

## OFFICE OF OPERATIONS

OPERATIONS ORDER NO. 5

April 18, 2018

**SUBJECT: PROCEDURES FOR MAKING ARRESTS UNDER THE NEW DOMESTIC VIOLENCE LAW – PENAL CODE SECTION 836(d) – REVISED**

**PURPOSE:** On January 1, 2013, California Penal Code (PC) Section 836(d), was amended to authorize a warrantless arrest for domestic violence of persons who are currently or were formerly engaged or who are currently or were formerly dating. This Operations Order revises procedures for the enforcement of PC Section 836(d), to define when a warrantless misdemeanor arrest may be made for a crime of domestic violence not committed in an officer's presence. This Operations Order supersedes Office of Operations Order No. 5, *Procedures for Making Arrests Under the New Domestic Violence Law – Penal Code Section 836(d)*, dated May 1, 1997.

**PROCEDURE:** Penal Code Section 836(d) states, **in part**, that peace officers may arrest a person without a warrant for a misdemeanor assault or battery upon:

- A current or former spouse;
- A current or former fiancé/fiancée;
- A current or former cohabitant;
- A current or former dating relationship; or,
- Parties with a child in common.

Officers should understand that this warrantless misdemeanor arrest authority applies only to domestic violence incidents involving one of the specified relationships. If no probable cause to arrest exists, the officer shall inform the victim of his or her right to make a private person's arrest, per PC Section 836(b).

Additionally, PC Section 13701(b) requires officers at the scene to make reasonable efforts to identify the **dominant aggressor** in any felony or misdemeanor domestic violence incident.

**Penal Code Section 13701(b) defines the dominant aggressor as the person determined to be the most significant aggressor, rather than the first aggressor.** In identifying the dominant aggressor, an officer shall consider the intent of the law to protect victims of domestic violence from continuing abuse; the threats creating fear of physical injury; the history of domestic violence between the persons involved; and, whether either person acted in self-defense.

**Note:** Penal Code Section 13701(b) is intended to discourage, when appropriate, but not prohibit, dual arrests in domestic violence incidents.

**If it is determined that the dominant aggressor has committed an assault or battery, the dominant aggressor shall be arrested, per Department policy, under the authority of PC Section 836(d).**

If officers are unable to determine the dominant aggressor, a supervisor **shall** be requested for advice. If the dominant aggressor still cannot be determined, Department personnel **shall** inform the victim of his or her right to make a private person's arrest. If the victim wants to make an arrest, the officers **shall** follow existing private person's arrest procedures outlined in Department Manual Sections 4/216.30 through 4/216.34.

Any questions regarding this matter should be directed to Evaluation and Administration Section, Office of Operations at (213) 486-6050.

A handwritten signature in blue ink, appearing to be 'MR. MOORE', written over a faint circular stamp.

**MICHEL R. MOORE, First Assistant Chief  
Director, Office of Operations**

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