

## OFFICE OF OPERATIONS

OPERATIONS ORDER NO. 6

April 18, 2018

**SUBJECT: DETERMINING THE DOMINANT AGGRESSOR AT A DOMESTIC VIOLENCE INVESTIGATION – REVISED**

**PURPOSE:** On January 1, 2014, California Penal Code (PC) Section 273.5, was amended to add current or formerly engaged parties and current or former dating relationships to the definition of victims of domestic violence. This Operations Order revises and clarifies procedures for the enforcement of PC Section 13701(b), which requires officers to make all reasonable efforts to determine the dominant aggressor at a domestic violence scene. This Operations Order supersedes Office of Operations Order No. 4, Determining the Dominant Aggressor at a Domestic Violence Investigation, dated May 20, 2004.

Officers are tasked with determining what, if any, crime has occurred and who is responsible for the crime at the scene of domestic violence investigations. Arresting both parties involved in a domestic violence-related crime, while not prohibited, is generally discouraged since many of these dual arrest cases result in no criminal filings. This allows the batterer to circumvent the criminal justice system and continue the behavior. The victim is then faced with the consequences of the arrest, including a possible negative impact on his or her reputation, employment, and the possible loss of current and future rights of child custody. Negative consequences such as these are the main reasons why domestic violence victims refrain from calling law enforcement agencies or from cooperating with the investigations. For the aforementioned reasons, dual arrests can actually promote further domestic violence rather than protect victims from continuing abuse.

**PROCEDURE:** 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.

When an officer has probable cause to believe that a person has committed an assault or battery upon the listed persons below and the dominant aggressor has been identified, he or she shall be arrested for the applicable charge:

- 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.

Penal Code Section 13701(b) states, **in part**, that officers **shall** make reasonable efforts to identify the dominant aggressor. Circumstances that may prove challenging include:

- Injuries to both parties involved (self-defense);
- Injuries to both parties involved (not self-defense); and,
- Mutual protective orders on file.

**I. INJURIES TO BOTH PARTIES INVOLVED (SELF-DEFENSE).** Officers may encounter a victim of domestic violence who has caused injury to the batterer. In the instance where the injury appears to be the result of self-defense, officers are reminded to consider that PC Sections 692 through 694 provide for the use of reasonable force in self-defense. When officers determine that the injuries caused by the victim were in self-defense, the victim **shall not** be arrested for a domestic violence related crime.

**II. INJURIES TO BOTH PARTIES INVOLVED (NOT SELF-DEFENSE).** In cases where both parties committed assault or battery upon one another and self-defense has been ruled out, but one individual used a demonstrably higher level of violence against the other, that person shall be identified as the dominant aggressor and arrested for the appropriate domestic violence-related charge pursuant to PC Section 13701(b). The person determined to not be the dominant aggressor **shall not** be arrested.

**Note:** Dual arrests are not prohibited in cases where the dominant aggressor cannot be determined or where both parties have used significant violence and self-defense is not a factor.

**III. MUTUAL PROTECTIVE ORDERS ON FILE.** During investigations where mutual protective orders exist, officers **shall** consider PC Section 836(c)(3), which requires officers to determine the dominant aggressor before making an arrest for this section. This section defines the dominant aggressor as the person determined to be the most significant, rather than the first, aggressor.

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 as outlined in Department Manual Sections 4/216.30 through 4/216.34.

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



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Director, Office of Operations

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