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Vehicle Pursuits

314.1 PURPOSE AND SCOPE

Vehicle pursuits expose innocent citizens, law enforcement officers and fleeing violators to the risk of serious injury or death. The primary purpose of this policy is to provide officers with guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law. Another purpose of this policy is to reduce the potential for pursuit-related collisions. Vehicular pursuits require officers to exhibit a high degree of common sense and sound judgment. Officers must not forget that the immediate apprehension of a suspect is generally not more important than the safety of the public and pursuing officers.

Deciding whether to pursue a motor vehicle is a critical decision that must be made quickly and under difficult and unpredictable circumstances. In recognizing the potential risk to public safety created by vehicular pursuits, no officer or supervisor shall be criticized or disciplined for deciding not to engage in a vehicular pursuit because of the risk involved. This includes circumstances where department policy would permit the initiation or continuation of the pursuit. It is recognized that vehicular pursuits are not always predictable and decisions made pursuant to this policy will be evaluated according to the totality of the circumstances reasonably available at the time of the pursuit.

Officers must remember that the most important factors to the successful conclusion of a pursuit are proper self-discipline and sound professional judgment. Officer's conduct during the course of a pursuit must be objectively reasonable; that is, what a reasonable officer would do under the circumstances. An unreasonable individual's desire to apprehend a fleeing suspect at all costs has no place in professional law enforcement.

314.1.1 VEHICLE PURSUIT DEFINED

A vehicle pursuit is an event involving one or more law enforcement officers attempting to apprehend a suspect, who is attempting to avoid arrest while operating a motor vehicle by using high-speed driving or other evasive tactics, such as driving off a highway, turning suddenly, or driving in a legal manner but willfully failing to yield to an officer's signal to stop.

314.2 OFFICER RESPONSIBILITIES

It shall be the policy of this department that a vehicle pursuit shall be conducted only with red light and siren as required by Vehicle Code § 21055 for exemption from compliance with the rules of the road. The following policy is established to provide officers with guidelines for driving with due regard and caution for the safety of all persons using the highway as required by Vehicle Code § 21056.

314.2.1 WHEN TO INITIATE A PURSUIT

Officers are authorized to initiate a pursuit when it is reasonable to believe that a suspect is attempting to evade arrest or detention by fleeing in a vehicle and the following conditions exist:



San Rafael Police Department

San Rafael PD Policy Manual



Vehicle Pursuits

- A. The violator does not stop and the driving behavior complies with the vehicle code, unless the circumstances change that would make it unsafe to continue and/or the violator begins driving without due care for other's safety; or
- B. There is reasonable suspicion to believe the suspect committed, or has an outstanding arrest warrant for, a violent felony, including but not limited to those specified in Penal Code 667.5(c), as listed below; or
- (1) Murder or voluntary manslaughter.
 - (2) Mayhem.
 - (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
 - (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
 - (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
 - (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
 - (7) Any felony punishable by death or imprisonment in the state prison for life.
 - (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice or any felony in which the defendant uses a firearm.
 - (9) Any robbery.
 - (10) Arson, in violation of subdivision (a) or (b) of Section 451.
 - (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
 - (12) Attempted murder.
 - (13) A violation of Section 18745, 18750, or 18755.
 - (14) Kidnapping.
 - (15) Assault with the intent to commit a specified felony, in violation of Section 220.
 - (16) Continuous sexual abuse of a child, in violation of Section 288.5.
 - (17) Carjacking, as defined in subdivision (a) of Section 215.
 - (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
 - (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22.
 - (20) Any burglary of the first degree, as defined in subdivision (a) of Section 460, where there is probable cause to believe that another person, other than an accomplice, was present in the residence during the commission of the burglary.
 - (21) A violation of subdivision (b) or (c) of Section 11418.



San Rafael Police Department

San Rafael PD Policy Manual



Vehicle Pursuits

(22) A violation of subdivision (c)(2) of Section 243, wherein the battery against a peace officer results in a physical injury which requires professional medical treatment.

C. There is reasonable suspicion to believe the suspect committed a crime involving the use of a firearm, or probable cause that the suspect is in possession of a firearm

An officer shall not initiate a pursuit of an individual suspected of a non-violent felony, misdemeanor, or vehicle code violation, except as specified in A, B or C above.

The following factors individually and collectively shall be considered in deciding whether to initiate a pursuit:

- (a) Seriousness of the known or reasonably suspected crime and its relationship to community safety.
- (b) The importance of protecting the public and balancing the known or reasonably suspected offense and the apparent need for immediate capture against the risks to officers, innocent motorists and others.
- (c) Apparent nature of the fleeing suspects (e.g., whether the suspects represent a serious threat to public safety).
- (d) The identity of the suspects has been verified and there is comparatively minimal risk in allowing the suspects to be apprehended at a later time.
- (e) Safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic and the speed of the pursuit relative to these factors.
- (f) Pursuing officers familiarity with the area of the pursuit, the quality of radio communications between the pursuing units and the dispatcher/supervisor and the driving capabilities of the pursuing officers under the conditions of the pursuit.
- (g) Weather, traffic and road conditions that substantially increase the danger of the pursuit beyond the worth of apprehending the suspect.
- (h) Performance capabilities of the vehicles used in the pursuit in relation to the speeds and other conditions of the pursuit.
- (i) Vehicle speeds.
- (j) Other persons in or on the pursued vehicle (e.g., passengers, co-offenders and hostages).
- (k) Availability of other resources such as helicopter assistance.
- (l) The police unit is carrying passengers other than police officers. Pursuits should not be undertaken with a prisoner in the police vehicle.

314.2.2 WHEN TO TERMINATE A PURSUIT

Pursuits should be discontinued whenever the totality of objective circumstances known or which reasonably ought to be known to the officer or supervisor during the pursuit indicates that the



San Rafael Police Department

San Rafael PD Policy Manual



Vehicle Pursuits

present risks of continuing the pursuit reasonably appear to outweigh the risks resulting from the suspect's escape.

The factors listed in When to Initiate a Pursuit of this policy are expressly included herein and will apply equally to the decision to discontinue as well as the decision to initiate a pursuit. Officers and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to innocent motorists and themselves when electing to continue a pursuit. In the context of this policy, the term "terminate" shall be construed to mean discontinue or to stop chasing the fleeing vehicle.

In addition to the factors listed in When to Initiate a Pursuit of this policy, the following factors should also be considered in deciding whether to terminate a pursuit:

- (a) Distance between the pursuing officers and the fleeing vehicle is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time and/or distance.
- (b) Pursued vehicle's location is no longer definitely known.
- (c) Officer's pursuit vehicle sustains any type of damage that renders it unsafe to drive.
- (d) Extended pursuits of violators for misdemeanors not involving violence or risk of serious harm (independent of the pursuit) are discouraged.
- (e) There are hazards to uninvolved bystanders or motorists.
- (f) If the identity of the offender is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit, officers should strongly consider discontinuing the pursuit and apprehending the offender at a later time.
- (g) Pursuit is terminated by a supervisor.

314.2.3 SPEED LIMITS

The speed of a pursuit is a factor that should be evaluated on a continuing basis by the officer and supervisor. Evaluation of vehicle speeds shall take into consideration public safety, officer safety and the safety of the occupants of the fleeing vehicle.

Should high vehicle speeds be reached during a pursuit, officers and supervisors shall also consider these factors when determining the reasonableness of the speed of the pursuit:

- (a) Pursuit speeds have become unreasonably unsafe for the surrounding conditions.
- (b) Pursuit speeds have exceeded the driving ability of the officer.
- (c) Pursuit speeds are beyond the capabilities of the pursuit vehicle thus making its operation unsafe.

314.3 PURSUIT UNITS

Pursuit units should be limited to three vehicles (two units and a supervisor); however, the number of units involved will vary with the circumstances. An officer or supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of



San Rafael Police Department

San Rafael PD Policy Manual



Vehicle Pursuits

officers involved would be insufficient to safely arrest the suspects. All other officers should stay out of the pursuit, but should remain alert to its progress and location. Any officer who drops out of a pursuit may then, if necessary, proceed to the termination point at legal speeds, following the appropriate rules of the road.

314.3.1 MOTORCYCLE OFFICERS

A distinctively marked patrol vehicle equipped with emergency overhead lighting should replace a police motorcycle as primary and/or secondary pursuit unit as soon as practical.

314.3.2 VEHICLES WITHOUT EMERGENCY EQUIPMENT

Vehicles not equipped with red light and siren are generally prohibited from initiating or joining in any pursuit. Officers in such vehicles, however, may become involved in emergency activities involving serious crimes or life threatening situations. Those officers should terminate their involvement in any pursuit immediately upon arrival of a sufficient number of emergency police vehicles or any police helicopter. The exemptions provided by Vehicle Code § 21055 do not apply to officers using vehicles without emergency equipment.

314.3.3 PRIMARY UNIT RESPONSIBILITIES

The initial pursuing unit will be designated as the primary pursuit unit and will be responsible for the conduct of the pursuit unless it is unable to remain reasonably close enough to the violator's vehicle. The primary responsibility of the officer initiating the pursuit is the apprehension of the suspects without unreasonable danger to him/herself or other persons.

Notify the Communications Center that a vehicle pursuit has been initiated and as soon as practicable provide information including, but not limited to:

- (a) Reason for the pursuit.
- (b) Location and direction of travel.
- (c) Speed of the fleeing vehicle.
- (d) Description of the fleeing vehicle and license number, if known.
- (e) Number of known occupants.
- (f) The identity or description of the known occupants.
- (g) Information concerning the use of firearms, threat of force, injuries, hostages or other unusual hazards.

Unless relieved by a supervisor or secondary unit, the officer in the primary unit shall be responsible for the broadcasting of the progress of the pursuit. Unless practical circumstances indicate otherwise, and in order to concentrate on pursuit driving, the primary officer should relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or aircraft joining the pursuit.



San Rafael Police Department

San Rafael PD Policy Manual



Vehicle Pursuits

314.3.4 SECONDARY UNITS RESPONSIBILITIES

The second officer in the pursuit is responsible for the following:

- (a) The officer in the secondary unit should immediately notify the dispatcher of entry into the pursuit.
- (b) Remain a safe distance behind the primary unit unless directed to assume the role of primary officer, or if the primary unit is unable to continue the pursuit.
- (c) The secondary officer should be responsible for broadcasting the progress of the pursuit unless the situation indicates otherwise.

314.3.5 PURSUIT DRIVING TACTICS

The decision to use specific driving tactics requires the same assessment of considerations outlined in the factors to be considered concerning pursuit initiation and termination. The following are tactics for units involved in the pursuit:

- (a) Officers, considering their driving skills and vehicle performance capabilities, will space themselves from other involved vehicles such that they are able to see and avoid hazards or react safely to maneuvers by the fleeing vehicle.
- (b) Because intersections can present increased risks, the following tactics should be considered:
 - 1. Available units not directly involved in the pursuit may proceed safely to controlled intersections ahead of the pursuit in an effort to warn cross traffic.
 - 2. Pursuing units should exercise due caution when proceeding through controlled intersections.
- (c) As a general rule, officers should not pursue a vehicle driving left of center (wrong way) on a freeway. In the event that the pursued vehicle does so, the following tactics should be considered:
 - 1. Requesting assistance from an air unit.
 - 2. Maintaining visual contact with the pursued vehicle by paralleling it on the correct side of the roadway.
 - 3. Requesting other units to observe exits available to the suspects.
- (d) Notifying the California Highway Patrol (CHP) and/or other jurisdictional agency if it appears that the pursuit may enter their jurisdiction.
- (e) Officers involved in a pursuit should not attempt to pass other units unless the situation indicates otherwise or they are requested to do so by the primary unit.

314.3.6 TACTICS/PROCEDURES FOR UNITS NOT INVOLVED IN THE PURSUIT

There should be no paralleling of the pursuit route. Officers are authorized to use emergency equipment at intersections along the pursuit path to clear intersections of vehicular and pedestrian



San Rafael Police Department

San Rafael PD Policy Manual



Vehicle Pursuits

traffic to protect the public. Officers should remain in their assigned area and should not become involved with the pursuit unless directed otherwise by a supervisor.

Non-pursuing personnel needed at the termination of the pursuit should respond in a non-emergency manner, observing the rules of the road.

The primary and secondary units should be the only units operating under emergency conditions (red light and siren) unless other units are assigned to the pursuit.

314.3.7 PURSUIT TRAILING

In the event the initiating unit from this agency either relinquishes control of the pursuit to another unit or jurisdiction, that initiating unit may, with permission of a supervisor, trail the pursuit to the termination point in order to provide necessary information and assistance for the arrest of the suspects.

The term trail means to follow the path of the pursuit at a safe speed while obeying all traffic laws and without activating emergency equipment. If the pursuit is at a slow rate of speed, the trailing unit will maintain sufficient distance from the pursuit units so as to clearly indicate an absence of participation in the pursuit.

314.3.8 AIRCRAFT ASSISTANCE

When available, aircraft assistance should be requested. Once the air unit has established visual contact with the pursued vehicle, it should assume control over the pursuit. The primary and secondary ground units should consider the participation of aircraft assistance when determining whether to continue the pursuit.

The air unit should coordinate the activities of resources on the ground, report progress of the pursuit and provide officers and supervisors with details of upcoming traffic congestion, road hazards, or other pertinent information to evaluate whether or not to continue the pursuit. If ground units are not within visual contact and the air unit determines that it is unsafe to continue the pursuit, the air unit has the authority to terminate the pursuit.

314.4 SUPERVISORY CONTROL AND RESPONSIBILITY

It is the policy of this department that available supervisory and management control will be exercised over all vehicle pursuits involving officers from this department.

The field supervisor of the officer initiating the pursuit, or if unavailable, the nearest field supervisor will be responsible for the following:

- (a) Upon becoming aware of a pursuit, immediately ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the pursuit in order to ensure that the pursuit is conducted within established department guidelines.
- (b) Engaging in the pursuit, when appropriate, to provide on-scene supervision.
- (c) Exercising management and control of the pursuit even if not engaged in it.



San Rafael Police Department

San Rafael PD Policy Manual



Vehicle Pursuits

- (d) Ensuring that no more than the number of required police units needed are involved in the pursuit under the guidelines set forth in this policy.
- (e) Directing that the pursuit be terminated if, in his/her judgment, it is unjustified to continue the pursuit under the guidelines of this policy.
- (f) Ensuring that aircraft are requested if available.
- (g) Ensuring that the proper radio channel is being used.
- (h) Ensuring the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this agency.
- (i) Controlling and managing SRPD units when a pursuit enters another jurisdiction.
- (j) Preparing post-pursuit critique and analysis of the pursuit for training purposes.

314.4.1 SHIFT SUPERVISOR RESPONSIBILITY

Upon becoming aware that a pursuit has been initiated, the Shift Supervisor should monitor and continually assess the situation and ensure the pursuit is conducted within the guidelines and requirements of this policy. The Shift Supervisor has the final responsibility for the coordination, control and termination of a vehicle pursuit and shall be in overall command.

The Shift Supervisor shall review all pertinent reports for content and forward to the Bureau Commander.

314.5 COMMUNICATIONS

If the pursuit is confined within the City limits, radio communications will be conducted on the primary channel unless instructed otherwise by a supervisor or communications dispatcher. If the pursuit leaves the jurisdiction of this department or such is imminent, involved units should, whenever available, switch radio communications to an emergency channel most accessible by participating agencies and units.

314.5.1 COMMUNICATION CENTER RESPONSIBILITIES

Upon notification that a pursuit has been initiated, the Communications Center will:

- (a) Coordinate pursuit communications of the involved units and personnel.
- (b) Notify and coordinate with other involved or affected agencies as practicable.
- (c) Ensure that a field supervisor is notified of the pursuit.
- (d) Assign an incident number and log all pursuit activities.
- (e) Broadcast pursuit updates as well as other pertinent information as necessary.
- (f) Notify the Shift Supervisor as soon as practicable.



San Rafael Police Department

San Rafael PD Policy Manual



Vehicle Pursuits

314.5.2 LOSS OF PURSUED VEHICLE

When the pursued vehicle is lost, the primary unit should broadcast pertinent information to assist other units in locating suspects. The primary unit will be responsible for coordinating any further search for either the pursued vehicle or suspects fleeing on foot.

314.6 INTER-JURISDICTIONAL CONSIDERATIONS

When a pursuit enters another agency's jurisdiction, the primary officer or supervisor, taking into consideration distance traveled, unfamiliarity with the area and other pertinent facts, should determine whether to request the other agency to assume the pursuit. Unless entry into another jurisdiction is expected to be brief, it is generally recommended that the primary officer or supervisor ensure that notification is provided to each outside jurisdiction into which the pursuit is reasonably expected to enter, regardless of whether such jurisdiction is expected to assist.

314.6.1 ASSUMPTION OF PURSUIT BY ANOTHER AGENCY

Units originally involved will discontinue the pursuit when advised that another agency has assumed the pursuit and assistance of the San Rafael Police Department is no longer needed. Upon discontinuing the pursuit, the primary unit may proceed upon request, with or at the direction of a supervisor, to the termination point to assist in the investigation.

The role and responsibilities of officers at the termination of a pursuit initiated by this department shall be coordinated with appropriate consideration of the units from the agency assuming the pursuit.

Notification of a pursuit in progress should not be construed as a request to join the pursuit. Requests to or from another agency to assume a pursuit should be specific. Because of communication limitations between local agencies and CHP units, a request for CHP assistance will mean that they will assume responsibilities for the pursuit. For the same reasons, when a pursuit leaves the freeway and a request for assistance is made to this department, the CHP should relinquish control.

314.6.2 PURSUITS EXTENDING INTO THIS JURISDICTION

The agency that initiates a pursuit shall be responsible for conducting the pursuit. Units from this department should not join a pursuit unless specifically requested to do so by the agency whose officers are in pursuit. The exception to this is when a single unit from the initiating agency is in pursuit. Under this circumstance, a unit from this department may join the pursuit until sufficient units from the initiating agency join the pursuit.

When a request is made for this department to assist or take over a pursuit from another agency that has entered this jurisdiction, the supervisor should consider these additional following factors:

- (a) Ability to maintain the pursuit
- (b) Circumstances serious enough to continue the pursuit
- (c) Adequate staffing to continue the pursuit
- (d) The public's safety within this jurisdiction



San Rafael Police Department

San Rafael PD Policy Manual



Vehicle Pursuits

(e) Safety of the pursuing officers

As soon as practicable, a supervisor or the Shift Supervisor should review a request for assistance from another agency. The Shift Supervisor or supervisor, after consideration of the above factors, may decline to assist in, or assume the other agency's pursuit.

Assistance to a pursuing allied agency by officers of this department will terminate at the City limits provided that the pursuing officers have sufficient assistance from other sources. Ongoing participation from this department may continue only until sufficient assistance is present.

In the event that a pursuit from another agency terminates within this jurisdiction, officers shall provide appropriate assistance to officers from the allied agency including, but not limited to, scene control, coordination and completion of supplemental reports and any other assistance requested or needed.

314.7 PURSUIT INTERVENTION

Pursuit intervention is an attempt to terminate the ability of a suspect to continue to flee in a motor vehicle through tactical application of technology, road spikes, blocking, boxing, PIT (Pursuit Intervention Technique), ramming or roadblock procedures. In this context, ramming shall be construed to mean maneuvering the police unit into contact with the pursued vehicle to mechanically disable or forcibly position it such that further flight is not possible or practicable.

314.7.1 WHEN USE IS AUTHORIZED

Use of pursuit intervention tactics should be employed only after approval of a supervisor. In deciding whether to use intervention tactics, officers/supervisors should balance the risks of allowing the pursuit to continue with the potential hazards arising from the use of each tactic to the public, the officers and persons in or on the pursued vehicle. With these risks in mind, the decision to use any intervention tactic should be reasonable in light of the circumstances confronting the officer at the time of the decision.

It is imperative that officers act within the bounds of legality, good judgment and accepted practices.

314.7.2 DEFINITIONS

Blocking or vehicle intercept - A slow-speed coordinated maneuver where two or more patrol vehicles simultaneously intercept and block the movement of a suspect vehicle, the driver of which may be unaware of the impending enforcement stop, with the goal of containment and preventing a pursuit. Blocking is not a moving or stationary road block.

Boxing-in - A tactic designed to stop a violator's vehicle by surrounding it with law enforcement vehicles and then slowing all vehicles to a stop.

Pursuit Intervention Technique (PIT) - A low-speed maneuver designed to cause the suspect vehicle to spin out and terminate the pursuit.

Ramming - The deliberate act of impacting a violator's vehicle with another vehicle to functionally damage or otherwise force the violator's vehicle to stop.



San Rafael Police Department

San Rafael PD Policy Manual



Vehicle Pursuits

Roadblocks - A tactic designed to stop a violator's vehicle by intentionally placing an emergency vehicle or other immovable object in the path of the violator's vehicle.

Spikes or tack strips - A device that extends across the roadway designed to puncture the tires of the pursued vehicle.

314.7.3 USE OF FIREARMS

The use of firearms to disable a pursued vehicle is not generally an effective tactic and involves all the dangers associated with discharging firearms. Officers should not utilize firearms during an ongoing pursuit unless the conditions and circumstances dictate that such use reasonably appears necessary to protect life. Nothing in this section shall be construed to prohibit any officer from using a firearm to stop a suspect from using a vehicle as a deadly weapon.

314.7.4 INTERVENTION STANDARDS

Any pursuit intervention tactic, depending upon the conditions and circumstances under which it is used, may present dangers to the officers, the public or anyone in or on the vehicle being pursued. Certain applications of intervention tactics may be construed to be a use of deadly force and subject to the requirements for such use. Officers shall consider these facts and requirements prior to deciding how, when, where and if an intervention tactic should be employed.

- (a) Blocking or vehicle intercept should only be considered in cases involving felony suspects or impaired drivers who pose a threat to public safety when officers reasonably believe that attempting a conventional enforcement stop will likely result in the driver attempting to flee in the vehicle. Because of the potential risks involved, this technique should only be employed by officers who have received training in such tactics after giving consideration to the following:
 - 1. The need to immediately stop the suspect vehicle or prevent it from leaving substantially outweighs the risks of injury or death to occupants of the suspect vehicle, officers, or other members of the public.
 - 2. All other reasonable intervention techniques have failed or reasonably appear ineffective.
 - 3. Employing the blocking maneuver does not unreasonably increase the risk to officer safety.
 - 4. The target vehicle is stopped or traveling at a low speed.
 - 5. At no time should civilian vehicles be used to deploy this technique.
- (b) Only those officers trained in the use of the Pursuit Intervention Technique (PIT) will be authorized to use this procedure and only then with approval of a supervisor upon consideration of the circumstances and conditions presented at the time, including the potential for risk of injury to officers, the public and occupants of the pursued vehicle.
- (c) Ramming a fleeing vehicle should be done only after other reasonable tactical means at the officer's disposal have been exhausted. This tactic should be reserved for situations



San Rafael Police Department

San Rafael PD Policy Manual



Vehicle Pursuits

where there does not appear to be another reasonable alternative method. This policy is an administrative guide to direct officers in their decision-making process before ramming another vehicle. When ramming is used as a means to stop a fleeing vehicle, one or more of the following factors should be present:

1. The suspect is an actual or suspected felon who reasonably appears to represent a serious threat to the public if not apprehended.
 2. The suspect is driving with willful or wanton disregard for the safety of other persons or is driving in a reckless and life-endangering manner.
 3. If there does not reasonably appear to be a present or immediately foreseeable serious threat to the public, the use of ramming is not authorized.
- (d) As with all intervention techniques, pursuing officers should obtain supervisor approval before attempting to box a suspect vehicle during a pursuit. The use of such a technique must be carefully coordinated with all involved units, taking into consideration the circumstances and conditions presented at the time as well as the potential risk of injury to officers, the public and occupants of the pursued vehicle.
- (e) The use of spike strips should be approved in advance by a supervisor and deployed only when it is reasonably certain that only the pursued vehicle will be affected by their use. Officers should carefully consider the limitations of such devices as well as the potential risks to officers, the public and occupants of the pursued vehicle. If the pursued vehicle is a motorcycle, a vehicle transporting hazardous materials, or a school bus transporting children, officers and supervisors should weigh the potential consequences against the need to immediately stop the vehicle.
- (f) Because roadblocks involve a potential for serious injury or death to occupants of the pursued vehicle if the suspect does not stop, the intentional placement of roadblocks in the direct path of a pursued vehicle is generally discouraged and should not be deployed without prior approval of a supervisor and only then under extraordinary conditions when all other reasonable intervention techniques have failed or reasonably appear ineffective and the need to immediately stop the pursued vehicle substantially outweighs the risks of injury or death to occupants of the pursued vehicle, officers or other members of the public.

314.7.5 CAPTURE OF SUSPECTS

Proper self-discipline and sound professional judgment are the keys to a successful conclusion of a pursuit and apprehension of evading suspects. Officers shall use only that amount of force, which reasonably appears necessary under the circumstances, to properly perform their lawful duties.

Unless relieved by a supervisor, the primary officer should coordinate efforts to apprehend the suspects following the pursuit. Officers should consider safety of the public and the involved officers when formulating plans to contain and capture the suspects.



San Rafael Police Department

San Rafael PD Policy Manual



Vehicle Pursuits

314.8 REPORTING REQUIREMENTS

The following reports should be completed upon conclusion of all pursuits:

- (a) The primary officer should complete appropriate crime/arrest reports.
- (b) The Shift Supervisor shall ensure that an Allied Agency Vehicle Pursuit Report (form CHP 187A) is filed with the CHP not later than 30 days following the pursuit (Vehicle Code § 14602.1). The primary officer should complete as much of the required information on the form as is known and forward the report to the Shift Supervisor for review and distribution.
- (c) After first obtaining the available information, a field supervisor shall promptly complete a Supervisor's Log, briefly summarizing the pursuit, and submit it to his/her manager. This log should minimally contain the following information:
 1. Date and time of pursuit
 2. Length of pursuit
 3. Involved units and officers
 4. Initial reason for pursuit
 5. Starting and termination points
 6. Disposition (arrest, citation), including arrestee information if applicable
 7. Injuries and/or property damage
 8. Medical treatment
 9. Name of supervisor at scene
 10. A preliminary determination whether the pursuit appears to be in compliance with this policy and whether additional review or follow-up is warranted

314.8.1 REGULAR AND PERIODIC PURSUIT TRAINING

In addition to initial and supplementary Police Officer Standard Training (POST) training on pursuits required by Penal Code § 13519.8, all sworn members of this department will participate no less than annually in regular and periodic department training addressing this policy and the importance of vehicle safety and protecting the public at all times, including a recognition of the need to balance the known offense and the need for immediate capture against the risks to officers and others (Vehicle Code § 17004.7(d)).

314.8.2 POLICY REVIEW

Each sworn member of this department shall certify in writing that they have received, read and understand this policy initially and upon any amendments. The POST attestation form, or an equivalent form, may be used to document the compliance and should be retained in the member's training file.



San Rafael Police Department

San Rafael PD Policy Manual



Vehicle Pursuits

314.9 APPLICATION OF VEHICLE PURSUIT POLICY

This policy is expressly written and adopted pursuant to the provisions of Vehicle Code § 17004.7, with additional input from the POST Vehicle Pursuit Guidelines.

314.10 PURSUIT REVIEW BOARD

The purpose of the review is to assist in determining if the pursuit was necessary and whether it was conducted within prescribed guidelines; to assist in identifying further training needs; to assist in determining if a change in policy is needed; to collect data which can reveal trends and demonstrate specific risk factors associated with pursuit driving; and to demonstrate to department members and others that the department is concerned about and actively manages pursuits.

A mandatory review and assessment will be conducted of all pursuits. The supervisor of the unit initiating the pursuit will be responsible for submitting a written report outlining the details of the pursuit.

The pursuit will be reviewed by a patrol lieutenant who will make a determination as to whether the pursuit was conducted "within policy." If determined to be within policy, no further action is required. If the patrol lieutenant determines additional review is warranted, a formal review will be conducted. The formal review will be conducted by a review board as outlined in the traffic collision review board policy.

The review and assessment may include a review of all reports and memoranda, radio tapes, officer statements, and other material pertaining to the incident.

The review board findings are reported in memorandum format to the Chief of Police.

Hate Crimes

337.1 PURPOSE AND SCOPE

The purpose of this policy is to meet or exceed the provisions of Penal Code § 13519.6(c) and provides members of this department with guidelines for identifying and investigating incidents and crimes that may be motivated by hatred or other bias.

337.1.1 DEFINITIONS

Hate crimes - A criminal act committed in whole or in part, because of one or more of the following actual or perceived characteristics of the victim (Penal Code § 422.55; Penal Code § 422.56; Penal Code § 422.57):

- (a) Disability
- (b) Gender
- (c) Nationality
- (d) Race or ethnicity
- (e) Religion
- (f) Sexual orientation
- (g) Association with a person or group with one or more of these actual or perceived characteristics
- (h) Examples of hate crimes include, but are not limited to:
 1. Interfering with, oppressing or threatening any other person in the free exercise or enjoyment of any right or privilege secured by the constitution or laws because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6).
 2. Defacing a person's property because of one or more of the actual or perceived characteristics of the victim (Penal Code § 422.6(b)).
 3. Terrorizing a person with a swastika or burning cross (Penal Code § 11411).
 4. Vandalizing a place of worship (Penal Code § 594.3).

The federal Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act expands federal hate crimes to include crimes motivated by a victim's actual or perceived sex, sexual orientation, gender identity or disability (18 USC § 249).

Victim - Includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library or other victim or intended victim of the offense (Penal Code § 422.56).

FED 2009 - EXPANDS HATE CRIME LAWS TO INCLUDE GENDER, SEXUAL ORIENTATION, GENDER IDENTITY + DISABILITY. ALSO REMOVES THE PROTECTED ACTIVITY ASPECT SUCH AS VOTING

Hate Crimes

337.2 POLICY

The San Rafael Police Department recognizes and places a high priority on the rights of all individuals guaranteed under the state and federal constitution and incorporated in state and federal law.

337.3 PREVENTION AND PREPARATION

While it is recognized that not all crime can be prevented, this department is committed to taking a proactive approach to preventing and preparing for likely hate crimes by, among other things:

- (a) Make an affirmative effort to establish contact with persons and groups within the community who are likely targets of hate crimes and forming networks that address prevention and response.
- (b) Accessing assistance by, among other things, activating the California Department of Justice Hate Crime Rapid Response Protocol when necessary.
- (c) Providing victim assistance and community follow-up as outlined below.
- (d) Educating community and civic groups about hate crime laws.
- (e) Establishing a community relations liaison to work with community organizations and leaders to coordinate public meetings, local group meetings and school assemblies on recognizing, preparing for and preventing hate crimes.

337.4 INVESTIGATIONS

Whenever any member of this department receives a report of a suspected hate crime or other activity that reasonably appears to involve a potential hate crime, the following should occur:

- (a) Assigned officers should promptly contact the victim, witness or reporting party to investigate the matter further as circumstances may dictate
- (b) A supervisor should be notified of the circumstances as soon as practical.
- (c) Once in-progress aspects of any such situation have been stabilized (e.g., treatment of victims, apprehension of suspects at the scene), the assigned officers should take all reasonable steps to preserve evidence that establishes a possible hate crime.
- (d) Based upon available information, officers should take appropriate action to mitigate further injury or damage to potential victims or the community.
 1. Officers should contact the property owner to remove any evidence that cannot be physically removed (i.e., painted words or signs on a wall) by the officer once the offense is documented.
- (e) The assigned officers should interview available witnesses, victims and others to determine what circumstances, if any, indicate that the situation may involve a hate crime.
 1. No victim of or a witness to a hate crime who is not otherwise charged with or convicted of a crime under state law may be detained for or turned over to federal authorities exclusively for any actual or suspected immigration violation (Penal Code § 422.93(b))

Hate Crimes

2. Statements of victims and witnesses should be audio or video recorded if practicable (see the Portable Audio/Video Recorders Policy).
- (f) Depending on the situation, the assigned officers or supervisor may request additional assistance from detectives or other resources.
- (g) The assigned officers should include all available evidence indicating the likelihood of a hate crime in the relevant reports. All related reports should be clearly marked as "Hate Crimes" and, absent prior approval of a supervisor, should be completed and submitted by the assigned officers before the end of the shift.
- (h) The assigned officers will provide the victims of any suspected hate crime with a brochure on hate crimes (Penal Code § 422.92). Such brochures will also be available to members of the general public upon request. The assigned officers should also make reasonable efforts to assist the victims by providing available information on local assistance programs and organizations.
- (i) The assigned officers and supervisor should take reasonable steps to ensure that any such situation does not escalate further and should provide information to the victim regarding legal aid (e.g., Possible Temporary Restraining Order through the District Attorney or City Attorney Penal Code § 136.2 or Civil Code § 52.1 as indicated).

337.4.1 INVESTIGATIONS SECTION RESPONSIBILITY

If a hate crime case is assigned to the Investigations Section, the assigned detective will be responsible for:

- (a) Coordinating further investigation with the District Attorney and other appropriate law enforcement agencies.
- (b) Maintaining contact with the victims and other involved individuals, as needed.
- (c) Maintaining statistical data and tracking on suspected hate crimes as indicated for required reporting to the Attorney General (Penal Code § 13023). See the Records Section Policy.
- (d) Make reasonable efforts to identify additional witnesses.
- (e) Utilize available criminal intelligence systems as appropriate (see Criminal Organizations Policy).
- (f) Provide the supervisor and the Press Information Officer (PIO) with information that can be responsibly reported to the media.
 1. When appropriate, the PIO should reiterate that the hate crime will not be tolerated and will be taken seriously.

337.4.2 SUPERVISOR RESPONSIBILITY

The supervisor should confer with the initial responding officers to identify reasonable and appropriate preliminary actions. The supervisor should:

- (a) Review related reports to verify whether the incident is appropriately classified as a hate crime for federal and state bias crime-reporting purposes.

Hate Crimes

- (b) Notify other appropriate personnel in the chain of command, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
- (c) Consider the need for further action to be taken for the protection of the victims or vulnerable sites, such as assigning an officer at specific locations that could become targets or increase neighborhood surveillance.
- (d) Ensure that members who are responsible for the conduct and maintenance of information on criminal groups are notified and that they make appropriate inquiries and entries into criminal intelligence systems (see Criminal Organizations Policy).

337.5 TRAINING

All members of this department will receive POST-approved training on hate crime recognition and investigation as provided by Penal Code § 13519.6. Training should also include recognition of bias motivators such as ranges of attitudes and perceptions toward a specific characteristic or group.

SRPD Domestic Violence Training and Legal Update

February 2018

Prevention is possible because:

- Legal awareness high
- Social awareness high. DV happens and can be stopped through accountability and intervention
- Police have powers that can actually stop the violence (entering the home; separating the parties; seizing weapons, making arrest; getting EPO; bail enhancements)

Objectives

- ▶ To review DV law, protocol, procedure, & current trends
- ▶ To explain "evidence based" prosecution model
- ▶ To address firearms issues, restraining order, EPOs, and GVROs
- ▶ Legal update/Case examples

Pro-Arrest Policy

The Marin County policy is **PRO-ARREST**, in order to break the pattern of violence and to deter future abuse.

Myth

- ▶ Waste of time - "These cases never get filed"
- ▶ Knee jerk reaction resulting from prominent cases
- ▶ The man must always be the dominant aggressor
- ▶ You can't legislate human nature / This issue has existed since the beginning of time

PRO-ARREST *does not* mean that there must be an arrest of someone at every incident.

(Pro-Arrest is not Mandatory Arrest)

It prioritizes arrest over citation, letter notification, or warrant (promotes safety especially while EPO pending)

Domestic Violence

Marin County Law Enforcement Protocol goals:

- Protect the victim;
- Hold the batterer accountable;
- Intervene to stop the pattern of violence, and
- To advise victim's of the availability of civil remedies and community resources.

Dominant Aggressor

The person **determined** to be the most significant, rather than the first aggressor.

An officer shall consider the complete picture: the ongoing relationship including the history of domestic violence and the existence of any form of threats/coercion/dissuasion, use of weapons, nature of injuries (seriousness/offensive/defensive), demeanor, court orders, size/strength, who is more in control of the other's life?

Person most likely to inflict injury and least likely to be afraid

Dual arrests are discouraged – makes prosecution virtually impossible

Make reasonable efforts to determine if self-defense applies. If self-defense does not apply . . .

identify the dominant aggressor, the most significant, rather than the first, aggressor.

Dominant Aggressor

Case example: Witness contacted and made generalized statement that he saw female and male subjects fighting - seemed "mutual." According to witness, female (who was intoxicated) pursued male into a business and pushed him. Male tried to get female away and ended up pushing her back. She fell. Male injured - marks on face, neck, chest, and stomach. Female small abrasion on nose and on finger. Both injured. Female denied physical altercation. Not want EPO. Male want EPO said female was drunk tried to get her away, pushed her away, female punched him about 10 times and scratched him.

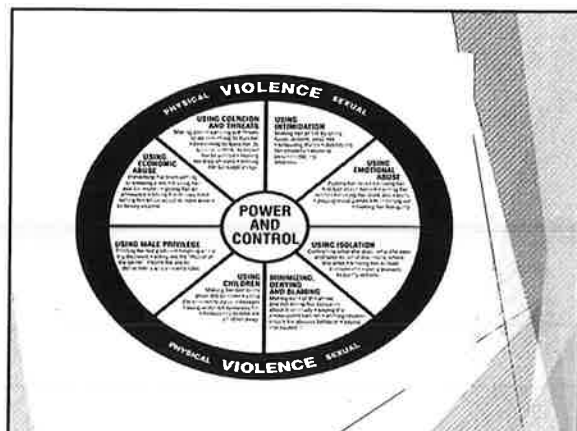
Self-defense/legal use of force

- The defendant reasonably believed that he/she was in imminent danger of suffering bodily injury or in imminent danger of being touched unlawfully
- The defendant reasonably believed that the immediate use of force was necessary to defend against that danger and
- No more force used than is reasonably necessary.
- Defendant threatened or harmed in the past may justify acting more quickly or taking greater self-defense measures.

Dominant Aggressor

Conclusion: Mutual combat and dual arrest based on injuries and witness statement that it looked "mutual"

Alternative conclusion: Based on the witness statement that female pursued male into male's place of business, (absence of DV history), (absence of size differential), the fact that the injuries to the male were more extensive than female, fact that male appeared more fearful & requested EPO, female's impairment/deception/defiant behavior observed by officers - female is dominant aggressor.



Domestic/Family Violence is defined by the relationship:
(important because of mandatory sentencing requirements and enhanced restraining order provisions)

- ▶ Family Code section 6211
- ▶ "Domestic violence" is abuse perpetrated against any of the following persons:
 - ▶ (a) A spouse or former spouse
 - ▶ (b) A cohabitant or former cohabitant.
 - ▶ (c) A person with whom the victim is having or has had a dating or engagement relationship.
 - ▶ (d) A person with whom the victim has had a child.
 - ▶ (e) A child of a victim.
 - ▶ (f) Any other person related by consanguinity (blood) or affinity (marriage) within the second degree.
- ▶ *get admission - so even if no victim, just witness to prove 242, may be able to get DV terms where def admitted to relationship*

Be aware of power & control dynamic

UNDERSTAND INTERPLAY OF VIOLENCE AND POWER AND CONTROL

POWER AND CONTROL WHEEL

PC 13700 - cohabitant defined

Two unrelated adults living together for a substantial period of time resulting in some permanency of the relationship.

Is it a romantic, intimate, or sexual relationship?

- Sharing of income or expenses
- Joint use or ownership of property
- Whether the parties hold themselves out as husband and wife or domestic partners. Is there a romantic relationship?
- The continuity of the relationship
- The length of the relationship

Domestic Violence Crimes

Penal Code Sections:

- ▶ Violations Restraining Orders: 166* (w/i 7 yrs and violence/credible threat), 273.6* (same)
- ▶ Harass, prowl, threaten, stalk, intimidate: 647(h), 646.9, 422, 653m, 653.1, 136.1
- ▶ Violence: 187, 207, 236, 236.1, 243(d), 243(e)(1), 243.25, 245, 273a,
- ▶ Sex assault: 261.5, 262
- ▶ Animal Cruelty: 597
- ▶ Entry and Damage: 459 (1st), 418 (forcibly entry), 603 (with damage), 451 (arson), 591, 591.5, 594
- ▶ Weapons & Firearms: 417, 246 (dwelling/veh), 246.3 (negl disch), 25400 (concealed), 25850 (loaded), 29800 (felon), 29805 (prior misd/WI 8103 - note misdemeanors include 240, 242, 273.6)
- ▶ PROPOSITION 63 - new requirement for firearm forfeiture felons/certain misd.

PC 13700 Defines Abuse

Intentionally or recklessly causing or attempting to cause bodily injury or placing another person in **reasonable apprehension of imminent serious bodily injury** to himself, herself or another.

(Violence or the threat of violence.)

13730 PC

Reports shall be made for all DV-related crimes and shall include:

- 1) Prior DV calls
- 2) Firearms/deadly weapons & seizure (run AFS?)
- 3) UI alcohol or controlled substance
- 4) Kids present
- 5) Self Defense/Dominant Aggressor Analysis

Traumatic condition

A condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force

Strangulation still requires an injury. Difficulty breathing, raspy voice, sore throat, redness, nausea/vomiting, unconscious, light-headedness, defecation, ruptured capillaries.

Penal Code 836

- (1) PC crime committed in the officer's presence.
- (2) PC felony.
- (3) DV (includes child of party, consanguinity/affinity 2nd degree, 65 years old or more & related by blood/legal guardianship)
- (4) DVRO or Criminal Protective Order

Strangulation

SB 40 (amending PC 13701) effective 1/1/18 requires the following notification:

Strangulation may cause internal injuries and the victim is encouraged to seek medical attention

Also LEAs are required to document in reports whether strangulation/suffocation was involved and to keep data

273.5 PC (Wobbler)

Any person who willfully inflicts corporal injury resulting in a traumatic condition upon:

- 1) The offenders spouse or former spouse
- 2) The offender's cohabitant or former cohabitant
- 3) The offender's fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship
- 4) The mother or father of the offender's child

243 (e)(1) PC

When a battery is committed :

1. Against a spouse/former spouse
2. Cohabitant/former cohabitant
3. Parent of the defendant's child
4. Fiancé/fiancée or a dating relationship, or has previously had, a dating or engagement relationship.

Includes an engagement and dating relationships and does not require an injury for any relationship.

Dating Defined in 243 (e)(1) PC

Frequent, intimate association primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

Credible Threat

Verbal or written threat, including through the use of an electronic communication device.

A threat implied by a pattern of conduct or a combination of verbal, written or electronically communicated statements and conducts.

Made with the intent to place the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family.

646.9 PC Stalking

Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family.

Intent

Intent to place the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family.

Issue: defendant is unstable/suffering from mental health issues - defense is desire to love or be with that person or motive to get custody of daughter.

[Stampfli case] where defendant insisted on maintaining contact with victim although she was attempting to avoid him and defendant warned by court, victim, victim's family etc. to stay away that intent to induce fear could be inferred

Investigative response: gather evidence that defendant knew actions likely to cause fear

Harassment

Engaging in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments or terrorizes that person, and that serves no legitimate purpose.

Sextortion

SB 500: amends PC 518, 520s

Extort (by force/fear/threat/color of authority) to obtain "consideration"

- sexual conduct
- image of intimate body part

What are some factors NOT to consider when making an arrest determination?

Perspective of recanting or uncooperative victim - why should you or jury believe them?

- 1) statistics show rare minority involve false reports
- 2) consistent with DV victim behavior**

DV expert on victim behavior testimony

The following factors should **NOT** be considered in the arrest determination:

1. Whether or not the suspect lives on the premises
2. Immigration status
3. Potential financial consequences of arrest
4. Verbal assurances that violence will cease
5. Victim's emotional state
6. Location of the incident (public/private)
7. Victim does not want to prosecute or make citizen's arrest
8. Speculation that victim may not follow through with the prosecution/recantation
9. The case may not result in a conviction
10. Racial, cultural, social, professional, or sexual orientation of victim or suspect.

Court Orders

Understand Victim Behavior

UNDERSTAND VICTIM BEHAVIOR &
WHY RECONTATION OCCURS

273.6 and 166(c)(1) PC Restraining Order Violations

An arrest should be made when probable cause exists to believe the subject of a restraining order has violated the order *whether or not in the presence of an officer* and evidence of proof of service of the order exists.

Generally:

- ▶ 273.6: for EPO violations, DV TRO violations, DVRO after hearing violations
- ▶ 166(c): for criminal DV restraining order violations
- ▶ All else: 166(a)(4)

273.6 and 166(c)(1) PC Restraining Order Violations

Issue for court?

In this and other DV cases is ID - where defendant has fled and officers did not get victim or witnesses to ID defendant. Court declines to issue warrants/orders & we cannot prove BYRD.

273.6 and 166(c)(1) PC Restraining Order Violations

Minimal restraining order violations - why arrest on these?

Cycle of violence

Restraining Order Verification

-Proof of service not necessary if defendant was in court when order issued.

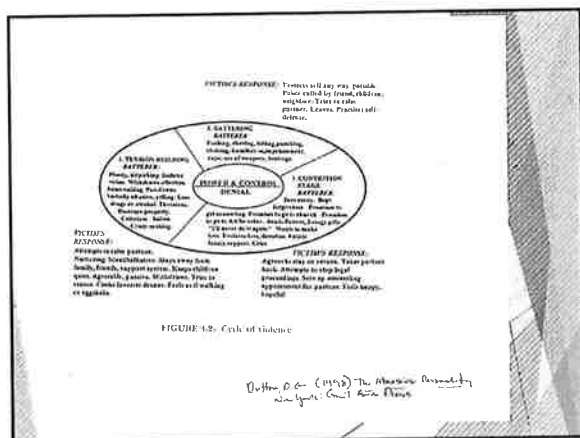
- Generally, the most recent order is the valid order.

-Criminal Court Stay-Away orders supersede Family Court Orders.

EPOs

*An EPO is authorized by statute where there are reasonable grounds to believe the following AND when necessary to prevent the occurrence or recurrence of the violence, abuse, abduction

(Family Code (FC) Section 6251)



EPOs

Domestic violence: "A person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought" (FC6250(a))

EPOs

"Abuse" includes (FC6203):

- ▶ To intentionally or recklessly cause or attempt to cause bodily injury;
- ▶ Sexual assault;
- ▶ To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another;
- ▶ "To engage in any behavior that has been or could be enjoined pursuant to Section 6320, which includes: molesting, attacking, striking, stalking, threatening, sex assault, battering, credible impersonating, falsely impersonating, harassing, telephoning including harassing/annoying calls, destroying property, contacting (directly or indirectly), coming within specified distance, disturbing peace"

EPOs

- ▶ **Stalking:** "A person is in immediate and present danger of stalking based upon the person's allegation that he or she has been willfully, maliciously, and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear for his or her safety, or the safety of his or her immediate family" (Penal Code Section 646.91)

EPOs

- ▶ **Child abuse by family/household member:** "A child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member." (FC6250(b))
- ▶ **Child abduction:** "A child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on an allegation of a recent threat to abduct the child or flee with the child from the jurisdiction." (FC6250(c))

EPOs

- ▶ **If decline initially:** do you explain in detail how it can protect victim/family while things settle down
- ▶ Victim does not need to go to civic center to get restraining order (DVRO) following EPO - can go to FACLC for assistance
 - ▶ Concerns re: civic center - safety issues in contacting defendant/defendant's family and potential to go to public defender for help instead of objective agency specializing in DVROs/family law
 - ▶ Purple card

EPOs

- ▶ **Elder/dependent adult abuse:** "An elder or dependent adult is in immediate and present danger of abuse [see WI 15610.07], based on an allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought" (FC6250(d))
 - ▶ "Abuse" includes:
 - ▶ Physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting harm or pain or mental suffering;
 - ▶ Deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering;
 - ▶ Financial abuse BUT No order may be issued based solely on financial abuse (FC6250(d))

136.2 orders

- ▶ Criminal court can order pre-conviction upon a good cause belief that harm to or intimidation or dissuasion of a victim or witness has occurred or is reasonably likely to occur.
- ▶ Where DV is charged, court can consider the nature of offense and criminal history records (including issuance of other restraining orders, registered firearms, etc.) when issuing pre-conviction orders.

136.2 orders

- ▶ An order protecting a victim or witness of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant.
- ▶ A minor who was not a victim of, but who was physically present at the time of, an act of domestic violence, is a witness and is deemed to have suffered harm

136.2 orders

- ▶ Court shall order:
- ▶ The defendant must surrender to local law enforcement, or sell to or store with a licensed gun dealer, any firearm owned by the defendant or subject to his or her immediate possession or control within 24 hours after service of this order and **must file a receipt with the court** showing compliance with this order within 48 hours of receiving this order
- ▶ *In addition to Prop 63

136.2 orders

- ▶ Post-conviction:
- ▶ Percipient witnesses to (DV/sex/gang offenses) if harassed can also be protected under order (AB 264 amendment to 136.2)
- ▶ 10 year order

Sandoval issue

- ▶ Be aware:
- ▶ New law which calls into question whether we can prove violation of no contact order where the contact was victim's idea

136.2 orders

- ▶ Court shall order:
- ▶ Defendant not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.
- ▶ Defendant relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.
- ▶ Defendant who owns, possesses, purchases or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to Section 29825.

GVROs

- ▶ Existing California law prohibits persons from purchasing or possessing firearms or ammunition if they have been convicted of felonies or certain misdemeanors, are subject to restraining orders, or have been involuntarily committed to a mental health facility as a result of a mental health disorder.
- ▶ But what about those individuals who don't meet the standard for involuntary prohibition but who are in crisis and at risk of dangerous behavior?
- ▶ If cannot get EPOs or DVROs, get GVROs

GVROs

- ▶ Difference between DVROs and GVROs:
 - ▶ Family members and unrelated cohabitants may apply.
 - ▶ A victim need not apply.

Three types:

- 1) Temporary emergency GVRO
- 2) Ex Parte GVRO
- 3) GVRO after notice and hearing

GVROs

- ▶ Court **must** consider: recent violence/threats, violation ROs, conviction for violence, pattern of violence/threats within last year
- ▶ Court **may** consider other evidence of increased risk for violence including: brandishing firearm, history of violence/threats or attempts, prior felony arrests, RO violations, alcohol/drug abuse, acquisition of firearms/ammo, information from mental health institutions

GVROs

- ▶ Temporary Emergency GVRO
- ▶ Sought by LEO
- ▶ Oral/Written application
- ▶ Standard: Reasonable Cause to Believe a person poses an **immediate and present danger** of injury to self or others by having a firearm in his/her possession
 - ▶ And the order is necessary because less restrictive alternatives have been ineffective, inadequate, or inappropriate.
 - ▶ 21 days

GVROs

- ▶ GVRO after notice and hearing:
- ▶ Within 21 days after issuance of Ex Parte GVRO
- ▶ Hearing (same factors as above) but can consider testimony of any relevant witnesses
- ▶ Standard: "clear and convincing evidence" that the subject of the petition poses a "significant danger of personal injury" to self or others by owning or possessing a firearm, and a GVRO is "necessary to prevent such injury" because less restrictive alternatives have been deemed ineffective, inadequate, or inappropriate.
- ▶ 1 yr.

GVROs

- ▶ Ex Parte GVRO
- ▶ Sought by LEO or immediate family member
- ▶ Written application during court hours for same day hearing
- ▶ Standard: **Substantial likelihood** that the subject of the petition poses a **significant danger, in the near future**, of personal injury to self or others by owning or possessing a firearm.
 - ▶ And the order is necessary because less restrictive alternatives have been ineffective, inadequate, or inappropriate.
 - ▶ 21 days

Risk/Lethality Assessment

- ▶ Threats to you, children, family members, friends
- ▶ Think suspect might hurt you, children, family members, friends
- ▶ Access to or use of guns/weapons
- ▶ Changing frequency or severity of violence/threats
- ▶ Intimidation: pressured or threatened by suspect, family/friends, attorneys
- ▶ Jealous, suspicious, tries to control victim's activities

Risk/Lethality Assessment

- ▶ Weapons accessible to suspect
- ▶ Recent separation or attempted separation
- ▶ Suspect abuses alcohol
- ▶ Suspect violent outside the relationship
- ▶ Destroyed cherished personal items
- ▶ Accuses victim of cheating
- ▶ "If I can't have you no one will"
- ▶ Threats to kill
- ▶ Suspect or Victim contemplated, attempted, threatened suicide
- ▶ Violence toward children
- ▶ Injured or killed pets
- ▶ Forced victim to have unwanted sex
- ▶ Victim is pregnant/violence or threats to pregnant victim

Prosecutor's Perspective: Evidence Based Model

What is an evidence based prosecution?

It is building cases we can win with or without victim testimony

Approach is:

- ▶ How can I prove this case if the victim does not testify in this case (unavailable - 5th)?
- ▶ If this was a circumstantial homicide case how would I prove it?

Risk/Lethality Assessment

- ▶ IMPORTANT BECAUSE OF NEW BAIL LAW
- ▶ Look at pocket card on scene for relevant questions

Case example of 5th invocation

Victim goes to defense and says how can I help defendant?

Referral to defense attorney

Victim takes the 5th

DA/LEA cannot talk to victim any longer

DA voir dire: non-incriminatory questions

In Camera hearing: court determination of validity of claim (examples of questions/SOL)

Felony - use immunity

Misdemeanor - only transactional; rarely given; usually claim is lie. Factors re immunity: corroboration of claim, history of threats or coercion

Firearms and DWs at DV incident or when serving DVROs or GVROs

- ▶ Seize firearms, ammo, other DW in plain sight, consensual/lawful search (probation/parole/PRCS/MS) for protection of officers and other persons (PC 18250)
- ▶ Inquire as to whether anyone on premises has firearms, ammo, DWs
- ▶ If serving PO indicating suspect in possession of firearms/ammo, request immediate surrender
- ▶ Records check to see if 1) prohibited from possessing firearms/ammo, 2) have registered firearms
- ▶ Seize firearms of prohibited persons (F/M)
- ▶ Issue receipt if seizure
- ▶ Consider SW if no surrender/seizure and PC belief firearms & prohibition

Case example of 5th invocation

Court asks if we want to dismiss

Will proceed if there is other *admissible* evidence of crime

Here did not think there was

BWC showed officer spoke with victim with victim's sister present

No statement from sister

No contact information for sister

Sister accompanied victim to court

Sister said she knew all about abuse and about prior abuse

Case example of 5th invocation

But sister would not testify to details

Contempt hearing: admitted knew information but would not testify; finally when asked why she said because defendant told her that if she lied to DA and court or not testify he would "change this time"

Court allowed spontaneous statements to sister about current incident and prior DV in to show defendant's propensity to commit DV

No Crawford/6th Amendment issue because statement to sister not LE

Charged defendant new case 136.1 dissuasion

Defendant pled guilty

What evidence do we need?

- ▶ Booking records/jail calls
- ▶ Correspondence (letters, emails, texts, voicemails - E-evidence [cell])
- ▶ Video/audiotaped interviews with victim and defendant
- ▶ Seize weapons
- ▶ Pictures! (vic/def/children/scene/weapons/dmg property)
 - ▶ "FOLLOW UP PHOTOS AND CONTACT"

Case example of 5th invocation

Had sister not come to court, could not have proceeded with case.

Take away - get statements from all potential witnesses - friends/family (BFFs!!!!!!/support person)

Why? Because they don't have the relationship dynamics that victim does preventing them from testifying. They often want to help victim.

Immigration fears - now neighbors and family members (even def's family members)/friends are reporting DV. Get their information, statements, etc.

What evidence do we need?

- ▶ New law AB 413: (Vic's recording)
 - ▶ Party to confidential communication
 - ▶ Can record communication to obtain evidence of DV
 - ▶ Admissible in court
- ▶ HT case P v. Brown (2017 14 CA5th 320)
 - ▶ Uncooperative and missing victim's statements
 - ▶ Oral statements to non-police and text messages
 - ▶ Come in over Crawford (not to LE)
 - ▶ Not hearsay (uncharged co-conspirator to crime)
- ▶ Expert testimony - evidence of control*
 - ▶ Needed for DV expert testimony

What evidence do we need?

- ▶ 911 tapes/logs
- ▶ BWC footage
- ▶ Child, neighbor, other family member/friend statements to this incident and to prior incidents
 - ▶ Separate child from parent
 - ▶ Parental suggestibility and LE suggestibility
- ▶ Medical records (including paramedic sheets)
- ▶ Prior police reports
- ▶ Restraining orders (and declarations)
- ▶ Your documentation of behavior/demeanor of parties as they made statement (not just "spontaneous" or "excited" statement)

Prosecutor's Perspective: Procedural Justice

- ▶ Procedural Justice - what it is and how it is actualized in our day to day work
- ▶ System is fair, everyone gets due process, even victim
- ▶ Victim services/victim representation (criminal/civil legal and support advocate) - purple card
- ▶ Make sure they are heard
 - ▶ By officer: Language/dialect - confirm understand
 - ▶ By court: report writing (New bail/OR language)***

Prosecutor's Perspective: Procedural Justice

DA meeting with victim - have them review police report and ask them to tell us what is not accurate; proper documentation is important from victim perspective as well.

Attempt to diffuse fears: long term jail/prison, deportation, breaking up family - goal is health of victim and family

Prosecutor's Perspective: Evidence Based Model

Good questions for defendant:

- ▶ What will your girlfriend/wife tell me about what you did?
- ▶ What will your kids say?
- ▶ Get out elements of offense -such as relationship

Prosecutor's Perspective: Evidence Based Model

Good questions for corroborating victim:

- ▶ Who have you told & who knows about it?
- ▶ Who else did you call to talk to right before or right after calling police? (BFF/family member)
 - ▶ Get that contact information & interview that person!
 - ▶ Do you have a safe place to stay? Where is that? Who else lives there?
 - ▶ How can we reach you in six months?
 - ▶ Who will know where you are?

End of Presentation

Why do we do this? Protect this and future victims.

Thank you & feel free to contact us with any questions.

Main contacts:

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Prosecutor's Perspective: Evidence Based Model

Good questions for corroborating victim:

- ▶ Who have you told & who knows about it?
- ▶ Boss/friend/neighbor - told you to call police
 - ▶ Get contact info & statement!
- ▶ Who else did you call to talk to right before or right after calling police? (BFF/family member)
 - ▶ Get that contact information & interview that person!
 - ▶ Do you have a safe place to stay? Where is that? Who else lives there?
 - ▶ How can we reach you in six months?
 - ▶ Who will know where you are?