

CALIFORNIA
Proposed Amendments to PC 13700 & 13701:
Domestic Violence Arrest Policy

The following proposed amendments were the result of a committee that was formed by California Batterer Intervention Treatment Providers, Domestic Violence Probation/Law Enforcement Personnel and Attorneys with a background in Domestic Violence. (See attached: Pro-Arrest and No Drop Prosecution Policies Document)

Note: Black text is existing language. Blue/underlined text is added or changed language. Red strike through text is deleted or changed language.

13700. As used in this title:

~~(a) "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.~~

(a) Domestic violence assault or an assault and battery. "Assault" is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another. A "battery" is any willful and unlawful use of force or violence upon the person of another.

(b) "Domestic violence" means ~~abuse~~ an assault or assault and battery committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) "Officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, a peace officer of the Department of General Services of the City of Los Angeles, as defined in subdivision (c) of Section 830.31, a housing authority patrol officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(d) "Victim" means a person who is a victim of domestic violence.

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for

officers' responses to domestic violence crimes calls by January 1, 1986.

These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) ~~The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed.~~ These policies also shall require the arrest of an offender, absent exigent circumstances, if there is objective evidence-based probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family **Code**, or Section 136.2 of this **code**, or by a court of any other state, a commonwealth, territory, or insular possession subject to the jurisdiction of the United States, a military tribunal, or a tribe has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the dominant aggressor in any incident. ~~The dominant aggressor is the person determined to be the most significant, 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~~. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims, such as medical care, transportation to a shelter, or a hospital for treatment when necessary, and police standbys for removing personal property and assistance in safe passage out of the victim's residence.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
 - (A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
 - (B) A statement that, "For further information about a shelter you may contact ____."
 - (C) A statement that, "For information about other services in the community, where available, you may contact ____."

(D) A statement that, "For information about the California victims' compensation program, you may contact 1-800-777-9229."

(E) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.

(F) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:

(i) An order restraining the attacker from abusing the victim and other family members.

(ii) An order directing the attacker to leave the household.

(iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.

(iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.

(v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.

(vi) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so.

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

(G) A statement informing the victim of the right to file a civil suit for losses suffered as a result of the abuse, including medical expenses, loss of earnings, and other expenses for injuries sustained and damage to property, and any other related expenses incurred by the victim or any agency that shelters the victim.

(H) In the case of an alleged violation of subdivision (e) of Section 243 or Section 261, 261.5, 262, 273.5, 286, 288a, or 289, a "Victims of Domestic Violence" card which shall include, but is not limited to, the following information:

(i) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers.

(ii) A simple statement on the proper procedures for a victim to follow after a sexual assault.

(iii) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime.

(iv) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.

(10) Writing of reports.

(d) In the development of these policies and standards, each local department is encouraged to consult with domestic violence experts, such as the staff of the local shelter for battered women and their children. Departments may utilize the response guidelines developed by the commission in developing local policies.