



DOMESTIC VIOLENCE

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ISSUING AUTHORITY:	<i>Kenneth M. Paulhus</i> Chief Kenneth M. Paulhus	EFFECTIVE DATE:	June 4, 2015
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I. GENERAL CONSIDERATIONS AND GUIDELINES

Among the most difficult and sensitive calls for police assistance are those involving domestic violence. Officers must be alert and impartial, and must be concerned with the needs of victims where domestic violence is apparent or alleged. At the same time, officers must always anticipate the unexpected. Domestic violence situations are often characterized by anger, frustration, and intense emotion. These feelings can easily be directed against the responding officers, who can suddenly become the focus and target of ensuing violence by the batterer or the victim.

II. POLICY

- A. It is the policy of this department to treat domestic violence with the same consideration as violence in other enforcement contexts.
- B. This department shall adhere to the requirements of G.L. c. 209A: Abuse Prevention.

III. DEFINITIONS

- A. *Abuse:*¹ The occurrence of one or more of the following acts between family or household members:
 1. Attempting to cause or causing physical harm;

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2. Placing another in fear of imminent physical harm; or
3. Causing another to engage involuntarily in sexual relations by force, threat of force or duress.

B. *Family or Household Members are defined as persons who:*²

1. Are or were married to one another;
2. Are or were residing together in the same household;
3. Are or were related by blood or marriage;
4. Have a child in common regardless of whether they have ever married or lived together; or
5. Are or have been in a substantial dating relationship which shall be adjudged by the court's consideration of the following factors:
 - a. The length of time of the relationship;
 - b. The type of relationship;
 - c. The frequency of interaction between the parties; and
 - d. If the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

Note: This includes same sex relationships.

IV. PROCEDURE

A. *Domestic Violence: Duties of Police Officers*

1. **GENERALLY**
 - a. The duties of police officers in responding to reports of domestic violence are established in M.G.L. c. 209A section 6.
 - b. Whenever any law officer has reason to believe that a family or household member has been abused or is in danger of being abused, such officer shall use all reasonable means to prevent further abuse. The officer shall take, but not be limited to, the following actions:
 - 1) **REMAIN ON THE SCENE:** Remain on the scene where the abuse occurred or was (or is) in danger of occurring as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of a law officer. This shall include but not be limited to remaining in the dwelling for a reasonable period of time.
 - 2) **Medical Treatment:** Assist the abused person in obtaining medical treatment necessitated by an assault, which may include driving the victim to the emergency room of the nearest

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hospital, or arranging for appropriate transportation to a health care facility, notwithstanding any law to the contrary.

- 3) **GETTING TO A PLACE OF SAFETY:** Assist the abused person in locating and getting to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or friend's residence (or a similar place of safety). The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances.
- 4) **NOTICE OF RIGHTS:** Give abuse victims immediate and adequate notice of their rights by handing them and reading a form detailing their rights (see Attachment A); where said person's native language is not English, the statement shall then be provided in said person's native language whenever possible; this form shall be left with such person.
- 5) **ACTIVATING THE EMERGENCY JUDICIAL RESPONSE SYSTEM (EJR):** Assist the abused person by activating the emergency judicial system (generally by contacting the state police, unless some other procedure has been established) when the court is closed for business.

2. ARREST WHEN APPROPRIATE

- a. Arrest any person a law officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to:
 - 1) Section three, three B, three C, four of chapter 209A (Abuse Prevention); or
 - 2) Sections fifteen or twenty of chapter two hundred and nine C (Children Born out of Wedlock); or
 - 3) A similar protection order issued by another jurisdiction.
- b. When there are no vacate, restraining, or no-contact orders or judgments in effect, arrest shall be the preferred response whenever an officer witnesses or has probable cause to believe that a person:
 - 1) Has committed a felony;
 - 2) Has committed a misdemeanor involving abuse as defined in section one of this chapter;
 - 3) Has committed an assault and battery in violation of section thirteen A of chapter two hundred and sixty-five.

3. **ABUSER BAIL:** Inform the victim that the abuser will be eligible for bail and may be promptly released. (See Section E-Arrest Guidelines; number 8 on page 14).

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4. **REFERRALS:** Provide the addresses and telephone number of available crisis centers or emergency shelters and, where appropriate, advise any victims or witnesses of the Victim/Witness Assistance Program administered by the local District Attorney's office. See department policy and procedure on **Victim/Witness Assistance**.
5. **INCIDENT REPORTS:** The victim shall be provided a copy of the full incident report at no cost upon request to the appropriate law enforcement department.³
6. **MANDATORY REPORTING**
 - a. **Child Abuse or Neglect:** A report will be filed with the Department of Social Services whenever the police officer has reasonable cause to believe that a child under the age of 18 has been abused or neglected, in accordance with M.G.L. c. 119, § 51A. During office hours, contact the local D.S.S. office. After hours, call the hotline: 1-800-792-5200.
 - b. **Disabled Person Abuse or Neglect:** A report will be filed with the Disabled Persons Protection Commission whenever the officer has reasonable cause to believe that a caretaker has abused/neglected a disabled person, between the ages of 18 and 59, in accordance with M.G.L. c. 19C, § 10. Call the hotline: 1-800-426-9009.
 - c. **Elder Abuse or Neglect:** A report will be filed with the Executive Office of Elder Affairs whenever the officer has reasonable cause to believe that someone age 60 or older has been abused/neglected, in accordance with M.G.L. c. 19A, §§ 14-26. Call the 24-hour hotline: 1-800-922-2275.
 - d. **Firearms:** Take appropriate action with firearms. See **Firearms** in this policy.

B. Restraining Orders

1. **Protection Order:** A Protection order issued by another jurisdiction is issued for the purpose of:
 - a. Preventing violent or threatening acts or harassment against;
 - b. Contact or communication with; or
 - c. Physical proximity to another person.
2. **VACATE ORDER**
 - a. This is a court order to leave and remain away from premises and to surrender forthwith any keys to said premises to the plaintiff.
 - b. The defendant shall not damage any of the plaintiff's belongings or those of any other occupant.

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- c. The defendant shall not shut off or cause to be shut off any utilities or mail delivery to the plaintiff.
- d. In the case where the premises designated in the vacate order is a residence, so long as the plaintiff is living at said residence, the defendant shall not interfere in any way with the plaintiff's right to possess such residence, except by order or judgment of a court of competent jurisdiction pursuant to appropriate civil eviction proceedings, a petition to partition real estate, or a proceeding to divide marital property.
- e. A vacate order may include in its scope:
 - 1) A household;
 - 2) A multiple family dwelling; and
 - 3) The plaintiff's workplace.

Note: When issuing an order to vacate the plaintiff's workplace, the presiding justice must consider whether the plaintiff and defendant work in the same location or for the same employer.

- 4) Venue: If the plaintiff has left a residence or household to avoid abuse, such plaintiff shall have the option of commencing an action in the court having venue over such prior residence or household, or in the court having venue over the present residence or household.⁴
- 5) Violations: Police officers shall arrest any person a law officer witnesses or has probable cause to believe has violated a temporary or permanent order.⁵

C. Patrol Officers Response

- 1. RESPONDING TO THE SCENE
 - a. Whenever possible, at least two officers should immediately be dispatched and proceed to the scene.
 - b. The dispatcher should check the address history and master file index for a history of any of the parties involved, particularly the alleged batterer, and provided officers with as much of the following information as is available:
 - 1) Any history of violence, weapons, or previous domestics;
 - 2) Any other relevant information, especially regarding a history of incidents involving the particular address, or the parties, and the likelihood of firearms being present;
 - 3) Record of firearms identification cards and/or licenses to carry being issued to resident(s);

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- 4) The existence of any warrant for the suspect (by a check of LEAPS and the Warrant Management System);
- 5) Board of Probation check of criminal history of the suspect; and
- 6) Any existing or prior restraining orders against the suspect (B.O.P. check). Include orders held by persons other than the victim in this case.

- c. Officers should plan their approach and use of sound tactics during the response.

2. ARRIVAL
 - a. Officers should not park directly in front of the scene, but a short distance away.
 - b. Upon approach, officers shall make observations of the scene, and listen for sounds of a disturbance or violence.
3. CONTACT
 - a. The initial contact by the responding officers must convey a professionally calm and helpful attitude.
 - b. The officers shall state their reason for being present.
 - c. They must be considerate and attentive toward all parties and their problems regardless of the officers' own views or personal reactions toward the matter.
4. GAINING ENTRY
 - a. Officers shall use all reasonable means to prevent further abuse.⁶
 - b. Officers may enter private premises:
 - 1) At the request of someone in lawful control of the premises;
 - 2) To enforce the provisions of a protective court order; or
 - 3) To take reasonable measures to prevent any further abuse under the authority of M.G.L. c. 209A.
 - c. Officers may enter private premises where there is probable cause to believe that a felony has been or is being committed, or where a breach of the peace has been committed in an officer's presence.⁷
 - d. Officers must leave if both parties request that they do so, unless there is probable cause to believe that a felony has been committed, or that their continued presence is necessary to prevent physical harm or to carry out the provisions of M.G.L. c. 209A.⁸

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- e. "Private Premises" includes a house, an apartment, a condominium, a hotel room, a mobile home, a dormitory room or a house trailer.

5. UPON ENTERING

- a. Take immediate control of the situation.
- b. Make an immediate arrest if an arrestable violent criminal act is witnessed by an officer or if a violation of an existing restraining order is obvious.
- c. Separate the parties and interview them apart from each other.
 - 1) Separation allows each to relate matters to an officer without being overheard or directly intimidated or interrupted by the other party.
 - 2) Officers should allow each party to present his or her story individually, avoiding any unnecessary interruptions or undue interference by the other party.
- d. Officers should remain within sight of one another whenever possible for officer safety purposes and to avoid any subsequent allegations of mistreatment.
- e. Prevent the physical movement of the parties as much as possible and control their access to any potential weapons, avoiding the kitchen area if possible.
- f. Officers should be mindful that an abuser who is under the influence of drugs or alcohol, or who suffers from mental illness, may pose a greater risk to the victim's and officers' safety.

6. RENDERING AID

- a. Officers may transport victims of domestic violence to the emergency room of the nearest hospital in a police vehicle if necessary, but should receive supervisory approval, except in an emergency.⁹
- b. The preferred method of transportation is via ambulance.
- c. The victim may seek medical attention on his/her own.

7. IMMUNITY FOR POLICE OFFICERS:

No officer shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a domestic violence incident for an arrest based on probable cause when such officer acted reasonably and in good faith and in compliance with this chapter.¹⁰

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D. INVESTIGATION

1. OBSERVATIONS

- a. Officers shall make observations of the parties involved and the surroundings, photographing when possible, and documenting the observations in the report.
 - 1) Officers must pay particular attention to the following:
 - 2) Signs of injury to the victim including bruising, bleeding, and defensive wounds;
 - 1) Torn clothing;
 - 2) Signs of offensive injury to the suspect including the suspect's hands and fists; and
 - 3) Signs of a struggle including:
 - Broken furniture, doors, and windows.
 - Telephone being damaged or torn from the wall.
 - Objects broken from having been knocked over or thrown.

2. EXCITED UTTERANCES

- a. Officers should make note of spontaneous or excited utterances which may be admitted into evidence as an exception to the hearsay rule.
- b. Statements made to dispatchers during an emergency (E9-1-1) call may be admitted into evidence as an exception to the hearsay rule even if the victim refuses to testify.¹¹
- c. Spontaneous statements made by a victim or witness may be admitted into evidence even if they later recant or refuse to testify, provided:¹²
 - 1) There is an occurrence or event "sufficiently startling to render inoperative the normal reflective thought processes of the observer;" and
 - 2) If the declarant's statement was "a spontaneous reaction to the occurrence or event and not the result of reflective thought."

3. WITNESSES

- a. Identifying Witnesses
 - 1) Attempt to identify and interview the party who called the police.
 - 2) Seek out other potential witnesses including children of the victim and batterer, neighbors and other witnesses.

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- 3) Be mindful of their concerns about retaliation.
- b. Questioning Witnesses
 - 1) The officers must ask pertinent questions.
 - 2) If conditions prohibit the obtaining of this information at the scene, it must be obtained during the follow-up investigations. Such information should include:
 - Information regarding identities and relationships, including children.
 - The phone number of the residence.
 - Information about the suspect's ownership of, presence of, or access to firearms, and their location.
 - Any prior history of such disputes and whether there are any vacate, restraining, no-contact or other protective orders currently in effect, including those held against the suspect by someone other than the victim:
 - i. Document allegations of prior abuse, including expired protective orders.
 - ii. Seek appropriate criminal action for prior incidents.
 - Information on who has lawful custody of any minors involved and whether court approved visitation rights are being transgressed.
 - 3) Avoid emphasis or in-depth questioning on personal matters if there is an indication that the person would rather not discuss them more fully.
- c. Additional Information: Ask the parties to produce copies of court orders or other court papers to verify their claims.

E. Arrest Guidelines [1.2.7]

1. THE DECISION TO ARREST
 - a. Generally
 - 1) The safety of the victim and any involved children shall be paramount in any decision to arrest, and in the timing of the arrest.
 - 2) Officers should attempt to identify the primary aggressor, and take action based on that determination. In the majority of cases, an effective investigation will reveal the primary aggressor.

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- 3) As in other types of criminal investigations, uncorroborated statements by a victim can constitute probable cause that the crime occurred.
- 4) The decision to arrest must be based on whether or not probable cause exists that the crime occurred, not on whether or not the victim wishes to seek complaints or wishes to testify at a future date.

b. Substantive Dating Relationship

- 1) Officers will gather information to determine whether or not a substantive dating relationship exists. Officers will examine the same factors which the courts review when making this determination:
 - The length of time of the relationship;
 - The type of relationship;
 - The frequency of interaction between the parties; and
 - If the relationship has been terminated by either person, the length of time that has elapsed since the termination of the relationship.
- 2) If the officer determines that a "substantive dating relationship" exists or did exist, then the officer shall take the proper action, including arrest when appropriate, regardless of whether the victim seeks a restraining order.
- 3) Even in cases where there is no substantive dating relationship, a crime, such as stalking or criminal harassment, may have been committed.

c. Substance Abuse and Mental Health Issues

- 1) When assessing credibility in order to establish probable cause, officers should remember that a victim who is under the influence of drugs or alcohol, or who suffers from mental illness, is not an inherently unreliable witness.
- 2) An abuser who is under the influence of drugs or alcohol, or who suffers from certain mental illnesses, may pose a greater risk to the safety of the victim and officer.
- 3) It is not unusual for an abuser to display a calm demeanor following a violent assault.

2. MANDATORY ARRESTS

- a. Officers shall make a warrantless arrest of any person the officers witness or have probable cause to believe has violated an

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emergency, temporary or permanent vacate, refrain from abuse, stay away or no-contact order or judgment, a suspension and surrender order, or protective order issued by another jurisdiction.¹³

b. If the victim is unwilling to bring a complaint against the alleged abuser, officers are expected to arrest where probable cause exists.

NOTE: While G.L. c. 276, §28 concerning arrests without a warrant for a violation of certain statutes, among which is listed c. 209A, uses the word "may," this is superseded by the provisions of c. 209A, which specify that officers "shall" make such a warrantless arrest.

3. ARREST AS A PREFERRED RESPONSE: When there is no restraining order in effect, arrest shall be the preferred response whenever an officer witnesses or has probable cause to believe that a person:

- a. Has committed a felony; or
- b. Has committed an assault and battery on a family or household member in violation of G.L. c. 265, § 13A; or
- c. Has committed a misdemeanor involving abuse, as defined in G.L. c. 209A; or
- d. Has committed an assault and battery or permits another to commit an assault and battery upon an elder or a person with a disability in violation of M.G.L. c. 265, § 13K.
- e. Has committed Domestic Assault or Assault and Battery. G.L. c. 265, § 13M. The victim must be a family or household member, but the term is defined differently than in G.L. c. 209A, § 1. This new crime is aimed at intimate partner violence and requires a current or former marriage, a child in common, or a "substantive dating relationship."
 - The punishment is up to 2 1/2 years in a house of correction and/or a fine up to \$5000.
 - The law also creates an aggravated penalty for a second offense, with up to 5 years in state prison or up to 2 1/2 years in a house of correction. No fine is provided.
 - The court must order the defendant to complete a certified batterer's intervention program for all convictions and CWOFs under the new law, absent specific written findings supporting good cause to omit the requirement.
- f. Has Committed Strangulation or Suffocation. G.L. c. 265, § 15D.
 - "Strangulation" is the intentional interference of the normal

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breathing or circulation of blood by applying substantial pressure on the throat or neck of another.

- "Suffocation" is the intentional interference of the normal breathing or circulation of blood by blocking the nose or mouth of another.
- The punishment is imprisonment in state prison for not more than 5 years or in the house of correction for not more than 2 years, or by a fine of not more than \$5,000, or by both such fine and imprisonment.
- Whoever: (i) strangles or suffocates another person and by such strangulation or suffocation **causes serious bodily injury**; (ii) strangles or suffocates another person, who is **pregnant** at the time of such strangulation or suffocation, knowing or having reason to know that the person is pregnant; (iii) is convicted of strangling or suffocating another person **after having been previously convicted of the crime of strangling or suffocating** another person under this section, or of a like offense in another state or the United States or a military, territorial or Indian tribal authority; or (iv) strangles or suffocates another person, **with knowledge that the individual has an outstanding temporary or permanent vacate, restraining or no contact order or judgment** issued under sections 18 or 34B of chapter 208 , section 32 of chapter 209, sections 3, 4 or 5 of chapter 209A or sections 15 or 20 of chapter 209C , in effect against such person at the time the offense is committed, shall be punished by imprisonment in state prison for not more than 10 years, or in the house of correction for not more than 2 years, and by a fine of not more than \$10,000.
- "Serious bodily injury" is bodily injury that results in a permanent disfigurement, loss or impairment of a bodily function, limb or organ or creates a substantial risk of death.
- The court must order the defendant to complete a certified batterer's intervention programs for all convictions and CWOFs under the new law, absent specific written findings supporting good cause to omit the requirement. G.L. c. 265, § 15D.

4. IF THE SUSPECT HAS FLED THE SCENE: When probable cause to arrest exists, and the suspect has fled the scene:

- a. The officer will advise the dispatcher to inform area patrols, including other jurisdictions where the suspect is believed to be going, to attempt to locate and arrest the suspect based upon the probable cause of the investigating officer.

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- b. If another police department has determined that probable cause to arrest exists, that probable cause shall be honored. This department shall immediately attempt to locate the suspect and effect an arrest as requested, based upon the probable cause of the investigating department.
- c. Officers will attempt to make a warrantless arrest when the suspect is not found immediately. However, as soon as is practical, the investigating department shall seek an arrest warrant from the appropriate court, in cases involving abuse as defined under G.L. c. 209A.

5. DUAL ARRESTS

- a. Any officer arresting both parties is required by law to submit a detailed, written report, in addition to an incident report, setting forth the grounds for dual arrest.¹⁴
- b. Dual arrests, like the issuance of mutual restraining orders, are strongly discouraged because they trivialize the seriousness of domestic abuse and increase the danger to victims.
- c. Officers should attempt to identify the primary aggressor, and take action based on that determination. In the majority of cases, an effective investigation will reveal the primary aggressor.
- d. Officers investigating an incident of domestic violence shall not threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.¹⁵

6. ARREST OF A CAREGIVER

- a. In cases involving abuse of an elder or a person with a disability, officers must address the issue of whether or not the victim can be left alone safely, if the abuser is arrested.
- b. If a suspect is the caretaker of a child, the officer needs to determine whether or not the child can be left alone.
- c. If the child, elder or person with a disability cannot be left alone, the appropriate, protective agency must be contacted, in order to arrange for the temporary care of the child, disabled or elder person.
- d. Any mandated reports of abuse or neglect will be filed in these instances.

7. SUMMONSES AND CLERK MAGISTRATE HEARINGS

- a. In instances where clear probable cause does not exist to effect an arrest, but the investigation indicates likelihood that domestic

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violence may have taken place, an officer may seek a show cause hearing before the Clerk Magistrate.

- b. A show cause hearing shall not be an alternative to a lawful arrest based upon probable cause.
8. BAIL
 - a. The law prohibits the out-of-court release of a defendant arrested for any criminal act constituting domestic abuse **until six hours after the time of arrest.**
 - b. For charges of violating a restraining order, domestic assault or assault and battery or strangulation, the Commonwealth is the only party that may move for arraignment in the first three hours after the criminal complaint is signed.
 - c. When a judge or other person authorized to take bail bails any person arrested under the provisions of chapter 209A, [s]he shall make reasonable efforts to inform the victim of such release prior to or at the time of said release.¹⁶
 - d. Police will often be tasked with executing this requirement.
 - e. When a defendant is bailed on a domestic violence/abuse charge, Officers shall serve the defendant with the **Alternatives to Abuse Pamphlet and attached Worcester County Resources provided in the Report Writing Room and available at <http://www.mass.gov/courts/selfhelp/abuse-harassment/alternatives-to-abuse.html>**

F. Out of State Orders or Violations

1. A protective order issued in another jurisdiction (as defined in G.L. c. 109A, § 1) shall be given full faith and credit in the Commonwealth.¹⁷
2. Officers shall make a warrantless arrest of any person the officers witness or have probable cause to believe has violated an emergency, temporary or permanent vacate, refrain from abuse, stay away, or no-contact order or judgment issued by another jurisdiction.
3. In assessing probable cause, an officer may presume the validity of the protection order issued by another jurisdiction when the officer has been provided with:
 - a. A copy of the order, by any source; and
 - b. A statement by the victim that such order remains in effect.

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4. Violations of Massachusetts orders which occur in another state may be charged criminally as contempt, in the jurisdiction which issued the order.

G. Children

1. **WELFARE OF CHILDREN**
 - a. Where children are present at a domestic dispute, their welfare and safety must be a major consideration.
 - b. Any evidence of neglect or emotional, physical or sexual abuse of children under eighteen shall be carefully noted.
2. **ABUSE OF A CHILD**
 - a. A police officer must take action when, in his/her professional capacity, [s]he has reasonable cause to believe that a child under eighteen is in any of the following situations:
 - 1) Is suffering serious physical or emotional injury resulting from abuse, including sexual abuse; or
 - 2) Is suffering serious physical or emotional injury resulting from witnessing domestic abuse, or from neglect, including malnutrition; or
 - 3) Is determined to be physically dependent upon an addictive drug at birth;
 - 4) Has died because of neglect, abuse or drug addiction; or
 - 5) Is present in a household in which the officer observes the presence of drugs or evidence of drug use.
 - b. The officer shall take the following action:
 - 1) Notify his/her supervisor.
 - 2) Complete an incident report.
 - 3) Submit an oral and/or written report to the Department of Social Services as required by G.L. c. 119, §51A.
3. **CHILD CUSTODY:** Officers should be aware that in serious cases of child neglect or abuse, "any person" may apply to an appropriate juvenile court to have custody of a child under eighteen taken away from the parents or other neglectful or abusing custodian and have custody transferred, on an emergency basis, to the Department of Social Services or a licensed child care agency or individual.

H. Property

1. **Property Disputes:** When a party to a domestic dispute is accused of removing or attempting to remove property from the dwelling or is

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accused of damaging or destroying property, the procedure is as follows:

- a. The officer should investigate to determine if any criminal violation has occurred and take appropriate action.
- b. The parties should be warned of the potential civil or criminal consequences of their conduct, and both parties should be advised to seek legal counsel.

2. COURT ORDERS TO RETRIEVE BELONGINGS

A. DEFENDANT

- 1) Once a vacate, no contact, stay away or refrain from abuse order is issued, officers should not accompany a defendant to the property for any reason without specific judicial authorization.
- 2) A vacate order includes the following requirement: "The defendant shall not damage any of the plaintiff's belongings or those of another occupant and shall not interfere with any utilities or mail delivery to the plaintiff."
- 3) The defendant in the vacate order may be allowed to retrieve his/her belongings only under the following conditions:
 - The defendant must have a court order allowing for the retrieval.
 - The defendant must be accompanied by the police. Officers shall remain with the defendant throughout the process.
 - The victim must have prior notice by the department, and must agree to the timing of the retrieval.
 - The defendant must not be allowed to use this as a means of harassing the victim.
 - Additional visits for property must be authorized by the court.

- b. PLAINTIFF (Victim): When a court order exists allowing for a victim to return to the defendant's residence in order to retrieve his or her belongings, the police shall accompany the victim to ensure the order is executed, and that the victim is able to follow the order free from harassment or abuse by the defendant.
- c. POLICE ROLE: When a police officer is present while a party to a restraining order retrieves property in compliance with a court order, the following must occur:
 - 1) The officer may not determine what property may be removed.

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- 2) Disputed property must remain, and the party claiming the property must seek satisfaction through the court.

I. Firearms

1. DOMESTICS GENERALLY

- a. When a firearm or other weapon is present at the scene of a domestic violence situation or the responding officer(s) are informed that a firearm or weapon has been or may be involved in the dispute, the officer(s) shall:
 - 1) Seize the weapon as evidence of the crime, if the responding officers are informed that a firearm or weapon has been involved in the dispute.
 - 2) Request that the firearm or weapon be placed in their custody temporarily.
 - 3) Search for and take custody of the firearm or weapon if one of the parties residing there requests that they do so.
 - 4) Seize and take temporary custody of the firearm or weapon to alleviate the threat of serious violence that it poses.
 - 5) Determine whether a firearm is lawfully possessed before returning the same.
- b. If the officer determines that the weapon cannot be seized:
 - 1) A judge can order a defendant to surrender his/her guns, License to Carry and Firearms Identification Card; and
 - 2) The Chief can revoke a License to Carry for cause and an Firearms Identification Card for:
 - Felony convictions;
 - Drug use, possession or sale; and
 - Mental illness.

2. RESTRAINING ORDERS

- a. **SERVICE OF SUSPENSION AND SURRENDER ORDERS:** Upon issuance of a Suspension and Surrender Order as part of a G.L. c. 209A Order, the police shall immediately take possession of all of the following:
 - 1) Firearms, rifles, shotguns, machine guns;
 - 2) Ammunition; and
 - 3) Any license to carry firearms in the control, ownership or possession of a defendant.

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- b. VIOLATIONS OF SUSPENSION AND SURRENDER ORDERS: In the interest of immediacy and the statutory mandate to arrest, officers shall make a warrantless arrest of any person the officers witness or have probable cause to believe has violated a c. 209A Suspension and Surrender Order.
- c. SEIZURE AND STORAGE OF FIREARMS: This department shall honor any another police department's request for assistance in seizing firearms, licenses and a permit, regardless of which department is named within the order. The department named within the order shall be responsible for the storage of the seized items or the delegation of storage to an authorized facility.
- d. ORDERS AGAINST LAW ENFORCEMENT OFFICERS
 - 1) In cases involving a police officer who is a defendant in a c. 209A Suspension and Surrender Order, the officer must relinquish all firearms, including departmental weapons, to the department serving the order.
 - 2) For further information, see the department policy regarding ***Domestic Violence by Police Officers***.

3. FEDERAL FIREARMS PROVISIONS

- a. Although officers cannot enforce the following federal provisions, the chief should be notified whenever an officer identifies a case involving the following circumstances, because there may be federal action which can be taken.
- b. Persons Named in Protective Orders: Under the Federal Crime Control and Law Enforcement Act of 1994, it is unlawful for an individual subject to a "permanent" restraining order involving "intimate partners" to receive, ship, transport, or possess guns (including handguns, rifles, and shotguns) or ammunition that traveled in interstate commerce.
- c. Misdemeanors Involving Domestic Violence: Under 18 U.S.C. § 922(g)(9), it is unlawful for any person convicted of certain misdemeanor crimes involving domestic violence to ship, transport, possess, sell or otherwise dispose of, or receive, firearms or ammunition.
- d. Federal Felon in Possession of a Firearm: Under 18 U.S.C. § 922(g)(1), it is unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to possess any gun or ammunition. Law enforcement officers are exempt from this federal firearms disability.

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NOTE: Misdemeanors are excluded from consideration if they are punishable by a term of two years or less. Therefore, misdemeanors which are punishable by a term of imprisonment of more than two years fall within this provision.

J. Incident Reports and Victim Confidentiality

1. OFFICERS' REPORTS

- a. The reporting procedures of any other crime scene should be applied to domestic violence incidents.
- b. Any officer arresting both parties is required by law to submit a detailed, written report, in addition to an incident report, setting forth the grounds for dual arrest.¹⁸

2. CONFIDENTIALITY

- a. The records of cases arising out of an action brought under the provisions of this chapter where the plaintiff or defendant is a minor shall be withheld from public inspection except by order of the court, provided that:
 - 1) Such records shall be open, at all reasonable times, to the inspection of the minor, said minor's parent, guardian, attorney; and
 - 2) Such records shall be open, at all reasonable times, to the plaintiff and the plaintiff's attorney, or any of them.
- b. The plaintiff's residential address, residential telephone number and workplace name, address and telephone number, shall be confidential, except that the data shall appear on the court order and be accessible to the defendant and the defendant's attorney unless the plaintiff specifically requests that this information be withheld from the order.

3. RELEASE OF REPORTS

- a. The victim shall be provided a copy of the full incident report at no cost upon request to the appropriate law enforcement department.¹⁹
- b. Such confidential portions of the court records shall not be deemed to be public records.²⁰

4. REPORTS OF DOMESTIC VIOLENCE & DAILY LOG

- a. The 2014 change to the Domestic Violence law expands the confidentiality of police records of rape and sexual assaults, G.L. c. 41, § 97D, to include all reports of domestic violence. Unlike the old statute, the new statute includes specific authorization for victims, prosecutors, counselors, and law enforcement officers to

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obtain the records. The law also specifically excludes these reports (as well as rape and sexual assault reports) from the police daily log.

K. Service of Orders

1. Service of orders shall be made in hand unless otherwise ordered by the court.
 - a. Orders shall be served promptly upon receipt. Service of orders will not be delayed in order to forward service by a specialized officer or unit.
 - b. The victim's safety should be considered in the timing of the service of the order. Officers should encourage the victim to contact an advocate (either through the district attorney's office, or through the local battered women's program) in order to develop a safety plan around the service of the order, if appropriate.
 - c. A record must be kept of all attempts at service by entering the information into the RMS.
2. Return of Service, including service of Emergency Orders, must be completed and signed by the officer making service and promptly returned to the court.
3. A plaintiff who brings an order to the department for service should be interviewed to ensure that the department's responsibilities under G.L. c. 209A and this policy and procedure are met.
4. When serving a court-issued restraining order, a police officer shall, to the extent practicable:
 - fully inform the defendant of the contents of the order and the available penalties for any violation of an order or terms thereof;
 - officers should read the order to the defendant and hand him or her the attached notice of penalties; and,
 - provide the defendant with informational resources, including, but not limited to, a list of certified batterer intervention programs, substance abuse counseling, alcohol abuse counseling and financial counseling programs located within or near the court's jurisdiction. **See the Alternatives to Abuse Pamphlet and attached Worcester County resources provided in the Report Writing Room and available at <http://www.mass.gov/courts/selfhelp/abuse-harassment/alternatives-to-abuse.html>**
 - The department will issue these documents to officers and periodically update them as appropriate. The documents can

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be located in the report writing room or downloaded from the above site.

L. Supervisor's Role

1. ASSURANCES OF PRACTICES
 - a. Supervisors will ensure that the provisions of G.L. c. 209A and the following guidelines are met.
 - b. Dispatch logs will be reviewed to ensure that an incident report has been filed, even in cases where no arrest was made.
 - c. Calls which are received as allegations of domestic violence or a domestic disturbance will not be reclassified because no probable cause to arrest existed. Incident reports will be filed in these cases.
 - d. Incident and arrest reports will be carefully reviewed by a supervisor, in order to ensure that the provisions of G.L. c. 209A and these guidelines are met.
 - e. If upon review of an incident report it is believed that probable cause exists, the supervisor will ensure that criminal charges are initiated according to the statute and these guidelines.
 - f. Whenever a supervisor identifies a particular case as posing significant danger, this case should be discussed at roll call.
 - g. Supervisors will ascertain that appropriate referrals were provided to the victim.
2. FOLLOW-UP INVESTIGATIONS
 - a. The reviewing supervisors shall determine whether a follow-up investigation is needed.
 - b. If so, the supervisor shall ensure that the investigation is conducted or forwarded to the appropriate entity or unit.
 - c. Upon review of the follow-up investigation, the supervisor will ensure that additional charges are initiated whenever appropriate.
3. POLICE OFFICER AS A DEFENDANT
 - a. Whenever a police officer from this or any other department is investigated regarding allegations of domestic violence, his or her Chief shall be notified.
 - b. For further information, see the department policy regarding ***Domestic Violence by Police Officers***.

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M. Criminal Statutes

1. CHAPTER 265: SECTION 43. STALKING
 - a. Elements of the Crime of Stalking: Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which:
 - 1) seriously alarms or annoys that person; and
 - 2) would cause a reasonable person to suffer substantial emotional distress; and
 - 3) makes a threat with the intent to place the person in imminent fear of death or bodily injury.
 - b. Punishment: Such person shall be guilty of the crime of stalking and shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars, or imprisonment in the house of correction for not more than two and one-half years or both.
 - c. Such conduct, acts or threats described in this paragraph shall include, but not be limited to, conduct, acts or threats conducted by mail or by use of a telephonic or telecommunication device including, but not limited to, electronic mail, internet communications and facsimile communications.
 - d. Restraining Orders
 - 1) Whoever commits the crime of stalking in violation of a temporary or permanent vacate, restraining, or no-contact order or judgment; or a protection order issued by another jurisdiction; or a temporary restraining order or preliminary or permanent injunction issued by the superior court, shall be punished by imprisonment in a jail or the state prison for not less than one year and not more than five years.
 - 2) No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of one year.
 - e. Jurisdiction: Chapter 277: Section 62B. Stalking; jurisdiction: The crime of stalking, as set forth in section forty-three of chapter two hundred and sixty-five, may be prosecuted and punished in any territorial jurisdiction of the commonwealth wherein an act constituting an element of the crime was committed.
2. CHAPTER 265: SECTION 43A. CRIMINAL HARASSMENT
 - a. Elements of the Crime of Criminal Harassment: Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which:

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- 1) Seriously alarms that person; and
- 2) Would cause a reasonable person to suffer substantial emotional distress.
- b. Such person shall be guilty of the crime of criminal harassment and shall be punished by imprisonment in a house of correction for not more than two and one-half years or by a fine of not more than \$1,000, or by both such fine and imprisonment.
- c. Such conduct or acts described in this paragraph shall include, but not be limited to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device including, but not limited to, electronic mail, internet communications or facsimile communications.
- d. Whoever, after having been convicted of the crime of criminal harassment, commits a second or subsequent such crime, or whoever commits the crime of criminal harassment having previously been convicted of a violation of section 43, shall be punished by imprisonment in a house of correction for not more than two and one-half years or by imprisonment in the state prison for not more than ten years.

Attachment A: ABUSED PERSON'S NOTICE OF RIGHTS

Directions to Police Officer: *Give a victim of domestic violence immediate and adequate notice of his/her rights. The notice shall consist of handing said person a copy of the statement which follows below and reading the same to the victim. Where the victim's native language is not English, the statement shall be then provided in the victim's native language whenever possible.*

"You have the right to appear at the Superior, Probate and Family, District or Boston Municipal Court, if you reside within the appropriate jurisdiction, and file a complaint requesting any of the following applicable orders: (a) an order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household, building or workplace; (c) an order awarding you custody of a minor child; (d) an order directing your attacker to pay support for you or any minor child in your custody, if the attacker has a legal obligation of support; and (e) an order directing your attacker to pay you for losses suffered as a result of abuse, including medical and moving expenses, loss of earnings or support, costs for restoring utilities and replacing locks, reasonable attorneys' fees and other out-of-pocket losses for injuries and property damage sustained."

"For an emergency on weekends, holidays, or week nights the police will refer you to a justice of the Superior, Probate and Family, District or Boston Municipal Court Departments."

"You have the right to go to the appropriate District Court or Boston Municipal Court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, and assault with intent to kill or other related offenses."

"If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment."

"If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and your children can leave or until your safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or a friend's residence, or a similar place of safety."

"You may request a copy of the police incident report at no cost from the police department."

Plaintiff shall also be given a Resources for Safety and Support pamphlet and attached Worcester County Resources sheet. Copies can be found in the Report Writing area or downloaded at <http://www.mass.gov/courts/selfhelp/abuse-harassment/resources-for-safety-and-support.html>.

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¹ M.G.L. c. 209A §1.

² M.G.L. c. 209A §1.

³ M.G.L. c. 209A § 6.

⁴ M.G.L. c. 209A §2.

⁵ M.G.L. c. 209A § 6(7).

⁶ M.G.L. c. 209A § 6.

⁷ M.G.L. c. 41 §98, "...may enter any building to suppress a riot or breach of peace therein."

⁸ M.G.L. c. 209A § 6(1).

⁹ M.G.L. c. 209A § 6(2).

¹⁰ M.G.L. c. 209A § 6.

¹¹ *Davis v. Washington*, 126 S. Ct. 2266.

¹² *Commonwealth v. Santiago*, 437 Mass. 620

¹³ M.G.L. c. 209A §6(7).

¹⁴ M.G.L. c. 209A § 6.

¹⁵ M.G.L. c. 209A § 6.

¹⁶ M.G.L. c. 209A §6.

¹⁷ M.G.L. c. 209A §5A.

¹⁸ M.G.L. c. 209A §6.

¹⁹ M.G.L. c. 209A §6.

²⁰ M.G.L. c. 209A §8.

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Hand this to all defendants when serving a restraining order

Penalties For Any Violation of A Restraining Order

M.G.L.A. 209A § 7

Each abuse prevention order issued shall contain the following statement:
VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Any violation of such order or a protection order issued by another jurisdiction shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment. In addition to, but not in lieu of, the forgoing penalties and any other sentence, fee or assessment, including the victim witness assessment in section 8 of chapter 258B, the court shall order persons convicted of a crime under this statute to pay a fine of \$25 that shall be transmitted to the treasurer for deposit into the General Fund. For any violation of such order, the court shall order the defendant to complete a certified batterer's intervention program unless, upon good cause shown, the court issues specific written findings describing the reasons that batterer's intervention should not be ordered or unless the batterer's intervention program determines that the defendant is not suitable for intervention. The court shall not order substance abuse or anger management treatment or any other form of treatment as a substitute for certified batterer's intervention. If a defendant ordered to undergo treatment has received a suspended sentence, the original sentence shall be reimposed if the defendant fails to participate in said program as required by the terms of his probation. If the court determines that the violation was in retaliation for the defendant being reported by the plaintiff to the department of revenue for failure to pay child support payments or for the establishment of paternity, the defendant shall be punished by a fine of not less than one thousand dollars and not more than ten thousand dollars and by imprisonment for not less than sixty days; provided, however, that the sentence shall not be suspended, nor shall any such person be eligible for probation, parole, or furlough or receive any deduction from his sentence for good conduct until he shall have served sixty days of such sentence.

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When a defendant has been ordered to participate in a treatment program pursuant to this section, the defendant shall be required to regularly attend a certified or provisionally certified batterer's treatment program. To the extent permitted by professional requirements of confidentiality, said program shall communicate with local battered women's programs for the purpose of protecting the victim's safety. Additionally, it shall specify the defendant's attendance requirements and keep the probation department informed of whether the defendant is in compliance.

In addition to, but not in lieu of, such orders for treatment, if the defendant has a substance abuse problem, the court may order appropriate treatment for such problem. All ordered treatment shall last until the end of the probationary period or until the treatment program decides to discharge the defendant, whichever comes first. When the defendant is not in compliance with the terms of probation, the court shall hold a revocation of probation hearing. To the extent possible, the defendant shall be responsible for paying all costs for court ordered treatment.

Where a defendant has been found in violation of an abuse prevention order under this chapter or a protection order issued by another jurisdiction, the court may, in addition to the penalties provided for in this section after conviction, as an alternative to incarceration and, as a condition of probation, prohibit contact with the victim through the establishment of court defined geographic exclusion zones including, but not limited to, the areas in and around the complainant's residence, place of employment, and the complainant's child's school, and order that the defendant to wear a global positioning satellite tracking device designed to transmit and record the defendant's location data. If the defendant enters a court defined exclusion zone, the defendant's location data shall be immediately transmitted to the complainant, and to the police, through an appropriate means including, but not limited to, the telephone, an electronic beeper or a paging device. The global positioning satellite device and its tracking shall be administered by the department of probation. If a court finds that the defendant has entered a geographic exclusion zone, it shall revoke his probation and the defendant shall be fined, imprisoned or both as provided in this section. Based on the defendant's ability to pay, the court may also order him to pay the monthly costs or portion thereof for monitoring through the global positioning satellite tracking system.

In each instance where there is a violation of an abuse prevention order or a protection order issued by another jurisdiction, the court may order the

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defendant to pay the plaintiff for all damages including, but not limited to, cost for shelter or emergency housing, loss of earnings or support, out-of-pocket losses for injuries sustained or property damaged, medical expenses, moving expenses, cost for obtaining an unlisted telephone number, and reasonable attorney's fees.