# The Commonwealth of Massachusetts
## Executive Office of Public Safety and Security
One Ashburton Place, Room 2133
Boston, Massachusetts 02108
Tel: (617) 727-7775
TTY Tel: (617) 727-6618
Fax: (617) 727-4764
www.mass.gov/eops

**Deval L. Patrick**
Governor

**Timothy P. Murray**
Lieutenant Governor

**Kevin M. Burke**
Secretary


January 30, 2009

Kevin M. Burke, Secretary
Executive Office of Public Safety and Security
One Ashburton Place, Room 2133
Boston, MA 02130

To the Massachusetts Law Enforcement and Victim Services Communities;

Signaling this administration's seriousness in ending the scourge of domestic and sexual violence in the Commonwealth, Governor Patrick created the Council to Address Sexual and Domestic Violence through Executive Order 486 and stipulated that it "Revise and update the Massachusetts Policy for Law Enforcement Response to Domestic Violence, pursuant to Chapter 403 of the Acts of 1990." The guidelines were first authorized and promulgated in 1991 and were last updated in 2002.

Governor Patrick, Lt. Governor Tim Murray and I know that Domestic and Sexual Violence affect every community in this Commonwealth and responding to these incidents is a significant proportion, and among the most dangerous of the work of police departments. It is also clear that police work, alone, will not end this violence. Communitywide response is necessary. To that end, I am distributing the attached guidelines broadly to law enforcement professionals, as well as to victim service providers and other community based organizations so that, as a Commonwealth, we insure that all involved with victims of intimate partner violence will be met with the same clear set of procedures. It is critical that communities as a whole know what to expect when they call 911.

These guidelines were revised by a collaboration of municipal and state police, state and community based victim services providers and other experts in the field. The final draft has been reviewed and approved by the Massachusetts District Attorney's Association and the Massachusetts Chiefs of Police and further vetted by General Council of EOPSS. I draw your attention to some of best practices employed in the guidelines including the importance of determining who the dominant aggressor is; the critical nature of NOT asking victims about immigration status; and how to deal with children on the scene. I am also pleased to let you know that the new training modules through MPTC for veteran officers and new officers will reflect the new guidelines.

To move the Commonwealth along toward a uniform response to domestic violence, I ask that Municipal, State and other Police Departments, such as Housing Authority and Campus Police Depts. review and adopt these guidelines.

On behalf of the Governor, Lt. Governor, I want to thank you in advance for your attention to these guidelines and for helping facilitate a uniform police response to domestic violence in Massachusetts.

Sincerely,

Kevin M. Burke
Secretary

P.S. Executive Order 486 also requires promulgation of Sexual Assault Response Guidelines which are currently being vetted and will require legislative language before they can be disseminated. We expect to be able to release them mid-year.

COMMONWEALTH OF MASSACHUSETTS

# Domestic Violence Law Enforcement Guidelines 2009

## The Commonwealth of Massachusetts
## Executive Office of Public Safety and Security


**Deval L. Patrick**
**Governor**

**Timothy P. Murray**
**Lieutenant Governor**

**Kevin M. Burke**
**Secretary**

## Table of Contents


| | | |
|---|---|---|
| ACKNOWLEDGEMENTS | | 3 |
| 1.0 | AUTHORITY AND EFFECTIVE DATE | 4 |
| 2.0 | M.G.L. c. 209A: ABUSE PREVENTION LAW | 5 |
| 2.1 | DEFINITIONS | 5 |
| | A. Abuse | 5 |
| | B. Family or household members | 5 |
| 2.2 | CIVIL LIABILITY | 6 |
| 3.0 | PROCEDURES | 6 |
| 3.1 | RESPONDING TO THE SCENE | 6 |
| | A. Dispatch and Immediate Response | 6 |
| | B. Probable cause standard | 7 |
| | C. Initial observations | 7 |
| | D. Entering a private premises | 7 |
| | E. Officer's demeanor | 8 |
| | F. Officers' roles at the scene | 9 |
| | G. If there is serious injury | 9 |
| 3.2 | INVESTIGATION | 9 |
| | A. Interviewing witnesses | 9 |
| | B. Information from the scene | 9 |
| | C. Information documentation | 10 |
| 3.3 | ARREST GUIDELINES | 11 |
| | A. The decision to arrest | 11 |
| | B. Arrest: mandatory or preferred | 11 |
| | C. If the suspect has fled the scene | 12 |
| | D. Dual arrests | 12 |
| | E. Substantive dating relationships | 13 |
| | F. Arrest of a caretaker | 13 |
| | G. Out of state orders or violations | 13 |
| 3.4 | FINGERPRINTING AND PHOTOGRAPHING OF DEFENDANTS | 15 |
| 3.5 | SERVICE OF ORDERS | 14 |
| | A. In-hand service | 14 |

| | | | |
|---|---|---|---|
| | B. | Record of Service | 14 |
| | C. | Return of Service | 14 |
| | D. | Plaintiff bringing orders to the department | 15 |
| | E. | Firearms | 15 |
| 3.6 | PROPERTY | | 15 |
| | A. | Removing or destroying property | 15 |
| | B. | Vacate orders and court orders to retrieve belongings | 15 |
| 3.7 | ALLEGATIONS AGAINST LAW ENFORCEMENT PERSONNEL | | 16 |
| | A. | Departmental policies | |
| 3.8 | CONFIDENTIALITY OF DOMESTIC VIOLENCE PROGRAMS LOCATIONS | | 18 |
| 4.0 | POLICE RESPONSIBILITIES CONSIDERATIONS | | 18 |
| 4.1 | THE OFFICER'S RESPONSIBILITIES | | 18 |
| | A. | Remain on the scene | 19 |
| | B. | Medical treatment | 19 |
| | C. | Getting to a safe place | 19 |
| | D. | Notice of rights | 19 |
| | E. | Activating the Emergency Judicial Response System (EJR)19 | |
| | F. | Arrest when appropriate | 20 |
| | G. | Bail | 20 |
| | H. | Referrals | 20 |
| | I. | Incident Reports | 20 |
| | J. | Mandatory reporting | 20 |
| | K. | Firearms | 21 |
| 4.2 | THE ROLE OF THE SUPERVISOR | | 23 |
| | A. | Assurances for practice | 23 |
| | B. | Referrals | 23 |
| | C. | Follow-up investigations | 24 |

| | |
|---|---|
| Attachments | 24 |
| Abused Person's Notice of Rights | 26 |
| Massachusetts General Laws Commonly Associated with Domestic Violence Incidents | 27 |
| Referrals and Resources | 28 |
| M.G.L. c. 276, §58A | 29 |

## ACKNOWLEDGEMENTS

The following people contributed significantly to the revision of these Guidelines:

ADA Courtney Cahill, Plymouth County District Attorney*s Office
Janice Dean, Massachusetts Parole Board
Stephanie Flaherty, DOVE
Heather M. Hall-Martin, Department of Correction
Sgt. Pi Heseltine, Massachusetts State Police
Chief Paul Porter, Randolph Police Department

Other Contributors:
David Adams, Emerge
ADA Kim Aliprantis, Massachusetts District Attorney's Association
District Attorney Jonathan Blodgett, Essex County District Attorney's Office
Diane DeAngelis, Executive Office of Public Safety and Security
Stephanie DeCandia, Boston Area Rape Crisis Center (BARCC)
Marci Diamond, Department of Public Health
Kelly Dunn, Jeanne Geiger Crisis Center
Janet Fine, Massachusetts Office for Victim
Assistance Detective Lieutenant Elaine Gill, Massachusetts State Police
Sheridan Haines, Governor's Council on Sexual and Domestic Violence
Kathy Jolin, Associate Director for Adult and Adolescent SANE program
Captain Michael Kalmbach, Digital Evidence Management Section
Lt. Richard Lane, Massachusetts State Police
ADA Maura McCarthy, Worcester County District Attorney's Office
ADA Kate McDougall, Essex County District Attorney's Office
Lieutenant Colonel Marian McGovern, Massachusetts State Police, Mass. Chiefs of Police Training and Education Committee
Gwen Pino, Massachusetts State Crime Lab
Sgt. Mary Ritchie, Massachusetts State Police
Gina Scaramella, Executive Director Boston Area Rape Crisis Center
District Attorney Betsy Scheibel, Northwestern District Attorney*s Office
Geline Williams, Massachusetts District Attorney*s Association
Marianne Winters, U-Mass Worcester
Isa Woldeguiorguis, Jane Doe, Inc.
Dr. Paul Zambella, Massachusetts State Crime Lab
Lucia Zuniga , Sexual Assault Nurse Examiner (SANE) Program

## Policy for Law Enforcement Response to Domestic Violence

## 1.0 AUTHORITY AND EFFECTIVE DATE

This policy is established pursuant to Section 14 of Chapter 403 of the Acts of 1990. Pursuant to Section 15 of Chapter 403 of the Acts of 1990, law enforcement agencies shall adopt this policy or establish and implement specific operational guidelines consistent with the provisions of this policy. This revision of the policy shall take effect as of January 1, 2009.

Among the most difficult and sensitive calls for police assistance are those involving domestic violence. Although domestic violence calls are usually responses to a home, domestic violence can occur at any location and in any setting. When responding to a domestic disturbance, officers must be both alert and impartial, and must be concerned with the needs of victims where domestic violence is apparent or alleged. Police are well aware that situations, which appear minor at first glance, can mask a much more serious condition.

Appropriate and effective police response to domestic violence calls is the best mechanism for enhancing victim safety. It is also the means by which police departments can minimize departmental liability. It is, therefore, imperative that police officers receive appropriate training in the handling of domestic violence complaints and that departments follow the statutory obligations for action, and implement the guidelines outlined here.

### 1.1 Purpose

The purpose of this policy is to establish guidelines for law enforcement officers and departments to respond to domestic violence calls. The primary focus shall be on victim safety, followed closely by offender accountability; accordingly, a proactive, pro-arrest approach in responding to domestic violence is a priority. Officers shall be expected to do the following:

- Establish arrest and prosecution as a preferred means of police response to domestic violence;
- Enhance the safety of victims, their children, and any one else living in the home;
- Take appropriate action for any violation of permanent, temporary, or emergency orders of protection;
- Promote the safety of law enforcement personnel responding to incidents of domestic violence;
- Provide victims or witnesses of domestic violence with support and assistance through cooperative efforts with community stakeholders in order to prevent further abuse and harassment. (Community stakeholders are individuals and entities in the community who work to foster effective intervention in and prevention of domestic violence. Entities include, but are not limited to, law enforcement agencies, prosecutors, parole, probation, community based domestic violence and sexual assault programs, social service agencies, adult and child protective services, clergy, educators, government agencies, animal welfare organizations, businesses and employers.); and

- Complete thorough investigations and effect arrest of the dominant aggressor upon establishment of probable cause.

## 2.0 M.G.L. c. 209A: ABUSE PREVENTION LAW

### 2.1 DEFINITIONS

**A. Abuse**

For the purposes of this policy, the term "abuse" is defined by M.G.L. c. 209A, § 1, as the occurrence of one or more of the following acts between family or household members:

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

**B. Family or household members**

For the purposes of this policy, the term "family or household member" shall include any of the following:

1. Persons who are or were married to one another;
2. Persons who are or were residing together in the same household;
3. Persons who are or were related by blood or marriage;
4. Persons who have a child in common regardless of whether they have ever married or lived together; or
5. Persons who are or have been in a substantive dating or engagement relationship. This includes relationships involving an individual or individuals who identify as gay, lesbian, bisexual or transgender.

**C Licenses**

For the purposes of this policy, the term "license", as defined in M.G.L. c.140, §§122, 122B, 129B, and 131, shall include all of the following:

1. Class A license to carry firearms;
2. Class B license to carry firearms;
3. Class C firearms identification card;
4. Class D firearms identification card;
5. License to possess a machine gun;
6. License to sell firearms;
7. License to sell ammunition; or
8. License to perform as a gunsmith.

**D Firearms**

For the purposes of this policy, the term "firearm" shall not be limited to its definition in M.G.L. c.140, §121, but rather shall include any of the following:

1. Firearms;
2. Rifles;

3. Shotguns;
4. Machine guns;
5. Ammunition;
6. High capacity feeding devices; or
7. Antiques.

## 2.2 CIVIL LIABILITY

According to M.G.L. c. 209A, § 6: "No law 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 and the statewide policy as established by the Secretary of Public Safety."

## 3.0 PROCEDURES

The provisions of M.G.L. c. 209A impose specific responsibilities upon the police in regard to a domestic abuse situation. All officers are expected to be thoroughly familiar with the contents of that statute (as amended and construed by case law) and to act with appropriate discretion and competence in carrying out its provisions.

## 3.1 RESPONDING TO THE SCENE

### A. Dispatch Response

The likelihood of injury associated with domestic violence situations requires that officers immediately proceed to the place of the dispute.

1. Whenever possible, two officers should be dispatched to the scene.
2. Dispatch officers or call takers should do the following:
    - Assign a priority response to all domestic violence calls, whether or not the assailant is known to be on the premises, including those calls that involve or appear to involve a police officer of any department;
    - Immediately notify a supervisor of any domestic violence call;
    - Preserve documentation of the facts and circumstances of each call, including 911 tapes, for use in potential administrative and criminal investigations;
    - Maintain current contact information of local domestic violence victim advocacy organizations for responding officers to provide to victims;
    - Attempt to elicit any and all information from the caller that may help the responding and investigating officers assess the situation, including the following:
        a) Immediate safety of the caller, the victim, and others at the scene;
        b) Nature of the incident (verbal or physical), nature of injuries, and whether violence is ongoing;
        c) The type of weapons that are involved, or present, if applicable;
        d) Hazards to responders, if any, including animals;

e) Whether the caller or alleged assailant is under the influence of alcohol or drugs, or if there are mental health issues;
f) Caller's and alleged assailant's description;
g) Presence or absence of the alleged assailant, and direction and mode of travel, if applicable;
h) Other people involved or witnesses at the scene, including children;
i) Alleged assailant's criminal history (B.O.P. check);
j) Number of times the department has been called to this scene because of this suspect;
k) Existence of a protection order currently on file against the suspect or caller (check B.O.P.);
l) Outstanding warrants against the caller or alleged assailant if any exist (check CJIS and Warrant Management System);
m) Caller's and alleged assailant's date of birth or social security number; and
n) Record of firearms identification cards and/or licenses to carry having been issued to resident(s);

- Inform the caller of an approximate time of the officers' arrival;
- Keep the caller on the telephone if the caller is a victim or witness to a domestic violence incident in progress in order to relay ongoing information provided by the caller to the responding officers and remain aware of victim's safety;
- Make the safety of domestic violence victims a primary concern. Address threats of violence, whether immediate or remote, by working with the victim to focus on ways to enhance safety, such as waiting for officers at another location or leaving the location if the suspect returns;
- Keep in mind that the caller could be the victim or assailant; and
- Do not cancel the original call for service if a subsequent request to cancel the original call is received. Advise the responding officers of the second call and instruct them to continue to respond, investigate, and assess the situation to ensure that all parties are safe.

**B. Police Response-Probable cause standard**

Police officers should keep in mind that the same standard for probable cause applies to domestic violence offenses as for any other crime. See, Section 3.3, Arrest Guidelines.

**C. Police Response- Initial observations**

Upon arrival, responding officers should approach the scene with a high degree of caution. Upon approach, officers should make observations of the scene, and listen for sounds or evidence of a disturbance. Observations should be documented in incident report. See Section 3.2.C, Information Documentation, and Section 4.1.I, Incident Reports.

**D. Police Response-Entering a private premises**

When investigating a report of domestic violence, officers should be thorough and observe the following guidelines:

1. Officers may enter private premises without a warrant in the following circumstances:
    a) At the request of someone in lawful control of the premises;
    b) Where there is imminent danger of violence that could result in death or serious physical injury;
    c) Where a breach of the peace has been committed in an officer's presence; or
    d) When a police officer has probable cause to believe a felony has occurred and is in fresh pursuit of the fleeing felon.

2. "Private premises" shall include but not be limited to, a house, an apartment, a condominium, a hotel room, a mobile home, a dormitory room or a house trailer.

3. Officers shall remain on the scene where the abuse occurred or was in danger of occurring as long as the officers have reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of an officer.

4. Officers should always consider the requirements of the Fourth Amendment when considering entering any premise.

**E. Police Response-Officer's demeanor**

The responding officers should maintain a professional and calm attitude upon initial contact.

1. The officers should state their reason for being present.
    a) Do not neglect to include children when explaining officers' presence, particularly if an arrest is being made.
        - Tell the children that what happened prior to the officers' arrival is not their fault.
        - If a child called 911, tell him/her that he/she did the right thing and that the officers are there to help the family.
    b) If the family does not speak English, when possible, DO NOT use the children as interpreters. This could prove dangerous to the child and adult victim. Officers can call QWEST, a multilingual communications network for use by police department at 888-**892-2850** for interpretive language services 24 hours a day.

2. Officers should strive to be considerate and attentive toward all parties and their concerns. Officers shall maintain a professional and objective demeanor throughout their investigation.

3. Upon entering, officers shall prevent the physical movement of the parties as much as possible and control their access to any potential weapons.

4. Persons who are under the influence of drugs or alcohol, or who suffer from mental illness, might pose a safety risk to themselves or others at the scene. Special precautions may need to be taken in these circumstances.

**F. Police Response-Officers' roles at the scene**

The responding officers must take immediate control of the situation and should separate the parties to prevent any further violent action. The parties should be interviewed independently. However, if there are two officers present at the scene, they should, if practical, remain within view of each other to enhance officer safety and to avoid any subsequent action. Throughout the investigation the officers should allow each party to present his or her story individually, avoiding any unnecessary interruptions by the other party. Separating the parties also allows each to relate matters to an officer without being overheard, influenced or intimidated by the other party. Officers should determine whether interpretative language services are needed and should seek out such services where available. See Section 3.1.E.1(b).

**G. Police Response-Instances involving serious injury**

In cases of serious injury, the preferred method of transportation is via ambulance. Officers are authorized by M.G.L. c. 209A, § 6, to transport victims of domestic violence to the emergency room of the nearest hospital, or to arrange for appropriate transportation to a health care facility. Officers should receive approval from their supervisor prior to transporting a victim of domestic abuse in a cruiser, except in an emergency. If the victim is not seriously injured, or declines transportation, the victim may then seek transportation through his or her own means.

**3.2 INVESTIGATION**

Officers responding to domestic violence calls should ensure thorough investigations.

**A. Interviewing witnesses**

Attempt to identify and interview the party who called the police, neighbors, and other potential witnesses. All parties present and involved should be documented in the incident report. It is not unusual for some witnesses to be unsupportive of the victim. Do not tell the suspect who called the police. See Section 4.1.I, Incident Reports.

**B. Information from the scene**

Attempt to obtain the following information at the scene. If that is not possible, obtain the information during the follow-up investigation.

1. Determine the relationships of all parties, including children, at the scene. If children are not immediately observed, ask if there are children present in the household. If children are present, record their names and dates of birth.
    - Check on the children to ascertain whether or not they have sustained injury.
    - Some children believe that police officers are not allies. If children are present, one officer should talk to the children to inform them of the officers' intentions to keep the family safe, that the officers are there to help, and that the violence is not the children's fault.
    - If a child is to be interviewed as a witness to the incident, the officer should consider the child's physical, emotional or psychological ability to give a statement; the child's age and ability to understand questions and

formulate responses; and the likelihood the child's safety will be compromised by disclosing what he/she witnessed.

2. Obtain at least two phone numbers where the victim can be reached. Include a cell phone number, a daytime phone number, or the number of a close relative or friend. Include these numbers in the incident report so the bail bondsperson or court personnel may inform the victim of the abuser's release on bail. Inform the victim that if she or he intends to leave the residence, and wishes to be informed of the abuser's release, he or she must inform the police department of a number where he or she may be reached, or where a message may be left safely.

3. Obtain information about the suspect's ownership of, presence of, or access to firearms, and their location.
4. Officers should gather information regarding suspect's past behavior/dangerousness. This information should be documented in incident report and provided to the Bail Commissioner in determination of bail and to the Prosecutor for use at arraignment. See Attachment 4, M.G.L. c. 276, §58A. Therefore, gather information regarding the suspect's:
    - Criminal history;
    - History of abusing the current victim;
    - History of abusing other victims;
    - History of non-fatal strangulation;
    - History of forced sex;
    - History of extreme possessiveness or jealousy;
    - Possession of weapons;
    - History of use of/or threats with a weapon;
    - Use of weapons in prior abuse of the victim;
    - Past threats against or abuse of pets;
    - Past attempts or threats to kill;
    - Past attempts or threats to commit suicide; and
    - Current or past vacate, restraining, no-contact or other protective orders, including those held against the suspect by someone other than this victim.

5. After ascertaining past reported and non-reported criminal history, seek appropriate criminal action for current and prior incidents. Refer victims to appropriate resources listed in Attachment 3

**C. Information documentation**

Properly document important information, i.e., spontaneous utterances (direct quotes) by the victim, the suspect, children, and other witnesses. In collecting evidence of domestic abuse, law enforcement officers are strongly encouraged to use photographs to document injuries sustained by the victim and the condition of the crime scene. Contemporaneous records of injuries and crime scene condition are critical to the prosecution of alleged abusers.

1. When documenting the scene photographically, officers are reminded to take both close-up and full scene pictures. Follow-up photographs of injuries should be taken 2-3 days after the incident to document progression of injuries.
2. Collect physical evidence (including weapons used, even when simple household item) and document collection in the incident report.

## 3.3 ARREST GUIDELINES

### A. The decision to arrest

1. **The safety of the victim, children and other family members shall be paramount in any decision to arrest.**
2. As in other types of criminal investigations, uncorroborated statements by a victim can constitute probable cause that the crime occurred.
3. The decision to arrest must be based on whether probable cause exists that the crime occurred, not on whether the victim wishes to seek complaints or wishes to testify at a future date.
4. Substance Abuse / Mental Health Issues:
   - 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.
5. 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 officer, the victim, children, bystanders, and him/herself. Officers should also remember that it is not unusual for an abuser to display a calm demeanor following any domestic violence incident.
6. Officers should be mindful that the victim has just been traumatized and may appear agitated, confused, numb, anxious, tearful or afraid. The victim may tell officers that he/she is to blame for the incident and will try to take responsibility for the incident. It is important to determine the dominant aggressor. The dominant aggressor is not who struck first, but who has a pattern of domination and control. See Section 3.3.D, Dual arrests/dominant aggressor.

### B. Arrest: mandatory or preferred

An officer's authority or mandate to arrest is set forth in M.G.L. c. 209A, § 6(7).

1. 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 an emergency, temporary or permanent vacate, refrain from abuse, stay away or no-contact order or judgment, a suspension and surrender order, or protection order issued by any jurisdiction.
2. When there are no refrain from abuse, vacate, stay-away or no-contact orders or judgments in effect, arrest shall be the preferred response whenever officers witness or have probable cause to believe that a person:
   a) Has committed a felony; or
   b) Has committed a misdemeanor involving abuse, as defined in M.G.L. c. 209A; or

c) 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.

**C. If the suspect has fled the scene**

When probable cause to arrest exists, and the suspect has fled the scene:

1. Officers shall direct the dispatcher to advise area patrols, including other jurisdictions where the suspect is believed to be going, in order for those patrols to attempt to locate and arrest the suspect.
2. One department's statement that probable cause to arrest exists shall be honored by another department. The second department shall immediately attempt to effect the arrest as requested by the investigating department.
3. Officers will attempt to make a warrantless arrest within a reasonable period of time. 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 M.G.L. c. 209A.
4. When probable cause exists to believe a crime involving abuse occurred, it is not proper procedure to advise the victim to seek complaint applications on his or her own.

**D. Dual arrests/dominant aggressor**

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.

1. Officers should attempt to identify the dominant aggressor, and take action based on that determination. In the majority of cases, an effective investigation will reveal the dominant aggressor. See Sections 3.2.B.4 and 3.2.B.5 regarding past behavior/dangerousness.
2. Officers should be aware of the difference between offensive and self-defensive injuries. Self-defense of reasonable force may be used by any person in resisting or aiding another to resist an offense against the person. The use of force must be reasonable for that person given the nature of the threat and, if warranted under the circumstances, may include the use of weapons. If one of the persons acted entirely in self-defense, the situation should be treated as if there was a single offender.
3. If the officers determine that neither party acted in self-defense and that both parties have committed an act of domestic abuse, then the officers should determine who is the dominant aggressor and take action considering the totality of the circumstances including:
    - The relative severity of injuries and fear inflicted in this incident;
    - The relative use of force and intimidation in this incident;,
    - Information available to the officers regarding prior incidents involving either party; or
    - The likelihood of either party to commit domestic violence in the near future.

4. Any officer arresting both parties is required by law to submit a separate detailed, written report, in addition to an incident report, setting forth the grounds for dual arrest.
5. 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

**E. Substantive dating relationships**

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.

**F. Arrest of a caretaker**

1. In cases involving abuse of a child, 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.
2. If the child, the elder or the person with a disability cannot be left alone, the appropriate protective agency must be contacted, in order to arrange for temporary care. When a caretaker is arrested and an agency is called for temporary care, the officer shall explain to the child, elder or person with disability what is happening and the reasons for calling a protective agency. See Section 4.1.J.

**G. Out-of-state orders or violations**

1. A protective order issued in another jurisdiction (as defined in M.G.L. c. 209A, § 1) shall be given full faith and credit in the Commonwealth. A responding officer shall serve and enforce the terms and conditions of an out-of-state protective order as written by the issuing jurisdiction.
2. Officers shall make a warrantless arrest of any person the officer witnesses or has 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 copy of the order, by any source; and
- A statement by the victim that such order remains in effect.

4. An order of protection is presumed valid if it gives the names of the parties involved, contains the date the order was issued, has not expired, specifies the terms and conditions set against the abuser, contains the name of the issuing court and is signed by the issuing authority.
5. Violations of out-of-state orders or Massachusetts orders violated in another state may be charged criminally as contempt of court (M.G.L. c. 220, §14), in the Commonwealth of Massachusetts.

## 3.4 FINGERPRINTING AND PHOTOGRAPHING OF DEFENDANTS

Whenever resources allow, officers shall take fingerprints and photographs of all criminal defendants in domestic violence cases. These records should be forwarded to the State Police for entry into the Automated Fingerprint Identification System (AFIS) system. This will greatly improve prosecution of crimes such as breaking and entering and stalking. When any defendant is arrested and charged with a felony, copies of fingerprints shall be forwarded to the colonel of state police. M.G.L. c. 263, § 1A.

## 3.5 SERVICE OF ORDERS

### A. In-hand service

Service of orders shall be made in hand unless otherwise ordered by the court. Chapter 209A, § 7, requires that "the law enforcement agency shall promptly make its return of service to the court."

1. Orders shall be served promptly upon receipt. If service is initially unsuccessful, the department must continue to attempt service until it is completed. Service of orders will not be delayed in order to forward service by a specialized officer or unit. If an officer is unable to make service after numerous attempts, the officer should document in detail the service attempts on the "return of service" form and request the court to allow service by leaving a copy of the order at the last known address of the defendant.
2. Service of orders may compromise victim safety. Victim 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 D.A.'s Office, SAFEPLAN or the local domestic violence program) in order to develop a safety plan around the service of the order.

### B. Record of Service

Departments must keep a record of all attempts at service.

### C. Return of Service

All returns of service, including service of Emergency Orders, must be sent to the court.

**D. Plaintiff bringing orders to the department**

When a plaintiff brings an order to the department for service, officers should ensure that the department's responsibilities under M.G.L. c. 209A and these guidelines are met.

**E. Firearms**

Upon service of the order, police shall immediately take possession of all firearms and licenses in the control, ownership, or possession of the defendant. The license-issuing authority shall be contacted and informed of the action taken and police reports regarding the incident forwarded to it. Such firearms and licenses shall not be returned until the Abuse Prevention Order has been completely vacated or the firearms provision has been modified by order of the court. M.G.L. c. 140, §§ 129B, 131

## 3.6 PROPERTY

The relationship of the parties and their property interests complicate domestic violence situations.

**A. Removing or destroying property**

When a person is accused of removing or attempting to remove property from the dwelling or is accused of damaging or destroying property, the officer should investigate to determine the civil or criminal consequences, and if criminal, take appropriate action (for example, malicious destruction of property).

**B. Vacate orders and court orders to retrieve belongings**

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. The defendant in the vacate order is allowed to retrieve his or her belongings under the following conditions:
    a) The defendant must have a court order allowing for the retrieval.
    b) The police must accompany the defendant. Officers shall remain with the defendant throughout the process.
    c) The victim must have prior notice by the department, and must agree to the timing of the retrieval.
    d) The defendant must not be allowed to use this as a means of harassing the victim.
    e) The defendant may retrieve personal property including clothing, shoes, personal care items etc. If the defendant is attempting to collect any other items, including furniture or electronic equipment, that is in dispute, the defendant should be referred to issuing court or the Probate and Family Court for settlement of shared property.
3. 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.

## 3.7 ALLEGATIONS AGAINST LAW ENFORCEMENT PERSONNEL

Police departments must recognize that the law enforcement personnel, whether sworn or civilian, are not immune from committing domestic violence against their intimate partners or being victims of domestic violence. Although no person is exempt, whatever his or her occupation, from the consequences of his or her actions that result in a violation of M.G.L. c. 208, 209, 209A, 209C and/or Superior Court injunctions, the dynamics between the responding and accused officers have the potential for making on-scene decisions additionally difficult. The following incident and response protocols are critical components to the integrity of the law enforcement profession and the trust of the community.

### A. Dispatch officers response

1. The dispatcher / communications officer **shall** assign a high priority to all domestic violence calls including those that involve sworn officers and civilian personnel.
2. The dispatcher / communications officer **shall** document all calls or reports of incidents of domestic violence including those involving sworn officers or civilian personnel.
3. The dispatcher / communications **shall** dispatch appropriate police personnel including the on-duty patrol supervisor
4. The dispatcher / communications officers **shall** immediately notify the on-duty commanding officer of all domestic violence involving officers.

### B. Patrol officers response

1. The responding officers **shall** take immediate action to ensure the safety of the victim and all parties present.
2. The responding officers **shall** proceed with an investigation in accordance with M.G.L. c.208, 209, 209A, 209C, M.G.L. c. 140, § 29B, court orders and their department's policy, procedures, rules and regulations.
3. The responding officers **shall** request a supervisor of higher rank than the officer involved respond to the scene.
4. The responding officers will remain on the scene until relieved by the responding supervisor.
5. The responding officers **shall** document in a report their actions and complete such report prior to the end of their tour of duty.

### C. On-scene supervisor's Response

1. Proceed to the scene of the incident and conduct an investigation.
2. Assess the actual and potential harm to the victim, children, and others present, and ensure their safety.
3. Upon investigation, if the responding supervisor has reasonable cause to believe that there is evidence of physical abuse or that the threat of physical abuse exists, and the abuser is a sworn member of the department, the responding supervisor shall seize and take into custody, all department-issued firearms, licenses and equipment in possession of the officer. In addition the responding supervisor **shall** request the officer surrender all personally owned firearms and

licenses. The responding supervisor **shall** ensure a check of the Firearms database is made.

4. If the suspected officer does not have his or her department-issued firearm on his or her person or under his or her control at the time of the incident, the responding supervisor **shall** accompany the officer to the location at which the firearm is located and take custody of department-issued firearms, licenses and other weapons.
5. Ensure enforcement of M.G.L. c. 208, 209, 209A, 209C, M.G.L. c.140, § 29B, court orders and department policy and procedure, rules and regulations.
6. The supervisor will ensure a check of the LEAPS database to determine if there are outstanding abuse prevention / restraining orders and or warrants in effect against the officer involved.
7. The supervisor **shall** submit, through the department's appropriate chain of command, a report detailing his/hers assessment of the incident and action taken before the end of the supervisor's tour of duty.

**D. On-duty commanding officer's responsibilities**

1. The commanding officer in charge of the officers/supervisor assigned to the initial investigation, upon being notified of a domestic violence incident involving a sworn officer **shall** ensure the on-duty supervisor has responded to the scene and commenced an investigation.
2. Ensure the safety of the victim, children or others present at the scene.
3. Ensure enforcement of all provisions of M.G.L. c.208, 209, 209A, 209C, M.G.L. c.140, § 29B, court orders, department policy, procedures, rules and regulations.
4. Ensure reports and proper documentation of the facts and circumstances of the incident and the action taken re submitted through the proper channels in accordance with department procedures.
5. Ensure the appropriate notifications are made in accordance with the department's procedures and chain of command. Notifications should include the commanding officer of the officer involved and the commanding officer of the jurisdiction in which the incident occurred.

**E. Additional considerations**

1. When responding to a domestic violence complaint involving a police officer from another jurisdiction, all responding officers, investigators, supervisors, and commanding officers shall follow the same procedures that are to be followed in responding to a domestic violence complaint regarding an officer from their own department.
2. In the event that the reported incident involves the chief, director, superintendent or commissioner of the department, the commanding officer shall notify the individual in the government who has direct oversight for the chief, director, superintendent or commissioner.
3. In responding to an incident where the victim is a police officer, standard domestic violence response and investigation procedures should be followed.

4. In responding to domestic violence incidents where the parties involved are both police officers, standard domestic violence procedures should be followed. After probable cause and dominant aggressor determinations are made, an arrest should be made and all service weapons of the accused officer confiscated.
5. Chiefs are encouraged to use, when a pattern of abusive behavior is detected, an administrative order of protection. This is a directive from the chief, commanding officer or supervisor ordering an officer to refrain from particular conduct toward a particular person as a condition of continued employment. This administrative order would be in addition to any abuse prevention or court order that may or may not be in effect.

## 3.8 CONFIDENTIALITY OF DOMESTIC VIOLENCE PROGRAM LOCATIONS

The location and street address of all domestic violence programs are absolutely confidential and shall not be required to be revealed in any criminal or civil proceeding. See M.G.L. c. 233, § 20L. For the purposes of this provision, a domestic violence program is defined as any refuge, shelter, office, safe home, institution, or center established for the purpose of offering assistance to victims of abuse through crisis intervention, medical, legal or support counseling. See M.G.L. c. 233, § 20K. If a report is made at a domestic violence program, the incident occurred at that program or an officer transported someone to a program, the officer shall not include this address in the incident report. Under no circumstances should a law enforcement officer release information to the public or otherwise regarding the location of a domestic violence program.

## 4.0 POLICE CONSIDERATIONS

When responding to domestic violence incidents officers should be aware of and consider the additional layers of control and oppression that victims may experience, including, but not limited to the following:

- Immigration status;
- Language skills including English as a second language;
- Cultural identity;
- Physical limitations and disabilities; and
- Sexual orientation and gender identity.

These victims may have fear of police, and may present angrily or as abusers themselves. It is important to be aware of, and deter, any biases. Statewide resources for these, and other special populations, can be found in Appendix 3.

## 4.1 THE OFFICER'S RESPONSIBILITIES AT THE SCENE

Whenever any 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 action:

**A. Remain on the scene**

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 an officer, that officer should remain at the scene where the abuse occurred or was (or is) in danger of occurring for a reasonable period of time to prevent abuse. If the suspect has fled the scene, a reasonable period is the amount of time necessary:

1. To assess that the suspect has left the scene, and
2. To carry out the responsibilities outlined in Sections 4.1.B-4.1.E, 4.1.H, and 4.1.K.

**B. Medical treatment**

Assist in obtaining medical treatment for injuries resulting from an assault, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility.

**C. Getting to a safe place**

Assist the victim and dependent children in locating and getting to a safe place, including but not limited to a designated meeting place for entry into emergency 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.

**D. Notice of rights**

Give abuse victims immediate and adequate notice of rights by handing to them and reading a form stating their rights (see attached). Where the person's native language is not English, the statement shall be provided in the person's native language whenever possible.

1. Confidentiality of Abuse Prevention Order provisions: a plaintiff's residential address and workplace address shall appear on the court order and be accessible to the defendant unless the plaintiff specifically requests that this information be withheld from the order. See M.G.L. c. 209A, § 8. Police officers helping to issue emergency abuse prevention orders must be cognizant of victims' confidentiality rights and requests.

**E. Activating the Emergency Judicial Response System (EJR)**

Assist the victim by activating the Emergency Judicial Response System when a judge is not available through court. This should be done even when the alleged abuser has been arrested.

NOTE: If a victim is unable to appear in court because of severe hardship due to the victim's physical condition, officers can seek an order by contacting the court. A representative may appear in court on behalf of the victim to seek an emergency or

temporary order. Officers shall advise these victims that a representative may appear on their behalf.

**F. Arrest when appropriate**

Decisions to arrest will be based on whether or not probable cause and the authority to arrest exist, not on whether or not the victim agrees to the action, or to testify at a future date. See Section 3.3, Arrest Guidelines.

**G. Bail**

Inform the victim that the abuser will be eligible for bail and may be promptly released. See Section 3.2.B, Information from the scene.

**H. Referrals**

1. Provide information, including phone numbers, about local resources such as the community based domestic violence and sexual assault advocacy programs for emergency shelter and counseling services and the District Attorney's Office Victim Witness Advocacy Program. Please see Referrals in the Appendix
2. It is advisable that departments have referral information preprinted, so that it can be distributed along with the Abused Person's Notice of Rights card. Referral information can be typed onto the card, or stapled to it.

**I. Incident Reports**

Incident reports will be filed whether or not an arrest is made. They will be made available to the victim at no cost, upon his or her request to the department. (Since the initial investigation should determine the existence of any history of abuse, that information must be included within the report.)

1. Prosecution and subsequent legal action can be greatly aided by documentation and description of physical injuries, photographs of the injuries, and/or noting the presence of children in household, and other information gained through the investigation.
2. Police departments shall ensure the confidentiality of domestic violence records including information regarding the identity of a victim or children and any medical information or statement by witnesses. Victims of domestic violence have a strong privacy interest in this type of information whether contained in the initial incident report or supplemental reports. With the exception of the complete report's release to the victim, reports should be reviewed and redacted accordingly in response to other requests.
3. All police departments that require an investigating officer to complete a report concerning an incident, offense, alleged offense, or arrest on a form provided by the department, shall include on said form a space to indicate whether such offense, alleged offense or arrest involved abuse as defined in M.G.L. c. 209A. See M.G.L. c. 41, § 98G, and M.G.L. c. 22C, § 49.

**J. Mandatory reporting**

1. A report will be filed with the Department of Children and Families 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 DCF office. After hours, call the hotline: 1-800-792-5200. Officers should file 51A child abuse reports against the offender abusing or neglecting the child. If an officer intends to file a 51A child abuse report, he/she should tell the non-offending parent or caretaker and explain the filing process, including the fact that the report is being filed against the abuser, not the caretaker who is also a victim of abuse.

2. 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. If an officer intends to file a report, he/she should tell the disabled person who is the subject of the abuse.
3. 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. If an officer intends to file a report, he/she should tell the elder person who is the subject of the abuse

**K. Firearms**

When a firearm or other weapon is present at the scene of a domestic violence situation, officers shall:

1. Seize the firearm or weapon as evidence of the crime, if the responding officers are informed that a firearm or weapon has been involved in the dispute.
2. If the firearm or weapon is not reported to have been involved in the dispute:
   a) Request that the firearm or weapon be placed in their custody temporarily;
   b) Search for and take custody of the firearms or weapon if a party who lawfully resides there requests that the officer do so. A consent search is allowed in areas to which the victim as access, including joint access with the suspect;
   c) Take temporary custody of the firearm or weapon to alleviate the threat of serious violence.
3. Determine whether a firearm or weapon is lawfully possessed before returning the same.
4. If the officer determines that the firearm or weapon cannot be seized, the following actions can take place:
   a) A judge can order the defendant to surrender guns and licenses; and
   b) The chief who issued a license to carry may revoke or suspend such license.
5. In all domestic violence cases, the investigating department shall advise the licensing authority that the subject of the licenses is suspected of abuse.
6. Issuance of an Abuse Prevention Order
   a) Abuse Prevention Orders-Upon issuance of any applicable order under M.G.L. c. 209A, police shall immediately take possession of all firearms and licenses in the control, ownership or possession of the defendant. Such firearms and licenses may not be returned until the order has been

completely vacated or the firearms provision modified by order of the court.

b) Violations of Orders- In the interest of immediacy and the statutory mandate to arrest, officers shall make a warrantless arrest of any person the officer witnesses or has probable cause to believe has violated an order including a violation, which stems from the possession of firearms, weapons, or licenses.

c) Seizure and Storage of Firearms-Every department within the Commonwealth shall honor another department's request for assistance in seizing firearm, weapons, or licenses, 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- In cases involving police officers that are defendants in Abuse Prevention Orders, the defendant shall immediately surrender all firearms, including departmental weapons and licenses, to the department serving the order.

7. Federal Firearms Provisions

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 that can be taken.

a) 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.

b) Federal law prohibits any person subject to a qualifying order of protection from possessing firearms and ammunition. See 18 U.S.C. § 922(g)(8).

c) Federal Felon in Possession of a Firearm- Under 18 U.S.C. § 922(g)(1), "Felon in possession of a firearm," 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.

d) 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

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

## 4.2 THE ROLE OF THE SUPERVISOR

### A. Response

1. Supervisors will ensure that the provisions of M.G.L. c.209A, other related statutes, and these guidelines are adhered to.
2. Supervisors shall be responsible for monitoring any domestic violence calls dispatched to officers under their direct supervision.
3. Whenever possible, supervisors should respond to the scene for the purpose of providing additional safety and advice.
4. When unable to respond, supervisors will perform follow up to ensure department policy and procedures were followed.

### B. Assurances for practice

1. Supervisors will assure that dispatch logs will be reviewed to ensure that an incident report has been filed, even in cases where no arrest was made. 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 **shall be** filed in those cases.
2. A supervisor or his or her designee within the department who is specially trained to review domestic violence cases, in order to ensure that the provisions of M.G.L. c. 209A and these guidelines are met, will carefully review incident and arrest reports. 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.
3. Whenever a department identifies a particular case as posing significant danger, that case will be discussed at roll call.

### C. Referrals

1. Supervisors shall make the safety and protection of victims and other family members a priority, recognizing the important role they perform in supporting the safety of victims and other family members and enabling them to make informed decisions.
2. Every effort shall be made to provide law enforcement protection and other safety measures to a victim domestic violence. These measures should be taken immediately following the report of an abusive incident, immediately preceding or following a criminal court date regarding the abuse, and at any other point at which the victim anticipates or is expecting prohibited contact or harassment from the abuser. Such protection shall include but not be limited to:
    - Drive-bys;
    - Welfare checks;
    - Arresting the abuser for violations of no-contact orders and any other offense committed;
    - Transporting the victim to a safe place when necessary; or
    - Ensuring victim contact with trained domestic violence advocates for safety planning.

3. Supervisors will ensure that appropriate referrals are ascertained and provided to the victim.

**C. Follow-up Investigations**

Regarding follow-up investigations, supervisors shall:

1. Determine whether a follow-up investigation is needed. For instance, if the report indicates a history of abuse, it is likely that additional criminal charges should be pursued.
2. If so indicated, the supervisor shall ensure that a follow-up investigation is conducted.
3. Upon review of the follow-up investigation, the supervisor will ensure that additional charges are initiated whenever appropriate.

# Attachments:

1. **Abused Persons Notice of Rights**
2. **Massachusetts General Laws Commonly Associated with Domestic Violence Incidents**
3. **Referrals and Resources**
4. **M.G.L. c. 276, §58A**

# Attachment 1

## Abused Persons Notice of Rights

Abused Person's Notice of Rights
Directions to Police Officer:

Give a victim of domestic violence immediate and adequate notice of his or 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 then be 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 the Boston Municipal Court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, 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."

# Attachment 2

## Massachusetts General Laws Commonly Associated with Domestic Violence Cases

For a complete listing of Massachusetts' General Laws please see:
*http://www.mass.gov/legis/laws/mgl/*
click onto "Search the General Laws"

To see the text of the following statutes connect to the above website and click onto "Link to a specific chapter and section" and follow the instructions.

| | |
|---|---|
| Bail question regarding "Dangerousness" | M.G.L. 276 sec. 58A |
| Violation of a Restraining Order | M.G.L. 209 Sec 6, 7 |
| Stalking | M.G.L. 265 sec. 43 |
| Criminal Harassment | M.G.L. 254 sec 43A |
| Assault and Battery | M.G.L. 265 sec 13A(a) |
| Aggravated Assault and Battery | M.G.L. 265 sec. 13A(b) |
| Assault and Battery/Dangerous Weapon | M.G.L. 265 sec. 15A(a) |
| Aggravated Assault and Battery/Dangerous Weapon | M.G.L. 265 sec. 15A(b) |
| Threats | M.G.L. 272 sec. 2 |
| Intimidation of a witness | M.G.L. 268 sec. 13B |
| Kidnapping | M.G.L. 265 sec. 26 |
| Mayhem | M.G.L. 265 sec. 14 |
| Malicious Destruction | M.G.L. 266 sec 127 |
| Resisting Arrest | M.G.L. 268 sec 32B |
| Disorderly Conduct | M.G.L. 272 sec. 53 |
| Disturbing the peace | M.G.L. 272 sec. 53 |

# Attachment 3

## Referrals and Resources

### For a Jane Doe Inc. Map of local advocacy agencies go to:
http://www.janedoe.org/know/JDI%20Map%2031%20October%202008.pdf

**SAFELINK** **877-785-2020 (TTY) 877-521-2601**
Statewide listing of available DV shelter beds and referrals to programs across the state including multi-lingual agencies

**Asian Task Force Against Domestic Violence** **617-338-2355**
Specializes in services to Asian communities

**Gay Men's Domestic Violence Project** **800-832-1901**
Specializes in services to the Gay, Lesbian, and Transgender communities

**The Network/La Red** **617-423-7233**
Specializes in services to the Gay, Lesbian, and Transgender communities

**Safe Recovery** **978-388-6600**
Specializes in services for victims with co-occurring substance abuse and domestic violence concerns

**Child Witness to Domestic Violence Project** **617-534-4244**
Specializes in services for children 0-8 years old who have Been exposed to domestic violence

**Llamanos Y Hablemos** **800-223-5001**
Sexual assault hotline for Spanish speaking individuals

**Elizabeth Stone House** **617-522-3659**
Specializes in services for victims with co-occurring substance abuse, mental health and domestic violence concerns

**Elder Abuse Hotline** **800-922-2275**

**Disabled Persons Hotline** **800-426-9009**

**Child at Risk Hotline** **800-792-5200**

# Attachment 4

## PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGSIN CRIMINAL CASES

### TITLE II. PROCEEDINGS IN CRIMINAL CASES

### CHAPTER 276. SEARCH WARRANTS, REWARDS, FUGITIVES FROM JUSTICE, ARREST, EXAMINATION, COMMITMENT AND BAIL. PROBATION OFFICERS AND BOARD OF PROBATION

ARREST, EXAMINATION, COMMITMENT AND BAIL

### Chapter 276: Section 58A. Conditions for release of persons accused of certain offenses involving physical force or abuse; hearing; order; review

Section 58A. (1) The commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for a felony offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person of another, or any other felony that by its nature involves a substantial risk that physical force against the person of another may result, including the crime of burglary and arson whether or not a person has been placed at risk thereof, or a violation of an order pursuant to section eighteen, thirty-four B or thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, section three, four or five of chapter two hundred and nine A, or section fifteen or twenty of chapter two hundred and nine C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section one of said chapter two hundred and nine A or while an order of protection issued under said chapter two hundred and nine A was in effect against said person, an offense for which a mandatory minimum term of three years or more is prescribed in chapter ninety-four C, arrested and charged with a violation of section thirteen B of chapter two hundred and sixty-eight or a third or subsequent conviction for a violation of section twenty-four of chapter ninety.

(2) Upon the appearance before a superior court or district court judge of an individual charged with an offense listed in subsection (1) and upon the motion of the commonwealth, the judicial officer shall hold a hearing pursuant to subsection (4) issue an order that, pending trial, the individual shall either be released on personal recognizance without surety; released on conditions of release as set forth herein; or detained under subsection (3).

If the judicial officer determines that personal recognizance will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person—

(A) subject to the condition that the person not commit a federal, state or local crime during the period of release; and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community that the person—

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on personal associations, place of abode or travel;

(v) avoid all contact with an alleged victim of the crime and with any potential witness or witnesses who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency, pretrial service agency, or other agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, without a prescription by a licensed medical practitioner;

(x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency and remain in a specified institution if required for that purpose;

(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial officer may require;

(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;

(xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

The judicial officer may at any time amend the order to impose additional or different conditions of release.

(3) If, after a hearing pursuant to the provisions of subsection (4), the district or superior court justice finds by clear and convincing evidence that no conditions of release will reasonably assure the safety of any other person or the community, said justice shall order the detention of the person prior to trial. A person detained under this subsection shall be brought to a trial as soon as reasonably possible, but in absence of good cause, the person so held shall not be detained for a period exceeding ninety days excluding any period of delay as defined in Massachusetts Rules of Criminal Procedure Rule 36(b)(2). A justice may not impose a financial condition under this section that results in the pretrial detention of the person. Nothing in this section shall be interpreted as limiting the imposition of a financial condition upon the person to reasonably assure his appearance before the courts.

(4) When a person is held under arrest for an offense listed in subsection (1) and upon a motion by the commonwealth, the judge shall hold a hearing to determine whether conditions of release will reasonably assure the safety of any other person or the community.

The hearing shall be held immediately upon the person's first appearance before the court unless that person, or the attorney for the commonwealth, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed seven days, and a continuance on motion of the attorney for the commonwealth may not exceed three business days. During a continuance, the individual shall be detained upon a showing that there existed probable cause to arrest the person. At the hearing, such person shall have the right to be represented by counsel, and, if financially unable to retain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information. The rules concerning admissibility of evidence in criminal trials shall not apply to the presentation and consideration of information at the hearing. The facts the judge uses to support findings pursuant to subsection (3), that no conditions will reasonably assure the safety of any other person or the community, shall be supported by clear and convincing evidence. In a detention order issued pursuant to the provisions of said subsection (3) the judge shall (a) include written findings of fact and a written statement of the reasons for the detention; (b) direct that the person be committed to custody or confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentence or being held in custody pending appeal; and (c) direct that the person be afforded reasonable opportunity for private consultation with his counsel. The person may be detained pending completion of the hearing. The hearing may be reopened before or after a determination by the justice, at any time before trial if the justice finds that information exists that was not known at the time of the hearing and that has a material bearing on the issue and whether there are conditions of release that will reasonably assure the safety of any other person and the community.

(5) In his determination as to whether there are conditions of release that will reasonably assure the safety of any other individual or the community, said justice, shall, on the basis of any information which he can reasonably obtain, take into account the nature and seriousness of the danger posed to any person or the community that would result by the person's release, the nature and circumstances of the offense charged, the potential penalty the person faces, the person's family ties, employment record and history of mental illness, his reputation, the risk that the person will obstruct or attempt to obstruct justice or threaten, injure or intimidate or attempt to threaten, injure or intimidate a prospective witness or juror, his record of convictions, if any, any illegal drug distribution or present drug dependency, whether the person is on bail pending adjudication of a prior charge, whether the acts alleged involve abuse as defined in section one of chapter two hundred and nine A, or violation of a temporary or permanent order issued pursuant to section eighteen or thirty-four B of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, sections three, four or five of chapter two hundred and nine A, or sections fifteen or twenty of chapter two hundred and nine C, whether the person has any history of orders issued against him pursuant to the aforesaid sections, whether he is on probation, parole or other release pending completion of sentence for any conviction and whether he is on release pending sentence or appeal for any conviction.

(6) Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

(7) A person aggrieved by the denial of a district court justice to admit him to bail on his personal recognizance with or without surety may petition the superior court for a review of the order of the recognizance and the justice of the district court shall thereupon immediately notify such person of his right to file a petition for review in the superior court. When a petition for review is filed in the district court or with the detaining authority subsequent to petitioner's district court appearance, the clerk of the district court or the detaining authority, as the case may be, shall immediately notify by telephone, the clerk and probation officer of the district court, the district attorney for the district in which the district court is located, the prosecuting officer, the petitioner's counsel, if any, and the clerk of courts of the county to which the petition is to be transmitted. The clerk of the district court, upon the filing of a petition for review, either in the district court or with the detaining authority, shall forthwith transmit the petition for review, a copy of the complaint and the record of the court, including the appearance of the attorney, if any is entered, and a summary of the court's reasons for denying the release of the defendant on his personal recognizance with or without surety to the superior court for the county in which the district court is located, if a justice thereof is then sitting, or to the superior court of the nearest county in which a justice is then sitting; the probation officer of the district court shall transmit forthwith to the probation officer of the superior court, copies of all records of the probation office of said district court pertaining to the petitioner, including the petitioner's record of prior convictions, if any, as currently verified by inquiry of the commissioner of probation. The district court or the detaining authority, as the case may be, shall cause any petitioner in its custody to be brought before the said superior court within two business days of the petition having been filed. The district court is authorized to order any

officer authorized to execute criminal process to transfer the petitioner and any papers herein above described from the district court or the detaining authority to the superior court, and to coordinate the transfer of the petitioner and the papers by such officer. The petition for review shall constitute authority in the person or officer having custody of the petitioner to transport the petitioner to said superior court without the issuance of any writ or other legal process; provided, however, that any district or superior court is authorized to issue a writ of habeas corpus for the appearance forthwith of the petitioner before the superior court.

The superior court shall in accordance with the standards set forth in section fifty-eight A, hear the petition for review under section fifty-eight A as speedily as practicable and in any event within five business days of the filing of the petition. The justice of the superior court hearing the review may consider the record below which the commonwealth and the person may supplement. The justice of the superior court may, after a hearing on the petition for review, order that the petitioner be released on bail on his personal recognizance without surety, or, in his discretion, to reasonably assure the effective administration of justice, make any other order of bail or recognizance or remand the petitioner in accordance with the terms of the process by which he was ordered committed by the district court.