

		Policy & Procedures			No. 2.02	
		Subject:				
		Domestic Disputes				
		Issuing Authority:		Effective Date:	Review Date:	
		Chief of Police		10/01/2009	12/04/2023	
				References:		
Review						
Revision	01/01/2014					
Reissued	02/17/2016					
Dates:	11/29/2019					
	11/13/2020					

CALEA Standards 41.4.3 41.4.5

GENERAL CONSIDERATIONS AND GUIDELINES

Among the most difficult and sensitive calls for police assistance are those involving domestic violence. 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. Therefore, whenever possible, at least two police officers should be assigned to a domestic violence situation, unless immediate intervention is necessary to prevent serious physical harm. This will enhance officer and victim safety.

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 the members of this department implement the guidelines contained within this directive. It is also imperative that members of this department observe and follow the statutory obligations whenever involved in a reported domestic violence incident.

POLICY

The Canton Police Department recognizes Domestic Violence as a universal problem that affects people from all walks of life. The purpose of this policy is to establish guidelines and to give direction to officers when dealing with domestic violence incidents. Domestic Violence is a criminal activity and, in such cases, where probable cause can be established, arrest is considered an appropriate and a preferred response. No person is exempt, whatever his or her occupation, from the consequences of their actions that result in violation of M.G.L. c. 208, 209, 209A, 209C and/or Superior Court injunctions. **41.4.5**

This policy is issued to:

1. Ensure the safety of victims;
2. Ensure compliance with all provisions of a court order;
3. Ensure compliance with Massachusetts General Laws, Policy and Procedures, Rules and Regulations; to include: M.G.L. c.208, 209, 209A, 209C; M.G.L. c.140, s.129B (An Act Relative to Firearms, Effective July 1, 1994); Executive Office of Public Safety's Domestic Violence Law Enforcement Guidelines – 2001 (revised);
4. Provide procedures for the uniformity of the investigation, notification and reporting of said incidents;
5. Preserve the integrity of the investigation, and
6. Provide for the securing of weapons surrendered.

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

I. DEFINITIONS

A. ABUSE

For the purposes of this policy, "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. For example, punching, kicking, shoving, etc.;
2. Placing another in fear of imminent serious physical harm – refers to threats and to situations where the abuser has assaulted the victim, but no battery has occurred; or
3. Causing another to engage involuntarily in sexual relations by force, threat or duress. Note that the parties' marital status is irrelevant. There is no marital exclusion to preclude a spouse being charged with rape.

B. FAMILY OR HOUSEHOLD MEMBERS

1. Persons who are or were married to one another;
2. Persons who are or were residing together in the same household (including dorms);
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- includes same sex relationships. Officers on the scene have the authority to determine whether or not a substantive dating relationship existed based on consideration of the following factors:

- a. The length of time of the relationship;
- b. The type of the relationship;
- c. The frequency of interaction between the parties;
- d. If the relationship has been terminated by either person, the length of the time that has elapsed since the termination of the relationship.

II. 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."

1. Chapter 209A, section 6 does not extend to suits brought in Federal Court; it applies to Massachusetts Courts, only.
2. Police officers should know that overreaction might not be the only basis for civil liability. Officers should also be concerned with their **failure to act**, which is more likely to cause for a suit. In Irwin v. Town of Ware (1984), the SJC made it clear that a municipality can be held liable for the failure of its police officers to act with reasonable care in protection members of the general public.

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 from time to time) and to act with appropriate discretion and competence in carrying out its provisions.

I. RESPONDING TO THE SCENE

A. DISPATCH AND IMMEDIATE RESPONSE

The high risk 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. Officers should be provided with the following information, when dispatched to a suspected domestic call:
 - a. The existence of any warrants (by a check of CJIS and the Warrant Management System);
 - b. The criminal history of the suspect --with a Board of Probation (B.O.P.) check;

- c. The existence of any protective orders against the suspect (B.O.P. check) (Include orders held by persons other than the victim in this case);
 - d. Any other relevant information the department is aware of, especially regarding a history of incidents involving the particular address, or the parties, and the likelihood of firearms being present; and
 - e. Record of firearms identification cards and/or licenses to carry having been issued to resident(s).
3. Dispatch officer should inform the caller of the approximate time of the officer's arrival.

B. 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 Arrest Guidelines*)

C. INITIAL OBSERVATIONS

Upon approach, officers shall make observations of the scene and listen for any sounds or evidence of a disturbance. Observations should be documented in the incident report. (See Section IX. I Incident Reports)

D. ENTERING A PRIVATE RESIDENCE

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;
 - d. When a police officer has probable cause to believe a felony has occurred or is being committed and is in fresh pursuit of the fleeing felon.
 - e. In the absence of any of the aforementioned situations (exigency circumstances or consent to effect a lawful entry), an officer will be required to obtain a warrant in order to gain entry into private premises.
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 officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of the officer.

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

E. OFFICERS DEMEANOR

The initial contact by the responding officers should convey a professionally calm and helpful attitude.

1. The officers shall state their reason for being present. Try to include children when explaining an officer's presence, particularly if an arrest is being made.
2. Officers should strive to be considerate and attentive toward all parties and their problems regardless of an officer's own views or personal reactions toward the matter or parties involved.
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. Officers should be mindful that 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.
5. If the family does not speak English, when possible, DO NOT use the children as interpreters. This could prove dangerous to the child and the adult victim. Officers can call **QWEST**, a multilingual communications network for use by police departments at **888-892-2850** for interpretive language services 24 hours a day.

F. OFFICERS ROLE AT THE SCENE

The responding officers must take immediate control of the situation and should separate the parties to prevent any violent action. The parties should be interviewed separately, and 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 allegations of mistreatment. In attempting to ascertain the facts in the dispute, 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.

G. 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.

II. INVESTIGATION

Officers responding to domestic violence calls should ensure a thorough investigation is conducted:

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. Do not tell the suspect who called the police. Be mindful of the callers concerns regarding retaliation.

B. INFORMATION FROM THE SCENE

Attempt to obtain the following at the scene or 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, check their physical well-being and record their names and dates of birth.
2. Obtain the number of the victim's residence and cell phone, both of which should be included in the incident report so the clerk, station officer or court personnel may inform the victim of the abuser's release on bail. Inform the victim that if she/he intends to leave the residence and wishes to be informed of the abuser's release, she/he must inform the police department of a number where she/he may be reached or where a message may be left safely.

NOTE: If the victim will be seeking to hide from the abuser, **KEEP A SEPARATE RECORD** of the address and phone number. Do not put an address in any document the abuser may have access to.

3. Obtain information about the suspect's ownership of, presence of, or access to firearms, and their location.
4. Officers should gather information regarding a defendant's dangerousness to be included in the incident report. This information should be provided to the Bail commissioner in determination of bail and to the Prosecutor for use at arraignment. Therefore, gather information regarding the defendant's:
 - Criminal history;
 - History of drug and/or alcohol abuse;
 - History of abusing the current victim;
 - History of abusing other victims;
 - Possession of weapons;

- 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.
5. Ascertain if there is a 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 this victim.
 - a. Document allegations of prior abuse, including expired protective orders.
 - b. Document past use of weapons in prior domestic abuse incidents.
 - c. Seek appropriate criminal action for prior incidents.
 6. It's important to keep in mind that a child's safety is paramount. Standard procedures such as D.C.F. (formerly known as D.S.S.) notification, when appropriate, should be followed for ensuring a child's safety.
 7. The parties should be advised to resolve any visitation and custody issues through the Family and Probate Court.

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.

III. ARREST GUIDELINES

A. THE DECISION TO ARREST

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. 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. **41.4.5**
4. Substance Abuse / Mental Health Issues:
 - a. 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
 - b. 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, the officer, the child and him/herself.
5. Officers should also remember that it is not unusual for an abuser to display a calm demeanor following a violent assault.
6. Officers should be mindful that the victim has just been traumatized and may appear agitated, confused, numb, anxious, tearful or afraid. It is important to determine the dominant aggressor. It is not the person who struck first, but who had a pattern of domination and control.

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 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, a suspension and surrender order, or protection order issued by **any** jurisdiction. **41.4.3; 41.4.5**
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 **41.4.3; 41.4.5** 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 of a family or household member in violation of M.G.L. c. 265, § 13A;
 - c. Has committed a misdemeanor involving abuse, as defined in M.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.

NOTE: 41.4.3; 41.4.5 Even if the victim is unwilling to bring a complaint against the alleged abuser, officers are expected to arrest where probable cause exists. (Note: While M.G.L. c. 276, s. 28 concerning arrests without a

warrant for a violation of certain statutes, among which are listed in c. 209A, uses the word “may”, this is superseded by the provisions of c. 209A which specifies that officers “shall” make such a warrantless arrest.)

Additionally, the trespass law- M.G.L. c. 266, s. 120 – has been amended by including within its scope a violation of a vacate order issued pursuant to M.G.L. c. 208, s, 34B, or M.G.L. c. 209A.

Decisions to arrest in a domestic situation will be based on whether or not probable cause and the authority to arrest exists, not on whether or not the victim agrees to the action, or to testify at a future date.

C. IF THE SUSPECT HAS FLED THE SCENE

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

1. In an attempt to locate and arrest the suspect, the officer will have the communications officer 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 affect the arrest as requested by the investigating department.
3. In cases involving abuse as defined under M.G.L. c. 209A, 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.
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

1. 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.
2. 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.
 - a. Officers should be aware of the difference between offensive vs. self-defensive injuries.
 - b. If neither party acted in self-defense and both parties have committed an act of domestic abuse, then the officer should determine who the dominant aggressor is and take action considering the totality of the circumstances.
3. 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.
4. Officers investigating an incident of domestic violence shall not threaten, suggest, or otherwise indicate the arrest of all involved 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 in the event 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.
 - a. Mandated reports of abuse or neglect of a child shall be filed with the Department of Children and Family Services (DCF). M.G.L. c. 119, §51A. (781) 641-8500.
 - b. Mandated reports of abuse or neglect of a disabled person shall be filed with the Disabled Persons Protection Commission (DPPC). M.G.L. c. 19C, § 10. 1-800-426-9009.
 - c. Mandated reports of abuse or neglect of an elder shall be filed with the Department of Elder Affairs. M.G.L. c. 19A, § 15. 1-800-922-2275.

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. Therefore, 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.
2. 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.

3. Violations of out of state orders or Massachusetts orders violated in another state may be charged criminally as Contempt in the Commonwealth of Massachusetts.

IV. FINGERPRINTING AND PHOTOGRAPHING OF DEFENDANTS 41.4.3

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 (A.F.I.S.). 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.

V. COURT ORDERS AND SERVICE OF THOSE ORDERS

A. Types of Restraining Orders (R.O.'s):

1. Refrain from abuse orders
2. No-contact orders
3. Vacate/stay away orders
4. Surrender custody (Probate Court has superseding jurisdiction regarding custody issues. District Court orders should be modified in order to be consistent with the Probate and Family Court order. Officers are advised to "err on the side of caution" when the orders disagree. The safety of the victim and the children is paramount. When necessary, advise the parties to have the order amended).
5. Superior Court injunctions are for parties who are not covered by the Abuse Prevention Act (family or household members). Violations of these types of orders can be enforced civilly, and/or through criminal contempt charges. They can be used to charge someone with Stalking in Violation of a Protection Order, which provides for a minimum mandatory sentence.

B. 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 it's return of service to the court."

1. Orders shall be served promptly upon receipt. If service is initially unsuccessful, the department must document it and continue to attempt service until it is completed.
2. 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 local court, the D.A.'s Office or a local battered women's program) in order to develop a safety plan around the service of the order.
3. In hand service may not be necessary to prove a violation; however, it is always the best mechanism of service.

B. RECORD OF SERVICE

The Canton Police Department shall keep a record of all attempts at service. The plaintiff's name listed on the R.O. should be entered into the computer system along with

all other pertinent information. After all avenues of service have been exhausted and an order cannot be served, the order must be returned to the Court.

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. Every effort should be made to contact the plaintiff once service has been made.

E. FIREARMS

Upon service of the order, police shall immediately take possession of all firearms, rifles, shotguns, machine guns, ammunition, licenses to carry and firearms identification cards in the control, ownership, or possession of the defendant. Such weapons and permits may 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.

VI. PROPERTY

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

A. REMOVING OR DESTROYING PROPERTY

When a party to a domestic dispute 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. If criminal, the appropriate actions should be taken (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. 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 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. (15 minutes should be reasonable unless more time is authorized by the Chief of Police)
- c. The victim must have prior notice by the department and must agree to the timing of the retrieval. The victim can choose whether to be present for the retrieval of items or not.
- 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. The defendant should be referred to the issuing court of the Probate and Family Court for settlement of shared property.

NOTE: Officers need to keep in mind that certain behaviors by the defendant, while at the residence, may constitute a violation of the protective order.

- 4. 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.

VII. ALLEGATIONS AGAINST LAW ENFORCEMENT PERSONNEL

A. DEPARTMENTAL POLICIES

There is a clear policy to deal appropriately with situations in which allegations of domestic violence are made against an officer. The policy "Domestic Violence Involving Police Officers" addresses those cases in which the department is called to investigate allegations against its own officers, as well as those instances in which the suspect is employed by another department.

- 1. In addition to a police officer's general responsibilities in responding to a domestic violence incident, this policy specifically addresses incidents involving armed law enforcement personnel. These policies require that:
 - a. The dispatching officer shall document a call or report of domestic violence involving a police officer and immediately notify the on-duty patrol supervisor who shall immediately notify a superior officer or the Chief of Police. This directive ensures that key command personnel receive the information and prevents the call from being handled informally.
 - b. A supervisor shall respond to the scene.
 - c. If the accused officer is the Chief, the Chairman of the Board of Selectman shall be notified.
 - d. Provision is made for the surrender of all firearms if warranted (both privately owned and Town of Canton issued).

- e. A supervisor shall formally notify a ranking officer that employs the officer if different from the responding agency as soon as possible, and
 - f. All officers responding shall prepare a written report. An alleged abuser's status as a police officer should never alter a responding officer's responsibilities to enforce the provisions of M.G.L. c. 209A.
- 2. See Department policy on "Domestic Violence Involving a Police Officer" for the reporting and investigation of 209A order against a member from within this department. All officers are required to immediately notify his or her supervisor if a restraining order is issued against him or her.
- 3. Firearms
 - a. All department-issued firearms and privately owned weapons should be surrendered pursuant to the terms of the order, relevant provisions of the law, or at the discretion of the Chief.
 - b. No officer should be returned to full duty with a firearm until the circumstances of the 209A order have been fully investigated.
 - c. Officers shall not carry a firearm for the duration of the abuse prevention order. However, in the following circumstances, the Chief may allow an officer to carry a department issued firearm:
 - If the officer is not otherwise precluded by law from possessing a firearm while subject to a restraining order, and
 - The Chief determines that the officer is fit to carry a weapon, through an evaluation.

NOTE: Under no circumstances shall an officer subject to an abuse prevention order carry a weapon when he or she is off duty nor shall such an officer take a weapon to his or her residence.

VIII. CONFIDENTIALITY OF DOMESTIC VIOLENCE PROGRAMS 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. Under no circumstances should law enforcement officer release information to the public or otherwise regarding the location of a domestic violence program.

IX. 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 B., C., D., E., H., and 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, notwithstanding any law to the contrary.

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 said person's native language is not English, the statement shall be provided in said 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, as amended by Section 24 of Chapter 236 of the Acts of 2000. 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

(See "Procedures," for discussion of Arrest Guidelines.) 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.

G. BAIL

Inform the victim that the abuser will be eligible for bail and may be promptly released. (Refer to Investigation Section)

H. REFERRALS

1. Provide information, including phone numbers, about local resources such as the battered women's programs, for emergency shelter and counseling services. Also, officers should know whether it is the District Attorney's Office or the local battered women's program (or both) that administer the advocacy program to assist domestic violence victims in the local court. Provide the advocate's number(s) to the victim.
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 41.4.3

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.
4. It should be noted in the officer's incident report that the victim was afforded all their rights under c. 209A and was given a copy of those rights.

J. MANDATORY REPORTING 41.4.3

1. A report will be filed with the Department of Children and Family 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.C.F. office. After hours, call the hotline: 1-800-792-5200.
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.
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.

K. FIREARMS

When a firearm or other weapon is present at the scene of a domestic violence situation the 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 they do so. A consent search is allowed in areas except those areas where the suspect has a reasonable expectation of privacy;
 - c. Take temporary custody of the firearm or weapon to alleviate the threat of serious violence.

3. Determine whether a firearm is lawfully possessed before returning the same.
4. If the officer determines that the weapon cannot be seized, the following actions can take place:
 - a. A judge can order the defendant to surrender guns, a license to carry and an F.I.D. card; and
 - b. The chief who issued the license to carry may revoke or suspend such license issued by him or her which. The revocation or suspension would require the immediate surrender of all guns and ammunition by the defendant. Failing to comply with the surrender order is considered a misdemeanor offense.
5. In all domestic violence cases, the investigating department shall advise the licensing authority that the subject of the license is suspected of abuse.
6. ABUSE PREVENTION ORDER
 - a. Abuse Prevention Orders
Upon issuance of any order, under M.G.L. c. 209A Abuse Prevention Orders, police shall **immediately** take possession of all firearms, rifles, shotguns, machine guns, ammunition, any license to carry firearms and any firearms identification cards in the control, ownership or possession of said defendant. Such weapons and permits 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 weapons, firearms, or licenses..
 - c. Seizure and Storage of Firearms
Every department within the Commonwealth shall honor another department's request for assistance in seizing the above listed items; 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 must relinquish all firearms, including departmental weapons, to the department serving the order.
7. Federal Firearms Provisions
Although officers cannot enforce the following Federal provisions, the Chief of Police should be notified whenever an officer identifies a case

involving the following circumstances, because there may be Federal action that can be taken.

- a. *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.
- b. *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.
- 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.

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.

X. THE ROLE OF THE SUPERVISOR

A. ASSURANCES FOR PRACTICE

Supervisors will ensure that the provisions of the statute and these guidelines are met. Specifically supervisors will assure that:

1. Dispatch logs will be reviewed to ensure that an incident report has been filed when appropriate 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 **will be filed in all cases of abuse**. In all other domestics not involving abuse, either a written report or a log entry shall be made at the discretion of the Supervisor.
2. It is the responsibility of the duty shift supervisor (or an officer acting in that capacity) to ensure that all of the provisions of the applicable statutes and the provisions outlined within this policy are carried out by the officers assigned to the domestic violence case. 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.

B. REFERRALS

Supervisors will ascertain that appropriate referrals were provided to the victim. Every effort shall be made to provide law enforcement protection and other safety measures to a victim of domestic violence including, but not limited to drive-bys, welfare checks, and transportation to a safe place when necessary.

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.

XI. OTHER SPECIAL INVESTIGATIVE CONSIDERATIONS:

A. Investigative Considerations Involving Children: Where children are present at a domestic dispute, their welfare and safety must be a major consideration. Any evidence of neglect or emotional, physical or sexual abuse of children under eighteen (18) years of age shall be carefully noted and a 51A shall be filed when mandated. A child does not have to be home at the time of the domestic dispute for a 51A to be filed.

B. Investigative Considerations Involving Juveniles:

1. A juvenile seeking a restraining order against a non-family member should not be refused solely on the basis that no adult is accompanying the juvenile complainant, if there is danger to the child from the defendant. If the defendant is the child's only care-taker, the Court will usually appoint a guardian ad litem.
2. All incidents involving adolescent violence shall be referred to the department's School Resource Officer (SRO) for follow-up action.
3. If a restraining order has been issued and both the plaintiff and defendant attend the same school, it will be the responsibility of the SRO to develop a plan with the administration of the appropriate school to ensure that the conditions of the order are observed. Furthermore, there will be a plan of action developed to ensure that the school administrators report violations of the restraining order to the police.

XII. Domestic Violence Coordinating Officer:

To ensure that domestic violence cases are being reviewed and assessed on a regular basis, the Chief of Police will appoint an officer who will serve as a Domestic Violence Coordinating Officer. The duties and responsibilities of this officer are to include, but not necessarily be limited to the following activities:

1. Review all domestic violence reports that are filed with the department. The purpose of this review is to ensure that all of the procedural requirements have been met, to assess the seriousness of the incidence, to assess the likelihood of future incidents and degree of dangerousness, and to make follow-up contacts with the victim when deemed appropriate.
2. Ensure that victims of domestic violence are made aware of social services and aftercare service providers that may offer further assistance. Make sure that the victim is aware of the victim/witness advocate program that is available through the District Attorney's Office.
3. Identify any patterns of domestic violence that may be taking place, which involves the same victim and/or abuser.
4. Serve as the department's liaison officer with the District Attorney's Office, with social service providers, and with other organizations that have any relationship with domestic violence cases.
5. Serve as the point of contact for victims of domestic violence who may require additional assistance. It is the responsibility of this officer to maintain contact with the victim as the case progresses through the courts, keeping the victim informed on the status of the case when possible.
6. Provide assistance to the victim as may be required or deemed to be appropriate.
7. Re-connect with the victim periodically to determine whether his/her needs have been met.
8. Explain to the victims the procedures involved in the prosecution of their cases and their role in those procedures.
9. Schedule interviews and other required appearances at the convenience of the victim and when appropriate, arrange for transportation.