



Fitchburg State University Police Department

Subject: DOMESTIC VIOLENCE	
Reference: Massachusetts 2017 Domestic Violence Law Enforcement Guide	
Rescinds: Sections 74 & 75	
Effective Date: January 25, 2021	Review Date:
By Order of: Michael J. Cloutier, Chief of Police	

General Order

13.3.4

PURPOSE:

The purpose of this general order is to establish guidelines for members of the Fitchburg State University Police Department when responding 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, witnesses, their children, and anyone else living in the residence;
- 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 and witnesses of domestic violence with support and assistance through cooperative efforts with community stakeholders, 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, on campus offices and departments, other 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.

POLICY:

It is the policy of the Fitchburg State University to fully and vigorously investigate and prosecute all domestic violence offenses.

Fitchburg State University takes pride in its tradition of maintaining a safe learning and working environment. Civility, mutual respect toward all members of the university community, and a safe campus are essential for effective teaching, learning, and work performance. The university is committed to the goal of providing a safe environment in its operations and activities.

Fitchburg State University will not tolerate acts of violence against or by any member of the university community, including students, faculty, staff, and visitors, that occur in university offices, classrooms, residence halls, facilities, worksites, vehicles, or while a university employee is conducting university business or a student is participating in curricular or co-curricular activities on or off-campus. The university will provide educational information about, take reasonable measures to prevent, and respond to incidents of campus violence. The university seeks to support members of the university community who are victims of campus violence and to reduce the impact of violence on student and employee well-being and productivity.

As part of this policy, the university will not tolerate domestic violence in the workplace or educational setting, including harassment and violent or threatening verbal or physical behavior that may result in injury or otherwise places one's safety and productivity at risk. The university is committed to assisting members of the university community who are victims of domestic violence. Domestic violence affects people from all walks of life and can adversely affect the well-being and productivity of faculty, staff, and students who are victims, as well as co-workers and others. Other campus effects of domestic violence may include increased absenteeism, turnover, and health care costs.

DEFINITIONS AND GENERAL CONSIDERATIONS:

A. Abuse

For the purposes of these guidelines, the term "abuse" is defined by MGL c209A, § 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

1. For the purposes of this general order, for all portions EXCEPT the charge of Domestic Assault and Battery c265 §13M, the term "family or household member" shall include any of the following:
 - a. Persons who are or were married to one another;

- b. Persons who are or were residing together in the same household;
 - c. Persons who are or were related by blood or marriage;
 - d. Persons who have a child in common regardless of whether they have ever married or lived together; or
 - e. 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.
2. For the purposes of this general order, for the charge of Domestic Assault and Battery c265 §13M ONLY, the term "family or household member" shall include any of the following:
- a. Persons who are or were married to one another;
 - b. Persons who have a child in common regardless of whether they have ever married or lived together; or
 - c. 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.

In essence, the broader MGL 209A, is inclusive of all types of domestic violence including family, household members, and intimate partners. However, if charging "Domestic Assault and Battery", C265 s 13M, it only applies to those persons who meet the "intimate partner" definition. All other domestic violence situations would be charged with a simple A&B, A&B DW, or whatever is appropriate given the circumstance.

C. Firearms

For the purposes of this general order, the term "firearm" shall not be limited to its definition in MGL c140, §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. Antique firearms.

D. Harass

For the purposes of this general order, the term "harass" as defined in MGL c268, §13B shall mean to engage in any act directed at a specific person or persons, which seriously alarms or annoys such person or persons and would cause a reasonable person to suffer substantial emotional distress. Such act shall include, but not be limited to, an act conducted by mail, telephonic or telecommunication devices, electronic communication, internet communication, instant message, or facsimile communication.

E. Licenses

For the purposes of this general order, the term "license", as defined in MGL c140, §§122, 1228, 1298, 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.

F. Serious Bodily Injury

For the purposes of this general order, the term "serious bodily injury," as defined in MGL c265, §§13A(b), 15A(b), and 15D(a), shall mean bodily injury that results in a permanent disfigurement, loss or impairment of a bodily function, limb or organ, or a substantial risk of death.

G. Strangulation

For the purposes of this general order, the term "strangulation" as defined in MGL c265 §15D (a) shall mean the intentional interference of the normal breathing or circulation of blood by applying substantial pressure on the throat or neck of another.

H. Suffocation

For the purposes of this general order, the term "suffocation" as defined in MGL c265, §15D(a) shall mean the intentional interference of the normal breathing or circulation of blood by blocking, or "block of" the nose or mouth of another.

I. Civil Liability

According to MGL c209A, § 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 guideline as established by the Secretary of Public Safety."

J. Procedures

All police officers are expected to be familiar with, and act in accordance with, Massachusetts guidelines. The provisions of MGL c209A 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 and all other statutes referenced within this general order, as amended and construed by case law, and to act with appropriate discretion and competence in carrying out these provisions.

K. Requirements on Employers

1. The law creates MGL c149, § 52E, which requires employers of fifty or more employees (including the Trial Court) to provide up to fifteen days of leave in any twelve-month period if the employee, or a family member of the employee, is a victim of abusive behavior and is using the leave to seek or obtain a variety of medical, community and legal services relating to the abusive behavior, including appearing in court or addressing “other issues” directly related to the abusive behavior. Abusive behavior extends beyond domestic violence to stalking, sexual assault, and kidnapping.
2. Employers may require employees to provide documentation demonstrating the employee is a victim of abusive behavior, including a document on court letterhead. The employer has the sole discretion to determine whether any leave taken under this section shall be paid or unpaid.
3. The Attorney General will enforce this section and may seek injunctive relief or other equitable relief. Any benefit received from this section “shall not be considered relevant in any criminal or civil proceeding” as it relates to the alleged abuse unless, after a hearing, the judge determines that such benefit is relevant to the allegations. MGL c149, § 52E (as inserted by Act § 10).

PROCEDURE:

A. DISPATCHER RESPONSE TO DOMESTIC CALLS

The likelihood of injury associated with domestic violence situations requires that officers immediately proceed to the place of the dispute. Whenever possible, two officers should be dispatched to the scene.

1. Tasks

Dispatchers should do the following:

- a. 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;
- b. Immediately notify a supervisor or OIC of any domestic violence calls;
- c. Preserve documentation of the facts and circumstances of each call, including recordings, for use in potential administrative and criminal investigations;
- d. Maintain current contact information of local domestic violence victim advocacy organizations (on and off campus resources) for responding officers to provide to victims;

- e. Attempt to elicit any and all information from the caller that may help the responding and investigating officers assess the situation, including the following:
 - 1) Immediate safety of the caller, the victim, and others at the scene;
 - 2) Nature of the incident (verbal or physical), nature of injuries, and whether violence is ongoing;
 - 3) The type of weapons that are involved, or present, if applicable;
 - 4) Potential hazards to responders, including animals;
 - 5) Whether the caller or alleged assailant is under the influence of alcohol or drugs, or if there are mental health issues;
 - 6) Caller's and alleged assailant's description;
 - 7) Presence or absence of the alleged assailant, and direction and mode of travel, if applicable;
 - 8) Other people involved or witnesses at the scene, including children;
 - 9) Alleged assailant's criminal history (BOP and in house check);
 - 10) Number of times the department has been called to this scene because of this suspect;
 - 11) Existence of a protection order currently on file against the suspect or caller (check BOP)
 - 12) Outstanding warrants against the caller or alleged assailant if any exist (check CJIS and Warrant Management System);
 - 13) Caller's and alleged assailant's date of birth or social security number; and
 - 14) Record of firearms identification cards and/or licenses to carry having been issued to resident(s);
- f. Inform the caller of an approximate time of the officers' arrival;
- g. 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;
- h. **Make the safety of domestic violence victims a primary concern;**

- i. 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;
- j. Keep in mind that the caller could be the victim or assailant; and
- k. Do not cancel the original call for service if a subsequent request to disregard 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 TO DOMESTIC VIOLENCE RELATED CALLS

1. On-scene Considerations

a. Initial Observations

- 1) Upon arrival, responding officers should approach the scene with the utmost degree of caution. Upon approach, officers should make observations of the surrounding area for evidence such as weapons, damaged furniture, broken windows, and any other items that may be evidence of a domestic violence incident.
- 2) Officers shall listen for sounds of an argument, threats, or an ongoing physical assault. All evidence, utterances, statements, and observations should be documented in an incident report—and photographed if appropriate.

b. Entering a Private Premises

- 1) When investigating a report of domestic violence, officers should wait for a second officer unless exigent circumstances exist. 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 and is in fresh pursuit of the fleeing felon;
 - e) In order to quell an ongoing disturbance and restore peace; or
 - f) After repeated attempts to contact residences and contacting the shift supervisor or OIC.

- 2) The term "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.

c. *Officer's Demeanor*

- 1) The responding officers shall maintain a professional, unbiased, and objective demeanor throughout their investigation. Officers should immediately state their reason for being present to the persons at the scene—including any children. This action can help defuse the situation.
- 2) Upon entering, officers shall prevent the physical movement of the parties as much as possible and control their access to any potential weapons.
- 3) Be cognizant that individuals under the influence of drugs or alcohol or those suffering a mental health disorder may pose additional safety risks to themselves or others on scene. Special precautions and tactics may need to be implemented as learned through in-service training.
- 4) Should an arrest be pending, attempt to remove children or the arrestee from the scene prior to affecting the arrest. Reinforce with the children that the incident was not their fault and that the police are there to help the family. If the child called 911, reinforce they did the right thing by calling the police.
- 5) Additional layers of control and oppression experiences by individuals which can exacerbate their response to law enforcement may include, but not limited to the following:
 - a) Immigration status;
 - b) Language skills including English as a second language;
 - c) Cultural identity;
 - d) Physical limitations and disabilities; and
 - e) Sexual orientation and gender identity.
- 6) These individuals may fear the police and 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 Appendices "B" and "C".

2. **Officer's Responsibility on Scene**

a. *Separate the Parties*

- 1) 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 conflict.

- 2) 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.

b. *Language Barriers*

- 1) Officer should determine whether interpretative language services are needed and should obtain such services when available.
- 2) The practice of using children or other family members as interpreters is strongly discouraged unless it is a medical emergency. Using family members as interpreters could prove dangerous to the child and/or adult victim. Officers can call **QWEST, a multilingual communications network provided to assist police department at (888) 892-2850** for interpretive language services 24 hours a day.

c. *Remain on Scene*

- 1) Officers shall remain on the scene or present wherever the incident occurred 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. 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. Law Enforcement officers should remain on scene 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:
 - a) To assess that the suspect has left the scene, and
 - b) To carry out the responsibilities outlined in this section.

d. *Medical Treatment*

- 1) Assist the victim in obtaining medical treatment for any sustained injuries by arranging for appropriate transportation by ambulance to a health care facility. Officers should consider responding to the Emergency Room to properly document any sustained injury. In addition, consideration should be given to whether a sexual assault forensic exam needs to be completed. (See Appendix "C" for list of MA Sexual Assault Nurse Examiner (SANE) sites).
- 2) In cases of serious injury, the preferred method of transportation is via ambulance. Officers are authorized by MGL c209A, § 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.

e. *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.

f. *Information from the Scene*

- 1) Attempt to obtain the following information at the scene. If that is not possible, obtain the information during the follow-up investigation:
 - a) 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.
 - b) If children are present,
 - i. Record their names and dates of birth;
 - ii. Check on the children to ascertain whether or not they have sustained an injury;
 - iii. Unless it involves a medical emergency or safety concern, consider conducting a “minimal facts” interview on scene if appropriate; and
 - iv. If the child needs a more comprehensive interview, contact the district attorney’s office/children’s advocacy center to schedule a forensic interview.
 - c) 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.
 - d) Inform the victim that if they intend to leave the residence, and wish to be informed of the abuser's release, the victim must inform the police department of a number where they may be reached, or where a message may be left safely.
 - e) Consult with the victim whether their phone number should remain confidential and take steps to ensure that it is, if necessary.
 - f) Do not rely on prior phone numbers in our Record Management System (IMC), as they may be outdated.

- g) Obtain information about the suspect's ownership of, presence of, or access to firearms, and their location.
- h) Officers should gather information regarding suspect's past behavior/dangerousness. This information should be documented in an incident report and/or high risk assessment worksheet (see attached Appendix IV) and provided to the Bail Commissioner in determination of bail and to the Prosecutor for use at arraignment. That information includes but is not limited to the suspect's:
 - i. Criminal history;
 - ii. History of abusing the current victim;
 - iii. History of abusing other victims;
 - iv. History of non-fatal strangulation;
 - v. History of forced sex;
 - vi. History of extreme possessiveness or jealousy;
 - vii. Possession of weapons;
 - viii. History of use of/or threats with a weapon;
 - ix. Use of weapons in prior abuse of the victim;
 - x. Past threats against or abuse of pets;
 - xi. Past attempts or threats to kill;
 - xii. Past attempts or threats to commit suicide; and
 - xiii. Current or past vacate, restraining, no-contact or other protective orders, including those held against the suspect by someone other than this victim.
- i) After ascertaining past reported and non-reported criminal history, seek appropriate criminal action for current and prior incidents.
- j) Refer victims to appropriate resources listed in attached Appendices "B" & "C".

g. *Information Documentation*

- 1) Officers shall properly document important information, i.e., spontaneous utterances (direct quotes) by the victim, the suspect, children, and other witnesses.
- 2) 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.
- 3) Contemporaneous records of injuries and crime scene condition are critical to the prosecution of alleged abusers:
 - a) 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;

- b) Collect physical evidence (including weapons used, even when simple household item) and document collection in the incident report; and
- c) If the incident involves strangulation, the officer should complete a strangulation worksheet. (See attached Appendix "F".)

h. *Getting to a Safe Place*

- 1) 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.
- 2) The location and street addresses of all domestic violence programs are absolutely confidential and shall not be required to be revealed in any criminal or civil proceeding. See MGL c233, § 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 MGL c233, §20K.
- 3) 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.**

i. *Notice of Rights*

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

j. *Activating the Emergency Judicial Response System (E.J.R.)*

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.

- 1) 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.
- 2) 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.

k. *Issuance of an Abuse Prevention Order*

Upon issuance of any applicable order under MGL c209A, 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.

- 1) 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.
- 2) If after your assessment, the situation does not meet the substantive dating relationship, consider if the facts and circumstances apply regarding a 258E protection order.

l. *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:
 - a) The length of time of the relationship;
 - b) The type of relationship; and
 - c) The frequency of interaction between the parties.
- 2) This includes the interaction between the parties through the use of technology; and, if the relationship has been terminated by either person, the length of time that has elapsed since the termination of the relationship.
- 3) 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.
- 4) Even in cases where there is no substantive dating relationship, a crime, such as stalking or criminal harassment, may have been committed.

C. ARREST GUIDELINES

1. The Decision to Arrest

- a. The safety of the victim, children, and other family members shall be paramount in any decision to arrest.
- b. As in other types of criminal investigations, uncorroborated statements by a victim can constitute probable cause that the crime occurred.

- c. 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.

- d. *Substance Abuse and/or 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.

- e. *Arrest: Mandatory or Preferred?*

An officer's authority or mandate to arrest is set forth in MGL c209A, § 6(7).

- 1) **Mandatory:**

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. c209A §7

- 2) **Preferred:**

When there is no outstanding restraining order, arrest shall be the preferred response whenever officers witness or have probable cause to believe that a person:

- a) Has committed a felony;
 - i. Aggravated Assault and Battery c265, §13A(b)
 - ii. Assault and Battery By Means of a Dangerous Weapon c265, §15A
 - iii. Assault and battery upon an Elder or a Person with a Disability c265, § 13K
 - iv. Assault and Battery on a Family or Household Member, Subsequent Offense Only c265, §13M(b)
 - v. Assault by Means of a Dangerous Weapon c265, §15B
 - vi. Intimidation of a Witness c268, §13A
 - vii. Kidnapping c265, §26
 - viii. Stalking c265, §43
 - ix. Strangulation or Suffocation c265, §15D
- b) Has committed a misdemeanor involving abuse, as defined in MGL c209A;
 - i. Assault and Battery on a Family or Household Member c265, §13M(a) (see definition)

2. If the Suspect Has Fled the Scene

- a. When probable cause to arrest exists and the suspect has fled the area, patrols, including other jurisdictions where the suspect is believed to be going, shall be advised in efforts to locate and arrest the suspect.

- i. One police department's statement that probable cause to arrest exists shall be honored by another police department. The second police department shall immediately attempt to affect the arrest as requested by the investigating police department.
 - ii. 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 MGL c209A.
 - iii. 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.
- b. *The Massachusetts Probation Service Electronic Monitoring (ELMO) Law*
- i. Enforcement agencies (i.e. local and state police) may request ELMO information, by submitting a written request to Elmo.Inforequests@jud.state.ma.us from a verifiable Law Enforcement agency email address. These requests are typically responded to within 24 to 48 hours. ELMO will supply GPS information "For Investigative Purposes Only".
 - ii. In the interest of public safety, if a Law Enforcement agency makes an urgent request (i.e. AMBER Alerts, Major/Catastrophic events, and requests for real time locations of specific monitored offenders for the purpose of serving a warrant or effectuating an arrest) and provides verifiable credentials such as the main phone number of the requesting agency, the officer's badge number, contact information, and that the Officer is currently assigned to investigate the matter at hand, information for investigative purposes may be provided immediately.
 - iii. If an agency is requesting a point tracking search (Crime Correlation) for a particular location, this request should include a defined period of time and should disclose for what purpose the request is being made.
 - iv. All requests should be sent to Elmo.Inforequests@jud.state.ma.us. Law enforcement may also contact ELMO directly at 978-365-2970 for assistance.

3. **Dual Arrests / Dominant Aggressor**

- a. 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.

- i. 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.
- ii. Officers should be aware of the difference between offensive and self-defensive injuries. The use of force used must be “reasonable” given the nature of the threat and surrounding circumstances and, if warranted, may even include the use of weapons. In some cases, the dominant aggressor may have the more serious injuries. If one of the persons acted entirely in self-defense, the situation should be treated as such and the dominant aggressor identified and arrested if appropriate.
- iii. 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 after considering the totality of the circumstances including:
 - a) The severity of injuries and fear inflicted in the incident;
 - b) The use of force and intimidation in the incident;
 - c) Prior incidents involving either party; or
 - d) The likelihood of either party committing domestic violence in the near future.
- iv. 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. In the event of a dual arrest, officers are encouraged to consult with a supervisor prior to arrest.
- v. 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.

4. **Arrest of a Caretaker**

In cases involving the 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.

- a. 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.

5. **Bail**

- a. A person, who is 18 years or older, shall not be bailed sooner than **6 hours** after arrest from a police station if under arrest for the following crimes:

- 1) A Restraining Order Violation under c208 or 209;
- 2) Any act that would constitute abuse, as defined in section 1 of said chapter 209A; or
- 3) A violation of sections c265 §§13M or 15D.

b. *Juveniles*

- 1) When a juvenile is properly charged with intimate partner violence, the 6-hour bail hold does NOT apply - All juveniles are exempt from this hold:
 - a) Circumstances which warrant a charge of MGL c265 § 13M upon a juvenile, would be those cases of violence perpetrated against someone with whom the juvenile was once married, has a child in common, has been in a 'substantive dating relationship,' or are engaged to be married. In such case, as in teen dating violence, **the six-hour waiting period for bail does NOT apply to juveniles.** By statute these provisions only apply to those defendants "who have attained the age of 18 years." MGL c 276 § 58.
 - b) Officers should therefore follow the typical protocol for arresting a juvenile. Officers are required to contact the juvenile probation officer on call and the juvenile's legal guardian, MGL c119, §67, when an arrest has been made of a juvenile. Officers would then be required to contact an on-call bail clerk or bail magistrate for a bail determination, even if the offense is alleging intimate partner violence.
- 2) A person shall **NOT** be bailed from a police station if under arrest for the following crimes:
 - a) A Restraining Order Violation under c208 or 209A; or
 - b) Any act that would constitute abuse, as defined in section 1 of said chapter 209A **WHILE A RESTRAINING ORDER IS IN EFFECT.**
- 3) Inform the victim that the abuser may be eligible for bail and may be promptly released. If a defendant is released on bail from the place of detention, a reasonable attempt shall be made to notify the victim of the defendants release by the arresting police department.
- 4) Under MGL c276 §58A, a defendant may be held without bail if a court determines that a defendant is a danger to the victim or the public.
 - a) The responding officer's actions and behavior at the scene form the basis for this determination by the prosecuting agency and/or Court.
 - b) Officers should ensure that the proper documentation is done in a timely manner and forwarded to the appropriate officer to be brought to Court and the prosecuting agency.

- c) In the event that an officer believes that a defendant is a high risk and poses a danger to a victim or the public, it should be documented in the police report and steps should be taken to notify the prosecuting agency.

6. Notification to the Victim in Criminal Cases

The law directs that a “reasonable attempt” must be made by the arresting police department to notify the victim if a defendant charged with a violation of a restraining order or a criminal act constituting domestic abuse is released on bail from the place of detention. If the defendant is released on bail by order of a court, a reasonable attempt at notice shall be made by the district attorney. MGL c276, § 42A, § 57, § 58 (as amended by Act §§ 28, 31-32).

7. Probable Cause Standard

- a. All officers shall utilize the same standard of “Probable Cause” for domestic violence offenses as with all other crimes.
- b. Decisions to arrest will be based on whether or not probable cause and the authority to arrest exist, not on the victim’s agreement to testify at a future date.

8. Fingerprinting of Defendants

- a. Whenever resources allow, officers shall take fingerprints and photographs of all criminal defendants in domestic violence cases.
- b. Fingerprints should be forwarded to the State Police for entry into the Automated Fingerprint Identification System (AFIS) system. This will greatly improve the detection and prosecution of other offenses, 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 per MGL c263, § 1A.

9. Referrals

- a. 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. (See attached Appendices “A”, “B”, & “C”)
- b. It is advisable that Police agencies have referral information preprinted, so that it can be distributed with the Abused Person's Notice of Rights card. Referral information can be typed onto the card or stapled to it. Victim Compensation can also be a valuable resource.

10. **Incident Reports**

- a. Incident reports will be filed whether or not an arrest is made. They will be made available to the victim, at no cost, upon their request to the investigating department. (Since the initial investigation should determine the existence of any history of abuse, that information must be included within the report.)
- b. Prosecution and subsequent legal action can be greatly aided by documentation and description of physical injuries, photographs of the injuries, noting the presence of children in household, and other information gained through the investigation.
- c. 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 their department, shall include on said form, a space to indicate whether such offense, alleged offense, or arrest involved abuse as defined in MGL c209A. See MGL c41, § 98G, and MGL c22C, § 49.

11. **Expanded Confidentiality of Abuse Prevention Order Provisions**

- a. The law expands the confidentiality of police records of rape and sexual assaults, MGL c41, § 97D, to include all reports of domestic violence. Unlike the old statute, the new statute includes specific authorization for victims, prosecutors, counselors, and law enforcement officers to obtain the records. MGL c41, § 97D (as amended by Act § 7). The law also specifically excludes these reports (as well as rape and sexual assault reports) from the police daily log. MGL c41, § 98F (as amended by Act § 8).
 - 1) Unlike with sexual assault crimes governed by MGL c265, § 24C, the law does not extend the confidentiality of police reports in domestic violence cases once those reports are filed in court. In the event a party seeks impoundment of the reports, clerks should not disseminate the reports until the issue has been decided by a judge.
 - 2) 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 MGL c209A, § 8). Police officers helping to issue emergency abuse prevention orders must be cognizant of victims' confidentiality rights and requests.

12. **Confidentiality of Reports: Chapter 41 Section 97D**

- a. All reports, including communications between police officers and victims of domestic violence/ abuse perpetrated by family or household members, rape and sexual assault are confidential, and are not public records. Violation of this section shall be punished by imprisonment of 1 year and/or fined \$1,000.00.

- 1) 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.
- 2) 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.

13. **Police Department Log: Chapter 41 Section 98F**

- a. The following entries shall be kept in a separate log and shall not be a public record, nor shall such entries be disclosed to the public:
 - 1) Any entry which pertains to those who are handicapped, confined to a wheelchair, bedridden, or required to use of a device designed to provide in mobility.
 - 2) Any information concerning the response to reports of domestic violence, rape, sexual assault.
 - 3) Any entry concerning the arrest of a person for assault, assault and battery or violation of a protective order where the victim is a family or household member, as defined by Chapter 209A Section 1.

14. **Mandated Reporting**

- a. 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 MGL c119, § 51A. If a child has witnessed abuse, this could be "neglect" for purposes of mandatory filing.
- b. During office hours contact the local DCF office. **After hours, call the hotline (1-800- 792-5200)**. Officers are filing on behalf of the child. If an officer intends to file a 51A child abuse report, they should tell the non-offending parent or caretaker and explain the filing process — including the fact that the report is being filed. A written report must be filed within 48 hours, an oral report immediately.
- c. A report will be filed with the **Disabled Persons Protection Commission** whenever the officer has reasonable cause to believe that a caretaker has abused and/or neglected a person with a disability between the ages of 18 and 59, in accordance with MGL c19C, § 10. An immediate report should be filed by calling the hotline at 1-800-426-9009. If an officer intends to file a report, he/she should tell the person with a disability who is the subject of the abuse.
- d. 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 or neglected, in accordance with MGL c19A, §§ 14-26. An immediate call shall be

placed to the 24-hour hotline at 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.

D. FIREARMS

1. When a firearm or other weapon is present at the scene of a domestic violence situation, officers shall:
 - a. 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.
 - b. 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.
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 to alleviate the threat of serious violence.
 - 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 where the victim has access to, including areas of joint access with the suspect.
 - c. Determine whether a firearm or weapon is lawfully possessed before returning the same.
 - d. If the officer determines that the firearm or weapon cannot be seized, the following actions can take place:
 - 1) A judge can order the defendant to surrender guns and licenses; and
 - 2) The chief who issued a license to carry may revoke or suspend such license.
 - e. In all domestic violence cases, the investigating department shall advise the licensing authority that the subject of the licenses is suspected of abuse.
3. *Storage of Firearms*
 - a. 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.
 - 1) 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.
4. *Federal Firearms Provisions*

Although State and Local Police officers cannot enforce 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 USC § 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 USC § 922(g)(8).
- c. Federal Felon in Possession of a Firearm — Under 18 USC. § 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.
- e. Misdemeanors are excluded from consideration if they are punishable by a term of two years or less. Therefore, misdemeanors punishable by a term of imprisonment of more than two years fall within that provision.

E. PROPERTY

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

1. *Vacate Orders and Court Orders to Retrieve Belongings*
 - a. Once a vacate, no contact, stay away, or refrain from abuse order is issued, officers should not accompany a defendant to the property without specific judicial authorization.
 - b. The defendant in the "vacate order" is allowed to retrieve their belongings under the following conditions:
 - 1) The defendant must have a court order allowing for the retrieval of the property.
 - 2) The police must accompany the defendant. Officers shall remain with the defendant throughout the process.
 - 3) The victim must have prior notice by the police department, and the victim must agree to the timing of the retrieval.

- 4) The defendant must not be allowed to use this as a means of harassing the victim.
- 5) 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 the issuing court or the Probate and Family Court for settlement of shared property.
- 6) When a court order exists allowing for a victim to return to the defendant's residence in order to retrieve their 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.

2. *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 take appropriate action (for example, malicious destruction of property).

F. STRANGULATION

1. Strangulation is a primary and significant dangerousness factor that is often misunderstood or misidentified. Strangulation and choking are not the same!
 - a. Despite the high fatality risk of strangulation, it is often mistaken for something less serious. The word 'choking' minimizes the severity of strangulation for victims, abusers, law enforcement, and court personnel.
 - b. Choking is when a food object lodges in a person's throat while they are eating and temporarily stops the person's breathing.
 - c. Strangulation is when a person constricts the neck or throat of another person in order to block their airflow.
 - d. Victims may have no visible injuries whatsoever, yet because of underlying physiological dangers, it is very important that the victim receives medical attention. Victims may have serious internal injuries which could lead to death hours, days, or even weeks later.
2. The general clinical sequence of a victim who is being strangled is:
 - a. Severe pain
 - b. Followed by unconsciousness
 - c. Followed by brain death.

3. The victim will lose consciousness by any one or all of the following:
 - a. Blocking of the carotid arteries which will deprive the brain of oxygen; (Carotid arteries are the major vessels that transport oxygenated blood from the heart and lungs to the brain. These are the arteries at the sides of the neck that persons administering cardiopulmonary resuscitation (CPR) check for pulses).
 - b. Blocking of the jugular veins which will prevent deoxygenated blood from exiting the brain, (Jugular veins are the major vessels that transport deoxygenated blood from the brain back to the heart).
 - c. Closing off the airway, causing the victim to be unable to breath.

4. *Questions to Document Strangulation*
 - a. Did the perpetrator use one or two hands?
 - b. Were you shaken while being strangled? If so, how much?
 - c. Were you whipped back and forth?
 - d. How much force was used and how hard were you grabbed?
 - e. Were you grabbed from the front or from the back?
 - f. Do you know how long you were strangled?
 - g. Were you strangled by the perpetrators hands or arm?
 - h. Was an object used?
 - i. Was he/she wearing rings?
 - j. Did you try to get their hands off?
 - k. Did he/she say anything while strangling you?
 - l. How did the strangulation stop?

5. *Questions to Determine Internal Injuries*
 - a. Did you have difficulty breathing?
 - b. Did you feel light-headed, faint, or close to losing consciousness?
 - c. Did you experience any loss of bodily functions?
 - d. Are you experiencing nausea or vomiting?
 - e. Are you in pain or discomfort?
 - f. Are you having trouble swallowing?
 - g. Have there been past incidents of strangulation?

6. *Physical Symptoms of Victims*
 - a. Spots around eyes or face from a ruptured capillary
 - b. Bruising
 - c. Impression marks, rope or cord burns
 - d. Swelling of the neck
 - e. Loss of bodily functions
 - f. Ringing ears or light-headedness, raspy voice
 - g. Difficulty talking, breathing, or swallowing

- h. Sore throat, bleeding from the mouth
- i. Fainting
- j. Petechiae behind ears; bleeding from ear canals

7. *Physical Evidence on Perpetrator*

- a. Scratches or cuts
- b. Bite marks on the arms, hands, or chest
- c. Finger impressions on hands or arms

8. *Lethal Progression*

- a. 10 Seconds: pass out
- b. 20 seconds: should bounce back on own
- c. 30 seconds: need to revive if they don't bounce back
- d. 50-100 seconds: point of no return
- e. 4 minutes (or less): brain death

9. *Evidence Collection*

Remember, DNA is contained in blood, semen, skin cells, tissue, organs, muscle, brain cells, bone, teeth, hair, saliva, mucus, perspiration, fingernails, urine, feces, etc.

10. *Documentation*

In order to properly assess not only the legal standards necessary for charging but also to understand the lethality of the assault, it is essential to fully document what happened by completing a strangulation worksheet. When strangulation is indicated by either the victim or the suspect, it is ideal to complete the Strangulation Worksheet which includes all questions cited in this section (See attached Appendix VI).

G. HIGH RISK MODEL

High Risk Teams exist throughout the Commonwealth. Keep in mind; your initial report may be submitted to review by your area High Risk Team and may be crucial to a successful follow up in the safety of the victim.

1. *Risk Assessment*

- a. The ability to assess the dangerousness and lethality of those who commit acts of domestic abuse is a critical element in violence intervention and prevention. Research shows that domestic violence homicides typically do not occur without warning. They occur most often in predictable patterns that escalate in severity and frequency. Risk indicators for intimate partner homicide (e.g., strangulation, forced sex, threats to kill) have been established through the research of Dr. Jacquelyn Campbell and others over the last 20 years. According to the research, there are approximately nine near-lethal incidents for every intimate partner homicide (IPH).

- b. Despite this, few police departments incorporate danger assessment into their investigation of domestic violence incidents. In addition, many domestic violence programs do not systematically assess for risk when working with abuse victims. This results in incomplete and limited information, decreasing offender accountability and victim safety.
- c. Risk assessment tools help us to gather and share information across systems – information which is critical to victim safety and offender accountability. Once high-risk offenders have been identified, we can begin to monitor the offender, ensure victims have the services they need, and manage the case with those two primary objectives in mind.
- d. By incorporating what we know about IPH and instituting risk assessment protocols for first responders, we can identify dangerous domestic violence offenders earlier, giving the system a better opportunity to interrupt the cycle of escalating violence before serious re-assault or a lethal assault occurs. Risk assessments encourage the system to look beyond an individual incident of violence and take a wider view of the history and patterns of abuse – a far better way to gauge the danger of a situation.

2. *Law Enforcement Response*

While the protocol will depend on town/county where the police are located, below is a standardized tool (Standard Risk Assessment is attached as Appendix “D”):

a. When should a risk assessment screen be conducted?

- 1) The risk assessment screen should be completed when there is a current or previous intimate relationship between the parties and the responding officer:
 - a) Believes a violent incident may have occurred,
 - b) Senses the potential for danger is high,
 - c) Is responding to repeat names or location, or
 - d) Simply believes one should be conducted.
- 2) When officers arrive at a scene of a verbal argument, the officer should note if they have gone to the location before or have responded to the same individuals before. The officer should consider doing a risk assessment if they believe that this is not an isolated incident. A risk assessment can also be conducted if the officer believes that the verbal argument rose to the level that at least one party was fearful enough to contact the police.
- 3) An abuser does not have to use physical force to be a high risk offender. There are a multitude of other behaviors and actions within the relationship that could place the victim at high risk.

b. Interviewing the victim and conducting the risk assessment:

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- 1) If there is need for emergency medical attention, conduct the interview after the victim has been treated (most likely at the medical facility).
- 2) Conduct the victim interview in a private setting, away from the suspect and, if possible, other family members.
- 3) In the case of a disclosed sexual assault, follow department procedure.
- 4) Obtain preliminary information from the victim about the current reported incident and specifics leading up to the incident, whether there is a relationship between the victim and suspect, prior history of abuse, any court orders, use of weapons, or use of alcohol/drugs.
- 5) Record the victim's excited utterances and emotional and physical condition.
- 6) Note demeanor, body language and other nonverbal communication and document in the police report.
- 7) Document the victim's injuries and inquire about injuries that are not visible.
- 8) Obtain temporary addresses/phone information from the victim.
- 9) If the four criteria to conduct a risk assessment have been met, conduct the risk assessment.
- 10) Officer(s) should use the Risk Assessment form and provide as complete answers as possible to all questions. (Sample form attached as Appendix IV).
- 11) The information received from the victim should then be included in, and attached to the incident report.
- 12) If the victim answers yes, to any of the high-risk questions, the officer should further investigate positive answers by asking for more details.

c. Responsibilities once the risk assessment screen has been completed:

If the officer determines and/or feels that the victim is at high risk and needs immediate assistance:

- 1) Inform the victim of his/her concerns for the victim's safety based on the answers given to the assessment questions;
- 2) Inform the victim that there are free and confidential services available that offer a wide range of services;
- 3) Inform victim of DV shelter hotline and assist if asked;
- 4) Inform the victim of Protective Order information and options;

- 5) The officer will offer to contact the local domestic violence agency for the victim to speak with an advocate;
- 6) The officer will give the victim the victim witness packet

H. SERVICE OF RESTRAINING ORDERS

1. *In-hand Service*

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

- a. Orders shall be served promptly upon receipt. If service is initially unsuccessful, the responsible Police 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.
- b. 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.

2. *Record of Service*

Departments must keep a record of all attempts at service.

3. *Return of Service*

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

4. *Orders Disseminated to the Department*

The Court is responsible for sending the order to the appropriate law enforcement agency for service on the defendant. In the event that the plaintiff brings an order to the police department for service, officers should ensure that the police department's responsibilities under MGL c209A and these guidelines are met.

5. *Firearms*

Upon service of the order, officers shall immediately take possession of all firearms, rifles, shotguns, ammunition and any licenses or FID cards in the control, ownership, or possession of the defendant. The license-issuing authority shall be contacted at once and fully informed of the incident and provided full reports in accordance with current

law. All confiscated items shall not be returned until the Order has been vacated or the firearms provision has been modified by order of the court. MGL c140, §§ 129B, 131.

6. *Notice to Plaintiffs*

When assisting plaintiffs with emergency abuse prevention orders, officers should provide guidance to the plaintiff as to the exact terms of the order sought.

7. *Out-of-state Order Violations*

- a. A protective order issued in another jurisdiction (as defined in MGL c209A,§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.
- b. 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.
- c. 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:
 - 1) A copy of the order, by any source; and
 - 2) A statement by the victim that such order remains in effect.
- d. 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.
- e. Violations of out-of-state orders or Massachusetts orders violated in another state may be charged criminally as contempt of court (MGL c220 §14) in the Commonwealth of Massachusetts.

8. *Notice to Defendants*

When serving an abuse prevention order, officers shall fully inform the defendant of the contents of the order and penalties for any violation of an order and provide additional resources, including information on batterer's intervention programs, substance abuse counseling, alcohol abuse counseling and financial counseling. (MGL c 209A §7) (See attached Appendix VIII).

9. *Third-Party Contact*

The Abuse Prevention Order states that the defendant is "ordered not to contact the plaintiff in person, by telephone, in writing, electronically or otherwise, either directly or through someone else." If there is third party contact in violation of an outstanding abuse prevention order, consider taking out charges against the third party or defendant for

violation of a restraining order or intimidation of a witness, depending on the appropriate circumstances.

I. **ALLEGATIONS AGAINST LAW ENFORCEMENT PERSONNEL**

1. Departments must recognize that law enforcement personnel, whether sworn or non-sworn, are not immune from committing or being a victim of Domestic Violence. Although no person is exempt whatever their occupation, the dynamics change when Law Enforcement personnel are involved.
2. The following response protocols are critical components to the integrity of the law enforcement profession and the trust of the community.
3. When responding to a Domestic Violence incident involving a law enforcement officer all of the previously outlined protocols apply. However, additional protocols also apply.
4. *Dispatch / Officer Response*
 - a. The dispatcher / communications officers shall immediately notify the on- duty commanding officer of all domestic violence involving officers.
 - b. The responding officers shall take immediate action to ensure the safety of the victim and all parties present.
 - c. A supervisor of higher rank than the officer involved must respond to the scene.
 - d. The responding officers will remain on the scene until relieved by the responding supervisor.
 - e. The responding officers shall document, in a report, their actions and complete such report prior to the end of their tour of duty.
5. *On-Scene Supervisor's Response*
 - a. Proceed to the scene of the incident and conduct an investigation.
 - b. Assess the actual and potential harm to the victim, children, and others present and ensure their safety.
 - c. 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.

- d. If the suspected officer does not have their 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 where the firearm is located and take custody of department-issued firearms, licenses and other weapons.
- e. Ensure enforcement of MGL c208, 209, 209A, 209C, MGL c140, § 298, court orders and department guideline and procedure, rules and regulations.
- f. The supervisor will ensure a Board of Probation (BOP) and Warrant Management System (WMS) check is conducted to determine the existence of outstanding abuse prevention orders, harassment orders, or warrants in effect against the officer involved.
- g. The supervisor shall submit, through the department's appropriate chain of command, a report detailing their assessment of the incident and action taken before the end of the supervisor's tour of duty.

6. *On-Duty Commanding Officer's Responsibilities*

- a. 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 initiated an investigation.
- b. Ensure the safety of the victim, children or others present at the scene.
- c. Ensure enforcement of all provisions of MGL c208, 209, 209A, 209C, MGL c140, § 298, court orders, department guideline, procedures, rules and regulations.
- d. Ensure reports and proper documentation of the facts and circumstances of the incident and the action taken are submitted through the proper channels in accordance with department procedures.
- e. 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.

7. *Additional considerations*

- a. 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.

- b. 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.
- c. In responding to an incident where the victim is a police officer, standard domestic violence response and investigation procedures should be followed.
- d. 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.

8. *The Role of the Supervisor*

a. Response

- 1) The supervisor shall ensure that all provisions of MGL c209A, other related statutes and these guidelines are fully adhered to.
- 2) A Supervisor shall be responsible for monitoring all domestic violence calls.
- 3) Whenever possible a Supervisor shall respond to the scene for the purpose of providing advice or any other assistance.
- 4) A Supervisor shall ensure all procedures; guidelines and department policies have been 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 MGL c209A 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 domestic violence incident is identified as posing a significant danger the case should be assigned for follow-up, presented at roll call and forwarded to a "High Risk Team", if applicable.

- 4) Whenever a defendant is identified as being a high risk to the victim or the public, the case should be promptly referred to the local prosecuting agency.
- 5) Whenever a dual arrest is made, the supervisor shall review the case to determine if one of the parties is a dominant aggressor before approving the dual arrests and reports.

c. Referrals

- 1) Supervisors shall ensure that the appropriate and mandated reports are filed for children, persons with disabilities, and the elderly.
- 2) Supervisors shall ensure proper safety plans are in place for the survivor and other family members. These measures shall be in place immediately enabling those affected to make informed decisions
- 3) The safety plan may include all, some or additional items;
 - a) Drive-bys
 - b) Welfare spot checks
 - c) Arresting the abuser
 - d) Serving 209a orders
 - e) Assisting in obtaining 209a order
 - f) Arranging transportation for medical, shelter, or other locations
 - g) Referral to a Domestic Advocate

d. Follow-up Investigations

Supervisors shall:

- 1) Determine if a follow-up is needed;
- 2) Ensure it is conducted in a complete and thorough fashion; and
- 3) Review and ensure proper charges are filed whenever appropriate.

J. HARASSMENT PREVENTION ORDER CONSIDERATIONS MGL C258E

MGL c258E, provides victims of criminal harassment, stalking and sexual assault, regardless of their relationship with the defendant, the ability to obtain harassment prevention orders against their perpetrators.

1. *Harassment Defined*

3 or more acts of willful and malicious conduct aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause fear, intimidation, abuse of damage to property, or (ii) an act that

- a. by force, threat, or duress causes another to involuntary engage in sexual relations
or

- b. constitutes a violation of section 13B, 13F, 13H, 22, 22A, 23, 24, 24B, 26C, 43, or 43A of Chapter 265 or section 3 of chapter 272.
2. *In-hand Service (MGL c258E)*
 - a. Service shall be made in-hand unless otherwise directed by the court. The law enforcement agency shall promptly make a return of service to the court (MGL c258E s9).
 - b. Service of an order may directly compromise a victim's safety; therefore consider the timing of service of the order. Officers should encourage the victim to contact an advocate (either through the DA's Office, SAFEPLAN or the local victim service program) in order to develop a safety plan around the service of the order.
3. *Record of Service (MGL c258E)*

Departments must keep a record of all returns of service. If an order is vacated the court will notify the law enforcement agency and all records of vacated order must be destroyed (MGL c258E section 9).
4. *Return of Service*

All returns of service must be sent to the court.
5. *Plaintiff Bringing an Order to the Police Department*

The Court is responsible for sending the order to the appropriate law enforcement agency for service upon the defendant. In the event that the plaintiff brings an order to the department for service, officers should ensure that the department's responsibilities under MGL c.209A and these guidelines are met.
6. *Out-of-state Orders*

A harassment order issued in another jurisdiction (as defined in MGL c258E section 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 order as written by the issuing jurisdiction.
7. *Emergency response*

If law enforcement officers have reason to believe that a person has been or is in danger of being abused or harassed, they shall use all reasonable means to prevent further abuse or harassment. Law enforcement officers should make every reasonable effort to do the following as part of the emergency response (MGL c258E section 8):

 - a. Assess the immediate physical danger to the victim and provide assistance reasonable to mitigate the safety risk;

- b. If there is observable injury to the victim or if the victim is complaining of injury, encourage the victim to seek medical attention and arrange for medical assistance by requesting an ambulance for transport to a hospital;
- c. If a sexual assault has occurred, encourage the victim to seek medical attention at a Sexual Assault Nurse Examination site (see SA guidelines) and request an ambulance for transport if appropriate. Provide the victim with referrals to local resources that may assist the victim in locating and getting to a safe place; and
- d. Provide adequate notice to the victim of his/her rights including, but not limited to, obtaining a harassment prevention order;
- e. Assist the victim by activating the emergency judicial system when the court is closed for business;
- f. Inform the victim that the abuser may be eligible for bail and may be promptly released; and
- g. Arrest any person that a law officer witnessed or has probable cause to believe violated a temporary or permanent vacate, restraining, stay-away or no-contact order or judgment issued under this chapter or similar protection order issued by another jurisdiction; provided, however, that if there are no vacate, restraining, stay-away or no-contact orders or judgments in effect, arresting the person shall be the preferred response if the law officer witnessed or has probable cause to believe that a person has committed a(n)
 - 1) Felony;
 - 2) Misdemeanor involving harassment or abuse as defined in section
 - 3) Assault and battery in violation of section 13a of chapter 265; provided further, that the safety of the victim shall be paramount in any decision to arrest; and provided further, that if a law officer arrests both parties, the law officer shall submit a detailed, written report in addition to an incident report, setting forth the grounds for arresting both parties.
- h. Whenever a law officer investigates an incident of harassment, the officer shall immediately file a written incident report in accordance with the standards of the law officer's law enforcement agency.
- i. The victim shall be provided with a copy of the full incident report at no cost upon request to the appropriate law enforcement department.

Approval:



Chief of Police

01/25/2021
Date

ATTACHMENTS:

Appendix A: Common Statutes Relating to Domestic Violence

Appendix B: Local Referrals and Resources

Appendix C: Jane Doe, Inc. Map of Victim Related Services

Appendix D: Sample High Risk Worksheet

Appendix E: Abused Person's Notice of Rights

Appendix F: Sample Strangulation Worksheet

Appendix G: Notice to Victim Form Available at the District Courts

Appendix H: Notice to Defendant Form Available at the District Courts

Appendix I: Batterer's Intervention Listings

Appendix J: FSU On / Off Campus Resources

Appendix A thru I can be found here: <https://www.mass.gov/files/2017-08/2017-domestic-violence-law-enforcement-guidelines.pdf>

APPENDIX J On and Off Campus Resources

ON CAMPUS	Type of Services Available	Contact Information
Counseling and Mental Health Services	Individual, couples and group counseling, crisis intervention, psychoeducational programming, outreach workshops, and community referrals. Counseling services are confidential and are offered at no charge to all enrolled students	<p>Hours of Operation</p> <p>Monday - Friday: 8:30 a.m. to 5:00 p.m.</p> <p>To make an appointment: Stop by our office or call us at 978-665-3152</p> <p>Hammond Bldg., 3rd Floor, Room 317</p> <p>https://www.fitchburgstate.edu/offices-services-directory/counseling-services/</p>
Visa and Immigration Assistance	The Office of International Education advises students on immigration matters, employment questions, and issues of cultural adjustment through a special orientation program, briefings, and individual advising.	<p>Hours of Operation</p> <p>Monday-Friday 8:30 am – 5 pm</p> <p>Hammond, 316 Phone: 978-665-31089</p> <p>https://www.fitchburgstate.edu/offices-services-directory/international-education/</p>
Student Financial Aid	Assists students who, without financial assistance, would be unable to attend college	<p>Hours of Operation</p> <p>Monday-Friday 8 am – 5 pm</p> <p>Anthony, Room 108 Phone: 978-665-3156</p> <p>https://www.fitchburgstate.edu/offices-services-directory/financial-aid-office/</p>
OFF CAMPUS	Type of Services Available	Contact Information
Victim Advocacy Provided by Pathways for Change	24 hour crisis intervention, support groups, counseling and advocacy for Survivors of sexual assault and abuse as well as prevention education, professional training and community outreach	<p>Pathways for Change No longer maintains an office on campus. However, they can be reached 24/7 by calling their hotline.</p> <p>Hotline: 1-800-870-5905</p> <p>https://www.pathwaysforchange.help/pfc/</p>
U-Mass Memorial Medical Center	Emergency Mental Health Services (EMHS) provides psychiatric evaluations and assessment of level of care for patients who self-present or are brought to the Hospital in an acute Psychiatric Crisis. The service is available 24 hours a day. Patients who are experiencing an acute psychiatric crisis will be evaluated by the EMHS Team which comprises Nurses, Social Workers, Mental Health Counselors, Ambulatory Service Representatives,, Psychiatric Residents and Attending Psychiatrists.	<p>Address: 60 Hospital Rd, Leominster, MA 01453</p> <p>(508) 334-3562</p>
Massachusetts Rape Crisis Centers		https://www.mass.gov/service-details/rape-crisis-centers
YWCA Central Massachusetts Domestic Violence Services	Domestic Violence Classes Confidential Emergency Shelter SAFEPLAN/Court Advocacy Short-term Counselling Support Groups	<p>(Hotline) 508-755-9030</p> <p>Leominster: 978 401-2290</p> <p>https://ywcacm.org/domestic-violence</p>