

 <p><b>Cambridge Police Department</b></p>	<b>POLICY &amp; PROCEDURES</b>		<b>No. 500.1</b>
	Subject/Title: <b>Response to Domestic Violence</b>		
	Issuing Authority:   Robert C. Haas Police Commissioner	Issue Date: <b>07/16/15</b>	Revision Date: <b>08/17/15</b>
		Review Date: <b>08/31/15</b>	Rescinds: <b>Policy # 1998-09 – Incorporates General Order #14-3 (Chapter 260 – An Act Relative to Domestic Violence).</b>
References/ Attachments: <b>EOPS Domestic Violence Law Enforcement Guidelines 2009</b>	Accreditation Standards: <b>55.2.5</b>		

**I. PURPOSE:**

The purpose of this policy is to establish guidelines for responding to and handling reports of domestic violence. These guidelines are based upon the model policy and procedures that have been developed by the Executive Office of Public Safety in compliance with Massachusetts General Laws.

**II. POLICY:**

The Cambridge Police Department recognizes Domestic Violence as a universal problem that affects people from all walks of life. Domestic Violence is a criminal activity and in such cases where probable cause can be established, arrest of the offender is the appropriate and 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 restraining orders. The provisions of M.G.L. c. 209A impose specific responsibilities upon police officers in domestic violence situations. 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. Therefore, this policy is issued to:

- Ensure the safety of victims;
- Ensure compliance with all provisions of court orders;
- Ensure compliance with Massachusetts General Laws, Policy and Procedures, Rules and Regulations, including: 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 - 2009 (revised);
- Provide procedures for the uniformity of the investigation, notification and reporting of said incidents;

- Preserve the integrity of domestic violence investigations, and;
- Provide for the securing of weapons surrendered.

### III. GENERAL GUIDELINES AND CONSIDERATIONS:

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. Police are well aware that situations, which appear minor at first glance, can mask a much more dangerous situation. 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.

Appropriate and effective police response to domestic violence calls is the best mechanism for enhancing victim safety. It is also the means by which police departments can minimize departmental liability. It is, therefore, imperative that police officers receive appropriate training in the handling of domestic violence complaints and that the members of this department implement the guidelines contained within this directive. It is also imperative members of this department observe and follow the statutory obligations whenever involved in a reported domestic violence incident.

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

- A. Definition of Abuse:** For purposes of this law, 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" - refers to any type of, or attempt to cause, physical harm. For example; punching, kicking, shoving, etc.;
  2. "Placing another in fear of imminent physical harm" - refers to threats and to situations where the abuser has assaulted the victim, but no battery has occurred;
  3. "Causing another to engage involuntarily in sexual relations by force, threat, or duress." Note that the parties' marital status is irrelevant. An individual may be charged with a sexual offense even if married to the alleged victim.

- B. Definition of Family or Household Members:**<sup>1</sup> are inclusive of the following:
1. Persons who are or were married to one another;
  2. Persons who are or were residing together in the same household (including college dormitories);
  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, which shall be adjudged by District, Probate, or Superior Courts after consideration of the following factors:<sup>2</sup>
    - a. The length of time of the relationship;
    - b. The type of the relationship;
    - c. The frequency of interaction between the parties; and
    - d. If the relationship has been terminated by either person, the length of the time that has elapsed since the termination of the relationship.
- C. 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 the more likely cause for a suit. In Irwin v. Town of Ware, 392 Mass. 745 (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 protecting members of the general public.

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<sup>1</sup> **Note:** This includes persons involved in same sex relationships. Also note that under the new Domestic Violence Law, entitled, “An Act Relative to Domestic Violence,” a new crime of Domestic Assault or Domestic Assault and Battery was created and enacted under G.L. c. 265, § 13M. Under this new statute, the victim must be a family or household member, but the term is defined slightly differently than under G.L. c. 209A, § 1. Aimed at intimate partner violence, this new crime requires current or former marriage, a child in common, or a “substantive dating relationship,” to be determined by the trier of fact in accordance with factors established by G.L. c. 209A, § 1.

<sup>2</sup> **Note:** The Attorney General's Office has advised that the police officer on the scene has the authority to determine whether or not a substantive dating relationship existed, based on the above factors, when deciding whether or not to arrest under 209A. The Court will use these factors in deciding whether or not to issue a 209A restraining order.

**V. INITIAL RESPONSE PROCEDURES:**

- A. Dispatch Response:** Once a report of a domestic violence incident is received, the Emergency Communications Center (ECC) will dispatch officers immediately to the scene of the incident. It shall be the responsibility of the communications officer receiving the initial complaint to take the following actions:
1. Whenever possible, two officers should be dispatched to the scene.
  2. 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.
  3. The ECC will be responsible for immediately notifying the shift supervisor (Sector Sergeant) of the report, and dispatching officers. If possible, a back-up unit will be dispatched on all domestic violence calls.
  4. Obtain and record all pertinent information that is received from the complainant, which shall include, but not be limited to, the name of the caller, exact location, the nature of incident, whether the abuse is in progress, and/or whether the abuser is still present.
  5. The ECC should attempt to ascertain whether a weapon is involved in the incident.
  6. The ECC should attempt to ascertain if there are any injuries, the extent of the injuries, and whether an ambulance will be needed at the scene.
  7. While officers are responding to the scene, the communications officer should obtain background information that may assist the responding officers which may include the following:
    - 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 (BOP) check;
    - c. Whether the caller or alleged assailant is under the influence of alcohol or drugs, or if there are mental health issues;
    - d. Other people involved or witnesses at the scene, including children;
    - e. The existence of any protective orders against the suspect (BOP check), including orders held by persons other than the alleged victim in this case;
    - f. Any other relevant information, especially any history of incidents at the reported address or between the parties, and the likelihood of firearms being present (in-house computer system); and
    - g. Record of firearms identification cards and/or licenses to carry having been issued to resident(s).
  8. The ECC is responsible for alerting responding units to whatever information was obtained at the time of the receipt of the report. The ECC will also advise

responding units of the record of any similar previous incidents, and whether any type of restraining order or other court order is known to be in place.

9. On occasion the ECC may elect to keep the complainant on the phone while units are responding for purposes of obtaining additional information and/or reassuring the complainant that help is on the way.
10. The ECC shall dispatch medical emergency equipment when there has been a report of injury.

**B. Officer Response upon Arrival to Scene:** The high risk of injury associated with domestic violence situations requires that officers immediately proceed to the place of the dispute. Officers are to exercise due caution, so as not to expose themselves to undue hazards. When practical, an officer shall wait for the arrival of a backup unit(s) prior to entering a household where there have been allegations of violence. The officer waiting for backup assistance should always be cognizant as to what is taking place at the scene of the reported domestic violence. Officers should not unnecessarily delay their response if individuals are at immediate risk of harm. Upon approach, officers should make observations of the scene, and listen for sounds or evidence of a disturbance.

**C. Entering a Private Premises:** When investigating a report of domestic violence, officers should be thorough and observe the following guidelines:

1. Officers may enter private premises without a warrant in the following circumstances:
  - a. At the request of someone in lawful control of the premises;
  - b. Where there is imminent danger of violence that could result in death or serious physical injury;
  - c. When a police officer has probable cause to believe a felony has been or is being committed, and is in fresh pursuit of the fleeing suspect;
  - d. In the absence of any of the aforementioned situations (exigent 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.<sup>3</sup>
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. An officer 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. This shall include, but not be limited to, remaining in the dwelling for a reasonable period of time;<sup>4</sup>

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<sup>3</sup> *Commonwealth v. Midi*, 46 Mass. App. Ct. 59 (1999).

<sup>4</sup> M.G.L. c. 209A, § 6(1).

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

**D. Officer's Demeanor:** The initial contact by the responding officers must convey a professional, calm, and helpful attitude.

1. The officers shall state their reason for being present.
  - a. Do not neglect to address the children when explaining an officer's presence, particularly if an arrest is being made.
  - b. Tell the children that what happened prior to the officers' arrival is not their fault.
  - c. If a child called 911, tell him/her that he/she did the right thing and that officers are there to help the family.
2. Officers must strive to be considerate and attentive toward all parties and their problems regardless of the officers' own view or personal reactions toward the matter or parties involved.
3. Upon entering, officers shall prevent or limit 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 and other at the scene.

**E. Initial On-Scene Actions:** Officers responding to the scene of domestic violence situations shall utilize the following guidelines while conducting their investigations:

1. 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 two officers are present, both officers should remain in view of each other to avoid any subsequent allegations of mistreatment or misconduct, and to offer assistance to each other if necessary.
2. Officers shall determine if any parties are injured, and if so, arrange for immediate medical attention.<sup>5</sup>
3. The use of alcohol and drugs, or a condition of mental illness, can aggravate a domestic violence situation, requiring far greater patience on the part of the responding officers.

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<sup>5</sup> M.G.L. c. 209A, § 6(2).

## VI. INVESTIGATIVE ACTIONS:

- A. Investigation of Domestic Violence Incident:** The provisions of M.G.L. c. 209A impose specific responsibilities upon the police in regards to a domestic abuse situation. All officers are expected to be thoroughly familiar with the contents of the statute (as amended from time to time) and to act with discretion and competence in carrying out its provisions.
1. Officers shall thoroughly investigate all allegations of domestic violence, as prescribed in those procedures outlining criminal investigations. In attempting to ascertain the facts in the dispute, the officer 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 or influenced by the other party. Officers should determine whether interpretative language services are needed and should seek out such services where available.
  2. If allegations are made which involve the violation of the law, officers shall determine if there is sufficient probable cause to support such allegations.
  3. Officers responding to domestic violence calls are expected to conduct thorough investigations, including interviewing children, neighbors and other potential witnesses. All parties present and involved should be documented in the incident report. Officers should be mindful that victims and witnesses are often fearful of retaliation by the offender. Do not tell the suspect who called the police.
  4. To appropriately address a domestic violence situation, responding officers must ask pertinent questions, and obtain certain fundamental information to be included in the police report:
    - a. Obtain information regarding the relationships between the parties, including any children. If children are not immediately observed, ask if there are children present in the household. If children are present, record their names and dates of birth.
      - i. Check on the children to ascertain whether or not they have sustained injury.
      - ii. Some children believe that police officers are not allies. If children are present, one officer should talk to the children to inform them of the officers' intentions to keep the family safe, that officers are there to help, and that the violence is not the children's fault.
      - iii. If a child is to be interviewed as a witness to the incident, the officer should consider the child's physical, emotional or psychological ability to give a statement; the child's age and ability to understand questions and formulate responses; and the likelihood the child's safety will be compromised by disclosing what he/she observed.

- b. Obtain at least two telephone numbers where the victim can be reached. Include a cell phone number, daytime number, or the number of a close relative or friend. Include said numbers in the police incident report for use by the Bail Commissioner so as to inform the victim if the suspect is released on bail.<sup>6</sup> Inform victim that if the victim intends to leave the residence, the victim must inform the police department of a telephone number where the victim can be reached, or where a message of such release can be safely relayed to the victim.<sup>7</sup>
- c. Obtain information about the suspect’s ownership and access to firearms, including their present location.
- d. Properly document spontaneous utterances (direct quotes) by the victim, the suspect, children, and other witnesses. In collecting evidence, when possible, photograph to document all injuries sustained by the victim and the condition of the crime scene.
  - i. When documenting the scene photographically, officers are reminded to take both close-up and full scene pictures.
  - ii. Collect physical evidence (including weapons used, even when simple household item) and document collection in the incident report.
- e. Officers should utilize the DOMESTIC VIOLENCE INCIDENT WORKSHEET (as outlined in *Policy & Procedures No. 504 – High Risk Domestic Violence Cases*) to record and provide information regarding a defendant’s dangerousness to the Prosecuting Officer for use at the arraignment. Toward that end, as promptly as possible, officers should gather information regarding the defendant’s:
  - i. Criminal history;
  - ii. History of abusing the current victim;
  - iii. History of abusing other victims;
  - iv. History of non-fatal strangulation or suffocation;<sup>8</sup>
  - v. History of forced sex;
  - vi. History of extreme possessiveness or jealousy
  - vii. Possession of weapons;
  - viii. Use of weapons in prior abuse of the victim;
  - ix. Past threats against or abuse of pets;

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<sup>6</sup> Note that the new Domestic Violence law, entitled, “An act Relative to Domestic Violence,” requires that a “reasonable attempt” be made 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. The law specifies that, if the defendant is released on bail from a place of detention, reasonable attempts at notice must be made by the arresting police department.

<sup>7</sup> **Note:** If the victim will be seeking to hide from the abuser, the investigating officer will keep information pertaining to the victim’s whereabouts and telephone number in a separate record so as to prevent the abuser from obtaining that information.

<sup>8</sup> **Note:** Under the new Domestic Violence Law, entitled, “An Act Relative to Domestic Violence,” a new felony offense for strangulation and/or suffocation was created and enacted under M.G.L. c 265, § 15D. This new statute also provides for an enhanced sentence where the victim is pregnant, under the protection of a court order, and/or suffers serious bodily injury.

- x. Past attempts or threats to kill;
  - xi. Past attempts or threats to commit suicide.
- f. Ascertain if there is a prior history of such disputes and whether there are any vacate, restraining, no-contact or other protective orders currently in effect, including those held against the suspect by someone other than the victim.
- i. Document allegations of prior abuse, including expired protective orders.
  - ii. Document past use of weapons in prior domestic abuse or other known incidents.
  - iii. Seek appropriate criminal action for prior incidents.
- g. Determine, when appropriate, who has lawful custody of any shared children of the parties and whether court approved visitation rights are being violated.
- i. Keep in mind that the children's safety is paramount. Standard procedures should be followed for ensuring safety, such as D.C.F. notification when appropriate.
  - ii. Officers will file a M.G.L. c. 119, § 51A report when children have been exposed to, or were present during, an incident of domestic violence.
  - iii. When filing a M.G.L. c. 119, § 51A report, the officer will notify the victim (non-offending parent/guardian) that a report will be filed against the perpetrator and explain why the report is being filed. The officer should explain that the police are mandated by law to file the report, and that the filing of a 51A is intended as a support service to the victim and his or her children.
- f. The parties may have to resolve visitation and custody issues in Probate Court.
- g. As a standard precaution, officers should check for outstanding arrest warrants on persons encountered during a domestic dispute. Since official court orders and other court papers are the best source for much of this information, officers should ask the parties to produce copies of court orders or other court papers to verify their claims. In addition, officers are encouraged to check police records or to contact appropriate courts, social service agencies or attorneys for information.
- h. Gather information, which will assist the district or probate courts in determining whether a "substantive dating relationship" exists. This is especially helpful if the officer anticipates activating the Emergency Response Judicial System. Chapter 209A specifies that such courts will take into consideration the following factors:
- i. The length of time of the relationship;

- ii. The type of relationship;
  - iii. The frequency of interaction between the parties; and
  - iv. If the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.<sup>9</sup>
- i. Officers should provide known information regarding a defendant's dangerousness to the Prosecuting Officer for use at arraignment. Include information regarding the defendant's criminal history, history of abusing the current victim, and history of abusing other victims.

**B. Investigating Officer Responsibilities:** 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 actions:<sup>10</sup>

1. Protection of the Victim: Officers should remain on the scene where the abuse occurred or was (or is) in danger of occurring as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of the officer for a reasonable period to prevent abuse.
2. Medical Treatment: Assist the abused person in obtaining medical treatment necessitated by an assault, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility notwithstanding any law to the contrary.
3. Assistance to the Victim: Assist the abused person and dependent children in locating and getting to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or friend's residence (or similar place of safety). The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances.
  - a. **Confidentiality of Domestic Violence Program Locations:** The location and street address of all domestic violence programs are absolutely confidential and shall not be required to be revealed in any criminal or civil proceeding (refer to 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 (refer to M.G.L. c. 233, § 20K). Under no circumstances should law enforcement officers release information to the public or otherwise identify the location of a domestic violence program, including in a police report. Officers should also be aware that the new Domestic Violence Law, entitled, "An Act Relative to Domestic Violence," expands the confidentiality of police records of rape

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<sup>9</sup> M.G.L. c. 209A, § 1.

<sup>10</sup> See M.G.L. c. 209A, § 6.

and sexual assaults, G.L. c. 41, § 97D, to include *all reports of domestic violence*. Unlike the old statute, the new statute includes specific authorization for victims, prosecutors, counselors, and law enforcement officers to obtain the records. The law also specifically excludes these reports (as well as rape and sexual assault reports) from the police daily log.

4. Notice of Victim’s Rights: Give abuse victims immediate and adequate notice of their rights by handing them and reading a form detailing their rights (see attached). Where said person's native language is not English, the statement shall then be provided in said person's native language whenever possible.<sup>11</sup>
  - a. 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.
5. Emergency Judicial System (EJR): Assist the abused person by activating the emergency judicial system when the court is closed for business.
  - a. If a victim is unable to appear in Court, because of severe hardship due to the victim’s physical condition, officers can seek an emergency or temporary restraining 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.
6. Notice of Release on Bail: Inform the victim that the abuser will be eligible for bail and may be promptly released. As previously noted, the new Domestic Violence law, entitled, “An act Relative to Domestic Violence,” also requires that a “reasonable attempt” be made 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. The law specifies that, if the defendant is released on bail from a place of detention, reasonable attempts at notice must be made by the arresting police department.
7. Referrals: Provide information, including the telephone numbers, about local resources such as battered women’s programs, for emergency shelter and counseling services. Also, officers should make referrals to the victim/witness advocates from the Middlesex County District Attorney’s Office (be sure to provide the telephone numbers for the victim-witness advocates).
8. Incident Reports and Domestic Violence Incident Worksheet: Incident Reports and DV Incident Worksheets will be filed whether or not an arrest is

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<sup>11</sup> CALEA Std. 55.2.5 – A written directive defines victim/witness assistance services to be rendered upon arrest and during post-arrest processing of the suspect.

made. These reports will be made available to the victim, upon request to the department, at no cost to the victim. With respect to incident reports, officers should be mindful of the following:

- a. Prosecution and subsequent legal action can be greatly aided by documentation and description of physical injuries, photographs of the injuries and any damage to property, and/or noting the presence of children in the household, and other information, including the names and contact information for any witnesses, gained through the investigation.
  - b. Police departments shall ensure the confidentiality of domestic violence records including information regarding the identity of a victim or children, any medical information, or statements 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. Other than requests by the victim, which are to be released in their entirety, other requests for reports should be reviewed and redacted to comply with public records and other applicable laws prior to their release. As noted above, the new domestic violence law expands the confidentiality of police records of rape and sexual assaults, G.L. c. 41, § 97D, to include *all reports of domestic violence*.
  - c. Officers should note on the incident report whether the reported 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).
  - d. Completion of Written Reports: Regardless of whether an arrest occurs, whenever an officer investigates a reported incident of domestic violence, the investigating officer shall immediately file a written incident report on the prescribed department report forms. The reporting officer must indicate that the victim has been advised of their rights under 209A (Domestic Abuse Law) and provided with a copy of the law. The victim must also be advised that they may obtain a copy of the incident report from the Records Unit at no charge.
    - i. Other officers who respond to a domestic violence incident shall be responsible for filing a supplementary report to the investigating officer's report if there is additional information or supportive documentation that can be added to the investigation.
9. Mandatory Reporting: Officers should be mindful of the following mandatory reporting requirements when responding to incidents of domestic violence:
- a. *Department of Children and Families (formerly Department of Social Services (DSS))*: Officers will file a report with DCF whenever an officer has reasonable cause to believe that a child under the age of 18 has been abused or neglected, as described in M.G.L. c.119, § 51A. If a child is present during an incident of domestic violence, it may constitute neglect pursuant to M.G.L. c. 119, § 51B. During office hours, the regional DCF office is to be contacted in such cases. If a situation takes place after

normal business hours, officers are to use the hotline telephone number (1-800-792-5200) to make immediate notification.

- b. *Disabled Persons Protection Commission:* Officers will file a report with the Disabled Persons Protection Commission whenever the officer has reasonable cause to believe that a caretaker has abused and/or neglected a disabled person, between the ages of 18 and 59,<sup>12</sup> as described in M.G.L. c. 19C, § 10. Notification in these cases will be made through the appropriate hotline telephone number (1-800-426-9009).
- c. *Department of Elder Affairs:* Officers will file a report with the Department of Elder Affairs whenever the officer has reasonable cause to believe that someone age 60 or older has been abused and/or neglected as described in M.G.L. c. 19A, §§ 14-26. Call the 24-hour hotline: 1-800-922-2275.

**B. Supervisory Officers:** It is the responsibility of the sector sergeant (duty shift supervisory officer) 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 domestic violence cases.

1. Responding to Reports of Domestic Violence: Whenever practical to do so, the sector sergeant or other on-duty supervisory officer should respond to all reports of domestic disturbances or domestic violence incidents.
2. Importance of Reporting Requirements: As part of his/her responsibilities, the supervisor shall ensure that the following reporting requirements are carried out by those officers who have been assigned to investigate reported domestic violence incidents:
  - a. 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 of no probable cause to arrest existed. Incident reports **shall be** filed in those cases.
  - b. A supervisor will carefully review incident and arrest reports, in order to ensure that the provisions of M.G.L. c. 209A and these guidelines are met. If upon review of an incident report it is believed that probable cause exists for further criminal action, the supervisor overseeing the investigation or reviewing the report will ensure that criminal charges are initiated according to the statute and these guidelines.
  - c. Whenever a supervisor identifies a particular case as posing significant danger, an e-mail bulletin will be forwarded to all members of the

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<sup>12</sup> By statute, a disabled person is defined as “a person between the ages of eighteen to fifty-nine, inclusive, who is mentally retarded, . . . or who is otherwise mentally or physically disabled and as a result of such mental or physical disability is wholly or partially dependent on others to meet his daily living needs.” M.G.L. c. 19C, § 1.

department outlining the pertinent facts of the case, specifying what precautionary actions should be taken by officers, and this email is to be reviewed at all roll call sessions. A copy of the report will be directed to the attention of the Domestic Violence Unit for appropriate follow-up action.

- d. Every effort shall be made to provide law enforcement protection and other safety measures to a victim of domestic violence. These measures should be taken immediately following the report of an abusive incident, immediately preceding or following a criminal court date regarding abuse, and at any other point in which the victim anticipates or is expecting prohibited contact or harassment from the abuser. Such protection shall include but not be limited to:

- i. Drive-bys;
- ii. Welfare checks;
- iii. Arresting the abuser for violations of no-contact orders and any other offense committed;
- iv. Transporting the victim to a safe place when necessary; or
- v. Ensuring victim contact with trained domestic violence advocates for safety planning.

3. Referral Information to Victims: The supervisory officer shall verify that appropriate referrals were made to the victim.
4. Follow-up Actions: Supervisory officers will ensure that the following steps are taken regarding follow-up action in domestic violence cases:
  - a. Determine whether a follow-up investigation is needed, for instance, if the report indicates a history of abuse, or where it is likely additional criminal charges should be pursued.
  - b. If so, the supervisor shall ensure that the investigation is conducted.
  - c. Upon review of the follow-up investigation, the supervisor will ensure that additional charges are initiated if appropriate.
  - d. In those cases that warrant additional follow-up action the supervisory officer will be responsible for making the appropriate referral for such follow-up action.
  - e. It shall be the responsibility of the supervisory officer to keep the shift commander fully informed on the status of domestic violence investigations.

- C. **Assigned Detectives:** If a detective is summoned to the scene of a domestic violence situation, it shall be the responsibility of the detective assigned to a domestic violence investigation to accomplish the following:

1. Conduct all relevant interviews and interrogations.

2. Process the crime scene and obtain evidence regarding the allegation of domestic violence, and/or determine if other technical services are needed.
3. Keep the victim(s) of domestic violence apprised of the disposition of the case.
4. When appropriate, refer victims to the Domestic Violence/Sexual Assault for victim support services.
5. The detective assigned to a domestic violence investigation shall file all relevant information regarding his/her investigation in a supplementary report to the initial investigating officer's report.

**D. Domestic Violence Unit:** To ensure that domestic violence cases are reviewed and assessed on a regular basis, personnel has been assigned to the Domestic Violence Unit. The duties and responsibilities of the personnel assigned to this unit are to include, but are not necessarily limited to the following:

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 incident, to assess the likelihood of future incidents and degree of dangerousness, and to arrange follow-up contacts with the victim.
2. Ensure that victims of domestic violence are made aware of social services and aftercare service providers that may provide further assistance. Make sure that the victim is aware of the victim/witness advocate program that is available through the Middlesex County District Attorney's Office.
3. Serve as the police department's point of contact and liaison to the Cambridge Domestic Violence Task Force and other agencies that are actively engaged in addressing the issues of domestic violence and/or provide services to victims of domestic violence.
4. Identify any patterns of domestic violence that may be taking place, which involve the same victim and/or abuser.
5. Serve as the department's liaison officer with the District Attorney's Office, social service providers and other organizations that have any relationship with domestic violence cases.
6. Serve as the point of contact for victims of domestic violence who may require additional assistance. It is the responsibility of this unit to maintain contact with the victim as the case progresses through the courts, keeping the victim informed on the status of the case.
7. Provide assistance to the victim as may be required or may be deemed to be appropriate.
8. Re-contact the victim periodically to determine whether his/her safety, housing, or other related needs have been met.

9. Explain to the victims the procedures involved in the prosecution of their cases and their role in those procedures.
10. Schedule interviews and other required appearances at the convenience of the victim, and when appropriate, arrange for transportation.
11. Return victim's property taken as evidence (except for contraband, disputed property and weapons used in the course of the crime), where permitted by law or rules of evidence.

## VII. ARREST GUIDELINES:

- A. The Decision to Arrest:** Officers should take the following factors into consideration when determining the appropriateness of making an arrest:
1. *The safety and the protection 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 or not probable cause exists that the crime occurred, not on whether or not the victim wishes to seek complaints or wishes to testify at a future date.
  4. Substance Abuse / Mental Health Issues:
    - a. When assessing the credibility of the parties 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(s), the child(ren) 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.
- B. Mandated Arrest Situations:** An officer's authority or mandate to arrest is set forth in M.G.L. c. 209A, § 6 (7). In the interest of immediacy, and the statutory mandate to arrest, officers shall make a warrantless arrest of any person the officer 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, including localities outside the Commonwealth.
- C. Preferred Arrest Situations:** When there is no refrain from abuse, vacate, stay-away or no-contact order or judgments in effect, arrest shall be the preferred

response whenever an officer witnesses or has probable cause to believe that a person:<sup>13</sup>

1. Has committed a felony, including the new crime of strangulation/suffocation under G.L. c. 265, § 15D; or
2. Has committed an assault and battery of a family or household member in violation of M.G.L. c. 265, § 13A or § 13M (new crime of Domestic Assault and Domestic Assault and Battery);<sup>14</sup> or
3. Has committed a misdemeanor involving abuse, as defined in M.G.L. c. 209A; or
4. Has committed an assault and battery or permitted 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.

**D. If the Suspect Has Fled the Scene:** When probable cause to arrest exists, and the suspect has fled the scene:

1. The officer will have the ECC notify area patrols, including other jurisdictions where the suspect is believed to be going, to attempt to locate and arrest the suspect.
2. One department's statements to another that probable cause to arrest exists shall be honored. The second department shall immediately attempt to effectuate the arrest as requested by the investigating department. It is the responsibility of the duty supervisor to ascertain the circumstances surrounding the other department's request to make a warrantless arrest, and confirm that the requesting police department actually wants the subject arrested if located.

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<sup>13</sup> **Note:** Even if the victim is unwilling to bring a criminal complaint against the alleged abuser, officers are expected to arrest where probable cause exists. (Note: M.G.L. c. 276, §28 concerning arrests without a warrant for a violation of certain statutes, among which are listed in c. 209A, uses the word "may." This language is superseded, however, 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, §120 - has been amended by including within its scope a violation of a vacate order issued pursuant to M.G.L. c. 208, §34B, or M.G.L. c. 209A.
- An officer may arrest and detain a person charged with a misdemeanor, without having a warrant for such arrest in his/her possession, if the officer has actual knowledge that a warrant then in full force and effect for the arrest of such person has, in fact been issued. (M.G.L. c. 276, §28.)

**Note:** Arrest for certain misdemeanors not committed in an officer's presence is a statutory exception to the long-standing rule which limits misdemeanor arrests to those committed in the officer's presence. M.G.L. c. 276, §28, regarding arrest without a warrant, may include misdemeanors involving abuse as defined in Chapter 209, such as assault and battery against a family or household member.

<sup>14</sup> Under the new domestic violence law, a second or subsequent offense of this statute constitutes a felony punishable by imprisonment in state prison for up to five years. M.G.L. c. 265, § 13M(b).

3. Officers will attempt to make a warrantless arrest when the suspect is not found immediately. However, as soon as practical, the investigating department shall seek an arrest warrant from the appropriate court, in cases involving abuse as defined under M.G.L. c. 209A.
4. When probable cause exists to believe a crime involving abuse occurred, it is not proper procedure to advise the victim to seek complaint applications on his or her own.

**E. Dual Arrest Situations:** Although there may be situations where both parties could be considered the aggressors in a domestic violence incident, they are generally the exception to the rule. Any officer arresting both parties is required by law to submit a detailed, written report, in addition to an incident report, setting forth the grounds for dual arrest. (Dual arrest, like the issuance of mutual restraining orders, trivializes the seriousness of domestic abuse and increases the danger to its victims.)

1. Where it may appear that both parties have been the victims of an assault, officers are to take the following factors into consideration when attempting to identify the dominant aggressor in a domestic violence situation:
  - a. The comparative extent of injuries suffered.
  - b. The history of domestic violence between the parties (see your Domestic Violence Incident Worksheet), if any, including the existence of any prior restraining orders.
  - c. Statements of witness(es) that indicate that one person or the other initiated the violence.
  - d. The possibility that one party may have been attempting to defend themselves.
  - e. Who appears to be in control of the relationship?
  - f. Who is in fear of the other?
  - g. The victim will often accept responsibility or blame for the violence. The abuser may admit to it, but will follow the admission with some form of "excuse" which is meant to justify the violence.
  - h. Any other relevant factors that would suggest that one of the parties initiated the violence.
2. Officers investigating an incident of domestic violence shall not threaten, suggest, or otherwise arrest all parties for the purpose of discouraging requests for law enforcement intervention by any party.

**F. Substantive Dating Relationships:** 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.<sup>15</sup>

1. 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 or not the victim agrees with this action, or intends to seek a restraining order or other intervention.
2. Even in cases where there is no substantive dating relationship, a crime, such as stalking or criminal harassment, may have been committed.

**G. Arrest of a Caretaker:** In cases involving abuse of an elder or a person with a disability, officers must determine whether or not the victim can be left alone safely if the suspected abuser is arrested. If a suspect is the caretaker of a child, the officer must determine whether or not the child can be left alone.

If the child, elder or person with a disability cannot be left alone, the officer must contact the appropriate protective agency in order to arrange for the temporary care of the child, disabled, or elder person. Any mandated reports of abuse or neglect will be filed in these instances. The officer shall explain to the child, elder, or person with disability what is happening and the reasons for calling a protective agency.

1. *Cooperation with Other Social Services Agencies:* It is the policy of this department that all reasonable measures will be taken to ensure cooperation between officers of this department and any social service agencies involved with domestic violence incidents.

**H. Investigative Considerations Involving On-View Arrests:** After an arrest has been made, the arresting officer shall arrange to transport the perpetrator to the police station for post-arrest procedures, adhering to the following guidelines:

1. Advise the suspect of the *Miranda* Warning.
2. Take necessary precautions when transporting the perpetrator to prevent escape or injury to all parties involved.
3. The officer shall complete the appropriate forms that accompany any on-view arrest situation and follow through with the appropriate booking procedures.
4. Fully advise the Shift Commander of all relevant facts relating to the arrest of the perpetrator.

**I. Fingerprinting & Photographing of Defendants:** Whenever an individual has been arrested in connection with a domestic violence case, the individual will be fingerprinted and photographed as part of the booking process. One fingerprint card will be forwarded to the Massachusetts State Police Identification Section for

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<sup>15</sup> Note that the Supreme Judicial Court has recently held that a substantive dating relationship can exist based on computer or social media interaction. See *E.C.O. v. Compton*, 464 Mass. 558 (2013).

entry into the Automated Fingerprint Identification System (A.F.I.S.) in accordance with M.G.L. c. 263, § 1A.

**J. Out of State Order of Violations:** 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.<sup>16</sup> Therefore, officers shall make a warrantless arrest of any person the officer 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.

1. 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.

## VIII. FIREARMS AND FIREARMS LICENSES:

**A. Amendments to the Firearms Laws:** Upon issuance of an emergency or temporary c. 209A order, as a condition of that order, the court shall also order the immediate suspension and surrender of any license to carry firearms and/or firearms identification card which the defendant may hold and order the defendant to surrender all firearms, rifles, shotguns, machine guns and ammunition which he then controls, owns or possesses to the appropriate law enforcement agency.<sup>17</sup>

1. Upon serving the order, with the notice of suspension and order to surrender attached (or incorporated into the order), the officer serving the applicable 209A order is required to take "immediate possession" of all guns, ammunition and gun permits in the defendant's "control, ownership or possession."
2. Failure of the defendant to comply with the surrender order is considered a misdemeanor offense.

**B. Action to be taken with Regard to Firearms:** When a firearm or other weapon is present at the scene of a domestic violence situation the officers shall:

1. Seize the weapon as evidence of the crime, if the responding officers are informed that a firearm or weapon has been involved in the dispute. Other circumstances when an officer may take possession of a firearm or weapons would also include:
  - a. The officer may request that the firearm or weapon be placed in their custody temporarily.

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<sup>16</sup> M.G.L. c. 209A, § 5A.

<sup>17</sup> M.G.L. c. 209A, § 3B.

- b. Search for and take custody of the firearm or weapon if a party who lawfully resides there, requests that they do so. A consent search is allowed in all areas except where the suspect has a reasonable expectation of privacy. **NOTE:** If the victim and the suspect share lawful authority over the premises to be searched, the consent of the victim alone is *not* valid if the suspect is present and refuses to consent. In those circumstances, officers must secure the premises and obtain a search warrant.<sup>18</sup>
  - c. Determine whether the firearm is lawfully possessed before returning same.
  - d. If the officer determines that the weapon cannot be seized, the following actions can take place:
    - i. A judge can order the defendant to surrender guns, a License to Carry and F.I.D. card; and
    - ii. The issuing authority of a license to carry may revoke or suspend such license.
2. In all domestic violence cases, the investigating department shall advise the licensing authority that the subject of the license is suspected of abuse.
  3. ***Suspension and Surrender Orders:*** Whenever an officer encounters a Suspension and Surrender Order, the following action will be taken:
    - a. *Service of Suspension and Surrender Orders:* Upon issuance of a suspension and surrender order, M.G.L. c. 209A requires police to 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.
    - b. *Violations of Suspension and Surrender Orders:* In the interest of immediacy, and the statutory mandate to arrest, officers shall make a warrantless arrest of any person whom the officer witnesses or has probable cause to believe has violated a suspension and surrender order.
    - c. *Seizure and Storage of Firearms:* Every police 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 who are defendants in Suspension and Surrender Orders, the

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<sup>18</sup> *Georgia v. Randolph*, 547 U.S. 103 (2006). However, police may search a home without a warrant when two occupants disagree about allowing officers to enter, and the resident who refuses access is arrested. *Fernandez v. California*, 571 U.S. \_\_\_ (2014).

defendant must relinquish all firearms, including departmental weapons, to the department serving the order.

- e. *Federal Firearms Provisions:* Although officers cannot enforce the 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 which may be taken.
- f. *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 travels in interstate commerce.
- g. *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.
- h. *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.<sup>19</sup>

**C. Internal Checks for Gun Related Permits:** Whenever a domestic violence restraining order is issued by the Court, that restraining order will be processed in the manner as described in this directive (refer to section entitled *IX. Court Orders* of this directive). With regard to the issue of firearms, the following steps will be taken as they relate to domestic violence restraining orders:

1. Once a copy of a restraining order has been sent to Domestic Violence/Sexual Assault Unit for processing, a check will be made to determine if there is a record of the defendant possessing a gun related permit.
2. A check will be made to ensure that there are no outstanding warrants against the defendant that should have been served at the time of service of the restraining order.
3. Where the record check reveals that the defendant has been issued a gun related permit, a copy of that order will be forwarded to the Administration Section Deputy Superintendent for further action.

**D. Disposition of Surrendered Firearms and Gun Permits:** Whenever an officer takes possession of any firearms, ammunition and/or gun related permits, they shall be submitted into the Department's Property/Evidence System. Once turned into the Property/Evidence System, the following steps will be taken:

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<sup>19</sup> **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 this provision.

1. The Evidence Custodian, upon receipt of any gun related permits, will forward those permits to the Administration Section Deputy Superintendent for further administrative action. The firearms and ammunition surrendered will be placed into the Property/Evidence System.
2. It will be the policy of this department to inform the issuing authority of a FID card or License to Carry Firearms that said permit had been surrendered if not issued by the Cambridge Police Department.

**E. Failure to Surrender Weapons:** If an officer has reason to believe that a defendant subject to a suspension and surrender order has failed to comply with the order, there are several means available to take possession of said items:

1. Officers may use all lawful means currently available to them to take possession of the weapons (for example, consent of the co-inhabitant of the dwelling, search incident to arrest, etc.). NOTE: If the victim and the suspect share lawful authority over the premises to be searched, the consent of the victim alone is not valid if the suspect is present and refuses to consent. In those circumstances, officers must secure the premises and obtain a search warrant.
2. Where probable cause exists to believe that a defendant possesses firearms and/or permits, but has failed to surrender them in violation of a court order, an officer may seek a search warrant, if adequate information as to where the items can be found is available. Likewise, the failure to surrender firearms or ammunition in violation of a M.G.L. c. 209A protective order to surrender firearms or ammunition is an independent criminal offense.<sup>20</sup>
3. If there is probable cause to believe a defendant possesses guns unlawfully (that is, without a valid FID card or LTC), or possesses stolen guns, the officer should seek issuance of a search warrant for the guns rather than relying on the court's order to surrender them.

**F. Investigative Considerations Involving Firearms:** When a firearm or other weapon is present at the scene of a domestic violence situation or the responding officers are informed that a firearm or weapon has been or may be involved in the dispute, the officers shall:<sup>21</sup>

1. Request that the firearm or weapon be placed in their custody temporarily;
2. Search for and take temporary custody of the firearm or weapon if one of the parties requests that they do so. Note, however, that if the victim and the suspect share lawful authority over the premises to be searched, the consent of the victim alone is not valid if the suspect is present and refuses to consent. In

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<sup>20</sup> M.G.L. c. 209A, § 3B.

<sup>21</sup> **Note:** In all cases when an officer takes possession of a firearm or weapon, the officer is required to fill-out a Property and Evidence Report Form, providing the receipt portion of the form to the person from whom the officer is receiving or taking such property.

those circumstances, officers must secure the premises and obtain a search warrant.<sup>22</sup>

3. Search for and take temporary custody of the firearm or weapon to alleviate the threat of serious violence that it poses; and
4. In those cases where a firearm or weapon have been implicated in a crime, and cannot be legally seized, a search warrant must be secured.
5. Determine whether a firearm is lawfully possessed before returning the same.

**G. Liability:** It is understood that officers have no way of knowing exactly how many guns a defendant has or, in some cases, whether a defendant owns guns at all. Therefore, unless officers intentionally disregard known facts about a defendant's possession of guns and failure to turn them over or explicitly assure a victim that the defendant no longer has any guns, officers will not be held liable under state law for harm caused by weapons that were not surrendered.<sup>23</sup>

## **XI. COURT ORDERS:**

### **A. Types of Restraining Orders:**

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 (i.e., not family or household members). Violations of these types of orders can be enforced civilly, and/or through criminal contempt charges. Such violations may also support the charge of Stalking in Violation of a Protection Order, which provides for a minimum mandatory sentence of one year imprisonment.<sup>24</sup>
6. Harassment Prevention Orders are also for parties who are not covered by the Abuse Prevention Act (i.e., not family or household members), but are being

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<sup>22</sup> *Georgia v. Randolph*, 547 U.S. 103 (2006). However, police may search a home without a warrant when two occupants disagree about allowing officers to enter, and the resident who refuses access is arrested. *Fernandez v. California*, 571 U.S. \_\_ (2014).

<sup>23</sup> M.G.L. c. 258, §§ 10(h) and 10(j).

<sup>24</sup> M.G.L. c. 265, § 43.

harassed and/or abused by an individual. These court orders may be obtained in the appropriate district, juvenile or superior court and may contain no abuse/harassment, stay away, or no contact orders.

**B. Application for Abuse Prevention Order:**<sup>25</sup> When the court is closed for business or the plaintiff is unable to appear in court because of severe hardship due to the plaintiff's physical condition, any Justice assigned to the Judicial Response System may grant relief to a Plaintiff if the Plaintiff demonstrates a substantial likelihood of immediate danger of abuse. "In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of an appropriate law enforcement agency, who shall record such order on a form of order promulgated for such use by the chief administrative justice and shall deliver a copy of such order on the next Court day to the clerk-magistrate of the Court having venue and jurisdiction over the matter."<sup>26</sup>

1. Packages of the Application for Abuse Prevention Order are maintained in the department's Report Room. It is the responsibility of the shift supervisor to be familiar with the contents of those packages and the instructions that accompany them.
2. Whenever a victim wishes to make application for an Abuse Prevention Order after normal court hours, it will be the responsibility of the duty shift supervisor to ensure that the appropriate forms are completed prior to contacting the Justice assigned to the Emergency Judicial Response System.
3. The duty shift supervisor will be responsible to making sure that the Justice assigned to the Emergency Judicial Response System is fully briefed, and if the Abuse Prevention Order is granted, the instructions given by the justice will be reflected on the appropriate forms.
4. A copy of the Abuse Prevention Order will be provided to the plaintiff along with a copy of the Complaint for Protection from Abuse form (2 pages). The initial investigating officer will fully explain to the plaintiff the process that is to be followed with respect the next appearance in court, as well as, the conditions that put into place by the justice.
5. Once the Abuse Prevention Order has been completed, the duty shift supervisor is responsible for making sure that the order is promptly served to the defendant, completing the return of service (review instructions on the proper completion of the forms).
6. The completed Application for Abuse Prevention Order package will be forwarded to the attention of the Prosecuting Officer, whose responsibility it is to deliver the appropriate copies to the Clerk-Magistrate's Office at the Cambridge District Court.

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<sup>25</sup> The same basic process should also be followed for applications for Harassment Prevention Orders, pursuant to G.L. c. 258E, § 8.

<sup>26</sup> M.G.L. c. 209A, § 5.

7. The Domestic Violence Unit will enter the contents of the Abuse Prevention Order into the department's in-house computer system, and place the appropriate copies of the order into the Abuse Prevention Order section of the Records Management System.

**C. Service of Orders:** Service of orders shall be in hand unless otherwise ordered by the court. M.G.L. c. 209A, § 7 requires that "the law enforcement agency shall promptly make its return of service to the court."

1. The victim's safety should be considered in the timing of the service of the orders.
2. In-hand service may not be necessary to prove a violation; however, it is always the best mechanism of service. Therefore:
  - a. Ask the victim where you might locate the defendant.
  - b. Make a "reasonable effort" to serve a restraining order in-hand.
  - c. When serving a "vacate order," make a note of the defendant's new or temporary address, so that the defendant can be located for service of future orders or warrants.
3. If in-hand service is made on an emergency or temporary order, and the defendant doesn't appear at the hearing, then a permanent order would be considered to have been served even if in-hand service is impossible.
4. Service to a non-English speaking defendant:
  - a. The preferred method is to employ a sworn officer who has adequate fluency in the defendant's language.
  - b. Use the AT&T Language Line, if necessary to communicate with a defendant who does not adequately understand English.
  - c. As a last resort, have a friend or family translate for the defendant.
5. Return of Service must be filled out, and returned to the Court.
6. **NEVER** accompany the defendant back to the home for the purpose of retrieving the defendant's belongings without an order from a Judge.
7. If an order cannot be served, the order must be returned to the Court.
8. Note, that under the new Domestic Violence Law, entitled, "An Act Relative to Domestic Violence," G.L. c. 209A, §7 was amended by inserting new language that imposes new responsibilities on police officers serving a 209A order. When effecting service upon a defendant pursuant to this paragraph, a law enforcement officer shall, to the extent practicable:
  - a. Fully inform the defendant of the contents of the order and the available penalties for any violation of an order or terms thereof, and
  - b. Provide the defendant with informational resources, including, but not limited to, a list of certified batterer intervention programs, substance

abuse counseling, alcohol abuse counseling and financial counseling programs located within or near the court's jurisdiction. Such documents will be provided by the Administrative Office of the Trial Court.

**D. Internal Processing of Orders:**

1. All restraining orders shall be processed immediately upon receipt, which will include the following steps:
  - a. A copy of the restraining order will be copied, and the copy will be forwarded to the Domestic Violence Unit for purposes of entering it into the in-house computer system and follow-up administrative checks.
  - b. The shift supervisor will make arrangements to have the restraining order served in-hand, if appropriate.
    - i. Once the order has been served, a report will be initiated documenting the service of the order and the method of service.
    - ii. If the order cannot be served because the defendant does not live locally, the shift supervisor shall ensure that follow-up action is taken to ensure that the order is sent onto the appropriate police agency for immediate service.
  - c. The copy of the restraining order shall be placed into the Records Management System.
  - d. Once the restraining order has been served, the officer shall notify the E.C.C. of service, complete the Return of Service and forward it to the Domestic Violence Unit, where it shall be entered in the Records Management system and then forwarded to the issuing court.
  - e. Departments must keep a record of all attempts at service.

**E. Violations of Restraining Orders:** These will vary, depending on which type of order has been violated. The following are all violations of stay-away and no-contact orders (several of these constitute distinct crimes, which should be charged separately):

1. Being present at the residence, whether or not the victim is present.
2. Being with the victim, even if invited by the victim (the defendant must be arrested. Both parties should be advised that if they wish to resume contact, the Court must amend the order. Be advised that only one person is named as the defendant in the order, and the victim can never be "in violation" by inviting the defendant).
3. Being in the same place as the victim, even if it is a public place.
4. Telephone calls:
  - a. Harassing telephone calls.

- b. \*57 telephone features will allow the victim to activate a trap that can trace the most recent incoming call.
  - c. Telephone Trap by the telephone company:
    - i. Trace Hotline: 1-800-227-1169.
    - ii. Annoyance Call Bureau: 1-800-332-6932 or 1-800- 743-7533.
    - iii. Only the telephone customer can request a trap.
    - iv. Traps cannot trace long-distance calls, unless a specific trap has been placed on long-distance carrier's trunk line.
    - v. Ineffective for calls from pay telephones.
    - vi. Results of traps will only be released to the police officer named on the application.
  - d. The victim may recognize the voice of the caller.
  - e. Messages left on answering machines, or voice mail should be saved, and retrieved by the officer as evidence.
  - f. Summons the defendant's toll records.
5. Letters/postcards:
- a. Dated and signed correspondence may constitute a violation of a no-contact order.
  - b. If unsigned, the victim may recognize the handwriting, or the officer may elect to have the letter fingerprinted.
  - c. If the correspondence is unsigned, the officer may use the postmark to establish a violation of a no-contact order.
6. Flowers or other items delivered on behalf of the defendant may constitute a violation of a no-contact order (contact need not be threatening to constitute a violation).
7. Failure to turn over keys or control over other articles may constitute a violation of a restraining order if so ordered.
8. Using others to deliver messages to the victim may constitute a violation of a no-contact order (children are often used).
9. Interfering with the victim's utilities.
10. Interfering with the delivery of mail to the victim.

**E. Investigative Considerations Involving Property:** The relationship of the parties and their property interests complicate domestic violence situations.

- 1. 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, an incident report will be initiated documenting the allegations.

2. Vacate Orders and Court Orders to Retrieve Belongings: 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.
  - a. 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.
  - b. The defendant named in the vacate order is allowed to retrieve his or her belongings under the following conditions:
    - i. The defendant must have a court order allowing for the retrieval of property.
    - ii. The police must accompany the defendant. Officers shall remain with the defendant throughout the process.
  - c. The victim must have prior notice by the department, and must agree to the timing of the retrieval.
  - d. The defendant must not be allowed to use this as a means of harassing the victim.<sup>27</sup>
  - e. When the 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.

## X. 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.
  1. Whenever an officer, in his/her professional capacity, has reasonable cause to believe that a child under the age of eighteen is suffering serious physical or emotional injury resulting from abuse, including sexual abuse, or from neglect, including malnutrition, or if a child is determined to be physically dependent upon an addictive drug at birth, the officer shall make an oral and

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<sup>27</sup> **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. Repeated visits may also constitute a violation. The purpose of the restraining order is to keep the defendant away from the plaintiff. If the defendant repeatedly returns to collect his or her belongings, it is defeating the purpose of the protective order.

written report to the Department of Social Services as required by M.G.L. c. 119, § 51A.

2. If an officer believes that a child under the age of eighteen has died because of neglect, abuse, or drug addiction, or is present in a household in which the officer observes the presence of drugs or evidence of drug use, he/she shall make a full report to his/her supervisor in addition to the report to the Department of Social Services in accordance M.G.L. c. 119, § 51A.
3. Officers should be aware that in serious cases of child neglect or abuse “any person” may apply to an appropriate juvenile court to have custody of a child under the age of eighteen taken away from the parents or other neglectful or abusing custodian, and have custody transferred, on an emergency basis, to the Department of Social Services or licensed child care agency or individual (refer to M.G.L. c. 119, §24).

**B. Teenage Dating Violence:** Adolescents can be involved in abusive relationships, which may be even more volatile than adult relationships. When investigating a violent teen relationship, the officer should keep in mind that the physical size and strength differential between the male and female may not be as dramatic as in adult relationships. The extent of injuries alone does not necessarily indicate who is the victim or the batterer. The officer will need to refer to the universal dynamics between the abuser and victim to uncover the truth.

1. A juvenile seeking a restraining order against a non-family member will not be refused protection solely because no adult is accompanying the juvenile complainant. If the defendant is the child's only care-taker, the Court will usually appoint a guardian ad litem to represent the juvenile.
2. All incidents involving adolescent violence shall be referred to the Youth/Family Services Unit 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 Youth/Family Services Unit to develop a plan with the school administration to ensure that the conditions of the order are observed. Further, there will be a plan of action developed to ensure that the school administrators report violations of the restraining order to the police.

**C. Victims for whom English is a Second Language:**

1. The preferred method of translation is to employ a sworn officer who has adequate fluency in the victim's language.
2. Use the AT&T Language Line, if necessary to communicate with a victim who does not adequately understand English.
3. As a last resort, have an adult friend or adult family member translate for the victim. *Avoid the use of minor children.*
4. **DO NOT** use the possible suspect to interpret.

**D. Hearing Impaired Victims:**

1. Some members of the deaf community are very reluctant to seek help from the hearing community, and this includes law enforcement.
2. **DO NOT** use the possible suspect to interpret. Use friends or family members only as a last resort, until a Court certified interpreter could be located. Extreme caution should be exercised when considering whether to have a child do the interpretation for parents (it is usually not advisable).
3. Massachusetts Commission for the Deaf and Hard of Hearing, Legal Interpretative Services: (617) 727-1543. To utilize this service for court hearings, advance notice of the Court date should be made.

**E. Mentally Ill Victims:**

1. Mental illness does not preclude someone from being the target of abuse. In fact, it may make some people even more vulnerable targets of domestic abuse. Do not fall prey to the abuser's claim that the victim is crazy which implies that the victim is making up the allegation of abuse, or somehow the abuse is being imagined.
2. Assess carefully for credibility, using other resources when possible.
  - a. Children, other family members.
  - b. Therapist.
3. Consider the possibility the injuries suffered by the complainant may be self-inflicted.

**F. Gay, Bi-Sexual, Lesbian, & Transgender Victims:**

1. These cases will pose more difficulty in assessing for the aggressor. Refer to the universal dynamics of abuse to serve as a guide.
2. Gay, lesbian and transgender victims of abuse may experience even deeper embarrassment because of the reality of homophobia in our culture, and within the criminal justice system. Extra sensitivity may be needed.
3. Resources for these victims are scant. One option is the Fenway Community Health Center's Victim Recovery Program. This organization can be reached at (617) 267-0900.

**G. Substance Abusing Victims/Abusers:**

1. Victims may abuse drugs or alcohol as a result of long-term abuse, or they may have been targeted as vulnerable because of their addiction. Abusing drugs or alcohol does not justify being victimized by a batterer. Also, note that the use of drugs or alcohol will preclude the victim's entry into most shelters. Most shelter care facilities generally require that the victim experience a period of sobriety prior to entry.

2. Offenders who abuse drugs or alcohol may blame that for their violence, and their victims may even agree. The investigating officer must remember that while some drugs may make a person more prone to violence, drug use does not excuse it. Alcohol does not make a person violent. Many drug and alcohol abusers are not violent, and not all batterers are substance abusers.

## **XI. REPORTING REQUIREMENTS AND CONSIDERATIONS:**

- A. Incident Reports:** The reporting procedures of any other crime scene should be applied to domestic violence incidents. Prosecution and subsequent legal action can be greatly enhanced by documentation and description of physical injuries, photographs of the injuries, and/or noting the presence of children in the household and other information specified in the aforementioned section of this directive.
- B. Situations Where an Arrest Has Not Been Made:** In those situations when an arrest is not warranted, or otherwise when an officer is not able to make an arrest in response to a domestic violence incident, the following procedures should be followed:
  1. The incident report should be forwarded to the Sexual Assault/Domestic Violence Unit for appropriate follow up.
  2. The officer shall note in his investigation report the reasons why he/she elected not to make an arrest.
    - a. This precaution is necessary to clearly demonstrate that officers acted well within the guidelines established by law.
  3. The officer should evaluate whether there are sufficient protections in place for the victim to ensure there will not be any further incidents. This may include, with permission of the sector sergeant transportation to a safer location.
  4. The officer shall advise and assist the victim in the completion of the necessary paperwork associated with the application for a temporary restraining order.
  5. An officer will never decline to assist an alleged victim of domestic violence with the application for a temporary restraining order.
- C. Records & Reports:** The following documentation must be made part of the records and reports that involve reports of domestic violence:
  1. Investigation Reports: All allegations of domestic violence shall be fully investigated. Officers shall conduct investigations in the same manner as they would any other criminal investigation. Officers investigating an allegation of

domestic violence shall also include as part of their report all actions taken or assistance offered to the victim.

2. M.G.L. c. 209A Domestic Abuse Law Rights Form: The reporting officer shall indicate in the report that the victim has been advised of their rights under M.G.L. c. 209A (Domestic Abuse Law) and provided with a copy of the law.
3. Property and Evidence Reports: Whenever an officer takes into his/her possession any property associated with the case, it shall be listed on a Property and Evidence Report form, a copy of which will be retained with the police report.
  - a. All property and/or evidence that is taken or received shall be submitted into an evidence holding locker, along with the original copy of the Property and Evidence form.
4. Photographs: Photographs of injuries sustained by the victim may prove to be very beneficial in a subsequent prosecution, and even in persuading the victim to follow through with such prosecution.
  - a. In those cases where photographs are taken of the victim's injuries, all precautions will be taken to preserve the victim's dignity and avoid any undue embarrassment to the victim. Officers must exercise discretion when photographing injuries. If an officer of the same sex is not on-scene, it is preferred that one be summoned to assist.
  - b. Photographs are considered evidence in a case and shall be handled as such.
5. Signing Complaints: Officers will always afford the victim the opportunity to file for criminal complaints, particularly if the officer elects not to make an arrest or take out an application for complaints.

**D. Investigative Considerations Involving Exceptions to the Hearsay Rule:**

There are circumstances where an officer may testify in court to what is termed “hearsay” in the law. Hearsay is defined as an out of court statement offered to prove the truth of the matter asserted. Hearsay statements are generally not admissible in court, with some notable exceptions. In the context of domestic violence cases, statements termed “excited” or “spontaneous” utterances represent a commonly used exception to the hearsay bar. This exception permits the introduction of statements made while the declarant is excited or traumatized by a recent event. In domestic violence investigations, officers should note in their reports any and all statements made by the victim, and the circumstances in which they were made, bearing in mind that they *may* be permitted to testify to these statements in court even if the victim ultimately denies the incident occurred, or declines to participate in the investigation or prosecution of the incident. “Excited” or “spontaneous” utterances are admissible in court if:

1. The witness's statements are made as a result of an exciting cause or traumatic event; and
2. The witness was still be reacting to the exciting cause or traumatic event at the time when making the statement. In assessing whether the victim/witness is reacting to an exciting or traumatic event, officers should take the following factors into consideration:
  - a. Length of time between the event and police response to the scene.
  - b. Observations made by the responding officers in addition to the statements made. Does what the officer is being told match with what the officer is observing?
  - c. Demeanor of the victim/witness, including crying, gasping for breath, difficulty speaking, fearfulness, or other signs of emotional upset and trauma.
  - d. Preservation of recordings made to the police station serve as supportive evidence.
  - e. Signs that the parties didn't have time to compose themselves or the affected areas.
3. Statements must relate to, characterize, or describe the event. Police reports should capture certain statements as reflected by quotations made by the parties involved.
4. How liberal were the victim/witness with their statements? Did the statements appear spontaneous as opposed to coaxed or premeditated?

**E. Development of recent case law related to spontaneous utterances:**

1. In *Crawford v. Washington*, 541 U.S. 36 (2004), decided on grounds of the sixth amendment Confrontation Clause, the United States Supreme Court ruled that testimonial statements<sup>28</sup> of an absent witness are not admissible in court unless the defendant had a prior opportunity to cross-examine the absent witness about the statements. In the context of Domestic Violence cases, this may severely restrict the use of spontaneous utterances in court where a victim refuses to testify against a defendant, absences herself from court, or is otherwise unavailable (ex: Fifth Amendment privilege).
  - a. If the declarant/victim is *available* to testify, the spontaneous utterance is admissible because the defendant's right to confrontation is satisfied.
  - b. *Commonwealth v. Gonsalves*, 445 Mass. 1 (2005) set out further analysis for the admissibility of testimonial statements where the declarant/victim is unavailable to testify:

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<sup>28</sup> "Testimonial statements" include affidavits, depositions, confessions to police by third parties, prior testimony at a preliminary hearing, prior grand jury or trial testimony, or formal statements procured through law enforcement interrogation. *Crawford v. Washington*, 541 U.S. 36, 56 (2004)

If the declarant/victim is unavailable to testify, whether or not the declarant/victim's statements are admissible depends upon whether they are *testimonial per se* or *testimonial in fact*.

- *Testimonial per se*: All statements to law enforcement officers are testimonial per se unless the statement was made during emergency questioning to secure a volatile scene or to determine the need for medical care.

Statements made to identify the nature of the emergency and to resolve the emergency are non-testimonial (and therefore admissible without the declarant's availability in court), including the name and whereabouts of the assailant. For investigative purposes, officers should note in their reports the circumstances of any statements made by the victim or witnesses on scene, including factors tending to make the situation an emergency, such as the known location of the suspect, and any injuries to the victim requiring medical attention.

- *Testimonial in fact*: Statements to any *non-governmental* witness are testimonial in fact if a reasonable person in the declarant's position would anticipate the statement being used against the accused in investigating and prosecuting the crime. For example, a statement to a civilian 911 operator would in most circumstances be testimonial in fact.

Statements made to civilians are generally non-testimonial, and therefore admissible, even when the declarant is unavailable. (Ex: six-year old child's statements to a physician during a medical examination were not testimonial, and were therefore admissible even though the child did not testify, *see Commonwealth v. DeOliviera*, 447 Mass. 56, 64 (2006)). If it can be shown that the statements were made to a civilian in an effort to seek help, but are not of a nature that one would reasonably expect the statements to be used by law enforcement to investigate or prosecute the crime, those statements are admissible even if the declarant is unavailable for trial.

For investigative purposes, it is therefore important to explore with the victim any and all individuals with whom she may have discussed the incident prior to police involvement.