

DOMESTIC VIOLENCE

WILLIAMSTOWN POLICE DEPARTMENT POLICY & PROCEDURE NO. 2.05	EFFECTIVE DATE: 02/28/2022
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I. GENERAL CONSIDERATIONS AND GUIDELINES

It is the policy of the Department to establish guidelines for law enforcement officers to respond to domestic violence calls. The primary focus shall be on victim safety, followed closely by offender accountability; accordingly, a proactive, pro-arrest approach in responding to domestic violence is a priority.

II. POLICY

It is the policy of the Department that officers shall be expected to do the following:

- Establish arrest and prosecution as a preferred means of police response to domestic violence;
- Enhance the safety of victims, their children, and anyone else living in the home;
- Take appropriate action for any violation of permanent, temporary, or emergency orders of protection;

- Promote the safety of law enforcement personnel responding to incidents of domestic violence. and;
- Provide victims and witnesses of domestic violence with support and assistance through cooperative efforts with community stakeholders in order to prevent further abuse and harassment. Community stakeholders are individuals and entities in the community who work to foster effective intervention in and prevention of domestic violence. Entities include, but are not limited to, law enforcement agencies, prosecutors, parole, probation, community based domestic violence and sexual assault programs, social service agencies, adult and child protective services, clergy, educators, government agencies, animal welfare organizations, businesses and employers; and
- Complete thorough investigations and effect arrest of the dominant aggressor upon establishment of probable cause.

III. **DEFINITIONS**

A. **Abuse:** is defined by G.L. c. 209A, § 1 as the occurrence of one or more of the following acts between family or household members:

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

B. **Family or Household Members:**

1. For the purposes of this policy, for all portions EXCEPT the charge of Domestic Assault and Battery under G.L. c. 265, section 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 policy, for the charge of Domestic Assault and Battery under G.L. c. 265, section 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.

Important Note: In essence, the broader G.L. c. 209A, section 1 is inclusive of all types of domestic violence including family, household members, and intimate partners. However, if charging “Domestic Assault and Battery” under G.L. c. 265, section 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:** shall not be limited to its definition in G.L. c. 140, § 121, but rather shall include any of the following:

1. Firearms;
2. Rifles;
3. Shotguns;
4. Machine guns;
5. Ammunition;
6. High capacity feeding devices; or
7. Antique firearms.

D. **Harass:** as defined in G.L. c. 268, section 13B means 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:** as defined in G.L. c. 140, sections 122, 122B, 129B, and 131, shall include all of the following:

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

F. **Serious Bodily Injury:** as defined in G.L. c. 265, sections 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 creates a substantial risk of death.

G. **Strangulation:** as defined in G.L. c. 265, section 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:** as defined in G.L. c. 265, section 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.

IV. PROCEDURE

According to 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."

V. DISPATCHER RESPONSE

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

- A. Whenever possible, two officers should be dispatched to the scene.
- B. Dispatch officers or call takers should do the following:
 1. 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;

2. Immediately notify a supervisor or the officer in charge of any domestic violence calls;
3. Preserve documentation of the facts and circumstances of each call, including tapes, for use in potential administrative and criminal investigations;
4. Attempt to elicit any and all information from the caller that may help the responding and investigating officers assess the situation, including the following:
 - a. Immediate safety of the caller, the victim, and others at the scene;
 - b. Nature of the incident (verbal or physical), nature of injuries, and whether violence is ongoing;
 - c. The type of weapons that are involved, or present, if applicable;
 - d. Potential hazards to responders, including animals;
 - e. Whether the caller or alleged assailant is under the influence of alcohol or drugs, or if there are mental health issues;
 - f. Caller's and alleged assailant's description;
 - g. Presence or absence of the alleged assailant, and direction and mode of travel, if applicable;
 - h. Other people involved or witnesses at the scene, including children;
 - i. Alleged assailant's criminal history (BOP check);
 - j. Number of times the Department has been called to this scene because of this suspect;
 - k. Existence of a protection order currently on file against the suspect or caller (check BOP);
 - l. Outstanding warrants against the caller or assailant if any exist (check CJIS and Warrant Management System);
 - m. Caller and alleged assailant's date of birth or social security number; and
 - n. Record of firearms identification cards and/or licenses to carry having been issued to resident(s).
5. Inform the caller of an approximate time of the officer's arrival;

6. 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 caller to the responding officers and remain aware of the victim's safety;
7. Make the safety of the domestic violence victim a primary concern;
8. 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;
9. Keep in mind the caller could be the victim or assailant; and
10. Do not cancel the original call for service if a subsequent request to cancel the original call is received – advise the responding officers of the second call and instruct them to continue to respond, investigate, and assess the situation to ensure that all parties are safe.

VI. POLICE RESPONSE

A. ON-SCENE CONSIDERATIONS

1. INITIAL OBSERVATIONS

a. Upon arrival, responding officers should approach the scene with a high degree of caution. Upon approach, officers shall 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.

Officers should consider the use of the tactical vests and ballistic helmets in the cruiser trunk.

b. 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 photographically if appropriate.

2. ENTERING A PRIVATE PREMISES

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 patrol supervisor.

"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. OFFICER'S Demeanor

- a. The responding officers shall maintain a professional, non-biased, 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.
- b. Upon entering, officers shall prevent the physical movement of the parties as much as possible and control their access to any potential weapons.
- c. Be cognizant that individuals under the influence of drugs or alcohol or 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.
- d. 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.

e. 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:

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

f. 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 the Appendix of this policy.

B. OFFICER'S RESPONSIBILITY ON SCENE

1. SEPARATE THE PARTIES

a. 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.

b. 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.

2. LANGUAGE BARRIERS

a. Officers should determine whether interpretative language services are needed and should seek out such services where available.

b. 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 the department at **(844) 348-9939, department code 85**, for interpretive language services 24 hours a day.

3. REMAIN ON SCENE

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:

- To assess that the suspect has left the scene; and
- To carry out the responsibilities outlined in the remainder of this policy.

4. MEDICAL TREATMENT

a. Officers shall 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.

b. In cases of serious injury, the preferred method of transportation is via ambulance. Officers are authorized by G.L. c. 209A, § 6 to transport victims of domestic violence to the emergency room of the nearest hospital, or to arrange for appropriate transportation to a health care facility. Officers should receive approval from their supervisor prior to transporting a victim of domestic abuse in a cruiser, except in an emergency.

5. INTERVIEWING WITNESSES

Officers shall 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.

6. GATHER INFORMATION FROM THE SCENE

Officers shall attempt to obtain the following information at the scene. If that is not possible, obtain the information during the follow-up investigation:

- Determine the relationships of all parties, including children, at the scene. If children are not immediately observed, ask if there are children present in the household.
- If children are present,
 - record their names and dates of birth;
 - check on the children to ascertain whether or not they have sustained an injury;
 - unless it involves a medical emergency or safety concern, consider conducting a “minimal facts” interview on scene if appropriate; and
 - if the child needs a more comprehensive interview, contact the District Attorney’s Office/Children’s Advocacy Center to schedule a forensic interview.
- Obtain at least two phone numbers where the victim can be reached. Include a cell phone number, a daytime phone number, or the number of a close relative or friend. Include these numbers in the incident report so the bail bondsperson or court personnel may inform the victim of the abuser's release on bail.
- Inform the victim that if 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.
- Consult with the victim whether their phone number should remain confidential and take steps to ensure that it is, if necessary.

- Do not rely on prior phone numbers in your in-house system, as they may be outdated.
- Obtain information about the suspect's ownership of, presence of, or access to firearms, and their location.
- Officers should gather information regarding suspect's past behavior/dangerousness. This information should be documented in an incident report 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:
 - Criminal history;
 - History of abusing the current victim;
 - History of abusing other victims;
 - History of non-fatal strangulation;
 - History of forced sex;
 - History of extreme possessiveness or jealousy;
 - Possession of weapons;
 - History of use of/or threats with a weapon;
 - Use of weapons in prior abuse of the victim;
 - Past threats against or abuse of pets;
 - Past attempts or threats to kill;
 - Past attempts or threats to commit suicide; and
 - Current or past vacate, restraining, no-contact or other protective orders, including those held against the suspect by someone other than this victim.
- After ascertaining past reported and non-reported criminal history, seek appropriate criminal action for current and prior incidents.
- Refer victims to 'Victim Referral Packet' found in Booking Area.

7. INFORMATION DOCUMENTATION

- a. Officers shall properly document important information, i.e., spontaneous utterances (direct quotes) by the victim, the suspect, children, and other witnesses.
- b. In collecting evidence of domestic abuse, officers should use photographs to document injuries sustained by the victim and the condition of the crime scene.

c. Contemporaneous records of injuries and crime scene condition are critical to the prosecution of alleged abusers:

- 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;
- Collect physical evidence (including weapons used, even when simple household item) and document collection in the incident report.

d. If the incident involves strangulation, the officer shall complete a strangulation worksheet. (See S:\DEPT FORMS\ABUSE FORMS)

e. Officers shall complete a High-Risk Assessment Worksheet (see Shared Drive under Domestic Violence) where there is a current or previous relationship between the parties and the responding officer:

- Believes a violent incident may have occurred,
- Senses the potential for danger is high,
- Is responding to repeat names or location, or
- Simply believes one should be conducted.

f. In cases where a domestic violence arrest has been made, copies of all worksheets will be submitted with the arrest packet for use by the Bail Commissioner for bail purposes, the District Attorney and Probation Department for use at the detainee's arraignment and prosecution.

8. GETTING TO A SAFE PLACE

a. Officers shall 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.

b. 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 G.L. c. 233, section 20L. For the purposes of this provision, a domestic

violence program is defined as any refuge, shelter, officer, 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 G.L. c. 233, section 20K.

c. 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.**

9. NOTICE OF RIGHTS

Officers shall give abuse victims immediate and adequate notice of rights by handing to them and reading them their rights (see Appendix of this policy). This form should be signed by the victim. Where the person's native language is not English, the statement shall be provided in said person's native language whenever possible. See 'Victim Referral Packet' in Booking Area and at S:\DEPT FORMS\ABUSE FORMS.

10. ACTIVATING THE EMERGENCY JUDICIAL RESPONSE SYSTEM

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

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

11. ISSUANCE OF AN ABUSE PREVENTION ORDER

Upon issuance of any applicable order under G.L. c. 209A, police shall immediately take possession of all firearms and licenses in the control, ownership or possession of the defendant. Such

firearms and licenses may not be returned until the order has been completely vacated or the firearms provision modified by order of the court.

- 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.
- 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.

12. SUBSTANTIVE DATING RELATIONSHIPS

a. 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; and
- the frequency of interaction between the parties.

b. 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.

c. 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.

d. Even in cases where there is no substantive dating relationship, a crime, such as stalking or criminal harassment, may have been committed.

A. RESPONSIBILITIES OF THE SHIFT SUPERVISOR OR OFFICER IN CHARGE

1. RESPONSE

- a. The Shift Supervisor or officer in charge shall ensure that all provisions of G.L. c. 209A, other related statutes and this policy are fully adhered to.
- b. The Shift Supervisor or officer in charge shall be responsible for monitoring all domestic violence calls.
- c. Whenever possible, the Shift Supervisor or officer in charge shall respond to the scene for the purpose of providing advice or any other assistance.

2. **ASSURANCES FOR PRACTICE**

Shift Supervisors or officers in charge will ensure that the provisions of all applicable laws and this policy are adhered to. Specifically, Shift Supervisors or officers in charge will ensure that:

- a. 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 will be filed in those cases.
- b. Shift Supervisor or officer in charge will review incident and arrest reports, in order to ensure compliance with the provisions of G.L. c. 209A and this policy. If, upon review of an incident report, it is believed that probable cause exists, the Shift Supervisor or officer in charge will ensure that criminal charges are initiated according to the statute and this policy.
- c. Whenever a domestic violence incident is identified as posing a significant danger the case should be assigned for follow up and a daily log entry made 'attention: all officers.'
- d. Whenever a shift supervisor or officer in charge identifies a particular defendant as being high risk to the victim or the public, the case should be promptly referred to the District Attorney's Office.
- e. Whenever a dual arrest is made, the Shift Supervisor or officer in charge shall review the case to determine if one of the

parties is a dominant aggressor before approving the dual arrests and reports.

3. **REFERRALS**

- a. Shift Supervisor or officer in charge shall ensure that the appropriate and mandated reports are filed for children, persons with disabilities, and the elderly.
- b. Shift Supervisor or officer in charge 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.
- c. The safety plan may include all, some or additional items:
 - Drive-bys
 - Welfare spot checks
 - Arresting the abuser
 - Serving 209A orders
 - Assisting in obtaining 209A order
 - Arranging transportation for medical, shelter, or other locations
 - Referral to a Domestic Advocate

4. **FOLLOW-UP INVESTIGATIONS**

Shift Supervisor or officer in charge shall:

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

VII. ARREST GUIDELINES

A. THE DECISION TO ARREST

1. **GENERALLY**

- 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 or not the victim wishes to seek complaints or wishes to testify at a future date.

2. **SUBSTANCES 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.

3. **ARREST: MANDATORY OR PREFERRED**

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

a. **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. G.L. c. 209A, section 7.

b. **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:

1. Has committed a felony;
 - o Aggravated Assault and Battery c265, §13A(b)

- Assault and Battery by Means of a Dangerous Weapon c265, §15A
 - Assault and battery upon an Elder or a Person with a Disability c265, § 13K
 - Assault and Battery on a Family or Household Member, Subsequent Offense Only c265, §13M(b)
 - Assault by Means of a Dangerous Weapon c265, §15B
 - Intimidation of a Witness c268, §13A
 - Kidnapping c265, §26
 - Stalking c265, §43
 - Strangulation or Suffocation c265, §15D
2. Has committed a misdemeanor involving abuse, as defined in G.L. c. 209A
- Assault and Battery on a Family or Household Member c265, §13M(a) (see definition)

B. IF THE SUSPECT HAS FLED THE SCENE

1. GENERALLY

- 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.
- b. One department's statement that probable cause to arrest exists shall be honored by another department. The second department shall immediately attempt to affect the arrest as requested by the investigating department.
- c. 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 G.L. c. 209A.
- d. 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.

2. THE MASSACHUSETTS PROBATION SERVICE ELECTRONIC MONITORING (ELMO) LAW

- a. 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”.
- b. 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.
- c. 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.
- d. 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.

C. DUAL ARRESTS / DOMINANT AGGRESSOR

1. Dual arrests, like the issuance of mutual restraining orders, are strongly discouraged because they trivialize the seriousness of domestic abuse and increase the danger to victims.
2. Officers should attempt to identify the dominant aggressor and take action based on that determination. In the majority of cases, an effective investigation will reveal the dominant aggressor.
3. 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.

4. If officers determine that neither party acted in self-defense and that both parties have committed an act of domestic abuse, then the officers should determine who is the dominant aggressor and take action considering the totality of the circumstances including:

- a. The relative severity of the injuries and fear inflicted in this incident;
- b. The use of force and intimidation in this incident;
- c. Prior incidents involving either party; or
- d. The likelihood of either party committing domestic violence in the near future.

5. 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 Shift Supervisor prior to arrest.

6. 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.

D. ARREST OF A CARETAKER

1. In cases involving abuse of a child, an elder or a person with a disability, officers must address the issue of whether or not the victim can be left alone safely if the abuser is arrested.

2. If the child, the elder or the person with a disability cannot be left alone, the appropriate protective agency must be contacted, in order to arrange for temporary care. When a caretaker is arrested and an agency is called for temporary care, the officer shall explain to the child, elder or person with disability what is happening and the reason for calling a protective agency.

E. BAIL

1. 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:

- A Restraining Order Violation under G.L. c. 208 or 209;
- Any act that would constitute abuse, as defined in G.L. c. 209A, section 1; or
- A violation of G.L. c. 265, sections 13M or 15D.

2. When a juvenile is properly charge with intimate partner violence, the 6-hour bail hold **does NOT apply** – All juveniles are exempt from this hold:

- Circumstances which warrant a charge of G.L. c. 265, section 13M upon a juvenile, would be those cases of violence perpetrated against someone with whom the juvenile once married, has a child in common, has been in a “substance dating relationship,” or are engaged to be marred. In such case, as 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.” See G.L. c. 276, section 58.
- 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 (G.L. c. 119, section 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.

3. A person shall NOT be bailed from a police station if under arrest for the following crimes:

- A Restraining Order Violation under G.L. c. 208 or 209A; or
- Any act that would constitute abuse, as defined in G.L. c. 209A, section 1 WHILE A RESTRAINING ORDER IS IN EFFECT.

4. 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 defendant’s release by the arresting police department.

5. Under G.L. c. 276, section 58A, a defendant may be held without bail if a court determines that a defendant is a danger to the victim or the public. The responding officer's actions and behavior at the scene form the basis for this determination by the prosecuting agency and/or Court. 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. 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.

F. NOTIFICATION TO THE VICTIM IN CRIMINAL CASES

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. See G.L. c. 276, sections 42A, 57, and 58 (as amended by Act sections 28, 31-32).

G. INFORMATION PROVIDED TO DEFENDANT

The arresting officer will provide the defendant with informational resources regarding domestic violence including a list of certified batterer's intervention programs. See G.L. c. 276, sections 42A, 57, and 58 (as amended by Act sections 28, 31-32). See 'Defendant Domestic Abuse Packets' in Booking Area and on the Shared Drive under Domestic Violence.

H. PROBABLE CAUSE STANDARD

All officers shall utilize the same standard of "Probable Cause" for domestic violence offenses as with all other crimes. 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.

I. FINGERPRINTING OF DEFENDANTS

Officers shall take fingerprints and photographs of all criminal defendants in domestic violence cases for entry into the Automated Fingerprint Identification System (AFIS). 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 M.G.L. c. 263, section 1A.

J. REFERRALS

1. Officers shall 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 Appendix of this policy). See 'Victim Referrals Packet' in Booking Area.
2. The referral information will be preprinted so that it can be distributed with the Abused Person's Notice of Rights card. The referral information may be typed directly onto the card to staple to it. 209A Victim Rights Form provides initial referral information preprinted, so that it can be distributed along with the abused victim's Notice of Rights Form. (Packets can be found in the Booking Area) Officers may also distribute information related to Victim Compensation through the Attorney General's Office.

K. INCIDENT REPORTS

1. 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.).
2. Officers shall indicate in the incident report whether the offense, alleged offense, or arrest involved abused as defined in G.L. c. 209A. See G.L. c. 41, section 98G, and G.L. c. 22C, section 49.

L. CONFIDENTIALITY OF REPORTS

1. The following records shall not be considered to be public records, and shall not be disseminated, except pursuant to this policy:
 - a. Any information concerning responses to reports of domestic violence, rape or sexual assault;
 - b. 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 in G.L. c. 209A, § 1; and
 - c. All reports of rape and sexual assault or attempts to commit such offenses, all reports of abuse perpetrated by family or household members, as defined in G.L. c. 209A, § 1, and all communications between police officers and victims of such offenses or abuse.
2. The above records may only be released to the following:
 - a. the victim, the victim's attorney, others specifically authorized by the victim to obtain such information;
 - b. prosecutors;
 - c. victim-witness advocates as defined in G.L. c. 258B, § 1, if such access is necessary in the performance of their duties;
 - d. domestic violence victims' counselors as defined in G.L. c. 233, § 20K, if such access is necessary in the performance of their duties;
 - e. sexual assault counselors as defined in G.L. c. 233, § 20J, if such access is necessary in the performance of their duties;
 - f. law enforcement officers, district attorneys or assistant district attorneys; and
 - g. all persons authorized to admit persons to bail pursuant to G.L. c. 276, § 57.

M. POLICE DEPARTMENT LOG

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 family or household member, as defined by Chapter 209A Section 1.

N. MANDATORY REPORTING

1. A report will be filed with the **Department of Children and Family Services (DCF)** 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 G.L. c. 119, § 51A. If a child has witnessed abuse, this could be “neglect” for purposes of mandatory filing. During office hours, contact the local DCF officer. After hours, call the hotline at: **1-800-792-5200**. 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.
2. A report will be filed with the **Disabled Persons Protection Commission** whenever the officer has reasonable cause to believe that a caretaker has abused / neglected a person with a disability between the ages of 18 and 59, in accordance with G.L. c. 19C, § 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.
3. A report will be filed with the **Executive Office of Elder Affairs** whenever the officer has reasonable cause to believe that someone age 60 or older has been abused / neglected, in accordance with G.L. c. 19A, §§ 14-26. An immediately 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.

VIII. FIREARMS

A. GENERALLY

When a firearm or other weapon is present at the scene of a domestic violence situation, 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.
2. If the 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 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 is lawfully possessed before returning the same.
3. If the officer determines that the weapon cannot be seized, the following actions can be taken:
 - a. a judge can order the defendant to surrender firearms and licenses; and
 - b. the chief who issued a license to carry may revoke or suspend such license.
4. In all domestic violence cases, the WPD case officer shall advise the licensing authority that the subject of the license is suspected of abuse and note this in their report.

B. STORAGE OF FIREARMS

1. 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.
2. 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.

C. FEDERAL FIREARMS PROVISIONS

Although officers cannot enforce Federal provisions, the chief or lieutenant should be notified whenever an officer identifies a case involving the following circumstances, because there may be Federal action that can be taken:

1. **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.
2. **Federal law** prohibits any person subject to a qualifying order of protection from possessing firearms and ammunition. See 18 USC § 922(g)(8).
3. **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.
4. **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 possesses guns (including handguns, rifles, and shotguns) or ammunition that traveled in interstate commerce.
5. **Misdemeanors** are excluded from consideration if they are punishable by a term of two years or less. Therefore,

misdemeanors that are punishable by a term of imprisonment of more than two years fall within that provision.

IX. **PROPERTY**

A. VACATE ORDERS AND COURT ORDERS TO RETRIEVE BELONGINGS

a.i.1. Once a vacate, no contact, stay away or refrain from abuse order is issued, officers shall not accompany a defendant to the property for any reason without specific judicial authorization.

a.i.2. The defendant in the vacate order is allowed to retrieve his or her belongings under the following conditions:

a. The defendant must have a court order allowing for the retrieval of the property.

b. The police must accompany the defendant, and shall remain with the defendant, throughout the process.

c. The victim must have prior notice by the police department, and must agree to the timing of the retrieval.

d. The defendant must not be allowed to use this as a means of harassing the victim.

e. The defendant may retrieve personal property including clothing, shoes, personal care items, etc. If the defendant is attempting to collect any other items, including furniture or electronic equipment that is in dispute, the defendant should be referred to the issuing court or the Probate and Family Court for settlement of shared property.

a.i.3. When a court order exists allowing for a victim to return to the defendant's residence in order to retrieve his or her belongings, the police shall accompany the victim to ensure the order is executed, and that the victim is able to follow the order free from harassment or abuse by the defendant.

B. REMOVING OR DESTROYING PROPERTY

When a 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.)

x. **SERVICE OF ORDERS**

A. IN-HAND SERVICE

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

2. Orders shall be served promptly upon receipt. If service is initially unsuccessful, the Department must continue to attempt service until it is completed. Service of orders will not be delayed in order to forward service by a specialized officer or unit. If an officer is unable to make service after "numerous attempts", the officer should document, in detail, the service attempts on the "return of service" form and request the court to allow service by leaving a copy of the order at the last known address of the defendant.

3. Service of orders may compromise victim safety. The victim's safety should be considered in the timing of the service of the order. Officers should encourage the victim to contact an advocate (either through the D.A.'s Office, SAFEPLAN or the local domestic violence program) in order to develop a safety plan around the service of the order.

B. RECORD OF SERVICE

The Department must keep a record of all attempts at service. Computer records and service/attempted service forms shall contain the following information, if appropriate:

a.i.1. Date and time received;

a.i.2. Type of legal process (civil or criminal);

a.i.3. Nature of document (warrant, summons, default, capiases, etc.);

a.i.4. Source of document (issuing court, etc.);

a.i.5. Name /address of plaintiff, defendant, complainant, or respondent;

a.i.6. Officer assigned for service;

a.i.7. Date/time of assignment and date/time service was executed/attempted;

a.i.8. Court docket number (warrant, restraining order number, etc.);

a.i.9. Date of service due;

a.i.10. Offense; and

a.i.11. Method of Service/Reason for Nonservice/Disposition (mailed, served, faxed, recalled, returned or unserviceable).

C. RETURN OF SERVICE

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

D. 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 department's responsibilities under G.L. c. 209A and this policy are met.

E. FIREARMS

Upon service of the order, police shall immediately take possession of all firearms, rifles, shotguns, machine guns, ammunition, and 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. G.L. c. 140, §§ 129B, 131.

F. 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.

G. OUT OF STATE ORDERS OR VIOLATIONS

1. A protective order issued in another jurisdiction (as defined in G.L. c. 209A, § 1) shall be given full faith and credit in the Commonwealth. A responding officer shall serve and enforce the terms and conditions of an out-of-state protective order as written by the issuing jurisdiction.
2. Officers shall make a warrantless arrest of any person the officer witnesses or has probable cause to believe has violated an emergency, temporary or permanent vacate, refrain from abuse, stay away, or no-contact order or judgment issued by another jurisdiction.
3. In assessing probable cause, an officer may presume the validity of the protection order issued by another jurisdiction when the officer has been provided with:
 - a. A copy of the order, by any source; and
 - b. A statement by the victim that such order remains in effect.
4. An order of protection is presumed valid if it gives the names of the parties involved, contains the date of the order was issued, has not expired, specifies the terms and conditions set against the abuser, contains the name of the issuing court and is signed by the issuing authority.
5. Violations of out of state orders or Massachusetts orders violated in another state may be charged criminally as contempt of court (G.L. c. 220, section 14), in the Commonwealth of Massachusetts.

H. 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. See G.L. c. 209A, section 7. (See Appendix of this policy). See 'Defendant Packet' in the Booking Area.

I. 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.

XI. **ALLEGATIONS AGAINST LAW ENFORCEMENT PERSONNEL**

Law enforcement personnel, whether sworn or civilian, 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. (See Department Policy **2.15 - Domestic Violence by Police Employees**)

The following procedures and protocols are critical components to the integrity of the law enforcement profession and the trust of the community.

When responding to a domestic violence incident involving law enforcement personnel, all of the previously outlined protocol apply. However, the additional protocols described in this section also apply.

A. DISPATCH AND OFFICER RESPONSE

1. The dispatcher shall immediately notify the on-duty Shift Supervisor or officer in charge and the Chief of all domestic violence involving law enforcement personnel of any agency.

2. The responding officers shall take immediate action to ensure the safety of the victim and all parties present.
3. A supervisor of higher rank than the officer involved must respond to the scene.
4. The responding officers will remain on the scene until relieved by the responding supervisor.
5. The responding officers shall document, in a report, their actions and complete such report prior to the end of their tour of duty.

B. ON-SCENE SHIFT SUPERVISOR RESPONSE

1. The Shift Supervisor or officer in charge and the Chief shall proceed to the scene of the incident and conduct a thorough investigation;
2. The Shift Supervisor or officer in charge and the Chief shall assess the actual and potential harm to the victim, children and others present, and ensure their safety;
3. Upon investigation, if the responding supervisor or officer in charge 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, that supervisor shall seize and take into custody, all department-issued firearms, licenses and equipment in possession of the officer, and shall further conduct a check of all firearms databases and request the officer surrender all personally-owned firearms and licenses;
4. If the suspected officer does not have their department-issued firearm(s) on his/her person or under his/her control at the time of the incident, the on-scene supervisor or officer in charge shall accompany the officer to the location where the firearm(s) are located and take custody of those firearm(s), licenses and any other weapons;
5. The Chief shall ensure enforcement of G.L. c. 208, 209, 209A, 209C, c. 140, § 129B, court orders, all policies, procedures and rules and regulations of the Department;

6. The Chief shall ensure that 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 employee involved;

7. The Chief shall submit, through the department's appropriate chain-of-command, a written report detailing his/her assessment of the incident and action taken before the end of that supervisor's tour of duty; and

C. CHIEF RESPONSE

The Chief shall:

1. ensure the on-duty supervisor or officer in charge has responded to the scene and initiated an investigation;
2. ensure the safety of the victim, children or others present at the scene.
3. ensure enforcement of all provisions of G.L. c. 208, 209, 209A, 209C c. 140, § 129B, court orders, all policies, procedures and rules and regulations of the Department;
4. ensure reports and proper documentation of the facts and circumstances of the incident and the action taken are submitted through proper channels in accordance with Department procedures;
5. ensure that appropriate mandatory notifications are made in accordance with Department procedure and chain-of-command, including notifications to the following:
 - a. Chief of Police;
6. Notify the proper police dept. if the officer is not from the WPD.

D. ADDITIONAL CONSIDERATIONS

1. When responding to a domestic violence complaint involving a police officer from another jurisdiction, all responding officers and commanding officers shall follow the same procedures that are to be followed in responding to a domestic violence complaint regarding an officer from their own department.
2. In the event that the reported incident involves the Chief, the supervisor or officer in charge shall notify the Town Manager.
3. In responding to an incident where the victim is a police officer, standard domestic violence response and investigation procedures should be followed.
4. In responding to domestic violence incidents where the parties involved are both police officers, standard domestic violence procedures should be followed. After probable cause and dominant aggressor determinations are made, an arrest should be made and all service weapons of the accused officer confiscated.

E. INVOLVED OFFICER/EMPLOYEE RESPONSE

Any officer or employee of the Department who has either been: (i) served with a restraining order; or (ii) named as a defendant in a restraining order or complaint involving domestic abuse; or (iii) is arrested for any crime involving abuse, shall:

1. immediately provide oral notification to the Chief at the time of the domestic incident or becoming aware that a court order has been issued or is in existence against them; and
2. within 24 hours provide written notification to the Chief of Police including a copy of the restraining order or other court document; and
3. Upon being served with a restraining order, the officer shall immediately surrender his or her License to Carry a Firearm / FID Card, department-issued firearm and any personal firearms in compliance with G.L. c. 140, § 129B to the Chief of Police. The officer may file an affidavit with the District Court that a firearm is necessary for employment and request an expedited hearing on the suspension and surrender order. If the officer is allowed to retain his department-issued firearm by the Court, the Chief of Police

may impose certain conditions (such as on-duty use and secured at the department during off-duty hours). [26.1.5]

F. CHIEF OF POLICE RESPONSE

The Chief of Police, or his/her designee, upon being notified that an employee under his/her command has been served with a restraining order and/or involved in a domestic incident, shall:

1. take steps to ensure the safety of the victim and all parties;
2. ensure that all appropriate notifications are made and that required documentation is completed and reviewed;
If not from Williamstown, the Chief shall notify the appropriate department's Chief.
3. determine if an internal affairs investigation should be conducted;
4. determine the employee's work status and if applicable, any appropriate disciplinary action. Pending a determination regarding the employee's fitness for duty, it may become necessary to place the involved officer or employee on Administrative Leave or Administrative Duty; and
5. ensure all completed investigatory reports have been submitted directly to the Chief of Police for his/her final approval, or continued investigation.

XII. DOMESTIC VIOLENCE ASSESSMENT WORKSHEETS AND STRANGULATION WORKSHEETS

While investigating D.V. cases, officers are to use these two forms at the request of the Berkshire District Attorney.

1. Strangulation Worksheet: Fill out when strangulation suspected.
2. D.V. Assessment Worksheet: Fill out in **ALL** cases

The D.A.'s Office has asked that we do NOT submit these forms with the complaint application and incident reports that go to the district court. They

request that officers submit them electronically by using the 'click here' box on the top of the sheet.

The sheets are located on the S:\ drive under the DEPT FORMS – ABUSSE FORMS folder.

APPENDIX INDEX

- A. RELEVANT STATUTES
- B. DOMESTIC VIOLENCE VICTIMOLOGY
- C. COMMON STATUTES RELATING TO DOMESTIC VIOLENCE
- D. ABUSED PERSON'S NOTICE OF RIGHTS

APPENDIX A
RELEVANT STATUTES

The following is a list of common domestic violence related statutes:

1. Physically Assaultive Crimes

a. Assault/Assault and Battery on a Family or Household Member c265m §13M(a)

- 1) Assault/Assault and Battery as defined by c265 s.13A, and
- 2) The Assault and Battery took place between:
 - a) Persons who are or were married to one another;
 - b) Persons who have a child in common regardless of whether
 - c) they have ever married or lived together; OR
 - d) Persons who are or have been in a substantive dating or engagement relationship.
- 3) Subsequent Offense c265 §13M(b)

b. Aggravated Assault and Battery c265 §13A(b)

- 1) Assault/Assault and Battery as defined by c265 s.13A, and
- 2) One of the additional Aggravating Factors were present:
 - a) The defendant's act caused serious bodily injury; OR
 - b) The defendant committed the act upon the complainant who was pregnant at the time of such assault, knowing or having reason to know she was pregnant, OR
 - c) The defendant committed the act upon the complainant who had an outstanding temporary or permanent restraining order at the time of the assault.

c. Assault and Battery by Means of a Dangerous Weapon c265 §15A(b)

- 1) Assault/Assault and Battery as defined by c265 s.13A, and
- 2) The touching was done with a dangerous weapon.
- 3) Aggravated Assault and Battery c265 §15A(c)
 - a) Assault/Assault and Battery as defined by c265 s.13A, and
 - b) The touching was done with a dangerous weapon.
 - c) One of the additional aggravating factors were present:
 - a.i. The defendant's act caused serious bodily injury;
OR
 - ii. The defendant committed the act upon the complainant who was pregnant at the time of such assault, knowing or having reason to know she was pregnant, OR
 - iii. The defendant committed the act upon the complainant who had an outstanding temporary or permanent restraining order at the time of the assault.
 - iv. The defendant is 18 years of age or older, and committed assault and battery upon a child under the age of 14.

d. Strangulation c265 §15D(b)

- 1) Strangulation or Suffocation as defined below.
- 2) Aggravated Assault and Battery is under c265 §15D(c)
 - a) Strangulation or Suffocation as defined below.
 - b) One of the additional Aggravating Factors were present:
 - i. The defendant's act caused serious bodily injury;
OR
 - ii. The defendant committed the act upon the complainant who was pregnant at the time of such assault, knowing or having reason to know she was pregnant, OR
 - iii. The defendant was previously convicted of the crime of strangulation or suffocation; OR

iv. The defendant committed the act upon the complainant who had an outstanding temporary or permanent restraining order at the time of the assault.

e. Assault and Battery upon an Elderly or Disabled Person c265 §13K

2. Other Crimes

a. Violation of a Restraining Order c209A §7

- 1) There was a Restraining Order which ordered the Defendant to
 - a) refraining from abusing,
 - b) vacate and remain away, OR
 - c) refrain from contacting the complainant;
- 2) Such order was in effect at the time of the violation;
- 3) The defendant knew of the pertinent terms of the order;
- 4) The defendant violated the order by:
 - a) abusing,
 - b) failing to vacate, OR
 - c) contacting the complainant.
- 5) Jurisdiction is given to the police department for either where the violation occurred or where the restraining order was obtained.
- 6) Any protection order issued by another jurisdiction shall be given full faith and credit throughout the Commonwealth and enforced as if it were issued in the Commonwealth for as long as the order is in effect in the issuing jurisdiction.

b. Stalking c265 §43(a)

- 1) The defendant knowingly engaged in a pattern of conduct or series of acts directed at the complainant (at least 3);

- 2) The acts would cause a reasonable person to suffer substantial emotional distress;
- 3) The acts caused the complainant to become seriously alarmed or annoyed;
- 4) The defendant committed the acts willfully and maliciously; and
- 5) The defendant also made a threat with the intention of placing the complainant in imminent fear of death or bodily injury.
- 6) Stalking in Violation of a Restraining Order c265 §43(b)
 - a) Stalking as defined by c265 s.43(a)
 - b) The acts were committed in violation of a temporary or permanent restraining order.
- 7) Stalking Subsequent Offense c265 §43(c)
 - a) Stalking as defined by c265 s.43(a)
 - b) The defendant was previously convicted of the crime of stalking.
- 8) Lesser Included Crime of Criminal Harassment c265 §43A(a)
 - a) The defendant knowingly engaged in a pattern of conduct or series of acts directed at the complainant (at least 3);
 - b) The acts would cause a reasonable person to suffer substantial emotional distress;
 - c) The acts caused the complainant to become seriously alarmed or annoyed;
 - d) The defendant committed the acts willfully and maliciously;
 - e) Criminal Harassment Subsequent Offense c265 §43A(b)
 - i. Criminal Harassment as defined by c265 s.43A(a)
 - ii. The defendant was previously convicted of the crime of criminal harassment.
- 9) Jurisdiction is given to the police department(s) where any one of the elements occurred.

c. Intimidation of a Witness c268 §13B

- 1) The defendant, directly or indirectly, willfully, did
 - a. Threaten OR
 - b. Attempted to cause physical injury, emotional injury, economic injury, or property damage to; OR
 - c. Conveyed a gift, offer, or promise of anything of value to; OR
 - d. Mislead, intimidated, or harassed a person who was:
 - a.i. A witness or potential witness at any stage of a criminal investigation or other criminal proceeding; OR
 - a.ii. A person who was or is aware of information, records, documents, or objects that relate to a violation of a criminal statute, or a violation of conditions of probation or bail; OR
 - a.iii. A person who is furthering a civil or criminal proceeding, including criminal investigation, grand jury proceeding, trial, other criminal proceeding of any type, probate and family proceeding, juvenile proceeding, housing proceeding, land proceeding clerk's hearing, court ordered mediation, or civil proceeding of any type; OR
 - a.iv. A person who is or was attending or had made known his intention to attend a civil or criminal proceeding, including criminal investigation, grand jury proceeding, trial, other criminal proceeding of any type, probate and family proceeding, juvenile proceeding, housing proceeding, land proceeding clerk's hearing, court ordered mediation, or civil proceeding of any type
- 2) With the intent to impeded, obstruct, delay, harm, punish or otherwise interfere thereby, or did so with reckless disregard
- 3) A prosecution under this section may be brought in the county in which the criminal investigation, grand jury proceeding, trial or other criminal proceeding is being conducted or took place, or in the county in which the alleged conduct constituting an offense occurred.

d. Kidnapping c265 §26

- 1) The defendant had no lawful authority;
- 2) The defendant forcibly (either physically or constructively) or secretly confined the complainant; and
- 3)** It was done against the complainant's will.

APPENDIX B

VICTIMOLOGY

Police can be agents of change—fulfilling a mandate to intervene, holding batterers accountable, and providing protection to victims. A victim’s first contact with law enforcement rarely happens after the first or even the second domestic violence incident. A sensitive response to a domestic violence call is essential due to the complex nature of these crimes and their devastating effects.

Domestic violence victims can display a variety of behaviors, and officers should understand and be prepared for a range of possible responses. Note that some responses, though frustrating, may allow victims and their families to feel safer once law enforcement has left the scene or the perpetrator is released from custody.

Remember, anyone can be a victim; anyone can be an offender regardless of gender and/or sexual orientation. Always consider who is the dominant aggressor and make that determination based on the totality of the facts and circumstance, not on the victim/offender’s gender, size etc.

- It is crucial for law enforcement officers to be familiar with the dynamics of domestic abuse. “Dynamics” refers to how an abuser may acts towards their victim and how the victim may react towards the abuser. A lack of understanding of the complexities of these dynamics may result in blaming the victim for the violence and manipulation of the criminal justice system by the abuser.
- Law enforcement officers arriving at an incident are likely to find a victim who is taking responsibility for an abuser’s actions. A victim, in fear of their abuser, may act in ways that appear to conceal the abuse. The victim may waive their right to “no contact” orders, choose not to obtain a restraining order, bail the abuser out of jail, or recant in court—accusing the officer of lying. Officers should be aware that victims may act this way in an attempt to keep themselves and their children safe. (NACDV: Dynamics page <http://ncadv.org/learn-more/what-is-domesticviolence/dynamics-of-abuse>).

- It is critical for officers to understand that when an abuser believes they are losing control over the victim, the risk to the victim of serious injury, sexual assault, stalking, and homicide increase.
- Many victims of domestic violence never file a report with law enforcement, get a restraining order/injunction, or connect with a domestic violence program. Numerous victims don't call 911 for many of the same reasons that they find it difficult to leave their abusers (fear, cultural beliefs, immigration ramifications, and economic concerns). Furthermore, many victims may regret calling 911 once they are thrust into the criminal justice system, which can bring increased financial burdens due to lost income, defense attorney fees, embarrassment for having to publicly testify to the abuse, and pressure to recant.
- This whole process may, in fact, put the victim at a higher risk of danger. An appropriate response is to assist in determining what risks exist and help to problem-solve on how to minimize those risks.
- Be aware that trauma may influence a victim's interactions with law enforcement officers responding to domestic violence calls. Do not assume a victim is uncooperative. Violence can be very traumatizing and each victim responds differently. It is of great assistance to Law Enforcement to be familiar with and work with the domestic violence programs in their area. Encourage victims to use all available services and, when available, utilize the domestic violence advocates who can greatly assist the victim with this safety planning process.

APPENDIX C COMMON STATUTES RELATING TO DOMESTIC VIOLENCE

Abuse Prevention—MGL c209A

Aggravated Assault and Battery—MGL c265 §13A(b)

Assault and Battery by Means of a Dangerous Weapon—MGL c265 §15A(b)

Assault/Assault and Battery on a Family or Household Member—MGL c265 §13M(a)

Assault and battery upon an elderly or disabled person—c265 §13K

Civil Liability—MGL c209A §6

Confidentiality—MGL c233 §20k, 20L

Employer Requirements—MGL c149 § 52E

Firearms—MGL c140 §121, 129B,131

Harassment Prevention Orders—MGL c258E

Intimidation of a Witness—MGL c268 §13B

Kidnapping—MGL c265 §26

Police Records—MGL c41 §98F

Police Reports—MGL c41 §97D

Reporting of Suspected Abuse or Neglect—MGL c119 §51A

Sexual Assault Law Enforcement Guidelines—EOPSS 2017

Strangulation—MGL c265 §15D(b)

Stalking -MGL c265 §43(a)

Violation of a Restraining Order—MGL c209A §7

Witness Intimidation—MGL c268 §13B

Witness Protection—MGL c263A

APPENDIX D**ABUSED PERSON'S NOTICE OF RIGHTS**

- **WILLIAMSTOWN POLICE DEPARTMENT**
 - **Abused Person's Notice of Rights**

Directions to Police Officer:

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

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

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

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

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

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

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

The victim is requested to sign this acknowledgement that rights were read and given in hand.

Signed: _____ Witness Officer: _____

Refused to sign