

Waltham Police Department

DOMESTIC VIOLENCE AND ABUSE

CHAPTER 91

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Accreditation Standard #:

POLICY:

It is the policy of the Waltham Police Department to treat domestic violence or abuse as criminal conduct. Reported instances of domestic violence shall be treated the same as all other requests for police assistance in cases where there has been physical violence or an assault has occurred. The department recognizes the inherent danger of domestic abuse, its repetitive nature, and the frequency with which it escalates in severity. Police are well aware that situations, which appear minor at first glance, can mask a much more serious condition. Therefore, whenever possible, at least two police officers and a supervisor should be assigned to a domestic violence situation, unless immediate intervention is necessary to prevent serious physical harm. Although domestic violence cases present unique and difficult problems for law enforcement, this department will attempt to carry out its mandate of preserving the safety and dignity of the community we serve by adopting the following:

- 1.** The primary focus of the Waltham Police response to domestic abuse will be ensuring the victim's safety.
- 2.** Arrests shall be made in domestic abuse cases in accordance with Mass. Gen. Law, Chap. 209A.
- 3.** The following factors will not affect police response to domestic violence:
 - a.** The marital status of the parties.
 - b.** The race, sex, or financial status of the parties.
 - c.** Verbal assurances that the violence will stop.
 - d.** Speculation that the victim may not pursue criminal prosecution.
 - e.** The location of the incident (i.e., public or private).
 - f.** The victim's emotional state.

DEFINITIONS:

Mass. Gen. Law, Chap. 209A, Sec. 1, defines certain terms used in these procedure as follows:

ABUSE: The occurrence of one or more of the following acts between family or household members:

- a. Attempting to cause or causing physical harm.
- b. Placing another in fear of imminent serious physical harm.
- c. Causing another to engage involuntarily in sexual relations by force, threat of force, or duress.

This definition should be interpreted broadly by officers when responding to a complaint. Category A applies to any type of physical harm or attempt to cause physical harm; for example, punching, kicking, shoving, etc. Category B applies to threats and to situations where the abuser has assaulted the victim but no battery has occurred. Note that category C applies regardless of the marital status between the parties.

FAMILY OR HOUSEHOLD MEMBERS ARE PERSONS WHO:

- a. Are or were married to one another.
- b. Are or were residing together in the same household.
- c. Are related by blood or are or were related by marriage.
- d. Have a child in common, regardless of whether they have ever been married or lived together.
- e. Are or have been in a substantial dating or engagement relationship.
- f. This includes same sex relationships.

Under this definition, any person, regardless of sex or age, who has been abused by a spouse, a former spouse, a household member or former household member (i.e., someone, not necessarily of the opposite sex, who shares a household), parent of the plaintiff's minor child (though unmarried), or a blood relative, including a minor child, may file a 209A abuse petition. If the parties are involved in a dating or engagement relationship of substance and time duration, they are included in this category. If the parties have a regular pattern of sharing a household for a night or more at a time, the parties should be considered to be household members for purposes of Mass. Gen. Law, Chap. 209A.

CIVIL LIABILITY:

According to Chapter 403 of the Acts of 1990 and MGL c. 209A: 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.

PROCEDURES:

1. **DISPATCH:** Upon receipt of a report of possible domestic abuse, the person receiving the report should obtain as much information as possible, including determining if an assault is in progress and if a weapon is involved. High priority should be given to any situation in which it appears that an assault is in progress or is imminent, and officers should be dispatched to the scene as soon as possible.
2. **RESPONDING TO THE SCENE:** The responding officers must take immediate control of the situation and should separate the parties to prevent any violent action, and to interview them 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 allegations of mistreatment. In attempting to ascertain the facts in the dispute, the officers should allow each party to present his or her story individually, avoiding any unnecessary interruptions by the other party. Separating the parties also allows each to relate matters to an officer without being overheard, influenced or intimidated by the other party. Officers should determine whether interpretative language services are needed and should seek out such services where available.
 - a. The high risk of injury associated with domestic violence situations requires that officers immediately proceed to the place of the dispute.
 1. Whenever possible, two officers and a supervisor should always be dispatched to the scene.
 2. Officers should request and be provided with the following information, when dispatched to a suspected domestic call:
 - a. The existence of any warrants (by a check of LEAPS and the Warrant Management System).
 - b. The criminal history of the suspect (B.O.P. check).
 - c. The existence of any protective orders against the suspect (B.O.P. check) (Include orders held by persons other than the victim in this case).

- d. Any other relevant information the department is aware of, especially regarding a history of incidents involving the particular address, or the parties, and the likelihood of firearms being present.
 - e. Record of firearms identification cards and/or licenses to carry being issued to resident(s).
 3. Upon approach, officers shall make observations of the scene, and listen for sounds of a disturbance.
 - b. **OFFICER'S 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 action:
 1. **REMAIN ON THE SCENE:** As long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of an officer, that officer should remain at the scene where the abuse occurred or was (or is) in danger of occurring for a reasonable period of time to prevent abuse. If the suspect has fled the scene, a reasonable period is the amount of time necessary:
 - a. To assess that the suspect has left the scene.
 - b. To carry out the responsibilities outlined in b-f listed below.
 2. **MEDICAL TREATMENT:** Assist in obtaining medical treatment for injuries resulting from an assault, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility, notwithstanding any law to the contrary.
 3. **GETTING TO A SAFE PLACE:** Assist the victim and dependent children in locating and getting to a safe place, including but not limited to a designated meeting place for entry into emergency shelter or a family member's or friend's residence (or a similar place of safety). The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances.
 4. **NOTICE OF RIGHTS:** Give abuse victim's immediate and adequate notice of rights by handing to them and reading a form stating their rights (see attached). Where said person's native

language is not English, the statement shall be provided in said person's native language whenever possible.

5. **CONFIDENTIALITY OF ABUSE PREVENTION ORDER PROVISIONS:** A plaintiff's residential address and workplace address shall appear on the court order and be accessible to the defendant **unless the plaintiff specifically requests that this information be withheld from the order.** See M.G.L. c. 209A, § 8. Police officers helping to issue emergency abuse prevention orders must be cognizant of the victims' confidentiality rights and requests.
6. **ACTIVATING THE EMERGENCY JUDICIAL RESPONSE SYSTEM (EJR):** Assist the victim by activating the Emergency Judicial Response System when a Judge is not available through court. This should be done even when the alleged abuser has been arrested.
7. **REFERRALS:**
 - a. Provide information, including phone numbers, about local resources such as the REACH program for emergency shelter and counseling services.
 - b. It is advisable that departments have referral information preprinted, so that it can be distributed along with the Abused Person's Notice of Rights card. Referral information can be typed onto the card, or stapled to it.

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

3. **ABUSE PREVENTION ORDER:**

- a. **ABUSE PREVENTION ORDERS:** Upon issuance of any order, under M.G.L. c.209A Abuse Prevention Orders, police shall immediately take possession of all firearms, rifles, shotguns, machine guns, ammunition, any license to carry firearms and any firearms identification cards in the control, ownership or possession of said defendant. Such weapons and permits may not be returned until the order has been completely vacated or the firearms provision modified by order of the court.

- b. **VIOLATIONS OF ORDERS:** In the interest of immediacy and the statutory mandate to arrest, officers shall make a warrantless arrest of any person the officer witnesses or has probable cause to believe has violated an order including a violation, which stems from the possession of weapons.
- c. **SEIZURE AND STORAGE OF FIREARMS:** Every department within the Commonwealth shall honor another department's request for assistance in seizing the above listed items; regardless of which department is named within the order. The department named within the order shall be responsible for the storage of the seized items or the delegation of storage to an authorized facility.
- d. **ORDERS AGAINST LAW ENFORCEMENT OFFICERS:** In cases involving police officers that are defendants in Abuse Prevention Orders, the defendant **must** relinquish all firearms, including departmental weapons, to the department serving the order.
- e. **FEDERAL FIREARMS PROVISIONS:** Although officers cannot enforce the following Federal provisions, the chief should be notified whenever an officer identifies a case involving the following circumstances, because there may be Federal action that can be taken.
 - 1. **Persons Named in Protective Orders:** Under the Federal Crime Control and Law Enforcement Act of 1994, it is unlawful for an individual subject to a "permanent" restraining order involving "intimate partners" to receive, ship, transport, or possess guns (including handguns, rifles, and shotguns) or ammunition that traveled in interstate commerce.
 - 2. **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.
 - 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.

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

4. **PRIVATE PREMISES:** Officers may enter private premises in the following circumstances:
- a. Officers must leave if both parties request that they do so unless there is probable cause to believe that a felony has been committed or that their continued presence is necessary to prevent physical harm or to carry out the provisions of Mass. Gen. Law, Chap. 209A, or that other circumstances warrant the officer's presence. Officers are to take any and all reasonable steps to ensure that a request to leave the premises is, in fact, the free and voluntary request of the involved parties.
 - b. Entering a private premises: When investigating a report of domestic violence, officers should be thorough and observe the following guidelines:
 - 1. Officers may enter private premises without a warrant in the following circumstances:
 - a. At the request of someone in lawful control of the premises.
 - b. Where there is imminent danger of violence that could result in death or serious physical injury.
 - c. Where a breach of 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.
 - 2. "Private premises" shall include but not be limited to, a house, an apartment, a condominium, a hotel room, a mobile home, a dormitory room or a house trailer.
 - 3. Officers shall remain on the scene where the abuse occurred or was in danger of occurring as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of the officer.
5. **PROFESSIONALISM:** Officers should act in a professional manner at all times in responding to a domestic dispute.
- a. Officers should not attempt to resolve arguments between the persons present. Personal opinions and emotions should not govern the words or actions of the officer.
 - b. The responding officer should state their reason for being present, and quickly

attend to the professional responsibilities presented by the situation.

6. **ENSURING IMMEDIATE SAFETY:** When responding to a call for services, officers should take whatever steps are necessary to ensure the immediate safety of those present.
 - a. Upon entering, officers shall prevent the physical movement of the parties as much as possible and control their access to any potential weapons. Officers should never lose sight of an alleged abuser, while on the scene.
 - b. Officers should be mindful that an abuser who is under the influence of drugs or alcohol, or who suffers from mental illness, might pose a greater risk to the victims and officers' safety.
7. **FIREARMS - SURRENDER/CONFISCATION:** Chapter 24 of the Acts of 1994 is an amendment to Mass. Gen Law, Chap 209A, which requires that when an emergency order or a temporary order is issued by the court, the defendant surrender all his firearms, rifles, shotguns, machine guns, ammunition, firearms identification card, and license to carry (called a "suspension and surrender" order). It also disqualifies a person who is the subject of a "suspension and surrender" order from obtaining a firearms identification card or license to carry firearms.
 - a. Upon service of the order, police shall immediately take possession of all firearms, rifles, shotguns, machine guns, ammunition, licenses to carry and firearms identification cards in the control, ownership, or possession of the defendant. Such weapons and permits may not be returned until the Abuse Prevention Order has been completely vacated or the firearms provision has been modified by order of the court. M.G.L. c. 140, §§ 129B, 131
 - b. 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.
 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.
 - b. Search for and take custody of the firearms or weapon if a party who lawfully resides there requests that they do so. A consent search is allowed in areas except those areas where the suspect has a reasonable expectation of privacy.

- c. Take temporary custody of the firearm or weapon to alleviate the threat of serious violence.
- 3. Determine whether a firearm is lawfully possessed before returning the same.
- 4. If the officer determines that the weapon cannot be seized, the following actions can take place:
 - a. A judge can order the defendant to surrender guns, a license to carry and an F.I.D. card.
 - b. The chief who issued the license to carry may revoke or suspend such license issued by him or her.
- 5. In all domestic violence cases, the investigating department shall advise the licensing authority that the subject of the license is suspected of abuse.
- 8. **DETERMINING PROBABLE CAUSE:** A responding officer should make a prompt inquiry to determine if there is probable cause to believe that a crime has been committed and the identity of the perpetrator.
 - a. Probable Cause may be established by the victim's description of events. No further corroborating evidence or admission by the defendant is necessary. (Note: Further evidence should be gathered, if available, to assist in later prosecution of the case.) If there is no valid order in effect but an abuser's actions witnessed by an officer constitute a crime, giving rise to a right to arrest, such as an assault, then an arrest shall be made.
 - b. Probable Cause to arrest for violation of a 209A order:
 - 1. Is not negated by the fact that the victim has allowed the abuser into the home.
 - 2. Is not negated by existing Probate Court orders granting the defendant custody or visitation.
 - 3. Is not predicated on the defendant's entry into the victim's home. If the defendant is outside the home but near enough to harass the victim in violation of the express terms of a stay away order, officers shall arrest.

9. **EVALUATION OF CRIMES PRESENTED:** Based upon the facts presented, the responding officer should determine what crime if any, has been or is being committed. In assault cases, officers should inquire what instrumentality has been used, so that it can be determined if a felony has been committed. In all cases, officers should ascertain if a 209A order is in force at the time, and if its provisions have been violated. Officers should consider whether any of the following crimes have been alleged:
- a. Assault.
 - b. Assault and Battery.
 - c. Assault by Means of a Dangerous Weapon.
 - d. Assault and Battery by Means of a Dangerous Weapon.
 - e. Assault with Intent to Murder or Maim.
 - f. Attempted Murder.
 - g. Mayhem.
 - h. Assault with Intent to Rape.
 - i. Rape.
 - j. Kidnapping.
 - k. Threats.
 - l. Trespass.
 - m. Malicious Destruction of Property.
 - n. Annoying Phone Calls.
 - o. Disorderly Conduct.
 - p. Disturbing the Peace.
 - q. Violation of a Restraining Order.
10. **ARREST:** Responding officer **must** make any arrest required by Mass. Gen. Law, Chap. 209A. Additionally, it shall be the policy of the Waltham Police Department that any officer who has reason to believe that a family or household member has been

abused or is in danger of being abused **shall**:

- a** **ARREST** any person whom the officer has reason to believe has committed a felony;
- b** **ARREST** any person who has committed, in the officer's presence, a misdemeanor which involves abuse, has a statutory or Common Law right of arrest; and
- c** **ARREST** any person whom the officer has probable cause to believe has committed a violation of a vacate order or refrain from abuse order issued under Mass. Gen. Law, Chap. 208 or 209A. (Note: In the case of violation of a 208 or 209A order, the statute makes an exception to the requirement that the misdemeanor be committed in the officer's presence.

The statute states that the officer **shall** arrest any person whom the officer has **PROBABLE CAUSE** to believe have violated a 209A or 208 Order. This means that in addition to arresting for violation of 209A orders, an arrest **shall** be made for a violation of a probate order issued under Mass. Gen. Law, Chap. 208, which says on the order either vacate order or temporary restraining order.

- d** **ARREST** any person whom the officer has probable cause to believe has committed a past assault and battery in violation of Mass. Gen. Law, Chap. 265, Sec. 13A.
- e** Any officer arresting both parties is required by law to submit a detailed, written report, setting forth the grounds for dual arrest.
- f** 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. In the event that a dual arrest occurs, any officer arresting both parties is required by law to submit separate, detailed, written report, in addition to an incident report, setting forth the grounds for the dual arrest.
- g** A police officer's decision whether or not to make an arrest shall not be influenced by a complainant's request that an abuser not be arrested.
- h** No law officer investigating an incident of domestic violence shall threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.

11. **IF THE SUSPECT HAS FLED THE SCENE:**

- a When probable cause to arrest exists, and the suspect has fled the scene:
 - 1 The officer will have the dispatcher advise area patrols, including other jurisdictions where the suspect is believed to be going, in order for those patrols to attempt to locate and arrest the suspect.
 - 2 One department's statements to another that probable cause to arrest exists shall be honored. The second department shall immediately attempt to affect the arrest as requested by the investigating department.
 - 3 **Officers will attempt to make a warrantless arrest within a reasonable period of time. However, as soon as is practical, the investigating department shall seek an arrest warrant from the appropriate court, in cases involving abuse as defined under M.G.L. c. 209A.**
 - 4 When probable cause exists to believe a crime involving abuse occurred, it is **not** proper procedure to advise the victim to seek complaint applications on THEIR own.

12. **FINGERPRINTING AND PHOTOGRAPHING OF DEFENDANTS:**

Whenever resources allow, officers shall take fingerprints and photographs of all criminal defendants in domestic violence cases. These records will be forwarded for entry into the A.F.I.S. system.

13. **VICTIM ASSISTANCE:**

- a Officers must remain for the period of time necessary to ensure the **immediate** physical safety of the victim; **or** make other arrangements for safety such as driving the victim to a relative's home or shelter;
- b Officers must also make arrangements for the victim(s) to receive medical attention if necessary. In cases of serious injury, the preferred method of transportation is via ambulance. Officers are authorized by Mass. Gen. Law, Chap. 209A to transport victims of domestic violence to the emergency room of the nearest hospital. Officers should receive approval from the Commanding Officer - Platoon on Duty prior to transporting victims of domestic abuse in a cruiser, except in an emergency. If the victim is not seriously injured, or declines transportation, the victim may then seek transportation through his own means.

- c. A victim of domestic violence will be kept informed of pertinent issues regarding the offender. Some of the issues to notify the victim are: any arrest of the offender, attempted arrest of the offender coupled with an escape, when the offender has been released or bailed from the Waltham Police Holding Facility, when a decision to summons instead of arrest is made. The Commanding Officer - Platoon on Duty, or his designee, shall notify the victims as soon as possible regarding the appropriate information. Such notifications will be noted.
- d. Victims of domestic violence may request and receive, at no cost, a copy of the police incident report from the Waltham Police Department within the limits set forth by C.O.R.I.
- e. Officers of the Waltham Police Department 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 or friends' 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.

14. RIGHTS:

- a. The officer must give the victim notice of applicable rights by **handing the victim a copy** of those rights in English and in Spanish as they appear in Mass. Gen. Law, Chap. 209A, Sec. 6, and **reading** the victim those rights in English. If the victim does not speak English, but another language, the officer shall make every reasonable effort to obtain an interpreter, at the earliest opportunity.
- b. The officer shall use a Waltham Police Department "Rights Under 209A Law" Form and obtain a signed receipt acknowledging that notice of rights has been given and read.
- c. When a victim appears at the Waltham Police Station requesting an abuse order, and will appear in court to obtain an order, a Waltham Police Department "Rights Under 209A Law" Form acknowledging notice of rights have been given, shall be filled out.

15. INVESTIGATING: Officers should investigate crimes that occur in the context of domestic violence in the same manner as any other crime. This should include taking statements of witnesses and seizing physical evidence where authorized to do so. Officers should facilitate the photographing of any physical injuries.

- a. If the victim will be seeking to hide from the abuser, **KEEP A SEPARATE RECORD** of the address and phone number.

- b. Obtain information about the suspect's ownership of, presence of, or access to firearms, and their location.
- c. Ascertain if there is a history of such disputes and whether there are any vacate, restraining, no-contact or other protective orders currently in effect, including those held against the suspect by someone other than this victim.
- d. Document allegations of prior abuse, including expired protective orders.
- e. Seek appropriate criminal action for prior incidents.
- f. **DETENTION HEARINGS:** Officers should provide information regarding dangerousness to the Prosecutor **for use at arraignment.**

16. **WARRANTS AND COMPLAINTS:**

- a. Officers should attempt to apprehend any person who the officer has reason to believe has committed a felony and who is no longer on the scene.
- b. In cases in which it appears that a misdemeanor has taken place outside of the officer's presence and an arrest is not possible, the officer shall complete a report and follow up with a complaint for a summons/warrant. In cases in which, in addition, it appears that there is an imminent threat of bodily injury, or the commission of another crime, or of flight from the Commonwealth by the perpetrator, the officer shall seek a warrant for the perpetrator's arrest under Mass. Gen. Law, Chap. 218, Sec. 35A, and attempt to execute the warrant in compliance with department procedures which require continued and vigorous attempts at service: seeking through investigative means the location of the suspects and ensuring that these efforts are continued on the following shift(s). In every instance where probable cause to arrest exists, the officers shall make continued and vigorous attempts in effecting an arrest.
- c. All attempts to arrest a suspect must be documented on the officer's report.
- d. **DOMESTIC VIOLENCE REPORTS:** All domestic violence reports shall be reviewed by the Domestic Violence Unit to determine appropriate follow-up.
- e. **INCIDENT REPORTS:** Incident reports will be filed whether or not an arrest is made. They will be made available to the victim at no cost, upon his or her request to the department.
 - 1. Prosecution and subsequent legal action can be greatly aided by documentation and description of physical injuries, photographs of

the injuries, and/or noting the presence of children in household, and other information gained through the investigation.

- 2 Police departments shall ensure the confidentiality of domestic violence records including information regarding the identity of a victim or children and any medical information or statement by witnesses. Victims of domestic violence have a strong privacy interest in this type of information whether contained in the initial incident report or supplemental reports. With the exception of the complete report's release to the victim, reports should be reviewed and redacted accordingly in response to other requests.

17. EMERGENCY ABUSE ORDERS:

Officers must advise victims of the right to seek an emergency 209A order on weekends, holidays, or week nights, when the court is closed. If the incident occurs when the District Court is closed and the victim indicates a desire to obtain an emergency order, officers shall contact the station. The officer will arrange for the notification of a local District Court Judge or utilization of the Judicial Response System. A judge will respond in person or will authorize the officer to record the court order, where appropriate.

The officer is responsible forms issued by the Trial Court of the Commonwealth and available at the station. Emergency orders are to be served upon the defendant as soon as possible. Documentation of service is to be certified on the next court day.

18. ENFORCEMENT OF ORDERS:

- a Every reasonable means should be used to enforce 209A orders.
- b The application for a criminal complaint for a violation of Mass. Gen. Law, Chap. 209A, must be filed in the court having jurisdiction over the location where the violation occurred.

19. CONFLICTS BETWEEN PROBATE COURT ORDERS AND ORDERS ISSUED IN THE DISTRICT COURT UNDER Mass. Gen. Law, 209A; AND QUESTIONS ABOUT THE VALIDITY OF ORDERS:

- a When responding to a call for assistance in which the parties assert conflicting rights pursuant to different court orders, an officer should enforce only those portions of the 209A order as relate to refraining from abuse or vacating a household. No officer shall enforce a 209A order, which has been subsequently superseded by a valid order issued by a Probate Court, or an Emergency Order.

- b.** If an officer has any question about the validity of an outstanding order, the officer should comply with the terms of the order until a court acts to change or clarify it.
- c.** Although a hard copy of a valid restraining order presented in hand by the victim is considered probable cause, it is incumbent upon the officer on scene to verify the restraining order through Operations. The OIC/Supervisor-Operations shall verify the conditions and service of any restraining order before a violation is determined. Copies of the verification documents are to be submitted with a copy of the report for Prosecutors.

20. SERVICE OF ORDERS: Orders shall be served in accordance with Chap.74, Sec.6-J&K, of the Waltham Police Department Manual.

- a.** The police are designated by statute to serve orders upon the defendant. Service of orders shall be made in hand unless otherwise ordered by the court. Because of the emergency nature of 209A and 208 orders, service of orders should be treated as priority matters and shall promptly make return of service to the court.
- b.** Return of service is to be documented and submitted to the Clerk-Magistrate's office according to procedures established in the Waltham Police Department Manual Chap. 74, Sec. J (LEGAL PROCESS - RECORDS).
- c.** Service of the complaint, orders, and summons shall be made upon the defendant as soon as possible. Officers shall use every reasonable means to serve such complaints, orders, and summons.
- d.** 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 in order to develop a safety plan around the service of the order.
- e.** The department shall keep a record of all attempts at service.
- f.** If the court has impounded the plaintiff's address, police should ensure that the address is kept confidential.
- g.** When the plaintiff or defendant is a minor, such records shall be withheld from public inspection.
- h.** When an order issued by another court is received, it is to be handled in the same manner as local court orders, and is to receive the same priority. Return is to be made via mail to the issuing court, with a copy of the order retained in this Department's files. If possible, the issuing court also should be notified by telephone that the order was served and the return is being sent.

by mail, to facilitate subsequent hearing of the matter.

21. **SUBMISSION OF WRITTEN REPORTS:** In every domestic violence case, regardless of the disposition of the call, a written incident report shall be filed. The report must include officer observations, identify the parties involved and any witnesses, and note any action taken. In the event that a dual arrest occurs, any officer arresting both parties is required by law to submit separate, detailed, written report, in addition to an incident report, setting forth the grounds for the dual arrest.

22. **SPECIAL VICTIMS OF DOMESTIC VIOLENCE - REPORTING REQUIREMENTS:**

- a. **CHILDREN:** Whenever children are present at a domestic dispute, their welfare and safety must be a consideration. Officers responding to a family dispute of any kind must be particularly observant for any indications of neglect or physical or sexual abuse of children.

Whenever a police officer has reasonable cause to believe that a child under eighteen is suffering serious physical or emotional injury resulting from abuse or from neglect, the officer must make a full written report to his superior for transmittal to the Department of Children and Families, in accordance with Mass. Gen. Law, Chap. 119, Sec. 51A.

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 eighteen taken away from the parents or other neglectful or abusing custodian and have custody transferred, on an emergency basis, to the Department of Children and Families or a licensed child care agency or individual in accordance with Mass. Gen. Law, Chap 119, Sec. 24.

- b. **DISABLED PERSONS:** Any police officer who upon responding to a domestic case has reasonable cause to believe that a disabled person (defined as a person between the ages of eighteen to fifty-nine, inclusive, who is mentally challenged 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) is suffering from a serious physical or emotional injury resulting from abuse, immediately must make a full written report to his superior for transmittal to the Disabled Persons Protection Commission, in accordance with Mass. Gen. Law, Chap. 19C, Sec. 10.
- c. **ELDERLY PERSONS:** Any police officer who upon responding to a domestic case has reasonable cause to believe that a person who is sixty years of age or over is suffering from abuse (an act or omission resulting in serious physical or emotional injury) immediately must make a full written

report to his superior, for transmittal to the Department of Elder Affairs, in accordance with Mass. Gen. Law, Chap. 19A, Sec. 15. The following number is to be used when reporting elder abuse: (800) 922-2275).

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

a. When a party to a domestic dispute is accused of removing or attempting to remove property from the dwelling or is accused of damaging or destroying property, the officer should investigate to determine the civil or criminal consequences, and if criminal, take appropriate action (For example: Malicious Destruction of Property.)

b. VACATE ORDERS AND COURT ORDERS TO RETRIEVE BELONGINGS:

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

2. A vacate order includes the following requirements:

The defendant shall not damage any of the plaintiff's belongings or those of another occupant and shall not interfere with any utilities or mail delivery to the plaintiff.

3. The defendant in the vacate order is allowed to retrieve his belongings under the following conditions:

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

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

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

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

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.

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

24. 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; 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.
- b. 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 seeks a restraining order.
- c. Even in cases where there is no substantive dating relationship, a crime such as Stalking, may have been committed.

25. ARREST OF A CARETAKER:

- a. In cases involving abuse of 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. If a suspect is the caretaker of a child, the officer needs to determine whether or not the child can be left alone.
- b. If a child, elder or person with a disability cannot be left alone, the respective protective agency must be contacted, 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.

26. RESPONSE TO DOMESTIC VIOLENCE SITUATIONS INVOLVING A SWORN LAW ENFORCEMENT OFFICER:

The following procedures **SHALL** be adhered to when responding to a domestic violence situation involving a sworn law enforcement officer. The dispatcher **MUST** document a call or report of domestic violence involving a police officer and immediately notify both the on-duty patrol supervisor and the chief of police. This directive ensures that key command personnel receive the information and

prevents the call from being handled informally.

a. RESPONSIBILITIES OF OFFICER(S) RESPONDING TO INCIDENT:

1. Immediate action shall be taken to ensure the safety of the victim.
2. The responding officer shall proceed with the investigation in accordance with Mass. Gen. Law, Chap. 208, 209, 209A, 209C and Chap. 140, Sec. 129B, court orders, Policy and Procedures, Rules and Regulations.
3. A supervisor preferably of higher rank than the involved officer is to be **immediately** called to the scene.
4. The responding officer will remain on the scene until arrival of the supervisor. The officer will await further instruction from the supervisor, which may include remaining at the scene, conducting a further investigation, and submitting a completed report.
5. Ensure the surrender of all firearms if warranted, both private and city owned.
6. Officers assigned to the incident are to submit a complete report prior to the end of the officer's tour of duty.

b. RESPONSIBILITIES OF THE RESPONDING SUPERVISOR:

1. Proceed to the scene of the incident.
2. Assess the actual and potential harm to the victim.
3. Ensure enforcement of Mass. Gen. Law, Chap. 208, 209, 209A, 209C, and Chap. 140, Sec. 129B, court orders, Policy and Procedures, Rules and Regulations.
4. The supervisor will ensure a check of LEAPS data base to determine if there are outstanding restraining orders and/or warrants in effect against the officer.
5. The supervisor shall submit, through the Department's appropriate chain of command, a report detailing his assessment of the incident and action taken before the end of the supervisor's tour of duty.
6. An alleged abuser's status as a police officer should never alter a

responding officer's responsibilities to enforce the provisions of M.G.L. c. 209A.

c. RESPONSIBILITIES OF THE COMMANDING OFFICER - PLATOON ON DUTY: The Commanding Officer - Platoon on Duty of the officer(s)/supervisor assigned to the initial investigation, upon being notified of a domestic violence incident involving a sworn officer, shall:

1. Ensure that the supervisor has responded to the scene and commenced an investigation.
2. Ensure enforcement of all provisions of Mass. Gen. Law, Chap. 208, 209, 209A, 209C, and Chap. 140, Sec. 129B, court orders, Policy and Procedures, Rules and Regulations.
3. Ensure reports and proper documentation of the facts and circumstances of the incident and the action taken are submitted through proper channels.
4. Ensure that appropriate notifications are made. These notifications should include the Commanding Officer of the jurisdiction in which the incident occurred, and the Chief of Police of the officer involved. (If necessary, the City Official who has direct oversight of the Chief if he is the involved party.)

d. RESPONSIBILITIES OF THE INVOLVED OFFICER: A sworn officer who has:

1. Been served with a Restraining Order.
2. Learns that he is a defendant named in any such order/complaint involving abuse.
3. Is arrested for any crime involving abuse shall:
 - a. Immediately provide oral notification to his Division Commanding Officer, of any of the above incidents, naming the investigating police department (example: police officer lives in town other than where he or she is employed).
 - b. Within 24 hours provide written notification to his Division Commanding Officer of any of the above incidents. A copy of the restraining order (if applicable) shall be attached.
 - c. Upon being served with a restraining order, the officer shall

immediately surrender his license to carry/FID card, department- issued firearm, and any personal firearms in compliance with Mass. Gen. Law, Chap. 140, Sec. 129B. The officer shall file an affidavit that a firearm is necessary for employment and request an expedited hearing on the suspension and surrender order. However, in the following circumstances, the department may allow an officer to carry a department issued firearm:

1. If the officer is not otherwise precluded by law from possessing a firearm while subject to a restraining order.
2. The chief determines that the officer is fit to carry a weapon.
3. The department determines that a policy precluding the return of a departmental weapon is not feasible in its community.

NOTE: If the policy allows an officer to carry a department issued firearm, the policy shall require that officers sign their weapons out and check their weapons in with a supervisor at the beginning and end of their shifts or assignments. Under no circumstances should a policy allow an officer subject to an abuse prevention order to carry a weapon when he or she is off-duty nor should a policy allow such an officer to take a weapon to his or her residence.

e. **RESPONSIBILITIES OF THE COMMANDING OFFICER OF THE INVOLVED OFFICER:** A Commanding Officer, upon being notified that an employee under his command has been served a restraining order and/or has been involved in a domestic violence incident, shall take the following actions:

1. Ensure the safety of the victim.
2. Order that all appropriate notifications be made and that required documentation be completed and review all documents and reports.
3. Determine the employee's work status and, if applicable, the appropriate disciplinary action.

27. **DOMESTIC VIOLENCE OFFICER:**

- a. The Domestic Violence Officer will be responsible for:

1. Developing a rapport with all victims of domestic violence, which fosters a trusting relationship;
2. Maintaining a professional demeanor being guided by, and in compliance with, the policies, procedures, and standards of conduct of the Waltham Police Department.

28. SUPERVISORS ROLE REGARDING DOMESTIC VIOLENCE:

- a. Supervisors will ensure that the provisions of the statute and these guidelines are met.
 1. 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 these cases.
 2. Incident and arrest reports will be carefully reviewed by a supervisor, and by the Department Domestic Violence Officer, in order to ensure that the provisions of MA Gen. Law, Ch. 209A and these guidelines are met. If upon review of an incident report it is believed that probable cause exists, the supervisor will ensure that criminal charges are initiated according to the statute and these guidelines.
- b. Supervisors will ascertain that appropriate referrals were provided to the victim.

29. DOMESTIC VIOLENCE CELL PHONES: The Waltham Police Department possesses cellular phones, which may be given to a victim of domestic violence. For instance, officers respond to a domestic violence call and find that the suspect has fled the scene. The victim has suffered abuse, and circumstances indicate that further abuse is likely if the suspect is not apprehended.

- a. These phones can only be used to contact 911.
- b. Short term hotel rooms can be provided for domestic violence victims through the domestic violence officer or other local domestic violence programs.
- c. REACH and other service agencies are better suited for protecting abuse victims and their children for extended periods of time, with undisclosed shelters outside of the city.

30. CONFIDENTIALITY OF DOMESTIC VIOLENCE PROGRAM'S LOCATIONS: The location and street address of all domestic violence programs are absolutely confidential and shall not be required to be revealed in any criminal or

civil proceeding. See M.G.L. c. 233, § 20L. For the purposes of this provision, a domestic violence program is defined as any refuge, shelter, office, safe home, institution, or center established for the purpose of offering assistance to victims of abuse through crisis intervention, medical, legal or support counseling. See M.G.L. c. 233, § 20K. Under no circumstances should a law enforcement officer release information to the public or otherwise regarding the location of a domestic violence program.

31. ABUSED PERSONS 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 be then provided in the victim's native language whenever possible.

- a.** 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; 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 attorney's fees and other out-of-pocket losses for injuries and property damage sustained. For an emergency on weekends, holidays, or weeknights the police will refer you to a justice of the Superior, Probate and Family, District or Boston Municipal Court Departments.
- b.** 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.
- c.** 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.
- d.** 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 with locating and taking

you to a safe place. This is including but not limited to:

- 1.** A designated meeting place for a shelter.
 - 2.** A family member or friend's residence.
 - 3.** Or a similar place of safety.
- e.** You may request a copy of the police incident report at no cost from the police department.