



DOMESTIC VIOLENCE

General Order Number: 33.2

Effective Date: May 5, 2017

PURPOSE: The purpose of this policy is to establish guidelines for police intervention in acts of domestic violence and abuse.

POLICY: Among the most difficult and sensitive calls for police assistance are those involving domestic violence. A pro-active approach must focus on victim safety. The touchstone must be a policy of “zero tolerance” on all incidents of domestic violence. When responding to a domestic disturbance, officers must be both alert and impartial, and must be concerned with the needs of victims where domestic violence is apparent or alleged.

At the same time, domestic violence related calls can also be among the most dangerous for responding officers, officers must always anticipate the unexpected. What appears to be a dispute of a minor nature may quickly escalate into a conflict of dangerous proportions because of the potentially violent nature of such incidents. Domestic violence situations are often characterized by anger, frustration, intense emotion and a batterer’s attempt to control household members. These feelings can easily be directed against the responding officers who can suddenly become the focus and target of ensuing violence. It is not unusual for aggressive outbursts within families to lead to serious bodily injury or even death. For this reason, whenever possible, at least two police officers should be assigned to a domestic violence situation.

M.G.L. Chapter 209A Section 6: **ABUSE PREVENTION LAW:** Whenever any law enforcement officer has reason to believe that a family or household member has been abused or is in danger of being abused, such officer shall use all reasonable means to prevent further abuse. The officer shall take, but not be limited to, the following action:

- A.** Remain on the scene where the abuse occurred or was (or is) in danger of occurring, as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of a law enforcement officer. This shall include, but not be limited to remaining in the dwelling for a reasonable period of time;
- B.** Assist the abused person in obtaining medical treatment necessitated by an assault, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility, notwithstanding any law to the contrary;
- C.** Assist the abused person and dependent children in locating and getting to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or friend's residence (or a similar place of safety). The officer shall consider the victim's preference in this regard and what is reasonable under

all the circumstances;

- D.** Give abuse victims immediate and adequate notice of their rights by handing them and reading a form detailing their rights (see attached); where said person's primary language is not English, the statement shall be then provided in said person's primary language whenever possible. Copies of the Massachusetts Victim Bill of Rights can be found online at <http://www.mass.gov/eopss/law-enforce-and-cj/prisons/dom-violence/massachusetts-victim-bill-of-rights.html> (To access the information in over 40 languages, click on the drop down tab in the upper right-hand corner of the screen and select the recipient's primary language from the list. For further assistance, refer to CO's Duty Manual.) When it is not possible to provide the statement in said person's primary language, or the method described above is otherwise inadequate, officers should request the services of an interpreter.
- E.** Assist the abused person by activating the emergency judicial system (unless some other procedure has been established) when the court is closed for business;
- F.** Inform the victim that the abuser will be eligible for bail and may be promptly released;
- G.** Arrest any person the officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contact order or judgment;
- H.** Where there are no vacate, restraining or no-contact orders or judgments in effect, arrest shall be the preferred response whenever an officer witnesses or has probable cause to believe that a person:
 - 1.** Has committed a felony; or
 - 2.** Has committed an assault and battery in violation of M.G.L. c. 265, s. 13A; or
 - 3.** Has committed a misdemeanor involving abuse.

NOTE: Arrest for a domestic violence misdemeanor not committed in an officer's presence is a statutory exception to the long-standing rule, which limits misdemeanor arrests to those committed in the officer's presence. Officers are authorized to arrest for past misdemeanors not committed in their presence, so long as the officers have probable cause to believe that a misdemeanor involving "abuse" has occurred.

For the purposes of this law, "abuse" is defined as 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 physical harm;
- c.** causing another to engage involuntarily in sexual relations by

force, threat, or duress.

The safety of the victim and any involved children shall be paramount in any decision to arrest. Any officer arresting both parties is required by law to submit a detailed written report in addition to an incident report, setting forth the grounds for dual arrest. (Dual arrests, like the issuance of mutual restraining orders, trivialize the seriousness of domestic abuse and increase the danger to its victims.)

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.

Regardless of arrest, whenever an officer investigates an incidence of domestic violence, the officer shall immediately file a written incident report. The victim shall be provided a copy of the full incident report at no cost, upon request to the police department.

Family or household members (this includes same sex relationships) are persons who:

1. are or were married to one another;
2. are or were residing together in the same household;
3. are related by blood or are or were related by marriage;
4. have a child in common regardless of whether they have ever been married or lived together; or
5. are or have been in a substantial dating relationship as determined by a court. (See "Procedures" below regarding criteria courts use and officer's role in assisting court in making such determination.)

Chapter 209A specifically provides that police shall make a warrantless arrest of a person whom the officer has probable cause to believe has committed a misdemeanor by violating a temporary or permanent vacate, restraining or no contact order or judgment. (M.G.L. c. 276, s. 28.) **Even if the victim is unwilling to bring a complaint against the alleged abuser, officers are directed to arrest where probable cause exists.** (Note: while M.G.L. c. 276, s. 28 concerning arrests without a warrant for a violation of certain statutes, among which are listed Chapter 209 A, uses the word "may", this is superseded by the provisions of Chapter 209 A which specify that officers "shall" make such a warrantless arrest.)

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

An officer may arrest and detain a person charged with a misdemeanor, without having a warrant for such arrest in his possession, if the officer has actual knowledge that a warrant then in full force and effect for the arrest of such person has, in fact, issued. (M.G.L. c. 276, s. 28.)

According to Chapter 403 of the Acts of 1990: "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

- I. **RESPONSE:** The unique nature of domestic violence situations requires that an officer immediately proceed to the place of the dispute. The dispatcher shall check the department CAD system and the WMS / BOP / Firearms Database system for previous incidents, existing orders, and the possibility of a resident possessing a License to Carry firearms and/or Firearms Identification Cards at the location that the officer is responding to. A second officer should be dispatched to the scene whenever possible.
 - A. The initial contact by the responding officers must convey a professionally calm and helpful attitude.
 1. The officers shall state their reason for being present.
 2. They must be considerate and attentive toward all parties and their problems regardless of the officers' own view or personal reactions toward the matter.
 3. Upon entering, they shall prevent the physical movement of the parties as much as possible and control their access to any potential weapons.
 - B. Officers are authorized by Chapter 209A to transport victims of domestic violence to the emergency room of the nearest hospital with approval of a supervisor. However, the preferred method of transportation is via ambulance and the officer shall activate EMS, or if the victim is not seriously injured, in their own vehicle or that of a friend.
 - C. The responding officers must take immediate control of the situation and should separate the parties to prevent any violent action. However, if there are two officers present at the scene, they should remain within view of each other to avoid any subsequent allegations of mistreatment.
 - D. The use of alcohol and drugs, or a condition of mental illness, can aggravate a domestic violence situation, requiring far greater patience on the part of the responding officers.
 - E. The provisions of Chapter 209A impose specific responsibilities upon the police in regards to a domestic abuse situation. All officers are expected to be thoroughly familiar with the contents of this statute (as amended from time to time) and to act in accordance with this Brookline Police Department Policy.

- F. M.G.L 209A Section 6 (7) makes reference to situations where there are no vacate, restraining orders, no contact orders, or judgments in effect and states that arrest shall be the preferred response whenever an officer has probable cause to believe that a person has committed a felony; assault & battery in violation of M.G.L. 265 Section 13A; or has committed a misdemeanor involving abuse.

II. **DEPARTMENT POLICY:** The policy of the Brookline Police Department in regards to the situations outlined in Section II, Response, is that an arrest **is the preferred response** when an officer has probable cause to believe that a person has committed a felony or a misdemeanor involving abuse and whether or not a restraining order, no contact order or judgments have been issued by the court. Exceptions are allowed when an officer can articulate the benefit to an alternative solution (i.e. transportation for psychiatric services.) In all situations where an exception is made, officers shall write a special report explaining the circumstances warranting the alternative course of action and the steps taken by the officer to ensure the victim's safety. This report shall be documented with the appropriate referral codes (C.I.T, Juvenile Division, Elder Services, etc.)

When an officer has developed probable cause and the suspect is no longer at the scene, the officer shall make every effort to affect an arrest. This shall include:

- A. Activating the Emergency Response Judicial System;

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.

- B. If the suspect cannot be located, an application for an arrest warrant shall be made as soon as is practical;

- C. If appropriate, Officers may make an application for an oral warrant from the On-Call Judge.

- D. 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 police department's statement that probable cause to arrest exists shall be honored by another police department. The second department shall immediately attempt to affect the arrest as requested by the investigating department.
3. 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.

4. The Commanding Officer – Platoon on Duty shall see that this information is disseminated at roll call until such time as the subject is formally charged.
5. All warrant information is to be passed on to the Detective Division and/or Domestic Violence Unit, who shall coordinate the follow up investigation and service of the arrest warrant.

III. **INVESTIGATION:** Officers responding to domestic violence calls should conduct an investigation, including interviewing children, neighbors and other potential witnesses. Keep in mind that the same standards for probable cause apply to domestic violence offenses as for any other crimes.

- A. When investigating a report of domestic violence, officers should observe the following guidelines:
 1. Officers may enter private premises at the request of someone in lawful control of the premises, or to enforce the provisions of a protective court order or to take reasonable measures to prevent any further abuse under the authority of M.G.L. Chapter 209A.
 2. Officers may enter private premises where there is probable cause to believe that a felony has been or is being committed or that there is imminent danger of violence, which could result in death or serious physical injury or where a breach of the peace has been committed in the officers' presence.
 3. Officers must leave if both parties request that they do so unless (i) there is probable cause to believe that a felony has been committed, (ii) or that their continued presence is necessary to prevent physical harm, (iii) the officer has reason to believe that the request by the victim is made under duress, or (iv) to carry out the provisions of M.G.L. Chapter 209A.
 4. "Private premises" includes a house, an apartment, a condominium, a hotel room, a mobile home, a dormitory room or a house trailer.
- B. 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 or undue interference by either party. While keeping all parties and officers in view, separate the parties sufficiently to allow each to relate matters to an officer without being overheard by the other party.
- C. To deal with the situation, the officers must ask pertinent questions, and certain fundamentals must be followed:

1. Obtain information regarding relationships, including names of children and their dates of birth. Obtain the phone number of the residence and include said number in the incident report for use by the bail bonds man in informing victim of the abuser's release on bail. Inform the victim that if he/she intends to leave the residence, and wishes to be informed of such release, the victim must inform the police department of a number where the victim can be reached, or where a message of such release can be safely relayed to the victim. A victim or witness shall not be asked, either directly or indirectly, about their immigration or citizenship status or the immigration or citizenship status of any other witness or family members.

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

2. Obtain information about the ownership or presence of firearms. If the listed owner is present and unable to produce a valid permit the officer must submit a special report with all the information to the Identification Unit for a follow up investigation.
3. Unless necessary, avoid emphasis or in depth questioning on personal matters if there is an indication that the person would rather not discuss them more fully.
4. Ascertain if there is a history of such disputes and whether there are any vacate, restraining, no contact or other protective orders currently in effect, including those held against the suspect by someone other than this victim.
 - a. Document allegations of prior abuse, including expired protective orders.
 - b. Document past use of weapons in prior domestic abuse incidents.
 - c. Seek appropriate criminal action for prior incidents.
5. Determine, when appropriate, who has lawful custody of any minors involved and whether court approved visitation rights are being violated. Since official court orders and other court papers are the best source for much of this information, police should ask the parties to produce copies of court orders or other court papers to verify their claims.
6. As a standard precaution, police should check for outstanding judicial arrest warrants on persons encountered during a domestic dispute. In an effort to protect victims and witnesses to crimes and to encourage the reporting of crimes, police shall not make any inquiries, either directly or indirectly, into the immigration or citizenship status of a victim or a witness to a crime.

7. When circumstances dictate, at least three photographs should be taken of the victim's injuries. One photo should be "full body", the second should be of the "intermediate area" and the third should be a "close up".
8. Properly document important information, i.e., spontaneous utterances (direct quotes) by the victim, the suspect, children, and other witnesses.
9. Gather information, where applicable, which will assist the Court in determining whether a "substantive dating relationship" exists. This is especially helpful if the officer anticipates activating the Emergency Response Judicial System. Chapter 209A specifies that such courts will take-into consideration the following factors:
 - a. the length of time of the relationship;
 - b. the type of relationship;
 - c. the frequency of interaction between the parties; and
 - d. if the relationship has been terminated by either person, the length of time lapsed since the termination of the relationship.

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

10. Officers will investigate to determine if any of the following **High Risk Indicators** are associated with the offender now or in the past. Officers should confer with the dispatcher to determine what was said initially, utilizing call playback if necessary, to determine if any high risk behaviors were mentioned in the initial call. Officers will provide this information in their written report as detailed in Chapter 11. The information provided regarding a defendant's dangerousness will be used when determining bail and by the prosecutor at arraignment. Therefore, gather information regarding the defendant's background:

- a. **Criminal History**
- b. **Perpetrator threatens homicide/suicide**
- c. **Perpetrator threatens/harms victim's children**
- d. **Strangulation/attempted strangulation**
- e. **Access to/ownership of weapons**
- f. **Extreme violence to victim**
- g. **Victim believes perpetrator will kill him/her**
- h. **Increase in severity or frequency of violence**
- i. **Hostage taking**
- j. **Drug/alcohol abuse**
- k. **Perpetrator is unemployed**
- l. **Violence to animals**
- m. **Stalking behaviors**

11. Give abuse victims immediate and adequate notice of rights by handing to them and reading a form stating their rights (see attached). Where said person's primary language is not English, the statement shall be provided in said person's primary language whenever possible. Copies of the Massachusetts Victim Bill of Rights can be found online at <http://www.mass.gov/eopss/law-enforce-and-cj/prisons/dom-violence/massachusetts-victim-bill-of-rights.html> (To access the information in over 40 languages, click on the drop down tab in the upper right-hand corner of the screen and select the recipient's primary language from the list. For further assistance, refer to CO's Duty Manual.)
 - a. Confidentiality of Abuse Prevention Order Provisions: a plaintiff's residential address and workplace address shall appear on the court order and be accessible to the defendant unless the plaintiff specifically requests that this information be withheld from the order. See M.G.L. c. 209A, § 8, as amended by Section 24 of Chapter 236 of the Acts of 2000. Police officers helping to issue emergency abuse prevention orders must be cognizant of victims' confidentiality rights and requests.
12. Provide the addresses and telephone numbers of available crisis centers or emergency shelters and, where appropriate, advise any victims or witnesses of the Victim-Witness Assistance Program administered by the District Attorney's Office, at Brookline District Court.

IV. **CONFIDENTIALITY OF ABUSE PREVENTION ORDER PROVISIONS:** A plaintiff's residential address and workplace address shall appear on the court order and be accessible to the defendant unless the plaintiff specifically requests that this information be withheld from the order. See M.G.L. c. 209A, § 8, as amended by Section 24 of Chapter 236 of the Acts of 2000. Police officers helping to issue emergency abuse prevention orders must be cognizant of victims' confidentiality rights and requests.

V. **CHILDREN:** Where children are present at a domestic dispute, their welfare and safety must be a major consideration. Any evidence of neglect or emotional, physical or sexual abuse of children under eighteen shall be carefully noted. Whenever a police officer, in his or her professional capacity, has reasonable cause to believe that a child under eighteen is suffering serious physical or emotional injury resulting from abuse, including sexual abuse, or from neglect, including malnutrition, or if a child is determined to be physically dependent upon an addictive drug at birth, the officer shall make an oral and written report to the Department of Children and Families as required by M.G.L. Chapter 119, Section 51A.

A child **does not** have to be physically injured to activate a report. If the child is seeing inappropriate behavior (e.g. yelling, throwing objects, etc.) a report should be filed.

If the child cannot be left alone, the respective protective agency must be contacted, in order to arrange for the temporary care of the child. Any mandated reports of abuse or neglect will also be filed in this instance.

- A. Officers should be aware that in serious cases of child neglect or abuse "any person" may apply to an appropriate juvenile court to 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. (Refer to MGL Chapter 119, section 124)

VI. STATE MANDATED REPORTS:

- A. A report will be filed with the Department of Children and Families whenever the police officer has reasonable cause to believe that a child under the age of 18 has been abused or neglected, in accordance with M.G.L. c. 119 s51A. During office hours, contact the local D.C.F. office. After hours, call the D.C.F. hotline.
- B. A report will be filed with the Disabled Persons Protection Commission whenever the officer has reasonable cause to believe that a caretaker has abused / neglected a disabled person, between the ages of 18 – 59, in accordance with M.G.L. c. 19 s10.
- C. A report will be filed with the Executive Office of Elder Affairs whenever the officer has reasonable cause to believe that someone age 60 or older has been abused/neglected, in accordance with M.G.L. c. 19A s14-26.

- VII. **ARREST OF A CARETAKER:** 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.

If the 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.

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

- A. **REMOVING OR DESTROYING PROPERTY:** When a party to a domestic dispute is accused of removing or attempting to remove property from the dwelling or is accused of damaging or destroying property, the officer should investigate to determine the civil or criminal consequences, 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 requirement: The defendant shall not damage any of the plaintiff's belongings or those of another occupant and shall not interfere with any utilities or mail delivery to the plaintiff.
3. The defendant in the vacate order is allowed to retrieve his or her belongings under the following conditions:
 - a. The defendant must have a court order allowing for the retrieval.
 - b. The police must accompany the defendant. Officers shall remain with the defendant throughout the process.
 - c. The victim must have prior notice by the department, and must agree to the timing of the retrieval.
 - d. The defendant must not be allowed to use this as a means of harassing the victim.

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.

- C.** When a court order exists allowing for a victim to return to the defendant's residence in order to retrieve his or her belongings, two officers 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.

IX. FIREARMS / WITHOUT A 209A ORDER BEING IN EFFECT: Question the victim to ascertain if the defendant has firearms or permits. When a firearm or other weapon is present at the scene of a domestic violence situation or the responding officers are informed that a firearm or weapon has been or may be involved in the dispute, the officers shall:

- A.** Search for and take temporary custody of firearms or weapons, to alleviate the threat of serious violence that it poses;
- B.** Search for and take custody of the firearms or weapon if one of the parties requests that they do so;
- C.** When a firearm is confiscated, the officer will also confiscate any and all licenses to carry and/or firearms identification cards issued to the interested parties.

- D. Officers are directed to be guided by current practice and law regarding the necessity of obtaining a search warrant prior to searching for and seizing any weapons.

X. **SURRENDER/ CONFISCATION OF FIREARMS:** When a firearm or other weapon is present at the scene of a domestic violence situation the officers shall:

- A. 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.

- B. If the weapon is not reported to have been involved in the dispute:

1. Request that the firearm or weapon be placed in their custody temporarily;
2. 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;
3. Take temporary custody of the firearm or weapon to alleviate the threat of serious violence.
4. Determine whether a firearm is lawfully possessed before returning the same.

- C. If the officer determines that the weapon cannot be seized, the following actions can take place:

1. A judge can order the defendant to surrender guns, a license to carry and an F.I.D. card; and
2. The chief who issued the license to carry may revoke or suspend such license issued by him or her.

- D. In all domestic violence cases, the investigating department shall advise the licensing authority that the subject of the license is suspected of abuse.

E. **ABUSE PREVENTION ORDER**

1. 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.

2. **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.

F. SEIZURE AND STORAGE OF FIREARMS:

1. The Brookline Police Department shall honor another police 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.
2. **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. The defendant shall also relinquish their FID card, badge, and Department-issued identification card.

G. FEDERAL FIREARMS PROVISIONS:

1. 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.
2. **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.
3. **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.
4. **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.

5. **POLICE ACTION:** Upon serving the order, with the notice of suspension and surrender order attached, officers shall immediately take possession of all guns, ammunition, and gun permits in the defendant's control, ownership, or possession. Failure of the defendant to comply with the Surrender Order is a misdemeanor, punishable by imprisonment for up to 2 1/2 years and/or fine of up to \$5000.
6. If an officer has probable cause to believe a defendant is failing to surrender a permit and guns in violation of a Surrender Order, they are mandated to make an arrest.

XI. INCIDENT REPORTS: The reporting procedures of any other crime scene should be applied to domestic violence incidents. Incident reports will be filed whether or not an arrest is made. Officers that are assigned to the incident are to submit a complete report prior to the end of the officer's tour of duty with copies forwarded to the Domestic Violence Unit, the Court Prosecutor, and the Domestic Violence Advocate.

Incident reports will be made available to the victim at no cost, upon his or her request to the department. (Since the initial investigation should determine the existence of any history of abuse, that information must be included within the report.)

- A. 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.
- B. The Brookline Police Department shall ensure the confidentiality of domestic violence records including information regarding the identity of a victim or children and any medical information or statements made 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. Information and reports relating to Domestic Violence are confidential and not to be disclosed. Calls of this nature shall be entered into CAD as "Domestic-Non Public Info" (9091). Domestic violence reports shall be accessible upon written request by victim, victim's attorney or others specifically authorized by the victim. Reports as well as communications between officers and victims may also be disclosed, upon request, to law enforcement officers, District Attorney's or Assistant District Attorney's, and persons authorized to admit persons to bail.
- C. Every officer submitting an incident or arrest report for an incident of domestic violence shall include narrative information supporting the presence of each high-risk indicator. The officer shall at the conclusion of

his/her report include a line that specifies **HIGH RISK INDICATORS**. Officers should indicate following this heading each and every high-risk indicator involving the incident and offender. If there are no high-risk indicators present, the reporting officer should specify NONE following the HIGH RISK INDICATOR line. Approving supervisors shall review all domestic violence reports for compliance with this policy. The Commanding Officer will be responsible for adherence to this policy by reporting officers.

Identifying and documenting specific high risk behavior will get responding officers to develop an idea of what the victim has been living through and how it has affected them and their family. It will also allow us to pinpoint cases that need further or continued intervention and resources. It will allow for coordination and safety planning between the victim, police, probation and the District Attorney's Office.

- XII. SERVICE OF ORDERS:** The following procedures are to be followed when dealing with orders issued by any court involving any person living or working in the Town of Brookline, whether such person is named as either the plaintiff or defendant. This also applies to emergency, temporary, or permanent orders.
- A.** When a plaintiff brings an order to the department for service, officers shall ensure that the department's responsibilities under M.G.L. c. 209A and the following guidelines are met.
 - B.** All restraining orders are to be logged in by the Commanding Officer on the departmental restraining order tracking form.
 - C.** All efforts to serve the restraining order shall commence immediately, manpower permitting, regardless of the time of day or night. Attempts shall continue without unreasonable delay until service has been completed. Commanding Officers are responsible for orders during their tour of duty. Such orders, if not served, are to be passed onto the next C.O. for service.
 - D.** Dispatchers will enter all attempts in the computer, code 1440, until service has been made. Code 63 will be used as the disposition code for unsuccessful attempts.
 - E.** Officers shall make a conscientious and reasonable effort to provide in-hand service to the defendant.
 - F.** Upon serving an order to a defendant, officers shall, to the extent practicable:
 - 1.** Fully inform the defendant of the contents of the order and the available penalties for any violation of an order or terms thereof, and;

2. Provide the defendant with informational resources, including, but not limited to, a list of certified batterer intervention programs, substance abuse counseling, alcohol abuse counseling and financial counseling programs located within or near the court's jurisdiction.
- G. Prior to service, Officers shall check the CAD, BOP, and Firearms Database System for previous orders or incidents and the possibility of a resident possessing a License to Carry firearms and/or Firearms Identification Cards.
- H. All orders are to be placed in a restraining order envelope after service has been completed. The envelope must contain: Restraining order, BOP, Defendant information sheet, and if any, Warrant information.
- I. If the defendant has any outstanding warrants (NCIC / WMS) this should be noted in the remarks section on the envelope.
- J. It shall be noted on the restraining order envelope the officer's name and the date and time that the order was served.
- K. Copies of all restraining orders received or issued by this Department must be forwarded to the Domestic Violence Unit as well as the Public Safety Business Office. The PSBO unit will be responsible for entering all restraining orders in the departmental CAD system.
- L. Orders that must be forwarded to another jurisdiction for service must be forwarded without unreasonable delay. The Commanding Officer may authorize the service of orders by Brookline Police Officers on defendants in other jurisdictions. When service of a restraining order is made by Brookline Officers at the request of another department, said department is to be notified of such service as soon as possible.

XIII. JURISDICTIONAL / OUT OF STATE RESTRAINING ORDERS:

- A. Violations of out of state orders or Massachusetts orders violated in another state may be charged criminally as contempt, in the Commonwealth of Massachusetts.
- B. A protective order issued in another jurisdiction (as defined in M.G.L. c. 209A, § 1) shall be given full faith and credit in the Commonwealth. Therefore, officers shall make a warrantless arrest of any person the officer witnesses or has probable cause to believe has violated an emergency, temporary or permanent vacate, refrain from abuse, stay away, or no-contact order or judgment issued by another jurisdiction.
- C. In assessing probable cause, an officer may presume the validity of the protection order issued by another jurisdiction when the officer has been provided with:

1. A copy of the order, by any source; and
 2. A statement by the victim that such order remains in effect.
- D. All out of state orders will be handled in the same manner and procedure as orders issued by the Brookline District Court.

XIV. DEPARTMENTAL ACCESS TO ON CALL JUDGES:

- A. On call judges will be posted in the Commanding Officer – Platoon on Duty's office. **This information is strictly confidential.**
- B. A BOP of the defendant must be checked prior to calling the on-call judge. This information must be available to the judge.
- C. Only the Patrol Supervisor or another ranking officer may call/page the on-call judge and seek 209A orders and oral warrants.
- D. If the judge has not returned the call after thirty minutes, the Patrol Supervisor or Commanding Officer will call State Police - Danvers at (508) 538-6020.

XV. EVIDENCE / PROPERTY:

- A. All guns, ammunition, and firearm permits along with any other property requested (keys) in the order are to be submitted to the Evidence/Property clerk along with a copy of the officer's report.
- B. A case number will be assigned to the property submitted and the officer will note all property surrendered in their report. A copy of the restraining order is to be submitted along with the property.
- C. All guns, ammunition, and firearm permits that are surrendered as requested by an order issued outside our jurisdiction will be submitted to the Evidence/Property clerk. A case number will be assigned to the property and the officer will submit a special report.
- D. Once a vacate, no contact or restraining order is issued, officers are not to accompany defendants to the property for any reason without specific judicial authorization. The victim's safety should be considered in the timing of the service of the orders.

XVI. THE ROLE OF THE SUPERVISOR:

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

1. Defendant who has been arrested for a Domestic Violence offense or restraining order violation, who is at least 18 years of age, shall not be eligible for bail for at least 6 hours from the time of arrest, unless bailed by a judge in open court. In the event the defendant is released from department custody he/she shall be provided informational resources including, but not limited to, a list of certified batterer intervention programs located within or near the court's jurisdiction and provided with information regarding the consequences of violating any restraining order or making any attempt to commit any further domestic violence offense. In the event a defendant is released from department custody, the Commanding Officer shall ensure that reasonable efforts are made to notify the victim of defendant's release and that reasonable requests for assistance with protection and safety planning are met.
2. 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.
3. The Commanding Officer - Detective Division or his or her designee within the department who is specially trained to review domestic violence cases, in order to ensure that the provisions of M.G.L. c. 209A and these guidelines are met will carefully review incident and arrest reports. If upon review of an incident report it is believed that probable cause exists, the Commanding Officer - Detective Division will ensure that criminal charges are initiated according to the statute and these guidelines.
4. Whenever the department identifies a particular case as posing significant danger, that case will be discussed at roll call and printed in the shift briefing report.
5. In the event of a domestic violence fatality, ensure that the Norfolk County Domestic Violence Fatality Review Team is notified.

- B. Referrals:** Supervisors will ascertain that appropriate referrals were provided to the victim, and that appropriate measures to ensure the victim's safety have been undertaken.
- C. Follow-up investigations:** Regarding follow-up investigations, supervisors shall:
 - 1. Determine whether a follow-up investigation is needed. For instance, if the report indicates a history of abuse, it is likely that additional criminal charges should be pursued.
 - 2. If so indicated, the supervisor shall ensure that a follow-up investigation is conducted.
 - 3. Upon review of the follow-up investigation, the supervisor will ensure that additional charges are initiated whenever appropriate.

XVII. DOMESTIC VIOLENCE BY POLICE OFFICERS: As part of our commitment to earning the trust of the citizenry so essential to community policing, it is essential that police professionals hold themselves to an exemplary standard in the area of domestic violence. A pro-active approach must focus on victim safety. The touchstone must be a policy of “zero tolerance” of acts of domestic violence by members of this department.

- A.** It is the policy of The Brookline Police Department:
 - 1. Not to hire individuals that have a history or a documented propensity for domestic violence, elder abuse, child abuse, sexual assault or stalking;
 - 2. Not to retain employees that engage in domestic violence, elder abuse, sexual assault, or stalking;
 - 3. To provide on-going training to every member on all forms of domestic violence and the Department's zero tolerance policy;
 - 4. To thoroughly investigate all complaints of domestic violence allegedly committed by members of this department; and
 - 5. To take disciplinary and criminal action against department members where appropriate
- B. RESPONSE TO DOMESTIC VIOLENCE SITUATIONS INVOLVING A SWORN LAW ENFORCEMENT OFFICER:** In accordance with the Governor's Domestic Violence Commission, the following procedures **SHALL** be adhered to when responding to a domestic violence situation involving a sworn law enforcement officer.
 - 1. RESPONSIBILITIES OF THE DISPATCHER:** The dispatcher shall

document a call or report of domestic violence involving a police officer and immediately notify both the Commanding Officer - Platoon on duty, the Chief of Police and Superintendent. This directive ensures that key command personnel receive the information and prevents the call from being handled informally.

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

- a.** Immediate action shall be taken to ensure the safety of the victim;
- b.** The responding officer shall proceed with the investigation in accordance with M.G.L. Chapter 208, 209, 209A, 209C and Chapter 140 Section 129B, Court Orders, Policy and Procedures, Rules and Regulations.
- c.** When a Brookline Police officer is involved, a supervisor, who is of higher rank than the involved officer, is to be called to the scene; If the accused officer is the Chief of Police, document and report the incident to the Town Administrator.
- d.** When the officer involved is from an outside police agency, the Patrol Supervisor will be called to the scene.

- 3.** The responding officer will remain on the scene until arrival of the Patrol 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;
- 4.** Officers that are assigned to the incident are to submit a completed report prior to the end of the officer's tour of duty with copies forwarded to the Domestic Violence Unit, the Court Prosecutor, and the Domestic Violence Advocate.
- 5.** Regardless of whether or not an arrest is made a Patrol Supervisor shall be called to the scene and a report shall be submitted by the assigned officer on any domestic incident involving a law enforcement officer.

C. 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 the enforcement of M.G.L. Chapter 208, 209, 209A, 209C and Chapter 140 Section 129B, Court Orders, Policy and Procedure, Rules and Regulations.

4. The Supervisor will ensure a check of LEAPS database to determine if there are outstanding Restraining Orders and/or warrants in effect against the officer.
5. The Supervisor will confiscate all department-issued firearms and privately owned weapons and permits to carry firearms, pending a follow-up investigation.
6. The Supervisor shall submit before the end of his/her tour of duty, a report detailing his/her assessment of the incident and action taken.

D. RESPONSIBILITIES OF THE COMMANDING OFFICER: The Commanding Officer, upon being notified of a domestic violence incident involving a sworn officer shall:

1. Ensure that the supervisor has responded to the scene and initiated an investigation;
2. Ensure enforcement of all provisions of M.G.L. Chapter 208, 209, 209A, 209C and Chapter 140 Section 129B, Court Orders, Policies and Procedures, and 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 in accordance with department procedures.
4. When the officer involved is a Brookline Police Officer, the Commanding Officer, Platoon-on-Duty shall ensure that appropriate notifications are made in accordance with department procedure and chain of command, up to and including the Chief of Police.
5. When the officer involved is from an outside police agency, the Commanding Officer - Platoon on Duty shall notify the Commanding Officer in the jurisdiction in which the officer is employed.

E. THE RESPONSIBILITIES OF THE INVOLVED OFFICER: A sworn officer who has been served with a Restraining Order; or learns that he/she is a defendant named in any such order/complaint involving abuse; or is arrested for any crime involving domestic abuse shall:

1. Immediately provide oral notification to his or her Division Commanding Officer, of any of the above incidents, naming the investigating police department (e.g. police officer lives in town other than where he/she is employed.)

2. Within 24 hours provide written notification to his or her Division Commanding Officer, of any of the above incidents. A copy of the Restraining Order (if applicable) shall be attached.

F. UPON BEING SERVED WITH A RESTRAINING ORDER, THE OFFICER SHALL: Immediately surrender his/her License to Carry, FID card, department issued firearm, personal firearms, and ammunition in compliance with M.G.L. Chapter 140 Section 129B. The officer may file an affidavit with the issuing Court that a firearm is necessary for employment and request an expedited hearing on the suspension and surrender order.

1. The Chief of Police will have ultimate discretion as to whether an officer will be allowed to work and carry a firearm, regardless of a Court granting a request to allow an officer to carry a firearm for employment purposes as a condition of a restraining order. In those instances when the Chief allows an officer to carry a firearm the firearm shall be secured at the police station when the officer is not on a working status.

G. THE RESPONSIBILITIES OF THE COMMANDING OFFICER OF THE OFFICER INVOLVED: A commanding officer upon being notified that an employee under his/her 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 thorough that Officer's chain of command and that required documentation be completed and reviewed.
3. All Department-issued firearms and privately owned weapons should be surrendered pursuant to the terms of the order.
4. Determine in accordance with departmental procedure, the employee's work status. No officer should be returned to full duty with a firearm until the circumstances of the 209A order have been fully investigated.
5. Notify the Chief of Police.

H. POST INCIDENT ADMINISTRATIVE AND CRIMINAL DECISIONS:

1. When possible, the department shall conduct separate parallel administrative and criminal investigations of alleged incidents of

police officer domestic violence in a manner that maintains the integrity of both investigations and promotes zero tolerance. Regardless of the outcome of the criminal case, the department shall uphold all administrative decisions. If the facts of the case indicate that domestic violence has occurred or any department policies have been violated, administrative action shall be taken independent of any criminal proceedings as soon as practicable.

2. The department will adhere to and observe all necessary protocols to ensure an accused officer's rights are upheld during the administrative and criminal proceedings.

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 primary language is not English, the statement shall be then provided in the victim's primary language whenever possible. When it is not possible to provide the statement in said person's primary language, the statement is to be provided in that person's primary language as soon as possible through an interpreter. Materials created shall be maintained by the Department for use in future cases.

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 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.*

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. If you are not a U.S. citizen, you may wish to seek out immigration legal services. The Brookline Police Department cannot provide you with such advice, but will not ask you about your immigration status.