


<b>NORTHAMPTON POLICE DEPARTMENT</b>		
<b>Administration &amp; Operations Manual</b>		
<b>Policy: Domestic Violence</b>		<b>AOM: O-211</b>
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## I. Introductory Discussion

Among the most difficult and sensitive calls for police assistance are those involving domestic violence. Although domestic violence calls are usually responses to a home, domestic violence can occur at any location and in any setting. 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. Police are well

aware that situations which appear minor at first glance, can mask a much more serious condition.

Appropriate and effective police response to domestic violence calls is the best mechanism for enhancing victim safety. It is also the means by which the Northampton Police Department can minimize departmental liability. It is therefore, imperative that all officers review, understand, and implement the policy outlined here as well as follow all statutory obligations for action.

The purpose of this policy is to establish guidelines for officers to respond to domestic violence calls. The primary focus shall be on victim safety, followed closely by offender accountability; accordingly, a proactive, pro-arrest approach in responding to domestic violence is a priority. Officers shall be expected to do the following:

1. Establish arrest and prosecution as a preferred means of police response to domestic violence
2. Enhance the safety of victims, their children, and anyone else living in the home
3. Take appropriate action for any violation of permanent, temporary, or emergency orders of protection
4. Promote the safety of law enforcement personnel responding to incidents of domestic violence
5. Provide victims or witnesses of domestic violence with support and assistance through cooperative efforts with community stakeholders in order to prevent further abuse and harassment. (Community stakeholders are individuals and entities in the community who work to foster effective intervention in and prevention of domestic violence. Entities include but are not limited to, law enforcement agencies, prosecutors, parole, probation, community based domestic violence and sexual assault programs, social service agencies, adult and child protective services, clergy, educators, government agencies, animal welfare organizations, businesses, and employers.)
6. Complete thorough investigations and effect arrest of the dominant aggressor upon establishment of probable cause.

## II. **M.G.L. c. 209A: Abuse Prevention Law**

### A. Definitions

For the purposes of this policy the following definitions have been adopted:

1. **Abuse** is defined by MGL C. 209A, § 1 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 serious physical harm
  - c. Causing another to engage involuntarily in sexual relations by force, threat, or duress.

**Family or Household Members** are defined by [MGL C. 209A, S.1](#) as:

- a. Persons who are or were married to one another
- b. Persons who are or were residing together in the same household
- c. Persons who are or were related by blood or marriage
- d. Persons who have a child in common regardless of whether they have ever married or lived together, or
- e. Persons who are or have been in a substantive dating or engagement relationship. This includes relationships involving an individual or individuals who identify as gay, lesbian, bisexual, or transgender.

**Family or Household Members** (for offenses charged under [MGL C.265, s. 13M](#)) are defined as:

- a. Persons who are or were married to one another
- b. Persons who have a child in common regardless of whether they have ever married or lived together, or
- c. Persons who are or have been in a substantive dating or engagement relationship.

2. **Licenses:** the term “license” as defined in: [M.G.L. c.140, §122, 122B, 129B, 131](#), shall include all of the following:

- a. Class A license to carry firearms
- b. Class B license to carry firearms
- c. Class C firearms identification card
- d. Class D firearms identification card
- e. License to possess a machine gun
- f. License to sell firearms
- g. License to sell ammunition or
- h. License to perform as a gunsmith

3. **Firearms:** the term “firearm” shall not be limited to its definition in M.G.L. c.140, § 121, but rather shall include any of the following:

- a. Firearms
- b. Rifles
- c. Shotguns
- d. Machine guns
- e. Ammunition
- f. High capacity feeding devices; or
- g. Antiques

## **B. Civil Liability**

According to [M.G.L. c. 209A, § 6](#): “No law officer shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a domestic violence incident for an arrest based on probable cause when such officer acted reasonably and in good faith and in compliance with this chapter and the statewide policy as established by the Secretary of Public Safety.”

## **III. Procedures**

The provisions of [M.G.L. c. 209A](#) impose specific responsibilities upon the police in regard to a domestic abuse situation. All Officers are expected to be thoroughly familiar with the contents of that statute (as amended and construed by case law), as well as with the procedures established within this policy, and to act with appropriate discretion and competence in carrying out its provisions.

### **A. Responding to the Scene – Dispatch Response**

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

1. Whenever possible, two officers should be dispatched to the scene.
2. Dispatchers or call takers should do the following:
  - a. Assign a priority response to all domestic violence calls, whether or not the assailant is known to be on the premises, including those calls that involve or appear to involve a police officer of any department
  - b. Immediately notify a supervisor of any domestic call
  - c. Preserve documentation of the facts and circumstances of each call, including 911 tapes, for use in potential administrative and criminal investigations
  - d. Maintain current contact information of local domestic violence victim advocacy organizations for responding officers to provide to victims
  - e. Attempt to elicit any and all information from the caller that may help the responding and investigating officers assess the situation, including the following:
    - 1) Immediate safety of the caller, the victim, and others at the scene
    - 2) Nature of the incident (verbal or physical), nature of injuries, and whether violence is ongoing
    - 3) The type of weapons that are involved, or present, if applicable
    - 4) Hazards to responders if any, including animals;
    - 5) Whether the caller or alleged assailant is under the influence of alcohol or drugs, or if there are mental health issues
    - 6) Caller’s and alleged assailant’s description

- 7) Presence or absence of the alleged assailant, and direction and mode of travel, if applicable
- 8) Other people involved or witnesses at the scene, including children
- 9) Alleged assailant's criminal history (B.O.P. check)
- 10) Number of times the department has been called to this scene because of this suspect
- 11) Existence of a protection order currently on file against the suspect or caller (check B.O.P.)
- 12) Outstanding warrants against the caller or alleged assailant, if any exist (check CJIS and Warrant Management System)
- 13) Caller's and alleged assailant's date of birth or social security number; and
- 14) Record of firearms identification cards and/or licenses to carry having been issued to resident(s).
- 15) Inform the caller of an approximate time of the officers' arrival
- 16) Keep the caller on the telephone if the caller is a victim or witness to a domestic violence incident in progress, in order to relay ongoing information provided by the caller to the responding officers and remain aware of victim's safety
- 17) Make the safety of domestic violence victims a primary concern. Address threats of violence, whether immediate or remote, by working with the victim to focus on ways to enhance safety, such as waiting for officers at another location or leaving the location if the suspect returns
- 18) Keep in mind the caller could be the victim or assailant
- 19) Do not cancel the original call for service if a subsequent request to cancel the original call is received. Advise the responding officers of the second call and instruct them to continue to respond, investigate, and assess the situation to ensure that all parties are safe.

#### **B. Police Response - Probable Cause Standard**

Police officers should keep in mind that the same standard for probable cause applies to domestic violence offenses as for any other crime. (See Section V, Arrest Guidelines).

#### **C. Police Response - Initial Observations**

Upon arrival, responding officers should approach the scene with a high degree of caution. Upon approach, officers should make observations of the scene, and listen for sounds or evidence of a disturbance. Observations should be documented in incident report. See Section: IVB2, Information Documentation, and XIII E. Incident Reports.

#### **D. Police Response - 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 the peace has been committed in an officer's presence
  - d. When a police officer has probable cause to believe a felony has occurred and is in fresh pursuit of the fleeing felon.
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.
4. Officers should always consider the requirements of the Fourth Amendment when considering entering any premises.

#### **E. Police Response - Officer's Demeanor**

The initial contact by the responding officers should convey a professionally calm and helpful attitude.

1. The officers shall state their reason for being present.
  - a. Do not neglect to include children when explaining an officer's presence particularly if an arrest is being made.
  - b. Tell the children that what happened prior to the officers' arrival is not their fault.
  - c. If a child called 911, tell them that they did the right thing and that the officers are there to help the family.
  - d. If the family does not speak English, when possible, **DO NOT use the children, or family members as interpreters.** This could prove dangerous to the child and adult victim. Officers can call **CTS Language Link**, a multilingual communications network for use by police departments at **877-737-4999 (acct #25308#)** for interpretive language services 24 hours a day.
2. Officers should strive to be considerate and attentive toward all parties and their concerns. Officers shall maintain a professional and objective demeanor throughout their investigation.
3. Upon entering, officers shall prevent the physical movement of the parties as much as possible and control their access to any potential weapons.

4. Persons who are under the influence of drugs or alcohol, or who suffer from mental illness, might pose a safety risk to themselves or others at the scene. Special precautions may need to be taken in these circumstances.

#### **F. Police Response - Officers' Roles At The Scene**

The responding officers must take immediate control of the situation and should separate the parties to prevent any violent action. The parties should be interviewed 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 action. Throughout the investigation, the officers should allow each party to present their 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. See Section: [III.E.1](#).

#### **G. Police Response – Instances Involving Serious Injury**

In cases of serious injury, the preferred method of transportation is via ambulance. Officers are authorized by [M.G.L. c. 209A, § 6](#) to transport victims of domestic violence to the emergency room of the nearest hospital, or to arrange for appropriate transportation to a health care facility. Officers should receive approval from their supervisor prior to transporting a victim of domestic abuse in a cruiser, except in an emergency. If the victim is not seriously injured, or declines transportation, the victim may then seek transportation through their own means.

### **IV. Investigations**

Officers responding to domestic violence calls should ensure thorough investigations.

#### **A. Interviewing Witnesses**

Attempt to identify and interview the party who called the police, neighbors, and other potential witnesses. All parties present and involved should be documented in the incident report. It is not unusual for some witnesses to be unsupportive of the victim. Do not tell the suspect who called the police. See Section: [XII- Incident Reports](#).

#### **B. Information from the Scene**

Attempt to obtain the following at the scene. If that is not possible, obtain the following information during the follow-up investigation.

1. Determine the relationships of all involved parties, including children at the scene. If children are not immediately observed, ask if there are children present in the household. If children are present, record their names and dates of birth.
  - a. Check on the children to ascertain whether or not they have sustained injury.
  - b. Some children believe that police officers are not allies. If children are present, one officer should talk to the children to inform them of the officers' intentions to keep the family safe, that the officers are there to help, and that the violence is not the children's fault.
  - c. If a child is to be interviewed as a witness to the incident, the officer should consider the child's physical, emotional, or psychological ability to give a statement; the child's age and ability to understand questions and formulate responses; and the likelihood the child's safety will be compromised by disclosing what they've witnessed.

2. **Obtain all available contact information where the victim can be reached.**

Include a cell phone number, a daytime phone number, or the number of a close relative or friend. Include these numbers in the incident report so the bail bondsperson, court personnel, or police department, may inform the victim of the abuser's release on bail. Inform the victim that if they intend to leave the residence, and wish to be informed of the abuser's release, they must inform the police department of a number where they may be reached, or where a message may be left safely.

**NOTE:** If the victim will be seeking to hide from the abuser, **keep a separate record** of the address and any phone numbers. Obtain information about the suspect's ownership of, presence of, or access to firearms, and their location.

3. Officers should provide information regarding a suspect's past behavior/dangerousness. This information should be documented in the incident report and provided to the Bail Commissioner in determination of bail and to the Prosecutor for use at arraignment. Therefore, gather information regarding the suspect's:
  - a. Criminal History
  - b. Board of Probation check, III
  - c. History of abusing the current victim
  - d. History of abusing other victims
  - e. History of alcohol/substance abuse
  - f. History of mental illness
  - g. History of non-fatal strangulation
  - h. History of forced sex
  - i. History of extreme possessiveness or jealousy
  - j. Possession of weapons
  - k. History of use of/or threats with a weapon
  - l. Use of weapons in prior abuse of the victim



- m. Past threats against or abuse of pets
  - n. Past attempts or threats to kill
  - o. Past attempts or threats to commit suicide; and
  - p. Current or past vacate, restraining, no-contact or other protective orders, including those held against the suspect by someone other than this victim.
  - q. Information on any police and incident reports related to the suspect
4. After ascertaining past reported and non-reported criminal history, seek appropriate criminal action for current and prior incidents. Refer victims to appropriate resources.

### C. Information Documentation

Properly document important information, i.e. spontaneous utterances (direct quotes) by the victim, the suspect, children, and other witnesses. In collecting evidence of domestic abuse, officers shall take photographs to document injuries sustained by the victim and the condition of the crime scene. Contemporaneous records of injuries and crime scene condition are critical to the prosecution of alleged abusers.

1. When documenting the scene photographically, officers are reminded to take both close-up and full scene pictures. Follow-up photographs of injuries should be taken 2-3 days after the incident to document progression of injuries.
2. Collect physical evidence (including weapons used, even simple household items) and document collection in the incident report.

## V. Arrest Guidelines

### A. The Decision to Arrest

1. The safety of the victim and any involved children shall be paramount in any decision to arrest. As in other types of criminal investigations, uncorroborated statements by a victim can constitute probable cause that the crime occurred.
2. The decision to arrest must be based on whether or not probable cause exists that the crime occurred, **not** on whether or not the victim wishes to seek complaints or wishes to testify at a future date.
3. Substance Abuse/Mental Health: When assessing credibility in order to establish probable cause, officers should remember that a victim who is under the influence of drugs or alcohol, or who suffers from mental illness, is **not** an inherently unreliable witness.
4. An abuser who is under the influence of drugs or alcohol, or who suffers from certain mental illnesses, may pose a greater risk to the safety of the officer, the victim, children, bystanders, and themselves. Officers should also remember that it is not unusual for an abuser to display a calm demeanor following any domestic violence incident.
5. Officers should be mindful that the victim has just been traumatized and may appear agitated, confused, numb, anxious, tearful, or afraid. The victim may

tell officers that they are to blame for the incident and will try to take responsibility for the incident. It is important to determine the dominant aggressor. The dominant aggressor is not who struck first, but who has a pattern of domination and control. See Section V.D, Dual arrests/dominant aggressor.

#### **B. Arrest: Mandatory Or Preferred**

An officer's authority or mandate to arrest is set forth in [M.G.L. c. 209A, §. 6\(7\)](#).

1. In the interest of immediacy, and the statutory mandate to arrest, officers shall make a warrantless arrest of any person the officer's witness or have probable cause to believe has violated an emergency, temporary or permanent order to: Refrain from abuse, vacate and stay away, no contact, failure to surrender firearms issued by **any** jurisdiction. **[1.2.6]**
2. When there are no refrain from abuse, vacate, stay-away or no-contact orders or judgments in effect, arrest shall be the preferred response whenever officers witness or have probable cause to believe that a person:
  - a. Has committed a felony; or
  - b. Has committed a misdemeanor involving abuse, as defined in: [M.G.L. c. 209A or MGL 265-13M](#); or has committed an assault and battery or permits another to commit an assault and battery upon an elder or a person with a disability in violation of: [M.G.L. c. 265, §. 13K](#).

#### **C. If the Suspect Has Fled the Scene**

When probable cause to arrest exists, and the suspect has fled the scene:

1. Officers shall direct the dispatcher to 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 statement that probable cause to arrest exists shall be honored by another department. The second department shall immediately attempt to affect the arrest as requested by the investigating department.
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

#### **D. Dual Arrests/Dominant Aggressor**

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.

1. Officers should attempt to identify the dominant aggressor, and take action based on that determination. In the majority of cases, an effective investigation will reveal the dominant aggressor. See Sections: **IV.B.** regarding past behavior/dangerousness.
2. Officers should be aware of the difference between offensive and self-defensive injuries. Self-defense of reasonable force may be used by any person in resisting or aiding another to resist an offense against the person. The use of force must be reasonable for that person given the nature of the threat and, if warranted under the circumstances, may include the use of weapons. If one of the persons acted entirely in self-defense, the situation should be treated as if there was a single offender.
3. If the officers determine that neither party acted in self-defense and that both parties have committed an act of domestic abuse, then the officers should determine who the dominant aggressor is and take action considering the totality of the circumstances including:
  - a. The relative severity of injuries and fear inflicted in this incident
  - b. The relative use of force and intimidation in this incident
  - c. Information available to the officers regarding prior incidents involving either party; or
  - d. The likelihood of either party to commit domestic violence in the near future.
4. Any officer arresting or chasing both parties is required by law to submit a separate detailed, written report **in addition** to an incident report, setting forth the grounds for dual arrest or dual charges. This includes situations where an arrest is made and there is a show cause request (or other criminal complaint request) against the other involved party.
5. 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 of law enforcement intervention by any party.

**E. Substantive Dating Relationships**

1. Officers will gather information to determine whether or not a substantive relationship exists. Officers will examine the same factors, which the courts review when making this determination:
  - a. The length of time of the relationship
  - b. The type of relationship
  - c. The frequency of interaction between the parties; and
  - d. If the relationship has been terminated by either person, the length of time that has elapsed since the termination of the relationship.

2. If the officer determines that a “substantive dating relationship” exists or did exist, then the officer shall take the proper action, including arrest when appropriate, regardless of whether the victim seeks a restraining order.
3. Even in cases where there is no substantive dating relationship, a crime, such as stalking or criminal harassment may have been committed.

#### **F. Arrest of a Caretaker**

1. In cases involving abuse of a child, an elder or a person with a disability, officers must address the issue of whether or not the victim can be left alone safely, if the abuser is arrested.
2. If the child, the elder, or the person with a disability cannot be left alone, the appropriate protective agency must be contacted, in order to arrange for temporary care. When a caretaker is arrested and an agency is called for temporary care, the officer shall explain to the child, elder, or person with disability, what is happening and the reasons for calling a protective agency. See Section XII.J.

#### **G. Out of State Orders or Violations**

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

## VI. Fingerprinting and Photographing Of Defendants

Whenever resources allow, officers shall take fingerprints and photographs of all criminal defendants in domestic violence cases. These records should be forwarded to the State Police for entry into the Automated Fingerprint Identification System (A.F.I.S.). This will greatly improve prosecution of crimes such as breaking and entering and stalking. When any defendant is arrested and charged with a felony, copies of fingerprints shall be forwarded to the Colonel of State Police. [M.G.L. c. 263, §. 1A](#).

## VII. Service of Orders

### A. In-Hand Service

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

1. Orders shall be served promptly upon receipt. If service is initially unsuccessful, the department must continue to attempt service until it is completed. Service of orders will not be delayed in order to forward service by a specialized officer or unit. If an officer is unable to make service after numerous attempts, the officer should document in detail the service attempts on the “return of service” form and request the court to allow service by leaving a copy of the order at the last known address of the defendant.
2. When an officer serves an order, they shall
  - a. Fully inform the defendant of the contents of the order and penalties if violated
  - b. Provide the defendant with informational resources including Certified Batterer’s Programs, sexual assault counseling, alcohol/substance abuse counseling, and financial counseling located near the court
  - c. Above information shall be documented on a card for service as well as in an incident report (if applicable)
3. Service of orders may compromise victim safety. Victim safety should be considered in the timing of the service of the order. Officers should encourage the victim to contact an advocate (either through the D.A.’s Office Victim Witness Unit, SAFEPLAN, or Safe Passage) in order to develop a safety plan around the service of the order. [55.2.2]

### B. Record Of Service

A record shall be made of **all** attempts at service in accordance with departmental policy and procedures set forth in [AOM O144 Legal Process](#). Each service

attempt will be documented in the IMC departmental RO# under *Service Attempts* by each officer who attempts to serve the order.

C. **Return of Service**

All returns of service, including service of Emergency Orders, must be sent to the court. A copy of the return of service should be filed with the police department copy of the restraining order. Service must also be documented in the IMC departmental RO# under *Service Attempts* by the officer who serves the order.

D. **Plaintiff Bringing Orders To The Department**

When a plaintiff brings an order to the department for service, officers should ensure that the department's responsibilities under [M.G.L. c. 209A](#) and these guidelines are met.

E. **Firearms**

Prior to serving an order, the firearms database should be checked to determine if the defendant has a firearms license. Upon service of the order, police shall immediately take possession of all firearms and licenses in the control, ownership, or possession of the defendant. The license-issuing authority shall be contacted and informed of the action taken and police reports regarding the incident forwarded to it. Such weapons and licenses 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](#).

Refer to departmental training brief entitled *Processing of Restraining Orders* for detailed instructions.

## 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. Should this occur, the defendant should be charged with [Criminal Contempt \(Common Law\); COMLAW2](#).
3. The defendant in the vacate order is allowed to retrieve their 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. The department allows a defendant up to 30 minutes (or length of time determined by the Officer-in-Charge) to retrieve their property.
  - 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. 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.
  - e. The defendant may retrieve personal property including clothing, shoes, personal care items etc. If the defendant is attempting to collect any other items, including furniture or electronic equipment that is in dispute the defendant should be referred to issuing court or Probate and Family Court for settlement of shared property.
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 and remain with 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. Allegations against Law Enforcement Personnel

- A. For departmental policy and procedures regarding situations in which allegations of domestic violence are made against a member of this department refer to [AOM P251 tb1 Domestic Violence Involving Department Employees](#).
- B. Whenever an employee of another law enforcement agency is being investigated

by this department regarding allegations of domestic violence, the investigating officer shall notify the suspect's Chief of Police as soon as possible.

## **X. Confidentiality of Domestic Reports**

Reports/communications from a victim of abuse perpetrated by a family/household member ([MGL. 209A, s. 1](#) definition) are confidential and will be documented in a separate log. This includes any information concerning responses to reports of domestic violence as well as any entry concerning the arrest of a person for assault, assault and battery, or violation of a protective order where the victim is a family or household member as defined in [MGL 209A, s.1](#).

## **XI. Confidentiality of Domestic Violence Programs 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, or 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](#). If a report is made at a domestic violence program, the incident occurred at that program or an officer transported someone to a program, the officer shall not include this address in the incident report. Under no circumstances should a law enforcement officer release information to the public or otherwise regarding the location of a domestic violence program.

## **XII. Police Considerations**

When responding to domestic violence incidents, officers should be aware of and consider the additional layers of control and oppression that victims may experience, including, but not limited to the following:

1. Immigration status
2. Language skills including English as a second language
3. Cultural identity
4. Physical limitations and disabilities
5. Sexual orientation and gender identity

These victims may have fear of police and may present angrily or as abusers themselves. It is important to be aware of and deter any biases. Statewide resources for these and other special populations can be found in [O211.c](#).



### **XIII. The Officer's Responsibility at the Scene [55.2.3, a]**

- A. 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/is in danger of occurring for a reasonable period of time to prevent abuse. If the suspect has fled the scene, a reasonable period of time is the amount of time necessary:

- a. To assess that the suspect has left the scene, and
- b. To carry out the responsibilities outlines in Sections: [XII.B-XII.E, XII.H, and XII.K.](#)

2. **Medical treatment**

Assist the victim 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. See [AOM O321 Police Escort & Relay Services](#).

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 circumstances.

4. **Notice of Rights**

Give abuse victims immediate and adequate notice of rights by handing to them and reading the Northampton Police Department's Abuse Law form stating their rights. See [AOM O211.a Northampton Police Department Abuse Law](#). Whenever possible, the statement shall be provided in said person's native language. Such an effort should also be extended to hearing impaired persons and those with disabilities that may impair their ability to comprehend. In the latter case, the assistance of the person's caseworker or counselor should be sought. If this is not possible, then the assistance of Emergency Services or other available resource should be utilized.

5. Confidentiality of Abuse Prevention Order Provisions: a plaintiff's residential address and workplace 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 victims' confidentiality rights and requests.

#### 6. **Activating the Emergency Judicial Response System (EJRS)**

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. See [\*AOM O211 tb1 Domestic Violence Reporting Procedures\*](#).

**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. **Arrest When Appropriate**

Decisions to arrest will be based on whether or not probable cause and the authority to arrest exist, **not** on whether the victim agrees to the action, or to testify at a future date. (See procedures in "Section **V: Arrest Guidelines**). If the suspect is not arrested at the scene, upon the suspect's arrest, the victim will be contacted and advised that the suspect is in custody. Additionally, if the suspect is released on bail the victim will be notified forthwith.

#### C. **Bail**

1. Inform the victim that the abuser will be eligible for bail six hours after the time of the arrest. (See procedures in Section IV.B, Information from the scene.
2. If the abuser gets bailed, a supervisor shall ensure a reasonable attempt is made to notify the victim prior to release.
3. When released upon bail, defendants charged with violations of restraining orders or a criminal act constituting domestic abuse, shall be provided with informational resources related to domestic violence.

#### D. **Referrals**

Provide information including phone numbers, about local resources, such as the community based domestic violence and sexual assault advocacy programs for emergency shelter and counseling services (Safe Passage) and the Victim-Witness Advocacy Program in the District Attorney's Office. Safe Passage's phone number is located on the bottom of the Northampton Police Department Abuse Law forms. Please see Referrals ([O211.c](#)) for additional referral and resource

information. Copies of this Appendix can be found in the report room with the Abused Person's Notice of Rights card.

#### 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. (Since the initial investigation should determine the existence of any history of abuse, that information must be included within the report). See [AOM O211 tb1 Domestic Violence Reporting Procedures](#) for detailed instructions.

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 the 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.
3. All police departments that require an investigating officer to complete a report concerning an incident, offense, alleged offense, or arrest on a form provided by the department, shall include on said form a space to indicate whether such offense, alleged offense or arrest involved abuse as defined in [M.G.L. c. 209A](#). See: [M.G.L. c.41, §98G, and M.G.L. c. 22C, §49](#).

#### F. **Mandatory Reporting**

1. 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, § 51A](#). Officers should file [51A](#) child abuse report(s) against the offender abusing or neglecting the child. If an officer intends to file a [51A](#) child abuse report, they should tell the non-offending parent or caretaker and explain the filing process, including the fact that the report is being filed against the abuser, not the caretaker who is also a victim of domestic abuse.
2. A report will be filed with the Disabled Persons Protection Commission whenever the officer has reasonable cause to believe that a caretaker has abused/neglected a disabled person between the ages of 18 and 59 in accordance with [M.G.L. c. 19C, § 10](#). The officer should advise the disabled person that a report is being filed.

3. A report will be filed with the Executive Office of Elder Affairs whenever the officer has reasonable cause to believe that someone age 60 or older has been abused/neglected in accordance with [M.G.L. c. 19A, § 14-26](#). The officer should advise the elder person that a report is being filed.

**Note:** See [AOM O211 tb1 Domestic Violence Reporting Procedures](#) for detailed instructions and a list of telephone numbers for the above agencies.

## G. **Firearms**

When a firearm or other weapon is present at the scene of a domestic violence situation, the officers shall:

1. Seize the weapon as evidence of the crime if the responding officers are informed that a firearm or weapon has been involved in the dispute.
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 the party who lawfully resides there requests that the officer do so. A consent search is allowed in all areas to which the victim has access, including joint access with the suspect
  - c. Take temporary custody of the firearm or weapon to alleviate the threat of serious violence
3. Determine whether a firearm or weapon is lawfully possessed before returning the same.

If the officer determines that the firearm or weapon cannot be seized, the following actions can take place:

- a. A judge can order the defendant to surrender guns and licenses
- b. The Chief who issued the license to carry may revoke or suspend such license
- c. In all domestic violence cases, the investigating department shall advise the licensing authority that the licensee is suspected of abuse

## H. **Issuance of an Abuse Prevention Order**

### 1. **Abuse Prevention Orders:**

Upon issuance of any applicable order under [M.G.L. c. 209A](#), police shall immediately take possession of all firearms and licenses in the control, ownership, or possession of the defendant. Such weapons and licenses may not be returned until the order has been completely vacated or the firearms provision modified by order of the court. Officers should check the firearms database to determine if the defendant has any licenses as well as specifically

ask the defendant about any firearms or licenses in their possession. This information should be documented on the card narrative or incident report.

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 firearms, weapons, or licenses.

3. **Seizure and Storage of Firearms:**

Every department within the Commonwealth shall honor another department's request for assistance in seizing the firearm, weapons, or licenses, 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.

4. **Orders against Law Enforcement Officers:**

In cases involving police officers that are defendants in Abuse Prevention Orders, the defendant **SHALL** immediately surrender all firearms, including departmental weapons and licenses, to the department serving the order.

I. **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 which 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 law prohibits any person subject to a qualifying order of protection from possessing firearms and ammunition.** See: [18 U.S.C. §922\(g\)\(8\)](#).

4. **Federal Felon in Possession of a Firearm:** [Under18 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 which are punishable by a term of imprisonment of more than two years fall within that provision.

## XIV. Supervisor’s Role

### A. Response

1. Supervisors will ensure that the provisions of [M.G.L. c.209A](#), other related statues, and these guidelines are adhered to
2. Supervisors shall be responsible for monitoring any domestic violence calls dispatched to officers under their direct supervision
3. Whenever possible, supervisors should respond to the scene for the purpose of providing additional safety and advice
4. When unable to respond, supervisors will perform follow-up to ensure department policy and procedures were followed

### B. Assurances for Practice

1. Supervisors will ensure that dispatch logs will be reviewed to ensure that an incident report has been filed, even in cases where no arrest was made. Calls which are received as allegations of domestic violence, a domestic disturbance, or violation of a restraining order, will **not** be reclassified because no probable cause to arrest existed. Incident reports **shall be** filed in those cases.
2. Prior to the end of each shift, the commanding officer shall review the log to ensure all domestic related calls for service and arrests have been properly coded to eliminate entries from the public log.
3. A supervisor or their 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 supervisor will ensure that criminal charges are initiated according to the statute and these guidelines.
4. Whenever a department identifies a particular case as posing significant danger, that case will be discussed at roll call. Additionally a referral will be made to the District Attorney’s High Risk Offender Team.

### C. Referrals

1. Supervisors shall make the safety and protection of victims and other family members a priority, recognizing the important role they perform in supporting the safety of victims and other family members and enabling them to make informed decisions.
2. Every effort shall be made to provide law enforcement protection and other safety measures to a victim of domestic violence. These measures should be taken immediately following the report of an abusive incident, immediately preceding or following a criminal court date regarding the abuse, and at any other point at which the victim anticipates or is expecting prohibited contact or harassment from the abuser. Such protection shall include but not be limited to:
  - a. Drive-bys
  - b. Welfare checks
  - c. Arresting the abuser for violations of no-contact orders and any other offense committed
  - d. Transporting the victim to a safe place when necessary; or
  - e. Ensure victim contact with trained domestic violence advocates for safety planning.
3. Supervisors will ensure that appropriate referrals are ascertained and provided to the victim. This includes the contacting of the DVIP advocate when available.

### D. **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. Refer to the Police Guide for Charging in Domestic Violence Cases for additional information.

## **XV. Domestic Violence Intervention Project**

Refer to [AOM O211 tb3 Domestic Violence Intervention Project](#) for information on program.

## **XVI. Aware Alarms**

Some victims of domestic violence who are at an enhance risk for further victimization may carry an AWARE alarm. See [AOM O601Commercial and Private Alarm Response Procedures](#) regarding NPD response protocol.

## **XVII. Domestic Violence Liaison**

The domestic violence liaison will be responsible for the following things:

1. Reviewing all Domestic Violence cases
2. Writing the annual report for the Captain of Operations
3. Be the liaison to the Civilian Advocate
4. Attend D.V.I.P. meetings
5. Attend high-risk offender meetings
6. Assist the DA's Office with grants