

	<p style="text-align: center;">RANDOLPH POLICE DEPARTMENT POLICY AND PROCEDURE DOMESTIC ABUSE & VIOLENCE GEN - 5</p>	
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Policy

Among the most difficult and sensitive calls for police assistance are those involving domestic violence. When responding to a domestic disturbance, officers must be both alert and impartial and must be concerned with the needs of victims where domestic violence is apparent or alleged. At the same time, officers must always anticipate the unexpected. 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. For this reason, whenever possible, at least two police officers should be assigned to a domestic violence situation unless immediate intervention is necessary to prevent serious physical harm.

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 from time to time) and to act with appropriate discretion and competence in carrying out its provisions.

Special Terms **Abuse** - For the purposes of this policy, "ABUSE" is defined by M.G.L. c. 209A, s. 1 as the occurrence of one or more of the following acts between family or household members:

- Attempting to cause or causing physical harm;
- Placing another in fear of imminent serious physical harm; or

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- Causing another to engage involuntarily in sexual relations by force, threat or duress.

Family or Household Members * -

- Persons who are or were married to one another;
- Persons who are or were residing together in the same household;
- Persons who are or were related by blood or marriage;
- Persons who have a child in common regardless of whether they have ever been married or lived together; or
- Persons who are or have been in a substantive dating or engagement relationship*.

Civil Liability-According to the M.G.L. c. 209A, s. 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."

*Includes same sex relationships

Desk Officer or Dispatcher

Upon receipt of a report of possible domestic abuse, the person receiving the report should obtain as much information as possible, including determining if an assault is in progress and if a weapon is involved. High priority should be given to any situation in which it appears that an assault is in progress or is imminent and officers should be dispatched to the scene as soon as possible. The high risk of injury associated with domestic violence situations requires that officers immediately proceed to the place of the dispute.

Whenever possible, two officers and a Supervisor should always be dispatched to the scene. Officers should request and be provided with the following information, when dispatched to a suspected domestic violence call:

- The existence of any warrants (by a check of LEAPS and the Warrant Management System);
- The criminal history of the suspect (B.O.P. check);
- The existence of any protective orders against the suspect (B.O.P. check) (Includes orders held by persons other than the victim in this case);
- Any other relevant information the department is aware of, especially regarding a history of incidents involving the particular address, or the parties, and the likelihood of firearms being present;

- Record of firearms identification cards and/or licenses to carry being issued to resident(s.)

**Initial
Observations
and Probable
Cause**

Upon approach, Officers shall make observations of the scene, and listen for sounds or evidence of a disturbance. Officers should keep in mind that the same standard for probable cause applies to domestic violence offenses as for any other crime. A responding Officer should make a prompt inquiry to determine if there is probable cause to believe that a crime has been committed and the identity of the perpetrator.

Probable Cause may be established by the victim's description of events. No further corroborating evidence or admission by the defendant is necessary. (**Note:** Further evidence should be gathered, including photos of the scene, photos of injuries, physical evidence, witness statements, etc, if available, to assist in later prosecution of the case.) In any domestic violence situation where probable cause exists to believe abuse (as defined) has occurred, the preferred response is arresting the perpetrator.

If there is no valid order in effect but an abuser's actions witnessed by an Officer constitute a crime, giving rise to a right to arrest, such as an assault, then an arrest shall be made.

An arrest shall be made where there is probable cause to believe a violation of a 209A order has occurred. Probable Cause to arrest for a violation of a 209A order shall be made:

- Is not negated by the fact that the victim has allowed the abuser into the home;
- Is not negated by existing Probate Court orders granting the defendant custody or visitation;
- Is not predicated on the defendant's entry into the victim's home. If the defendant is outside the home but near enough to harass the victim in violation of the express terms of a stay away order, officers shall arrest.

**Entering
Private
Premises**

When investigating a report of domestic violence, officers should be thorough and observe the following guideline.

Officers may enter private premises without a warrant in the following circumstances:

- At the request of someone in lawful control of the premises
- Where there is imminent danger of violence that could result in death or serious physical injury

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- Where a breach of the peace has been committed in an officer's presence
- When a police officer has probable cause to believe a felony has occurred and is in fresh pursuit of the fleeing felon.

"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."

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.

Officer's Demeanor

The initial contact by the responding officers should convey a professionally calm and helpful attitude. The officers shall state their reason for being present. Do not neglect to include children when explaining an officer's presence particularly if an arrest is being made. Officers should strive to be considerate and attentive toward all parties and their problems regardless of an officer's own views or personal reactions toward the matter or parties involved.

Upon entering, officers shall prevent the physical movement of the parties as much as possible and control their access to any potential weapons. Officers should be mindful that persons who are under the influence of drugs or alcohol, or who suffer from mental illness, might pose a safety risk to themselves or others at the scene.

Officer's Role at the Scene

Responding officers must take immediate control of the situation and should separate the parties to prevent any violent action and to interview them independently. However, if there are two officers present at the scene, they should, if practical, remain within view of each other to enhance officer safety and to avoid any subsequent allegations of mistreatment. In attempting to ascertain the facts in the dispute, the officers should allow each party to present his or her story individually, avoiding any unnecessary interruptions by the other party. Separating the parties also allows each to relate matters to an officer without being overheard, influenced, or intimidated by the other party. Officers should determine whether interpretative language services are needed and should seek out such services where available.

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

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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 his or her own means.

Investigation Guidelines

Officers responding to domestic violence calls should ensure thorough investigations by:

Attempting to identify and interview the party who called the police, neighbors, and other potential witnesses. Be mindful of their concerns regarding retaliation.

Determine the relationships of all parties, including children, at the scene. If children are not immediately observed, ask if there are children present in the household. If children are present, record their names and dates of birth.

Obtaining the phone number of the victim's residence (and cell phone) and include that number in the incident report so the bail bondsperson or court personnel may inform the victim of the abuser's release on bail. Inform the victim that if she or he intends to leave the residence, and wishes to be informed of the abuser's release, he or she must inform the police department of a number where he or she may be reached or where a message may be left safely. If the victim is moving or staying with someone else and does not have a telephone, the phone number of where she can be reached or who she will be with should be obtained.

Obtaining information about the suspect's ownership of, presence of, or access to firearms and their location. Officers should provide information regarding a defendant's dangerousness to the Prosecutor for use at arraignment. Therefore, gather information regarding the defendant's:

- Criminal history
- History of abusing the current victim
- History of abusing other victims
- Possession of weapon
- Use of weapons in prior abuse of the victim
- Past threats against or abuse of pets
- Past attempts or threats to kill
- Past attempts or threats to commit suicide.

Ascertaining 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.

- Document allegations of prior abuse, including expired protective orders.
- Document past use of weapons in prior domestic abuse incidents.
- Seek appropriate criminal action for prior incidents.

Determining, when possible, who has lawful custody of any minors, and whether court approved visitation rights are being violated.

- Keeping in mind that the child's safety is paramount. Standard procedures such as Department of Children and Families notification, when appropriate, should be followed for ensuring safety. With any indications of a child being present in a home, a mandatory 51A should be filed.
- Officers shall file 51A child abuse reports against only the person abusing or neglecting the child.
- If an officer intends to file a 51A child abuse report, he or she should tell the victim.
- Be mindful of the implication of using children as translators.
- The parties should be advised to resolve visitation and custody issues through the Probate and Family Court.

Note: If the victim will be seeking to hide from the abuser, keep a separate record of the address and phone number

Reporting

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.) 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. 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. 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.

The proper domestic violence assessment form should also be filled out for all domestic arrests and put into the court folder. The forms are the domestic violence assessment worksheet and/or the strangulation worksheet, whichever is applicable to the situation. The officer should fill out the form, not the victim.

These forms are invaluable when arrests are made for domestic violence as they portray a historical aspect to the relationship. The forms can also assist the victim in understanding how they have answered the questions, what types of dangers they have been living under, as well as the dangerous conditions the future holds if they remain in the relationships. The forms can also assist in report writing and painting a picture of the relationship or history.

For non-violent domestic violence/family offense, the officer should use their discretion as to whether or not the form should be filled out. For instance, if the officer suspects the victim is holding back, if further services are required, or if we feel that the victim may get a better understanding of the dangers he/she may be in the form should be filled out and forwarded to the domestic violence officer.

**Arrest
Guidelines
41.4.5**

The safety of the victim and any involved children shall be paramount in any decision to arrest, and in the timing of the arrest. As in other types of criminal investigations, uncorroborated statements by a victim can constitute probable cause that the crime occurred. The decision to arrest must be based on whether probable cause exists that the crime occurred, not on whether the victim wishes to seek complaints or wishes to testify at a future date. [41.4.5]

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.

An abuser who is under the influence of drugs or alcohol, or who suffers from certain mental illnesses, may pose a greater risk to the safety of the victim, the officer, the child, and him or herself. Officers should also remember that it is not unusual for an abuser to display a calm demeanor following a violent assault.

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An officer's authority or mandate to arrest is set forth in M.G.L. c. 209A, § 6 (7). In the interest of immediacy, and the statutory mandate to arrest, officers shall make a warrantless arrest of any person the officer 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, a suspension and surrender order, or protection order issued by any jurisdiction. 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 an officer witnesses or has probable cause to believe that a person: [41.4.5]

- Has committed a felony; or
- Has committed an assault and battery of a family or household member in violation of M.G.L. c. 265, § 13A; M.G.L. c265 §13M
- Has committed a misdemeanor involving abuse, as defined in M.G.L. c. 209A; 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.

Suspect Fled Scene **41.4.5**

When probable cause to arrest exists, and the suspect has fled the scene: [41.4.5]

- 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.
- 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.
- 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.
- 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.

Dual Arrests **41.4.5**

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. Officers should attempt to identify the dominant aggressor, and take action based on that determination [41.4.5]. In the majority of cases, an effective

investigation will reveal the dominant aggressor. Officers should be aware of the difference between offensive and self-defensive injuries. Officers arresting both parties are required by law to submit a separate detailed, written report, in addition to an incident report, setting forth the grounds for dual arrest. 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.

**Special
Victims and
Mandated
Reporting**

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

Whenever a police officer has reasonable cause to believe that a child under eighteen is suffering serious physical or emotional injury resulting from abuse or from neglect, the officer must make a full written report and 51A form for transmittal to the Department of Children and Families (DCF), in accordance with Mass. Gen. Law, Chap. 119, sec. 51A. Officers should be aware that in serious cases of child neglect or abuse, any person may apply to an appropriate juvenile court to have custody of a child under eighteen taken away from the parents or other neglectful or abusing custodian and have custody transferred, on an emergency basis, to the Department of Children and Families or a licensed child care agency or individual in accordance with Mass. Gen. Law, Chap 119, Sec. 24.

Officers who upon responding to a domestic case have reasonable cause to believe that a disabled person (defined as a person between the ages of eighteen to fifty-nine, inclusive, who is mentally disabled or who is otherwise mentally or physically disabled and as a result of such mental or physical disability is wholly or partially dependent on others to meet his daily living needs) is suffering from a serious physical or emotional injury resulting from abuse, immediately must make a full written report and DPPC form for transmittal to the Disabled Persons Protection Commission, in accordance with Mass. Gen. Law, Chap. 19C, Sec. 10.

An Officer who upon responding to a domestic case has reasonable cause to believe that a person who is sixty years of age or over is suffering from abuse, (an act or omission resulting in serious physical or emotional injury) must immediately make a full written report and complete an Elder Abuse form for transmittal to the Department of Elder Affairs, in accordance with Mass. Gen. Law, Chap. 19A, Sec. 15.

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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.

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.

Substantive Dating Relationship

Officers will gather information to determine whether or not a substantive dating relationship exists. Officers will examine the same factors which the courts review when making this determination:

- the length of time of the relationship;
- the type of relationship;
- the frequency of interaction between the parties;
- whether or not they have a child in common;
- If the relationship has been terminated by either person, the length of time that has elapsed since the termination of the relationship.

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

Out of State Protective Orders

Violations of out of state orders or Massachusetts orders violated in another state may be charged criminally as contempt MGL c. 220 s. 14, in the Commonwealth of Massachusetts.

Protective orders 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. 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 copy of the order, by any source; and
- A statement by the victim that such order remains in effect.

Service of Protective Orders

Service of orders shall be in hand unless otherwise ordered by the court. Chapter 209A, section 7 requires that "the law enforcement agency shall promptly make its return of service to the court." With delivery of the order, that officer shall complete a report noting delivery and any relevant notations, including but not limited to, that the person understood the order and service. Service of orders shall be the responsibility of the Shift Sergeant. If delivery of order cannot be made during the shift then it shall be the Shift Sergeant's responsibility to pass the order and any pertinent information to the oncoming Shift Sergeant. Review policy: **Legal Process**. Without Judicial authorization, officers should not accompany defendants to the property for any reason.

Personal 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.

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 and the plaintiff's permission.

Vacate orders include 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. The defendant in the vacate order is allowed to retrieve his or her belongings under the following conditions:
- The defendant must have a court order allowing for the retrieval.
- The police must accompany the defendant. Officers shall remain with the defendant throughout the process.
- The victim must have prior notice by the department and must agree to the timing of the retrieval.
- 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.

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

Notice of Rights

Officers investigating domestic incidents shall give a victim of domestic violence immediate and adequate notice of his or her rights. The notice shall consist of handing said person a copy of the statement, which follows below, and reading the same to the victim. Where the victim's native language is not English, the statement shall be then provided in the victim's native language whenever possible. Officers should note in their reports that the victim was given and understood these rights.

ABUSE LAW

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

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

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.

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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 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.

Note: Although not a mandatory right, all victims of domestic violence where an arrest has been made should be advised that the defendant has the right to be bailed. And upon the release of a defendant, a courtesy call should be made to the victim advising him/her of such.

Confidentially of Domestic Violence Programs

The location and street address of all domestic violence programs are absolutely confidential and shall not be required to be revealed in any criminal or civil proceeding. See M.G.L. c. 233, § 20L. For the purposes of this provision, a domestic violence program is defined as any refuge, shelter, office, safe home, institution, or center established for the purpose of offering assistance to victims of abuse through crisis intervention, medical, legal or support counseling. See M.G.L. c. 233, § 20K. Under no circumstances should a law enforcement officer release information to the public or otherwise regarding the location of a domestic violence program.

Supervisor's Role and Responsibilities

Supervisors should make an effort to respond to domestic abuse calls and will ensure that the provisions of the statute and these guidelines are met. Specifically supervisors will assure that:

- Collection of physical evidence, including but not limited to weapons used and pictures taken of injuries and/or the scene.
- 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 submitted in those cases.
- A supervisor, 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

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believed that probable cause exists, the supervisor will ensure that criminal charges are initiated according to the statute and these guidelines.

- Whenever a department identifies a particular case as posing significant danger, that case will be discussed at roll call.
- Supervisors will ascertain that appropriate referrals and rights were provided to the victim. Ensure the victim and any children feel safe to stay at the scene and have an officer remain if they are not. Also, ensuring that the victim is advised of the defendant's right of bail and whether or not an emergency order is necessary.

Regarding follow-up investigations, supervisors shall:

- 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.
- If indicated, the supervisor shall ensure that a follow-up investigation is conducted.
- Upon review of the follow-up investigation, the supervisor will ensure that additional charges are initiated whenever appropriate.

Reporting Agencies

Mandated reports of abuse or neglect of a child shall be filed with the Department of Children and Families (DCF). M.G.L. c. 119, §51A.
Department of Children and Families (781) 682-0800
After Hours Hotline 1-800-792-5200

Mandated reports of abuse or neglect of a disabled person shall be filed with the Disabled Persons Protection Commission (DPPC).
M.G.L. c. 19C, § 10. 617-727-6465 After Hours 1-800-426-9009

Mandated reports of abuse or neglect of an elder shall be filed with the South Shore Elder Services (781) 848-3910 After Hours Service 1-800-922-2275 Department of Elder Affairs. M.G.L. c. 19A, § 15. after 5pm or weekends and holidays.