


MELROSE POLICE DEPARTMENT		Department Manual: Policy No. 2 . 01
Subject: Domestic Violence Incidents		
<ul style="list-style-type: none"> MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.2.7, 55.2.2, 55.1.3, 74.1.2 		GENERAL ORDER 17-005
Effective Date: June 25, 2003 Reviewed & Revised: August 01, 2017 February 25, 2018 REF. MPD Domestic Violence Law Enforcement Guidelines 2017, as amended 2002, 2009, 2014.	Issuing Authority <i>Michael L. Lyle</i> Michael L. Lyle Chief of Police	

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It is the policy of the Melrose Police Department to investigate all reports of a domestic nature. Officers will always be dispatched to investigate the report no matter how trivial it may seem. Police are well aware that situations, which appear minor at first glance, can mask a much more serious condition. At the same time, 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. It is not unusual for uncontrolled aggressive outbursts within relationships to lead to serious bodily injury or even death. Therefore, at least two (2) police officers shall be assigned to all calls involving domestic disputes, unless immediate intervention is necessary to prevent serious bodily harm. This will enhance officer and victim safety. When possible, the Supervisor should also respond to assess and provide guidance. Supervisors and officers should be aware of the **6 hour rule** as defined in M.G.L. c. 276 § 57. (See Below)

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Bail and arraignment changed to delay the potential release of a domestic batterer.

Officers must hold any person arrested with a domestic violence offense listed below since they cannot:

- Be bailed any sooner than **six (6) hours** after the arrest (unless by a judge in open court). OR
- Be arraigned in court unless three (3) hours have passed since the time of arrest.

The offenses include:

- Restraining Order violations issued under;
 - o M.G.L. c. 208 s. 18 or 34B; (Divorce proceedings)
 - o M.G.L. c. 209A s.3, s.4 or s.5 (Mandate Arrest Orders)
 - o M.G.L. c. 209C s.15 or s. 20 (Paternity Actions)
- Any act that would constitute abuse, as defined in section 1 of said chapter 209A:
- Violation of MGL c. 265 s. 15D (Strangulation, Suffocation, Serious Bodily Injury)

The obvious goal of these provisions is to provide a ***cooling-off period*** for the offender and to allow a window for a victim to formulate a safety plan.

For police departments, this will mean holding more defendants for a longer duration and many more defendants will be held overnight awaiting the next court session

Assistant District Attorneys will be required to notify victims when a defendant posts bail that was set pursuant to a court order, **while police departments will be notifying victims if a defendant is bailed from a place of detention.**

It is the role of a police officer in responding to domestic disputes to:

1. Render or seek emergency medical assistance.
2. Attempt to calm emotional conflict.
3. Restore and maintain order.
4. Inform the victim in writing of his/her abuse rights under *M.G.L. Ch. 209A* including obtaining a restraining order. Officers will provide a copy of the abuse law to victim. (See police forms for copy.)

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5. Inform the victim of her/his rights pursuant to M.G.L. Ch. 258 § A, B, C (Massachusetts Bill of Rights) which is fully discussed and described in Chapter 55 of the Melrose Police Department Manual.
6. At the discretion of the Supervisor, transport the victim either to a shelter or safe location, as requested.
7. Provide the victim protection while he/she leaves the residence. If practical, providing a reasonable amount of time to remove clothing from the residence.
8. Officers should presume that an arrest, consistent with state law, is the preferred response to domestic disputes.

Under the provisions of M.G.L. Chapter 209A, police officers responding to the scenes of domestic disputes are required to take specific action to enforce all protective court orders, whether issued in state or out of state, and to take all reasonable measures to prevent any further abuse.

M.G.L. CH 209A. § 6: ABUSE PREVENTION LAW

A. For the purposes of this policy, "ABUSE" is defined by *M.G.L. Ch. 209A* as the occurrence of one or more of the following acts between family or household members:

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

B. "FAMILY OR HOUSEHOLD MEMBERS" are:

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

*This includes same sex relationships.

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CIVIL LIABILITY

According to *M.G.L. Ch. 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 disputes 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

The provisions of *M.G.L. Ch. 209A* impose specific responsibilities upon the police in regard to a domestic abuse situation. Even if an abused person has not gone into court for a 209A restraining order, he or she is still entitled to specific police protections pursuant to *Section 6 of Chapter 209A*. All officers are expected to be thoroughly familiar with the contents of this statute, as it is amended from time to time, and to act with discretion and competence in carrying out its provisions.

DISPATCH AND IMMEDIATE RESPONSE

The high risk of injury associated with domestic disputes requires that officers immediately proceed to the place of the dispute.

1. When dispatched to a suspected domestic call, officers should request and be provided with the following background information:
 - a. Past domestic calls at that address.
 - b. The existence of any warrants (by a check of CJIS and the Warrant Management System) when the suspect is known.
 - c. The criminal history of the suspect (B.O.P. check) when the suspect is known.
 - d. The existence of any protective orders against the suspect when the suspect is known.
 - e. 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 or other weapons being present.
 - f. Record of firearms identification cards and/or licenses to carry having been issued to **any** resident at that address.

2. Initial Observations

- a. Upon approach, officers shall make observations of the scene and listen for sounds or evidence of a disturbance.
- b. Since officers are responding to a request for police assistance, the officers should remain until entry is granted and not leave until they have

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accomplished their purpose. At a minimum, this requires the officer to ensure that peace is restored. This usually consists of an opportunity to observe and ask a few questions of **all** the parties involved.

3. Entering Private Premises

When investigating a report of a domestic dispute, officers should be thorough and observe the following guidelines:

- a. Officers may enter private premises without a search warrant in the following circumstances:
 - 1) At the request of someone in lawful control of the premises.
 - 2) Where there is imminent danger of violence that could result in death or serious physical injury.
 - 3) Where a breach of the peace has been committed in an officer's presence.
 - 4) In exigent circumstances.
 - 5) To check the well-being of a party when there are articulable facts and/or circumstances outlining the possibility that a party may need medical or other assistance.
 - 6) When a police officer has probable cause to believe a felony has occurred and is in fresh pursuit of the fleeing felon.
 - 7) Where an arrest warrant is issued and the police have a reasonable suspicion that the suspect lives there and is present.
- b. "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.
- c. Officers shall remain on 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 imminent physical danger without the presence of the officer.

OFFICERS ROLE AT THE SCENE

- A. 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 allegations of mistreatment.
- 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 influence by the other party. Separating the parties also allows each to relate

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matters to an officer without being overheard, influenced or intimidated by the other party.

- C. In cases of injury, whether minor or major, the ambulance shall be notified to respond.
- D. Officers shall complete a “Domestic Violence Risk Assessment Form” preferably at the scene with the victim. If victim reports that strangulation occurred, then the “Strangulation Worksheet” will be completed as well. However, if unable to complete on scene the worksheet may be completed at the station, hospital or by phone with the victim. When completing the M.P.D. incident report these forms shall be scanned and attached to the report. These documents are accessible by clicking on the short cut “Police Forms” then folder “Domestic Violence Incident Forms” or hard copies can be located in the report writing room.
- E. The Domestic Violence Risk Assessment Form will be fully completed.
- F. Whether an arrest is made or not, the officer shall advise the non-aggressive party of their abuse rights by giving them a written copy of their *Abused Persons Notice of Rights*. If a party qualifies for an emergency restraining order after court hours the officer or O.I.C. will:
 - 1. Fill out the **Emergency Abuse Prevention Order**.
 - 2. Assist the victim in filling out the following required forms;
 - a. Complaint for protection from abuse.
 - b. Plaintiff Confidential Information Form.
 - c. Defendant Information Form.
 - d. Issues pertaining to children form (if applicable).
 - 3. Notify the on-call judge. The officer should have a copy of the suspect’s BOP prior to making the call.
 - 4. When a 209A order has been issued the officer shall:
 - a. Provide a copy of the order to the Plaintiff/Victim -make sure they understand when the order expires and how to extend said order.
 - b. Attempt to serve or cause the order to be served if outside Melrose’s jurisdiction following the service of process procedures outlined in this manual.
 - c. Notify the Plaintiff when the order is served.

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INVESTIGATION

Officers responding to domestic disputes calls should ensure thorough investigations. At a minimum, the following investigative actions shall be taken:

A. Interviewing Witnesses - Attempt to identify and interview the party who called the police, neighbors and other potential witnesses. Be mindful of their concerns around retaliation. Officers must get all contact information from involved parties and witnesses for follow up by the victim witness advocate, District Attorney's (A's) office, and further police involvement.

B. Information from the Scene - Attempt to obtain the following at the scene.

1. Determine the identities and relationship of all parties at the scene, including the children. If children are not immediately observed, ask if there are children in the household present. If children are present, record their names and dates of birth.
2. It has been determined that children are often the eventual victims of domestic disturbances and that child abuse is a common characteristic in violence-prone families. All officers responding to a family dispute of any kind must be particularly observant for any indications of neglect or abuse (physical or sexual) of children.
3. **Obtain the phone number** of the victim and where the victim will be staying if not at her residence. Include the number(s) in the incident report so the bail bondsperson or court personnel may inform the victim of the abuser's release on bail and may contact her regarding her rights throughout the case (see Victim's Rights).

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

4. Obtain information about the suspect's ownership of, presence of, or access to firearms and their location.
5. Document any injuries, both past and present, caused by the abuse - fill out the Melrose Police Department Domestic Violence Risk Assessment Form and Strangulation Worksheet.
6. Provide information regarding a defendant's dangerousness to the Prosecutor for use at arraignment. Therefore, gather information regarding the defendant's dangerousness by filling out the Melrose Police Department's Domestic Violence Risk Assessment Worksheet.

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7. 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.
8. Determine, when possible, who has lawful custody of any minors and whether court-approved visitation rights are being violated.
 - a. Keep in mind that the child's safety is paramount. To ensure safety and when appropriate, standard procedures such as notifying the Department of Children & Families (D.C.F.) should be followed.
 - Officers should file 51A child abuse reports when they suspect there is abuse or neglect of a child.
 - If an officer intends to file a 51A child abuse report, he/she should tell the victim.
 - b. Be mindful of the implication of using children as translators.
 - c. The parties should be advised to resolve visitation and custody issues through the Probate and Family Court.

C. Information Documentation

1. Properly document important information, e.g., spontaneous utterances (direct quotes) by the victim, the suspect, children, and other witnesses. In collecting evidence of domestic abuse, officers are to use 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.
2. When documenting the scene or injuries photographically, officers are reminded to take both close ups and full scene pictures.

The Officer in Charge (OIC) shall ensure that a full and complete report of the circumstances and the police action taken in responding to domestic disputes is filed in accordance with Department procedures.

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ARREST GUIDELINES

A. The Decision to Arrest

1. The preferred response is to arrest when there is any arrestable offense committed during a domestic dispute.
2. The safety of the victim and any involved children shall be paramount in any decision to arrest and in the timing of the arrest.
3. As in other types of criminal investigations, uncorroborated statements by a victim can constitute probable cause that the crime occurred.
4. The decision to arrest must be based on whether or not probable cause exists that the crime occurred; not on whether the victim wishes to seek complaints or wishes to testify at a future date.
5. Substance Abuse/Mental Health Issues - The use of alcohol or drugs or a condition of mental illness may aggravate a domestic dispute, requiring far greater patience on the part of the responding officers.
 - a. When assessing credibility in order to establish probable cause, officers should remember that a person, who is under the influence of drugs, alcohol or suffers from mental illness, is not an inherently unreliable witness.
 - b. An abuser who is under the influence of drugs, alcohol or who suffers from certain mental illness may pose a greater risk to the safety of the victim, officer, child and himself/herself.

B. Arrest-Mandatory or Preferred

Using every reasonable means to enforce such orders, a police officer shall arrest, with probable cause, the person violating a protective order. An officer's authority or mandate to arrest is set forth in *M.G.L. Ch. 209A §6*.

1. 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

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officer witnesses or has probable cause to believe that a person has:

- a. Committed a felony.
- b. Committed an assault and battery of a family or household member in violation of *M.G.L. Ch. 265 § 13A*.
- c. Committed a misdemeanor involving abuse, as defined in *M.G.L. Ch. 209A*.
- d. Committed an assault and battery or permits another to commit an assault and battery upon an elder or person with a disability in violation of *M.G.L. Ch. 265 §13K*.

The Suspect Has Fled the Scene

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. Those patrols shall attempt to locate and arrest the suspect.
2. A Department's statements to another Department that probable cause to arrest exists shall be honored by the Melrose Police Department.
3. Officers will attempt to make a warrantless arrest within a reasonable period of time. However, as soon as it is practical, the investigating Department shall seek an arrest warrant from the appropriate court, in cases involving abuse as defined under *M.G.L. Ch. 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 his/her own.

C. Dual Arrests

1. Any officer arresting both parties is required by law to submit a detailed, written incident report, setting forth the grounds for the dual arrest.
2. Dual arrests, like the issuance of mutual restraining orders, are strongly discouraged because they trivialize the seriousness of domestic abuse and

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increase the danger to victims.

3. Officers should attempt to identify the primary aggressor and take action based upon that determination. 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.
4. Officers investigating an incident of domestic disputes shall not threaten, suggest or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.

D. Substantive Dating Relationships

1. 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:
 - a. The length of time of the relationship.
 - b. The type of relationship.
 - c. The frequency of interaction between the parties.
 - 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 or not 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.

E. 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 person with a disability cannot be left alone, the following appropriate protective agency must be contacted in order to arrange for temporary care:

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- a. Mandated reports of abuse or neglect of a child shall be filed with the Department of Children & Families (DCF). *M.G.L. Ch. 119 §51A*. 1-800-792-5200,
- b. Mandated reports of abuse or neglect of a disabled person shall be filed with the Disabled Persons Protection Commission (DPPC). *M.G.L. 19C §10*. 1-800-426-9009.
- c. Mandated reports of abuse or neglect of an elder shall be filed with the Department of Elder Affairs. *M.G.L. Ch. 19A §15*, 1-800-922-2275.

F. Out of State Orders or Violations

1. Violations of out of state orders or Massachusetts orders violated in another state may be charged criminally as contempt in the Commonwealth of Massachusetts.
2. A protective order issued in another jurisdiction, as defined in *M.G.L.: 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.
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.
 - b. A statement by the victim that such order remains in effect.

G. Vacate Orders and Court Orders to Retrieve Belongings

1. Once a vacate, no contact, stay away or refrain from abuse order is issued, officers shall not accompany a defendant to the property for any reason without specific judicial authorization.
2. The defendant in the vacate order is allowed to retrieve his/her belongings under the following conditions:
 - a. The defendant must have a court order allowing for the retrieval.
 - b. The defendant must be accompanied by the police - 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.

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- d. The defendant must not be allowed to use this time as a means of harassing the victim.
 - e. All defendants being served an abuse prevention order must be provided with a list of certified batterers programs(See Police Forms: Batterers Programs List)
3. It is the policy of the Melrose Police Department to allow no more than fifteen (15) minutes for any retrieval of property by a defendant unless otherwise directed by the Court.

DOMESTIC INCIDENTS INVOLVING POLICE OFFICERS AS SUSPECTS

- A. Any domestic incident where a police officer is involved, whether from the Melrose Police Department or other Police Departments, will follow the aforementioned procedures regarding domestic incidents. In addition the following will be performed:

If the Domestic occurs in Melrose and the suspect is an officer of the Melrose Police Department, the shift supervisor shall oversee and conduct the investigation of the incident and file a report on same. If an arrest occurs the supervisor shall:

- a. Notify the Chief immediately.
 - b. Confiscate any and all Department weapons issued to the involved officer.
2. If a Melrose Police officer is arrested by another Police Department for domestic abuse, the following shall be performed:
- a. The Shift Supervisor shall be notified immediately.
 - b. The Chief of Police shall be notified immediately by the Supervisor.
 - c. The Supervisor shall request a copy of the arrest report from the arresting Department.
 - d. The Supervisor shall attempt to confiscate any and all Department weapons issued to the involved officer.
- B. Any Melrose police officer who is the defendant of a 209A restraining order shall immediately, upon service, notify the Melrose Police Supervisor on duty. The Supervisor shall then:
- 1. Notify the Chief of Police.
 - 2. Request a copy of any and all reports associated with the restraining order from the Department(s) involved.
 - 3. Confiscate any and all Department weapons issued to the arrested officer.

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4. Confiscate the officer's License to Carry (LTC) if it was issued by the Melrose Police Department.
- C. If a Domestic incident occurs involving a police officer in Melrose and the suspect is an officer from another Department, the shift supervisor shall oversee the investigation. If an arrest occurs the Supervisor shall notify the OIC of the officer's Department.