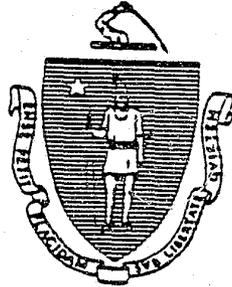




*Commonwealth of Massachusetts
Office of the Attorney General*

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*Scott Harshbarger
Attorney General*



Domestic Violence: Beyond Chapter 209A

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*Northeastern University
October 22, 1992*

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NCJRS

OCT 21 1994

ACQUISITIONS

October 22, 1992

TO THE LAW ENFORCEMENT COMMUNITY OF THE
COMMONWEALTH OF MASSACHUSETTS

We are all aware that family violence is one of the most pervasive forms of violence occurring in our country today. National surveys indicate that at least two million women per year are severely assaulted by their marital partners and over thirty percent of all female homicide victims nationally are killed by males with whom they are intimate. Research has also revealed that domestic violence is the leading cause of injury for women, more common than automobile accidents, muggings and stranger rapes combined. Moreover, almost one-third of all women seeking medical care in emergency rooms have been injured by their boyfriends or husbands. Finally, family violence is a problem which touches the lives of many others in addition to the perpetrator and the victim over an extended period of time. About three million children each year witness abuse of one parent by the other. These children are themselves at high risk of being the targets of violence by battering parents.

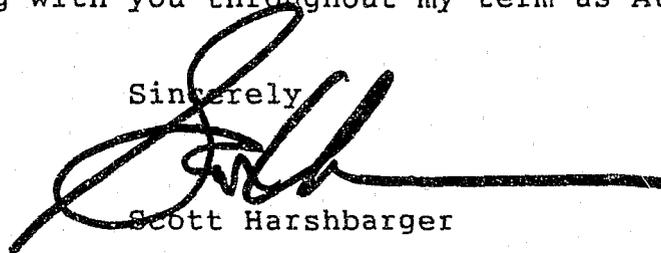
In Massachusetts, there has been a dramatic increase in the number of women seeking restraining orders over the past year, and a frightening increase in the number of women who are being killed by boyfriends or husbands. The statistics reveal that in 1985, a Massachusetts women was murdered every 22 days by her partner. Today, someone is killed every five days because of domestic violence.

Police are on the frontlines in identifying and intervening in domestic violence incidents. As District Attorney of the state's largest county, I was very impressed with the outstanding work of police departments and individual police officers in their efforts to combat the increasing incidence of family violence.

More recently, as Attorney General, in an attempt to stem the rising tide of domestic violence, my office has played an active role in partnership with the state legislature in the passage of the stalking law and the law creating a statewide domestic violence registry. In addition, together with the Massachusetts Medical Society, the Department of Public Health, and the Massachusetts Hospital Association, we are planning cross-disciplinary training for police, domestic violence advocates, physicians and hospital emergency room personnel.

One of the goals of this program is to provide you with information about the police response to domestic violence incidents in light of the new legislation. However, while these new laws will provide us with important legal tools against domestic violence, law enforcement alone will never solve the problem of domestic violence. I hope that this conference will provide you with a forum for the exchange of ideas that will help you and other law enforcement professionals to develop effective strategies to deal with this complex problem. Thank you for joining me here today and I look forward to working with you throughout my term as Attorney General.

Sincerely

A large, stylized handwritten signature in black ink, appearing to read 'S. Harshbarger', is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott Harshbarger

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*Chapter 209A:
The Abuse Prevention Law*

THE ABUSE PREVENTION ACT: CHAPTER 209A

OCTOBER, 1992

I. Chapter 209A of the General Laws, known as the Abuse Prevention Act, represents a strong statement of public policy: Domestic violence is a serious crime and is not simply a matter of personal family business. Law enforcement personnel play a key role in the implementation of this policy. Because they are most likely to be called upon to intervene when domestic violence occurs, police officers are generally the victim's first contact with the criminal justice system. These materials describe the duties and obligations of police under c. 209A.

II. STATUTORY OVERVIEW

Chapter 209A contains nine sections.^{1/} Sections Six and Seven are the most important for law enforcement personnel because they set forth the obligations of police under c. 209A. However, police officers should be familiar with all sections of c. 209A so that they can provide complete and accurate information to victims.

^{1/} G.L. c. 209A was signed into law in July, 1978. It has been amended in 1983, 1984, 1987, and 1990. The 1990 amendments went into effect on January 31, 1991.

SECTION ONE [Definitions]

Section One sets forth definitions of "abuse", "court", "family or household member", "law officer", and "vacate order" as follows:

"Abuse", is 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.

Police should interpret this definition broadly when responding to a complaint. Category (a) applies to any type of physical harm or attempt to cause physical harm, for example, punching, kicking, shoving, etc. Category (b) applies to threats and to situations where the abuser has assaulted the victim but no battery has occurred. Note that the parties' marital status is irrelevant to the application of category (c). Massachusetts law contains no spousal exclusion which would prevent a married woman from charging her husband with rape. Commonwealth v. Chretien, 383 Mass. 123 (1981).

"Court", includes the superior, probate and family, district, or Boston municipal court departments of the trial court.

"Family or household members", are persons who:

- a. are or were married to one another;
- b. are or were residing together in the same household;

- c. are or were related by blood or marriage;
- d. have a child in common regardless of whether they have ever married or lived together; or
- e. are or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston Municipal courts after consideration of the following factors: (1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

While c. 209A was originally intended to provide legal remedies to battered women, it can be used by both men and women, adults and minors. Under the definition of "family or household member", any person, regardless of sex or age, who has been abused by a spouse, former spouse, household member or former household member (who need not be of the opposite sex), past or present in-laws, step-children, or a blood relative, (including a minor child) may file a c. 209A abuse petition. Note that blood relatives, in-laws, or step-children need not reside or have resided with the plaintiff. The protections of c. 209A have also been extended to individuals who are or were involved in what is termed by the statute as "a substantive dating or engagement relationship".

"Law officer", any officer authorized to serve criminal process.

"Vacate order" court order to leave and remain away from a premises and surrendering forthwith any keys to said premises to the plaintiff. The defendant shall not damage any of the plaintiff's belongings or those of any other

occupant and shall not shut off or cause to be shut off any utilities or mail delivery to the plaintiff. In the case where the premises designated in the vacate order is a residence, so long as the plaintiff is living at said residence, the defendant shall not interfere in any way with the plaintiff's right to possess such residence, except by order or judgment of a court of competent jurisdiction pursuant to appropriate civil eviction proceedings, a petition to partition real estate, or a proceeding to divide marital property. A vacate order may include in its scope a household, a multiple family dwelling and the plaintiff's workplace. When issuing an order to vacate the plaintiff's workplace, the presiding justice must consider whether the plaintiff and defendant work in the same location or for the same employer.

Thus, the defendant must turn over the keys to the premises to the victim and must leave and remain away from the premises and the victim's workplace. The defendant is also barred from interfering with the victim's occupancy of the premises, damaging any of the household contents, shutting off the utilities, or stopping the victim's mail. (Police Guidelines, § 2.0, pp. 3-4; § 3.4, pp. 7-8; § 3.7, pp. 8-9)

SECTION TWO [Venue]

Section Two permits the victim to file a complaint in the appropriate court, as defined in Section One, where the victim resided at the time the abuse occurred or where the victim resides at the time of the complaint if he/she has left the residence or household to avoid the abuse.

SECTION THREE [Content of Orders]

Section Three sets forth the types of court orders that a victim may request by filing a complaint. Court orders include but are not limited to:

- a. ordering the defendant to refrain from abusing the plaintiff whether the defendant is an adult or minor;
- b. ordering the defendant to refrain from contacting the plaintiff, unless authorized by the court, whether the defendant is an adult or minor;
- c. ordering the defendant to vacate forthwith and remain away from the household, multiple family dwelling, and workplace. Notwithstanding the provisions of section thirty-four B of chapter two hundred and eight, an order to vacate shall be for a fixed period of time, not to exceed one year, at the expiration of which time the court may extend any such order upon motion of the plaintiff, with notice to the defendant, for such additional times as it deems necessary to protect the plaintiff from abuse;
- d. awarding the plaintiff temporary custody of a minor child;
- e. ordering the defendant to pay temporary support for the plaintiff or any child in the plaintiff's custody or both, when the defendant has a legal obligation to support such a person. In determining the amount to be paid, the court shall apply the standards established in the child support guidelines;
- f. ordering the defendant to pay the person abused monetary compensation for losses suffered as a direct result of such abuse. Compensatory losses shall include, but not be limited to, loss of earnings or support, costs for restoring utilities, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical and moving expenses and reasonable attorney's fees;

- g. ordering the plaintiff's address to be impounded as provided in Section Nine;
- h. ordering the defendant to refrain from abusing or contacting the plaintiff's child, or child in plaintiff's care or custody, unless authorized by the court;
- i. the judge may recommend to the defendant that the defendant attend a recognized batterer's treatment program.

A court is explicitly authorized under Section Three to order the defendant to refrain from contacting the victim or the victim's child or any child in the victim's care. Such "no contact" orders apply to multiple family dwellings as well as to the victim's household and workplace. (§§ 3(c) and 3(d)) In addition, a court may also issue child custody orders (even where the parties have never been married) and child support orders in accordance with the child support guidelines. However, a child support order is only permissible where the defendant has a pre-existing legal obligation to pay support. (§§ 3(d) and 3(e)).

A judge may order the defendant to pay the victim for any expenses caused by the abuse such as physician or hospital bills, lost wages, attorney's fees, or shelter expenses. Such an order may also include costs for restoring utilities and replacement costs for locks and personal property removed or destroyed. (§ 3(f))

The judge may also recommend that a defendant attend a recognized batterer's treatment program. (§ 3(i))

Section Three prohibits a court from compelling mediation. Although the judge may refer the case to the probation department or a victim/witness advocate for an information gathering session, the court may not compel the parties to meet together at these sessions.

Section Three also limits the power of the court to issue mutual restraining orders, requiring a judge to make "specific written findings of fact in the event that mutual orders are issued." (§ 3(j))

There is no statute of limitations on the filing of a complaint under Section Three of c. 209A: "A court shall not deny any complaint filed under this chapter solely because it was not filed within a particular time period after the last alleged incident of abuse."

Section Three provides that every order must state the time and date of its expiration and include the date and time for a continuation hearing. Any order remains in effect until such hearing is held. Although any relief granted by the court shall not exceed one year, the victim may obtain an extension of orders under the following circumstances:

If the plaintiff appears at the court at the date and time the order is to expire, the court shall determine whether or not to extend the order for any additional time reasonably necessary to protect the plaintiff or to enter a permanent order. The court may also extend the order upon motion of the plaintiff, for such additional time as it deems necessary to protect from abuse the plaintiff or any child in the plaintiff's care or custody.

In addition, the fact that no abuse has occurred while the order was in effect will not, by itself, prevent the extension of the order or the issuance of a new order.

These orders are not exclusive. The court may draft specific orders tailored to the individual needs of the victim. For example, a court may issue an order directing the defendant to return all house or car keys, or to remain away from the victim's school, etc.

The victim may not be charged a fee for filing a complaint. Neither the victim nor his/her attorney shall be charged for certified copies of any orders entered by the court or for copies of the file.

Orders issued under c. 209A do not affect title to real property. Moreover, c. 209A orders affecting custody or support are superseded by any subsequent custody or support order from the probate or family court. In addition, a judge cannot issue orders for custody or support under c. 209A, where there are prior or pending custody or support orders from the probate or family court. Chapter 209A does not empower the district court to award visitation rights to the defendant.

The filing of a c. 209A complaint does not preclude any other civil or criminal remedies. However, a person who files a complaint under c. 209A must disclose prior or pending actions for divorce, annulment, paternity, custody or support,

guardianship, separate support or legal separation or abuse prevention. In cases where there are outstanding orders, a person should not be discouraged from filing subsequent c. 209A complaints.

Note that a defendant's violation of a prior protective order constitutes both a criminal misdemeanor and contempt of court. The victim may file a civil or criminal contempt action in addition to seeking criminal charges and may seek any or all of these remedies simultaneously.

SECTION FOUR [Temporary Orders]

Section Four describes the procedure for obtaining temporary orders. A court may issue a temporary order upon the victim's filing of a complaint.

Abuse prevention cases follow a two-step procedure. At the first (ex-parte) hearing at which the abuse is established, the victim can request a number of protective orders (See Section Three, above). Following this first hearing, a temporary order is issued which is valid for a period of ten (10) days. The plaintiff receives a copy of the order, a second copy is sent to the police, and the third copy is served on the defendant. However, the defendant need not be served in hand. (c. 209A, §§ 4, 7; Police Guidelines, § 3.7, p. 8.) Assuming that the defendant is served, a second hearing is held at which both

parties are present.^{2/} The court can then vacate, modify or continue the temporary orders for up to one year. A judge is also required to set up a continuation hearing on the date such orders are to expire. As long as the defendant has been served with the temporary order, the plaintiff is entitled to ask that the temporary orders be extended or that a permanent order be entered regardless of whether or not the defendant appears at the hearing. (See Section Three, above)

SECTION FIVE [Afterhours Orders]

Any judge of the superior, district, family and probate, or Boston Municipal Court may issue an order granting relief to a victim who demonstrates a substantial likelihood of immediate danger of abuse. The order then must be certified by the clerk magistrate on the next court day.

Temporary orders can be issued by phone when the court is not in session:

In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of an appropriate law enforcement agency, who shall record such order on a form of order promulgated for such use by the chief administrative justice and shall deliver a copy of such order on the next court day to the clerk-magistrate of the court having venue and jurisdiction over the matter.

^{2/} If the defendant has been served with notice of the order but does not appear at the hearing, the temporary order continues in effect without further court order. (c. 209A, § 4)

Police are required to access the emergency judicial system when the court is closed for business. (c. 29A, § 6; Police Guidelines, § 2.0(E), p.2)

If the plaintiff receives an order under this section without filing a complaint, he/she must appear at court on the next business day to file a complaint. The notice and hearing requirements set forth in Section Four apply to orders issued under this section.

Since most cases of domestic violence occur during non-business hours, police should know all of the procedures that apply during this period.

SECTION SIX [Police Responsibilities]

A. Powers and Duties of the Police

Section Six describes the powers and duties of the police. When an officer has reason to believe that a family or household member, as defined in Section One, has been abused or is in danger of being abused, c. 209A requires the officer to use all reasonable means to prevent further abuse. The steps that an officer shall take, but not be limited to, include the following:

- (1) remain on the scene of where said 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 a law officer. This shall include but not be limited to remaining in the dwelling for a reasonable period of time;

(2) assist the abused person in obtaining medical treatment necessitated by an assault, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility, notwithstanding any law to the contrary;

(3) assist the abused person in locating and getting to a safe place; including but not limited to a designated meeting place for a shelter or a family member's or friend's residence. The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances;

(4) give such person immediate and adequate notice of his or her rights. Such notice shall consist of handing said person a copy of the statement which follows below and reading the same to said person. Where said person's native language is not English, the statement shall be then provided in said person's native language whenever possible.

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

For an emergency on weekends, holidays, or weeknights, the police will refer you to a justice of the superior, probate and family, district or Boston municipal court departments.

You have the right to go to the appropriate district court or the Boston municipal court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and your children can leave or until your safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or a friend's residence, or a similar place of safety.

You may request a copy of the police incident report at no cost from the police department."

(5) assist such person by activating the emergency judicial system when the court is closed for business; (See Section Five, above)

(6) inform the victim that the abuser will be eligible for bail and may be promptly released; and

(7) arrest any person a law officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to section eighteen, thirty-four B or thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, section three, four or five of this chapter, or sections fifteen or twenty of chapter two hundred and nine C. When there are no vacate, restraining, or no-contact orders or judgments in effect, arrest shall be the preferred response whenever an officer witnesses or has probable cause to believe that a person:

(a) has committed a felony;

(b) has committed a misdemeanor involving abuse as defined in section one of this chapter;

(c) has committed an assault and battery in violation of section thirteen A of chapter two hundred and sixty-five.

The safety of the victim and any involved children shall be paramount in any decision to arrest. Any officer arresting both parties must submit a detailed, written report in addition to an incident report, setting forth the grounds for dual arrest.

Subsection (7) of Section Six now mandates an arrest where a temporary or permanent restraining order has been violated in the presence of police or where police have probable cause to believe that such a violation has occurred. In addition, a violation of a "vacate," "refrain from abuse" or "no contact" order issued under G.L. Chapters 208, 209, 209A or 209C mandates an arrest and is subject to criminal penalties under c. 209A, § 7.

Please note that when a judge has issued a vacate, no-contact, and/or refrain from abuse order under c. 209A, certain additional conditions may have been imposed by the judge. These additional conditions may include granting temporary custody of the minor children to the petitioning parent or ordering the defendant to pay for child support, damage to property, replacement of locks, etc. In the past, there has been some confusion as to whether a criminal complaint for violation of a 209A order can be pursued if, for example, a defendant fails to pay the monies ordered by the court but has not violated either the vacate or refrain from abuse order. A criminal complaint and related criminal sanctions for violation of a c. 209A order are only permissible when the vacate, no contact, and/or refrain from abuse

provisions of the order have been violated. Violations of other conditions are enforceable through civil contempt proceedings.

Pursuant to Subsection (7) of Section Six, arrest is the "preferred response" when no orders are in effect but the officer has probable cause to believe that a person has committed a felony, an assault and battery or a misdemeanor involving "abuse". Abuse is specifically defined in Section One to include "placing another in fear of imminent serious physical harm" which, under appropriate circumstances, could include threats. (c. 209A, §§ 1, 7; Police Guidelines, § 2.0 (G) and (H), p. 2). While arrest under these circumstances is authorized, it is not mandated under the law.

Nothing in c. 209A requires the officer to present a complaint to a court or justice or to obtain a warrant before making an arrest, if the criteria for arrest set forth in Subsection 7 of Section Six are met. The authority to arrest for a misdemeanor involving abuse is a statutory exception to the complaint and warrant requirements of G.L. c. 275, §§ 2, 3 discussed in Wagenmann v. Adams, 829 F.2d 196, 207-08 (1st Cir. 1987).

B. Additional Provisions

"Reasonable efforts" must be made by anyone authorized to make bail to inform the victim prior to a defendant's release upon posting bail.

Additionally, Section Six now requires that upon request by the victim, either the court or an emergency response judge can issue a written no-contact order.

Finally, Section Six also addresses a police officer's civil liability for responding to a domestic violence call:

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.

C. Violation of Orders Issued By Probate, Family, or Superior Courts

1. Probate and Family Court: Historically, when an order to vacate or refrain from abuse issued by the Probate or Family Court pursuant to c. 208, § 34B was violated, c. 208, § 34C provided for criminal penalties. However, in 1990, Section 34C was amended to provide for criminal penalties for violation of an order for custody issued pursuant to any abuse prevention action as well as for violation of an order prohibiting a person from imposing any restraint on the personal liberty of another person under c. 209A, §§ 3, 4, or 5, and c. 209C, §§ 15 or 20. As a result, it now appears that violation of a custody order is a criminal offense under § 34C. However, violation of a custody order is an arrestable offense under c. 209A, § 6(7). In addition, in most cases, there will be no other crime to be charged in addition to violation of a restraining order. This is in contrast to other actions which often suggest other criminal charges. For example, violation of a vacate order

suggests trespass; violation of a no-contact order suggests threats or assault; and violation of a refrain from abuse order suggests assault and battery, etc. However, interference with the custody rights of another suggests a civil remedy except in the instance of a parental kidnapping. Thus, Chapter 34C requires further amendment to correct this problem.

2. Superior Court: The police frequently receive copies of Superior Court restraining orders, enjoining parties from contacting or visiting another party, which are issued in the course of litigation that has nothing to do with divorce, separate support or disputes between family or household members. These orders are civilly enforceable only; police response is the same as in any non-domestic matter. However, any vacate or restraining order issued under c. 209A, whether from District, Probate and Family, Superior or Boston Municipal Court, is criminally enforceable and its violation requires an arrest.

D. Victim Safety

The victim's safety is paramount in any domestic violence case. Under c. 209A, the police are required to take all reasonable steps to insure that the victim is safe. In addition to making arrests when appropriate, the police may be required to remain on the scene until the victim's safety is assured, to transport the victim elsewhere, and to assist the

victim in obtaining necessary medical treatment. (c. 209A, § 6 (1), (2) and (3); Police Guidelines, § 2.0 (C), p. 2) If the defendant agrees to leave the residence but to pack his belongings in another room, police may keep the defendant in view by following him through the residence. Commonwealth v. Rexach, 20 Mass. App. Ct. 919 (1985). Under c. 209A, police must read aloud a notice of rights to the victim and provide him/her with a printed copy of such rights in the victim's native language when possible.

Issues of tenancy, immigration status, custody and visitation, and marital status must not affect and are not relevant to the enforcement obligations of police under c. 209A. Arrests should be made and outstanding protective orders enforced without regard to any argument by the defendant that, for example, his name on the lease to the apartment gives him possessory rights, or that a custody agreement entitles him to visit the home.

Police officers must fill out incident reports whenever they respond to domestic violence calls in accordance with the standards of the officer's law enforcement agency. Documentation of a defendant's prior mistreatment of the victim may be admissible in some cases to show the defendant's mental state or intent to harm the victim. Commonwealth v. Jordan, (No. 1), 397 Mass. 489, 492 (1986). In the event of a dual

arrest, the police must submit a detailed written report in addition to the incident report setting forth the basis for the dual arrest. The police may not suggest a dual arrest as a means of discouraging requests for law enforcement intervention. (c. 209A, § 6(7); Police Guidelines § 2.0, p. 3)

SECTION SEVEN [Service and enforcement of orders]

This section pertains to the service of court orders on the defendant. It requires that the court clerk transmit two certified copies of all orders and one copy of the complaint and summons to the appropriate law enforcement agency. Unless otherwise ordered by the court, the police must serve one copy of all orders and the copy of the complaint and summons on the defendant. There is no requirement, however, that the defendant be served in hand. In addition, Section Seven specifically authorizes service of complaints, summonses, and orders on Sunday.

Each order must contain the statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE. As set forth in this section, a violation is punishable by a fine of not more than five thousand dollars or by imprisonment in the house of correction for not more than two and one-half years, or both. The court must notify the police when any order is vacated.

If a defendant is convicted of a violation of a restraining order, and has no prior record of any crime of violence, then the court can ask that he be evaluated by a certified batterer's treatment program. If the evaluation indicates that he is amenable to treatment, then the court may order the defendant to receive appropriate treatment in addition to any other penalty. If the defendant fails to participate in treatment as ordered, then any suspended sentence will be imposed. The court may also order treatment for substance abuse. The defendant is responsible for the cost of the treatment, if he can afford it.

Where an abuse prevention order is violated, the court may order the defendant to pay the victim for all damages including, but not limited to, cost for shelter or emergency housing, loss of earnings or support, out-of-pocket losses for injuries sustained or property damaged, medical expenses, moving expenses, cost for obtaining an unlisted telephone number, and reasonable attorney's fees.

The criminal remedies provided in Section Seven are not exclusive. A criminal action does not preclude enforcement of such orders by civil contempt procedure.

SECTION EIGHT [Confidentiality of records.]

This section permits the court to impound the victim's address. The victim may request that the court impound his/her

address, keep it from appearing on orders, and otherwise ensure that the address remains confidential.

Records of cases brought under c. 209A shall be withheld from public inspection.

SECTION NINE [Standard complaint form.]

Section Nine requires the administrative judges of the superior, district, family and probate, and Boston municipal court departments to promulgate a standard form complaint. If no form complaint is available, a plaintiff may prepare and file a complaint pro se.

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209A § 1

Definitions

As used in this chapter the following words shall have the following meanings:

"Abuse", the occurrence of one or more of the following acts between family or household members:

- (a) attempting to cause or causing physical harm;
- (b) placing another in fear of imminent serious physical harm;
- (c) causing another to engage involuntarily in sexual relations by force, threat or duress.

"Court", the superior, probate and family, district or Boston municipal court departments of the trial court, except when the petitioner is in a dating relationship when "Court" shall mean district, probate, or Boston municipal courts.

"Family or household members", persons who:

- (a) are or were married to one another;
- (b) are or were residing together in the same household;
- (c) are or were related by blood or marriage;
- (d) having a child in common regardless or¹ whether they have ever married or lived together; or
- (e) are or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston municipal courts consideration of the following factors:

(1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

"Law officer", any officer authorized to serve criminal process.

"Vacate order", court order to leave and remain away from a premises and surrendering forthwith any keys to said premises to the plaintiff. The defendant shall not damage any of the plaintiff's belongings or those of any other occupant and shall not shut off or cause to be shut off any utilities or mail delivery to the plaintiff. In the case where the premises designated in the vacate order is a residence, so long as the plaintiff is living at said residence, the defendant shall not interfere in any way with the plaintiff's right to possess such residence, except by order or judgment of a court of competent jurisdiction pursuant to appropriate civil eviction proceedings, a petition to partition real estate, or a proceeding to divide marital property. A vacate order may include in its scope a household, a multiple family dwelling and the plaintiff's workplace. When issuing an order to vacate the plaintiff's workplace, the presiding justice must consider whether the plaintiff and defendant work in the same location or for the same employer.

209A § 2.

Venue

Proceedings under this chapter shall be filed, heard and determined in the superior court department or the Boston municipal court department or respective divisions of the probate and family or district court departments having venue over the plaintiff's residence. If the plaintiff has left a residence or household to avoid abuse, such plaintiff shall have the option of commencing an action in the court having venue over such prior residence or household, or in the court having venue over the present residence or household.

Remedies; period of relief

A person suffering from abuse from an adult or minor family or household member may file a complaint in the court requesting protection from such abuse, including, but not limited to, the following orders:

(a) ordering the defendant to refrain from abusing the plaintiff, whether the defendant is an adult or minor;

(b) ordering the defendant to refrain from contacting the plaintiff, unless authorized by the court, whether the defendant is an adult or minor;

(c) ordering the defendant to vacate forthwith and remain away from the household, multiple family dwelling, and workplace. Notwithstanding the provisions of section thirty-four B of chapter two hundred and eight, an order to vacate shall be for a fixed period of time, not to exceed one year, at the expiration of which time the court may extend any such order upon motion of the plaintiff, with notice to the defendant, for such additional time as it deems necessary to protect the plaintiff from abuse;

(d) awarding the plaintiff temporary custody of a minor child;

(e) ordering the defendant to pay temporary support for the plaintiff or any child in the plaintiff's custody or both, when the defendant has a legal obligation to support such a person. In determining the amount to be paid, the court shall apply the standards established in the child support guidelines;

(f) ordering the defendant to pay the person abused monetary compensation for the losses suffered as a direct result of such abuse. Compensatory losses shall include, but not be limited to, loss of earnings or support, costs for restoring utilities, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical and moving expenses and reasonable attorney's fees;

(g) ordering the plaintiff's address to be impounded as provided in section nine;

(h) ordering the defendant to refrain from abusing or contacting the plaintiff's child, or child in plaintiff's care or custody, unless authorized by the court;

(i) the judge may recommend to the defendant that the defendant attend a recognized batterer's treatment program.

No filing fee shall be charged for the filing of the complaint. Neither the plaintiff nor the plaintiff's attorney shall be charged for certified copies of any orders entered by the court, or any copies of the file reasonably required for future court action or as a result of the loss or destruction of plaintiff's copies.

Any relief granted by the court shall be for a fixed period of time not to exceed one year. Every order shall on its face state the time and date the order is to expire and shall include the date and time that the matter will again be heard. If the plaintiff appears at the court at the date and time the order is to expire, the court shall determine whether or not to extend the order for any additional time reasonably necessary to protect the plaintiff or to enter a permanent order. When the expiration date stated on the order is on a weekend day or holiday, or a date when the court is closed to business, the order shall not expire until the next date that the court is open to business. The plaintiff may appear on such next court business day at the time designated by the order to request that the order be extended. The court may also extend the order upon motion of the plaintiff, for such additional time as it deems necessary to protect from abuse the plaintiff or any child in the plaintiff's care or custody. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order, of allowing an order to expire or be vacated, or for refusing to issue a new order.

The court may modify its order at any subsequent time upon motion by either party. When the plaintiff's address is impounded and the defendant has filed a motion to modify the court's order, the court shall be responsible for notifying the plaintiff. In no event shall the court disclose any impounded address.

No order under this chapter shall in any manner affect title to real property.

No court shall compel parties to mediate any aspect of their case. Although the court may refer the case to the family service office of the probation department or victim/witness advocates for information gathering purposes, the court shall not compel the parties to meet together in such information gathering sessions.

209A § 3 (Cont.)

A court shall not deny any complaint filed under this chapter solely because it was not filed within a particular time period after the last alleged incident of abuse.

A court may issue a mutual restraining order or mutual no-contact order pursuant to any abuse prevention action only if the court has made specific written findings of fact. The court shall then provide a detailed order, sufficiently specific to apprise any law officer as to which party has violated the order, if the parties are in or appear to be in violation of the order.

Any action commenced under the provisions of this chapter shall not preclude any other civil or criminal remedies. A party filing a complaint under this chapter shall be required to disclose any prior or pending actions involving the parties for divorce, annulment, paternity, custody or support, guardianship, separate support or legal separation, or abuse prevention.

If there is a prior or pending custody support order from the probate and family court department of the trial court, an order issued in the superior, district or Boston municipal court departments of the trial court pursuant to this chapter may include any relief available pursuant to this chapter except orders for custody or support.

If the parties to a proceeding under this chapter are parties in a subsequent proceeding in the probate and family court department for divorce, annulment, paternity, custody or support, guardianship or separate support, any custody or support order or judgment issued in the subsequent proceeding shall supersede any prior custody or support order under this chapter.

209A § 4

Temporary orders; notice; hearing

Upon the filing of a complaint under this chapter, the court may enter such temporary orders as it deems necessary to protect a plaintiff from abuse, including relief as provided in section three. Such relief shall not be contingent upon the filing of a complaint for divorce, separate support, or paternity action.

If the plaintiff demonstrates a substantial likelihood of immediate danger of abuse, the court may enter such temporary relief orders without notice as it deems necessary to protect the plaintiff from abuse and shall immediately thereafter notify the defendant that the temporary orders have been issued. The court shall give the defendant an opportunity to be heard on the question of continuing the temporary order and of granting other relief as requested by the plaintiff no later than ten court business days after such orders are entered.

Notice shall be made by the appropriate law enforcement agency as provided in section seven.

If the defendant does not appear at such subsequent hearing, the temporary orders shall continue in effect without further order of the court.

209A § 5.

Granting of relief when court closed; certification

When the court is closed for business, any justice of the superior, probate and family, district or Boston municipal court departments may grant relief to the plaintiff as provided under section four if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse. In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of an appropriate law enforcement agency, who shall record such order on a form of order promulgated for such use by the chief administrative justice and shall deliver a copy of such order on the next court day to the clerk-magistrate of the court having venue and jurisdiction over the matter. If relief has been granted without the filing of a complaint pursuant to this section of this chapter, then the plaintiff shall appear in court on the next available business day to file said complaint. Notice to the plaintiff and defendant and an opportunity for the defendant to be heard shall be given as provided in said section four.

Any order issued under this section and any documentation in support thereof shall be certified on the next court day by the clerk-magistrate or register of the court issuing such order to the court having venue and jurisdiction over the matter. Such certification to the court shall have the effect of commencing proceedings under this chapter and invoking the other provisions of this chapter but shall not be deemed necessary for an emergency order issued under this section to take effect.

209A § 6

Powers of police

Whenever any law 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 of where said 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 a law officer. This shall include, but not be limited to remaining in the dwelling for a reasonable period of time;

(2) assist the abused person in obtaining medical treatment necessitated by an assault, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility, notwithstanding any law to the contrary;

(3) assist the abused person in locating and getting to a safe place; including but not limited to a designated meeting place for a shelter or a family member's or friend's residence. The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances;

(4) give such person immediate and adequate notice of his or her rights. Such notice shall consist of handing said person a copy of the statement which follows below and reading the same to said person. Where said person's native language is not English, the statement shall be then provided in said person's native language whenever possible.

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

For an emergency on weekends, holidays, or weeknights the police will refer you to a justice of the superior, probate and family, district, or Boston municipal court departments.

209A § 6 (Cont.)

You have the right to go to the appropriate district court or the Boston municipal court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and your children can leave or until your safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or a friend's residence, or a similar place of safety.

You may request a copy of the police incident report at no cost from the police department."

The officer shall leave a copy of the foregoing statement with such person before leaving the scene or premises.

(5) assist such person by activating the emergency judicial system when the court is closed for business;

(6) inform the victim that the abuser will be eligible for bail and may be promptly released; and

(7) arrest any person a law officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to section eighteen, thirty-four B or thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, section three, four or five of this chapter, or sections fifteen or twenty of chapter two hundred and nine C. When there are no vacate, restraining, or no-contact orders or judgments in effect, arrest shall be the preferred response whenever an officer witnesses or has probable cause to believe that a person:

(a) has committed a felony;

(b) has committed a misdemeanor involving abuse as defined in section one of this chapter;

(c) has committed an assault and battery in violation of section thirteen A of chapter two hundred and sixty-five.

The safety of the victim and any involved children shall be paramount in any decision to arrest. Any officer arresting both parties must submit a detailed, written report in addition to an incident report, setting forth the grounds for dual arrest.

No law officer investigating an incident of domestic violence shall threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.

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.

Whenever any law officer investigates an incident of domestic violence, the officer shall immediately file a written incident report in accordance with the standards of the officer's law enforcement agency and, wherever possible, in the form of the National Incident-Based Reporting System, as defined by the Federal Bureau of Investigation. The latter information may be submitted voluntarily by the local police on a monthly basis to the crime reporting unit of the criminal history systems board.

The victim shall be provided a copy of the full incident report at no cost upon request to the appropriate law enforcement department.

When a judge or other person authorized to take bail bails any person arrested under the provisions of this chapter, he shall make reasonable efforts to inform the victim of such release prior to or at the time of said release.

When any person charged with or arrested for a crime involving abuse under this chapter is released from custody, the court or the emergency response judge shall issue, upon the request of the victim, a written no-contact order prohibiting the person charged or arrested from having any contact with the victim and shall use all reasonable means to notify the victim immediately of release from custody. The victim shall be given at no cost a certified copy of the no-contact order.

209A § 7

Court orders; service; enforcement; violations

Whenever the court orders under sections eighteen, thirty-four B, and thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, sections three, four and five of this chapter, or sections fifteen and twenty of chapter two hundred and nine C, the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order and one copy of the complaint and summons forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant, together with a copy of the complaint, order and summons. The law enforcement agency shall promptly make its return of service to the court.

Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order. The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated and shall direct the agency to destroy all record of such vacated order and such agency shall comply with that directive.

Each abuse prevention order issued shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Any violation of such order shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment. Where the defendant has no prior record of any crime of violence and where the court believes, after evaluation by a certified or provisionally certified batterer's treatment program, that the defendant is amenable to treatment, the court may, in addition to any other penalty, order appropriate treatment as specified in this section. If a defendant ordered to undergo treatment has received a suspended sentence, the original sentence shall be reimposed if the defendant fails to participate in said program as required by the terms of his probation.

When a defendant has been ordered to participate in a treatment program pursuant to this section, the defendant shall be required to regularly attend a certified or provisionally certified batterer's treatment program. To the extent permitted by professional requirements of confidentiality, said program shall communicate with local battered women's programs for the purpose of protecting the victim's safety. Additionally, it shall specify the defendant's attendance requirements and keep the probation department informed of whether the defendant is in compliance.

In addition to, but not in lieu of, such orders for treatment, if the defendant has a substance abuse problem, the court may order appropriate treatment for such problem. All ordered treatment shall last until the end of the probationary period or until the treatment program decides to discharge the defendant, whichever comes first. When the defendant is not in compliance with the terms of probation, the court shall hold a revocation of probation hearing. To the extent possible, the defendant shall be responsible for paying all costs for court ordered treatment.

In each instance where there is a violation of an abuse prevention order, the court may order the defendant to pay the plaintiff for all damages including, but not limited to, cost for shelter or emergency housing, loss of earnings or support, out-of-pocket losses for injuries sustained or property damaged, medical expenses, moving expenses, cost for obtaining an unlisted telephone number, and reasonable attorney's fees.

Any such violation may be enforced in the superior, the district or Boston municipal court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston municipal court departments may each enforce by civil contempt procedure a violation of its own court order.

The provisions of section eight of chapter one hundred and thirty-six shall not apply to any order, complaint or summons issued pursuant to this section.

209A § 8

Address of plaintiff; exclusion from court documents; confidentiality of records

Upon the request of the plaintiff, the court shall impound the plaintiff's address by excluding same from the complaint and from all other court documents which are available for public inspection, and shall ensure that the address is kept confidential from the defendant and defendant's attorney.

The records of cases arising out of an action brought under the provisions of this chapter where the plaintiff or defendant is a minor shall be withheld from public inspection except by order of the court; provided, that such records shall be open, at all reasonable times, to the inspection of the minor, said minor's parent, guardian, attorney, and to the plaintiff and the plaintiff's attorney, or any of them.

209A § 9.

Form of complaint; promulgation

The administrative justices of the superior court, probate and family court, district court, and the Boston municipal court departments shall jointly promulgate a form of complaint for use under this chapter which shall be in such form and language to permit a plaintiff to prepare and file such complaint *pro se*.

COMMONWEALTH vs. JONATHAN P. GORDON.

Essex, January 9, 1990. - May 14, 1990.

Present: LIACOS, C.J., ABRAMS, NOLAN, LYNCH, & O'CONNOR, JJ

Abuse Prevention, Protective Order, Evidence, Relevancy and materiality, Redirect examination. Words, "Abuse," "Vacate."

Discussion of G. L. c. 209A, with respect to violations of protective orders issued under § 3 thereof and to the imposition of criminal sanctions. [344-345]

A protective order issued pursuant to G. L. c. 209A, requiring the defendant to "immediately leave and remain away from the [marital] household" was consonant with the terms of G. L. c. 209A, § 7, requiring a defendant to "vacate the household," with the result that the defendant was properly found criminally liable for violation of the order for returning to the marital home for visits. [345-348]

The evidence presented at the trial of a complaint for violation of a protective order issued under G. L. c. 209A supported the jury's finding that the defendant failed to "remain away" from the marital household as ordered, and the defendant's motion for a required finding of not guilty was properly denied. [348]

The definition of "abuse" provided by G. L. c. 209A, § 1, was construed, consonant with the common law definition of assault, to mean an act placing another in reasonable apprehension that force may be used. [348-349]

The evidence presented at the trial of a complaint for violation of a protective order issued under G. L. c. 209A supported the jury's finding that the defendant's wife was in reasonable apprehension that her husband might physically abuse her, and the defendant's motion for a required finding of not guilty was properly denied. [349-350]

No issue with respect to a criminal defendant's motion for a mistrial was presented for appellate review. [350]

Evidence of a confrontation between a criminal defendant and his wife five days before he was arrested and charged with violation of a protective order issued under G. L. c. 209A, was relevant and admissible at the trial of the complaint for the violation to show the wife's reasonable fear of her husband. [351]

At a criminal trial the judge properly admitted certain rebuttal evidence on redirect examination where the subject had been opened by defense counsel on cross-examination. [352]

There was no error in the jury instructions at the trial of a complaint for violation of a G. L. c. 209A protective order. [352-353]

COMPLAINT received and sworn to in the Newburyport Division of the District Court Department on November 15, 1988.

On transfer to the jury session of the Haverhill Division, the case was tried before *William H. Sullivan, J.*

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Julian Soshnick (Bruce Garr with him) for the defendant.

Margaret J. Perry, Assistant District Attorney, for the Commonwealth.

LIACOS, C.J. On January 4, 1989, tried before a jury of six in the Haverhill Division of the District Court Department, the defendant, Jonathan P. Gordon, was found guilty of violating a protective order issued pursuant to G. L. c. 209A (1988 ed.). He was sentenced by the judge to one year in a house of correction.¹ The defendant now appeals from his conviction, asserting various errors in the trial below. We affirm the conviction.

The evidence submitted at trial warranted the jury finding the following facts. The defendant and Karen Gordon (Karen) had been married for eleven years when, on May 31, 1988, the couple separated in anticipation of divorce. On July 26, 1988, following a hearing at which the defendant was present, a judge of the District Court issued an order pursuant to G. L. c. 209A (209A order) requiring the defendant "to refrain from abusing [Karen]" and to "immedi-

¹The judge ordered the defendant to serve thirty days, and suspended the remainder of the sentence. A fine of \$5,000 also was imposed, but was reduced subsequently to \$500. The defendant sought a stay of execution of his sentence from a single justice of the Appeals Court and a single justice of this court, pending an appeal from his conviction. Both requests for a stay were denied.

ately leave and remain away from the [marital] household." The order also awarded temporary custody of the couple's two children to Karen and directed the defendant to pay \$700 each month for the temporary support of the children. This order was to remain in effect from July 26, 1988, to July 26, 1989.

Between July 26, 1988, and November 10, 1988, the defendant came to the marital home on five separate occasions. Generally, these visits were to see his children. On November 10, 1988, the defendant telephoned Karen and asked if she would type a paper for a friend. She agreed, and the defendant came to the house to deliver the paper. During this visit, the defendant and Karen became involved in an argument when the defendant learned that Karen had been dating another man. The defendant yelled at his wife in front of their five year old son, calling her a "bitch" and a "whore." Karen testified at trial that, at this time, she was "upset" and felt "insecure"; she stated that she "didn't know what [the defendant] was going to do next."

Five days later, on November 15, 1988, the defendant returned to the house unannounced. Karen's brother and a neighbor were visiting at that time, and Karen sent her neighbor upstairs with the Gordons' older son to telephone the police. The defendant came to the outside of the front door of the house and urged Karen to let him in. He stated that he wanted to talk, but Karen did not respond or open the door. The defendant said that Karen was being "immature and ridiculous." The defendant left a note on the front door, returned to his automobile, and started to back out of the driveway. When Karen opened the door to take the note, the defendant left his automobile, walked up to the house, and stood with a foot on the threshold, his back resting against the front door, holding it open.

At this point, two officers of the Newbury police department arrived at the house. Lieutenant Rick Frappier ordered the defendant away from the door and arrested him for violation of the 209A order. The other police officer went into the house to speak with Karen, who stated that the defendant

had not abused her physically during his visit. Lieutenant Frappier later filed a report incident to the defendant's arrest, which stated that "[the defendant] did not appear to be abusive nor did he make physical contact with [Karen]."³

On appeal, the defendant contends that the trial judge erred in denying a motion for directed verdict and a motion for mistrial. The defendant also claims that the judge impermissibly admitted irrelevant and prejudicial evidence, and failed to instruct the jury properly regarding what acts would constitute a violation of the 209A order. Finally, the defendant argues that G. L. c. 209A, § 7, which makes criminal the violation of certain sections of a 209A order, fails to give clear warning as to what activities are proscribed. We address each claim in turn.

1. *Denial of the defendant's motion for a required finding of not guilty.* At the close of the Commonwealth's case, defense counsel moved for a required finding of not guilty. In support of the motion, defense counsel argued that G. L. c. 209A, § 7, makes criminal only the violation of a 209A order to "refrain from abus[e]" or to "vacate the household," and claimed that the Commonwealth had failed to present sufficient evidence to prove beyond a reasonable doubt that the defendant had either "abused" his wife on November 15, 1988, or that he had failed to "vacate" the marital home by November 15, 1988. The judge denied the defendant's motion.

In reviewing the denial of a motion for a required finding of not guilty, we must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" (emphasis in original). *Commonwealth v. Latimore*, 378 Mass. 671, 677 (1979), quoting *Jackson v. Virginia*, 443 U.S. 307, 318-319 (1979). See *Commonwealth v. Merola*, 405 Mass. 529, 533 (1989); Mass. R. Crim. P. 25 (a), 378 Mass. 896 (1979). In

³The defendant did not testify, and no witnesses were presented in his behalf.

this regard, we note that “[c]ircumstantial evidence is competent to establish guilt beyond a reasonable doubt . . . [and] [a]n inference drawn from circumstantial evidence ‘need only be reasonable and possible; it need not be necessary or inescapable.’” *Commonwealth v. Merola, supra*, quoting *Commonwealth v. Beckett*, 373 Mass. 329, 341 (1977).

The defendant’s argument in support of his motion for a required finding of not guilty encompasses not only a dispute as to the testimony presented below and the inferences which reasonably can be drawn therefrom, but it also raises questions regarding the necessary elements of a criminal violation of G. L. c. 209A. Specifically, the defendant claims that he cannot be found to have “abused” his wife in violation of G. L. c. 209A, § 7, unless he physically harmed her or made some outwardly threatening gesture which put her in fear of “imminent serious physical harm.” In addition, the defendant claims that a 209A order to “vacate the household” only requires him to surrender his residency at the marital home and does not prohibit him from returning to the home for visits. This court has not faced these issues before. A short review of the structure of G. L. c. 209A, as it relates to the present case, is in order.

General Laws c. 209A, entitled “Abuse Prevention,” provides a statutory mechanism by which victims of family or household abuse can enlist the aid of the State to prevent further abuse. “Abuse” is defined as “the occurrence of one or more of the following acts between family or household members: (a) attempting to cause or causing physical harm; (b) placing another in fear of imminent serious physical harm; (c) causing another to engage involuntarily in sexual relations by force, threat of force or duress.” G. L. c. 209A, § 1.

Under § 3 of c. 209A, “[a] person suffering from abuse from an adult or minor family or household member may file a complaint in the court requesting protection from such abuse” The complainant may request the court to issue orders which: (1) “[order] the defendant to refrain from abusing the plaintiff,” (2) “[order] the defendant to vacate

forthwith the household,” (3) “[award] the plaintiff . . . temporary custody of a minor child,” (4) “[order] the defendant to pay temporary support for the plaintiff or any child in the plaintiff’s custody or both,” (5) “[order] the defendant to pay to the person abused monetary compensation for losses suffered as a direct result of . . . abuse,” and (6) “[order] the plaintiff’s address to be impounded.” G. L. c. 209A, § 3 (a)-(f). Any orders issued by the court are for a fixed period of time not to exceed one year. On the expiration of an order, the plaintiff may move for an extension, which the court may grant if it is needed to protect the plaintiff from abuse. *Id.*

While the court is entitled to issue any of the orders which the complainant may request under § 3, c. 209A appears to anticipate that only a violation of an order to refrain from abuse, or an order to vacate the household, will represent a criminal offense. Section 7 of c. 209A requires any order to refrain from abuse or to vacate the household to contain the statement: “VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE,” and provides that a violation of either of these types of orders “shall be punishable by a fine of not more than five thousand dollars or by imprisonment for not more than two and one-half years in a house of correction or both such fine and imprisonment.” In contrast, no specific criminal sanctions are provided for violations of 209A orders other than orders to refrain from abuse or orders to vacate the household. Furthermore, no statements warning of criminal liability for violations are required for any 209A orders other than those described in § 7.

a. *Order to vacate the household.* The defendant argues that, while the judge below issued a 209A order requiring him to “immediately leave and remain away from the [marital household],” criminal liability may attach for a violation of the order only in so far as there is a failure to “vacate the household,” as is provided in § 7. The defendant argues further that the order to “vacate” was satisfied when he surrendered legal occupancy in the house, and that § 7 did not require him to “remain away” from the house. Therefore, he concludes, he cannot be found criminally liable for returning

to the marital home for visits, regardless of the terms of the 209A order below. We disagree. The defendant has misconstrued the scope of the term "vacate" as it is used in c. 209A.

In determining the range of activity the Legislature intended to prohibit by authorizing courts to issue orders requiring defendants to "vacate" the marital home, this court must look to the words of the statute "construed by the ordinary and approved usage of the language, considered in connection with the cause of [the statute's] enactment, the mischief or imperfection to be remedied and the main object to be accomplished." *O'Brien v. Director of the Div. of Employment Sec.*, 393 Mass. 482, 487-488 (1984), quoting *Industrial Fin. Corp. v. State Tax Comm'n*, 367 Mass. 360, 364 (1975). Chapter 209A, while allowing an order to "vacate," provides no particular definition for the term. Webster's New Int'l Dictionary 2810 (2d ed. 1957) defines "vacate" as "3. [t]o make vacant, as an office, post, house, etc.; to deprive of an incumbent or occupant." While this definition makes clear the fact that the Legislature intended an abusive defendant to depart from the house, it provides no guidance in either a negative or affirmative direction whether the Legislature intended to require such a defendant to stay away from the house subsequent to the initial departure. The Legislature's intention, however, becomes clear when we consider the "mischief or imperfection" with which c. 209A is concerned and "the main object" which c. 209A seeks to accomplish. *O'Brien v. Director of the Div. of Employment Sec.*, *supra* at 488.

As we discussed earlier, c. 209A represents a legislative response to the troubling social problem of family and household abuse in the Commonwealth. Judicial orders issued pursuant to c. 209A afford abused individuals the opportunity to avoid further abuse and provide them with assistance in structuring some of the basic aspects of their lives, such as economic support and custody of minor children, in accordance with their right not to be abused.

Of the types of orders allowed under c. 209A, orders requiring an abusive defendant to "refrain from abusing" a family or household member and to "vacate" the household have been accorded the most importance by the Legislature, as is demonstrated by the criminal sanctions prescribed for violations thereof. The significance attached to these two types of orders is eminently reasonable, in that they both serve directly to support the statute's primary goal of abuse prevention. An order to "refrain from abus[e]" serves the obvious purpose of putting an abusive party on notice of the possibility of criminal penalties, thereby deterring further abuse. An order to "vacate the household," on the other hand, creates a haven for the abused party in which no further abuse need be feared and provides a temporary, partial separation of the abused and abusive party, thereby leaving fewer opportunities for abusive contact.

Were we to adopt the defendant's definition of "vacate," an abusive party, having surrendered occupancy of the household, would be free to return to the house at will. The abused party would have no ability to lessen the abusive party's prerogative to initiate contact and could expect no refuge from the possibility of further abuse. That the Legislature intended the word "vacate" to include the concept of "remain away" is demonstrated by the authority of a judge to issue a "vacate" order for a period of one year. G. L. c. 209A, § 3 (b). See G. L. c. 266, § 120 (1988 ed.) (making it a criminal trespass to "enter" in violation of an order under G. L. c. 209A). The Legislature can be assumed to know that opportunities for abuse do not ebb or flow automatically according to the pull of the legal notion of occupancy; a true haven from abuse exists only where an abusive party has no right to enter at any time.

The 209A order issued below, which required the defendant to "immediately leave and remain away from the [marital] household" was entirely consonant with the terms of G. L. c. 209A, § 7, requiring a defendant to "vacate the

household." Accordingly, the defendant may be held criminally liable for the violation of the 209A order.³

The evidence presented supported a conclusion that the defendant failed to "remain away" from the house in violation of the 209A order. On such evidence, the jury clearly were entitled to find the defendant guilty under G. L. c. 209A, § 7, for violating an order to "vacate" the house. The defendant's motion for a required finding of not guilty regarding the order to "vacate" was appropriately denied.

b. *Order to refrain from abuse.* For the purposes of criminal punishment under G. L. c. 209A, § 7, a party violates an order to "refrain from abus[e]" when he or she: (1) "attemp[t] to cause or caus[es] physical harm"; (2) "plac[e]s another in fear of imminent serious physical harm"; or (3) "caus[es] another to engage involuntarily in sexual relations by force, threat of force or duress." G. L. c. 209A, § 1. In the present case, there have been no allegations that the defendant either physically harmed or attempted physically to harm his wife on the date of his arrest. Furthermore, there have been no allegations that he caused his wife to engage involuntarily in sexual relations. Therefore, any claim of a violation of the order to refrain from abuse must have been

³The defendant argues that, even though his acts may have constituted a violation of G. L. c. 209A, § 7, he cannot be held criminally liable because the phrase "vacate the household" was not sufficiently explicit to give him clear meaning of the activities proscribed under § 7 at the time of his arrest. "We have not hesitated to relieve defendants of criminal responsibility where the law was so unsettled or unclear that it did not provide fair notice of what conduct was forbidden." *Commonwealth v. Chretien*, 383 Mass. 123, 132 (1981). However, the 209A order below, which carried the warning "VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE," ordered the defendant to "immediately leave and remain away from the [marital] household" (emphasis added). The terms of the order put the defendant on notice as to precisely the range of activity that was forbidden. He cannot reasonably claim that he was unaware that he risked criminal punishment for failing to "remain away" from the house. The particularity of the terms of the 209A order, of which the defendant was well aware, leads us to reject the defendant's request that we apply our holding today in a prospective manner only. See *Commonwealth v. Klein*, 372 Mass. 823, 833 (1977).

based on an allegation that the defendant "plac[ed his wife] in fear of imminent serious physical harm."

The defendant claims that the test whether such fear exists must be objective, and that his actions on November 15, 1988, cannot be found to have created an objective fear of "imminent serious physical harm." In support of his conclusion, the defendant directs our attention to the fact that, at trial, Karen did not testify that she was in fear of "imminent serious physical harm" at the time of the defendant's visit, and claims that the evidence presented below demonstrates that he made no outwardly threatening or menacing gestures toward his wife.

The relevant definition of "abuse" provided by G. L. c. 209A, § 1, "plac[ing] another in fear of imminent serious physical harm," closely approximates the common law description of the crime of assault. We must presume that the Legislature was aware of the common law definition of assault when it provided a similar definition for "abuse" in c. 209A. *Selectmen of Topsfield v. State Racing Comm'n*, 324 Mass. 309, 313 (1949). Accordingly, we turn to the common law treatment of assault for guidance in our examination of c. 209A.

Under the common law, "it is well established . . . that an act placing another in reasonable apprehension that force may be used is sufficient for the offense of criminal assault." *Commonwealth v. Delgado*, 367 Mass. 432, 437 (1975), and cases cited. In determining whether an apprehension of anticipated physical force is reasonable, a court will look to the actions and words of the defendant in light of the attendant circumstances. *Id.* at 436-437. See *Commonwealth v. Tar-rant*, 367 Mass. 411, 414-416 (1975). In a criminal assault, the Commonwealth need not prove that the victim was in fear. "[N]either fear, nor terror nor apprehension of harm is an essential ingredient of the common law crime of assault." *Commonwealth v. Slaney*, 345 Mass. 135, 139 (1962).

In the present case, there was evidence of a verbal outburst between the defendant and Karen five days before the incident in question, during which the defendant called his

wife a "bitch" and a "whore." Karen testified that, at this time, she was "upset," and that she "didn't know what [the defendant] was going to do next." At the next meeting between Karen and the defendant, on November 15, 1988, the defendant arrived at the house unannounced, and when Karen refused to respond to the defendant's requests that she open the door, the defendant said that Karen was being "immature and ridiculous." Despite Karen's obvious unwillingness to speak with him, the defendant left his automobile when she appeared and prevented Karen from closing the front door by propping his back against it.

In these circumstances, we cannot say that a jury could not conclude beyond a reasonable doubt that Karen entertained a reasonable apprehension that her husband might physically abuse her. The fact that the defendant had violated an order to remain away from the house, the evidence of the tension between the parties, the previous verbal abuse by the defendant, and the defendant's physical actions in holding open the door when Karen clearly desired to avoid contact could reasonably be combined by the jury to create a picture of a volatile situation in which the possibility of physical abuse was present. Moreover, the fact that the prosecutor did not ask Karen whether she anticipated physical abuse does not preclude such a conclusion on the part of the jury. The jury were entitled to draw reasonable inferences from the circumstantial evidence described above. See *Commonwealth v. Walker*, 401 Mass. 338, 342-343 (1987). The denial of the defendant's motion for a required finding of not guilty was appropriate.

2. *Denial of the defendant's motion for a mistrial.* The defendant claims error in the denial of his motion for a mistrial. The defendant states his claim on appeal in conclusory fashion and cites no legal authority to support his claim. "This is an insufficient appellate argument and is not properly before us. Mass. R. A. P. 16 (a) (4), as amended, 367 Mass. 921 (1975)." *Commonwealth v. Silva*, 401 Mass. 318, 327 (1987).

3. *Admission of evidence.* The defendant claims that the judge erred by allowing the admission of evidence regarding a confrontation between Karen and the defendant at the marital household on November 10, 1988. During this confrontation, which was the last contact between Karen and the defendant prior to the visit of November 15, the defendant learned that Karen had become involved with another man. He yelled at Karen, calling her a "bitch" and a "whore." The defendant claims on appeal that evidence regarding this incident was irrelevant to the material issues in this case. We disagree.

"The relevancy of proffered evidence depends on whether it tends to prove some issue in the case on trial." *Commonwealth v. Chretien, supra* at 135. "Evidence need not establish directly the proposition sought; it must only provide a link in the chain of proof." *Commonwealth v. Tobin*, 392 Mass. 604, 613 (1984). Evidence that the defendant was angry with Karen for seeing another man, and that he had called her a "bitch" and a "whore" during their last contact prior to his arrest was relevant to proving that Karen was in fear of her husband. See, e.g., *Commonwealth v. Mora*, 402 Mass. 262, 267-268 (1988); *Commonwealth v. Person*, 400 Mass. 136, 143 (1987). Furthermore, such evidence provided support for the prosecution's assertion that Karen's fear of physical harm was reasonable, because it had roots in the defendant's outburst just five days earlier. "[R]elevant evidence should be admitted unless there is a quite satisfactory reason for excluding it." *Green v. Richmond*, 369 Mass. 47, 59 (1975).⁴ This evidence was relevant and admissible. See P.J. Liacos, *Massachusetts Evidence* 408 (5th ed. 1981 & Supp. 1985).

⁴The defendant claims that the evidence regarding the incident on November 10, 1988, was inadmissible because it was unduly prejudicial, but he provides no explanation. "We accord the judge substantial discretion in deciding whether . . . the prejudicial implications of [relevant] evidence outweigh its probative value." *Commonwealth v. Tobin, supra* at 613. We perceive no unfair prejudice to the defendant's case arising out of the admission of this evidence. There was no abuse of discretion.

The defendant also claims that the judge improperly allowed the admission of Karen's testimony that three checks given her by the defendant during their separation had "bounced." This testimony arose in response to questions by the prosecution on redirect examination. When the defendant objected to its admission, the judge ruled that the evidence was admissible because defense counsel had raised the issue of the checks during cross-examination of Karen.

"The scope of redirect examination of a witness is within the sound discretion of the trial judge." *Commonwealth v. Maltais*, 387 Mass. 79, 92 (1982). "A defendant who claims, on appeal, an abuse of discretion, assumes a heavy burden." *Id.* In this case, that burden has not been met.

The defendant had raised the issue of the checks when he questioned Karen as to whether one of the defendant's prior visits had been for the purpose of "bringing [Karen] a check which [she] then took down to the bank for deposit." In pursuing this line of questioning, defense counsel could have been attempting to prove to the jury that an amiable relationship existed between the defendant and Karen, thereby casting doubt on the prosecution's assertion that Karen had reason to fear the defendant. Karen's testimony on redirect examination merely explored in more detail a subject opened up by defense counsel on cross-examination, and served to rebut the inference that the relationship between the defendant and Karen was without tension. See *Commonwealth v. Mandeville*, 386 Mass. 393, 400 (1982). "The purpose of redirect examination is to explain or rebut adverse testimony or inferences developed during cross-examination." *Commonwealth v. Hoffer*, 375 Mass. 369, 375 (1978). There was no error.

4. *Jury instructions.* The defendant claims that the judge committed reversible error in his instructions to the jury and in his rejection of two of the defendant's proposed jury instructions. In essence, the defendant's claims in this regard suggest that the judge should have instructed the jury that a failure to remain away from the marital home does not constitute a violation of c. 209A. We have already rejected this

position. See section 1, *supra*. There was no error in the jury instructions.

As we perceive no error by the judge in the trial below, the defendant's conviction is affirmed.

Judgment affirmed.

RELATED STATUTES

M.G.L. c. 208: DIVORCE

208 § 18.

Pendency of action for divorce; protection of personal liberty of spouse; restraint orders authorized

The probate court in which the action for divorce is pending may, upon petition of the wife, prohibit the husband, or upon petition of the husband, prohibit the wife from imposing any restraint upon her or his personal liberty during the pendency of the action for divorce. Upon the petition of the husband or wife or the guardian of either, the court may make such further order as it deems necessary to protect either party or their children, to preserve the peace or to carry out the purposes of this section relative to restraint on personal liberty.

208 § 34B

Order to vacate marital home

Any court having jurisdiction of actions for divorce, or for nullity of marriage or of separate support or maintenance, may, upon commencement of such action and during the pendency thereof, order the husband or wife to vacate forthwith the marital home for a period of time not exceeding ninety days, and upon further motion for such additional certain period of time, as the court deems necessary or appropriate if the court finds, after a hearing, that the health, safety or welfare of the moving party or any minor children residing with the parties would be endangered or substantially impaired by a failure to enter such an order. The opposing party shall be given at least three days' notice of such hearing and may appear and be heard either in person or by his attorney. If the moving party demonstrates a substantial likelihood of immediate danger to his or her health, safety or welfare or to that of such minor children from the opposing party, the court may enter a temporary order without notice, and shall immediately thereafter notify said opposing party and give him or her an opportunity to be heard as soon as possible but not later than five days after such order is entered on the question of continuing such temporary order. The court may issue an order to vacate although the opposing party does not reside in the marital home at the time of its issuance, or if the moving party has left such home and has not returned there because of fear for his or her safety or for that of any minor children.

208 § 34C.

Orders to vacate marital home and orders of restraint; notice to law enforcement agencies; procedures; violations

Whenever a division of the probate and family court department issues an order to vacate under the provisions of section thirty-four B, or an order prohibiting a person from imposing any restraint on the personal liberty of another person under section eighteen or under the provisions of section thirty-two of chapter two hundred and nine or section three, four or five of chapter two hundred and nine A or section fifteen or twenty of chapter two hundred and nine C or an order for custody pursuant to any abuse prevention action, the register shall transmit two certified copies of each order forthwith to the appropriate law enforcement agency which shall serve one copy of each such order upon the defendant. Unless otherwise ordered by the court, service shall be by delivering a copy in hand to the defendant. Law enforcement officers shall use every reasonable means to enforce such order. Law enforcement agencies shall establish procedures adequate to insure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order.

The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated by the court and shall direct the agency to destroy all records of such vacated order and such agency shall comply with such directive.

Any violation of such order shall be punishable by a fine of not more than five thousand dollars or by imprisonment for not more than two and one-half years in the house of correction, or both such fine and imprisonment. Each such order issued shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Any such violation may be enforced in the superior or district or Boston municipal court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston municipal court departments may each enforce by civil contempt procedure a violation of its own court order.

209 § 32

Order prohibiting restraint of personal liberty of spouse; support, custody and maintenance orders; investigations; factors determining support amount

If a spouse fails, without justifiable cause, to provide suitable support of the other spouse, or deserts the other spouse, or if a married person has justifiable cause for living apart from his spouse, whether or not the married person is actually living apart, the probate court may, upon the complaint of the married person, or if he is incompetent due to mental illness or mental retardation upon the complaint of the guardian or next friend, prohibit the spouse from imposing any restraint upon the personal liberty of the married person during such time as the court by its order may direct or until further order of the court thereon. Upon the complaint of any such party or guardian of a minor child made in accordance with the Massachusetts Rules of Civil Procedure the court may make further orders relative to the support of the married person and the care, custody and maintenance of minor children, may determine with which of the parents the children or any of them shall remain and may, from time to time, upon similar complaint revise and alter such judgment or make a new order or judgment as the circumstances of the parents or the benefit of the children may require.

Upon request by the court, the state police, local police or probation officers shall make an investigation in relation to any proceedings and report to the court. Every such report shall be in writing and shall become a part of the record of such proceedings.

In determining the amount of a support order, if any, to be made, the court shall consider, but is not limited to, the following factors, to the extent pertinent and raised by the parties: (a) the net income, assets, earning ability, and other obligations of the obligor; (b) the number and ages of the persons to be supported; (c) the expenses incurred by the obligor and the persons to be supported for the necessities of life, and the usual standard of living of the persons to be supported; (d) the assets and net earnings, including a deduction for the provision for childcare, of the persons to be supported; (e) the marriage or remarriage of any person being supported; and (f) the capacity of any person being supported or having custody of supported children, except persons under eighteen years of age, to work or to make reasonable efforts to obtain employment, including the extent of employment opportunities in fields in which such person is suited for employment, the necessity for and availability to said person of job training programs, and the extent to which said person is needed during business hours by members of the family and the availability to said person of child care services and the extent to which such person needs to attend school to obtain skills necessary for employment. When the court makes an order for maintenance or support on behalf of a spouse or child, said court shall determine whether the obligor under such order has health insurance or other health coverage available to him through an employer or organization or has health insurance or other health coverage available to him at reasonable cost that may be extended to cover the spouse or child for whom support is ordered. When said court has determined that the obligor has such insurance or coverage available to him, said court shall include in the support order a requirement that the obligor exercise the option of additional coverage in favor of the spouse and child or obtain coverage for the spouse and child.

No order shall leave an obligor with less money than is required to provide him minimum subsistence, including food, shelter, utilities, clothing and the reasonable expenses necessary to travel to or obtain employment.

209C § 15

Temporary orders; final judgments; enforcement

At any time pursuant to an action under this chapter, the court may upon motion of any party or on its own motion issue a temporary order or final judgment including a vacate, restraining or no-contact order to protect a party or child. Any such order or judgment, including a custody provision if issued by a probate court, shall be served as specified under sections four and seven of chapter two hundred and nine A and shall contain the following statement: **VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.** Criminal violations of such orders shall be enforced pursuant to section seven of chapter two hundred and nine A.

The court may, in like manner, upon motion of any party or of a next friend on behalf of the child, and upon notice to the other parties, enter temporary orders providing for the support of the child or relative to the care and custody of the child or visitation rights with the child in accordance with the provisions of sections nine and ten.

All orders entered pursuant to this section, unless modified or revoked pursuant to section twenty or twenty-three of chapter two hundred and nine C, shall continue in force and be incorporated in the final judgment. Violations of any order or judgment may be punished as contempt.

209C § 20

Modification of judgments; jurisdiction

A court with original jurisdiction pursuant to section three has continuing jurisdiction, upon a complaint filed by a person or agency entitled to file original actions, to modify judgments of support, custody or visitation whenever a substantial change in the circumstances of the parties or the child has occurred, provided however, that no modification concerning custody or visitation shall be granted unless the court also finds it to be in the child's best interests to do so. Except as restricted by section twenty-three, the court may also modify a judgment to protect a party or child.

AMENDMENTS TO OTHER CHAPTERS OF THE GENERAL LAWS
ENACTED BY CHAPTER 403 OF THE ACTS OF 1990

M.G.L. c. 208: DIVORCE

§ 34C. Orders to vacate marital home and orders of restraint; notice to law enforcement agencies; procedures; violations

Whenever a division of the probate and family court department issues an order to vacate under the provisions of section thirty-four B, or an order prohibiting a person from imposing any restraint on the personal liberty of another person under section eighteen or under the provisions of section thirty-two of chapter two hundred and nine or section three, four or five of chapter two hundred and nine A or section fifteen or twenty of chapter two hundred and nine C or an order for custody pursuant to any abuse prevention action, the register shall transmit two certified copies of each order forthwith to the appropriate law enforcement agency which shall serve one copy of each such order upon the defendant. Unless otherwise ordered by the court, service shall be by delivering a copy in hand to the defendant. Law enforcement officers shall use every reasonable means to enforce such order. Law enforcement agencies shall establish procedures adequate to insure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order.

The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated by the court and shall direct the agency to destroy all records of such vacated order and such agency shall comply with such directive.

Any violation of such order shall be punishable by a fine of not more than five thousand dollars or by imprisonment for not more than two and one-half years in the house of correction, or both such fine and imprisonment. Each such order issued shall contain the following statement: **VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

Any such violation may be enforced in the superior or district or Boston municipal court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston municipal court departments may each enforce by civil contempt procedure a violation of its own court order.

M.G.L. c.209C: CHILDREN BORN OUT OF WEDLOCK

§ 13. Inspection of documents; copies; segregation of records

In all actions to establish paternity or in which paternity of a child is an issue, all complaints, pleadings, papers, documents, or reports filed in connection therewith, docket entries in the permanent docket and record books shall not be available for inspection, unless a judge of the court where such orders are kept, for good cause shown, shall otherwise order; provided however, that the child, his mother, the man adjudicated to be the father and the department of public welfare, when the child who is or was the subject of the complaint is a recipient of public assistance or the attorney for any of them, shall have access to and the right to obtain copies of the papers, docket books and judgments in actions pursuant to this chapter. Section 5A.¹ For good cause shown, the court shall impound a party's address by excluding it from the complaint and from all other court documents and testimony, and shall ensure that the address is kept confidential from each other party except the IV-D agency as set forth in chapter one hundred and nineteen A. Such complaints, reports, pleadings papers, and documents, permanent docket and record books shall be segregated. A separate permanent docket book and index shall be provided and shall likewise be segregated.

Amended by St.1990, c. 403, § 9.

¹ So in enrolled bill

§ 15. Temporary orders; final judgments; enforcement

At any time pursuant to an action under this chapter, the court may upon motion of any party or on its own motion issue a temporary order or final judgment including a vacate, restraining or no-contact order to protect a party or child. Any such order or judgment, including a custody provision if issued by a probate court, shall be served as specified under sections four and seven of chapter two hundred and nine A and shall contain the following statement: **VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.** Criminal violations of such orders shall be enforced pursuant to section seven of chapter two hundred and nine A.

The court may, in like manner, upon motion of any party or of a next friend on behalf of the child, and upon notice to the other parties, enter temporary orders providing for the support of the child or relative to the care and custody of the child or visitation rights with the child in accordance with the provisions of sections nine and ten.

All orders entered pursuant to this section, unless modified or revoked pursuant to section twenty or twenty-three of chapter two hundred and nine C, shall continue in force and be incorporated in the final judgment. Violations of any order or judgment may be punished as contempt.

§ 20. Modification of judgments; jurisdiction

A court with original jurisdiction pursuant to section three has continuing jurisdiction, upon a complaint filed by a person or agency entitled to file original actions, to modify judgments of support, custody or visitation whenever a substantial change in the circumstances of the parties or the child has occurred, provided however, that no modification concerning custody or visitation shall be granted unless the court also finds it to be in the child's best interests to do so. Except as restricted by section twenty-three, the court may also modify a judgment to protect a party or child.

CHAPTER 276: ARREST LAW

§ 28. Arrest without warrant

Any officer authorized to serve criminal process may arrest, without a warrant, and detain a person found in the act of stealing property in the presence of the officer regardless of the value of the property stolen and may arrest, without a warrant, and detain a person whom the officer has probable cause to believe has committed a misdemeanor by violating a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to section eighteen, thirty-four B or thirty-four C of chapter two hundred and eight, section three, four or five of chapter two hundred and nine A, section thirty-two of chapter two hundred and nine, or section fifteen or twenty of chapter two hundred and nine C. Said officer may arrest and detain a person charged with a misdemeanor, without having a warrant for such arrest in his possession, if the officer making such arrest and detention shall have actual knowledge that a warrant then in full force and effect for the arrest of such person has in fact issued.

OTHER LAWS RELATING TO DOMESTIC VIOLENCE

CHAPTER 22: DEPARTMENT OF PUBLIC SAFETY

§ 9U. Domestic abuse; police reports

The form used by an investigating police officer to make a report concerning any incident, offense or alleged offense investigated or any arrest made shall provide a space to indicate whether such incident, offense, alleged offense or arrest involved abuse as defined in section one of chapter two hundred and nine A.

Added by St.1987, c. 93, § 1.

CHAPTER 41: OFFICERS AND EMPLOYEES OF CITIES, TOWNS, AND DISTRICTS

§ 98G. Domestic abuse; police reports

Any city, town or district police department which requires an investigating police officer to make a report concerning an incident, offense or alleged offense investigated, or any arrest made, on a form provided by the department, shall include on said form a space to indicate whether said incident, offense, alleged offense or arrest involved abuse as defined in section one of chapter two hundred and nine A.

Added by St.1987, c. 93, § 2.

265 § 13A

Assault or assault and battery; punishment

Whoever commits an assault or an assault and battery upon another shall be punished by imprisonment for not more than two and one half years in a house of correction or by a fine of not more than five hundred dollars.

A summons may be issued instead of a warrant for the arrest of any person upon a complaint for a violation of any provision of this section if in the judgment of the court or justice receiving the complaint there is reason to believe that he will appear upon a summons.

OTHER STATUTES REFERRED TO IN CHAPTER 209A

M.G.L. c. 136 OBSERVANCE OF A COMMON DAY OF REST AND LEGAL
HOLIDAYS

136 § 8 Service or execution of process

Civil process shall not be served or executed on Sunday, and such service if made shall be void, and the person who serves or executes it shall be liable in damages to the person aggrieved in like manner as if he had no such process; provided, that this section shall not apply to service of such process by publication in a newspaper published on Sunday.

Added by St.1962, c. 616, § 2.

LAW ENFORCEMENT AND DOMESTIC VIOLENCE:
COMMONLY ASKED QUESTIONS^{1/}

I. Interjurisdictional Arrest

1. A 209A order is in effect in Town A. The husband violates the order by assaulting the wife in Town A. Husband flees to Town B. Do the Town B police have the authority to arrest the husband upon notice of the assault by Town A police?

Town B police may arrest the husband because the mandatory arrest provision of Chapter 209A Section (6)(7) requires an arrest whenever a police officer has probable cause to believe that the defendant has violated a restraining order. This means that an officer of a city or town must arrest anyone located within his or her jurisdiction who the officer has probable cause to believe has violated a restraining order under 209A or its related provisions.

It makes no difference in the determination of probable cause that the offense may have been committed in another city or town; if a police officer concludes that there is probable cause that a restraining order was violated anywhere in the Commonwealth, the officer is obligated, within his or her jurisdiction, to make the arrest.

As in any other situation, police officers may rely on information provided to them by officers in another jurisdiction to establish probable cause.

2. A 209A order is in effect in Town X. The boyfriend calls from Town Y and threatens the girlfriend who is in Town X. Do the Town Y Police have the power to arrest the boyfriend upon notification by Town X?

If there is a no-contact order in effect against the boyfriend, then the threatening phone call is a violation of the order, and the mandatory arrest provision of Chapter 209A

1/The Attorney General's Office wishes to acknowledge the contribution of Cathy Sullivan, Assistant District Attorney, Middlesex County, in the preparation of Sections I - III.

is triggered. Therefore, based upon the probable cause reasoning contained in the answer to question #1, once the Town Y police are notified that the order has been violated, Town Y officers are required to arrest the boyfriend.

II. PROBABLE CAUSE

1. How long does the "mandatory arrest" power last? Is there any problem about the "staleness" of probable cause?

As long as the probable cause does not dissipate, the right to arrest continues to exist. In 209A cases, once an officer learns that an order has been violated, the probable cause to arrest has been established. Unless new facts come to light indicating that no restraining order was in effect against the defendant at the time of the reported offense, or that the report of abuse was unfounded, probable cause, once established, continues to exist.

III. WARRANTS

1. A 209A order is in effect in Town Q. The husband assaults the wife in her home in Town Q. Husband flees to his mother's home in Town Q. Can the police enter the mother's home to arrest the husband?

If the mother refuses to allow the police to enter her home, the police cannot enter the home, absent exigent circumstances, without a search warrant. Therefore, in this situation, the police must obtain both a search warrant to gain entry to the home and an arrest warrant to apprehend the defendant.

If the husband had fled to his own apartment in Town Q, and refused to answer the door, the police must again, absent exigent circumstances, first obtain an arrest warrant to enter his home and take him into custody.

IV. SERVICE OF ORDERS

1. A woman obtains an emergency 209A order against her husband. The police attempt in-hand service twice, and then leave the order with the husband's sister, with whom he is staying. For the purposes of the ten-day hearing, is this sufficient notice to the husband under Chapter 209A?

Yes, the 1990 Amendments to Chapter 209A expressly deleted the in-hand service requirement for service of 209A orders. See, Chapter 209A, Section (7).

2. Regarding multi-jurisdictional problems, when a victim obtains an Emergency 209A from an on-call Justice, can the on-call Justice also issue a complaint and arrest warrant for the perpetrator?

An on-call Justice cannot issue a complaint and arrest warrant over the phone. For an arrest warrant to be issued, a sworn affidavit must be presented in person to the on-call judge.

V. MANDATORY ARREST

1. If an alleged abuser is not served with a temporary restraining order before he appears at the victim's door, can you arrest or must you first serve the order and tell him to leave and not come back?

If the perpetrator is at the victim's home, and the only alleged violation is of the vacate or no-contact order, then the police must serve the order and warn the perpetrator that if he returns to the premises, he will be arrested. Unless the police have previously served the defendant with the order, they cannot arrest him for a violation of the vacate order.

However, if the situation includes any circumstances which would give rise to the "arrest as the preferred response" provisions of Chapter 209A, Section 6(7), then the police could arrest the perpetrator. Under Section 6(7), arrest is the preferred response when the officer has probable cause to believe that the individual has committed: (a) a felony; (b) a misdemeanor involving abuse as defined in Section One of Chapter 209A; or (c) an assault and battery in violation of Chapter 265, Section 13A.

2. Since the police have the right to arrest where probable cause exists under Chapter 209A, Section 6, what is the proper response in the situation where the police arrive on the scene and the abuser has fled, and the facts indicate either a mandatory arrest (violation of an order) or a preferred arrest response (probable cause to believe that abuse has occurred)? Can the officer go to court and get a complaint and warrant issued? What if the clerk refuses to issue a warrant?

A major area of confusion concerning 209A has been the felony/misdemeanor distinctions in due process owed to the defendant. An individual accused of a misdemeanor must receive notice and has the right to be heard before a complaint is issued. Specifically, under Chapter 218, Section 35A, before process (complaint) issues, the District Court must give the accused person, written notice of the application and an opportunity to be heard in opposition, unless exigent circumstances are present. The exigent circumstances that remove the need for written notice involve an imminent threat of bodily injury, the commission of a crime or of flight from the Commonwealth by the accused person.

Obviously, given the nature of the crimes committed in violation of Chapter 209A, there is an inherent "threat of bodily injury." In addition, if the abuser has violated a restraining order, he has already committed a crime, and would more than satisfy the "imminent threat ... of the commission of a crime" component of Chapter 218, Section 35A. Finally, in the above scenario, the abuser has already fled the scene and in light of past experiences with domestic violence cases, there is always the likelihood that he will flee - at least temporarily - to another state to avoid prosecution. Therefore, in this scenario, it would be reasonable to advise the clerk that the combination of the arrest authority under Chapter 209A, Section 6 and the existence of "exigent circumstances" pursuant to Chapter 218, Section 35A would allow the issuance of a complaint in the absence of either notice to the accused and/or a sworn complaint by the victim.

In addition, and probably more importantly, the authority to arrest for violation of a restraining order must be exercised, i.e., mandatory arrest, and is itself, an exception to the warrant requirement.

3. **Is an abuser's failure to surrender the keys to the premises a violation of the vacate order and therefore subject to mandatory arrest?**

Under the 1990 Amendments, Chapter 209A, Section 6(7) explicitly requires mandatory arrest when a temporary or permanent vacate, restraining, or no-contact order has been violated. Furthermore, chapter 209A, Section 1 was amended to include the definition of "vacate order". In pertinent part, the statutory definition of "vacate order" includes:

leave and remain away from the premises;

surrendering forthwith any keys to said premises to the plaintiff; and

shall not shut off or cause to be shut off any utilities or mail delivery to the plaintiff.

Therefore, although it would appear that the traditional recourse of contempt would be more appropriate in these purely civil matters, the language in Chapter 209A clearly requires mandatory arrest for the violation of a vacate order, and since "vacate order" includes the surrender of keys, any refusal to do so is subject to the mandatory arrest provision of Section 6(7). The legislative intent behind the mandatory arrest provision clearly states that a violation of an order will result in arrest, therefore, the inclusion of surrendering keys, and not interfering with utilities or mail delivery in the statutory definition of a vacate order must also be enforced as written.

VI. LIABILITY ISSUES

1. Are officers protected from civil suits under 42 U.S.C. 1983 brought by domestic violence victims?

No, under both the Federal and State Civil Rights Acts, a police officer can be held personally liable. A plaintiff bringing suit against a police officer generally relies on one of three sources of law: the Massachusetts Torts Claims Act, G.L. Chapter 258, Section 2; the Federal Civil Rights Act, 42 U.S.C. 1983; and the Massachusetts Civil Rights Act, G.L. Chapter 12, Section 11H and 11I.

Under the Mass. Torts Claims Act, "public officials shall be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any public employee while acting within the scope of his office or employment." The municipality, as a public employer, is liable for any judgment rendered, and not the individual officer. Since liability under the Mass. Torts claims Act is limited to \$100,000, most plaintiffs choose to bring suit under the Federal and State Civil Rights Acts, which do not limit the amount of damages available to a plaintiff.

Under both the Federal and State Civil Rights Acts, in addition to the personal liability of the officer, the municipality may also be held liable if the plaintiff proves that as a result of "policy or custom," the town was responsible for the plaintiff's injuries. Monell v. Department of Social Services, 436 U.S. 658 (1978).

(Note: Under Chapter 209A, Section 6(7), "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 ...")

VII. MISCELLANEOUS ISSUES

- 1. I received a call from a woman whose daughter (who is over age 18) is being beaten by her boyfriend. The mother is not a victim of abuse by the boyfriend, but the daughter won't file a complaint.**

The key consideration in this situation is whether the police have probable cause to arrest the boyfriend. Probable cause is unlikely to exist without the victim's (daughter's) statement unless the mother is an eyewitness to the abuse. The secondary problem here is that even if the police can establish probable cause to arrest the boyfriend, if the daughter is unwilling to seek a complaint or to prosecute, then there is really nothing more that either the mother or the police can do.

- 2. What if a parent and child are fighting and the parent strikes the child in front of a police officer?**

The best approach to such a situation is to use common sense. Some factors that responding officers may consider when deciding whether to institute the preferred arrest policy are: (a) Is the action by the parent clearly abusive or is the action disciplinary?; (b) Is there a pattern or prior history of abusive behavior in this relationship?

An alternative or additional response would be to file a 51A for child abuse to have the potentially abusive situation investigated.

- 3. How long must an officer stay at the scene of a domestic violence call, particularly if there is a possibility of the batterer returning?**

Chapter 209A, Section 6(1) mandates that officers responding to domestic violence calls "remain on the scene of where said abuse occurred as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of a law officer. This shall include, but not be limited to, remaining in the dwelling for a reasonable period of time."

The Police Guidelines, Section 2.0 reiterate the provision set forth in Chapter 209A, Section 6(1), and do not add any further instructions.

Therefore, the most important consideration is reasonableness in light of the specific facts of the situation. If there is an established history of violence and a genuine fear for the safety of the victim, it may be more

reasonable to assist the victim in finding a "safe place", either at a relative's or friend's home or a shelter rather than requiring a police officer to remain on the scene for any extended period of time. (Chapter 209A, Section 6(3); Police Guidelines 2.0, Section C.)

4. Our Department has many restraining orders on file which were issued out of Probate Court and contain no expiration dates. Many are several years old, but include recent correspondence from attorneys stating that the orders are still valid. Are these restraining orders issued out of Probate Court still in effect?

Unlike restraining orders issued under 209A, which expire after one year, orders issued under Chapter 209, Section 34B by the Probate Court as part of a divorce decree remain in effect until a judgment for divorce has been entered or a permanent restraining order has been issued as part of the divorce proceeding. Any divorce judgment will vacate any existing temporary orders and any final divorce judgment which contains a restraining order is fully enforceable.

5. The plaintiff/mother went to District Court in Town A on Tuesday, where she applied for and received a 209A order against her own mother to surrender custody of her (the plaintiff's) minor children.

The plaintiff went to the Town A Police on Thursday to have them execute the order. When the police arrived at the grandmother's house, she presented them with an order from the Probate Court in Town B that was issued on Wednesday. This order awarded the grandmother custody of the minor children.

In light of these inconsistent orders, does the Probate Court order awarding the grandmother custody supercede the 209A order?

- a. Where 208 and 209A Orders co-exist, which takes precedence?

Any Probate Court order affecting custody or support which is prior to or subsequent to the issuance of a 209A order, takes precedence over the custody or support provisions of the 209A order.

Where the Probate Court orders restraining, no-contact, or vacate orders in domestic violence cases, neither would appear to take precedence over the other.

The best approach here would be to advise the plaintiff to go to the Probate Court and explain the situation to the judge who issued the custody order.

b. What about a Probate Court ex-parte emergency restraining order?

Since it is an ex parte order, it would not automatically supercede a 209A temporary restraining order from a District Court, which is also an ex parte order. Again, the parties should be instructed to return to the court for clarification of the orders.

c. What about a restraining order issued by the Probate Court where there was a full hearing, with notice to all parties and both parties appeared in court?

Here, the order by the Probate Court should supercede the District Court ex-parte order since both parties were present and were able to present their respective positions to the Probate Court judge. Similarly, if the District Court issues a permanent restraining order after a ten-day hearing where there was notice and an opportunity to be heard for both parties, the District Court order should take precedence over an ex-parte Probate Court order.

d. What about contradictory restraining orders issued after full hearing in both courts?

The problem of inconsistent final or permanent restraining orders is really a court problem. Unfortunately, such orders do exist in domestic violence cases and the police have no alternative but to enforce both orders while advising the parties to straighten it out in court.

WPP(38)

Pre-Court Forms and Procedures



TRIAL COURT OF THE COMMONWEALTH

APPLICATION FOR ABUSE PREVENTION ORDER ABUSE PREVENTION ORDER

FOR USE BY POLICE DEPARTMENTS AFTER COURT HOURS

"When the court is closed for business, any justice of the superior, probate and family, district or Boston municipal court departments may grant relief to the plaintiff... if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse. In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of an appropriate law enforcement agency, who shall record such order on a form of order promulgated for such use by the chief administrative justice and shall deliver a copy of such order on the next court day to the clerk-magistrate of the court having venue and jurisdiction over the matter....

"When any person charged with or arrested for a crime involving abuse under this chapter is released from custody, the court or the emergency response judge shall issue, upon request of the victim, a written no-contact order prohibiting the person charged or arrested from having any contact with the victim and shall use all reasonable means to notify the victim immediately of release from custody. The victim shall be given at no cost a certified copy of the no-contact order."

-G.L. c. 209A, §§ 5 & 6

INSTRUCTIONS FOR POLICE OFFICERS

- 1. USE OF THIS FORM.** This forms package has been promulgated by the Chief Administrative Justice of the Massachusetts Trial Court pursuant to G.L. c. 209A §§ 5 & 6 for use by police departments to record an Abuse Prevention Order issued by a judge over the telephone when the court is closed for business. Additional supplies of this forms package may be obtained from your local District Court. Please keep any supplies of these forms under adequate security to prevent misuse.
- 2. SEPARATING THE TWO FORM SETS IN THIS PACKAGE.** First remove this instruction sheet from the forms package. Then separate the two form sets that make up this package (one is the "Complaint," the other is the "Order") by pulling apart the two form stubs that hold each form set together. Do not separate the individual parts of each form which are attached to the two form stubs.
- 3. COMPLAINT.** It is preferable to have the plaintiff complete and sign the Complaint form set before contacting a judge, if the plaintiff is able to do so. Please print in ballpoint pen and press hard enough so that all four parts are legible. There are instructions which the plaintiff may refer to on the back of the Complaint form set.
In appropriate circumstances, a judge may issue an Order without the plaintiff having completed and signed a written Complaint. If the judge does so, please discard the Complaint form set and advise the plaintiff that G.L. c. 209A, § 5 requires the plaintiff to appear in court on the next business day to file such a Complaint.
- 4. AFFIDAVIT.** After the Complaint form set has been completed and signed, separate the three parts from the form stub that holds them together. Turn over the original (first white) part and ask the plaintiff to describe the details of the abuse on the "Affidavit" form printed there. When the Affidavit is complete, please indicate by your signature that you have witnessed the plaintiff's signature on the Affidavit.
In appropriate circumstances, a judge may dispense with the need for an Affidavit. If the judge does so, leave the Affidavit form blank.
- 5. ORDER.** Read or summarize the Complaint and Affidavit over the telephone as requested by the judge. If the judge issues an Order, please complete Section A of the Order form set, item by item, as the judge directs. Please print in ballpoint pen and press hard enough so that all six parts (white original, white probation copy, pink, blue, yellow and green copies) are legible. Leave the space for "Docket No." blank, but please remember to enter the name and address of the court where the judge makes the Order returnable. Print your name and police department, and print the name of the judge issuing the Order, in the appropriate spaces. Do not write in Sections B and C of the form. Print the name of the "First or Administrative Justice" as indicated by the issuing judge. Leave blank the space for the Clerk-Magistrate or the Register of Probate to attest the Order.
- 6. COLLATE AND DISTRIBUTE COPIES.** Separate the six parts of the Order form set from the form stub that holds them together. If the plaintiff has completed the Complaint form, match up and staple together the four copies of the Complaint form with the matching-color copies of the Order form: the original white (court) copies, the white (probation) copies, the pink (plaintiff's) copies, and the yellow (defendant's) copies.
Give the pink copies of the Complaint and Order to the plaintiff.
Deliver the white (original) copies and the white (probation) copies of the Complaint and Order on the next business day to the clerk-magistrate or register of the court where the Order is returnable. If the plaintiff's address has been impounded, please take appropriate care to ensure that these white copies of the Complaint, which bear the plaintiff's address, are not seen by the defendant or the defendant's counsel.
Arrange for the yellow copies of the Complaint and Order to be served on the defendant as soon as possible. If service on the defendant cannot be made before the date and time of hearing shown in the Order, service of additional Orders may be necessary.
The two remaining copies of the Order are for police use: the blue copy of the order is for your records; the green copy of the Order may be used for the return of service that must be filed with the court.

COMPLAINT FOR PROTECTION FROM ABUSE (G.L. c. 209A)

FOR COURT USE ONLY →

DOCKET NO. _____

TRIAL COURT OF MASSACHUSETTS 

PART 1	<input type="checkbox"/> BOSTON MUNICIPAL COURT	<input type="checkbox"/> DISTRICT COURT	<input type="checkbox"/> PROBATE & FAMILY COURT	<input type="checkbox"/> SUPERIOR COURT	
	DIVISION	DIVISION	DIVISION	DIVISION	
PART 2	NAME OF PLAINTIFF (the person seeking protection)		NAME OF DEFENDANT (the person causing abuse)		
	Write your address here if you are NOT asking the Court to keep it confidential		DEF. DATE OF BIRTH		
	3A _____		DEFENDANT'S ALIAS, IF ANY		
	Daytime Phone No: (____) _____		DEFENDANT'S ADDRESS		
PART 3	Write your address here only if you are asking the Court to keep it CONFIDENTIAL (that is, impounded).		<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE		
	3B _____		DEFENDANT'S DAYTIME PHONE		
	Daytime Phone No: (____) _____		DEFENDANT'S SOC. SEC. NO.		
PART 4	If you left a former residence to avoid abuse, write that address here:		DEFENDANT'S PLACE OF BIRTH		
PART 5	Name of your attorney (if any):		DEFENDANT'S MOTHER'S MAIDEN NAME (First & Last)		
	Phone No: (____) _____		DEFENDANT'S FATHER'S NAME (First & Last)		
PART 6	I <input type="checkbox"/> am <input type="checkbox"/> am not under the age of eighteen.		PART 8 CHECK AS MANY AS APPLY: The defendant and I: <input type="checkbox"/> are currently married to each other. <input type="checkbox"/> were formerly married to each other. <input type="checkbox"/> are not married but we are related to each other by blood or marriage; specifically, the defendant is my _____ <input type="checkbox"/> are the parents of one or more children. <input type="checkbox"/> are not related but we now live in the same household. <input type="checkbox"/> are or were in a dating or engagement relationship of the following nature: Date relationship began: _____ Nature of relationship: _____ Frequency of contact during relationship: _____ If it has ended, date relationship ended: _____		
	The defendant <input type="checkbox"/> is <input type="checkbox"/> is not under the age of eighteen.				
PART 7	Are there any prior or pending court actions in any state or country involving you and the defendant for divorce, annulment, paternity, child custody or support, guardianship, separate support, legal separation, or abuse prevention? <input type="checkbox"/> No <input type="checkbox"/> Yes If Yes, give court, type of case, date and (if available) docket number: _____				
PART 9	On or about (dates) _____ I suffered abuse when the defendant:				
	<input type="checkbox"/> attempted to cause me physical harm.		<input type="checkbox"/> placed me in fear of imminent serious physical harm.		
	<input type="checkbox"/> caused me physical harm.		<input type="checkbox"/> caused me unwillingly to engage in sexual relations by force, threat of force, or duress.		
	Therefore:				
	<input type="checkbox"/> 1. I ask the Court to order the defendant to stop abusing me.				
	<input type="checkbox"/> 2. I ask the Court to order the defendant not to contact me, or any child(ren) listed below, unless authorized by the Court.				
	<input type="checkbox"/> 3. I ask the Court to order the defendant to leave and remain away from my residence which is located at: _____				
	If this is an apartment building or other multiple family dwelling, check here: <input type="checkbox"/>				
	<input type="checkbox"/> 4. I ask the Court to impound my address to prevent its disclosure to the defendant, the defendant's attorney, or the public. Do not check item 4 if you wrote your address in Part 3A above.				
	<input type="checkbox"/> 5. I ask the Court to order the defendant to leave and remain away from my workplace which is located at: _____				
PART 10	<input type="checkbox"/> 6. I ask the Court to award me temporary custody of the following children under 18:		You may not obtain an Order from the Boston Municipal Court or a District or Superior Court covering items (6) or (7) in Part 10 if there is a prior or pending Order for custody or support from the Probate and Family Court.		
	N	DATE			
	A	OF			
	M	BIRTH			
	E				
	<input type="checkbox"/> 7. I ask the Court to order the defendant, who has a legal obligation to do so, to pay temporary support: <input type="checkbox"/> for me. <input type="checkbox"/> for any child(ren) in my custody. <input type="checkbox"/> for both.				
	<input type="checkbox"/> 8. I ask the Court to order the defendant to pay me \$ _____ in compensation for the following losses suffered as a direct result of the abuse: _____				
	<input type="checkbox"/> 9. I ask the Court to order the following: _____				
	<input type="checkbox"/> 10. I ask the Court to order the relief I have requested above, except for items (7) and (8), without advance notice to the defendant because there is a substantial likelihood of immediate danger of abuse. I understand that if the Court issues such a temporary Order, the Court will schedule a hearing within 10 court business days to determine whether such a temporary Order should be continued, and that I must appear in court on that day if I wish the Order to be continued.				

DATE _____

PLAINTIFF'S SIGNATURE _____

INSTRUCTIONS TO THE PLAINTIFF

1. HOW DOES THE LAW PROTECT YOU FROM ABUSE?

Under chapter 209A of the Massachusetts General Laws, judges can make Orders to protect people from abuse by family or household members. These orders will be recorded and enforced by law enforcement agencies. They are commonly called "Abuse Prevention Orders" or "Restraining Orders" or "209A Orders."

"Abuse" includes causing you physical harm, attempting to cause you physical harm, placing you in fear of imminent serious physical harm, or causing you to engage in sexual relations against your will by force, threat or duress.

A "family or household member" may include your spouse or former spouse, a relative by blood or marriage, the other parent of your child, a person who lives or formerly lived in your household, or a person who is or was in a substantive dating or engagement relationship with you.

2. WHERE DO YOU OBTAIN SUCH AN ORDER?

You may request such an Order from a judge of any of the following courts: the Boston Municipal Court, the District Court, the Probate and Family Court, or the Superior Court. To do so, you must go to the office of the Clerk-Magistrate or the Register of Probate at the courthouse ("division") in the area in which you live. You can find out from your local police department which court division is in the area where you live. If you have left your residence to avoid abuse, you may also go to the court in the area of your former residence.

In an emergency that occurs after court hours or on weekends, you may ask your local police to put you in contact with a judge.

3. HOW DO YOU OBTAIN SUCH AN ORDER?

Fill out entirely the front of this application ("Complaint"). There is no filing fee. You are the "plaintiff". The person who you allege is abusing you is the "defendant".

Part 3. If you are not asking the court to keep your current address confidential, write your address in Part 3A and leave Part 3B blank. If you are asking the court to keep your address confidential (by "impounding" it), write your address in Part 3B and leave Part 3A blank. An address written in Part 3B will appear only on the first copy of this form, which will be kept by the court. If you prefer, you may write your name and address on a separate piece of paper, seal it in an envelope marked "PLAINTIFF'S ADDRESS — CONFIDENTIAL," and staple the envelope to the court (white) copy of this form.

Part 6. If either you or the defendant is under the age of 18, indicate that in Part 6. The law provides that such cases are not open to public inspection, and are available only to the plaintiff, the plaintiff's attorney, the person under 18, or a parent or guardian of the person under 18. If you and the defendant are both over 18, court records of this matter will generally be open to public inspection. If the judge orders your address impounded, it will not be publicly available. If you have good reasons to ask the judge to keep other parts of the court record confidential, you may file a written request (a "motion") asking the judge to do so. Usually a general preference for privacy is not itself a sufficient reason to permit court records to be kept confidential.

Part 7. If you answer "Yes", please bring with you to the courthouse any legal papers you have from any such court proceeding.

Part 10. Indicate the type of abuse you have suffered, and the relief you are requesting. In item 8, list any financial loss you have suffered as a direct result of the abuse. Such losses may include, but are not limited to, lost earnings or support, costs for restoring utilities, replacements costs for locks or personal property removed or destroyed, medical and moving expenses, and reasonable attorneys' fees. Generally the Court will allow requests under items (7) and (8) only after the defendant has been given an opportunity to be heard.

If you are requesting relief after court hours, or if the Court otherwise requires, you must write out a sworn statement describing the abuse (an "affidavit"). If an affidavit is required, after filling out the front of this form, detach the first (white) copy from the remaining copies, turn it over and write your affidavit on the back.

IF YOU ARE REQUESTING CUSTODY OF A CHILD

If you are requesting that the Court give you temporary custody of a minor child or children, you must file along with this form a sworn statement (an "affidavit") indicating whether there are any other pending or concluded court proceedings involving the care or custody of that child or children, either in Massachusetts or in any other state or country. The Clerk-Magistrate's office or the Register of Probate's office at the courthouse will provide you with a blank "Affidavit Disclosing Care and Custody Proceedings" to fill out and sign.

If there is a prior or pending Order for support or for child custody from the Probate and Family Court, you may not obtain an order from the Boston Municipal Court of a District or Superior Court regarding support or child custody.

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

"For an emergency on weekends, holidays or weeknights, the police will refer you to a justice of the superior, probate and family, district or Boston municipal court departments.

"You have the right to go to the appropriate district court or the Boston municipal court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

"If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

"If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and your children can leave or until your safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or a friend's residence, or a similar place of safety.

"You may request a copy of the police incident report at no cost from the police department."

GENERAL LAWS, CHAPTER 209A, SECTION 6

"Ud. tiene derecho a radicar una querrela ante el tribunal que tenga jurisdicción sobre su vecindario, ya sea el tribunal superior, el de sucesiones y relaciones de familia, el de distrito, o el municipal de Boston, y solicitar la(s) orden(es) correspondiente(s): (a) una orden que le impida a su agresor continuar maltratándola(o); (b) una orden que le indique al agresor que tiene que abandonar el hogar, el edificio o el lugar donde trabaja; (c) una orden que le otorgue a Ud. la custodia de un menor de edad; (d) una orden indicándole al agresor que tiene que pagarle pensión alimenticia a Ud. y a cualquier menor de edad bajo su custodia, siempre y cuando el agresor tenga la obligación legal de pagar por su manutención; (e) una orden que le indique al agresor que le pague por las pérdidas sufridas a consecuencia del maltrato, incluyendo gastos médicos y de mudanza; pérdida de salario o pensión alimenticia; gastos incurridos en el reestablecimiento de servicios públicos (gas, electricidad, teléfono) y cambio de cerraduras; honorarios razonables de abogados y otros gastos personales incurridos a consecuencia de lesiones físicas o daños a la propiedad.

"En casos de emergencia los fines de semana, días feriados o durante horas de la noche, la policía le referirá a un juez del tribunal superior, el de sucesiones y relaciones de familia, el de distrito, o el municipal de Boston

"Ud. tiene derecho a presentarse ante el tribunal de distrito apropiada o el municipal de Boston, y a obtener una querrela criminal por motivo de amenazas, acoso, agresión, agresión con arma mortífera, agresión con intento de asesinato y otras ofensas similares.

"Si necesita servicios médicos, tiene derecho a pedirle al policía que se encuentre presente que le lleva al hospital más cercano o que le ayude a obtener dichos servicios.

"Si cree que necesita protección policiaca para garantizar su seguridad física, tiene derecho a pedirle al policía presente que permanezca en el lugar hasta tanto Ud. y sus hijos puedan marcharse o hasta tanto se le garantice su seguridad personal. También pueden pedirle al policía que le ayude a identificar un sitio que sea seguro para Ud. y que le lleve a dicho lugar incluyendo, pero sin limitarse a, un punto de reunión designado para un refugio o la residencia de un pariente o un amigo(a), o cualquier otro lugar similar donde se sienta segura(o).

"Puede solicitarle al departamento de la policía copia del informe relatando el incidente, sin costo alguno."

LEYES GENERALES, C. 209A, SECCION 6

DRAFT

ABUSE PREVENTION INFORMATION FORM

(Information provided by Plaintiff)

COURT: _____ DOCKET#: _____ DATE: _____

ATTENTION:

TO ASSIST POLICE IN LOCATING/SERVING THE DEFENDANT AND
PROTECTING THE PLAINTIFF, PLEASE PROVIDE AS MUCH
INFORMATION AS POSSIBLE.

PLAINTIFF'S NAME: _____ **TELEPHONE#**

home: _____

ADDRESS: _____ **work:** _____

(unless confidential or impounded) **other(s):** _____

PLAINTIFF'S RELATIONSHIP TO DEFENDANT? _____

DEFENDANT'S NAME

(LAST NAME) (FIRST NAME) (MI)

ALIASES (OTHER NAMES DEFENDANT MIGHT USE)

HEIGHT: _____

WEIGHT: _____

HAIR: _____

EYES: _____

DATE OF BIRTH: _____ **SEX:** _____ MALE _____ FEMALE

SOCIAL SECURITY#: _____ **RACE:** _____

DESCRIPTIVE INFO:

(INCLUDE: MOUSTACHE, BEARD, GLASSES, SCARS, TATOOS, HAIR STYLE, ACNE, FRECKLES, ETC.)

PHOTOGRAPH OF DEFENDANT AVAILABLE? _____

(PLEASE PROVIDE) PHOTO. REC'D? _____

***** Prepared By:
Pre-court Subcommittee
* of Domestic Violence
* Roundtable 1992
* *Please complete other side.* *

DEFT. UNDERSTAND ENGLISH? _____ SPEAK ENGLISH? _____
(IF NOT) WHAT LANGUAGE? _____

A.M. P.M.

SERVICE: BEST PLACE _____ BEST TIME _____
DEFT.'S ADDRESS: _____
TEL.# _____

VERY IMPORTANT: APT.# _____ FLOOR# _____
NAME ON MAILBOX/DOORBELL: _____

DEFT.'S EMPLOYER: _____ ADDRESS: _____
WORK HOURS: _____ POSITION/DEPT: _____
WORK TEL.#: _____

OTHER PLACES DEFT. MAY BE FOUND: _____
(Relatives, friends, hangouts, places frequented, etc.)

DEFT.'S MOTOR VEHICLE REGISTRATION PLATE#: _____
YR: MAKE: MODEL: COLOR:

DOES DEFENDANT HAVE:

1. CRIMINAL RECORD? Where?
For What? Outside MA?
2. OUTSTANDING WARRANTS? Where?
For What? Outside MA?
3. PROBATION? Where?
PAROLE? Where?
4. UPCOMING COURT DATES? Where?
When?
5. ACCESS TO GUNS? What Kind?
Where?
6. LICENSE OR PERMIT FOR GUNS? Where?
When?
7. PSYCHIATRIC/EMOTIONAL PROBLEMS? Treated/Hospitalized?
Where? When?
8. DOES DEFENDANT USE/ABUSE DRUGS?
USE/ABUSE ALCOHOL?
9. WILL DEFENDANT BE HOSTILE/VIOLENT TO POLICE?

ABUSE PREVENTION ORDER
(G.L. c. 209A)

DOCKET NO.

TRIAL COURT OF MASSACHUSETTS



PLAINTIFF'S NAME	DEFENDANT'S DOB <input type="checkbox"/> M <input type="checkbox"/> F	DEFENDANT'S PLACE OF BIRTH	NAME AND ADDRESS OF COURT
DEFENDANT'S NAME AND ADDRESS	DEFENDANT'S MOTHER'S MAIDEN NAME (First & Last)		
	DEFENDANT'S FATHER'S NAME (First & Last)		
	DEFENDANT'S S.S. NO.	DEFENDANT'S ALIAS, IF ANY	

A. THE COURT HAS ISSUED THE FOLLOWING ORDERS TO THE DEFENDANT: (only items checked shall apply)

This Order was issued without advance notice because the Court determined that there is a substantial likelihood of immediate danger of abuse.

This Order was communicated by telephone from the judge named below to:
Police Dept: _____
Police Officer: _____

- 1. YOU ARE ORDERED NOT TO ABUSE THE PLAINTIFF by harming or attempting to harm the plaintiff physically, or by placing the plaintiff in fear of imminent serious physical harm, or by using force, threat or duress to make the plaintiff engage in sexual relations unwillingly.
- 2. YOU ARE ORDERED NOT TO CONTACT THE PLAINTIFF or any child(ren) listed below, either in person, by telephone, in writing, or otherwise, either directly or through someone else, and to stay at least _____ yards away from them, unless you receive written permission from the Court to do otherwise.
- 3. YOU ARE ORDERED IMMEDIATELY TO LEAVE AND STAY AWAY FROM THE PLAINTIFF'S RESIDENCE which is located at:

The Court also ORDERS you: (a) to surrender any keys to that residence to the plaintiff, (b) not to damage any belongings of the plaintiff or any other occupant, (c) not to shut off or cause to be shut off any utilities or mail delivery to the plaintiff, and (d) not to interfere in any way with the plaintiff's right to possess that residence, except by appropriate legal proceedings.

If this box is checked, the Court also ORDERS you immediately to leave and remain away from the entire apartment building or other multiple family dwelling in which the plaintiff's residence is located.

4. PLAINTIFF'S ADDRESS IMPOUNDED. The Court ORDERS that the address of the plaintiff's residence is to be impounded by the Clerk-Magistrate or Register of Probate so that it is not disclosed to you, your attorney, or the public.

5. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF'S WORKPLACE which is located at: _____

6. YOU ARE ORDERED TO SURRENDER CUSTODY of the following child(ren) to the plaintiff:

N A M E	_____	DATE OF BIRTH	_____
	_____		_____
	_____		_____

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE punishable by imprisonment or fine or both.

7. YOU ARE ORDERED TO PAY SUPPORT for the plaintiff and the child(ren) listed above, at the rate of \$ _____ per month week, beginning _____, 199____, directly to the plaintiff. through the Probation Office of this court. through the Massachusetts Department of Revenue.

8. YOU ARE ORDERED TO COMPENSATE THE PLAINTIFF for \$ _____ in losses suffered as a direct result of the abuse, to be paid in full on or before _____, 199____, directly to the plaintiff. through the Probation Office of this court.

9. YOU ARE ALSO ORDERED _____

DATE OF ORDER	TIME OF ORDER <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	EXPIRATION DATE OF ORDER	NEXT HEARING DATE at _____ A.M. _____ P.M.
			in Ctroom _____

The above Order expires on the expiration date indicated above. A hearing on whether to continue and/or to modify this Order will be held on the date and time indicated.

SIGNATURE OR NAME OF JUDGE

B. PRIOR COURT ORDER EXTENDED. After a hearing at which the defendant appeared did not appear, the Court has ORDERED that the prior Order dated _____, 199____ shall continue in effect without change until the expiration date below.

DATE OF ORDER	TIME OF ORDER <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	EXPIRATION DATE OF ORDER	NEXT HEARING DATE at _____ A.M. _____ P.M.
			in Ctroom _____

The above Extension of Order expires on the expiration date indicated above. A hearing on whether to continue and/or modify this Order will be held on the date and time indicated.

SIGNATURE OR NAME OF JUDGE

The plaintiff must appear at scheduled hearings, or this Order may be vacated. The defendant may appear, with or without an attorney, to oppose any extension or expansion of this Order. If the defendant does not appear, an extended or expanded Order may remain in effect for up to one year.

<input type="checkbox"/> C. PRIOR COURT ORDER VACATED. This Court's prior Order is vacated. Law enforcement agencies shall destroy all records of such Order.	DATE	SIGNATURE OR NAME OF JUDGE
---	------	----------------------------

FIRST OR ADMINISTRATIVE JUSTICE

A true copy, attest:

WITNESS:

(Assistant) Clerk-Magistrate/(Assistant) Register of Probate

IMPORTANT INFORMATION

THIS ORDER IS EFFECTIVE WHEN MADE. IF YOU HAVE BEEN ORDERED TO REMAIN AWAY FROM A PARTICULAR RESIDENCE OR WORKPLACE, YOU MAY BE ARRESTED IF YOU RETURN THERE, EVEN IF YOU RETURN WITH THE PERMISSION OF THE PLAINTIFF. IF THE PLAINTIFF IS NOW WILLING TO HAVE YOU RETURN, HE OR SHE MUST APPEAR BEFORE THE COURT AND ASK THAT THIS ORDER BE ENDED, UNTIL THE COURT ALLOWS SUCH A REQUEST AND "VACATES" THIS ORDER, IT WILL REMAIN IN EFFECT.

If the plaintiff changes address of residence or workplace, the plaintiff may file a sworn affidavit stating that new address, and this Order may be reissued by the Clerk-Magistrate or Register of Probate with that new address in item 3 or 5 without further Order of the Court.

For good cause, either the plaintiff or the defendant may request the Court to modify this Order before its scheduled expiration date.

TO ANY OFFICER OF THE POLICE DEPARTMENT TO WHICH THE COURT HAS DIRECTED THIS ORDER:

PURSUANT TO G.L. c. 209A, § 6, THIS ORDER SHALL BE ENFORCED BY ANY LAW ENFORCEMENT OFFICER IN THE COMMONWEALTH WHO IS AWARE OF OR SHOWN A COPY OF THIS ORDER. IF SERVICE ON THE DEFENDANT HAS NOT YET BEEN MADE, ANY LAW ENFORCEMENT OFFICER SHALL ADVISE THE DEFENDANT OF THE TERMS OF THE ORDER AND THEN SHALL ENFORCE IT.

The YELLOW COPY of this Order must be served on the defendant immediately. Please return the GREEN COPY of this Order to the court with your return of service prior to any scheduled hearing date, or new service may be required.

The BLUE COPY of this Order is for your records.

"Whenever the court orders . . . the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order . . . forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant . . . The law enforcement agency shall promptly make its return of service to the court.

"Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order."

G.L. c. 209A, § 7

ATENCIÓN: ESTE ES UN AVISO OFICIAL DE LA CORTE. SI USTED NO SABE LEER INGLÉS, OBTENGA UNA TRADUCCIÓN.

ATTENTION: CEÇI EST UNE ANNONCÉ OFFICIALE DU PALAIS DE JUSTICE. SI VOUS ÊTES INCAPABLE DE LIRE ANGLAISE, OBTENEZ UNE TRADUCTION.

ATTENZIONE: IL PRESENTE È UN AVVISO UFFICIALE DAL TRIBUNALE. SE NON SAPETE LEGGERE IN INGLESE, OTTENETE UNA TRADUZIONE.

ATENÇÃO: ESTE É UM AVISO OFICIAL DO TRIBUNAL. SE NÃO SABE LER INGLÊS, OBTENHA UMA TRADUÇÃO.

LƯU Ý: ĐÂY LÀ THÔNG BÁO CHÍNH THỨC CỦA TÒA-ÁN. NẾU BẠN KHÔNG ĐỌC ĐƯỢC TIẾNG ANH, HÃY TÌM NGƯỜI DỊCH HỘ.

注意：此份表格係官方文件。如果您不諳英文的話，可向法庭官員索取中文翻譯。

Police Guidelines

SUMMARY OF POLICE DOMESTIC VIOLENCE GUIDELINES
October, 1992

Background: In response to the 1990 Amendments to c. 209A, these guidelines were developed by the Department of Public Safety to ensure uniform police procedure in responding to domestic violence calls. The following is a summary of the Police Guidelines.

2.0: G.L. c. 209A, § 6: ABUSE PREVENTION LAW

Subparts A through D detail the steps police must take in responding to domestic violence calls.

Subpart E discusses how to activate the emergency judicial system through the state police when the court is closed for business.

Subpart F requires the police to inform the victim that the abuser is eligible for bail and may be promptly released. In addition, the judge or other person authorized to take bail must make reasonable efforts to inform the victim of the abuser's imminent release. Upon request of the victim, a written no-contact order will be a condition of the abuser's release on bail. (c. 209A, § 6)

Subpart G mandates that the police arrest any person the officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contact order or judgment.

Note that where probable cause exists, Chapter 209A specifically provides for warrantless arrests even if the victim is unwilling to bring a complaint against the abuser. (c. 209A, § 6)

Subpart H states that where no orders or judgments are in effect, arrest shall be the preferred response when an officer witnesses or has probable cause to believe that a person has committed:

- (1) a felony;
- (2) an assault and battery in violation of c. 265, § 13A; or

(3) a misdemeanor involving abuse.

This provision is important because a misdemeanor involving abuse includes a "threat to commit crimes against the person or property of another." (c. 275, § 2)

Definition of "abuse" under c. 209A, § 1:

- (a) attempting to cause or causing physical harm;
- (b) placing another in fear of imminent physical harm; or
- (c) causing another to engage involuntarily in sexual relations by force, threat, or duress.

The Guidelines set forth the statutory description of "family or household members" under c. 209A, § 1 who may bring an action for abuse protection.

Dual arrests are discouraged, because they trivialize the seriousness of domestic violence and increase the danger to victims. When dual arrests are made, officers must submit a detailed written report in addition to the incident report.

A written incident report must be filed whether or not an arrest was made. Upon request, the victim is entitled to receive a copy of the incident report at no cost.

Civil liability: A police officer will not be civilly liable for making an arrest upon probable cause when the officer acted reasonably, in good faith and in accordance with c. 209A and the Guidelines. (c. 209A, § 6)

3.0: PROCEDURES:

3.1 Response

Subparts A through E describe how officers should conduct themselves when they arrive at the scene of a domestic violence call.

3.2 Investigation: Officers are reminded that the same standards for probable cause apply to domestic violence offenses as for any other crimes.

Subparts A(1) through A(4) describe "private premises" and when officers must leave the scene.

Subpart B notes that each party must have the opportunity to relate his or her story individually and confidentially.

Subpart C directs officers to collect information in several categories. For example:

Whether firearms are present and who owns them;

Whether there has been past history of disputes and if any orders or judgments are in effect. Violation of any such order would trigger the mandatory arrest provision of c. 209A, § 6;

Whether outstanding warrants exist;

Whether a "substantive dating relationship" exists. Criteria the court will use in its determination is listed. (c. 209A, § 1(e));

Police must also provide victims with addresses and telephone numbers of crisis centers, shelters, and where appropriate, Victim Witness Assistance staff from the local District Attorney's office.

3.3 Children: The welfare and safety of children who are present at a domestic dispute must be a major consideration. Officers are directed to make oral and written reports to DSS pursuant to c. 119, § 51A if they believe child abuse has occurred.

3.4 Property: Police should warn any person who is being accused of removing, damaging or destroying property of the potential civil or criminal consequences of such action.

3.5 Firearms: Responding officers should place all firearms into temporary custody. If the firearm cannot be seized:

(a) a judge can order the defendant to surrender the firearm, license to carry, and FID card; and

(b) a police chief can revoke the license or FID card.

3.6 Incident Reports: Domestic violence cases are subject to the same reporting procedures as any other crime scene.

3.7 Service of Orders: Service in hand unless otherwise directed by the court. Once an order has been issued by the court, officers should not accompany defendants back to the property for any reason without judicial authorization. The victim's safety should be considered in the timing of the service of any order.

6827A

COMMONWEALTH OF MASSACHUSETTS

DOMESTIC VIOLENCE

STANDARDIZED LAW ENFORCEMENT GUIDELINES

1991

1.0 **BACKGROUND.** 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. What appears to be a dispute of a minor nature may quickly escalate into a conflict of dangerous proportions because of the potentially violent nature of such incidents. Domestic violence situations are often characterized by anger, frustration, intense emotion and a batterer's attempt to control household members. These feelings can easily be directed against the responding officers, who can suddenly become the focus and target of ensuing violence. It is not unusual for aggressive outbursts within families to lead to serious bodily injury or even death. For this reason, whenever possible, at least two police officers should be assigned to a domestic violence situation unless immediate intervention is necessary to prevent serious physical harm.

2.0 **G.L. c. 209A ABUSE PREVENTION LAW (1991).** Whenever any law officer has reason to believe that a family or household member has been abused or is in danger of being abused such officer shall use all reasonable means to prevent further abuse. The officer shall take, but not be limited to, the following action:

- a. remain on the scene where the abuse occurred or was (or is) in danger of occurring as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of a law officer for a reasonable period to prevent abuse;
- b. assist the abused person in obtaining medical treatment necessitated by an assault, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility, notwithstanding any law to the contrary;
- c. assist the abused person and dependent children in

locating and getting to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or friend's residence (or a similar place of safety). The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances;

- d. give abuse victims immediate and adequate notice of their rights by handing them and reading a form detailing their rights (see attached); where said person's native language is not English, the statement shall be then provided in said person's native language whenever possible;
- e. assist the abused person by activating the emergency judicial system (generally by contacting the state police, unless some other procedure has been established) when the court is closed for business;
- f. inform the victim that abuser will be eligible for bail and may be promptly released;
- g. arrest any person the officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contract order or judgment.
- h. Where there are no vacate, restraining or no-contact orders or judgments in effect, arrest shall be the preferred response [Note: Officers are expected to use the same probable cause criteria which applies to any other crime.] whenever an officer witnesses or has probable cause to believe that a person:
 - (1) has committed a felony; or
 - (2) has committed an assault and battery in violation of G.L. c. 265, s. 13A; or
 - (3) has committed a misdemeanor involving abuse.

NOTE: This is a statutory exception to the longstanding rule which limited misdemeanor arrests to those committed in the officer's presence. Officers are now authorized to arrest for past misdemeanors not committed in their presence so long as the officers have probable cause to believe that a misdemeanor involving "abuse" occurred. Such misdemeanors include but are not limited to threats to commit crimes against the person or property of another (Chap. 265 sec. 2).

For the purposes of this law, "abuse" is defined as "the occurrence of one or more of the following acts between family or household members: (a) attempting to cause or causing physical harm; (b) placing another in fear of imminent physical harm; (c) causing another to

engage involuntarily in sexual relations by force, threat, or duress."

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

Officers investigating an incident of domestic violence shall not threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.

Regardless of arrest, whenever an officer investigates an incidence of domestic violence, the officer shall immediately file a written incident report on the prescribed department form. The victim shall be provided a copy of the full incident report at not cost, upon request to the police department.

Family or household members are persons who:

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

* This includes same sex relationships.

C. 209A specifically provides that police shall make a warrantless arrest of a person whom the officer has probable cause to believe has committed a misdemeanor by violating a temporary or permanent vacate, restraining or no-contact order or judgment. (G.L. c. 276, s. 20.) Even if the victim is unwilling to bring a complaint against the alleged abuser, officers are expected to arrest where probable cause exists. [(Note: While GL. c. 276, s. 28 concerning arrests without a warrant for a violation of certain statutes, among which are listed c. 209 A, uses the work "may", this is superseded by the provisions of c.209 A which specify that officers "shall" make such a warrantless arrest.)]

Additionally, the trespass law - G.L. c. 266, s. 120 - has been

amended by including within its scope a violation of a "get-out" order issued pursuant to G.L. c. 208, s. 234B, or G.L. c. 209A.

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

According to Chapter 403 of the Acts of 1990: "No law officers 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 reasonable and in good faith and in compliance with this chapter and the statewide policy as established by the secretary of public safety".

It is strongly recommended that all reasonable measures be taken to ensure cooperation among law enforcement personnel and those social service agencies involved with domestic violence incidents.

3.0 PROCEDURES.

3.1 RESPONSE. The unique nature of domestic violence situations requires that an officer immediately proceed to the place of the dispute. Check with dispatcher about previous incidents and existing orders. If possible, a back-up officer should also be dispatched to the scene.

- a. The initial contact by the responding officers must convey a professionally calm and helpful attitude.
 1. The officer(s) shall state their reason for being present.
 2. They must be considerate and attentive toward all parties and their problems regardless of the officers' own view or personal reactions toward the matter.
 3. Upon entering, they shall prevent the physical movement of the parties as much as possible and control their access to any potential weapons.
- b. Officers are authorized by c. 209A to transport victims of domestic violence to the emergency room of the nearest hospital. However, the preferred method of transportation is via ambulance, or if the victim is not seriously injured, in their own vehicle or that of a friend. Officers should receive approval from their supervisor prior to transporting victims of domestic abuse in a cruiser, except in an emergency.

- c. The responding officer(s) must take immediate control of the situation and should separate the parties to prevent any violent action. However, if there are two officers present at the scene, they should remain within view of each other to avoid any subsequent allegations of mistreatment.
- d. The use of alcohol and drugs, or a condition of mental illness, can aggravate a domestic violence situation, requiring far greater patience on the part of the responding officer(s).
- e. The provisions of G.L. c. 209A impose specific responsibilities upon the police as regards to domestic abuse situation. All officers are expected to be thoroughly familiar with the contents of this statute (as amended from time to time) and to act with discretion and competence in carrying out its provisions.

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

- a. When investigating a report of domestic violence, officers should be thorough and observe the following guidelines
 - 1. These specific guidelines shall govern any situation:
 - (a) Officer(s) may enter private premises at the request of someone in lawful control of the premises, or to enforce the provisions of a protective court order or to take reasonable measures to prevent any further abuse under the authority of G.L. c. 209A.
 - (b) Officer(s) may enter private premises where there is probable cause to believe that a felony has been or is being committed or that there is imminent danger of violence which could result in death or serious physical injury or where a breach of the peace has been committed in the officer(s)' presence.
 - (c) Officer(s) must leave if both parties request that they do so unless there is probable cause to believe that a felony has been committed or that their continued presence

is necessary to prevent physical harm or to carry out the provisions of G.L. c. 209A.

(d) "Private premises" includes a house, an apartment, a condominium, a hotel room, a mobile home, or a house trailer.

2. In attempting to ascertain the facts in the dispute, the officer(s) should allow each party to present his or her story individually, avoiding any unnecessary interruptions or undue interference by either party. While keeping all parties and officers in view, separate the parties sufficiently to allow each to relate matters to an officer without being overheard by the other party.
3. To deal with the situation, the officer(s) must ask pertinent questions, and certain fundamentals must be followed:
 - a. Obtain information regarding identities and relationship. Also obtain a phone number where victim can be reached. If victim wishes to leave her residence, obtain a phone number where she can be reached. Officers should be aware that if a victim goes to a shelter (due to confidentiality requirements) a message must be left for victim to return calls.
 - b. Obtain information about firearms. If the officer determines that the weapon cannot be seized:
 1. the judge can order defendant to surrender guns and FID card; and
 2. the chief can revoke for felony convictions, drug use, possession or sale; and mental illness.
 - c. Unless necessary, avoid emphasis or in depth questioning on personal matters if there is an indication that the person would rather not discuss them more fully.
 - d. Ascertain if there is a prior history of such disputes and whether there are any vacate, restraining, no-contact or other protective orders currently in effect.
 - e. Determine, when appropriate, who has lawful custody of any minors involved and whether court approved visitation rights are being transgressed.
 - f. As a standard precaution, police should check for outstanding arrest warrants on persons encountered during a domestic dispute. Since of-

ficial court orders and other court papers are the best source for much of this information, police should ask the parties to produce copies of court orders or other court papers to verify their claims; in addition, the police records bureau may be checked, or appropriate courts, social service agencies or attorneys contacted.

g. Gather information, where applicable, which will assist the district, probate or Boston municipal courts in determining whether a "substantive dating relationship" exist. This is especially helpful if the officer anticipates activating the Emergency Judicial System. Chapter 209A specifies that such courts will take into consideration the following factors:

- * the length of time of the relationship;
- * the type of relationship;
- * the frequency of interaction between the parties; and
- * if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

h. Provide the addresses and telephone numbers of available crisis center or emergency shelters and where appropriate, advise any victims or witnesses of the Victim-Witness Assistance Program administered by the local District Attorney's Office.

3.3

CHILDREN. Where children are present at a domestic dispute, their welfare and safety must be a major consideration. Any evidence of neglect or emotional, physical or sexual abuse of children under eighteen shall be carefully noted. Whenever a police officer, in his professional capacity, has reasonable cause to believe that a child under eighteen is suffering serious physical or emotional injury resulting from abuse, including sexual abuse, or from neglect, including malnutrition, or if a child is determined to be physically dependent upon an addictive drug at birth, the officer shall make a full report to his superior such that an oral and written report may be made to the Department of Social Services as required by G.L. chapter 119, section 51A. If an officer believes that a child under eighteen has died because of neglect, abuse or drug addiction, or is present in a household in which the officer observes the presence of drugs or evidence of drug use, he shall make a full report to his superior in addition to the report to the Department of Social Services in accordance with that same statute.

- a. 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 Social Services or a licensed child care agency or individual. See Chapter 119, section 24.

- 3.4 **PROPERTY.** The relationship of the parties and their property interests complicate domestic violence situations. 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, he or she should be warned of the potential civil or criminal consequences of his or her conduct, and both parties should be advised to seek legal counsel. A vacate order issued pursuant to c. 209A include the following requirement:

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

- 3.5 **FIREARMS.** When a firearm or other weapon is present at the scene of a domestic violence situation or the responding officer(s) are informed that a firearm or weapon has been or may be involved in the dispute, the officer(s) shall:

1. request that the firearm or weapon be placed in their custody temporarily;
2. search for and take custody of the firearm or weapon if one of the parties requests that they do so;
3. search for and take temporary custody of the firearm or weapon to alleviate the threat of serious violence that it poses; and
4. determine whether a firearm is lawfully possessed before returning the same.

- 3.6 **INCIDENT REPORTS.** The reporting procedures of any other crime scene should be applied to domestic violence incidents. Prosecution and subsequent legal action can be greatly helped by documentation and description of physical injuries, photographs of the injuries, and/or noting the presence of children in household, and other information specified under 3.2.

- 3.7 **SERVICE OF ORDERS.** Service of orders shall be in hand unless otherwise ordered by the court. 209 A Sec. 7 requires that "the law enforcement agency shall

promptly make its return of service to the court".

* Without judicial authorization, officers should not accompany defendants to the property for any reason.

NOTE: The victim's safety should be considered in the timing of the service of the orders.

ABUSED PERSON'S NOTICE OF RIGHTS

=====

Directions to Police Officer:

Give a victim of domestic violence immediate and adequate notice of his or her rights. The notice shall consist of handing said person a copy of the statement which follows below and reading the same to the victim. Where the victim's native language is not English, the statement shall be then provided in the victim's native language whenever possible.

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 you attacker to leave your household, building or workplace; (c) an order awarding you custody of a minor child; (d) an order direction 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 week nights the po-

lice will refer you to a justice of the superior, probate and family, district, or Boston municipal court departments.

You have the right to go to the appropriate district court or the Boston municipal court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and your children can leave or until your safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter of a family member's or a friend's residence, or a similar place of safety.

You may request a copy of the police incident report at no cost from the police department.

The Emergency Judicial Response System

The Judicial Response System

Report

for

Year Eight

July 5, 1991 - July 3, 1992

Massachusetts Trial Court
Administrative Office

Planning and Development Department

August 1992

JUDICIAL RESPONSE SYSTEM

Highlights -- Year 8

(July 5, 1991 - July 3, 1992)

- Calls to the system increased 73% over the previous year -- 10,438, up from 6,048.
- Calls in Year 8 represent 35% of all calls to the system since it began in July, 1984.
- 234 Trial Court justices volunteer to participate in the system.
- The Massachusetts State Police, in five locations statewide, serve as the contact point and dispatch agents for the activation of the system.
- The number of c.209A requests handled by the system after court hours (10,093) was equal to the total number of 209A requests filed in six urban courts during the day -- Springfield, Quincy, Lynn, Lawrence, Lowell and Dorchester.
- The number of 209A's was more than double the number filed in the Probate & Family Court in FY91.
- Of the nine regions of the state, the Worcester County area recorded the most calls for the year -- 2,284; of these, 2,229 (97%) were requests for relief under c.209A, the Abuse Prevention Act.
- 299 of 351 city and town police departments (85%) utilized the system during the year; Worcester, Lynn, Springfield and Boston called the system most often.

Report for Year Eight

The Massachusetts Trial Court operates the Judicial Response System, the state-wide emergency program which uses the services of 234 Trial Court justices who volunteer to assist police, hospitals, sheriffs and members of the public to resolve emergency legal situations. The Trial Court is indebted to the Massachusetts State Police for their continued excellence in acting as dispatch agents for the activation of the Judicial Response System.

The Judicial Response System began on July 13, 1984. Since that time Trial Court justices working after court hours, on weekends, and holidays have volunteered to answer 29,764 recorded emergency response requests. The Report for Year Eight contains information recorded by justices of the Trial Court who volunteered their services during year eight (July 5, 1991 to July 3, 1992) to record a total of 10,438 calls.

Number of Calls		
Year 1	(7/13/84 - 6/28/85)	324
Year 2	(6/28/85 - 6/27/86)	698
Year 3	(6/27/86 - 7/10/87)	1,238
Year 4	(7/10/87 - 7/08/88)	2,604
Year 5	(7/08/88 - 7/07/89)	3,797
Year 6	(7/07/89 - 7/06/90)	4,617
Year 7	(7/06/90 - 7/05/91)	6,048
Year 8	(7/05/91 - 7/03/92)	10,438
Total		29,764

The Report for Year Eight contains information recorded on logsheets provided by each justice who serves in one of nine JRS Regions for a two week* period.

Justices assigned for duty have been designated by the Chief Administrative Justice of the Trial Court as Associate Justices of all seven court departments. Acting as an emergency response justice, a judge is designated to perform the duties of a Superior, Land, Probate & Family, District, Housing, Juvenile or Boston Municipal Court Department justice. Justices of the Supreme Judicial Court and the Appeals Court are available to answer questions of an appellate nature should emergency judges need their assistance.

* In Region B-5 (Berkshire County) justices serve for a one month period.

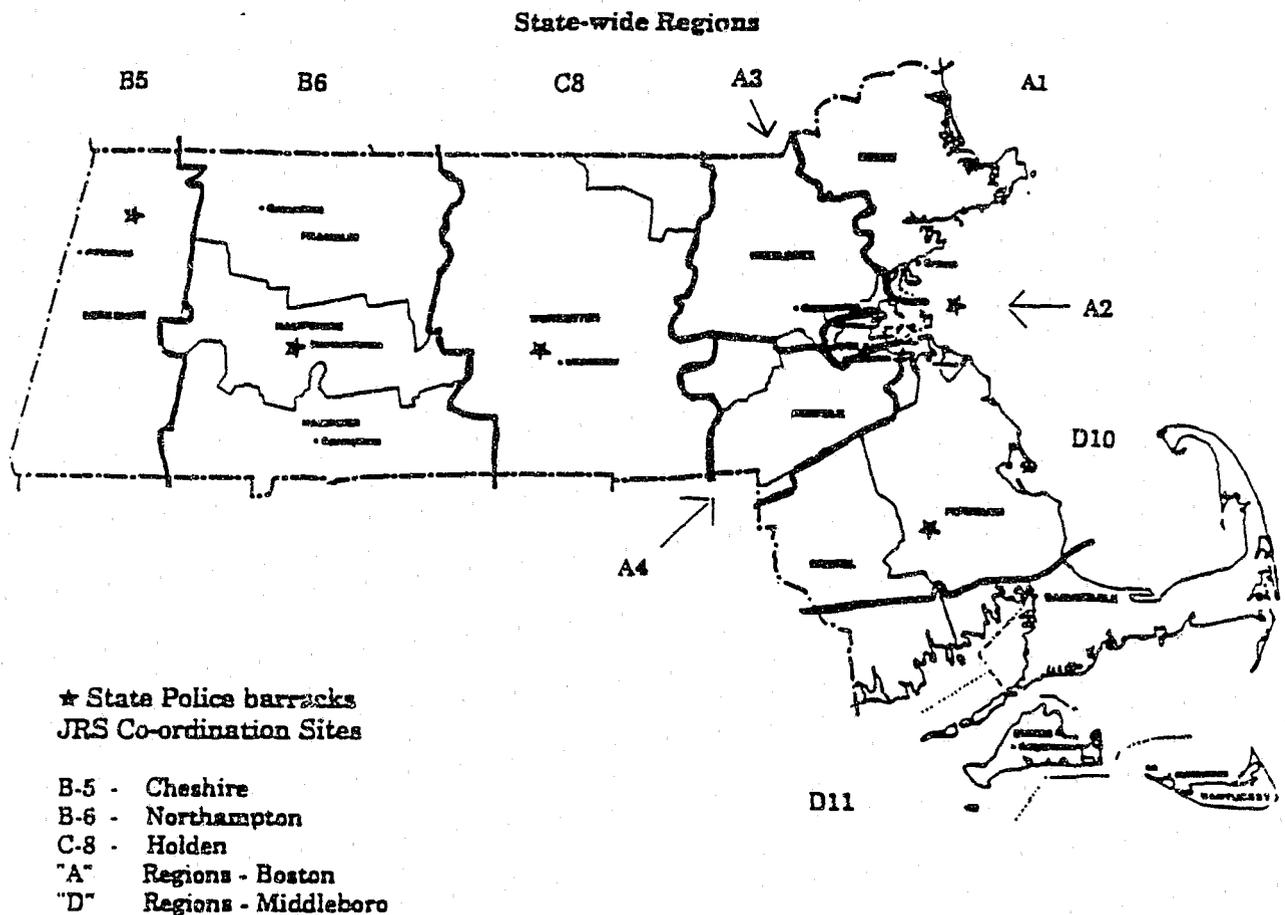
Judicial Response System Report for Year Eight

When the Judicial Response System was activated in July 1984, it formalized and consolidated individual response systems that had been in operation in the Boston Juvenile Court, Probate & Family and District Court Departments.

For purposes of the Judicial Response System, the Commonwealth of Massachusetts has been divided into nine regions. Each region is served by the On Call Justice who provides emergency response to requests for a two week period.

Generally, justices are assigned for duty in their region on the average of once every nine months. The frequency of scheduling varies from region to region because both the number of justices residing in each region and the level of participation varies from region to region.

Five State Police barracks act as the dispatch agents for the system.



The Judicial Response System could not operate without the expert, highly professional coordination provided by the Massachusetts State Police.

7/5/91 - 7/3/92

Judicial Response System Report for Year Eight

Calls By Quarter Year Eight					
Region	QTR 29*	QTR 30	QTR 31	QTR 32	Total
A1	366	385	305	532	1,588
A2	96	48	86	226	456
A3	326	401	334	517	1,578
A4	283	226	237	304	1,050
B5	34	42	21	83	180
B6	311	311	279	419	1,320
C8	496	591	503	694	2,284
D10	204	238	177	320	939
D11	187	216	226	414	1,043

* Quarter Dates

QTR 29 07/05/91 - 09/27/91

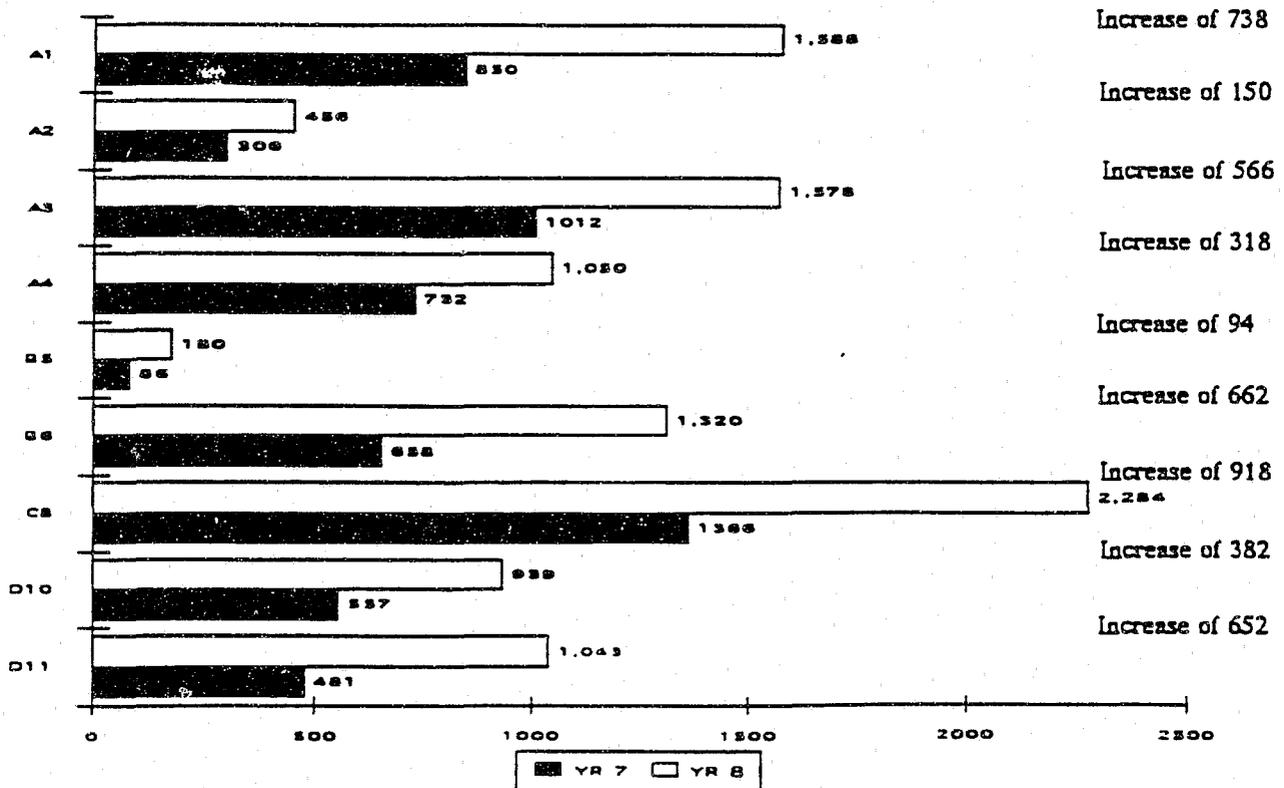
QTR 30 09/27/91 - 01/03/92

QTR 31 01/03/92 - 03/27/92

QTR 32 03/27/92 - 07/03/92

Calls in Region C-8 (Worcester County) led the state for year eight with 2,284 recorded calls. Every region increased calls dramatically with the largest numerical increase in Region C-8, which had an increase of 918 calls over the prior year. The largest percentage increase was in Region D-11 which had a 117% increase.

Calls by Region Years Seven & Eight



7/5/91 - 7/3/92

Judicial Response System Report for Year Eight

JRS Calls By Case Type

	Year 5	Year 6	Year 7	Year 8
C. 209A*	3,412 (90%)	4,222 (91%)	5,694 (94%)	10,093 (97%)
Restraining Order	3	2	9	7
Em. Medical	67	45	57	38
C. 119 s51C**	19	27	12	9
Mental Health	5	6	7	5
C.123***	132	134	59	63
Grdnshp/Custdy/Vstn	6	5	8	33
Arrng/Def/Arrst	20	22	12	17
Search Warrant	64	72	69	71
Juv/Cstdy/CHINs	33	27	43	18
Bail	14	19	20	17
C. 265 s26****	1	1	2	2
Other	21	35	56	65
Total	3,797	4,617	6,048	10,438

The largest type of request continues to be for assistance with domestic abuse complaints. Abuse prevention legislation is contained in chapter 209A of the Massachusetts General Laws. Justices recorded 10,093 abuse calls during year eight. This is 97% of all emergency response requests for the year. This is an increase of 4,399 calls for c. 209A assistance over year seven and it represents a 77% increase in this category.

This increase may be attributable to both a heightened public awareness of domestic violence issues and the changes in chapter 209A (Chapter 403 of the Acts and Resolves of 1990). These included an expansion of the definition of a family member to include persons who "are or have been in a substantive dating or engagement relationship." The scope of a "vacate order was expanded to include the turning over of keys, and the inclusion of multiple dwellings and places of employment in an order. Section 4 of the law "extends from five to ten court business days the time the defendant has to be heard on continuing a temporary order and of other relief requested by the plaintiff." The emergency system was specifically included in the statute which now authorizes the communication of orders by telephone by the emergency judge to the officer on the scene. The legislation also mandated that all police departments implement standard domestic violence law enforcement policies.

The second most numerous type of request was for Search Warrants. There were 71 requests for after-hour search warrants during year eight.

7/5/91 - 7/3/92

* c. 209A - Abuse Prevention Act

** c. 119 s. 51C - Hospital custody of injured child

*** c. 123 - Mental health commitment of prisoner/commitment of drug/alcohol dependent person

**** c. 265 s. 26 - Kidnapping

Judicial Response System Report for Year Eight

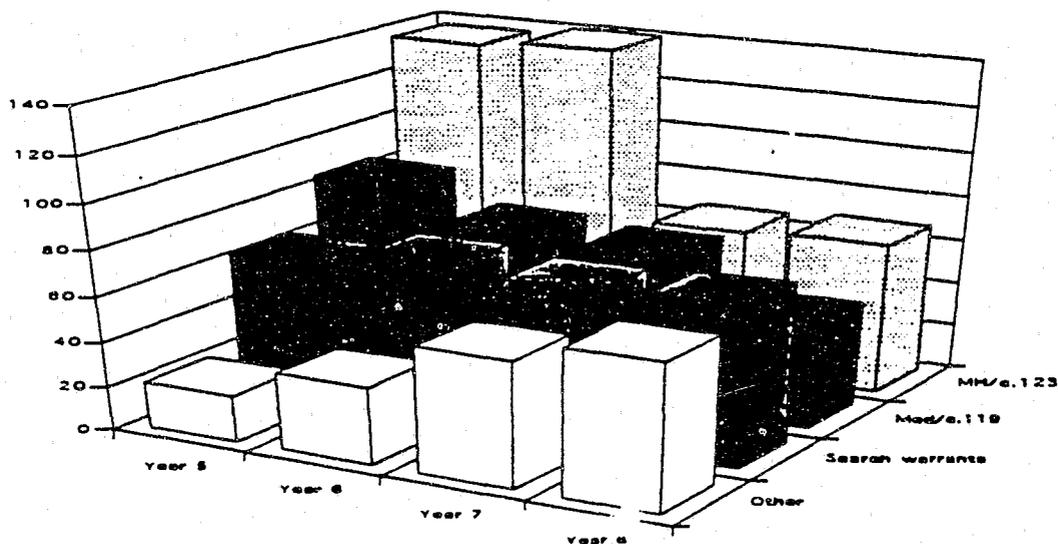
The third highest category of request was for "Other" which accounted for 65 calls in the eighth year.

Other Types of Calls

Criminal	9
c.111B (alcoholism)	1
c.209B (child custody another state)	2
Disposition of Corpse	1
Election Ballot Quest.	1
Extradition	1
Governor's Warrant (rendition)	1
Habeas Corpus	1
Injunction	2
Inquiry/Quest/Advise	25
Landlord/Tenant	5
Marriage to Comatose Person	1
Sexual Harassment	1
Unknown/Wrong call	14

In the "Other" category, a significant number of calls (25) were either to ask for advise or pose questions to the on call judges. Educational efforts are needed to inform local police officials that these types of calls are inappropriate for the emergency system. Another category is that of unknown/wrong call (14) which may be attributed to false activation of the pagers or to confusion on the part of the requesting departments.

In the chart below, Other significant categories of calls are displayed. In the medical and child abuse categories (Med/c.119) there was a decrease in requests in year eight. Judges were called to respond to medical emergencies



Judicial Response System Report for Year Eight

38 times in year eight from 17 different hospitals. It is estimated that one quarter of these calls necessitated a judge's presence at a hospital to conduct a hearing to ascertain whether or not to authorize threatment for an incapacitated or minor patient. Judges are also called by hospital administrators to rule on the custody of children under chapter 119 section 51C which authorizes a judge to order a physician to hold a child in the hospital pending a hearing where a child has been suspected of being abused.

The final category combines mental health and c.123 calls. These requests numbered 68. Chapter 123 calls often concern the emergency commitment of mentally ill persons, a procedure which ordinarily can be accomplished by a physician or police officer. A portion of these requests come from sheriffs who request a judge's authorization to transfer a mentally ill prisoner from a jail or house of correction to the mental health facility.

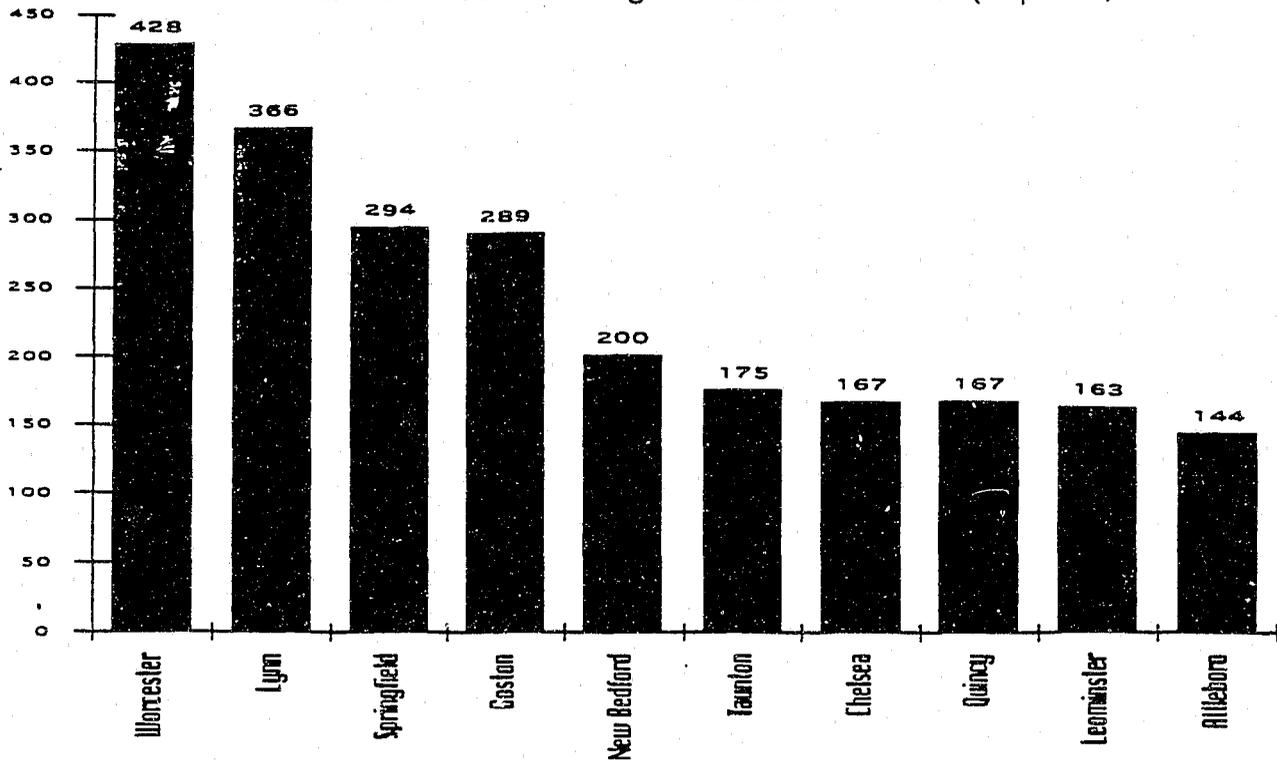
Requestors

	Year 5	Year 6	Year 7	Year 8
Local P.D.	3,512 (90%)	4,336 (94%)	5,802 (96%)	10,204 (98%)
State Police	72	66	72	96
Hospital	96	97	70	49
Mental Health Fac.	7	14	4	4
DSS	5	7	12	4
Social Serv. Fac.	6	2	0	0
Sheriff/HC	59	58	45	35
Attorney	14	6	14	9
AG/DA	9	10	5	11
Physician	1	0	1	0
Psychologist	0	0	0	0
Clerk-Magistrate	7	5	7	5
Another Judge	2	0	0	0
Other	7	16	16	21
Total	3,797	4,617	6,048	10,438

Local police accounted for 98% (10,204 calls) of all requests recorded by on call justices during year eight. This is a numerical increase of 4,402 calls (76%) over year seven. Of the 351 cities and towns in the Commonwealth, 299 used the Judicial Response System at least once during year eight. This is an increase of thirteen towns over year seven. The graph on the next page depicts the "top ten" towns for year eight.

Judicial Response System Report for Year Eight

Number of Calls Year Eight – Selected Towns (Top Ten)



Massachusetts State Police accounted for the second highest number of requestors (96). The third highest number of requestors was hospitals (49). These are listed below.

Anna Jaques (Newburyport)	1	Lahey Clinic (Burlington)	1
Addison Gilbert (Gloucester)	1	Lawrence General	2
Baystate Medical Cntr (Springfield)	2	Metro-West (Framingham)	1
Brockton Hospital	2	Milford-Whitinsville(Milford)	4
Burbank (Fitchburg)	2	N.E. Medical Center (Boston)	3
Carney (Boston)	2	N.E. Memorial (Stoneham)	3
Cooley Dickinson (Northampton)	2	Quincy	2
Goddard (Stoughton)	1	So. Shore Hospital (So. Weymouth)	5
Hale Hospital (Haverhill)	1	Tobey (Wareham)	1
Hubbard Regional (Webster)	1	Waltham Weston (Waltham)	1
Jordan (Plymouth)	2	U. Mass (Worcester)	9

7/5/91 - 7/3/92

Judicial Response System Report for Year Eight

Requests made through the system for assistance by local police departments for year eight are recorded below. Totals represent domestic abuse calls unless there is a total in the right hand column. The number in the right column is the number of calls (if any) that were not c.209A calls.

Town	chap. 209A	non 209A	Town	chap. 209A	non 209A	Town	chap. 209A	non 209A	Town	chap. 209A	non 209A	Town	chap. 209A
ABINGTON	14		DARTMOUTH	33	2	IPSWICH	17		NORFOLK		6	STOW	7
ACTION	13		DEDHAM	2		KINGSTON	13		NORTHAMPTON	101	2	STURBRIDGE	11
ACUSHNET	19		DEERFIELD	14		LAKEVILLE	5		NORTHBORO	34	1	SUDBURY	20
ADAMS	20		DENNIS	5		LANCASTER	2		NORTHBRIDGE	38	1	SUNDERLAND	9
AGAWAM	34		DIGHTON	12		LANESBORO	4		NORTON	14		SUTTON	26
AMESBURY	25		DOUGLAS	11		LAWRENCE	94	1	NORWELL	4		SWAMPSCOTT	22
AMHERST	48		DRACUT	7		LEE	12		OAK BLUFFS	26		SWANSEA	24
ANDOVER	17		DUDLEY	16		LEICESTER	38	2	OAKHAM	4		TALNTON	175
ARLINGTON	69		DURSTABLE	3		LENOX	6		ORANGE	20		TEMPLETON	52
ASHBURNHAM	14		DUXBURY	12		LEOMINSTER	163		ORLEANS	12		TEWKSBURY	23
ASHEY	8		E. BRIDGEWATER	6		LEVERETT	1		OXFORD	50	3	TISBURY	18
ASHFIELD	3		E. BROOKFIELD	4		LEXINGTON	8	2	PALMER	19		TOPSFIELD	6
ASHLAND	35		E. LONGMEADOW	13		LEYDEN	1		PAXTON	6		TOWNSEND	25
ATHOL	16		EASTHAM	5		LINCOLN	3		PEABODY	139	1	TRURO	4
ATTLEBORO	144		EASTHAMPTON	36	1	LITTLETON	17		PELHAM	1		TYNGSBORO	7
AUBURN	18		EASTON	23		LONGMEADOW	13	1	PEMBROKE	6		U. Mass-Amherst	15
AYER	28	1	EDGARTOWN	20		LOWELL	10		PEPPERELL	39		UPTON	19
BARNSTABLE	38		ERVING	2		LUDLOW	25		PETERSHAM	2		UDBRIDGE	58
BARRE	10		ESSEX	6		LUNENBERG	21		PHILLIPSTON	1		W. BOYLSTON	7
BEDFORD	11		EVERETT	53		LYNN	366	3	PITTSFIELD	61		W. BRIDGEWATER	9
BELCHERTOWN	9		FAIRHAVEN	56		LYNNFIELD	17	1	PLAINVILLE	13		W. BROOKFIELD	11
BELLINGHAM	15		FALL RIVER	98	1	M.B.T.A.	2		PLYMOUTH	83	1	W. NEWBURY	2
BELMONT	40		FALMOUTH	20		MALDEN	53		PRINCETON	2		W. SPRINGFIELD	93
BERKLEY	11	1	FITCHBURG	102		MANCHESTER	5		PROVINCETOWN	2		W. STOCKBRIDGE	1
BERLIN	1		FOXBORO	28		MANSFIELD	34		QUINCY	167	2	W. TISBURY	6
BEVERLY	59		FRAMINGHAM	68		MARBLEHEAD	18		RANDOLPH	47	1	WAKEFIELD	26
BILLERICA	31		FRANKLIN	64		MARION	1		RAYNHAM	15		WALES	1
BLACKSTONE	23		FREETOWN	1		MARLBORO	41		READING	37	1	WALPOLE	35
BOLTON	4		GARDNER	133		MARSHFIELD	21		REHOBETH	8		WALTHAM	104
BOSTON	289	31	GEOGETOWN	4		MASHPEE	10		REVERE	47	1	WARE	39
BOURNE	53		GLOUCESTER	128		MATTAPOISETT	9		ROCHESTER	7		WAREHAM	26
BOXBORO	10	1	GOSHEN	6		MAYNARD	19	1	ROCKLAND	28		WARREN	22
BODFORD	8	1	GRAFTON	20	1	MEDFIELD	1		ROCKPORT	19		WATERTOWN	35
BOYLSTON	6		GRANBY	5		MEDFORD	118		ROWLEY	13		WAYLAND	9
BRAINTREE	15		GRANVILLE	1		MEDWAY	6		RUTLAND	16	1	WEBSTER	59
BREWSTER	2		GREENFIELD	99	1	MELROSE	23		S. HADLEY	28		WELLFLEET	6
BRIDGEWATER	38		GROTON	14		MENDON	6		SALEM	78		WENHAM	8
BRIMFIELD	1		GROVELAND	10		MERRIMAC	2		SALISBURY	37		WESTBORO	39
BROCKTON	119		GT. BARRINGTON	14		METHUEN	113		SANDWICH	23		WESTFIELD	31
BROOKFIELD	16		HADLEY	4		MIDDLEBORO	28		SAUGUS	16		WESTFORD	6
BROOKLINE	63	2	HALIFAX	5		MIDDLETON	13		SCITUATE	16		WESTHAMPTON	2
BUCKLAND	4		HAMILTON	7		MILFORD	85	1	SEEKONK	6		WESTMINSTER	9
BURLINGTON	35		HAMPDEN	9		MILLSBURY	17		SHARON	18	1	WESTON	3
CAMBRIDGE	118	1	HANOVER	3	1	MILLIS	8		SHEFFIELD	4		WESTPORT	11
CANTON	16		HANSON	5		MILLVILLE	5		SHELDORNE	4		WESTWOOD	1
CARLELE	2		HARDWICK	4		MILTON	45		SHERBORN	3	1	WEYMOUTH	80
CARVER	19		Harvard U.	4		MONSON	15		SHIRLEY	19		WHITMAN	43
CHARLEMONT	2		HARWICH	15		MONTAGLE	20		SHREWSBURY	55	1	WILBRAHAM	10
CHARLTON	23		HAVERTHILL	138	1	N. ADAMS	21		SOMERSET	47		WILLIAMSTOWN	1
CHATHAM	11		HEATH	1		N. ANDOVER	44		SOMERVILLE	105	1	WILLIAMSTOWN	4
CHELMSFORD	5		HIGHAM	13		N. ATTLEBORO	71	1	SOUTHAMPTON	5		WILMINGTON	26
CHELSEA	167		HOLBROOK	23		N. BROOKFIELD	18		SOUTHBORO	5		WINDHENDON	45
CHESHIRE	4		HOLDEN	11		N. READING	12		SOUTHBRIDGE	42		WINCHESTER	11
CHICOPEE	109		HOLLISTON	17		NAHANT	14	1	SOUTHWICK	5		WINDSOR	2
CLARKSBURG	2		HOLYOKE	102	1	NANTUCKET	40		SPENCER	61		WINTHROP	55
CLINTON	50		HOPEDALE	10		NATICK	57	3	SPRINGFIELD	318	1	WOBURN	53
COHASSET	2		HOPKINTON	11		NEW BEDFORD	200	3	STERLING	9		WORCESTER	428
CONCORD	18		HUBBARDSTON	12	1	NEWBURY	9		STOCKBRIDGE	1		WRENTHAM	17
DALTON	7		HUTSON	51		NEWBURYPORT	24		STONEHAM	36	1	YARMOUTH	61
DANVERS	48		HULL	50		NEWTON	54		STOUGHTON	55	2		

Please note, some towns not listed have maintained arrangements with their local district court to handle emergency calls independently of the Judicial Response System.

Calls To Volunteer Judges For 209As Soar

BY BARBARA RABINOVITZ

State judges volunteering to intervene in legal emergencies in the middle of the night fielded more than 10,000 calls for domestic-violence restraining orders during the past year, the Office of the Chief Administrative Justice reported last week.

The number of requests—10,093—for so-called 209As, named for the abuse-prevention legislation known as chapter 209A of the General Laws, equals the amount of 209A requests filed during daytime hours in courts in Springfield, Quincy, Lynn, Lawrence, Lowell and Dorchester, according to the OCAJ's report on the operation of the trial courts' Judicial Response System for fiscal year 1992 that ended in July.

Two other findings reported by the OCAJ highlighted a dramatic increase in the use of the system, under which 200-plus trial judges volunteer to assist police, hospitals and members of the public. The total number of calls received in the past year—10,438—represents 35 percent of all the calls placed to the system since it began in July 1984. And the calls received in 1991-1992 were up by 73 percent over the previous year, when 6,048 calls were logged.

Trial Court Administrator John F. Burke, commenting on the findings, said the fact that 35 percent increase of all the requests for assistance from the program were made this past year "at least shows that people know about it."

"Like so many of these social problems, it's hard to sort out whether it's an increase in the reporting of the problem or an increased problem," Burke said. "My guess is it's both, and therefore the demands on the system go up."

Because of the increased demands on the judges participating in the program, a new

schedule of volunteer service is to be implemented later this month by Chief Administrative Justice John E. Fenton Jr., Burke announced last week.

The old system that divided the state into nine regions, each of them served by an on-call judge for two weeks at a time, is being replaced, he explained. Under the new arrangement, the state will be divided into two north and south regions, each one to be covered by a judge for one week at a time. During that week, the on-call judge will not be required to sit on the bench during day-

(See page 28)

Massachusetts Lawyers Weekly
September 7, 1992

Calls To Volunteer Judges For 209As Soaring

(Continued from page 3)

time hours.

"When you had judges doing [this service] on a rapidly rotating basis, you had a lot of judges up at night and having to go in the morning," Burke said, noting that the number of calls placed to the system on weekend nights often has exceeded 100. "So what they [Fenton and the chief judges of the several trial court departments] decided was to try and make it a regular assignment, release the judges from their daytime duties and hold it to a week at a time so it would be a long time before they'd come back to you."

Burke noted that Berkshire County will not be included in the new regional configuration because of its "particular geography" and the small number of judges assigned to that far western county. "So the Mason-Dixon line starts at Berkshire and works east," he said.

A Volume-Reduction Plan

Hampden County Probate Judge David G. Sacks, who has taken a particular interest in the Judicial Response System, applauded the changes planned for the program but remains concerned that the number of calls for judicial intervention will continue to "overwhelm the system."

The changes, Sacks said in an interview Wednesday, are "a response by Judge Fenton [to the question of] how you can best service all those calls."

"In my mind, you still need to decrease the number of calls because [under the new arrangement] one judge is going to be getting half the state now instead of a region. So that judge literally will be on the phone the entire night."

In an effort to reduce the number of calls, Sacks earlier this year proposed legislation that provides for the automatic issuance of

a 209A order. The bill, he explained, "essentially says that if someone's in jail and they are released on bail, there will be an automatic, no-contact 209A order until there is a court hearing."

Sacks said that when he has volunteered for night time duty on the Judicial Response System, a substantial number of the calls—"maybe 20-30 percent," he estimated—involved cases in which the defendant is already in custody when the judge is called. "Common sense says why am I getting a call if the person is in jail," he said. "The victim is not a risk if the person is in jail."

In that belief, Sacks drafted his legislative proposal, which he sees as "a way to decrease the volume of calls in the middle of the night without decreasing the protection to victims."

According to Sacks, the bill is in the Legislature's Judiciary Committee and is scheduled for consideration this month.

Other Findings

Both Sacks and Burke pointed out in their interviews last week that the OCAJ report on the operation of the Judicial Response System over the years shows how the program has evolved from one responding to requests for emergency medical treatment to a service providing protection to victims of domestic abuse almost exclusively.

Other findings reported by the OCAJ seem to confirm their contention:

- The number of requests for 209As was more than double the number filed in the state's probate courts during fiscal 1991.

- The Worcester County area logged the most calls of any of the regions, receiving a total of 2,284, of which 2,229—or 97 percent—were requests for relief under c.209A.

- Judges were asked to respond to medical

emergencies 38 times during the year from 17 different hospitals.

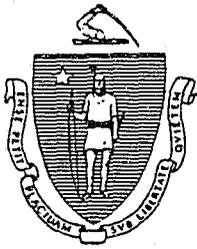
Commenting about the incidence of 209A requests, the OCAJ report states that the sharp increase in requests for 209As "may be attributable to both a heightened public awareness of domestic violence issues and the changes in 209A."

The latter, the report says, included an expansion of the definition of a family member to include persons who "are or have been in a substantive dating or engagement relationship" and in the scope of a vacate

order to include "the turning over of keys and the inclusion of multiple dwellings and places of employment." The law also now extends from five to 10 "court business days" the time a defendant has to be heard on continuing a temporary order and "other relief requested by the plaintiff."

The report also notes that the emergency response system was "specifically included in the statute, which now authorizes the communication of orders by telepho[n] by the emergency judge to the officer on the scene."

Legal Developments in Domestic Violence Law



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

MEMORANDUM

TO: Chiefs of Police
FROM: Scott Harshbarger *SH*
DATE: May 21, 1992
RE: Chapter 31 of the Acts of 1992, An Act Establishing The Crime Of Stalking

Attached for your information is a copy of the recently-enacted Chapter 31 of the Acts of 1992, establishing the crime of stalking. This statute adds a new Section 43 to Chapter 265 of the General Laws. Governor Weld signed an emergency preamble to the legislation, rendering it effective immediately upon receiving his approval. Therefore, the statute applies to acts occurring after 11:33 a.m. on May 18, 1992. A brief analysis of the legislation follows.

SUMMARY

The statute creates the crime of stalking, with two sentence enhancement provisions. The crime is a felony, allowing arrest based on probable cause, whether or not committed in the officer's presence.

1. Any person who willfully, maliciously and repeatedly follows or harasses* another person and who makes a threat with the intent of placing that person in imminent fear of death or serious bodily injury is guilty of the crime of "stalking", a felony, and subject to a maximum state prison sentence of five years, or a house of correction sentence of up to two and one-half years, or a fine of up to \$1000, or both fine and imprisonment. G.L. c.265, §43(a).

*"Harasses" is defined in the statute (subsection (d)) as "a knowing and willful pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms or annoys the person . . . [and which is] such as would cause a reasonable person to suffer substantial emotional distress."

2. Any person who commits the crime of "stalking" in violation of a vacate, restraining, or no-contact order issued under G.L. c. 208 or G.L. c. 209A, or any other temporary restraining order or preliminary or permanent injunction issued by the superior court, faces a mandatory minimum one year sentence (with the maximum sentence remaining five years in state prison). G.L. c.265, §43(b).
3. Any person convicted of a second or subsequent violation of any provision of the stalking law faces a maximum ten year state prison sentence, and a mandatory minimum two-year sentence. G.L. c.265, §43(c).

ELEMENTS

Therefore, the following elements constitute the crime of stalking in violation of G.L. c.265, §43(a):

1. That the defendant acted willfully;
2. That the defendant acted maliciously;
3. That the defendant followed OR harassed another person;
4. That the defendant engaged in the conduct repeatedly;
5. That the defendant made a threat, with the intent to place the victim in imminent fear of death or serious bodily injury.

For the mandatory minimum sentences to apply, it must also be alleged and proven that:

6. The acts were committed in violation of one of the orders or injunctions specified in the statute (G.L. c.265, §43(b));

OR

7. That the defendant had previously been convicted of the crime of stalking (G.L. c.265, §43(c)).

NOTE: Complaints or indictments should be drawn in the precise wording of the statute. If the acts alleged are covered by the mandatory minimum sentencing provisions of the statute, and the prosecutor wishes to ensure that these sentencing provisions apply, the complaint or indictment should be drawn in two parts, with the second page alleging, in the specific terms of the statute, the relevant aggravating factor (i.e., violation of a court order or previous conviction for stalking).

The statute is intended to fill a void in current law, allowing police and the courts to intervene in certain circumstances before abuse escalates. Instead of being faced with various isolated misdemeanor offenses which must be proved separately, these separate acts of harassment can be joined to prove a dangerous pattern resulting in a felony offense.

If you have any questions about the provisions of the statute, please feel free to call either Jane Tewksbury, Chief of the Family and Community Crimes Bureau in this office, or Diane Juliar, Director of Policy and Training. Either can be reached at (617) 727-2200.

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety-two

AN ACT ESTABLISHING THE CRIME OF STALKING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 265 of the General Laws is hereby amended by adding the following section:-

Section 43. (a) Whoever willfully, maliciously, and repeatedly follows or harasses another person and who makes a threat with the intent to place that person in imminent fear of death or serious bodily injury shall be guilty of the crime of stalking and shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars, or imprisonment in the house of correction for not more than two and one-half years or both.

(b) Whoever commits the crime of stalking in violation of a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to sections eighteen, thirty-four B, or thirty-four C of chapter two hundred and eight; or section thirty-two of chapter two hundred and nine; or sections three, four, or five of chapter two hundred and nine A; or sections fifteen or twenty of chapter two hundred and nine C; or a temporary restraining order or preliminary or permanent injunction issued by the superior court, shall be punished by imprisonment in a jail or the state prison for not less than one year and not more than five years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of one year.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this subsection.

(c) Whoever, after having been convicted of the crime of stalking, commits a second or subsequent such crime shall be punished by imprisonment in a jail or the state prison for not less than two years and not more than ten years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of two years.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, su-

perintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this section.

(d) For the purposes of this section, "harasses" means a knowing and willful pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms or annoys the person. Said conduct must be such as would cause a reasonable person to suffer substantial emotional distress.

House of Representatives, May 11, 1992.

Passed to be enacted,

Charles F. Edley, Speaker.

In Senate, May 11, 1992.

Passed to be enacted,

William W. Bulger, President.

18 May, 1992.

Approved,

11:33 a.m.

W. William F. Weld
Governor.

STALKING BILL

By: Robert J. Bender, Assistant District Attorney,
Essex County District Attorney's Office

On Monday, May 18, 1992, Governor Weld signed Senate Bill 1493, St. 1992, c. 31, which creates two new crimes, "stalking" and stalking in violation of a court order, G.L. c. 265, §§43(a) and 43(b), respectively. There are enhanced penalties for second and subsequent convictions of stalking, added as §43(c). An emergency preamble was signed, which made these new crimes effective at 2:30 p.m. Monday, May 18, 1992.

ELEMENTS

"STALKING:" c. 265, §43(a)

- (1) "whoever willfully, maliciously, and repeatedly"
- (2) "follows or harasses another person"
- (3) "and who makes a threat with the intent to place that person in imminent fear of death or serious bodily injury"

"STALKING IN VIOLATION OF A COURT ORDER:" c. 265, §43(b)

- (1) "whoever commits the crime of stalking"
- (2) "in violation of a temporary or permanent vacate, restraining, or non-contact order or judgment issued pursuant to" G.L. c. 208, §§18, 34B, or 34C, or G.L. c. 209, §32, or G.L. c. 209A, §§2, 4, or 5, or G.L. c. 209C, §§15 or 20, or a temporary restraining order or preliminary or permanent injunction issued by the superior court.

ANALYSIS

The Legislature has recognized that some offenders have been committing serious misconduct which seemed to "borrow" elements of certain "traditional" crimes, but as a whole was not targeted by any crime. This new statute defines a new crime, "stalking," and spells out its elements with particular care to give proper notice of what misconduct falls within its scope. The new crime is not intended to replace but to complete the familiar list of offenses against persons which have been used to address such behavior. It is certain that in

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the past some offenders have committed acts best described as "stalking," but until now these offenders usually could be prosecuted only for misdemeanors. Now, if every element of the crime of stalking can be shown to have occurred since 2:30 p.m. on May 18, 1992, a felony can be prosecuted in appropriate cases.

Jurisdiction and Penalties

"Stalking," G.L. c. 265, §43(a), is punishable by a fine or by 5 years imprisonment in state prison or by 2 1/2 years in the house of correction. Thus it falls within the concurrent jurisdiction of the District Court and the Superior Court. "Stalking in violation of a court order," G.L. c. 265, §43(b), also is punishable by 5 years imprisonment in state prison or by 2 1/2 years in the house of correction, but this crime carries a mandatory minimum sentence of one year, which may not be suspended or reduced by probation, parole, work release, or furlough. The statute uses the same language for the mandatory portion of the sentence as is used in G.L. c. 94C, §32H, concerning mandatory minimum sentences for certain drug offenses. This crime too falls within the concurrent jurisdiction of the District Court and the Superior Court.

Second and Subsequent Offenses

Under G.L. c. 265, §43(c), if a prior conviction for "the crime of stalking" is proven, the authorized penalty doubles to 10 years imprisonment in state prison, with a house of corrections alternative. There is a 2 year mandatory minimum term. G.L. c. 218, §26, has not been amended to bring second and subsequent offenses within the jurisdiction of the District Court. Now it is a 10 year felony within the jurisdiction of the Superior Court only. Note that §43(c) is not as clear as it should be regarding what "counts" as a "prior conviction." It is certain that repeat violations of §43(a), which is defined specifically as "the crime of stalking," are to be treated as "second and subsequents" subject to §43(c)'s enhanced penalties. The crime of stalking in violation of a court order, as defined by §43(b), is an "aggravated" form of stalking, so that logically a previous conviction under §43(b) should make the repeat offender one who has "been convicted of the crime of stalking." It may be argued, however, that §43(c) applies by its very terms only to prior violations of §43(a).

Definition of "Harasses"

As the elements show, stalking is either willful, malicious, and repeated "following" with proof of actual

threat, or willful, malicious, and repeated "harassment" with proof of actual threat. The new statute defines "harasses" in such a manner that if one can prove the statutory element of "harasses," one also will have proved "willfully, maliciously, and repeatedly." To prove "harasses," one must show "a knowing and willful pattern of conduct or series of acts over a period of time," which is the functional equivalent of "willfully" and "repeatedly." This choice of language implies that to establish "harasses," it is not enough to prove that the offender committed several distinct acts (which seriously alarm or annoy) at one time or in one criminal contact with the victim. It is necessary to prove distinct acts which occurred "over a period of time." Stalking is repeated harassment. Harassment is repeated if it occurs on more than one occasion; harassment is repeated even if the offender does not repeat the first pattern of conduct but changes to a different type of harassing conduct.

The second part of the definition of "harasses" requires that the misconduct "seriously alarms or annoys the person" and is "such as would cause a reasonable person to suffer substantial emotional distress." Thus the statute requires that the victim actually feel serious alarm or serious annoyance due to the offender's actions directed at that person, and that the offender's actions be "such as would cause" any reasonable person to suffer such "substantial emotional distress."

Evidence of a Threat

The third element of "stalking," that of "and who makes a threat with the intent to place that person in imminent fear of death or serious bodily injury," cannot be overlooked. An offender who repeatedly makes such threats does maliciously harass, but one does not commit the crime of stalking by following or harassing alone. There must be proof of an actual threat. The "threat" element of stalking is "narrower" than the familiar "threat to commit a crime" offense in G.L. c. 275, §3. The threat in stalking requires proof that the offender had the specific intent to place the victim "in imminent fear of death or serious bodily injury." It is not enough that the victim feel threatened or that the offender's acts or words "seriously alarm or annoy" the victim. Proof of stalking requires evidence of the offender's state of mind or intention. In practical terms, however, specific intent to place the victim in imminent fear may be inferred from the offender's acts or words as reported by the victim. It is not necessary to establish that "a reasonable person" would have

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been placed in fear by the threat, but if that is established, the inference that the offender intended to place the victim in fear is strong. In addition, specifying that the threat be made with the intent to cause the victim "imminent fear" should be read to mean that the offender intended that the victim be in fear immediately. This does not require that the threat be one of immediate harm. It is enough that the offender intend the victim to be immediately and/or continuously in fear of a harm which could occur at any time, without warning. The statute does not require that the threat be made "in person."

Stalking by Following

Finally, the mere willful and repeated following of another is not "stalking." The offender must follow "maliciously," and also must make the requisite threat. The threat does not need to occur during the act of following, and once the threat is made, the "malice" of the act of following may be more evident. It would seem that any acts of malice during the following also establish the malicious intent.

Stalking in Violation of a Court Order

Stalking in violation of G.L. c. 265, §43(a), is a lesser included offense, or necessary element of stalking in violation of a court order, under G.L. c. 265, §43(b). The "aggravated" form of stalking carries the additional element that the stalking occur in violation of the terms of a court order that the offender "vacate" the victim's home, or have "no contact," or "refrain from abuse." The court orders listed in the stalking statute are the same ones listed in G.L. c. 209A, §7, orders which will have been served on the offender pursuant to G.L. c. 209A, §7. Of course, violation of such court orders is itself a crime, created by G.L. c. 209A, §7, and punishable by a fine or by up to two and one half years in jail. Stalking in violation of a court order thus appears as an "aggravated" form of this misdemeanor too.

No court order is violated by acts which occur before such an order is issued, and it is not necessary to prove that the offender intended to violate the court order to prove this crime; it is only necessary to prove that the offender willingly, maliciously, and repeatedly did the acts which constitute stalking. By the act of stalking, one may commit an act of abuse ("placing another in fear of imminent serious physical harm") or otherwise violate a "no-contact" or vacate (and stay away) order. It does not appear necessary to prove that the offender had been served with the court order, but it

is prudent to show that the offender was served or otherwise knew about the court order because such evidence strengthens the inferences of malice and intent to place the victim in imminent fear, each an element of stalking. A prosecutor may argue that one who stalks may be guilty without knowledge of the court order on a strict liability basis. See Commonwealth v. Miller, 385 Mass. 521, 524-525 (1982) (statutory rape).

Acts of Stalking Committed Before May 18, 1992

It is important to realize that conduct which occurred before the time that stalking became a crime may be used only to put the offender's conduct after criminalization into context. See, e.g., Commonwealth v. Gordon, 407 Mass. 340, 351 (1990) (evidence of acts which occurred before issuance of restraining order may be admissible at trial for violation of that order). The offender must act repeatedly and make the requisite threat after the passage of the statute, regardless of his or her earlier conduct.

Form of Complaint or Indictment

Complaints or indictments should be drawn in the precise wording of the statute. If the acts alleged are covered by the mandatory minimum sentencing provisions of the statute, and the prosecutor wishes to ensure that these sentencing provisions apply, the complaint or indictment should be drawn in two parts, with the second page alleging, in the specific terms of the statute, the relevant aggravating factor (i.e., violation of a court order or previous conviction for stalking).

CONCLUSION

While the Stalking Bill may not be the solution to every case, it will prove to be an important protection or prevention only if it is implemented and not ignored. Do not hesitate to contact your District Attorney's office or the Attorney General's office (Jane Tewksbury, Chief of the Family and Community Crimes Bureau, or Diane Juliar, Director of Policy and Training, (617) 727-2200) with questions, suggestions, or comments based on your experiences with this new statute. Do not be deflected from prosecutions by challenges to the statute which will be addressed one by one in the trial courts, appellate courts, and perhaps in the Legislature.

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TEXT OF G.L. c. 265, §43, the "Stalking Bill"

Section 43(a): Whoever willfully, maliciously, and repeatedly follows or harasses another person and who makes a threat with the intent to place that person in imminent fear of death or serious bodily injury shall be guilty of the crime of stalking and shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars, or imprisonment in the house of correction for not more than two and one-half years or both.

Section 43(b): Whoever commits the crime of stalking in violation of a temporary or permanent vacate, restraining, or non-contact order or judgment issued pursuant to sections eighteen, thirty-four B, or thirty-four C of chapter two hundred and eight; or section thirty-two of chapter two hundred and nine; or sections three, four, or five of chapter two hundred and nine A; or sections fifteen or twenty of chapter two hundred and nine C; or a temporary restraining order or preliminary or permanent injunction issued by the superior court, shall be punished by imprisonment in a jail or the state prison for not less than one year and not more than five years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of one year.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse;

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to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of the subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this subsection.

Section 43(c): Whoever, after having been convicted of the crime of stalking, commits a second or subsequent such crime shall be punished by imprisonment in a jail or the state prison for not less than two years and not more than ten years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of two years.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offender on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this section.

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Section 43(d): For the purposes of this section, "harasses" means a knowing and willful pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms or annoys the person. Said conduct must be such as would cause a reasonable person to suffer substantial emotional distress.

Effective Date: May 18, 1992

FREQUENTLY ASKED QUESTIONS ABOUT STALKING

The following is our current understanding of the application of the stalking law. Check with your local District Attorney's office, however, to determine whether a stalking charge is appropriate in a particular case.

1. What does the term "repeatedly" mean?

This term should be given its common sense meaning, that is, "more than once".

2. Are threats a necessary element of stalking, and what kinds of threats are sufficient to satisfy this element?

Yes, it is an element of the crime of stalking that a defendant made a threat with the intent of placing the victim in imminent fear of death or serious bodily injury. Unless a threat has been made, stalking cannot be charged.

A verbal threat or an action which clearly is intended to communicate a threat to the physical well-being of the victim, may also satisfy the "threat" element of the crime. For example, mailing a copy of a burial insurance policy to the victim may be a sufficient "threat" to satisfy this element of the crime.

NOTE: The victim and perpetrator need not have any special relationship (for example, "family or household member" as in c. 209A) for stalking to be charged under G.L. c. 265, § 43(a).

3. If there is an outstanding restraining order issued by the Superior Court involving two parties not eligible for a domestic violence restraining order (for example, co-workers who have never had a dating relationship), can stalking in violation of that restraining order be prosecuted under c. 265, § 43(b)?

Yes, the violation of a Superior Court restraining order prohibiting a person from imposing any restraint on the personal liberty of another is no different from the violation of any other restraining order for the purpose of charging the defendant with stalking in violation of a restraining order under G.L. c. 265, § 43(b). However, other violations of non-domestic violence restraining orders are not criminal offenses and are only enforceable through civil contempt proceedings.

4. Can one of the incidents required to prove the elements of stalking have occurred before the effective date of the law?

No. In our view, stalking cannot be charged under these circumstances. All of the conduct necessary to prove the crime of stalking must have occurred after May 18, 1992, the effective date of the law.

5. In charging stalking, what date do you use on the complaint when the incidents giving rise to a charge of stalking occurred on different dates?

You should charge "diverse dates".

6. If the particular circumstances don't support a charge of stalking, what other charges might be brought?

Some examples of the charges which may be brought include:

Intimidation of a Witness, G.L. c. 268, § 13B

Annoying Phone Calls, G.L. c. 269, § 14A

Threat to Commit a Crime, G.L. c. 275, § 2

Annoying or Harassing a Person of the Opposite Sex, G.L. c. 272, § 53

7. Where should the complaint be brought if various incidents occurred in different jurisdictions?

A. We are advising law enforcement officials to bring the complaint in the jurisdiction where the last incident used to satisfy all the elements of the offense occurred, because it is at that time that the crime of stalking has occurred. For example, if a defendant has been waiting outside his former girlfriend's place of work every day in Lynn, and then calls her at her home in Somerville and threatens her life, we would recommend that the complaint be brought in the Somerville District Court. (The Attorney General plans to file legislation which would establish venue in any jurisdiction where an act constituting an element of the crime of stalking occurred.)

B. However, if some of the incidents occur out of state, e.g., at the victim's cottage in New Hampshire, but the most recent one occurs in Massachusetts, it is not clear that a stalking charge can be brought in Massachusetts.

8. Do the incidents underlying a stalking complaint have to occur within a certain period of time?

You will have to determine whether or not the crime of stalking should be charged on a case-by-case basis. There is no requirement under the law that the incidents occur within a certain period of time. For example, in one case, a defendant may threaten a victim and then, once a month appear in front of her home and remain all day. In another case, on a single day, the offender may threaten a victim over the phone, go to her place of employment, be waiting outside of her home later that day and follow her out in the evening. In our view, both of these cases could constitute stalking. However, in some cases, the incidents may be so far apart in time, and their connection so slight, that a stalking charge would be inappropriate or unprovable.

9. What if the restraining order is from another jurisdiction?

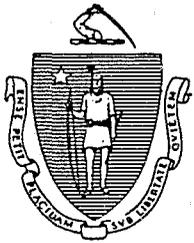
As long as it is a Massachusetts order, the location of the issuing court is irrelevant. (The Attorney General's office plans to file legislation to include similar restraining orders issued by courts in other states within the definition of restraining order in the stalking law.)

10. What does the term "threats" mean?

"The word 'threat' has a well established meaning in both common usage and in the law. It is 'the expression of an intention to inflict evil, injury, or damage on another.' (Citation omitted) In law 'threat' has universally been interpreted to require more than the mere expression of intention. It has, in fact, been interpreted to require both intention and ability in circumstances which would justify apprehension on the part of the recipient of the threat." Robinson v. Bradley, 300 F.Supp. 665, 668 (D.Mass.1969) However, in Commonwealth v. Ditsch, the Massachusetts Appeals Court retreated from the requirement that a defendant be able to effectuate his threat. In that case the Appeals Court stated, "[w]e do not think that the absence of immediate ability, physically and personally, to do bodily harm precludes a conviction for threats." 19 Mass. App. Ct. 1005 (rescript) (1985). In Ditsch, the defendant was incarcerated and made threats in letters written to his mother-in-law. The court found that the mother-in-law could reasonably have believed that the defendant actually had the ability to cause her bodily harm, either personally after his release or through his employment of an agent.

0102p

*Chapter 188 of the Acts of 1992:
Statewide Domestic Violence Registry*



The Commonwealth of Massachusetts

Office of the Attorney General

One Ashburton Place,

Boston, MA 02108-1698

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

MEMORANDUM

TO: CHIEFS OF POLICE

FROM: SCOTT HARSHBARGER

DATE: OCTOBER 19, 1992

RE: DOMESTIC VIOLENCE REGISTRY BILL

Attached for your information is copy of the recently enacted Domestic Violence Registry Bill (Chapter 188 of the Acts and Resolves of 1992), which establishes a statewide central registry system for domestic violence civil restraining orders and for criminal violations of those orders. This law which was enacted with an emergency preamble went into effect at 2:58 p.m. on September 18, 1992.

This bill amends all of the sections of the Massachusetts General Laws under which civil domestic violence restraining orders are issued including Chapter 208 (Divorce), Chapter 209 (Husband and Wife), Chapter 209A (The Abuse Prevention Act), and Chapter 209C (Children Born Out of Wedlock).

1. Basically what this bill does is to require the Commissioner of Probation to include the issuance of civil restraining orders, and violations of those orders, in the Court Activity Record Information system (CARI). This will give the judge, through Board of Probation checks, and the police, through the Criminal Justice Information System (CJIS), information regarding probation and default or other court warrants. (CORI information and information regarding arrest warrants are not included in this system and must be accessed separately through CJIS.)

(NOTE: All civil restraining orders issued since September 7, 1992, under the sections affected by this bill, have been registered.)

2. Second, the bill requires a judge who is conducting a civil ex parte or 10 day restraining order hearing to access the statewide domestic violence registry maintained by the Commissioner of Probation.

3. Third, if as a result of this record check, the judge determines that there is an outstanding warrant against the defendant, then the judge must notify the appropriate law enforcement officials and provide them with whatever information the court has about the whereabouts of the defendant.

4. Finally, if there is a warrant, the judge must also determine "based upon all of the circumstances" and after reviewing the domestic violence registry information and the defendant's criminal record, if any, whether or not "an imminent threat of bodily injury exists to the petitioner." If the judge so determines, the judge must notify the appropriate law enforcement officials of this finding and the law enforcement officials must then execute the warrant "as soon as is practicable."

OTHER MISCELLANEOUS PROVISIONS

1. The court must inform the victim that the restraining order process itself is civil and that only violations of a restraining order are criminal. In addition, the court must provide the victim who has sought issuance of the civil restraining order with information prepared by the appropriate district attorney's office regarding the fact that criminal proceedings may be available.

2. The District Attorneys' offices are required to "instruct" the victim as to how to seek a criminal complaint.

NOTE: This new law applies only to orders issued between "related" parties. It does not apply to the occasional Superior Court restraining order issued between unrelated parties, e.g., co-workers.

If you have any questions about the provisions of the bill, please contact the Family and Community Crimes Bureau at 727-2200.

WPP90



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

Section-by-Section Analysis of
Chapter 188 of the Acts and Resolves of 1992
An Act Establishing A Statewide Registration
of Domestic Violence Offenses

by

Betty Eng, Assistant Attorney General
Jane E. Tewksbury, Assistant Attorney General

October 8, 1992

Governor Weld signed Chapter 188 into law with an emergency preamble rendering it effective at 2:58 p.m. on September 18, 1992.

Note: Information on restraining orders issued since September 7, 1992, is available through LEAPS.

Section 1: (Chapter 208):

- a. Adds new section 34D to Chapter 208 (Divorce).
- b. Section 34D would require the court to advise the petitioner that although proceedings under M.G.L. c.208, §§18, 34B are civil in nature, violations of orders are criminal violations.
- c. Additionally, the court would be required to provide the petitioner with information prepared by the appropriate district attorney's office about additional criminal remedies.
- d. The District Attorney's Office would be required to instruct the petitioner about how to seek a criminal complaint including, but not limited to, a complaint for a violation of M.G.L. c. 265, §43 (the "stalker" law).
- e. Finally, Section 34D would require that the above information be provided in the petitioner's native language, whenever possible.

f. Section 34D would require the judge to access the "domestic violence registry" of the Office of the Commissioner of Probation to determine whether the defendant has a civil or criminal record involving domestic or other violence.

g. If a search of the records indicates that an outstanding warrant exists against the defendant, the judge must order that the appropriate law enforcement officials be notified and that any information regarding the defendant's last known whereabouts be forwarded.

h. Where an outstanding warrant exists, the judge must determine whether "an imminent threat of bodily injury exists to the petitioner or the public."

i. Where such a threat exists, the judge must notify the appropriate law enforcement officials of the threat. The law enforcement officials must then take "all necessary actions to execute any outstanding warrants as soon as is practicable".

Section 2 (Chapter 209):

Adds the foregoing amendments to amend M.G.L. c. 209, §32 (Husband and Wife).

Section 3 (Chapter 209A):

a. Adds amendments (b - e) as described in Section 1 above to M.G.L. c. 209A by adding Section 3A after §3. (Remedies; Period of Relief).

Section 4 (Chapter 209A):

a. Adds amendments (f - i) as described in Section 1 above to M.G.L. c. 209A, §7 (Service and Enforcement of Orders).

Section 5 (Chapter 209C)

a. Adds all of the amendments described in Section 1 above to M.G.L. c. 209C, §15 (Children Born out of Wedlock: Temporary Orders; Enforcement).

Section 6 (Chapter 218):

a. Amends M.G.L. c. 218, §35A (District Courts: Process; issuance of complaint for misdemeanors; condition precedent) by adding language requiring the court or other officer named in Section 35A (justice, associate justice, special justice, clerk, assistant clerk, temporary clerk, temporary assistant clerk) to consider the defendant's criminal record and the applicable "domestic violence registry" records in determining whether there is an imminent threat of bodily injury.

Section 7

a. The Office of the Commissioner of Probation is authorized and directed to develop and implement a statewide domestic violence record keeping system no later than September 30, 1992.

b. Restraining orders issued under the following chapters and violations of the same would be input into the system:

M.G.L. c. 209A (restraining order to prevent abuse).

M.G.L. c. 208, § 18 (protective order/restraining order to prevent divorcing spouses from prohibiting each other's liberty -- and to protect the children).

M.G.L. c. 208, §34B (vacate order requiring spouse to vacate the marital home).

M.G.L. c. 209, §32 (civil restraining order prohibiting restraints on personal liberty of a spouse).

M.G.L. c. 209C, §15 (orders to protect the children, e.g. custody).

M.G.L. c. 209C, §20 (modification orders).

NOTE: Orders obtained in the Superior Court through a petition in equity are not covered.

c. The computerized system shall also include information contained in the Court Activity Record Information System (CARI) maintained by the Commissioner of Probation.

d. The information contained in the system shall be made available to judges considering petitions or complaints pursuant to:

M.G.L. c. 208, §§18, 34B;

M.G.L. c. 209, §32;

M.G.L. c. 209A;

M.G.L. c. 209C, §§15, 20.

NOTE: Orders obtained in the Superior Court through a petition in equity are not covered.

e. Furthermore, the information contained in the system shall be made available to law enforcement agencies through CJIS.

f. The Office of the Commissioner of Probation must make a written report to the Joint Committee on the Judiciary regarding its implementation of the system no later than October 9, 1992.

Section 8:

a. Until the statewide domestic violence record keeping system is operational, a judge who is considering a request for relief or complaint filed under:

M.G.L. c. 208, §§18, 34B;

M.G.L. c. 209, §32;

M.G.L. c. 209A; or

M.G.L. c. 209C, §§15, 20

"shall make every effort to review the named defendant's history of violence using available and accessible records."

NOTE: Orders obtained in the Superior Court through a petition in equity are not covered.

9772A

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety-two

AN ACT ESTABLISHING A STATEWIDE REGISTRATION OF DOMESTIC VIOLENCE OFFENSES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately provide for the statewide registration of domestic violence offenses, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety. _____

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 208 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting after section 34C the following section:-

Section 34D. Upon the filing of a request for a restraining order pursuant to section eighteen or for an order for a spouse to vacate the marital home pursuant to section thirty-four B, a petitioner shall be informed that the proceedings hereunder are civil in nature and that violations of orders issued hereunder are criminal in nature. Further, a petitioner shall be given information prepared by the appropriate district attorney's office that other criminal proceedings may be available and such petitioner shall be instructed by such district attorney's office relative to the procedures required to initiate such criminal proceedings including, but not limited to, the filing of a complaint for a violation of section forty-three of chapter two hundred and sixty-five. Whenever possible, a petitioner shall be provided with such information in the petitioner's native language.

When considering a request for a restraining order pursuant to section eighteen or for an order for a spouse to vacate the marital home pursuant to section thirty-four B, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that

an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

SECTION 2. Section 32 of chapter 209 of the General Laws, as so appearing, is hereby amended by inserting after the first paragraph the following two paragraphs:-

Upon the filing of a complaint pursuant to this section to prohibit a spouse from imposing any restraint upon the complainant's personal liberty, a complainant shall be informed that proceedings hereunder are civil in nature and that violations of orders issued hereunder are criminal in nature. Further, a complainant shall be given information prepared by the appropriate district attorney's office that other criminal proceedings may be available and shall be instructed by such district attorney's office relative to the procedures required to initiate criminal proceedings including, but not limited to, the filing of a complaint for a violation of section forty-three of chapter two hundred and sixty-five. Whenever possible, a complainant shall be provided with such information in the complainant's native language.

When considering a complaint to prohibit a spouse from imposing any restraint upon the complainant's personal liberty under this section, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent

threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

SECTION 3. Chapter 209A of the General Laws is hereby amended by inserting after section 3 the following section:-

Section 3A. Upon the filing of a complaint under this chapter, a complainant shall be informed that the proceedings hereunder are civil in nature and that violations of orders issued hereunder are criminal in nature. Further, a complainant shall be given information prepared by the appropriate district attorney's office that other criminal proceedings may be available and such complainant shall be instructed by such district attorney's office relative to the procedures required to initiate criminal proceedings including, but not limited to, a complaint for a violation of section forty-three of chapter two hundred and sixty-five. Whenever possible, a complainant shall be provided with such information in the complainant's native language.

SECTION 4. Section 7 of said chapter 209A, as appearing in the 1990 Official Edition, is hereby amended by inserting before the first paragraph the following paragraph:-

When considering a complaint filed under this chapter, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

SECTION 5. Section 15 of chapter 209C of the General Laws, as so appearing, is hereby amended by adding the following two paragraphs:-

Upon the filing of a request for an order to protect a party or a child under the provisions of the first paragraph of this section, a petitioner shall be informed that proceedings hereunder are civil in nature and that violations of orders issued hereunder are criminal in nature. Further, a petitioner shall be given information prepared by the appropriate district attorney's office that other criminal proceedings may be available and such petitioner shall be instructed by such district attorney's office relative to the procedures required to initiate criminal proceedings including, but not limited to, a complaint for a violation of section forty-three of chapter two hundred and sixty-five. Whenever possible, a petitioner shall be provided with such information in the petitioner's native language.

When considering a request for relief pursuant to this section, a judge shall cause a search to be made of the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving domestic or other violence. Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

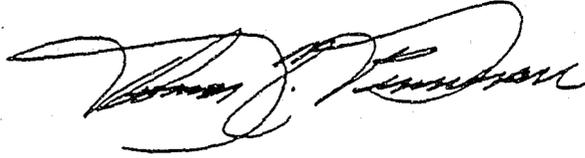
SECTION 6. The second paragraph of section 35A of chapter 218 of the General Laws, as so appearing, is hereby amended by inserting after the first sentence the following sentence:- The court or other officer referred to in the preceding paragraph shall consider the named defendant's criminal record and the records contained within the statewide domestic violence record keeping system maintained by the office of the commissioner of probation in determining whether an imminent threat of bodily injury exists.

SECTION 7. The commissioner of probation is hereby authorized and directed to develop and implement a statewide domestic violence record keeping system not later than September thirtieth, nineteen hundred and ninety-two. Said system shall include a computerized record of the issuance of or violations of any protective orders or restraining orders issued pursuant to sections eighteen and thirty-four B of chapter two hundred and eight of the General Laws, section thirty-two of chapter two hundred and nine of the General Laws, civil restraining orders or protective orders issued pursuant to chapter two hundred and nine A of the General Laws or any violations of said chapter two hundred and nine A, or sections fifteen and twenty of chapter two hundred and nine C of the General Laws. Further, said computerized system shall include the information contained in the court activity record information system maintained by the office of said commissioner. The information contained in said system shall be made available to judges considering petitions or complaints pursuant to said sections eighteen and thirty-four B of said chapter two hundred and eight, said section thirty-two of said chapter two hundred and nine, said chapter two hundred and nine A and said sections fifteen and twenty of said chapter two hundred and nine C. Further, the information contained in said system shall be made available to law enforcement agencies through the criminal justice information system maintained by the executive office of public safety. Said commissioner shall make a written report to the joint committee on the judiciary regarding implementation of said record keeping system no later than October ninth, nineteen hundred and ninety-two.

SECTION 8. Until such time as the office of the commissioner of probation has completed the preparation of a statewide domestic violence record keeping system, pursuant to section seven, a judge, upon considering a request for relief pursuant to section eighteen or thirty-four B of chapter two hundred and eight of the General Laws or a complaint under section thirty-two of chapter two hundred and nine of the General Laws or a complaint under chapter two hundred and nine A of the General Laws or a request for relief pursuant to section fifteen or twenty of chapter two hundred and nine C of the General Laws, shall review the named defendant's history of violence using available and accessible records.

House of Representatives, September 3, 1992.

Preamble adopted,



, Speaker.

In Senate, September 8, 1992.

Preamble adopted,



, President.

House of Representatives, September 8, 1992.

Bill passed to be enacted,



, Speaker.

In Senate, September 8, 1992.

Bill passed to be enacted,

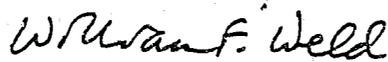


, President.

18 September, 1992.

Approved,

at two o'clock and 58 minutes, P . M.



Governor.

RESTRAINING ORDERS

EFFECTIVE SEPTEMBER 21, 1992, INFORMATION ON RESTRAINING ORDERS (RO'S) IS AVAILABLE THROUGH YOUR LEAPS TERMINAL. THIS INCLUDES RO'S ISSUED SINCE SEPTEMBER 7, 1992.

YOU CAN ACCESS RO INFORMATION THROUGH THE BOP SCREEN. THE LOGON SCREEN (BOP) AND THE CANDIDATE SELECTION SCREEN (BOP1) REMAIN THE SAME.

BOP2 SCREEN

ONCE YOU SELECT A CANDIDATE, THE BOP2 SCREEN NOW CONTAINS ONE OF THE FOLLOWING MESSAGES:

1. IF AN INDIVIDUAL HAS RO'S ONLY

**** ** ACTIVE RO **** ** X TO SEE RO []

**** ** INACTIVE RO **** ** X TO SEE RO []

2. IF AN INDIVIDUAL HAS ADULT CRIMINAL ACTIVITY ONLY:

**** ** CRIMINAL ONLY **** **

3. IF AN INDIVIDUAL HAS BOTH RO AND ADULT CRIMINAL:

**** ** ACTIVE RO / CRIMINAL **** ** X TO SEE RO []

**** ** INACTIVE RO / CRIMINAL **** ** X TO SEE RO []

TO VIEW THE RO'S TYPE AN X IN THE BOX WHERE IT SAYS "X TO SEE RO []" AND TRANSMIT.

BOP8 SCREEN

THE BOP8 SCREEN IS THE NEW SCREEN FOR ROS. THE PRINTOUT AND SCREEN CONFORM AS CLOSELY AS POSSIBLE TO THE FORMAT OF THE PAPER RO. THE SCREEN CONTAINS INFORMATION ON THE DEFENDANT, PLAINTIFF, COURT, DOCKET NUMBER, ORDER DATE AND EXPIRATION DATE. THE STATUS OF THE RO, OPEN (ACTIVE) OR CLOSED (INACTIVE) ALSO APPEARS. IF THE COURT ORDERED A SPECIFIC CONDITION FOR A RO, AN X APPEARS TO THE LEFT OF THE CONDITION.

IF THE PERSON HAS MORE THAN ONE RO A MESSAGE WILL APPEAR THAT SAYS "PRESS XMT FOR MORE RO'S". IF THERE ARE NO MORE ROS, A MESSAGE WILL APPEAR THAT SAYS "THERE ARE NO MORE RO'S".

PRINTING AN RO:

AT THE TOP OF THE BOP8 SCREEN THERE IS A PRINT BOX. TYPE AN X IN THE BOX AND TRANSMIT. THIS WILL PRINT THE RO THAT YOU ARE CURRENTLY VIEWING.

FOR MORE INFORMATION ABOUT RO'S, YOU MAY CONTACT THE QUALITY CONTROL UNIT AT (617) 727-0090.

*Chapter 201 of the Acts of 1992:
Amendments to the Bail Law*



**Trial Court of the Commonwealth
District Court Department**

MUEL E. ZOLL
Chief Justice

HOLYOKE BUILDING
HOLYOKE SQUARE
SALEM, MASSACHUSETTS 01970

Telephone
508/745-9010

M E M O R A N D U M

TO: To all District Court judges, clerk-magistrates and chief probation officers
FROM: Chief Justice Zoll
DATE: October 8, 1992
SUBJECT: New law affecting the right to bail and release on personal recognizance

A new law, St. 1992, Ch. 201, has been enacted regarding bail and personal recognizance. It was signed by the Governor on Wednesday, October 7, 1992, at 12:46 p.m., and went into effect upon signing under an emergency preamble. A copy is attached.

The law contains (1) restrictions on the authority of persons other than judges to admit arrestees to out-of-court bail or personal recognizance in crimes involving domestic abuse, (2) the addition of dangerousness as a general criterion for denying personal recognizance and imposing bail for any crime, and (3) the addition of specific abuse-related factors as criteria for denying personal recognizance and imposing bail for any crime.

1. Limitations on out-of-court release.

Section 2 of the new law adds a paragraph to G.L. c. 276, § 57 that prohibits out-of-court release by anyone other than a judge for any arrestee charged with:

- (1) a violation of a protective order issued under G.L. c. 209A, c. 208, 209, 209C, or
- (2) any misdemeanor or felony involving "abuse" as defined in G. L. c. 209A, § 1, while a protective order under c. 209A is in effect against that defendant.

To comply with this law, the person responsible for an out-of-court release decision (other than a judge) will have to determine the nature of the criminal charge. If one or more of the charges involve violation of one of the listed types of protective orders, the arrestee cannot be released by that person. If no violation of a protective order is charged, but one or more of the charges involves "abuse" as that term is defined in G.L. c. 209A, § 1, and there is an existing c. 209A order against the arrestee, then the defendant will not be eligible for out-of-court release by a non-judge.

Compliance with the second of these two ineligibility provisions requires familiarity with the definition of "abuse" under G.L. c. 209A, § 1:

"Abuse, the occurrence of one or more of the following acts between family or household members:

- (a) attempting to cause or causing physical harm;
- (b) placing another in fear of imminent serious physical harm;
- (c) causing another to engage involuntarily in sexual relations by force, threat or duress.

"Family or household members", persons who:

- (a) are or were married to one another;
- (b) are or were residing together in the same household;
- (c) are or were related by blood or marriage;
- (d) having [sic] a child in common regardless or whether they have ever married or lived together, or
- (e) are or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston municipal court's consideration of the following factors: (1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

If no protective order violation is charged, but it is determined that one or more of the charges involves "abuse," the person making the release decision must check the Statewide Domestic Violence Record Keeping System. If the arrestee has an existing order under c. 209A against him or her, the arrestee is ineligible for out-of-court release other than by a judge.

Note that the existing order may involve a victim other than the alleged victim of the crime that was the basis of the arrest. Note also that the existence of an order other than one issued under c. 209A would not appear to render the arrestee ineligible for release, notwithstanding the fact that the criminal charge involves abuse.

There may be a problem in determining whether an arrestee is the subject of an existing order insofar as the Domestic Violence Record Keeping System does not necessarily list orders issued prior to September 8, 1992. The police who made the arrest should be able to determine if any orders against the defendant issued to them for service in their jurisdiction are in existence, but the existence of orders predating September 8, 1992 involving other departments may not be ascertainable.

2. "Safety" and "dangerousness" as factors for setting bail rather than allowing personal recognizance.

Section 1 of the new law amends the general provision in G.L. c. 276, § 57 for admitting a person to bail by adding that the authorized person (judge, clerk, master in chancery, etc.) may set bail if he or she "determines that such release will reasonably assure the appearance of the person before the court and will not endanger the safety of any other person in the community." Thus, community safety has been added to reasonable likelihood of future court appearance as a reason for setting bail.

This same change is added by Section 3 of the new law to G.L. c. 276, § 58 regarding the presumption in favor of personal recognizance. Formerly, a defendant was entitled to release on his or her own recognizance unless the judge or other person making the bail decision determined as a matter of discretion that such release would not "reasonably assure" future court appearances. The new law adds a new criterion: the presumption in favor of personal recognizance does not obtain if the releasing authority determines as a matter of discretion "that such release will endanger the safety of any other person or the community." Thus, a discretionary determination regarding the risk of non-appearance in court or danger to the safety of another person or the community can overcome the presumption in favor of personal recognizance.

Section 4 of the new law adds dangerousness to the list of specific factors in G.L. c. 276, s. 58 that must be considered in making the release decision: the releasing authority "shall on the basis of any information which he can reasonably obtain, take into account the nature and seriousness of the danger to any person or the community that would be posed by the prisoner's release," G.L. c. 276, s. 58, first par. (new language underlined).

It is important to note that the addition of community safety and dangerousness as factors for denying personal recognizance and setting bail are not limited to issues involving domestic abuse. Community safety and dangerousness, however determined, must now be considered by the judge or other authorized person in every release decision. Of course, certain defendants are now ineligible for any out-of-court release by a non-judge, as discussed in section 1, above.

3. New abuse-related criteria for denying personal recognizance and setting bail.

Two additional, abuse-related criteria are added by Section 5 of the new law to the list of factors that must be considered in making the decision between personal recognizance or bail:

- (1) whether the acts alleged (in the criminal charges) involve abuse as defined in G.L. c. 209A, § 1 or violation of a temporary or permanent order issued under G.L. c. 208, ss. 18 or 34B; G.L. c. 209, s. 32; G.L. c. 209A, ss. 3, 4 or 5; or G.L. c. 209C, ss. 15 or 20; or
- (2) whether the prisoner has "any history of orders issued against him pursuant to the aforementioned sections."

These factors must now be considered along with dangerousness and the fourteen other factors listed in G.L. c. 276, s. 58 for every defendant for whom a decision on release is required.

In Section 6, the new law requires the Secretary of Public Safety to collect data and report to the Legislature regarding a number of matters relating to implementation of laws pertaining to domestic abuse and pretrial release.

* * *

District Court Form CR-6, Reasons for Ordering Bail, will be amended to reflect the new bases on which bail can be set and release on personal recognizance denied. Until the new form is available, appropriate notations should be added to the current form whenever personal recognizance is denied on one or more of the new bases.

SEZ:msr

enc.



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

WILLIAM F. WELD
GOVERNOR

ARGEO PAUL CELLUCCI
LIEUTENANT-GOVERNOR

October 7, 1992

The Honorable Michael Joseph Connolly
Secretary of the Commonwealth
State House, Room 340
Boston, MA 02133

Dear Secretary Connolly:

I, William F. Weld, Governor, pursuant to the provisions of Article XLVIII of Amendments to the Constitution of the Commonwealth of Massachusetts, the Referendum II, Emergency Measures, hereby declare that the immediate preservation of the public peace, health, safety or convenience requires that the attached Act, Chapter 201 of the Acts of 1992, entitled "An Act Relative To The Release On Bail Of Certain Persons", the enactment of which received my approval on October 7, 1992, should take effect forthwith.

I further declare that it is in the public interest that this Act take effect immediately in order to protect the public safety from arrestees who pose a threat to other individuals or to the community and in particular to protect the victims of domestic violence from those who would abuse them and often pose an imminent threat to their lives as well as the lives of their children.

Sincerely,

William F. Weld

William F. Weld
Governor

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety-two

AN ACT RELATIVE TO THE RELEASE ON BAIL OF CERTAIN PERSONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 57 of chapter 276 of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by inserting after the word "bail", in line 10, the first time it appears, the following words:- if he determines that such release will reasonably assure the appearance of the person before the court and will not endanger the safety of any other person or the community.

SECTION 2. Said section 57 of said chapter 276, as so appearing, is hereby further amended by inserting after the first paragraph the following paragraph:-

Notwithstanding the foregoing, a person arrested and charged with a violation of an order or judgment issued pursuant to section eighteen, thirty-four B or thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, section three, four or five of chapter two hundred and nine A, or section fifteen or twenty of chapter two hundred and nine C, or arrested and charged with a misdemeanor or felony involving abuse as defined in section one of said chapter two hundred and nine A while an order of protection issued under said chapter two hundred and nine A was in effect against said person, shall not be released out of court by a clerk of courts, clerk of a district court, bail commissioner or master in chancery.

SECTION 3. Section 58 of said chapter 276, as so appearing, is hereby amended by inserting after the word "discretion", in line 11, the following words:- that such release will endanger the safety of any other person or the community or.

SECTION 4. Said section 58 of said chapter 276, as so appearing, is hereby further amended by inserting after the word "nature", in line 15, the fol-

lowing words:- and seriousness of the danger to any person or the community that would be posed by the prisoner's release, the nature.

SECTION 5. Said section 58 of said chapter 276, as so appearing, is hereby further amended by inserting after the word "charge", in line 24, the following words:- , whether, the acts alleged involve abuse as defined in section one of chapter two hundred and nine A, or violation of a temporary or permanent order issued pursuant to section eighteen or thirty-four B of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, section three, four or five of chapter two hundred and nine A, or section fifteen or twenty of chapter two hundred and nine C, whether the prisoner has any history of orders issued against him pursuant to the aforesaid sections.

SECTION 6. The governor shall direct the secretary of public safety to collect and study data regarding overcrowding conditions in the commonwealth's prisons, houses of corrections, and municipal police overnight detention facilities, the operation of the courts of criminal jurisdiction of the commonwealth, information management systems within those courts, the judicial and administration procedures regarding revocation of parole, revocation of conditional release, and revocation of probation, the experience of the courts implementing the foregoing sections of this act as they relate to violations of restraining orders under chapters two hundred and eight, two hundred and nine, two hundred and nine A and chapter two hundred and nine C of the General Laws, as well as federal and state administrative and judicial procedures regarding deportation of illegal aliens.

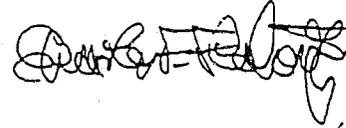
Said secretary shall make findings regarding the cost impact on the courts and correctional facilities within the commonwealth, as well as the effect on the administration and personnel of same, of several models of a presumptive forty-eight hour detention period for all prisoners pending revocation of parole, revocation of conditional release, revocation of probation, deportation, or trial for violation of restraining orders under said chapters two hundred and eight, two hundred and nine, two hundred and nine A and chapter two hundred and nine C. Said secretary shall make recommendations regarding the orderly and efficient use of available resources to effect the goal of preserving public safety under the provisions of section fifty-eight of chapter two hundred and seventy-six of the General Laws. Said secretary shall report his finding to the clerk of the house of representatives who shall forward the same to the committees on criminal justice, as soon as may be reasonably found

H 5772

to be convenient, but in no event later than December thirty-first, nineteen hundred and ninety-two.

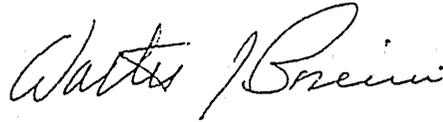
House of Representatives, September 30, 1992.

Passed to be enacted,

 Speaker.

In Senate, September 30, 1992.

Passed to be enacted,

 , President.

7 October, 1992.

Approved,

12:46 pm



Governor.

SUMMARY OF HOUSE 5772

AN ACT RELATIVE TO THE RELEASE ON BAIL OF CERTAIN PERSONS

Current Law: G.L. c. 276, §§57 and 58

Under current law, a person authorized to set bail for an arrestee held in custody pending his initial appearance in court, and a judge setting bail at the arrestee's initial appearance in court, are limited to considering only the risk that the arrestee might flee prior to trial. Judges and other persons authorized to set bail are statutorily prevented from considering the danger an arrestee poses to another individual or the community when setting bail.

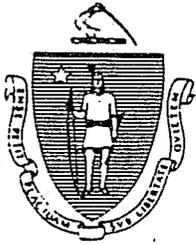
Summary of Bill

This bill amends current law to allow judges and other persons authorized to set bail to consider the danger an arrestee poses to any other person or the community as an equal factor along with the risk the arrestee might flee prior to trial. In addition, this bill would prevent clerks, bail commissioners or masters in chancery from releasing an arrestee charged with violating a domestic restraining order from the police station until a judge has had the opportunity to consider fully the question of bail at the arrestee's initial court appearance.

Judges under this proposed legislation would also be required to take into account in setting bail whether the charges against the arrestee involve abuse between family or household members as well as any violations of domestic restraining orders.

Finally, this proposed legislation would require the Governor to direct the Secretary of Public Safety to collect and study data regarding prison overcrowding, the operation of the courts of criminal jurisdiction and information management systems within those courts, judicial and administrative procedures regarding parole and probation revocation and the experience of the courts in implementing this legislation as the legislation relates to domestic restraining orders. The Secretary of Public Safety shall make findings regarding the cost impact of a presumptive forty-eight hour detention period for certain arrestees. The Secretary shall then make recommendations to be reported to the clerk of the House of Representatives regarding the orderly and effective use of resources to effect the goal of preserving the public safety under the state's bail system.

*Proposed
Federal Legislation*



The Commonwealth of Massachusetts

House of Representatives

Committee on Ways and Means

STATE HOUSE, BOSTON 02133

Committee on Ways and Means

Committee on Rules

Divorce Commission
House Chairperson

Local Aid Commission

School Bus Safety Commission

Parenting Leave Commission

Special Commission on
Growth and Development

Special Commission on
Temporary Disability and
Dependent Care Insurance

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1 million attacks on women reported

By Sonya Ross
ASSOCIATED PRESS

WASHINGTON - The nation had about 1 million attacks on women by their husbands or lovers last year, a Senate committee said yesterday, as 16 women's groups urged more stringent laws to combat domestic violence.

The Senate Judiciary Committee estimated 3 million violent domestic crimes - murders, rapes and assaults - went unreported.

"Women's lives remain controlled by fear, yet Congress has been slow to respond," said Rosemary Dempsey, vice president of the National Organization for Women.

Dempsey cited a 1988 US surgeon general's report that listed violence as the number one health risk among women. The Senate committee cited a June 1992 report from Surgeon General Antonia Novello, which said violence is the leading cause of injury to women aged 15-44.

The statistics demonstrate the need for the proposed Violence Against Women Act he sponsored, said the committee's chairman, Sen. Joseph Biden of Delaware.

The measure awaits action by the Senate, which is about to adjourn.

If the antiviolence measure is not approved this year, Biden said he plans to "make it the single No. 1 priority for me and the judiciary committee" next year.

Biden's legislation calls for allowing women to bring civil cases for attacks committed against them because of their sex, educational programs against domestic violence, and stiffer laws against spouse abuse.

He said the bill could make rape a federal offense, but said that is justifiable if it is proven that a victim is attacked because of her sex.

"It is a hate crime. My objective is to give the woman every opportunity under the law to seek redress, not only criminally, but civilly," Biden said.

The committee also looked at 200 cases of assault on women during the first week of last month. Twenty-four of the women either were seeking or already had obtained court orders to protect them from past or potential attackers.

The 200 recent examples were gathered from rape crisis centers, emergency rooms, shelters and police stations.

The report said domestic disputes accounted for 16 percent of all sexual assaults and 20 percent of all aggravated assaults reported in 1991. It counted 1.37 million domestic cases, and estimated that 83 percent of the victims are women, based on reports that Senate staff members collected from 17 states that tally victims by sex.

BIDEN "VIOLENCE AGAINST WOMEN ACT"

(S.15)

Title I -- Safe Streets for Women

Creates New Penalties for Sex Crimes

- * Creates new penalties for sex offenders.
- * Increases restitution for the victims of sex crimes.

Encourages Women to Prosecute Their Attackers

- * Extends "rape shield law" protection to civil cases (e.g. sexual harassment cases) and all criminal cases (other than sexual assault cases where it already applies) to bar embarrassing and irrelevant inquiries into a victim's sexual history at trial.
- * Bars the use of a woman's clothing to show, at trial, that the victim incited or invited a sexual assault.
- * Requires States to pay for rape exams.

Targets Places Most Dangerous for Women, Including Public Transit and Parks

- * Authorizes \$300 million for law enforcement efforts to combat violence against women, aiding police, prosecutors and victim advocates.
- * Funds increased lighting and camera surveillance at bus stops, bus stations, subways and parking lots and targets existing funds for increased lighting, emergency telephones and police in public parks.

Education and Prevention

- * Authorizes \$65 million for rape education, starting in junior high.

Establishes the "National Commission on Violent Crime Against Women"

- * Creates a commission to develop a national strategy for combating violence against women.

Title II -- Safe Homes for Women

Protects Women from Abusive Spouses

- * Creates federal penalties for spouse abusers who cross state lines to continue their abuse
- * Requires all states to enforce any "stay-away" order, regardless of which state issues it.

Promotes Arrests of Abusive Spouses

- * Authorizes \$25 million for states that promote the arrest of abusing spouses.
- * Provides additional grants to "model states" to experiment with new innovative techniques to increase arrest, prosecution and conviction rates in domestic violence cases.

Provides More Money for Shelters

- * More than triples funding for battered women's shelters.

Educates Women about Their Rights

- * Requires states to establish commissions to study domestic violence and authorizes a national media campaign against such violence. (Senator Coats)

Title III -- Civil Rights for Women

Extends "Civil Rights" Protections to All Gender-Motivated Crimes

- * Makes gender-based assaults a violation of federal civil rights laws
- * Allows victims of all felonies "motivated by gender" to bring civil rights suits against their assailants.

Title IV -- Safe Campuses for Women

Funds Rape Prevention Programs

- * Creates a \$20 million grant program for the neediest colleges to fund campus rape education and prevention programs.

Guarantees Students' Right to Know

- * Requires colleges to disclose statistics of not only rape, but all sexual assaults.

Title V -- Equal Justice for Women

Makes Courts Fairer by Training Judges

- * Creates training programs for State and Federal judges to raise awareness and increase sensitivity about crimes against women.

Effectiveness of the Quincy Model

James Hardeman

October 14, 1992

THE QUINCY MODEL: CRITICAL FACTORS FOR SUCCESS

I. Introduction

- A. Historical perspective of the times
 - 1. 1978 - state of the environment
 - 2. 209A - public sector policy involving the criminal justice system.

- B. Birth of the Quincy Model: 1979

II. The Quincy Model

- A. The catalyst
- B. Mood of influential stakeholders
- C. The whole is as strong as its weakest part: criminal justice system.

III. The Research Study

- A. Research design and methodology
- B. Research findings

Problem:

Data showed that before the Abuse Prevention Act became law, it was difficult and occasionally impossible for women to get legal protection and advance through the maze of the county criminal justice system. The problem examined in this research is the effectiveness of each county criminal justice system to implement the Abuse Prevention Act and as a result advance women through the system for relief (help) from further abuse.

Hypothesis:

Due to the "Partnership agreements" between the Norfolk County District Attorney/Family Service Unit, Quincy District Court and Quincy Police Department, higher rates per hundred of women shall advance through the Quincy District Court, higher rates per hundred of women shall appear for judicial hearings than victims filing under the Abuse Prevention Act in the Plymouth County criminal justice system.

Research Questions:

Does the Family Service Unit influence prevention measures within the Norfolk County criminal justice system? Which county criminal justice system increased rates of civil protection orders? Which system supported higher rates of women advancing through the courts and also reduced rates of repeated battering (recidivism)?

Research Design:

The dissertation contrasts two intervention strategies. One system has a program for intervention and the other does not. Effectiveness can be defined as "the ability of the county criminal justice system to respond to family violence occurrences and provide prevention (safety)." Criteria for measuring responsiveness are:

successful completion of temporary civil protection orders and successfully obtaining permanent orders. Successfully experiencing this passage and no further occurrence of abuse during a one year period is defined as prevention (safety) from abuse. The study was conducted through sampling civil protection orders within the Norfolk and Plymouth county district courts and interviews with victims and shareholders within both criminal justice system.

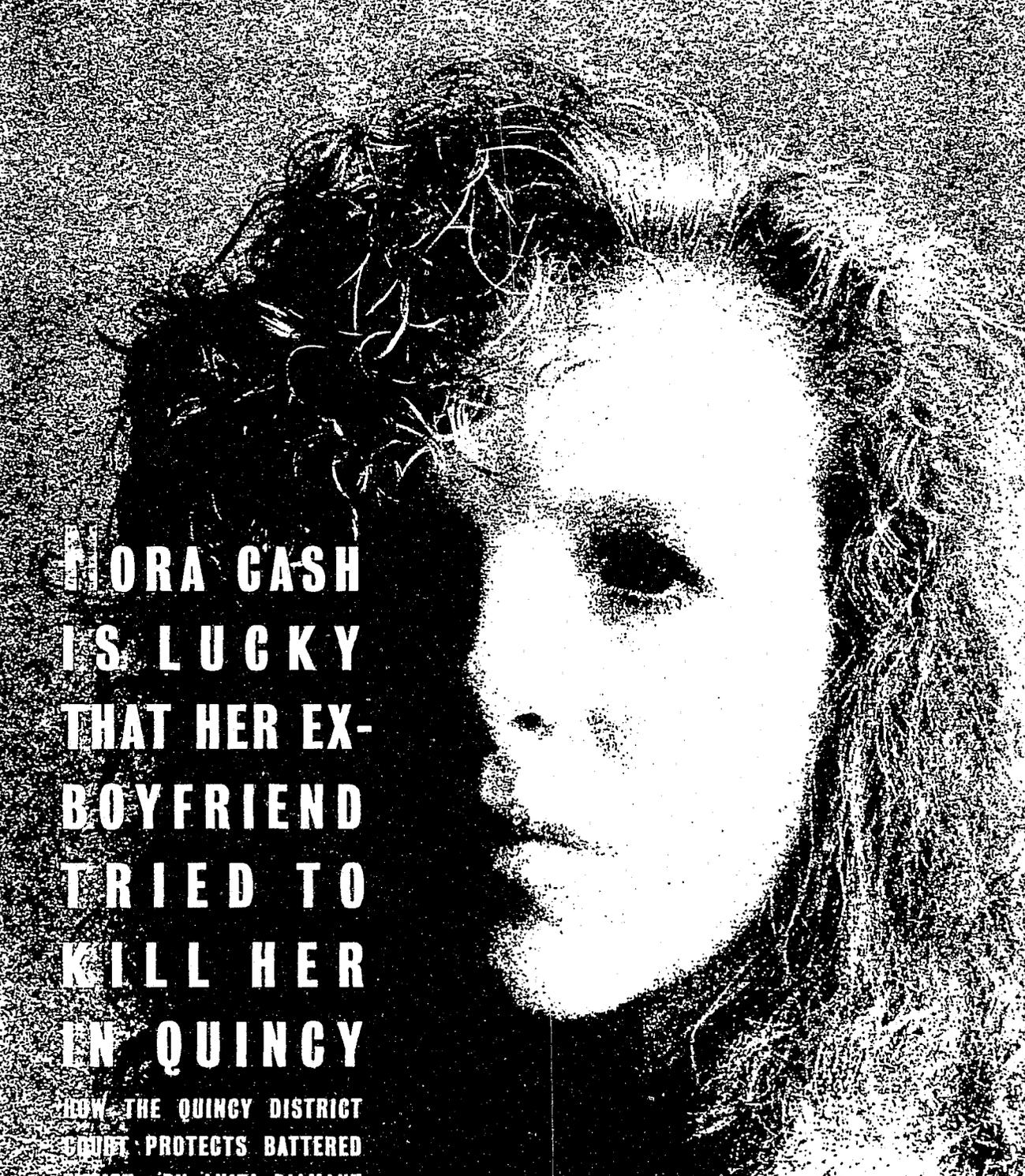
RESEARCH FINDINGS

Testing of the research hypothesis:

- analysis of civil protection orders dated between 1978 and 1986 from both Brockton and Quincy District Courts;
- interviews from women who were abused and received assistance through the Family Service Unit/Norfolk County District Attorney's Office;
- interviews from women who were abused and failed to received any "integrative preventive assistance" from the Plymouth County criminal justice system; and
- interviews of stockholders/program staff from both counties.

The Boston Globe Magazine

OCTOBER 11, 1992



**MORA CASH
IS LUCKY
THAT HER EX-
BOYFRIEND
TRIED TO
KILL HER
IN QUINCY**

**HOW THE QUINCY DISTRICT
COURT PROTECTS BATTERED
WOMEN, BY ANITA DIAMANT**

[BY ANITA DIAMANT]

HOW THE QUINCY DISTRICT COURT PROTECTS BATTERED WOMEN



“I KNOW FOR A FACT HE WOULD HAVE KILLED ME,”

says Nora Cash. “I would have been one of those statistics you see today. I would have been buried, and my children wouldn’t have had a mother. I truly believe that I would not be here today if it was not for the Quincy court system.” She sits at a table in the noisy food court of a shopping mall, watching her children, Stephanie, 9, and Victor, 7, head off with her husband, Bob Cash, whom she married last year. Nora Cash is 26 years old, blond, blue-eyed, Breck-girl pretty – a picture of domestic contentment. You’d never know.

For nine years – from the time she was 14 and first fell in love with the handsome, popular Victor, until August 9, 1989, when he tried to kill her – Nora Cash was a battered woman. She was slapped and thrown against walls for breaking Victor’s “rules.” Like the time she was pregnant and went, without his permission, to a neighborhood drugstore to buy prenatal vitamins. The worst, she says, was when he would grab her long blond hair and slam the top of his skull into her face, again and again, which is how he fractured her skull. That happened in Brockton.

Nora Cash says she was lucky that Victor tried to kill her in Quincy.

IN THE FIRST THREE MONTHS OF 1992, ONE MASSACHUSETTS WOMAN was murdered every nine days as a result of domestic violence. Not one of them died in Quincy. In fact, there hasn’t been a single domestic violence homicide in Quincy in five years, a statistic that

Continued on Page 52

Judge Kramer, whose approach to domestic violence is proactive, counsels a woman in his Quincy courtroom. Though willing to be photographed, the woman on the facing page did not want her name used. She said her boyfriend had beaten her and threatened her life.

QUINCY COURT
Continued from Page 14

police officers, prosecutors, judges, and victim advocates hate to hear quoted. "We know that any one incident could end that," says Quincy District Court Judge Albert Kramer. "But we are putting women in a more protected position here. I know we're saving lives."

The word has gotten around. Sarah Buel, Norfolk County assistant district attorney in charge of domestic-violence prosecution, herself once a battered woman, says, "We have a number of victims who've moved to Quincy from other cities and towns and commute to jobs all over the Greater Boston area, because they feel that here they get protection. Here, something will be done."

What Quincy does is provide victims of domestic violence with the most comprehensive and coordinated assistance in the state. Aggressive enforcement of laws to control batterers, combined with unconditional and consistent support for victims, has made the South Shore city a national model. In its new book, *State of the Art Court Programs*, the National Council of Juvenile and Family Court Judges features Quincy's program for battered women as one of 15 of the country's most effective. And the Quincy court has been awarded a Ford Foundation Innovation Grant of \$100,000 to help other jurisdictions replicate its early-intervention approach.

UNTIL 1978, QUINCY was no different from any other city or town in Massachusetts, where domestic-violence cases were treated as private matters. Quincy police lieutenant Tom Frane says, "The police didn't view domestic violence as a crime. Our role was to restore peace. You were considered successful if the phone never rang again from that address."

But 1978 was the year that Joan Quirk was murdered.

On the Sunday of Memorial Day weekend that year, Quirk called the police because her husband was beating her. Officers drove her to the station, advised her that she could come back on Tuesday to make out a formal complaint, and returned her to her home in suburban Cohasset. The next day, police found Joan Quirk lying dead on her kitchen floor, shot in the face. James Quirk, whom the newspapers referred to as a "respected oil tanker captain," had also shot their three young children and the family dog before killing himself.

"That case was a real catalyst," says Norfolk District Attorney William Delahunt. "It was so senseless. It did not have to happen. That's when it all jelled." The following month, Massachusetts criminalized domestic violence with the Abuse Protection Act - 209A, the law that mandates, among other things, round-

the-clock access to restraining orders - and Delahunt launched a pilot family-violence program in Quincy.

From the beginning, the effort involved all the key players. Delahunt assigned members of his staff to help get the city's newly established battered women's hot line and shelter, DOVE (Domestic Violence Ended), up and running. DOVE staff members helped the district attorney's office design and win funding for a first-in-the-nation data base of police responses to family-disturbance calls.

Like police in most cities and towns, Quincy's officers didn't record domestic-violence calls as such, not even when there was an arrest or criminal complaint. That changed in 1979 with the institution of a standard Family Disturbance Incidence Report in Quincy, which provided the basis for future response and early intervention. Dispatchers are required to tell responding officers about any history of domestic violence or the existence of a restraining order at a given address, increasing the likelihood of arrest or other protective actions, such as confiscating batterers' weapons and revoking their gun licenses - something the Quincy police have been doing for years. A statewide, computerized registry of domestic violence restraining orders, which became operational last month, provides women across the commonwealth with this aspect of Quincy's program.

Quincy's police force also undergoes the most extensive training of any in the state, according to Gwen DeVasto, director of the district attorney's Domestic Violence Unit. All Quincy police officers are required to take an extra 20 hours of classes, covering the laws against and causes for battering. A few of those hours are taken up with first-person accounts by battered women, such as Nora Cash.

VICTOR AND NORA NEVER married. Although Cash wanted to, he kept saying the time wasn't right. In retrospect, she says she's grateful it didn't happen.

Victor fractured Cash's skull in 1988, on the Friday night before Mother's Day. She took out a restraining order that time - not because of her injury so much as because he hadn't let her get the children out of the room before he started hitting her. "I used to put them in their rooms when he went into a rage. A lot of times I'd think, they can't possibly know what's going on, because they've never seen it," she says. "But they understood. I now think that keeping them in a room was even worse than letting them see it. They didn't know if I'd be alive when they came out."

When the Brockton police arrived, Cash says, "It was like nobody saw me. They took pictures of me, and this one cop turned my face with his hands, to the left and to the right. I asked if they were going to keep him overnight. They said no, he'll probably be out within

the hour, so be careful. They got me an emergency restraining order and said I'd have to go to court on Monday, and that was it."

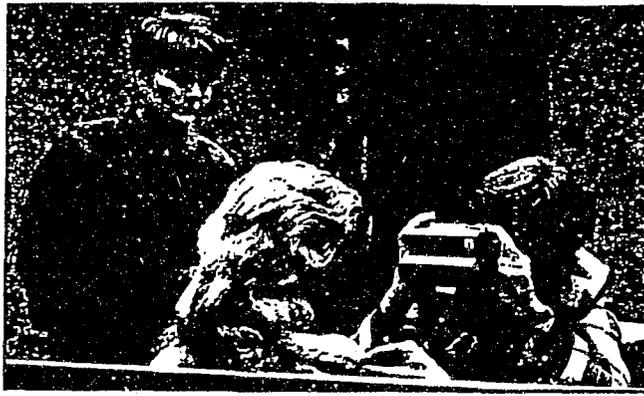
As they left, one of the cops, the last one out the door, told Cash that she ought to see a doctor. His exact words were, "I think you may have a fractured skull." And then he closed the door.

Cash says, "I had no ride, no car, two kids, my house was a mess, I didn't have a phone because he ripped it out of the wall. At that point, I didn't know they were doing anything wrong. I was scared and just glad that he was gone."

Cash went to court on Monday morning to renew the emergency restraining order, and something about the experience moved her to change. In the months that followed, she signed up for GED classes, earned her high school diploma, and started training to become a dental assistant.

"I was an A student. I graduated with high honors and then I got a job. What a difference it made," she says. "All those years, Victor had told me, 'No one will like you. You're fat and ugly. You'll never find anyone to take care of you like I did. You'll never have a job that'll pay you anything.' By going to school and getting this job, I saw he was lying. I think that was the first step of taking control of my life."

As Cash was getting her life together, Victor's was falling apart — he broke up with his new girlfriend and talked about suicide. So when he called, sounding



Kristin Ryan, a victim advocate in Quincy, waits with a client while a police officer photographs her injuries.

upset and "weird," and asked her to come to his place in Quincy, Cash agreed. "At that point, I thought I'd help him because of what we had in the past, but he wasn't going to stop me from living."

But that's just what he tried to do. He hit her and said, "Today's the day that you're going to die. Don't be scared. It's all right." Cash says, "He was so calm about it, I knew he meant it."

He pinched her nose shut and put three fingers down her throat until she nearly passed out. Then he put a pillow over her head. "I couldn't breathe," says Cash. "I'm an asthmatic. The biggest fear in my life is to not be able to breathe, and he knows that. He kept telling me, 'I'm going to kill you; there's nothing to worry about, you're going to be fine.'"

When Victor ordered her to move into the bedroom, Cash escaped. She ran down the fire escape and screamed for help as Victor chased her, in broad daylight, through the large apartment complex. No one helped her. Cash says she ran toward a maintenance

truck, which drove off as she approached. "He didn't even put his foot on the brake."

Eventually, someone did call the police. When they arrived, Cash says, Victor tried to make light of the scene to the police. "We're just running around, having a good time," he told them.

But the Quincy police weren't buying it. Cash remembers Officer Tom Tierney's words exactly; "First things first," he said. "Get your hands off of her."

After Victor had been arrested, "Officer Tierney got in the back seat with me and gave me a big hug and said — I'll never forget this — he said, 'Blue eyes like yours should not be crying.' It was so out of context, so unofficial. So caring. It's something someone's father would say. It made me feel so safe.

"At the police station, he asked me, first, 'Would it be okay if I took a couple of pictures?' He sat me down and got me a glass of water. I told him the story, but he wouldn't let me get to the point where I was totally out of control, like you're reliving it. He let me calm down.

"Every time I went to court, Officer Tierney was there. He wouldn't call — I'd just turn around, and there he was, not in uniform, in street clothes; it was his day off. Tom Tierney was fabulous."

EVERY SINGLE REPORT of a family disturbance in Quincy, however serious or seemingly minor is handed over to the district attorney's Domestic Violence Unit, which includes victim advocates, counselors, and interns from local social-work programs. Each report is followed up with a letter that introduces the unit's services and explains the process of getting a restraining order.

"People are always telling these women, 'Get a restraining order,' like that's going to fix everything," says Beth LeDoux, a domestic-violence victim advocate in Quincy. "But when she gets a restraining order, she may be in even more danger, because that can infuriate him."

Gwen DeVasto, who has worked with the Quincy unit for 12 years, says, "Within a week of the letter, we make a follow-up call for anything but verbal arguments, which means in about 75 percent of the cases they get a call. We ask how they're doing and invite them to a restraining-order briefing."

Briefings are held every weekday at 8:45 a.m. in the courthouse. On Mondays, the day that emergency orders issued over the weekend must be filed, there may be as many as 25 women seeking protection. Last year, Quincy issued restraining

orders to 1,419 people, more than twice the number filed in any other court in Norfolk or Plymouth counties, and one of the highest figures in the state. In the first six months of 1992, 1,100 were issued.

The 45-minute briefing session informs victims about the mechanics of filing for a restraining order, a civil proceeding that makes it a criminal offense for an abuser to come near or even call a victim. Says DeVasto, "The women get a feel for what's going to happen before they see the judge. We'll tell them the microphone in the courtroom is there only to record, that it doesn't amplify, and that they can speak as softly as they like. We tell them that they need to come back in 10 days to renew the order for one year."

But these sessions provide more than legal information. Victim advocate LeDoux, herself a battered woman, says, "When the woman takes the first step out of a relationship — when she gets a restraining order — she is in the most danger. It can be a catalyst for him to get more violent. So, at the briefings, we not only explain the process, we talk about safety plans and try to hook them to long-term services like our six-week education group and, after that, the six-week support group. Or counseling, or AA.

"In all the years of working with violence, the most obvious thing we learned is that one good day, one sensitive judge, isn't enough," LeDoux says. "Women drop the restraining order or criminal charges and get hooked back into a destructive relationship. There's always the honeymoon period, when he stops drinking and he cries and cries that he didn't mean it and it'll never happen again. But it does happen again, and the violence escalates."

Which is why the advocates in Quincy stay in contact with victims during the journey through criminal proceedings if the batterer violates a restraining order, through divorce and probate court, and through the slower, more painful process of putting together a shattered life.

The Domestic Violence Unit's six-week education group covers a lot of that ground. "Women feel ashamed or even crazy for staying with an abuser," says LeDoux. "But we talk about how women stay for the kids, or because they don't have any money or anywhere to go, or because they're afraid of being murdered. We talk about the role of alcohol and stress — that it's not a cause of violence, that it's a separate problem.

"We save the effects of the violence on children for last, because it produces so much guilt. But we do convince them that children are affected. Many women cannot take steps for themselves but are willing to take steps for their children," says LeDoux. "I was one of those women who couldn't do for herself. I left for my son."

The unit also offers support groups, individual therapy, and referrals to a variety of agencies. And it doesn't stop trying to help, even when help is refused. "If a woman goes back to her abuser, I let her know I'm not going to vaporize, says LeDoux. "I tell her to call me. Or I'll call her."

IT WASN'T EASY FOR Nora Cash to proceed with the criminal case against Victor. "I'd get letters about different court dates," she says, "and I'd panic and think, I can't do this. But as soon as you feel you're going to bail out, like 'I can't give any more, because I'm afraid, he's going to kill me, you don't under-

stand,' somebody is there to pick you up off the ground and say, 'Yes, you can.'"

Cash's advocate called often and attended every court date with her. "The big thing for me is, I wasn't alone anymore," she says. "You can't do this alone."

Cash attended the program's six-week education class, which she started, like most of the other women in the group, without much enthusiasm. "I had better things to do with my time," she says. "But after six weeks, you not only learned what battering is all about, you also get some self-esteem. My favorite part of the course was learning that he didn't do this to me because of what I did. He did it to me because of who he is."

When she did appear before Judge Kramer for the arraignment, Cash says, "I was scared out of my mind. Victor was there, and I was scared he would go off the deep end. But I wasn't alone anymore. He never beat me again."

Victor was charged with attempted murder, which meant that the case was transferred to Superior Court in Dedham, where Cash was assigned another advocate.

During the year between the arraignment and the court date, Victor took Cash to probate court in Brockton for the right to visit his children, which was granted despite the restraining order and criminal charges against him. The judge didn't see how it could put Cash in any danger.

When she told her then 6-year-old daughter that she would have to see her father, she remembers, "Stephanie got up and threw a chair at me and called me a liar and said I must not love her, because I let her go and he's going to hurt her."

During the children's first visit with him, Victor

beat his girlfriend severely, and then threatened his daughter, warning her not to tell what had happened, or else her mother would pay the price. Cash returned to probate court to have Victor's visitation rights revoked. "You have to be an attorney to get through this," she says.

QUINCY'S COMPREHENSIVE response to domestic violence represents a sizable financial commitment. Batterers pay for their own treatment programs as a condition of probate, and social-work interns provide hundreds of hours of professional services at no cost. There is no separate budget set aside to protect women against violence and prosecute the men who abuse them. Quincy's services and programs are seen as part of the overall mandate of the Police Department and the justice system, so existing resources and personnel are committed to these efforts.

Judge Albert Kramer's proactive approach to domestic violence works on two fronts: by empowering victims and controlling abusers. To make the court more user-friendly for victims, most judges in Quincy hear requests for restraining orders at the bench, where victims can speak quietly, almost privately, to the judge. Special sessions for restraining orders are held twice daily, morning and afternoon, to minimize waiting. And every effort is made to encourage victims to stay within a system that works hard to protect them.

Protecting them is not easy. According to Judge Kramer, "More than any other perpetrators of violence, these are most persistent in pursuit and persecution, and the most tenacious in resisting court orders."

What Kramer and others in Quincy refer to as the "lethality" of batterers led to the creation of an orchestrated and graduated system for controlling abusers' behavior, starting with the treatment of restraining orders.

"We consider sending a postcard a serious violation of an order," says Kramer. "The postcard means they're getting away with something. It proves they don't have to follow the court's order, and once the victim believes the perpetrator can do what he wants, she feels there's no point in continuing to resist."

Once a restraining order has been violated, the batterer is arrested. But that doesn't necessarily mean jail. Men who have no prior record are generally sentenced to a year's probation, the terms of which include weekly sessions at a batterers' treatment program, and often attendance at 12-step-program meetings five times a week and random drug and alcohol tests.

"In the Quincy court, if you're on probation, either you do the program or you're incarcerated," says Bruce Carr, a probation officer for 14 years. Carr is in charge of 80 to 85 batterers, whose actions he monitors in a variety of ways. He stays in regular contact with them and their victims, and he checks in with members of the Domestic Violence Unit and the police force. Carr finds that information from leaders of batterer treatment groups can be especially useful. If Carr hears that a batterer has said something like, "If I can't have her, no one can," Carr will step up contact with the abuser, warn the victim and her advocate, and alert the police. "In Quincy we all talk to each other," says Carr. "That lets us build a better safety net."

Violations of probation mean jail time. However, in cases where a violation isn't violent — if, for example, it's a matter of a missed AA meeting — the Quincy court may impose a "tourniquet" sentence: After a week in jail, the abuser is released, with a six-month sentence hanging over his head should he violate probation again.

"A majority of defendants do obey their restraining orders," says Assistant District Attorney Sarah Buel. "We're kept busy by the numbers that don't."

Buel, who has spent the last 16 years working on behalf of abused women and children, joined the Quincy team in 1991 as special prosecutor for domestic-violence cases. Here, she says, she is finally able to put her experience into practice, with the full support of the district attorney. She explains how her approach to these cases differs from the norm: "In most courts, if a victim comes in at arraignment and says, 'I want my case dropped,' that's the end of it. We work on the assumption the abuser will harass and threaten her. Maybe he's slashing her tires, or calling her at work 40 times a day.

"I start with the premise of not dismissing, which takes the burden off her. It becomes the state's case," says Buel. "I tell the women, 'I have the same respect for you as I have for my grandmother, and I'm going to treat [the abuser] just as if he beat up my grandmother on Main Street at noon.'"

Despite Buel's determination to prosecute, however, victim safety remains her priority. "It's easy for us to think winning is everything," she says. "But in too many cases, a conviction was followed by a murder. There are cases where we don't

prosecute, when someone may have to go underground and start a new life."

WHEN VICTOR'S TRIAL date came up, a year after his arrest — a common waiting period — Cash's father was dying of cancer. Rather than face a jury trial, she agreed to a plea bargain in which Victor admitted to assault and battery and was sentenced to a year in prison. "I had missed seven years of my father's life, and I blamed that on Victor," says Cash. "He wasn't going to take his death away."

Cash's father died the day after Victor pleaded guilty to the assault charge. He served six months behind bars.

"Two years ago, I thought there never would be any happiness for me," Cash says. But she was reconciled with her family, who had cut off dealings with her as long as she stayed with Victor. Then her friendship with Bob Cash blossomed into romance. Walking down the aisle on her wedding day, at the church where she had received her First Communion, Cash says, "was like a walk through my life. All the court people were sitting at the back of the church — the advocates, the district attorney, all the people who showed me how to believe in myself. Up front were my family, my childhood. And up at the altar was my future."

"These women I see in the news, shot, dead — it kills me," says Cash. "Because there is that, and then there is me. I got off that highway."

Cash is willing to go public with her story, even offering to be photographed in hopes of providing an alternative vision to women

who are still living with batterers, still subjecting their children to the emotional damage she and her children are trying to heal in therapy. However, she is still very protective of her exact whereabouts. Although it's been two years since Victor was convicted, and over a year since he was released from jail, she's had word that he's still looking for her and the children.

She travels to Quincy annually to renew her restraining order. "No one is watching him now," she says. "I have to watch out for myself." □

*Myth V. Reality:
Clinical Issues In Domestic Violence*

Identifying the Assaultive Husband in Court: You Be the Judge

by David Adams, M.Ed.

David Adams is Co-founder and President of Emerge: A Men's Counseling Service on Domestic Violence. He is a nationally known expert on counseling assaultive husbands.

Individual and institutional suppression of the truth frequently run parallel courses in history. Even when the truth is not actively suppressed, it is sometimes resisted because of the low status of its tellers. Such is the case with wife abuse. The ability of individual perpetrators to conceal or justify their violence has been facilitated by a criminal justice system that has historically ignored or blamed the battered woman (Taub & Schneider, 1982; New York Task Force on Women in the Courts, 1986). But the criminal justice system is not alone in letting the abusive man off the hook. The downplaying of domestic violence and the tendency to blame victims have been well documented among social service providers, medical personnel, clergy, and the media (Schechter, 1982). Too often, those who are in a position to intervene have failed to educate themselves about wife abuse. Biased preconceptions about men and women have impaired nearly everyone's ability to identify wife abuse and consequently, our ability to hold abusers responsible for their violence. Even our questions betray a preoccupation with the victim's choices and responsibilities rather than those of the perpetrator. We ask, "Why does she put up with it?" rather than "Why does he beat her?" Finding the truth means moving beyond popular

stereotypes and learning to ask the right questions. Court officers must be especially careful to ask plaintiffs whether they fear potential reprisals from the defendant in reporting domestic assaults.

As frightening as domestic abuse is, the experience of publicly disclosing it has been compared to stepping off a cliff. Disclosure not only puts the battered woman at greater risk for retribution from her abuser but it also severely jeopardizes her social and economic security. Research shows that, far from being irrational, these fears are well-founded. Women are most likely to be murdered while attempting to report abuse or to leave an abusive relationship (Sonkin, 1985; Browne, 1987). Many battered women report that their husbands have repeatedly threatened to kill them if they call the police or attempt to leave. Those who treat the abusive man confirm that the violence often escalates once the woman attempts to end the relationship. The abuser's threats of continued physical abuse are often accompanied by economic threats. These commonly include threats to withhold child support and to sabotage her job plans. Some men make threats that are specific to the children, exploiting their wives fears of losing the children once they report domestic abuse.

Most battered women's fears about calling the police or seeking court protection are logical reflections of her past experience with her abusive spouse. What appears from the outside as an irrational pattern of "crying wolf," becomes much more understandable when one identifies the specific scare tactics of the abuser. These, combined with inconsistent and sometimes hostile responses from the criminal justice system reinforce the battered women's fears that there is no real escape from the abuse.

Characteristics of the Abusive Husband
The following descriptive profile of the abusive husband is provided to help criminal justice workers become more sensitive to the concerns of battered women and more knowledgeable (and hence, less vulnerable) to the manipulation patterns of the abusive man. The profile is drawn not only from victim accounts and research findings but also my twelve year experience as a counselor of abusive men at Emerge: A Men's Coun-

seling Service on Domestic Violence, in Cambridge, Massachusetts. Founded in 1977, Emerge was the first program of its kind in the nation. Each characteristic listed has implications for all those who are in a position to identify abusive behavior and prescribe solutions.

1. *Discrepancy in public versus private behavior*

Men who batter their wives often do not come across to those outside the family as abusive individuals. Often, the abusive man maintains a public image as a friendly, caring person who is a devoted "family man." This good reputation often leads neighbors and friends to conclude that his wife is exaggerating when she reports physical abuse. Police responding to these reports may be swayed by the calm demeanor of the perpetrator. By contrast, his wife may seem more agitated and hysterical, leading police officers to conclude falsely that she is the more aggressive party. This false picture is often repeated in court. Dressed in a suit and accompanied by counsel, the male defendant frequently comes across more credibly than the female plaintiff. This is especially true when the perpetrator is a professional man. In such a case, the picture the plaintiff paints of her husband's behavior may seem inconsistent with his stature in the community. Approximately one-third of the men counseled at Emerge are professional men who are well respected in their jobs and their communities. These have included doctors, psychologists, lawyers, ministers, and business executives. Police and court officers must look beyond the popular image of the abusive man as an easy-to-spot brute. While some abusers bear some resemblance to this stereotype, most do not.

2. *Minimization and denial*

Living in a society that undervalues domestic life, abusive men do not expect their abusive behaviors toward women to be taken seriously. One man said it had never occurred to him that he could be arrested for such a "minor thing." This man's attitude that men's ill-treatment of women doesn't belong in the public sphere, does not exist in a social vacuum. It is mirrored by recent public debates about the relevance of how public men treat their wives, particularly when allegations of wife abuse or infi-

delity are made. It is reflected by the historical reluctance of police and courts to intervene in "domestic disturbances" (Roy, 1977).

Few, if any, abusive husbands characterize themselves as men who beat their wives. A recent informal poll of clients at Emerge revealed that few men, even the most severe abusers, had thought of themselves in those terms. The abuser's tendency to minimize problems is comparable to the denial patterns of alcohol or drug abusers. Problem drinkers minimize their drinking by favorably comparing their own consumption pattern to "worst case" alcoholics — those who drink bottles of hard liquor on the street. Many battering husbands similarly minimize their violence by comparing it to "brutes who beat their wives every day." Besides spurning the "wife beater" label, most abusive men underreport their violence. Research studies of violence-reporting patterns among husbands and wives have found that husbands are more likely than wives to underreport their own violence (Szinovacz, 1983; Browning & Dutton, 1986). For instance, husbands are more likely to count even severe acts of violence (e.g., choking, punching, beating someone up) as self-defense rather than violence (Brygger & Edleson, 1984). Frequently, what abusers report as self-defense is in reality violent retaliation. While some men rationalize their violence, other merely lie about it. The previously mentioned poll of Emerge clients found that many had lied about their violence when asked by neighbors, relatives, and police.

3. *Blaming others*

Perhaps the most common manipulation pattern of the abusive man is to project blame for his violence onto his wife. In treatment programs for abusers, statements like "she drove me to it," "she provoked me," "she really knows how to push my buttons" are common. Statements like these reveal the abusers attempts to divert attention away from his own behavior and choices. Abusers in the early stages of treatment resist self-criticism by projecting responsibility for their violence onto others (Adams, 1988). This is similar to the alcoholic's tendency to blame other people, things, and circumstances for his drinking. The abusive husband, like the alcoholic, pre-

sents himself as a victim.

Too often, interveners get caught up in talking about the victim's behavior. This is a disservice to the abuser because it reinforces his denial of responsibility. When the topic of discussion shifts to his partner's behavior, the abuser is prevented from recognizing that he has choices in how he responds to her, and that some choices are more constructive than others. Often, the abuser manipulatively seeks allies in his attempts to monitor and police his wife's behavior. Abusers in later stages of treatment are able to critically identify this as a lack of respect for their partners. One man said "I could never accept her the way she was; I always felt I had to 'correct' her. And it was easy to find other people to agree with me." (Emerge, 1989).

4. *Controlling behaviors*

Advocates for battered women have pointed out that wife abuse is more than isolated acts of physical violence. It is a cohesive pattern of coercive controls that include verbal abuse, threats, psychological manipulation, sexual coercion, and control over economic resources (Dobash & Dobash, 1979; Schechter, 1982). The co-existence of these other controlling behaviors serve to remind the victim subliminally of the potential for physical abuse (e.g., yelling, threats, angry sulking) and to undermine her independence. The abuser's frequent criticisms of his wife erode her confidence in her own abilities. One abusive husband said he constantly tore down his wife's self-confidence because "I felt threatened whenever she felt good about herself." This man's wife said that it was only when she got support and validation from others that she began to trust that she could make it on her own. Social isolation is another tactic used by abusers to undermine their wife's autonomy (Walker, 1984). Accusations of infidelity or of "neglecting the family" serve to manipulate the woman into curtailing her contacts with friends, co-workers, and relatives.

5. *Jealousy and possessiveness*

Many battered women report that their husbands make frequent jealous accusations. For some abusers, this jealousy has an obsessive quality. These men constantly monitor their wife's whereabouts. Their surveillance activities often con-

tinue (and escalate) when their wives leave or attempt to end the relationship. These may include following her around, interrogating the children, eavesdropping on telephone conversations, and making frequent telephone calls to monitor her activities.

It bears repeating that pathological jealousy of this kind is not evident in all men who abuse their wives. Its presence should be seen as a significant indicator of potential homicidality (Sonkin, 1985). Closely related to this is extreme possessiveness which is often manifested by the abuser's unwillingness to accept the end of the relationship. Women who leave this type of man are subjected to ongoing harassment and pressure tactics, including multiple phone calls, homicide or suicide threats, uninvited visits at home or work, and manipulation of the children.

6. *Manipulation of children*

There is considerable variation among abusive husbands on whether their violence extends to the children. While child abuse is as frequent or more frequent than wife abuse for some abusive husbands, others have strong prohibitions against hitting their children. Regardless of whether children are directly abused, children are adversely affected by being exposed to wife abuse (Kalmuss, 1984). Children exposed to abuse are more insecure, more aggressive, and more prone to depression. Children in this situation commonly feel divided loyalties between their mothers and fathers. Research shows that childhood exposure to wife abuse is a significant predictor of future wife abuse (Hotaling & Sugarman, 1986).

Courts are often asked to decide custody and child visitation issues when battered women file for protective orders. Judges must be wary of the manipulation patterns of the abuser in making these decisions. For instance, abusive husbands commonly misuse child visitations as a way of gaining access to their wives. Abuse of child visitations not only compromises the battered woman's safety but also has an adverse emotional impact on the children. Some abusers use their children as emissaries who are responsible for spying on mom's activities or for convincing mom to "let Daddy come home." Some abusers contest cus-

today or child support agreements as a bargaining tactic designed to coerce their partners to reconcile or to drop criminal complaints. Prosecutors and judges should routinely encourage battered women to seek modification of child visitation agreements if such agreements are being abused, or if the child's or woman's physical safety is being jeopardized.

7. Substance Abuse

Research studies have varied findings about the degree of overlap between spouse abuse and substance abuse. One study found 70% of men arrested for domestic battery showed evidence of alcohol or drug abuse (Roberts, 1987). A survey of women who sought refuge in shelters for battered women, found that 48% reported that their abusive husband abused alcohol. This variation in findings is attributable to the use of differing criteria in assessing the batterer's use or abuse of substances. There is also evidence to suggest that police are more likely to arrest a batterer when there is also evidence that he is under the influence of alcohol or drugs (Kantor & Straus, 1986).

Despite the high correlation, experts in the domestic violence field agree that alcohol or drug use does not cause men to batter their wives (Coleman & Straus, 1983). Acting as a socially approved disinhibitor, alcohol use becomes a convenient excuse for some men to hit their wives. The battering husband who abuses alcohol has two problems for which he must take responsibility. Alcohol or drug treatment alone will not stop the batterer's abusiveness. Recovering alcoholics exhibit high rates of abusive behavior. Despite this, one study found that courts in one state refer most alcohol/drug abusing batterers to alcohol or drug treatment programs only — without also referring to specialized batterer treatment programs (Roberts, 1987). Because probation officers and judges have been more sensitized to alcohol and drug problems, there is a danger of focusing exclusively on the substance abuse when the substance abuser is also abusive toward his wife. When the problems co-exist, it is critical for the individual to be evaluated for both kinds of treatment.

8. Resistance to change

Like substance abusers who are still in

the denial stage, most abusive husbands lack internal motivation to seek counseling or to change their behavior. It is estimated that less than 1% of men who batter are referred to specialized treatment programs for abusers. Approximately 20% of Emerge clients are court-ordered to attend the program. Though the rest, technically, are self-referred, most of these have sought counseling only once it became clear that their relationship will not continue unless they attend. For most of these men, the problem as they see it is that their wives have left them, not that they have been violent. Initially, the abusive man bargains with his wife to change as little as possible (Adams, 1989). For instance, he may agree to attend one week of counseling in exchange for returning home or having criminal charges against him dropped. Fifty percent of Emerge clients drop out of treatment within the first month, a figure that is consistent with other programs. Some drop out as soon as they reconcile with their wives. Others drop out as soon as it becomes clear that a reconciliation isn't possible. The typical battering man, like the alcoholic, brings a 'quick fix' mentality to counseling. His desire to restore the status quo outweighs his desire to change.

Summary

For court workers to become aware of abusive behavior patterns does not condemn the abuser's chances for change. On the contrary, this insight helps interveners resist the abuser's manipulation patterns and more realistically appraise his suitability for rehabilitative efforts. Clearly, some perpetrators pose too great a danger to their wives for the courts to release them into the community. Assessments for potential lethality should be made in every spouse assault case. In my experience, the men who do make significant changes are those who accept legal sanctions and persevere with counseling. These men respect their wife's decisions concerning the amount and nature of contact she wishes to have with him. He learns to focus on his own rather than her behavior. Much depends on the public sanctions that the abuser encounters along the way. Courts have a critical role to play in this. They determine whether the abuser attends a treatment program, how long he stays in the

program, and whether the victim's safety is ensured while he attends the program.

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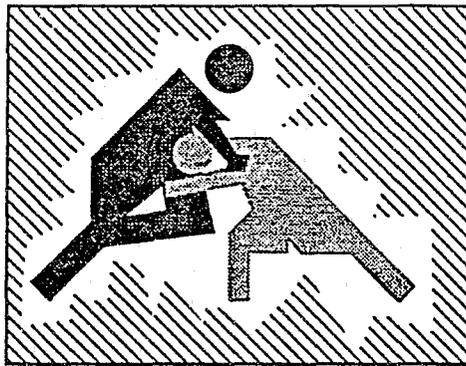
FACTS ON ALCOHOL, DRUGS AND DOMESTIC VIOLENCE

Robert Mackey, M.A., C.A.S.¹

Statistics on the correlation between domestic violence and addiction range between forty-four percent according to the New Jersey Uniform Crime Report of 1989, to more than eighty percent in some research studies. According to the National Woman Abuse Prevention Project in Washington, D.C., alcoholism and battering share the following characteristics: Both are inter-generational, both involve denial and minimization of the problem, and both involve isolation of the family. Considering this, any intervention with either of these problems should consider the implications and presence of the other.

The topic of domestic violence and its association with addiction has received increased attention over the past decade. In a report by Schuerger and Reigle, personality and background data were obtained on two-hundred and fifty men enrolled in a group treatment program for spouse abuse. The major conclusions of this investigation verified the prevalence of alcoholism, drug abuse, and violence in the family of origin of abusive men. Fitch and Papantonio found violence between the batterer's parents, abuse of the batterer as a child, alcohol and drug abuse, and economic stress to be highly correlated to spouse abuse. Lehmann and Krupp cited several striking statistics on drinking and wife abuse. Data from the New York based program, *Abused Women's Aid In Crisis*, indicate that alcohol abuse on the part of the husband was a factor in over eighty percent of their cases. Another interesting point cited by these authors was the survey conducted by Scott, who interviewed 100 wives of alcoholics who had identified themselves as victims of abuse. Seventy-two percent of these women indicated they had been threatened physically, forty-five percent had been physically attacked, and twenty-seven percent had experienced "potentially lethal" attacks. None of these women had sought help as victims of battering, suggesting that alcohol abuse is not

only a factor in many cases of domestic violence, but that wife battering may be very common in families of alcoholics.



Lehmann and Krupp carried out their own survey of 1500 cases of women calling a hotline for abused women in Philadelphia. Fifty-five percent of these women said that their husbands became abusive when drinking. They asserted that although the association between alcoholism and domestic violence is clear, "most existing research supports the conclusion that alcohol abuse does not cause domestic violence." A final portion of this research involved interviews with ten alcoholism counselors and ten workers specializing in the field of domestic violence. Contrary to the research literature, workers in both fields believed that alcoholism was in fact the primary cause of the violence. These findings support the need for collaboration between the fields of addiction treatment and domestic violence as well as professional training on the subject.

In summary, the literature on alcohol abuse and domestic violence makes it clear that men with drinking problems are at high risk to be abusive toward their spouses. However, it is also clear that many men who have drinking problems do not abuse their wives and that some men who don't have drinking problems do abuse their

wives. Therefore, the conclusion that there is no direct causal relationship between drinking and spouse abuse, a position supported by most of the researchers in this area, appears irrefutable.

There are a few salient points to consider when intervening with the problems of alcohol abuse and domestic violence. First, there is no causal relationship between the two, therefore recovering from one of the problems does not assure resolution of the other. Treatment of the addiction should precede treatment for the battering; however in many cases, counseling for battering can be initiated concurrently or can be instituted initially to assist in confronting the denial of the addiction. In either case, the violence must be addressed immediately, if not through counseling then through legal sanctions and restraints to assure the safety of the victim(s). Victims of domestic violence, where alcoholism is involved or not, should receive the benefit of counseling and education concerning the cycle and dynamics of battering. Victims should also be afforded the opportunity to investigate family-of-origin issues, beliefs, behavioral patterns, and role expectancies that increase vulnerability to abusive types of relationships through disempowerment. The goal of intervention is to assure safety and to empower both victim and abuser to act in their best interest independently. While family therapy is an important aspect of addiction recovery, it is contraindicated in the presence of domestic violence. Early recovery where both problems exist should focus on individual self-management and should incorporate marital or family treatment as an adjunct therapy later in the therapeutic process. Domestic violence creates an extreme imbalance of power in the relationship prohibiting effective negotiation. This disempowerment requires a reasonable degree of resolution before the effective assertion of the victim's needs can be realized.

The following components are recommended to be incorporated in treatment programs for battering, in order of priority:

1. Instruct/support the alcoholic-batterer to abstain from alcohol use and violence through direct appeal and appropriate treatment modalities (if necessary, through legal or formal sanctions such as restraining orders, job jeopardy, etc.).
2. Confront denial/minimization and projection of responsibility.
3. Incorporate recovery programs for addiction concomitant with anger management/self-control techniques.
4. Address potential relapse issues common to both problems such as resentment, self-pity, and cyclical self-defeating patterns of behavior.
5. Teach assertive communication skills.
6. Educate all parties on the techniques of effective problem-solving, thereby empowering each individual in the system to behave in his or her personal best interest.
7. Address the needs of the entire family system. These are inter-generational problems, and prevention is a primary objective.

Suggestions for Abusers

1. Seek help from people with specific knowledge of addiction and/or aggression control. This may require involvement in appropriate 12-step meetings and in anger management counseling. Remember, addressing one problem will not necessarily resolve the other.
2. Understand that both battering (physical and psychological) and addiction are progressive. The longer you deny the problems, the more dangerous they become.
3. Resentment, denial, self-pity, and loss of control are characteristic of alcoholism and battering. Be willing to get honest.
4. Alcoholism and family violence tend to be inter-generational; be prepared for long-term care. Be supportive and encourage help for your children and family.
5. You can't avoid influencing others, but you can't afford to control anyone but yourself.
6. Stop losing control of yourself to try to gain control of others.

Robert Mackey, M.A., C.A.S.
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Suggestions for Battered Persons

1. Attempt to define yourself as a *survivor* of violence rather than a *victim*; it's more empowering.
2. Reach out to support groups; isolation is one of your greatest enemies.
3. Trust that ultimately you know what's in your best interest; act accordingly.
4. You are not the cause of another's behavior, so you cannot change someone else; focus on yourself.
5. Develop a safety plan for you and your children in the event that you need to act quickly. A local domestic violence service can assist you in developing your options and advise you of your rights. In New Jersey, the state-wide hotline number is: 1-800-572-SAFE.

Domestic violence and addiction can be a

lethal mix. The loss of control and effects of alcohol and drug abuse contribute significantly to the severity of beatings in abusive relationships. FBI statistics indicate that thirty percent of female homicide victims are killed by their husbands or boyfriends.

Battering, unlike the disease of addiction, is a socially learned behavior which can be reversed if the motivation for change is realized. Techniques and social skills can be re-learned to eliminate the violent behavior, just as life manageability can be attained through a commitment to recovery. Where abstinence of the drug alone is insufficient for true recovery, elimination of the violence is just the first of many steps toward breaking the cycle of domestic violence. The process of recovery ultimately benefits other significant people.

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The New Jersey Alcohol/Drug Resource Center and Clearinghouse serves institutions of higher education, state agencies, communities and school districts throughout the state of New Jersey by providing technical assistance, training, and resources in alcohol and other drug abuse education and prevention. For more information on the Clearinghouse, call or write to:

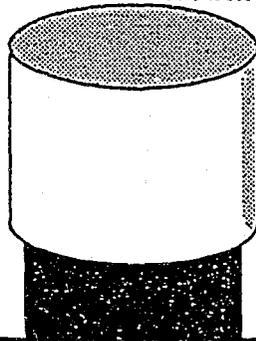
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Is Danger Ahead In Your Relationship ? Take This Test And Find Out

*Alcohol is a drug.
If you're pregnant
don't drink or take
drugs -- they can
hurt your baby.*



*These drinks all have the
same amount of alcohol:
* 1 beer * 5 oz. of wine
* 1 shot of hard liquor
* 1 wine cooler*

Warning Signs of Alcohol or Other Drug Addiction

Are you going out with someone who ...

- Is hard to get along with when drinking or using other drugs.
- Drinks or takes drugs because they're "depressed."
- Drinks or takes drugs to calm their nerves or deal with other pressures.
- Can use a lot of alcohol or other drugs without seeming to be drunk or high.
- Gets into trouble at work, school, or at parties because of alcohol or drug use.
- Forgets things they say or do when under the influence of drugs or alcohol.
(Also called blackouts.)
- Wants you to drink or take drugs with him.
- Tries to hide or lie about drinking or drug use.
- Is scary when drinking or using drugs.
- Gets violent or yells or insults you when drinking or using drugs.
- Uses drinking as an excuse for hurting you with words or actions.
- Gets mad when you try to talk about drinking or drug use.
- Has trouble with money because of spending too much on liquor or other drugs.
- Apologizes later or tries to make up for things after drinking or drug use.
- Has been arrested for driving "under the influence," or been in any other trouble with the law due to drinking or drugging.
- Says they'll stop drinking if you have sex, or do other things for them.

Do you keep trying to "make things better"? Do you blame yourself? Do you feel trapped? Don't know what to do?

There is hope and help. Call the Mass. Drug and Alcohol Hotline 1-800-327-5050

Personal Health | Jane E. Brody

When love turns violent: the roots of abuse.

AMERICAN women have far more to fear from the men they know and once loved than from any stranger on the street. Domestic violence is the leading cause of injury and death to American women, causing more harm than vehicular accidents, rapes and muggings combined.

Each year an estimated six million women are beaten by the men they live with, and 30 percent of women who become homicide victims die at the hands of men with whom they have a "family" relationship. While there are some cases of domestic violence in which the wife is the abuser as well as problems of abuse among gay couples, in the overwhelming majority of cases, women are the victims at the hands of their men.

When such cases gain wide attention, the public tends to blame alcohol or drugs or poverty as the provocation. But are they? A chemical high may release inhibitions against physical abuse but it does not create a violent, power-hungry person who needs to control a spouse even more tightly than a master rules a slave. As for poverty, experts say well-educated, well-off professional men are hardly immune; they are simply better at escaping punishment.

Even when the victim's charges of abuse are believed, she is often blamed for staying with her abuser, for not throwing him out or picking up the children and leaving. Sometimes she is blamed for hooking up with a violent man, or even for provoking his attacks.

Why Men Do It

"Why did she stay?" is the leading question. Far fewer people ask, "Why did he do it?" Yet understanding the nature of spouse abuse and the forces that foster and perpetuate it is crucial to establishing effective social and legal mechanisms for protecting the victims, breaking these violent patterns and preventing such cases from developing in the first place.

As more communities mandate



Bob Scott

therapy for men convicted of domestic violence, the extent and origins of their abusive behavior is at last undergoing professional scrutiny. For example, Cyndee Pattison, a therapist who runs groups for men who batter women, said: "Most of the time the men don't understand that what they are saying or doing is offensive. It's like a reflex, something they've done all their lives." She says men tend to minimize their actions and the consequences, saying things like "we had a little argument," even when the woman required stitches to close facial wounds.

Ms. Pattison, who works for Victim Services, a private nonprofit agency in New York City that aids battered women, said the men are acting on beliefs they learned from their parents and society. "Boys are taught to settle problems and disputes with their fists, whereas girls are taught to use their mouths," she said.

John Aponte, a founder of the Victim Services counseling program for men who batter, said batterers were

at the extreme of a continuum of men who "carry the seeds of superiority given to them" at an early age. "Men may use intimidation, threats, economic control or emotional abuse," he said. "It's when these control tactics don't work and a man's authority is challenged that he feels he has to resort to physical abuse."

Experts say many abusive men are the products of a vicious cycle in which they were abused as children or witnessed their fathers abusing their mothers physically or psychologically by belittling them.

The issue, Ms. Pattison said, is power and control. "Historically, women were property and men had to keep them in line," she said. An abusive man may control his wife's access to money, not allow her to work and make her account for every penny she spends. He may try to isolate her from social contacts by disapproving of her friends, escorting her everywhere she goes and alienating her from her family. And he may constantly berate her until she is convinced she is worthless. When he is through, she has nowhere to turn for support and affirmation but to him, her abuser.

Why Women Stay

Dr. Samuel C. Klagsbrun, psychiatrist and medical director of Four Winds Hospital in Katonah, N.Y., points out that most abusive relationships start out normally as loving, romantic and exciting. When abuse begins, women have trouble believing that something initially so wonderful is turning sour. There is a lot of apologizing and making up, and the woman thinks everything will go back to the way it once was. Slowly, barraged by repeated abuse, she becomes dehumanized, helpless and unable to see herself as a separate person and to distinguish right from wrong.

Dr. Klagsbrun, who treated Hedda Nussbaum, the abused companion of Joel Steinberg, the New York lawyer now in jail for fatal child abuse, said such women end up surviving in the same way that prisoners of war, hostages or concentration camp victims do: by trying to behave well, by accommodating their captors, by living from hour to hour. An abused woman may even begin to believe her batterer's rationalization that the beating is for her own good.

When a woman finally musters up the courage to leave a man who abuses her, she typically encounters insurmountable obstacles. Sarah Buel was herself once the victim of an abusive spouse. She eventually escaped with her young son, put herself through college, went to Harvard Law School on scholarship and is now an assistant district attorney for Norfolk County, Mass., and a leading advocate for battered women and court reform nationwide. She lists some problems faced by battered women who try to leave:

• Most do not have enough money to live on and cannot earn enough to support themselves or their children, particularly if the children require day care. If they have no street address, many cannot get welfare.

• Most have trouble finding a place to live. Five women are turned away for every one who seeks shelter, and 95 percent of shelters will not accept women with children.

• Leaving an abusive spouse does not necessarily bring safety; it often triggers more serious violence. More women are killed in the process of leaving than at any other time. For example, last week a Milwaukee woman was stabbed to death in the courthouse by the man from whom she was seeking court protection.

• Women who leave are afraid they will lose their children. The men, who control the money, are often able to hire good lawyers and fight successfully for custody of the children. In Massachusetts, 70 percent of men who try to gain custody succeed.

More often than not, the law fails to protect a battered woman. Abusive men, instead of being prosecuted and jailed for committing acts of criminal violence, are either not arrested or are released by disbelieving judges. They are then able to hound and terrorize their spouses until the women are forced to return. Having nowhere else to go, half of them do.

Are You Abused?

Victim Services says that a woman who answers "yes" to any of these questions may be in an abusive relationship.

Does your partner:

- Constantly criticize you and your abilities?
- Become overprotective or extremely jealous?
- Threaten to hurt you, children, pets, family or friends?
- Prevent you from seeing family or friends?
- Have sudden bursts of anger?
- Destroy personal property?
- Deny you access to family assets or control all finances and force you to account for what you spend?
- Use intimidation or manipulation to control you or your children?
- Hit, punch, slap, kick, shove or hit you?
- Prevent you from going where you want when you want?
- Force you to have sex when you don't want to?
- Humiliate or embarrass you in front of others?

Victim Services operates a 24-hour phone line for victims of domestic violence in New York State at (212) 677-7777.

The National Domestic Violence Hotline phone number is (800) 333-SAFE (7233); (800) 873-6363 for the hearing impaired.

CHAPTER IV:

Effective Intervention with Battered Women

QUESTIONS TO HELP YOU IDENTIFY BATTERED WOMEN

1. Ask yourself what is making you think she is battered? (Is it what she says, her injuries, her or her partner's behavior?)

She may say: "I'm afraid to go home."

"Things aren't going so well at home."

"My husband has been upset lately."

"We've been fighting a lot."

2. Build trust with her by helping her feel safe and comfortable. If her partner is with her, take her to a private room where he cannot see or hear her.

3. Then, ask questions about what you have noticed.

a. If she is injured:

"I see you have (injury). Did someone hurt you?"

"I noticed your (injury). Did someone hurt you?"

"I have seen other women who have (injury) and they have been hurt by their partners. I wonder if this is happening to you?"

- b. If she seems withdrawn, sad, anxious, frightened, or is crying. Or if she says something that may indicate battering:

"What are the tears about?"

"What's going on that you seem (mood)?"

"You seem (mood). I wonder what's going on."

"You said (what she said). I wonder if your partner hurts you."

- c. If her partner's behavior or mood seems angry, jealous, controlling, or threatening:

"I noticed your partner acting (behavior). I wonder if he ever hits you."

"Your husband seems (mood). Has he ever hurt you?"

Once she identifies herself as being abused by her partner, you can go on to discuss the situation. Remember: It is very difficult for her to acknowledge the abuse. She may even say she is not a battered woman. Don't argue over the label, look at behaviors with her. You may be the first person she has talked to about the abuse.

INTERVENTION GOALS

The purpose of intervention with a battered woman is to help her reclaim power in her life and to encourage her to act for her own well-being and safety.

The goals of intervention with battered women are to:

1. Validate her experiences
2. Explore her options
3. Advocate for her safety
4. Build on her strengths
5. Respect her right to make her own decisions

Providing Effective Support

1. Allow her to tell her story. Let her know you believe her and want to listen to her. Use listening skills.
2. Allow her to express her feelings. She has a right to be angry, scared, etc. This may be the first time she is feeling safe enough to express anger over her victimization. Show empathy.
3. Express your concern for her safety and the safety of her children. She often denies that abuse occurs or denies the level of danger to herself or her children. She may be in extreme danger from the abuser. Help her explore how she might be safe.
4. Let her know that help is available. Keep information at hand to share with her about helplines, shelters, counseling and other resources.
5. Reinforce the idea that nobody deserves to be beaten. Remind her that she is not the cause of the beatings. She is his excuse. She may be responsible for deciding to stay in the relationship, but not for the beatings. Changing her behavior in the relationship will not stop his violence.
6. Realize that she may be embarrassed and humiliated about the abuse. She may have left the relationship before and may be afraid that people won't believe her this time. Since she feels that the responsibility for the relationship is hers, she may think the abuse is her fault. She may have denied the abuse at one time, but wants help now. Support her desire for help now.
7. Recognize and understand her ambivalence. She is often confused about her feelings. Although he abuses her, she may still love him and not want to give up the relationship. Her love for him may not stop just because he beats her. Acknowledge her ambivalence or confusion.
8. Respect the cultural values which affect her behavior. Although no woman is a stereotype, recognize that some cultural beliefs are important to her and may be a source of security for her.

us myths about domestic violence. She tends to believe some of the myths about domestic violence even though these myths may contradict her own reality. Help her separate the myths from the truths.

10. **Be aware of the effects of isolation and control issues.** The woman may be physically and/or socially isolated due to location, language, intimidation, threats, economic dependence, skills, etc. She may have great difficulty trusting you or believing you will understand. Your warmth and concern for her are vital.
11. **Remember that crisis situations inhibit decision-making ability.** Explain slowly and carefully choices available to her. If appropriate, encourage her decision making ability. Help her assess her own resources and support systems. Provide information about community resources so that she's aware of all of her options. She may need time and a safe place before making any decisions.
12. **Work at building trust with her** so that she can be open about her feelings and the battering relationship. Assure her you will not betray her trust. Show concern for her safety and the difficulties she faces.
13. **Remind her that she is not alone.** There are many other women in similar situations. Connecting with others begins to break the isolation battered women experience. She may call a crisis line or help line, go to a shelter, join a support group for battered women, or participate in individual counseling. Support her efforts to reach out to others.
14. **Remember that she may have other problems that demand immediate intervention.** She may be a danger to herself or others, lack food or housing, be unable to care for her children or herself. Provide services or make appropriate referrals.

EXAMPLES OF SUPPORTIVE RESPONSES

Listed below are two possible responses to statements that are frequently made by battered women. The ineffective responses are reacting to common myths that people have about battering: that the victim is to blame, that she can easily leave, that domestic violence is not dangerous, etc.

The effective responses validate her feelings, show her that you are listening to her and understanding her feelings. The effective responses may seem awkward at first, but are helpful to battered women.

Only one example is given. There are many effective responses.

"My husband started hitting me and he had no reason to hit me this time."

"He beat me so bad I went to the hospital. He broke my nose and cut my face."

"I'm worried about my kids. They are afraid of him too. Sometimes he hits them."

"He thinks I sleep with everyone. He's so jealous. I guess he really loves me."

"He yells at me and calls me names. It really hurts. He gets so angry—he's like a different person."

"I'm afraid to go home—he left to get drunk. He'll beat me when he gets home."

"My minister told me to stay. That he is in charge and I need to please him. That I have no right to break up a marriage. Marriage is forever."

"He says he's sorry and he's going to get counseling. I know everything will be o.k. now."

"He says I'm ugly and fat. Sometimes I think he's right. I'm afraid no one will ever want me."

"He says he'll commit suicide if I don't stay with him. Maybe I should go home until he gets better."

"Are you wondering why he hit you this time?"

"How do you feel about his hitting you?"

"You're concerned because your children are getting hurt too."

"You wonder if his jealousy means he loves you."

"You feel hurt by the things he says when he's angry."

"You feel scared because you're not safe."

"You're worried because your minister wants you to stay in the relationship no matter what."

"When he promises to go to counseling, you believe that everything will be o.k."

"It sounds like you're afraid you're going to be alone for the rest of your life if you end this relationship."

"You're afraid it will be your fault if he kills himself."

"What were you doing when he hit you? What are you doing to trigger his violence?"

"Why don't you leave him? You're crazy to stay with someone like that."

"They are better off with a father. You should go to a parenting class."

"His jealousy will lessen if you help him trust you more."

"Don't worry. He's just letting off steam. He needs to get out his feelings."

"If you stop enabling him to drink, he won't drink or beat you anymore."

"Your minister is crazy. Don't pay attention to him."

"You're doing the right thing. I can work with both of you so you can both see better ways to talk to each other. That's the main problem."

"Maybe you'd feel better if you lose some weight."

"You should talk to him and see if you can calm him down. He'll feel better if you're there."

Victimization of Mothers of Abused Children: A Controlled Study

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ABSTRACT. To search for indicators of violence against mothers of child abuse victims by husbands or boyfriends, the women's medical records were reviewed and compared to records of mothers of a nontraumatized child comparison group. Of the 32 children ascertained in a 6-month interval, the records of mothers of 19 (59.4%) were diagnostic or highly suggestive of current or previous victimization. Although the prevalence of documented violence against the mothers of children in the comparison group was an unexpectedly high 16%, the case-control difference was highly significant ($P < .001$). Although differences were found in the (younger) ages and (higher) parity of mothers of abused children, these differences did not predict risk of mothers' exposures to violence in a multivariate analysis. The rate of violence against single mothers of child abuse victims, however, was four times the rate against mothers who were married ($P = .022$). These findings suggest a need to broaden the diagnostic conceptualization of child abuse to include maternal victimization and argue for including data concerning maternal risk in formulating diagnoses and disposition plans for abused children. *Pediatrics* 1989;84:531-535; *child abuse; maternal victimization, battered women.*

With the publication 27 years ago by Kempe and colleagues¹ of the influential paper, "The Battered Child Syndrome," a diagnostic concept was coined that stipulated a causal connection between the aggressive actions of a perpetrator (a parent or foster parent) and the symptoms of a child victim. In the intervening years, the notion has been formalized in laws obliging physicians and others to report child abuse, and the concept has been expanded in clinical studies and legal definitions of child abuse.²

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An important conceptual advance was made in 1980 with the publication of the Straus et al³ national survey of family violence, in which parent to child violence was perceived as one among many modes of physical aggression within families. Violence between parents was estimated to be as frequent as, or more frequent than, violence toward children. Violence between parents and toward children were estimated from interviews to be related. Women who were victims of severe violence, for example, were 150% more likely to use severe violence in resolving conflicts with their children than women who were not.

A recent review of data from studies concerning the posited intergenerational transmission of violence suggests that minimally 30% of children will express toward their own offspring physical or sexual abuse or extreme neglect similar to that which they had suffered.⁴

Although a literature is developing regarding the psychologic impact of violence between adults on children, there are few reports of physical victimization of both children and mothers.⁵⁻¹¹ With a view to exploring the extent of overlap of maternal and child abuse, a retrospective case-control study was designed.

METHODS

Case Selection

Cases were selected through a multitiered review of all child abuse reports filed at Boston City Hospital during the 6-month period, January 1, 1986, through July 6, 1986. Given the purpose of this study, only those reports filed by emergency room staff were retained for further review; there were 95 such filings (59% of the total).

These reports were evaluated by the following inclusion criteria: (1) physical examination findings

positive for signs of physical abuse except where sexual abuse was the chief complaint; (2) presence of biologic mother at the time of the child protective report, and (3) injuries that were not self-inflicted. Reasons for exclusion included injury known to be inflicted by a day-care worker or a case that was deemed "unsubstantiated" after investigation by the Massachusetts Department of Social Services.

On the basis of these inclusion and exclusion criteria, 63 case reports were retained for further review. The mothers' charts were then obtained through the following process. First, the mother's name and address, as listed on the child abuse report, were compared with those of the insurance guarantor (usually the mother) on the child's computerized demographic record. The mother's social security number was often available from this source. Subsequently, the mother's name was entered into the hospital's computerized data base. These records were reviewed and the mother's identity was verified through a comparison of social security number, address, and consistency of information in the medical chart itself (eg, birth records of the child).

Following a definite match, the medical record number was retrieved and the medical chart requested. Sixteen mothers had no medical record numbers at Boston City Hospital and presumably had not received medical care there. Forty-seven charts were requested; 5 of these were not available after two requests from the medical records department. The remaining 42 charts were reviewed. Ten of these medical records were excluded because of insufficient information.

Control Selection

Control mothers were also selected based on initial review of children's records. The emergency room daily logs were scanned for records of children with nontraumatic complaints who had sought medical attention within the same month as the index case. In addition to time of emergency room visit, the children were also matched for age, sex, race, and socioeconomic status (dependency on Medicaid was used as a proxy for low socioeconomic status). The same process used to locate a case mother's chart was used to retrieve the control mother's medical chart.

Chart Review

Thirty-two case and 32 control mothers' charts were evaluated and assigned to one of four categories of maternal victimization: (1) diagnostic, (2) suggestive, (3) notable for relationship problems and psychosomatic complaints, and (4) nonsuggestive.

These categories were operationalized using the following criteria: diagnostic—a chart with explicit data both confirming intentional physical trauma and identifying the perpetrator as an intimate man; (2) suggestive—a chart with documented intentional physical abuse but with no specification of the perpetrator's identity, either as man or woman, acquaintance or stranger; (3) relationship problem—a chart without specific indication of physical abuse but rather of significant marital/relationship problems with such associated psychosomatic complaints as hyperventilation syndrome, depression, and tension headaches; and (4) nonsuggestive—a chart with no evidence of physical abuse and/or relationship problems. (It should be recalled that charts with insufficient information for evaluation were excluded before this review.) The following additional information was extracted from the medical record: mother's date of birth, race, employment status, type of health insurance coverage, and number of other children.

The data were gathered from the medical records by one of us, who was unaware of the hypothesis and the classification status of case and control mothers. Because the first eligible control mother was used, however, there was little opportunity for bias in the selection of the comparison group. The possible intrusion of bias in the coding of data from the records was addressed in meetings among the coauthors as the study proceeded.

The study design was reviewed and approved by the chief of the Boston City Hospital's Child Protection Program, the chairman of the Department of Pediatrics, and the Institutional Review Board before the initiation of the research.

Statistical Methods

Data analysis was done with statistical methods appropriate both to the level of measurement of the variables and to the sampling design of the study. The appropriate unit of analysis for the central questions in this retrospective study was the matched pairs that constituted the sample rather than individual subjects. Thus, for example, the major question regarding differences in the presence or absence of violence against mothers of case children and control children was addressed using McNemar's test with a continuity correction.¹² Where the variable being considered was at least interval level, as in the comparison between cases and controls regarding maternal age, a paired *t* test was used.

RESULTS

The child's record served as the basis for selection of control children's records. They were matched

sex, age, race, socioeconomic status, and time of emergency room visit. The matching variables are compared in Table 1.

All control children were seen in the pediatric emergency room within 1 month of their target case child's visit. The criteria for matching were adequately met. Characteristics of case mothers and control mothers are compared in Table 2.

Although case mothers were somewhat younger than control mothers, the difference was not statistically significant (paired $t = -1.83, P = .08$). Similarly, although case mothers were twice as likely

to be employed than control mothers, the difference again was not significant (McNemar's test, $\chi^2 = 3.125$). Case and control mothers did differ significantly, however, on marital status and parity. Fewer than one of five case mothers were married (19.4%) in comparison to nearly half of the control mothers (45.2%) (McNemar's test, $\chi^2 = 4.083, P < .05$). Similarly, case mothers had more children (1.28 vs 0.56 children); the difference was significant (paired $t = 2.70, P = .011$).

The central focus of this study was the relationship between child abuse and violence against mothers in mother-child pairs where a protective report was filed on behalf of the child at an emergency room visit. The cross-tabulation of maternal victimization categories for case and control pairs is given in Table 3. The marginal totals indicate that case pairs were far more likely to be classified in the suggestive and diagnostic categories (37.5% and 21.8%, respectively) than were the control pairs (9.4% and 3.1%, respectively).

This scale of violence against mothers, however, is not really ordinal. The amount of violence within the suggestive category may have been greater than within the diagnostic category; the difference was that a perpetrator was identified in the latter and not in the former. Thus, there were alternative methods for collapsing the table, depending upon emphasis.

A cross-tabulation of dichotomized maternal victimization categories that identify the mother as victim, disregarding the identity of the perpetrator and his relationship to the mother, is presented in Table 4. Thus, the diagnostic and suggestive categories were pooled, and relationship problems and nonsuggestive categories were pooled.

The case pairs were far more likely to be victims of violence than were the control pairs (59.4% vs 12.5%, respectively). One of eight control mothers were victims of violence, an impressive prevalence, and nearly three of five case mothers were victimized. The difference was highly significant (McNemar's test, $\chi^2 = 11.53, P < .001$).

The difference between case and control pairs with respect to the victim of violence dichotomy as shown in Table 4 was striking. The result requires

TABLE 1. Case and Control Children Variables That Served as the Basis for Matching

	Cases Children	Control Children
Sex (No. [%])		
Male	15 (46.9)	15 (46.9)
Female	17 (53.1)	17 (53.1)
Age		
Mean	7.04 y	6.89 y
Range	6 mo-17 y	3 mo-16 y
Race/ethnicity (No. [%])		
Black	23 (71.9)	
Hispanic	7 (21.9)	
White	2 (6.3)	
Health coverage (No. [%])		
Medicaid	25 (78.1)	25 (80.6)
Blue Cross/Blue Shield	2 (6.3)	4 (12.9)
Private	3 (9.4)	1 (3.2)
Health maintenance organization	2 (6.3)	1 (3.2)

TABLE 2. Case and Control Mother Variables

	Case Mothers	Control Mothers
Employment status (No. [%])		
Unemployed	22 (68.7)	28 (87.5)
Employed	10 (31.3)	4 (12.5)
Age (y)		
Mean	28.81	31.25
Range	17-46	17-51
Marital status (No. [%])		
Married	6 (19.4)	14 (45.2)
Single	25 (80.6)	17 (54.8)
Other children (No.)		
Mean	1.28	0.56
Range	0-4	0-3

TABLE 3. Cross-Tabulation of Victimization Categories for Case and Control Mothers (Full Categorization)

Case Category	Control Category				Total No. (%)
	Non-suggestive	Relationship Problems	Suggestive	Diagnostic	
Nonsuggestive	6	1	0	1	8 (25.0)
Relationship problems	5	0	0	0	0 (15.6)
Suggestive	9	1	2	0	12 (37.5)
Diagnostic	5	1	1	0	7 (21.8)

TABLE 4. Cross-Tabulation of Victimization Categories for Case and Control Mothers (Mother as Victim Dichotomy)

Case Category	Control Category		
	Victim	Nonvictim	Total No. (%)
Victim	3	16	19 (59.4)
Nonvictim	1	12	13 (40.6)

* The percentages for victims and nonvictims in the control category are 12.5 and 87.5, respectively.

no elaboration with respect to the child-focused variables that served as the basis for case and control selection. Nevertheless, given the differences between case and control pairs on mother-level variables (viz, number of other children, maternal age, and marital status), this difference needs to be examined in more detail.

A significant difference was noted earlier between case mothers and control mothers with respect to the number of other children. A one-way analysis of variance was performed on the case data to evaluate the relationship between this variable and maternal victimization. The analysis revealed no overall significance when using the full four-category victimization scale. However, case mothers categorized as suggestive and diagnostic victims of violence had more children than did mothers in the other two categories. The dichotomized violence scheme was employed and a *t* test was used to compare victims of violence (mean 1.47 children) with nonvictims (mean = 1.00 children); the difference was not significant ($t = 1.158$).

A significant difference was also noted earlier in the ages of case and control mothers. An analysis was conducted of case data to determine whether within that group any relationship existed between maternal victimization and maternal age. Again, the overall differences using all four violence categories were not statistically significant. However, victimized case mothers appeared somewhat older than nonvictimized mothers. A *t* test on the dichotomized grouping indicated that victimized case mothers (mean age 30.84 years) were significantly older than nonvictimized case mothers (mean age 25.85 years) ($t = 2.213$, $P = .034$). For control mothers, no differences in age were found.

Marital status, as well, demonstrated a significant relationship to case-control status. The case data were analyzed to test whether or not a relationship existed between victimization and marital status. The results appear in Table 5. Whereas 16.7% of married case mothers were victims of violence, 68.0% of single case mothers were victims, more than four times the rate ($\chi^2 = 5.236$, $P = .022$).

A similar analysis was conducted for control mothers. Although the number of control mothers

TABLE 5. Victimization and Marital Status of Mothers of Abused Children

Child	Mother's Marital Status	
	Married	Single
Victim (No. [%])	1 (16.7)	17 (68)
Nonvictim (No. [%])	5 (83.3)	8 (32)

who were victims of violence was small, the results were consistent with the case data. Fewer than one in four single control mothers was a victim of violence, although all four victims were single; none of the married control mothers were victims (Fisher's exact test [one-tail], $P = .076$).

Given the original focus of this study and the relationship between marital status and victimization, an analysis was performed limited to case-control pairs of the same marital status. In this subsample, case pairs were again far more likely to be victims of violence than were control pairs (66.7% vs 22.2%, respectively). Six of nine mothers of case children were victimized, in comparison to two of nine mothers of control children. The difference was again significant (McNemar's test, $\chi^2 = 4.90$, $P < .05$).

DISCUSSION

The 59.4% concurrence of maternal victimization and child abuse in this study is impressive and worrisome. The findings exceed previous estimates in the literature.

Stark et al¹⁰ reviewed the medical records of mothers of children referred to a child protective team at Yale-New Haven Hospital during 1 year without restriction to emergency room visits. Their "positive" and "probable" groups were defined similarly to our categories of diagnostic and suggestive, respectively. In their study, these two groups accounted for 41% of the cases of victimization. Their positive group, in a manner similar to our own diagnostic group, accounted for approximately 25% of the cases; in our own, the result was 23%. However, our suggestive group was more than double their probable group (40% vs 16%, respectively). Our finding of three times the amount of violent marital conflict may signify greater risk for the Boston mothers, assuming that health care providers in both locations are similarly documenting these issues. This comparison suggests that traumatized children visiting inner-city emergency rooms are at high risk for exposure to violence against their mothers.

Pascoe et al¹¹ reviewed records of children who were referred to a child-protection team in North

Carolina during a 2-year period, where a majority of families were rural. Their results revealed a higher prevalence of wife abuse in women with multiple pregnancies and in alcoholic families. Overall, they found a 40% prevalence of wife abuse when the child's records were supplemented with information from social workers involved with the cases. The authors suggested that this rate was high partly on the basis that the social workers were attuned to family violence issues.

As a corollary, Flitcraft and Stark's probable and our suggestive groups may also be composed of women abused by male partners; but their medical records may not document the abuse sufficiently. Many health care providers have insufficient knowledge and understanding of family violence¹³ and many victims seek medical care with nontraumatic complaints.¹⁴

The finding of an association between maternal victimization and single marital status corroborates the findings of Goldberg and Tomlanovich.¹⁴ They demonstrated an increased risk of spouse abuse in unmarried women.

More research concerning the convergence of child abuse and spouse abuse would appear urgently to be needed. From so few published data, nearly all composed principally of families in poverty, little can be confidently generalized. Nor are any of the reports able sufficiently to probe the kinds of information about family life that would be most useful to practitioners: information concerning the child: medical and developmental history and present status, handicapping conditions, quality of relationships to care givers; information concerning the mother: medical and psychologic history and present status, family and social history including victimization, perceptions of people and institutions who may have tried to help her, history of the spousal relationship and the priority and meaning of the abused child; information concerning the abuser(s): medical and psychologic history and present status, family and social history including victimization, history of previous relationships with women and children, educational and employment status, use and abuse of psychoactive substances.

To address the problem of child and spouse abuse in clinical practice, we recommend the wider use of domestic violence protocols in adult and pediatric medical care. The systematic collection of data and engagement of protective interventions should include both children and their mothers.

Emergency room staff should be equipped with basic knowledge of the legal rights of domestic violence victims and their roles as legally mandated reporters of child abuse and neglect. In addition, they should be advised to document their professional interactions fully.

CONCLUSION

The striking overlap in this study between the victimization of children and their mothers suggests a need for a serious redefinition of both problems, focusing on violence in the family. Such a family-level conceptualization may be difficult to bring about in today's environment of specialized services and smaller human service budgets. But we believe that certain steps can be taken. Just as the staff of pediatric emergency rooms can take the time, pursue the training, and advocate for increased access to services to contend with the realities of mothers' lives, so may the professionals who hear mothers' complaints, from physicians, nurses, to battered women's shelter workers, begin systematically to consider the safety and welfare of their offspring.

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ARTICLES

Family Advocacy Clinic

WHAT IS THE FAMILY ADVOCACY CLINIC AT THE BOSTON FLOATING HOSPITAL?

The Family Advocacy Clinic (FAC) provides comprehensive pediatric, psychosocial and developmental assessments of children and mothers. The goal of the Boston Floating Hospital FAC is to improve safety and health of women and their children who have experienced violence in their homes, either currently or in the past. By evaluating current needs of children and mothers, the FAC can advocate for appropriate services and support through community and other agencies.

WHO WORKS IN THE FAMILY ADVOCACY CLINIC?

The Clinic is staffed by a team of a general pediatrician, a social worker for General Pediatrics at Boston Floating Hospital and child psychologists. Each is skilled in working with families about general issues, as well as in counselling women and children about family violence in a sensitive, supportive manner.

HOW DOES THE CLINIC WORK?

Mothers and children are scheduled for one to three half-day visits, although not all children need attend each visit. Women are

interviewed privately to understand their concerns about the health of the children, possible effects of domestic violence on the children and current safety issues both for mothers and their children. The children each receive a full physical examination usually in the presence of the mother. Subsequently the social worker interviews each child or there is a family session with mother and children together. If indicated, developmental testing may be scheduled to address concerns, such as language or learning problems in the children. Once the initial evaluations are complete, a feedback session with the mother is scheduled to discuss the results of the evaluation and make recommendations.

WHY AREN'T FATHERS INVOLVED IN THE CLINIC'S EVALUATION?

Because of safety and confidentiality issues, parents who use violence or threats of violence, usually fathers or boyfriends of mothers, are NOT asked to participate in this clinic. Information about treatment programs for men who hurt their wives, girlfriends and/or children is available and referrals will be facilitated if appropriate.

ARE THESE SERVICES CONFIDENTIAL?

YES. The medical records generated are NOT placed in the child's hospital chart. FAC

reports are sent only to the referring agency. They can be sent elsewhere, for example, the children's pediatrician or school with parental permission.

WHY IS THERE A NEED FOR THE FAMILY ADVOCACY CLINIC?

Unfortunately too many women experience violence and emotional abuse from their partners or former partners. Children can be affected by this in many different ways, from subtle behavioral problems to severe injuries from abuse. Whether and how they are affected depends on many individual factors. The FAC staff aims to help mothers sort out complex questions about the effects of domestic violence on children. Mothers are often expected to protect themselves and their children without adequate support. The FAC staff offers respectful and up-to-date information to help women and children cope with and overcome violence and abuse in their families. Children and adolescents need to hear positive messages about their mothers, whom many blame for families' problems.

HOW ARE APPOINTMENTS MADE FOR THE CLINIC?

Most appointments are made through the Massachusetts Department of Social Services Family Life Center. Inquiries regarding appointments from other referral sources can be made by calling (617) 956-5337.

Boston Floating Hospital for Infants and Children

Violence

U P D A T E

A Monthly Newsletter Dedicated to the Continuing Education of Professionals in the Field of Interpersonal Violence

FEATURE
Impact of Spouse Abuse on Children of Battered Women
Implications for Practice

by **Honore M. Hughes**
Saint Louis University

Literature regarding children of battered women is sparse, with the results from research primarily accumulated over the last 10 years. Many people do not realize that when spouse abuse occurs in a family, the children are also very likely to be negatively affected. The most accurate description of these unwilling observers—the “unintentional victims”—is that they are emotionally abused. Recently, critiques and summaries of this area have begun to appear, and much of the following article is based on two reviews by Hughes (1, 2).

At this time, investigations in this area have progressed beyond the descriptive and clinical anecdote stage. Researchers working actively in this area are using standardized instruments and appropriate comparison groups. However, the samples of families studied have been mostly limited to low-income families and to those who sought refuge from violence at shelters for battered women or who have requested treatment for marital violence.

Prevalence

To briefly review, researchers’ best estimates regarding the prevalence of spouse abuse range from 10% to 30% of couples. Even with the most conservative estimates, 10% to 15%, it is clear that a substantial number of children live in violent homes. When investigators ask women who have been beaten where their children are while they are being assaulted, in 90% of the cases the children are either in the same room or in the next room.

Impact

Although the data base regarding the impact of observing spouse abuse is relatively small, there is sufficient evidence to state that for children, being exposed to parental violence is a traumatic experience. On standardized behavior problem checklists, mothers describe high levels of problematic

behavior in their children. Consistent differences between children of battered women and comparison children in both internalizing (e.g., depressed, anxious) and externalizing (e.g., aggressive, dis-

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obedient) behaviors have been found, with both behavioral and emotional problems significantly higher in the children of battered women. Other difficulties that have been reported include (a) an increase in somatic symptoms, (b) lower cognitive skills and school achievement, (c) difficulties with social problem solving, and (d) tendencies to be more external in locus of control.

Focusing more on personality development, clinicians have also discussed the disruption that occurs in personality development when developmental stages are interrupted by violence in the family. For many, Erik Erickson’s psychosocial stages of personality development have been helpful in understanding the problems experienced by violent families. His first and most basic stage, that related to the development of trust in other people, is the one most frequently mentioned by clinicians as being disrupted by family violence.

Severity of Impact

Other than high mean scores, another way to examine the impact of spouse abuse on the children is to look at the proportion of children who are reported to exhibit more severe difficulties, problems that are beyond those of the normative group for the measure. The Child Behavior Checklist (CBCL), one of the most commonly used instruments, provides T-scores and percentiles for age

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Feature

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and gender; thus shelter children can be compared with the normative sample on extent of problems.

Several researchers have investigated the percentage of children in shelter samples who have CBCL scores above the cutoffs that indicate a need for clinical services. Depending on the gender of the child, the type of violence experienced, and the T-score used as the cutoff, the percentages reported indicate that from 25% to 65% of shelter children receive scores above that clinical level. On the average, approximately 35% to 45% of shelter children fall above that cutoff.

Mediating Variables

In terms of factors that influence the psychological adjustment of individual children, investigators in this area have stressed the importance of identifying variables that mediate the impact of domestic violence on the children. The list of potential mediators has been adapted from a number of sources (1, 2) and includes both child and situational/contextual factors (see box). The variables that have received the most in-depth examination are past experience with violence, and gender.

Type of Violence Experienced

Researchers in the area of family violence have quite consistently found that the co-occurrence of different types of violence is rather high, with estimates in the 40% to 60% range. As an example, available evidence from shelters and treatment programs indicates that 50% to 60% of the observers of domestic violence have also been physically abused themselves. Thus, in violent homes, chances are about 1 in 2 that if child abuse is present, spouse abuse is also likely to be occurring, and vice versa.

Based on research I conducted, results indicate that past experience with different types of violence does seem to make a difference in psychological adjustment: The more types of violence children are exposed to, the less well adjusted they will be. Thus type of violence experienced seems to be an important mediator in children's adjustment.

Gender

A differential impact on the psychological adjustment of children in shelters based on gender seems to appear in a manner that is inconsistent with previous literature on influences of gender on psychopathology. Most researchers in this area find that both shelter boys and shelter girls receive high mean scores on both internalizing and externalizing behaviors. Moreover, when severity of impact is investigated using clinical level cutoffs based on those same behaviors, again both boys and girls are high on both types of problems. It is interesting to note that this pattern is contrary to the traditional gender-role-related pattern of behavior

problems, wherein boys showed externalizing-type—and girls exhibited internalizing-type—difficulties.

Mechanisms by Which Conflict Exerts an Impact

In terms of a framework for understanding the impact of spouse abuse on children and the influence of mediating variables, my adaptation of Grych and Fincham's (3) discussion of marital conflict and children's adjustment suggests that we look at direct and indirect mechanisms. Under *direct mechanisms* fall (a) modeling of aggressiveness and (b) stress in the family.

Regarding the fact that both boys and girls exhibit internalizing and externalizing symptoms, the aggressiveness on the part of both genders likely has been acquired through modeling. Their fathers are strong, powerful models who obtain what they want through aggressiveness. In contrast, the children's anxiety and depressive-type symptoms are apt to be a result of the stress the children feel from the spouse abuse. Jaffe, Wolfe, and Wilson (4) point out that many of the signs of distress in children of battered women are very similar to posttraumatic stress disorder (PTSD) symptoms.

Indirect mechanisms of influence include (a) characteristics of the parent-child relationship (for example, quality of attachment or emotional availability) and (b) disciplinary practices (e.g., those that are exceedingly negative, harsh, inconsistent, and so on). Related to the former, the parent-child relationship can be influenced by many factors, but one of the most important is the mental health of the mother. A common effect of being beaten is depression, with the result being that the abused woman is often emotionally unavailable. Thus the quality of attachment and the parent-child relationship are at risk for being negatively affected.

The second indirect mechanism of influence concerns disciplinary practices. Again, many variables can enter into this equation, depending on the length of time there has been physical violence between the parents, whether violence has been directed at the child, how much parenting is done by either parent, and the effectiveness of the parenting. Inadequate parenting in the form of very inconsistent and/or harsh discipline puts children at especially high-risk for behavioral and emotional problems.

Research Questions

Because so little empirical research has been conducted with children of battered women, there are multiple subareas that need extensive investigation. It is clear that, in addition to searching for variables that mediate the impact, empirically testing the proposed model for the mechanisms of influence, and studying more diverse samples, the

Feature...

Continued

major task for researchers is to examine the effectiveness of different treatment approaches.

Intervention with children of battered women is the area in which there is probably the smallest amount of literature available. Most of the information is based on clinical experience; therefore we have little empirically tested information to guide our clinical work. The few interventions that have been published have assessed outcome informally, although the results look promising. More types of treatment, including crisis intervention, need to be evaluated, and in a more formal, standardized manner.

Several clinical descriptions of interventions have been published (e.g., 4), with the majority of them developed for school-age children using a time-limited group format. Jaffe et al. have informally evaluated their group approach from the children's, mothers', and clinicians' perspectives and recommended it as appropriate for mild problems. In addition, they suggested the group be used

Points to Remember

1. Spouse abuse is emotional/psychological abuse to observers. Don't overlook the children.
2. The more types of violence a child is exposed to, the worse the child's psychological adjustment is likely to be.
3. Ask about the presence of violence in the homes of your clients and attend to the response. Provide information about safety and shelters if necessary.
4. Behavioral/emotional difficulties that we see most frequently are aggressiveness and anxiety among both boys and girls.
5. Intervene by actively disapproving of the use of violence and by teaching children new interpersonal and problem-solving skills.

as a general educational format for any child who has been exposed to parental violence.

Some of the issues covered in the groups include (a) labeling feelings, (b) dealing with anger, (c) safety skills, (d) social support, (e) social competence and self-concept, (f) responsibility for parent/violence, (g) understanding family violence, and (h) wishes about family (see 4 and 5 for more details).

Implications for Practice

Child- and Parent-Focused Intervention

When we see any member of a family in our centers or clinics, the most important thing to do is to ask about violence between the adult partners. Our acknowledgment of the possibility of violence conveys to a mother that this experience is important to discuss and has a detrimental impact on her children as well as on her.

As clinicians, we need to be advocates for the child and mother. Put the family in touch with domestic violence projects or social workers if necessary. In addition, work with teachers and the school. Basically, help the woman to do what needs

Mediating Variables*

1. Child factors

temperament, self-esteem, cognitive abilities, coping abilities, attributional style, gender, age, cognitive developmental abilities

2. Situational/contextual factors

(a) more or less stable factors related to the child (e.g., past experience with violence, perceived emotional climate of the family)

(b) marital conflict factors (e.g., frequency, intensity, duration, content, resolution, overt, covert, age at onset)

*Adapted from Grych & Fincham, 1990; Hughes et al., 1991; Hughes & Fenuzzo, in press; Moore & Pepler, 1990.

to be done to stop the violence and keep herself and her children safe.

Child Focus

Research findings indicate that we must intervene with both behavioral difficulties (especially aggressiveness) and emotional problems (e.g., depression, anxiety, other PTSD-type symptoms). Empirical evidence from other areas of family violence suggests that intervention with aggressiveness is a major priority; one important and effective approach to treating aggressiveness is teaching anger control (e.g., 6). In addition, children of battered women often show difficulties in social problem solving. Improving those abilities would be helpful, as this would allow the children an opportunity to establish peer support systems. Teaching children how to get along better with peers, along with enhancing their empathy skills, has the additional benefit of reducing aggressiveness as well (5).

We must also attend to the emotional symptoms in both girls and boys. Research suggests that a cognitive-behavioral approach to treating both anxious and depressive symptoms would be helpful. Treat negative cognitive errors and other characteristic thought patterns that seem to be conducive to depression (e.g., attributions and locus of control). Working on the skills deficits that are seen in the areas of social problem solving can also help with low self-esteem and feelings of lack of competence. Play therapy (either nondirective or more focused) to deal with interpersonal and intrapersonal issues is also likely to be beneficial (7).

In addition, consider intervention for academic deficits as well as behavior problems. Success with school can be a strengthening and buffering experience for the children.

Parent Focus

Research from other areas of family violence and the model presented here suggests that we need

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to focus on parenting in two ways. One is to help a mother decrease her discipline problems. She can be a much more adequate parent with more effective discipline, and she will feel empowered by her effectiveness in her role as a mother. Second, we need to attend to and treat women's depression. Doing so will also improve a mother's ability to be attached to her children and meet their emotional needs.

Comprehensive, Extensive Approach

It is important to remember that effective treatment needs to be extensive, that is, lasting long enough to have an impact. With physically abusive families, research suggests that comprehensive (i.e., both child- and mother-focused) intervention lasting from 7-18 months after the violence has ended is necessary. Follow-up contacts—perhaps monthly—after the intensive intervention can be very effective.

Health Care Professionals

Intervention from health care professionals can be extremely beneficial to the children and their families. Several studies indicate that a battered woman is most likely to seek help from the medical community, whether it is from her physician, pediatrician, or a hospital's emergency room. Often, depending on her financial and emotional resources, her first attempt to obtain help is from the ER. An informed physician or nurse can be very effective in assisting the children. Many good recommendations are contained in an article by Wildin, Williamson, and Wilson (8). Essentially, they urge that the health care person ask about violence in the family and respond to the woman's answers. With

the children, acknowledge how scary violence is and give the woman information about how to keep safe. If a referral seems to be in order, refer the family to a social worker rather than a psychiatrist.

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(A full list of related references
may be obtained by writing to the publisher)

Supplemental Materials



SCOTT HARSHBARGER
ATTORNEY GENERAL

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The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

Domestic Violence Facts

- * In Massachusetts, on average, a woman was killed by her batterer every 22 days in 1990, every 16 days in 1991, every 9 days in April, 1992, and as of September 1992, every 5 days (Massachusetts Department of Public Health).
- * National surveys indicate that at least 2 million women per year are severely assaulted by their male partner (Straus and Gelles, 1990).
- * From 1976 through 1987, the deaths of approximately 38,648 people over the age of 15 resulted from one partner killing another. Of these deaths 61% of the victims were women killed by their husbands or boyfriend, and 39% were men killed by women partners (Browne and Williams, in press).
- * In a national survey over half of the males who were violent toward female partners also abused their children (Finkelhor, et al., 1983).
- * In the United States women are more at risk to be assaulted and injured, raped, or killed by a current or ex-male partner than by all types of assailants combined (Finkelhor and Yllo, 1985; Browne and Williams, 1989).
- * Abused women make up approximately 22 - 35% of women presenting with injury to hospital emergency rooms (Randall, 1990).
- * Police in Massachusetts estimate that 40 - 60% of their calls involve family violence (C.J.T.C. Domestic Violence Manual, 1986).
- * About 3 million children each year witness abuse of one parent by another (Robert S. Pynoos, M.D., U.C.L.A. School of Medicine).
- * Violence by intimate partners is the leading cause of injury for women, "responsible for more injuries than car crashes, rape, and muggings combined" (Centers for Disease Control).
- * Abuse of pregnant women is the leading cause of birth defects and infant mortality (March of Dimes study).
- * In Norfolk and Walpole prisons, at least 80% of the inmates have been victims of or witness to family violence (Department of Social Services).



MASSACHUSETTS COALITION OF BATTERED WOMEN SERVICE GROUPS

107 South Street (5th floor), Boston, Massachusetts 02111 (617) 426-8492

MEMBER PROGRAMS

- Alternative House
Lowell
- A Safe Place
Nantucket
- Casa Myrna Vazquez, Inc. and
Mary Lawson Foreman House
of CMW
Boston and Dorchester
- Daybreak
Worcester
- Elizabeth Stone House
Jamaica Plain
- F.I.N.E.X. House
Dorchester
- Harbor Me
Chelsea
- HAWC - Help for Abused
Women and Their Children
Salem
- Independence House
Hyannis
- Necessities/Neceidades
Northampton
- NELCWTT - New England
Learning Center for Women
in Transition
Greenfield
- New Bedford Women's Center
Battered Women Project
New Bedford
- New Hope, Inc.
Attleboro, Taunton, Norwood
- Renewal House
Boston
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Somerville
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Martha's Vineyard
- YWCA's of Western
Massachusetts
- Arch - Springfield
- New Beginnings - Westfield

**A STATE OF EMERGENCY EXISTS FOR BATTERED WOMEN
A Historical Overview**

In 1989

**A WOMAN WAS MURDERED, ALLEGEDLY, AS A RESULT OF
DOMESTIC VIOLENCE, EVERY 22 DAYS IN MASSACHUSETTS ...**

BATTERED WOMEN'S PROGRAMS: (1.)

- Received 54,769 hotline calls
- Sheltered 2,029 women; accompanied by
3,173 at-risk children
- Provided 12,714 battered women individual or group peer support services
- Assisted 6,641 women in obtaining necessary protection from the Courts

**WHEN STATE FUNDING WAS CUT FROM \$5.4 MILLION TO \$4.8 MILLION
THE ADVOCACY COMMUNITY WARNED THAT MORE WOMEN
WOULD DIE...**

In 1990

STATE FUNDING REMAINED LEVEL AT \$4.8 MILLION

- A deepening recession and an erosion of the Commonwealth's safety net of supportive services made it more and more difficult for advocates to educate and empower battered women to develop safety plans (see #4) to protect themselves and to rebuild their lives free from on-going abuse.

BATTERED WOMEN'S PROGRAMS: (2.)

- Received 68,199 hotline calls
- Sheltered 2,013 women; accompanied by
3,097 at-risk children
- Provided 12,074 battered women with individual and group peer support services
- Assisted 9,361 women in obtaining necessary protection from the Courts

(1.) Statistics from 27 member programs of MCBWSG only.
 (2.) Statistics from calendar year 1989 and 1990 - full impact of funding cuts and results deterioration in ability to provide services not seen until 1991.

In 1991

MGL 209A, as amended by Chapter 403 in 1990, mandated that police arrest on violation of restraining order; A state-wide police policy directed officers to refer victims to appropriate battered women's programs; and passage of this landmark domestic violence legislation generated extensive media attention on the issue.

The Massachusetts Coalition of Battered Women Service Groups supported passage of Chapter 403, a comprehensive amendment to MGL Chapter 209A - The Abuse Prevention Act, in the believe that the statute was necessary to protect untold numbers of vulnerable people from family abuse.

THE COALITION AND THE ADVOCACY COMMUNITY WARNED...

- That if adequate funding was not restored to existing Battered Women's Programs;
- If the Police, Prosecutors and Courts did not adequately implement the provision of the new statute;
- If the most isolated, terrorized and vulnerable battered women believed, through media stories, that the police and courts could/would protect them when they found the courage to reach out for help...

THEN MORE WOMEN AND CHILDREN WOULD DIE.

STATE FUNDING REMAINED LEVEL AT \$4.8 MILLION

BATTERED WOMEN'S PROGRAMS:

- Received 69,016 hotline calls
- Sheltered 1,992 women; accompanied by 2,543 at-risk children (3.)
- Provided 8,718 battered women individual or group peer support services (4.)
- Assisted 9,416 women in obtaining necessary protection from the Courts. (5.)
- Were called on more and more to provide training and technical assistance to police, courts, social service agencies and hospitals - to work toward an integrated community response.

In 1991

A WOMAN WAS MURDERED, ALLEGEDLY, AS A RESULT OF DOMESTIC VIOLENCE EVERY 16 DAYS, SEVERAL AS THEIR CHILDREN WATCHED. TWO CHILDREN DIED WITH THEIR MOTHERS.

-
- (3.) While approximately the same number of women have been sheltered in available beds for the past three years, the number of children sheltered dropped significantly. We believe that, with the absence of available 707 certificates and the lack of affordable housing, many battered mothers are choosing to remain home and suffer the abuse rather than risk homelessness for themselves and their children.
 - (4.) 3,356 fewer women were given these services which help them plan: how to safely leave their batterers and how to keep themselves and their children safe in the long run.
 - (4.) & (5.) In addition to the women and children sheltered, approximately 18,605 women received direct services. These additional women from your communities were care-takers for approximately 28,000 at-risk children.

By April 1992

A WOMAN WAS MURDERED, ALLEGEDLY, AS A RESULT OF DOMESTIC VIOLENCE, EVERY 9 DAYS. FIVE CHILDREN HAD DIED AT THE HANDS OF THEIR MOTHER'S BATTERER; TWO MORE WERE WOUNDED. ONE MOTHER AND TWO NEIGHBORHOOD FRIENDS OF BATTERED WOMEN ALSO LOST THEIR LIVES.

Responding to Crisis

- *The Caucus of Women Legislators, which had prioritized domestic violence for three years, took leadership in holding hearing and proposing appropriations and legislative initiatives.*
- *Governor Weld responded to the Caucus' request to declare a State of Emergency; and established, by Executive Order, a Domestic Violence Policy Commission. Lt. Gov. Cellucci pledged the administration's assistance in finding funds to restore the stability of the infrastructure of existing Battered Women's Programs.*
- *Various bills to better protect victims of domestic violence were reviewed by Legislative Committees.*

The Coalition supports the need for legislation, or other remedies, which address the problems of:

- *Batterer who stalk their victims (S. 126)*
- *The ability of police to remove weapons from the scene of a domestic violence incident (S. 753)*
- *Battered women who defend themselves from batterers (H. 2108 and 2109)*
- *Battered women's programs respecting due process rights of residents; balanced with the need to insist that residents protect the confidentiality of the shelter location - for the safety of all resident women and children (H. 207 and 3914)*
- *Batterers who are released on bail after an arrest*

The Coalition appreciates, however, that these bills have significance beyond the scope of domestic violence; and that the Legislature has a duty to protect the Constitutional rights of all citizens.

We call for the Legislature, the Judiciary, and the Executive Branch to seek appropriate subject matter expertise from model programs whose intervention philosophies and/or practices have acknowledged and/or demonstrable results in preventing fatalities; and to craft...

- *Adequate budgets and appropriate statutes; and/or*
- *Ground-breaking case law; and/or*
- *Creative administrative policies;*

...which will allow replication of these models in order to better protect battered women and children in the Commonwealth.

**IN THIS DECLARED STATE OF EMERGENCY FOR BATTERED WOMEN,
THE MOST IMPORTANT PIECE OF LEGISLATION IS THE
FY '93 STATE BUDGET**

**RECOMMENDATIONS TO BEST ADDRESS BATTERED WOMEN'S SAFETY IN THE
IMMEDIATE STATE OF EMERGENCY AND TO COORDINATE LONG TERM, INTEGRATED,
EMERGENCY RESPONSE SYSTEMS.**

- \$1,000,000 To restore stability to the existing network of Battered Women's Programs, bringing the infrastructure back to FY '89 levels.
- \$1,500,000 To coordinate a state-wide Emergency Response System to respond to crisis needs for shelter and/or advocacy; as well as longer term referral needs for housing, counseling, translations services, etc.
- \$1,100,000 To enable each County's District Attorney to establish a multi-disciplinary Community Response System to prosecute batterers and protect victims.
- \$ 400,000 To support trainings to educate both public and private sector institutions who must play key roles in the Emergency and Community Response Systems.
- \$4,000,000 **TOTAL ALLOCATION**
To support systemic reform and allow more effective implementation of the statutory protections guaranteed by MGL Chapter 209A as amended by landmark legislation Chapter 403 in 1991.

The Advocacy Community looks to the leadership of the Caucus of Women Legislators and to the:

Governor and Lt. Governor	Exec. Office of Public Safety
Legislature	Mass. Criminal Justice Training Council
Attorney General	Exec. Office of Health and Human Services
Mass. Office of Victims Asst.	Dept. of Social Services
Supreme Judicial Court	Dept. of Public Health
Comm. for Gender Equality	Office of Violence Prevention
	Mass. District Attorneys' Association
	Mass. Police Chiefs' Association

...and perhaps, most importantly, to the rank and file police officers of the State.

**TO PARTICIPATE IN INTEGRATED EMERGENCY RESPONSE AND COMMUNITY
RESPONSE SYSTEMS TO STOP THE CRIMES COMMITTED BEHIND
CLOSED DOORS IN MASSACHUSETTS.**

**FOR MORE INFORMATION, WRITE TO:
THE MASSACHUSETTS COALITION OF BATTERED WOMEN SERVICE GROUPS
107 SOUTH STREET, BOSTON, MA 02111.**

NONE OF US ARE SAFE UNTIL WE ALL ARE.

NEW PROCEDURES FOR THE ENTRY OF WARRANTS INTO THE LEAPS WANTED PERSON FILE FOR VIOLATIONS OF CHAPTER 209A RESTRAINING ORDERS.

L.E.A.P.S. USERS ARE HEREBY ALERTED TO SOME IMMEDIATE CHANGES RELATING TO THE ENTRY OF WARRANTS INTO THE L.E.A.P.S. WANTED PERSON FILE FOR VIOLATIONS OF CHAPTER 209A RESTRAINING ORDERS. THE PURPOSE OF THESE CHANGES IS TO MORE READILY IDENTIFY INDIVIDUALS WANTED FOR VIOLATIONS OF 209A RESTRAINING ORDERS AND TO FACILITATE THE TIMELY EXCHANGE OF SUCH INFORMATION ON A STATEWIDE BASIS VIA THE L.E.A.P.S. SYSTEM.

UNTIL NOW, THERE HAS BEEN NO SPECIFIC OFFENSE CATEGORY IN THE L.E.A.P.S. WANTED PERSON FILE FOR THE VIOLATION OF A 209A RESTRAINING ORDER. ACCORDINGLY, THESE WARRANTS HAVE TYPICALLY BEEN ENTERED UNDER THE GENERIC FAMILY OFFENSE CATEGORIES OR UNDER ANOTHER CATEGORY, SUCH AS ASSAULT & BATTERY.

EFFECTIVE IMMEDIATELY, WARRANTS ISSUED FOR VIOLATIONS OF 209A RESTRAINING ORDERS SHOULD BE ENTERED UNDER THE NEW OFFENSE CODE, 3209.

IN CASES WHERE THE 209A VIOLATION WARRANT IS ISSUED IN CONJUNCTION WITH ANOTHER WARRANT - E.G., THERE IS A 209A VIOLATION WARRANT AND AN ASSAULT & BATTERY WARRANT - A SECOND WARRANT SHOULD BE ENTERED INTO THE L.E.A.P.S. WANTED PERSON FILE. THE 209A VIOLATION WARRANT SHOULD ALWAYS BE ENTERED, ALONG WITH THE MOST SERIOUS OF THE OTHER WARRANTS ASSOCIATED WITH THE INCIDENT. THIS IS THE ONLY INSTANCE IN WHICH A "DOUBLE-ENTRY" OF WARRANTS ON ONE INDIVIDUAL IS PERMITTED IN THE L.E.A.P.S. WANTED PERSON FILE, AND THE LIMIT IS TWO WARRANTS I.E., THE 209A VIOLATION WARRANT AND THE MOST SERIOUS ASSOCIATED WARRANT.

THEREFORE, EFFECTIVE IMMEDIATELY, LAW ENFORCEMENT AGENCIES SHOULD IMPLEMENT THE FOLLOWING PROCEDURES RELATING TO THE ENTRY OF WARRANTS FOR VIOLATIONS OF 209A RESTRAINING ORDERS INTO THE L.E.A.P.S. SYSTEM:

1. ENTER ALL NEW WARRANTS FOR 209A RESTRAINING ORDER VIOLATIONS INTO THE L.E.A.P.S. WANTED PERSON FILE UNDER THE NEW OFFENSE CODE, 3209:
2. WHERE THERE ARE MULTIPLE WARRANTS ASSOCIATED WITH THE 209A VIOLATION, ALWAYS ENTER THE 209A VIOLATION WARRANT UNDER THE NEW OFFENSE CODE, 3209, AND ENTER THE MOST SERIOUS OTHER WARRANT ASSOCIATED WITH THE 209A VIOLATION UNDER THE EXISTING OFFENSE CODES: AND,
3. REVIEW ALL EXISTING WARRANTS FOR 209A RESTRAINING ORDER VIOLATIONS, AND RE-ENTER (OR ENTER) THEM INTO THE L.E.A.P.S. WANTED PERSON FILE UNDER THE NEW OFFENSE CODE 3209, ACCORDING TO STEPS 1 AND 2 ABOVE.

YOUR COOPERATION IN IMPLEMENTING THESE PROCEDURES IS GREATLY APPRECIATED. THIS APPROACH WILL MAKE AVAILABLE STATE-WIDE INFORMATION ON INDIVIDUALS WANTED FOR 209A VIOLATIONS.

LAW ENFORCEMENT WILL BE MORE AWARE OF WARRANTS FOR 209A VIOLATIONS IN OTHER JURISDICTIONS, AND BETTER PREPARED TO PROTECT THE PUBLIC AND ENSURE OFFICER SAFETY. FURTHER, THIS APPROACH WILL PERMIT THE IDENTIFICATION OF TARGET GROUPS OF 209A VIOLATIONS TO LAW ENFORCEMENT AGENCIES.

THANK YOU FOR YOUR ASSISTANCE IN IMPLEMENTING THESE IMPORTANT CHANGES.

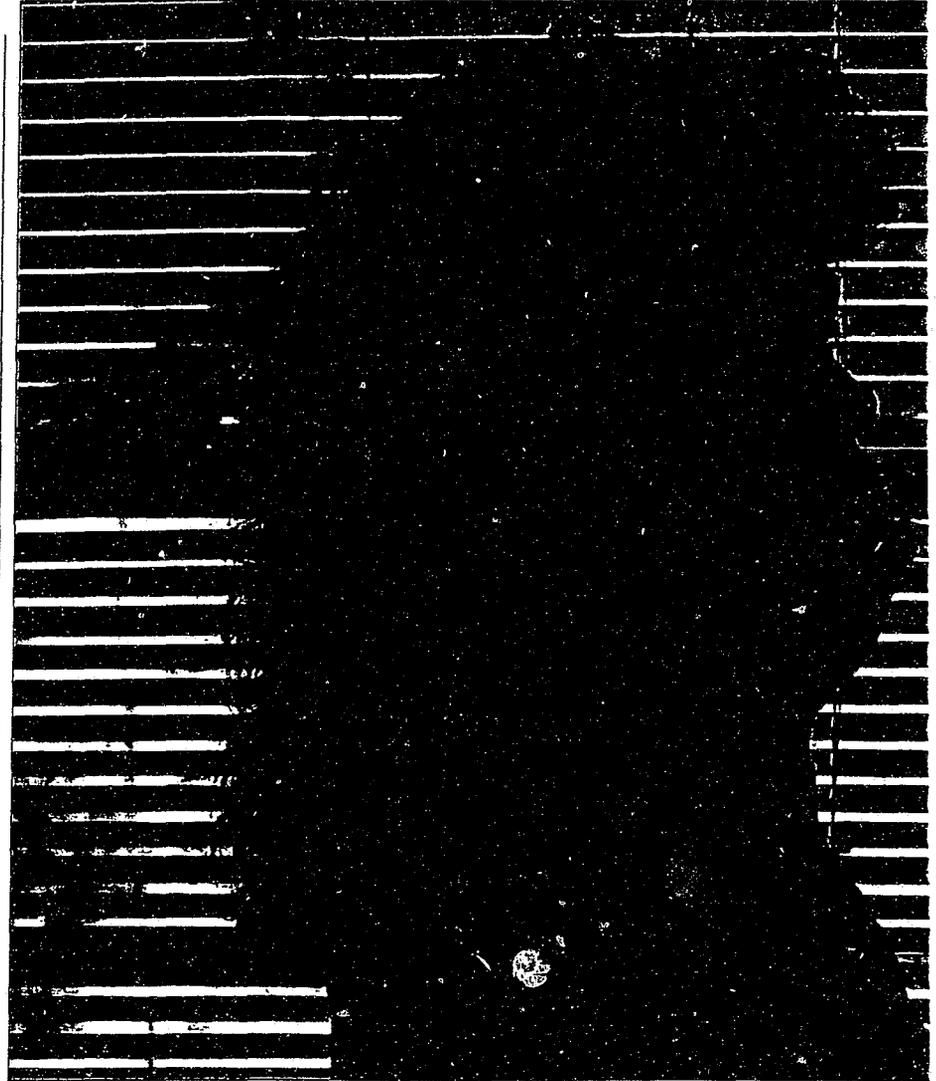
Murderous Obsession

Can new laws deter spurned lovers and fans from 'stalking'—or worse?

Barbara Erjavec and Grace Beach sometimes take a rug to the cemetery and have lunch by the graves of their children, sharing a sad litany of what ifs. What if they had known that Kenneth Kopecky had talked openly about his plans to kill the young lovers? What if the law now awaiting the Illinois governor's signature had been in place—could the police have done something then? Grace and Barbara will never know the answers. All they do know is that Kopecky became infatuated with Karen Erjavec last summer when they were both members of a wedding party, and that for the next six months Karen and her boyfriend, Glenn Beach, lived in fear. They received anonymous letters and bizarre, threatening phone calls. Glenn's car was vandalized, and there were tire tracks across the lawn of the house where he lived with his parents. Karen's father, a policeman, knew that the law was powerless against what seemed like just a persistent creep. Even the surveillance lights Glenn's parents installed around their home had no effect last Feb. 16. The Beaches returned from a movie that night to a bustling crime scene in their driveway. Glenn had been shot six times in the back and stabbed twice; Karen had been shot in the head at close range. Two days later, police tracked Ken Kopecky to a motel in Michigan. He shot himself to death as the cops moved in.

The stories sound like the plot lines of hit movies, from "Fatal Attraction" to "Sleeping With the Enemy" to "Cape Fear." But increasingly, state legislators are hearing real-life versions, and they are responding with astonishing speed. California passed the first "anti-stalking" law in 1990, making it a crime to repeatedly follow or harass someone with a "credible threat" to cause fear of bodily harm. Since then, 20 more states have enacted similar laws, and at least a dozen others are considering them. Most make the first stalking offense a misdemeanor, punishable by up to one year in jail and a \$1,000 fine, with felony counts and stiffer penalties for repeat offenses. Florida's law, which went into effect last week, even allows police to make arrests without obtaining a warrant.

Behind almost every state bill has been at least one local tragedy. Wisconsin lawmakers acted after Shirley Lowery was fa-



tally stabbed 19 times, allegedly by her ex-boyfriend in a Milwaukee courthouse where she had gone to obtain a protective order. Virginia lawmakers were moved after Regina Butkowski's mother testified that her daughter had been stalked for six months by a weight lifter who finally shot her, set her body on fire and dumped it into a creek, where it was found eight months later. Georgia's proposed law may pick up more support after the sad case of Joyce Durden, whose estranged husband carried out his repeated death threats last month. He gunned her down at a school where she taught mentally disabled preschoolers, then shot himself in the head.

Love gone mad: A battered wife living in fear in Tampa, grieving mothers Beach (left) and Erjavec

Such horrifying examples aside, no one can say how widespread a problem stalking is—mainly because it has never been a crime category before. The new laws aim at halting a pattern of threats and harassment that often precedes violent acts, from assault to rape, child molestation and murder. Some of the most publicized cases have involved celebrities, like actress Rebecca Schaeffer, fatally shot by an obsessed fan, Robert John Bardo, in 1989. A few stalkers

fixate on co-workers or complete strangers, and not all victims are female; women sometimes stalk men. But the vast majority of cases involve former lovers or spouses. Nearly one third of all women killed in America are murdered by their husbands or boyfriends, and, says Ruth Micklem, codirector of Virginians Against Domestic Violence, as many as 90 percent of them have been stalked.

Some civil-liberties experts argue that the new laws are overly vague and carry a potential for misuse, particularly in marital disputes. "There are very often false allegations made in all sorts of contexts against spouses or former spouses," says Miami criminal-defense attorney Jeffrey Weiner, who thinks Florida's no-warrant provision may be unconstitutional. Critics also say that people who fear for their safe-

Will the laws actually deter such crimes? Much depends on what twisted logic motivates the stalker. "A lot of these people are just caught up in the emotion of a bad breakup," says David Beatty of the National Victim Center in Arlington, Va. "Sitting someone down in jail for a while may make him rethink his actions." But some stalkers are mentally deranged. Stanton Samenow, a Virginia clinical psychologist and author of "Inside the Criminal Mind," says that many have disturbed self-images in which they see themselves as irresistible or complete zeros. When they are rejected, they resort to intimidation in a desperate attempt to try to regain self-esteem. The threat of prison may deter some of them, but for others, says Samenow, "it's like putting fuel on a fire."

For the anti-stalking laws to have a real impact, courts must take them seriously and apply the new legal muscle they provide. Ironically, the first person sentenced under California's law, Mark David Bleakley, was put on probation and ordered to serve time in a psychiatric facility. Unsupervised, he wandered away and was found waiting outside his victim's health club. Fortunately, he was reapprehended before he could harm her and sentenced to three years in prison.

'Won't hunt': Kristin Lardner wasn't so lucky. The 21-year-old Brookline, Mass., art student was murdered by her former boyfriend in May, just two weeks after the state's anti-stalking law went into effect. Michael Cartier had already served six months in jail and was on probation for attacking another ex-girlfriend. He was attending a violence-treatment program when he began beating Lardner. She reported the

incidents to the police, who issued a warrant for his arrest. She also obtained two restraining orders from civil-court judges, but they were unaware of the outstanding warrant and merely barred Cartier from going within 200 feet of her. That didn't faze him. On May 30, Cartier waited outside the liquor store where Lardner worked and shot her repeatedly as she walked down Boston's Commonwealth Avenue. Police found him in his apartment, dead from a self-inflicted gunshot wound. "The restraining orders don't restrain, and I strongly suspect the new anti-stalking order won't hunt," says Kristin's father, Washington Post reporter George Lardner.



NICK UT—AP

Bardo behind bars

Where Stalking Is Illegal

- California
- Colorado
- Connecticut
- Delaware
- Florida
- Hawaii
- Idaho
- Iowa
- Kentucky
- Massachusetts
- Mississippi
- Nebraska
- Oklahoma
- South Carolina
- South Dakota
- Tennessee
- Utah
- Virginia
- Washington
- West Virginia
- Wisconsin

SOURCE: NATIONAL CONFERENCE OF STATE LEGISLATURES

ABOVE: BILL GENTILE FOR NEWSWEEK, BELOW: DAVID WALBERG



ty can already apply to the civil courts for restraining orders. But such orders are notoriously hard to enforce, and all too often, the first violation is fatal. The California law was drafted after five Orange County women were killed in a six-week period in early 1990. All but one had sought help in vain from authorities. "What does he have to do—shoot me?" 19-year-old Tammy Marie Davis asked police just days before an ex-boyfriend did just that, fatally, in Huntington Beach. When Patricia Kastle, a onetime Olympic skier from Newport Beach, was shot by her former husband, police found a restraining order in her purse.

Massachusetts has since instituted a number of reforms—including computerizing all records of restraining orders and violations. By fall, any police officer or judge should be able to cross-reference them to pinpoint repeat offenders. In Brookline, civil-court judges now routinely look at criminal records of all accused batterers. A committee of the chief justice's office is also studying the idea of outfitting stalkers and their victims with electronic monitoring devices, like those used in house-arrest cases, that would automatically sound an alarm if a stalker came within a certain range.

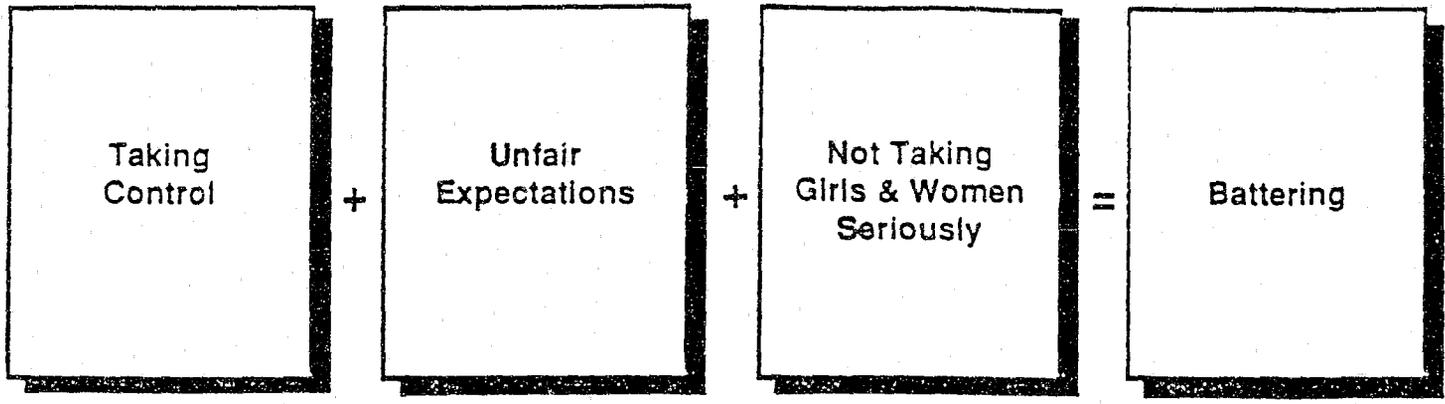
ADT Security Systems is testing another kind of personal-alarm system for battered women. The victim wears a pendant around her neck, and if she spots her stalker, she presses a button that triggers an alarm at an ADT monitoring station, which in turn alerts police. The system isn't foolproof, however. It works only in close range of a receiving device installed in her home, and a determined stalker could foil it by disconnecting the phone lines. Six Tampa, Fla., women, all former residents of The Spring women's shelter, have been wearing the beepers for the last six months. But only one has used it, when her ex-husband turned up at her home, daring her to shoot him. Police arrived, but the episode left the woman so shaken that she handed in her beeper and went underground. Staffers at The Spring say they don't know what's become of her.

Packing weapons: Other desperate victims have taken to packing their own weapons. Sabine Tsang, 27, had filed numerous futile complaints about a former co-worker. Last month, when Irineo Dominguez allegedly accosted her in a parking lot and ordered her into her car, she pulled out a handgun and shot him twice in the abdomen. Dominguez, now recovering in a Houston hospital, has been charged with attempted kidnapping, according to police. But they have not charged Tsang. "I don't think you'd find a jury in Texas that would convict her, so why try?" says Houston homicide Sgt. Doug Bacon.

The prospect of more victims arming themselves is no comfort to law-enforcement officials. Yet most admit there is very little they can do in the face of a persistent stalker. "You can put a person in jail for a year or so, but they eventually will get out," says Det. John Lane, part of a four-member anti-stalking unit established by the Los Angeles police after Schaeffer's murder. Even so, the new laws do give police one more weapon to employ against stalkers—and if they deter even a small percentage of crimes, that's better than none.

MELINDA BECK with DEBRA ROSENBERG in Boston, FARAI CHIDEYA in Chicago, SUSAN MILLER in Houston, DONNA FOOTE in Los Angeles, HOWARD MANLY in Atlanta and PETER KATEL in Tampa

The Mathematics of Battering



Taking control means:

- Giving orders.
- Being the boss.
- Making decisions for the two of you without consulting the other person.
- Being possessive, keeping track of where the other person is, who they talk to and what they do.
- Critizing her all the time.
- Ruining her reputation by spreading rumors.
- Getting her back for not doing what you want.

Unfair expectatlons are:

- Thinking she owes you sex.
- Believing she must agree with you all the time.
- Thinking she shouldn't contradict you in public.
- You can question her but she can't question you.
- She must be interested in everything you are interested in.
- Thinking you don't need to be interested in what she's interested in.
- Expecting her to be available all the time.
- Expecting her to put up with any mood you're in.
- When you are unhappy, expecting her to feel responsible for making you feel better.
- Thinking that you can cheat on her but she can't cheat on you.

Not taking girls and women serlously means:

- Not listening.
- Not respecting their opinions.
- Seeing girls as sex objects.
- Thinking girls aren't as smart as boys.
- Thinking girls are too sensitive, overly emotional or irrational.
- Sexism.

Battering includes:

- Hitting, shoving, pinching, burning, pushing, beating, throwing things, punching walls.
- Threatening to hurt someone.
- Destroying a person's property, hurting their pets, threatening their family.
- Forcing sex on another person.
- Keeping someone fearful of you.

Is Danger Ahead In Your Relationship ? Take This Test And Find Out

When beginning a new relationship, sometimes the excitement of going out with someone you really like stops you from seeing the warning signs of abuse. Remember, you don't have to have broken bones or a black eye to be abused. You may be experiencing emotional abuse, which might turn into physical abuse. There is hope and help:

Call *Transition House* (617) 661-7203 (24 hours)
or call the *National Domestic Violence Hotline*:
1-800-333-SAFE

Lesbian and gay relationships can have these problems, too.

Call *Fenway Community Health Center*
(617) 267-0900 (9 a.m. - 5 p.m.)
(617) 267-9001 (evenings)

Warning Signs of Abuse

Are you going out with someone who...

- Is jealous and possessive toward you, won't let you have friends, checks up on you, won't accept breaking up.
- Tries to control you by being very bossy, giving orders, making all the decisions; doesn't take your opinion seriously.
- Is scary. You worry about how they will react to things you say or do. Threatens you, uses or owns weapons.
- Is violent: has a history of fighting, loses temper quickly, brags about mistreating others.
- Pressures you for sex, is forceful or scary around sex. Thinks women or girls are sex objects. Attempts to manipulate or guilt-trip you by saying "If you really loved me you would..." Gets too serious about the relationship too fast.
- Abuses drugs or alcohol and pressures you to take them.
- Blames you when they mistreat you. Says you provoked them, pressed their buttons, made them do it, led them on.
- Has a history of bad relationships and blames the other person for all the problems. "Girls just don't understand me."
- Believes that men should be in control and powerful and that women should be passive and submissive.
- Has hit, pushed, choked, restrained, kicked, or physically abused you.
- Your family and friends have warned you about the person or told you they were worried for your safety.

This flyer was developed for young women by Mount Auburn Hospital Prevention and Training Center, Waltham, Mass., (617) 893-0111, and by the Dating Violence Intervention Project, Cambridge, Mass. (617) 868-8328.

If you check more than two of the questions on either test, turn to someone for help before the "ultimate date" turns on you.

NEW JERSEY

In Domestic Violence, These Charges Stick

Sussex Cracks Down on Spouse Abuse

By JON NORDHEIMER
Special to The New York Times

NEWTON, N.J. — Albert D. rolled his eyes and grimaced when he was told he had to spend Labor Day weekend in the Sussex County jail.

"If a married couple wants to patch things up between themselves," he moaned, "why get the law involved?"

What Albert and his wife Lillian wanted to settle between themselves was her call to the police a few days earlier, saying her husband had punched and kicked her when she threatened to leave him and take their three children with her. Now she wanted to drop the complaint.

No way, said the police, prosecutor and judge. In Sussex County, in northwest New Jersey, if the authorities are called to break up a family fight, the assailant is arrested on an assault charge and goes before a Superior Court judge. Even if the victim wants to drop the charge, the prosecution goes ahead with the case.

All Fights Go to Judge

No more letting couples make up and leaving the police to wait for the next time tempers flare.

Some other jurisdictions in the region have adopted a "pro-arrest" policy in recent years to crack down on domestic violence, instructing the po-

No matter what the victim wants, the case proceeds until the parties get help.

lice to arrest and jail a batterer if evidence of assault is observed. But only rural Sussex, population 140,000, insists that all criminal cases stemming from family fights be resolved in Family Court before a judge.

In civil cases, as when a family member obtains a restraining order to keep a threatening spouse at a safe distance, the person filing the complaint is also required to appear before a judge and at least sit down with a counselor from a local victims advocates group before the case is closed. He or she may be held in contempt if the court date is not met.

"The court takes the position that we do not dismiss these cases lightly," said Superior Court Judge Lorraine Parker. "First of all it is very frustrating and demoralizing to police officers who are called to the same house time after time to break up a fight only to have the complaint dropped by the victim the next day.

"But more importantly we take the view that it is unacceptable for quarrelling husbands and wives to slap

each other around," she said.

If they are permitted to plead guilty to a reduced charge of simple battery, first offenders like Albert D. almost always get a few weekends in jail to drive home the point. They also are ordered as part of probation to attend 29 weekly sessions by Domestic Abuse Services, a local nonprofit victims support group, to understand why they use violence or intimidation.

Dennis O'Leary, the Sussex County Prosecutor, said the policy was inspired, but not mandated, by New Jersey's tough new domestic violence act that took effect last November. A community task force recommended the tough line after studying domestic violence, a leading cause of police complaints in Sussex that often were not prosecuted until bones were broken or the victim died, he said.

"If the violence is serious enough to call in the cops, the criminal-justice system will not let go of the case until one or both parties get help with their problem," said Mr. O'Leary.

Takes Burden off Victim

There is preliminary evidence, he noted, that the new policy is reducing repeat offenses in these types of cases. Another important side effect of "pro-prosecution" is it removes responsibility from the victims, nearly all women, to punish the abusers. Women, domestic-violence experts say, are often intimidated by fear of future beatings or don't like to see husbands get caught up in the criminal justice system since the victims may suffer the social or economic consequences of a jail term or fine as much as their male abusers.

"What these women want most is for their men to get help with their problems," said Jeanine Ferris Piro, a Westchester County judge in New York, who hailed the Sussex experiment and said it bore watching. Judge Piro is a former prosecutor who headed the domestic violence and child abuse bureau in Westchester, where 21 of 43 police departments follow a "pro-arrest policy."

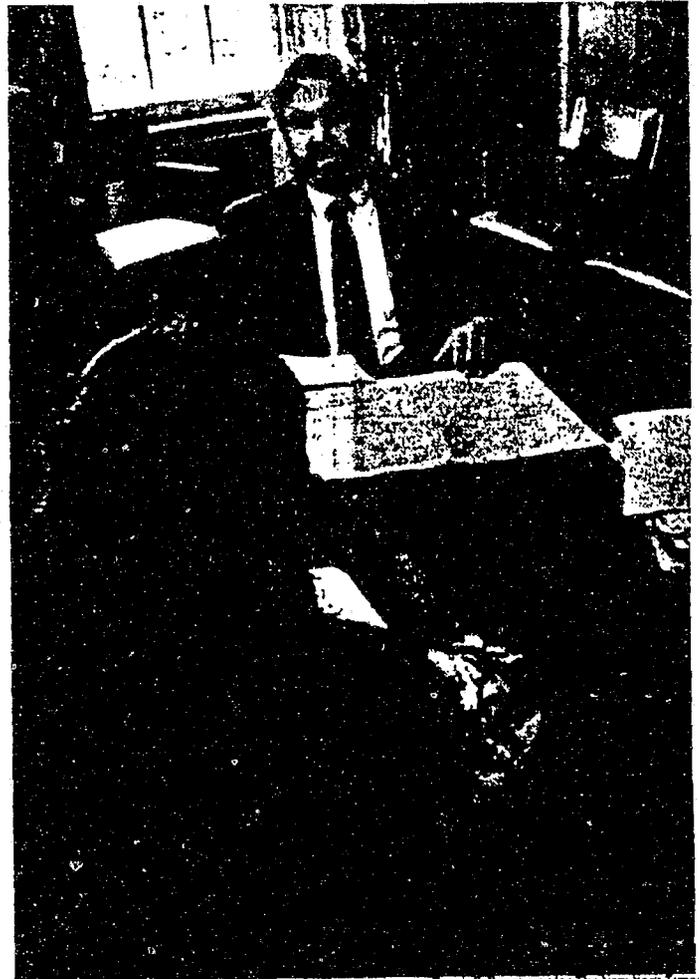
But overloaded dockets and over-worked judges discourage some courts from prosecuting these cases unless the victim is a willing witness.

'Coerced Prosecution'

In New York, some officials are ambivalent "about forcing a woman into a coerced prosecution and making her a hostile witness," said Karla DiGirolamo, executive director of Governor Cuomo's Commission on Domestic Violence.

Sussex officials recognize that what works in a small rural county in New Jersey's highlands may not be feasible in a large urban one. It wasn't all that long ago that Sussex had more cows than people.

The new policy has about doubled the number of domestic violence cases heard by the Family Court, forcing a delay in divorce and custo-



Frank C. Dougherty for The New York Times

After filing assault and battery charges against her husband, a woman meets with Bruce LaCarrubba, an assistant prosecutor in Sussex County, to ask that a restraining order against her husband be lifted.

'We do not dismiss these cases lightly,' a judge says.

He relented, however, and minutes later was telling the husband that because of his wife's intervention he would go to jail for only one weekend. "I wanted four weekends but she nagged me down to one."

'I Told You She Was a Nag'

The husband, without hesitation, responded: "I told you she was a nag. Pretty soon you're going to want to belt her."

Mr. LaCarrubba's eyes narrowed as he measured the hefty man standing before him. For a few seconds there was a feeling the electrician had talked his way back into four weekends in the county jail.

The husband, sensing trouble, rolled up his sleeve and exhibited a livid scar on a forearm. "She did that with a fork," he explained. He then hitched up a trouser leg, exposing an older wound. "Screwdriver."

Mr. LaCarrubba let the single weekend sentence stand, a decision affirmed minutes later in a brief hearing before a judge, and in minutes he was in conference with another emotionally confused and torn victim, alternately consoling her and insisting on an apt punishment for her batterer.

dy proceedings, said Judge Parker.

Bruce LaCarrubba, an assistant county prosecutor, spends Thursdays — called "Family Feud Day" in the courthouse corridors — handling about 20 criminal domestic violence cases filed the previous week.

"Usually we try to get the guy some professional help to deal with what are obviously deep-seated problems," said Mr. LaCarrubba. In cases involving serious injury, evidence is presented to a grand jury to consider a felony indictment.

Lillian D. had made it clear she did not want her husband, an electrician, to go to jail. Mr. LaCarrubba, conferring with her, insisted some jail time was necessary, in addition to counseling and psychological evaluation at county expense.

"Given what he did to you," he told her, "he should spend more than one weekend in jail."



Some facts about the prevalence of Partner Abuse in Same-Sex relationships:

Domestic Violence does occur within gay and lesbian relationships with unfortunate frequency. Although few formal studies of the extent of the problem exists, some data exists:

The VICTIM RECOVERY PROGRAM of the Fenway Community Health Center, which provides counseling and advocacy services to gay men and lesbians who are being battered or stalked. Although the Fenway does not advertise its Domestic Violence services, it has been receiving increasing numbers of reports this type for three years.

1990		1991		1992 (1st eight months)	
Male	Female	Male	Female	Male	Female
9	2	12	4	27	13

The New York City Anti-Violence Project, which advertises services to victims of same sex domestic violence and stalking, documented the following numbers of reported incidents:

1991	1992
143	401
	(47% female, 53% male)

Same-sex Partner Abuse is an under-reported crime. Experts in the anti-violence field who work with gay and lesbian victims of Partner Abuse report the following:

Jim Shattuck, Director of Men overcoming Violence, reports that "The accumulating body of research indicates that approximately 25-33% of lesbian relationships have experienced abuse. Our hypothesis is that it is similar, if not more prevalent, given gender role conditioning, for gay men."

Dr. David Island, and Patrick Letellier, authors of Men who Batter the Men Who Love Them, have estimated that there are 500,000 victims of domestic violence in the gay community of the United States.

The Victim Recovery Program of the Fenway Community Health Center provides counseling and advocacy services to gay, lesbians, and bisexual victims of partner abuse, stalking and hate crimes in Massachusetts. We are available state-wide, and welcome calls from both victims and officers of the law and courts. If you would like to contact us, or refer a victim of violence to us, we may be reached at (617)-267-0900 x311 or 1-800-834-3242 x311 from anywhere in Massachusetts.

Resources

BATTERED WOMEN'S SERVICES: STATEWIDE RESOURCES

Massachusetts Coalition of Battered Women Service Groups

Phone: 426-8492
Address: 107 South Street
Boston, MA 02111
Services: Information and referral

SHELTER AND COUNSELING LISTINGS

BOSTON AREA

Casa Myrna Vazquez

Phone: 262-9581
Address: P.O. Box 180019
Boston, MA 02118
Services: Shelter for battered women; transitional living program; English and Spanish-speaking staff.

Elizabeth Stone House

Phone: 522-3417
Address: P.O. Box 15
Jamaica Plain, MA 02130

F.I.N.E.X. House

Phone: 288-1054
Address: P.O. Box 1154
Jamaica Plain, MA 02130

Shelter is wheelchair accessible, sign language

Harbor Me

Phone: 889-2111
Address: P.O. Box 191
Chelsea, MA 02150
Services: Counseling for battered women; assistance with locating shelter; safe-home network; English, Vietnamese and Spanish-speaking staff.

Mary Lawson Forman House

Phone: 825-1666 (Hotline); 262-9581 (Office)
Address: P.O. Box 49
Dorchester MA 01842

Renewal House

Phone: 566-6881 (Hotline); 277-4194 (Office)
Address: P.O. Box 919
Roxbury, Ma 02115
Services: Counseling and shelter for battered women; Spanish and Haitian-speaking staff.

Respond

Phone: 623-5900
Address: P.O. Box 555
Somerville, MA 02143

New Bedford Women's Center
Battered Women's Project
Phone: (508) 992-4222
Address: 252 Country Street
New Bedford, MA 02740

Women's Center/ SSTR, Inc.
Phone: (508) 675-0087
Address: 386 Stanley Street
Fall River, MA 0270

NORTH OF BOSTON

Alternative House
Phone: (508) 454-1436
Address: P.O. Box 2096
Highland Station
Lowell, MA 01851

H.A.W.C. (Help for Abused Women and Their Children)
Phone: (508) 774-6841
Address: 9 Crombie Street
Salem, MA 01970

Services Against Family Violence
Phone: 324-2221
Address: 110 Pleasant Street
Malden, MA 02148

Women's Resource Center
Phone: (508) 685-2480 (Lawrence)
(508) 373-4041 (Haverhill)
Address: 454 North Canal Street
Lawrence, MA 01842

Waltham Battered Women Support Committee
Phone: 899-8676
Address: P.O. Box 24
Walthm, MA 02254

Women's Crisis Center of Greater Newburyport
Phone: (508) 465-2155
Address: 8 Prince Street
Newburyport, MA 01950

WEST OF BOSTON

Daybreak, Inc.
Phone: (508) 755-9030
Address: 72 Cambridge Street, No. 222
Worcester, MA 06103-2369

Necessities/Necesidades
Phone: (413) 586-5066
Address: 16 Armory Street
Northhampton, MA 01060-3031

CAMBRIDGE

Transition House

Phone: 661-7203 (24 hour hotline)

Address: P.O. Box 530
Harvard Square Station
Cambridge, MA 02238

Services: Shelter; counseling and referrals for battered women; dating violence and intervention for teens.

CAPE COD AND THE ISLANDS

Independence House

Phone: (508) 771-6507

Address: 105 Pleasant Street
Hyannis, MA 02601

A Safe Place, Inc.

Phone: (508) 228-0561

Address: P.O. Box 3231
Nantucket, MA 02584

Women's Support Services

Phone: (508) 693-0032

Address: Box 369
Vineyard Haven, MA 02568

SOUTH OF BOSTON

South Shore Women's Center

Phone: (508) 746-2664

Address: Ferioli Building
85 Samoset Street
Plymouth, MA 02360

WOMANSPLACE

Phone: (508) 588-2041

Address: P.O. Box 4206
Brockton, MA 02403

DOVE (Domestic Violence Ended)

Phone: 471-1234

Address: P.O. Box 289
Quincy, MA 02269

New Hope

Phone: 762-1530 (Norwood)
(508) 695-2113 (Attleboro)
(508) 824-4757 (Taunton)

Address: P.O. Box 1036
Attleboro, MA 02703

Services: Shelter and counseling; Spanish-speaking legal advocate; sexual assault unit

NELCWIT (New England Learning Center for Women in Transition)

Phone: (413) 772-0806

Address: 25 Forest Avenue
Greenfield, MA 01301

Wheelchair accessible

Women's Protective Services

Phone: (508) 626-8686 (Hotline)

(508) 820-0834 (Office)

Address: 63 Fountain Street
Framingham, 01701

Women's Resources

Phone: (508) 342-9355 (Fitchburg)

(508) 630-1031 (Gardner)

(508) 368-1311 (Clinton)

Women's Services Center

Phone: (413) 443-0089

Address: 146 First Street
Pittsfield, MA 01201

Womenshelter/ Companeros

Phone: (413) 536-1628

Address: P.O. Box 6099
Holyoke, MA 01041

YWCA of Western Mass.

Phone: (413) 562-1920 (Westfield)

(413) 733-7100 (Springfield: Abuse and Rape
Crisis Hotline)

7131A

24 HOUR HOTLINE NETWORK FOR WOMEN'S SAFETY

1-800-992-2600

-178-

■ **Women's Services Center**
Pittsfield (413) 443-0089

■ **Necessities/Necesidades**
Northampton (413) 586-5066

■ **Women's Shelter/Compañeras**
Holyoke (413) 536-1628

■ **YWCA of Western MA**
New Beginnings
Westfield (413) 562-1920

■ **YWCA of Western MA**
ARCH - Abuse and
Rape Crisis Hotline
Springfield (413) 733-7100

■ **NELCWIT - New England**
Learning Center for
Women in Transition
Greenfield (413) 772-0806

■ **Women's**
Resources
Fitchburg (508) 342-9355
Gardner (508) 630-1031
Clinton (508) 368-1311

■ **Daybreak**
Worcester (508) 755-9030

■ **Women's Protective**
Services
Framingham (508) 626-8686

■ **Alternative**
House
Lowell (508) 454-1436

■ **Waltham Battered**
Women Support
Committee
Waltham (617) 899-8676

■ **New Hope Inc.**
Attleboro (508) 695-2113

■ **New Hope Inc.**
Taunton (508) 821-1757

■ **Our Sister's Place**
Fall River (508) 677-0221

■ **Women's Center/**
SSTR, Inc.
Fall River (508) 675-0087

■ **New Bedford**
Women's Center
Battered Women Project
New Bedford (508) 992-1222

■ **Women's**
Support
Services
Vineyard Haven (508) 696-7233

■ **Women's Resource**
Center
Haverhill (508) 373-4011

■ **Women's**
Resource Center
Lawrence (508) 685-2180

■ **Woman's Place**
Brockton (508) 588-2011

■ **New Hope Inc.**
Attleboro (508) 695-2113

■ **New Hope Inc.**
Taunton (508) 821-1757

■ **Our Sister's Place**
Fall River (508) 677-0221

■ **Women's Center/**
SSTR, Inc.
Fall River (508) 675-0087

■ **New Bedford**
Women's Center
Battered Women Project
New Bedford (508) 992-1222

■ **Women's**
Support
Services
Vineyard Haven (508) 696-7233

■ **Women's Crisis Center of**
Greater Newburyport
Newburyport (508) 465-2155

■ **HAWC-Help for Abused**
Women and Their Children
Salem (508) 741-6811

■ **Services Against**
Family Violence
Malden (617) 324-2221

■ **Respond-Somerville**
Somerville (617) 623-5900

■ **Harbor Me-CChelsea**
Chelsea (617) 889-2111

■ **Transition House-Cambridge**
Cambridge (617) 661-7203

■ **Renewal House-Boston**
Boston (617) 566-6881

■ **Casa Myra Vasquez, Inc.**
Boston (617) 262-9581
■ **Mary Lawson Foreman**
House of C.M.V.
Dorchester 1-800-992-2600

■ **F.E.N.E.X House-Dorchester**
Dorchester (617) 288-1051

■ **Elizabeth Stone House**
Jamaica Plain (617) 522-1117

■ **DOVE**
Domestic Violence Ended
Quincy (617) 171-1231
(Non Member)

■ **South Shore**
Women's Center
Plymouth (508) 746-2661

■ **Independence**
House
Hannis (508) 771-6307

■ **A Safe**
Place, Inc.
Nantucket (508) 228-0561

Massachusetts Coalition of Battered Women Service Groups

107 South Street, Boston, MA 02111
(617) 426-8492

Asian Women's Project (617) 723-6696

Counseling for batterers

Note: All of the programs listed below have received certification or provisional certification from the Massachusetts Department of Public Health. All currently serve adult men who batter, but are required by the terms of their certification to serve women and adolescents who batter if there is a sufficient number of such individuals to form a treatment group.

Assabet Human Services
Dammonmill Square
Concord, MA 01742
508-371-0300

Brockton Family & Community Resources
18 Newton Street
Brockton, MA 02401
508-583-6498

Common Purpose, Inc.
P.O. Box 553
Woburn, MA 01801
617-524-7717

Domestic Abuse Intervention Project
Independence House
P.O. Box 743
Barnstable, MA 02630
508-771-8572

EMERGE
Central Square
Cambridge, MA
617-422-1550

Fort Devens Army Post
Building 2734
Ayer, MA
508-641-3101

Gandara Mental Health Center
2155 Main Street
Springfield, MA 01104
413-736-0395

Greater Lawrence Mental Health Center
550 Broadway
Lawrence, MA 01841
508-683-3128

Inter-Church Council of New Bedford
412 County Street
New Bedford, MA 02740
508-993-6242

Men Overcoming Violence (MOVE)
Men's Resource Connection, Inc.
24 S. Prospect Street
Amherst, MA 01002
413-253-9887

New Hope, Inc.
140 Park Street
Attleboro, MA 02703
508-824-4757

North Central Alcoholism Commission
71 Pleasant Street
Leominster, MA 01453
508-537-8278

Peaceful Movement
879 Blue Hill Avenue
Dorchester, MA 02124
617-436-3159

Project RAP
202 Rantoul Street
Beverly, MA 01905
508-921-1292

The Psychological Center, Outpatient
Services
488 Essex Street
Lawrence, MA 01840
508-685-1337

South Shore Women's Center
85 Samoset Street
Plymouth, MA 02360
508-746-2664

Springfield Psychological Associates
42 Elsie Street
Springfield, MA
413-783-8877

Source: "Identifying and Treating Battered Adult and Adolescent Women and Their Children: A Guide for Health Care Providers", Mass. Dept. of Public Health, 1992.

Legal Services

Legal Services Corporation
Boston Regional Office
617-223-0230
(information regarding legal services in your area)

Battered Women's Advocacy Project
Harvard Women's Law Association
Holmes Hall Rm. 9
Cambridge, MA 02138
617-495-3139
(services free, court advocacy, assistance with restraining orders, immigration, children's issues, referrals, Spanish and Russian spoken)

Battered Women's Advocacy Project
Suffolk Law School
41 Temple St.
Boston, MA 02114
617-357-7017
(helps with restraining orders)

Boston College Legal Assistance Bureau
24 Crescent St., Suite 202
Waltham, MA
617-893-4793
(Spanish interpreters, service free for low-income clients)

Cambridge & Somerville Legal Services
264 3rd St.
Cambridge, MA 02142
617-492-5220
(free, low-income clients only, Spanish and Portuguese spoken)

Greater Boston Legal Services
68 Essex St.
Boston, MA 02111
617-357-5757
(free, low-income clients only, Spanish spoken)

Harvard Legal Aid Bureau
1511 Massachusetts Ave.
Cambridge, MA 02138
617-495-4408
(free, low-income clients from Middlesex and Suffolk Counties only, Spanish and French spoken)

Legal Services Center
3529 Washington St.
Jamaica Plain, MA 02130
617-522-3003
(free, low-income clients only, Spanish and Chinese spoken)

Legal Services (cont'd)

National Lawyer's Guild
15 Beacon St.
Boston, MA
617-277-7008
(sliding fee scale, Spanish spoken)

Suffolk University
56 Temple St., Rm. T-22
Boston, MA 02114
617-357-7017 or
617-573-8108
(free for low-income clients, focus on restraining orders, vacate orders, support orders,
Spanish and French spoken)

Alcohol and Drug Problems

Alcoholics Anonymous
617-426-9444

AL ANON
617-843-5300
(For family members of alcoholics)

ALATEEN
617-843-5300
(for adolescent family members of alcoholics)

Narcotics Anonymous
617-884-7709

National Cocaine Hotline
1-800-COCAINE

Statewide Drug & Alcohol Information & Referral Hotline
617-445-1500 or 1-800-327-5050

Child Abuse

Massachusetts Department of Social Services
24-hour hotline: 1-800-792-5200

National Child Abuse Hotline
1-800-4-A-CHILD

Child Abuse (cont'd)

AWAKE (Advocacy for Women and Kids in Emergencies)

Children's Hospital
300 Longwood Avenue
Gardner House 812
Boston, MA 02115
617-735-7979

(crisis intervention and advocacy for abused women whose children are followed at Children's Hospital)

Parental Stress Line

654 Beacon St.

Boston, MA

1-800-632-8188 or

617-437-0110 (Spanish)

(counseling for parents under stress and/or fearful of abusing)

Parents Anonymous of Mass.

140 Clarendon St.

Boston, MA 02116

617-267-8077 or

1-800-882-1250

(information and referral for child abuse and parents in crisis)

Rape Crisis Services

Greater Boston

Boston Area Rape Crisis Center

99 Bishop Allen Drive

Cambridge, MA 02139

Hotline: 617-492-RAPE (7273)

Office: 617-492-8306

Community Programs Against Sexual Assault (CPASA)

Roxbury Multi Service Center

317 Blue Hill Avenue

Roxbury, MA 02121

Hotline: 617-536-6500

Office: 617-427-4470, ext. 453

Women's Protective Services

63 Fountain Street

Framingham, MA 01701

Hotline: 508-626-8686

Office: 508-820-0334

Rape Crisis (cont'd)

Western Massachusetts

Abuse and Rape Crisis Hotline (ARCH)
P.O. Box 80126
Springfield, MA 01108
Hotline: 413-733-7100
Office: 413-733-1588

Every Woman's Center
Wilder Hall, University of Massachusetts
Amherst, MA 01003
Hotline: 413-545-0800
Office: 413-545-0883

New England Learning Center for Women in Transition (NELCWIT)
219 Silver Street
Greenfield, MA 01301
Hotline: 413-772-0806
Office: 413-772-0871

Rape Crisis Center of Berkshire County
18 Charles Street
Pittsfield, MA 02101
Hotline: 413-442-0089
Office: 413-442-6708

Central Massachusetts

Blackstone Valley Rape Crisis Center Team
204A Main Street
Milford, MA 01757
Hotline: 508-478-2992
Office: 508-478-8775

Rape Crisis Program of Worcester
1016 Main Street
Worcester, MA 01603
Hotline: 508-799-5700
Office: 508-791-9546

Northeastern Massachusetts

North Shore Rape Crisis Center
202 Rantoul Street
Beverly, MA 01915
Hotline: 1-800-922-8772
Office: 508-927-4506

Rape Crisis (cont'd)

Rape Crisis Center of Greater Lowell, Inc.
295 Varnum Avenue
Lowell, MA 01854
Hotline: 1-800-542-5212
Office: 508-452-7721

Latinas Against Sexual Assault
Women's Resource Center
North Canal Street
Lawrence, MA
Hotline and Office: 508-685-2480

Southeastern Massachusetts

Plymouth County Rape Crisis Center
P.O. Box 4206
Brockton, MA 02403
Hotline and Office: 508-588-8255

New Hope
140 Park Street
Attleboro, MA 02703
Hotline: 508-695-2276
Office: 508-226-4015

Rape Crisis Program/New Bedford Women's Center
252 County Street
New Bedford, MA 02740
Hotline: 508-996-6656
Office: 508-993-1842

Independence House
105 Pleasant Street
Hyannis, MA 02601
Hotline and Office: 508-771-6507

General Information on Battering

The Massachusetts Coalition of Battered Women Service Groups
20 East Street
Boston, MA
617-426-8492

AWAKE (Advocacy for Women and Kids in Emergency)

Children's Hospital

300 Longwood Avenue, Gardner House 812

Boston, MA 02115

617-735-7979

(Provides consultation, training, and technical assistance to health care providers and community programs on issues of violence against women and children.)

VICTIM ASSISTANCE PROGRAMS AND COURT LISTINGS

Barnstable County District Attorney's Office
Victim/Witness Assistance
First District Courthouse
Route 6A
Barnstable, MA. 02360
508-362-8103

DISTRICT COURTS: Barnstable, Edgartown, Nantucket, Orleans

Berkshire County District Attorney's Office
Victim Assistance Program
P.O. Box 1383
Pittsfield, MA. 01201
413-443-3500

DISTRICT COURTS: North Berkshire, Pittsfield,
South Berkshire

Bristol County District Attorney's Office
Victim/Witness Assistance Program
888 Purchase Street
New Bedford, MA. 02740
508-997-0711

DISTRICT COURTS: Attleboro, New Bedford, Fall River,
Taunton

Essex County District Attorney's Office
Victim/Witness Assistance
Museum Place
1 East India Square
Salem, MA. 01970
508-745-6610

DISTRICT COURTS: Amesbury, Gloucester, Haverhill, Ipswich,
Lawrence, Lynn, Newburyport, Peabody,
Salem

Hampden County District Attorney's Office
Victim/Witness Assistance
50 State Street
Springfield, MA. 01103
413-781-8100

DISTRICT COURTS: Chicopee, Holyoke, Palmer, Springfield,
Westfield

Victim Assistance Programs

Middlesex County District Attorney's Office
Victim/Witness Service Bureau
40 Thorndike Street
Cambridge, MA. 02141
617-494-4604

DISTRICT COURTS: Ayer, Cambridge, Concord, Framingham,
Lowell, Malden, Marlborough, Natick,
Newton, Somerville, Waltham, Woburn

Northwestern District Attorney's Office
Victim/Witness Assistance Program
One Court Square
Northampton, MA. 01060
413-586-5780

DISTRICT COURTS: Greenfield, Northampton, Orange, Ware

Norfolk County District Attorney's Office
Victim/Witness Assistance
P.O. Box 309
Dedham, MA. 02026
617-329-5440

DISTRICT COURTS: Brookline, Dedham, Quincy, Stoughton,
Wrentham

Plymouth County District Attorney's Office
Victim Assistance Program
32 Belmont Street
Brockton, MA. 02401
508-583-3306

DISTRICT COURTS: Brockton, Hingham, Plymouth, Wareham

Suffolk County District Attorney's Office
Victim/Witness Assistance
Old Courthouse, Room 2720
Boston, MA. 02108
617-725-8677

DISTRICT COURTS: Boston Municipal Court, Brighton,
Charlestown, Chelsea, Dorchester, East
Boston, Roxbury, South Boston,
West Roxbury

Victim Assistance Programs

Worcester County District Attorney's Office
Victim/Witness Assistance
332 Main Street
Worcester, MA. 01608
508-792-0214

DISTRICT COURTS: Clinton, Dudley, Fitchburg, Gardner,
Leominster, Milford, Spencer, Uxbridge,
Westborough, Winchendon, Worcester

STATEWIDE OFFICES:

Massachusetts Victim and Witness Assistance Board
Massachusetts Office for Victim Assistance
100 Cambridge Street, Room 1104
Boston, MA. 02202
617-727-5200

Massachusetts Parole Board
Victim Services Unit
Fort Point Place
27-43 Wormwood Place, 3rd fl.
Boston, MA. 02110-1606
617-727-3271

Victim Compensation and Assistance Division
Department of the Attorney General
One Ashburton Place
Boston, MA. 02108
617-727-2200 X2875

SOURCE: Domestic Violence Trainer's Manual produced by the
Massachusetts Criminal Justice Training Institute,
Boston, MA, 1991.