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MANDATORY ARREST AND DOMESTIC VIOLENCE IN MASSACHUSETTS

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TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
INTRODUCTION	1
RESEARCH QUESTIONS	1
ARREST POLICIES	2
PREVIOUS RESEARCH	4
DESCRIPTION OF THE PROJECT	5
PRE-POST COMPONENT	5
NATURAL EXPERIMENT COMPONENT	5
ADVISORY PANEL	6
MEASUREMENT	6
NEW STANDARDS AND THEIR IMPLEMENTATION	7
DOMESTIC VIOLENCE AND RESPONSE	7
DOMESTIC DISTURBANCE CALLS	7
OFFENDERS	8
VICTIMS	11
CHILDREN	13
ARRESTS	14
CORRELATES OF ARREST	14
DUAL ARREST	19
CIRCUMSTANCES	19
CORRELATES OF DUAL ARREST	20
REDUCTION OF DUAL ARREST	20
NIBRS	20
STATEWIDE PATTERNS	21
DEPARTMENTAL VARIATION	22
IMPLEMENTATION	23
CHANGES IN PATTERNS	24
OFFICER AND ADVOCATE PERCEPTIONS	25
SUMMARY AND RECOMMENDATIONS	25
IMPLEMENTATION	25
STATUTORY ISSUES	25
TRAINING	25
DEPARTMENTAL POLICIES	25
STATISTICAL ISSUES	26
FUTURE EFFORTS	26
APPLICABILITY TO OTHER STATES	26
REFERENCES	27
APPENDIX	
MASSACHUSETTS MANDATORY ARREST LAW	A1
LIST OF PAPERS FROM PRIOR STUDY	B1
DATA COLLECTION INSTRUMENT	C1
MODEL DEPARTMENTAL POLICY	D1

LIST OF TABLES

<u>TABLE</u>	<u>PAGE</u>
1. OFFENDER CHARACTERISTICS	8
2. OFFENSES CHARGED TO OFFENDERS	9
3. OUTCOME OF REPORTS	11
4. VICTIM CHARACTERISTICS	13
5. VICTIM/OFFENDER RELATIONSHIPS	14
6. CORRELATES OF OFFENDER ARREST	16
7. CORRELATES OF VICTIM ARREST	19
8. DEPARTMENTAL PATTERNS	22
9. TYPE OF TRAINING	24

LIST OF FIGURES

<u>FIGURES</u>	<u>PAGE</u>
1. OFFENSE CHARGES	10
2. OFFICER RESPONSES	12

MANDATORY ARREST AND DOMESTIC VIOLENCE IN MASSACHUSETTS

INTRODUCTION

Police have traditionally been reluctant to become involved in domestic violence situations (Goldsmith, 1990). Officers are concerned with recidivism, violence directed toward the officer, and the belief that courts and social agencies fail to follow through in domestic violence cases (Caputo, 1991). Some argue that a mandatory arrest law inhibits a partner from committing acts of violence and reduces the chances that an abuser, after arrest, will continue abusive behavior (Humphreys and Humphreys, 1985; Sherman and Berk, 1984).

Recently, Massachusetts passed a statute revising the law regarding arrests of domestic violence offenders (Massachusetts, 1990). The new law (commonly called the "Tucker Bill") mandates arrest of violators of protective court injunctions and permits arrest under expanded circumstances (see appendix). The state Executive Office of Public Safety working with law enforcement and human service agencies developed a model policy for police handling of domestic violence. Statutory changes and the new model policy should increase the arrest rate in domestic violence situations. Whether it will do so and the effect it will have on domestic violence statistics depends, in part, on how the police officers enforce the law.

The findings of Sherman and Berk in Minneapolis (1984) encouraged arrest in cases of domestic violence. Since then many police departments have adopted some form of an arrest policy. Studies in Nebraska (Steinman, 1988), Seattle (Ferguson, 1987), and the National Crime Survey (Langan and Innes, 1986) replicated deterrence effects. In contrast, Dunford et al. (1989) did not find such effects in Omaha, Nebraska.

This study of police response to domestic violence includes 24 police departments across the Commonwealth. Data were collected over a three month period on specific incidents of domestic violence. Interviews with police officers and staff of women's shelters provided further insight.

RESEARCH QUESTIONS

Four research questions are the focus of this study.

- * To what extent have the new standards for arrest of domestic violence offenders been followed by police officers in Massachusetts?
- * How has the new law affected statewide patterns of policing?
- * What issues need to be considered when interpreting domestic violence statistics in a mandatory arrest context?
- * To what extent have there been occurrences of dual arrest (where both offender and victim are arrested)?

Answers to these questions will provide important information about the effect of state policies on arrest practices, on domestic violence, and on statistics concerning domestic violence. The effect of arrest policies on domestic violence statistics is important because there is much concern over the appropriate ways to handle domestic violence. These policies have implications for victims, perpetrators, family members and police.

The research findings are not consistent regarding the prevalence of arrest, factors that influence arrest, and its consequences (Black, 1980; Smith, 1987; Holmes, 1991a). Resolving these inconsistent findings requires more information. Basic descriptive information on the nature, correlates, and outcomes of arrest will help resolve these inconsistencies. This will also help to refine policing policy and procedures reduce the recurrence and severity of domestic violence.

ARREST POLICIES

Despite mixed research results, battered women's advocates, victims, and some criminal justice professionals share a growing national agreement that early and decisive intervention by the police in domestic violence cases effectively reduces repeat calls and may save lives or prevent further injuries. The immediate and primary concern of police officers is protection of the victim, and of her children as well.

An amendment to Chapter 209A of the Massachusetts General Law, the Abuse Prevention Act, embodies one of three different approaches to arrest in domestic violence incidents. The three approaches are: mandatory arrest, pro-arrest, and permissive arrest. The new law in Massachusetts shifts from permissive arrest policies in most aspects of domestic violence to pro-arrest and mandatory arrest policies. For example, previous violations of restraining orders and probable cause evidence of abuse permitted arrest, but did not require it. Under the new law, arrest is mandated for violations of restraining orders (209A violations). Absent a restraining order, arrest of the suspect is preferred (a pro-arrest policy) when there is probable cause of abuse.

Mandatory Arrest

A mandatory arrest approach requires that in incidents of domestic assault police must arrest whenever probable cause exists. An often misunderstood idea of this approach is the belief that police will lose discretion in the arrest procedure. Proponents argue that police continue to have much discretion in deciding if probable cause exists. They reason that if an officer determines that a crime has been committed and there is probable cause for arrest, only then is arrest mandatory. Arrest based on probable cause ultimately emphasizes an officer's law enforcement duty.

Some opponents argue that a mandatory arrest approach is too much of a load on the system. Critics think increased case volume will strain the court system. In some instances this is true. However, planning resources can alleviate this problem in jurisdictions with mandatory arrest policies. The potential reduction in repeat calls (if that is what results from arrest) would also reduce demands on the criminal justice system.

Pro-Arrest Approach

A pro-arrest policy assumes and encourages arrest as the appropriate response in domestic violence incidents. Approximately twenty-five states have implemented this approach. Proponents argue that it leaves a degree of discretion to the arresting officer in his or her decision to arrest. In many municipalities, however, officers must indicate their reasoning in writing if they choose not to arrest. Proponents also argue that this approach allows for individual counties and cities to implement their own policies. An example is Concord, New Hampshire where the city's police department chose to institute its own policy of mandatory arrest, while the state as a whole did not.

Opponents argue that, although this method allows for greater freedom of choice for individual departments, the result often leaves a state with less standardized enforcement. Also, some argue that mandatory arrest policies are bound to occur in many departments in incremental time periods, raising questions of unequal enforcement of the law. It would be more expedient to proceed with a statewide policy at the outset, thus leaving less likelihood of a civil suit as a result of unequal enforcement.

Permissive Arrest

The old Massachusetts law followed a permissive approach to arrest under Chapter 209A. Police were mandated to respond in some way to domestic violence incidents. They were not required to always arrest the suspect, even when faced with probable cause of abuse or violation of court restraining orders (criminal offenses under Massachusetts statutes).

Proponents argue that this method offers the most discretion in arrests. The variety of arrest procedures include arrest on probable cause if a felony has been committed or arrest if a restraining order has been violated. The new law in Massachusetts states arrest is preferred if there is probable cause, even without police witnessing the assault and battery. Opponents argue that this method allows too little discretion in enforcement.

Dual Arrest

In addition to these three arrest policies, a number of jurisdictions found that, after promoting domestic violence arrests, there were increasing numbers of domestic violence incidents in which police were arresting both victim and offender. In many cases this was a result of officers' assessments that both parties exhibited injuries. In Connecticut, after the Torrington law suit and a new mandatory arrest statute, there was a significant increase in dual arrests for the first two to three years after the new law. Rhode Island had also seen an increase in dual arrest after the passage of a mandatory arrest statute. In view of this problem some states (e.g. Washington) have included self-defense and "primary aggressor" language in their abuse statutes. The statute in Massachusetts requires officers to provide a written justification for dual arrest. Police training programs are also designed to encourage the police officers to focus on the primary aggressor and not arrest victims who were defending themselves.

PREVIOUS RESEARCH

An earlier study by the Massachusetts Statistical Analysis Center (Holmes and Bibel, 1989), focused on the police response when answering a call of 'domestic dispute'. Data were collected from a random sample of police agencies in Massachusetts over a three month period. Officers completed an incident reporting form after responding to such calls. UCR data on domestic homicides in the state were also examined.

The police responses to domestic violence reported in the earlier project were similar to that described in other studies. Only seven percent of the incidents resulted in arrest. Even in cases of violating a 209A restraining order (a criminal offense) or in which weapons were used, most disputes were not resolved by arresting the alleged perpetrator. The presence of a 209A violation and witnesses, however, did increase the rate of arrest to 35%. Arrests were also more likely when the call closely followed the violence.

Prior Recommendations

The earlier study recommended specific issues for which statutes needed to be clarified, particularly with respect to the following: the degree of discretion intended for arrest policies, the extent of police liability under false arrest or failure to arrest situations, and probable cause interviewing of potential child victims. Greater coordination between arrest policy, alternative interventions, and resource allocation was also needed. Most of these recommendations were addressed by the new statute. Some of these changes are likely to affect arrest statistics for domestic violence. An understanding of how a state's statute affects arrest statistics requires examination of these issues.

Impact of Prior Study

The report "Police Response to Domestic Violence" and presentations based on the study (see appendix for a list of papers based on the study) contributed to the evaluation, clarification, and revision of public policy and agency procedures regarding policing and domestic violence. It has also encouraged support by domestic violence activists for NIBRS adoption by police departments. These impacts occurred in Massachusetts and in other states as well.

The domestic violence project provided basic evaluative data on the implementation and outcomes of police interventions in domestic disputes at the time of the study. It provided basic descriptive statistics regarding police actions in domestic violence situations. It allowed comparisons with normative standards for police behavior established by a previous law regarding domestic violence. It identified policy and programmatic issues that needed followup or clarification. It also resulted in changes in administrative procedures for handling domestic violence disputes and proposed changes in existing law. The present study provides assessment and clarification of police response to the new domestic violence law. It will also clarify the meaning of domestic violence arrest statistics and identify potential applications of NIBRS data to interventions in such cases.

DESCRIPTION OF THE PROJECT

This project takes advantage of a change in statutory law in Massachusetts regarding police handling of domestic violence disturbances to examine the effect of a mandatory arrest policy on domestic violence reports and the outcomes of these reports. In part, it is a pre-post design, comparing statistics before and after the legislative change. It includes a natural experiment comparing departments that have and have not had training in the domestic violence model policy. It also compares departments that adopt or do not adopt the state's model policy.

The natural experiment component is especially important because it is commonly believed among planners dealing with domestic violence that training of officers and adoption of a model policy are essential for effective implementation of the law. It is also thought that without training and a new model policy, arrest statistics are unlikely to change.

PRE-POST COMPONENT

The pre-post component contrasts departments before and after passage of the domestic violence statute. It also compares departments before and after officers receive training in the new statute as well as for departments before and after adoption of the model statute.

It utilizes a sample of agencies stratified by size, adoption of the model policy, and whether officers from the department have received training by the Criminal Justice Training Council. Selection of the departments in each strata occurred during the summer of 1991. Twenty-six police departments were selected for the different combinations of the strata. The SAC has a history of close working relationships with police departments in the Commonwealth. Many indicated a willingness to cooperate with SAC evaluations. Twenty-four were included in the final sample.

In addition to the sampled departments, data from all NIBRS participating departments will be analyzed. Data are available for 21 police departments for the year preceding enactment of the law. NIBRS data will examine changes in officer actions and incident outcomes, comparing before and after adoption of the law. NIBRS data also provides an analytical exemplar for examining victim-offender relationships in domestic violence situations.

NATURAL EXPERIMENT COMPONENT

The "Natural Experiment" derives from the fact that not all police departments will receive training in the new statute at the same time, nor will all departments adopt the model policy. Departments that have and have not had training in the new statute or adopted the model policy are compared and contrasted. Data analysis uses statistical controls to remove some of the pre-group differences inherent in natural experiments. This includes (but is not limited to) controls for baseline differences in crime rates and in participation in police accreditation. The purpose of controlling for the former is to remove some of the pre-existing differences in the communities. The purpose of controlling for the latter is to remove some of the differences in the

departments. The sampled communities and the NIBRS departments also provide baseline information on domestic assaults, which will be used to remove pre-group differences.

ADVISORY PANEL

The project had an advisory panel to help assure that information collected will have utility in assessing the implementation and impact of the statutory change and in interpreting domestic violence data produced by existing information systems. The advisory panel had a representative of the state's Criminal Justice Training Council, the Governor's Domestic Violence Advisory Board, and an outside researcher with experience in studies of domestic violence. The advisory panel suggested data to be collected, reviewed drafts of instruments, commented on project findings, and helped to identify policy and programmatic issues implied by the findings.

MEASUREMENT

Measures were developed for domestic disturbance, arrest, recidivism, receipt of domestic violence training, and adoption of model policy, and response procedures specified in the model policy. Presence of a domestic disturbance was indicated by a crime report that is classified after officers investigate domestic disturbance, domestic argument, or domestic assault calls. Arrest was indicated by inclusion of an incident in a written arrest report. Receipt of domestic violence training was measured using records from the Criminal Justice Training Council and self-report by the officers. Adoption of a model policy will be determined by a department sending a letter to the Executive Office of Public Safety (EOPS) or the SAC indicating adoption of the policy. All departments were queried on this matter by the EOPS. Since the Massachusetts Committee on Criminal Justice (in which the SAC is located) is the agency designated by EOPS to receive and evaluate domestic violence policies adopted by police, this information was readily available.

Measures of police responses derive from UCR and NIBRS response codes and policy issues. They include responses specified in the model policy: reading the statement of rights, mandatory arrest for 209A violation, preferred arrest for probable cause, interviewing children, and having two officers respond. The last response is of additional interest because many police departments have had so many cutbacks in personnel that it may be difficult or impossible for departments to always adhere to this procedure. Yet, it is regarded as essential for officers maintaining control over the situation, protection of the officers and victims, and providing witnesses for offender and officer behavior.

Recidivism was indicated by a domestic disturbance incident at the same address within six months of the original disturbance. A repeat call as an indicator of recidivism, rather than subsequent arrest, is chosen because the intervention being investigated is arrest. Choosing arrest as an indicator of arrest would confound the intervention with the outcome. It is known that a prior arrest tends to encourage subsequent decisions to arrest. Using arrest as an outcome measure when arrest is the intervention tends to create spurious correlation between intervention and outcome, confounding and complicating the analysis. It is also the case that the goal

is not only to reduce the need for arrest, it is to reduce the need for domestic disturbance calls. Consequently, a repeat call is a more appropriate measure. Information on repeat calls is part of the NIBRS system in Massachusetts. Such information will also be requested from the sampled departments as part of the information they agree to provide.

Information was also collected on relevant control variables. This includes characteristics of the victim and the offender, presence of mutual restraining orders and court imposed sanctions for violations of the orders. A copy of the data collection instrument is in the Appendix.

NEW STANDARDS AND THEIR IMPLEMENTATION

The change in the statutes required issuing new state regulations for their implementation. As part of this process, a model policy for departmental response was written. Local police departments had to either adopt the model policy or submit to the state Executive Office of Public Safety (EOPS) an alternative departmental policy to be approved by the state. The vast majority of the departments in the Commonwealth had adopted the state's model policy. The few exceptions involved expanding the policy to cases of elder abuse.

The Criminal Justice Training Council modified its curriculum regarding domestic violence to reflect changes in the statute. Emphasis was given to mandatory arrests, changes in probable cause requirements, avoidance of dual arrest, and investigation for child abuse when children were present during the incident.

Most officers had received training in responding to domestic violence (95.2%). The type of training varied, however. One in five had twenty or more hours of training, usually as part of an instructional module approved by the state Criminal Justice Training Council. Other modules of 3.5, 1.0 and 0.25 hours were also utilized (16.7%, 7.4%, and 5.8%, respectively). Officers also partook of other, unspecified training, which may not have been part of an approved curriculum.

DOMESTIC VIOLENCE AND RESPONSE

DOMESTIC DISTURBANCE CALLS

Twenty-four law enforcement agencies across the Commonwealth of Massachusetts participated in the Statistical Analysis Center's (SAC) domestic violence project. Reports on domestic violence cases were provided by the individual police agencies over a three month period. A total of 861 domestic violence cases were received and input into a Statistical Analysis Center unit data file for research purposes. Characteristics of these cases were reviewed and analyzed so that a correlation could be made between the offender/victim abuses and the law enforcement response.

OFFENDERS

Of these 861 cases, 705 reports (82%) involved men committing the offense,

while 105 (12%) reports implicated women. Fifty-one cases (6%) did not list the offenders sex (see Table 1).

TABLE 1
OFFENDER CHARACTERISTICS

<u>CHARACTERISTIC</u>	<u>FREQUENCY</u>	<u>PERCENT</u>
<u>Sex</u>		
Male	705	82.0
Female	105	12.0
Sex Not Listed	51	6.0
<u>Race</u>		
White	428	49.0
Black	80	9.0
Hispanic	38	4.0
Asian	29	3.0
Other	5	1.0
Race Not listed	281	34.0
Total	861	100.0

Racial differences were present in these cases. Whites accounted for 428 (49%) of the cases reported to the SAC unit. African Americans represented 80 (9%) cases while Hispanics were involved in 38 (4%) incidents reported. People of Asian descent totaled 29 (3%) of the cases, whereas the race category 'other' (any race other than those listed) accounted for five (.6%) reports. Two hundred and eighty-one reports (32%) did not list the offender's race when reported (see Table 1).

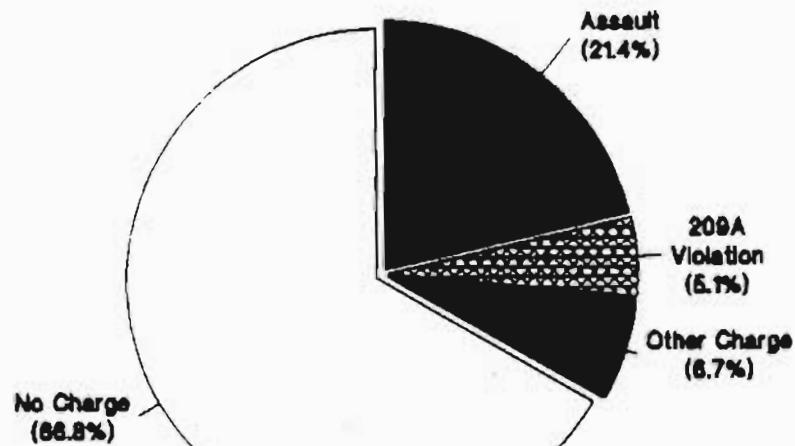
The offenders were charged with crimes that ranged from simple assault to weapons violations. Of the 861 cases compiled with the SAC, two-thirds of the reports showed that the alleged offender was not arrested and charged with a crime. Aggravated assault resulted in 94 charges (11%), whereas simple assault was listed in 84 cases (10%). Violating the domestic violence restraining order (209A violations) resulted in 44 (5.1%). The category 'other' (any charge other than those listed) accounted for 28 (3.3%) offenses. Warrants, destruction of property, and disorderly conduct accounted for seven charges each (2.4%). Nonviolent family offenses and public drunkenness each totaled three charges (1%), while trespassing and weapons violations (see Table 2) resulted in one charge each (0.2%).

TABLE 2
OFFENSES CHARGED TO OFFENDERS

<u>OFFENSE CHARGE</u>	<u>FREQUENCY</u>	<u>PERCENT</u>
No Charge	577	67.0
Aggravated Assault	94	11.0
Simple Assault	84	10.0
209A Violation	44	5.1
Other	33	3.3
Warrants	7	.8
Destruction of Property	7	.8
Disorderly Conduct	7	.8
Non-Violent Family Offense	3	.5
Public Drunkenness	3	.5
Trespassing	1	.1
Weapons Violations	1	.1
Total	861	100.0

When the offense charges are grouped, it is apparent that assault is the highest proportion of charges (21.8 percent of all incidents, 64.5 percent of all arrests) (see Figure 1). Violation of 209A orders was also a significant percentage of the charges (15.3 percent of the arrests). The actual number of 209A violations was greater than this because officers often charged for a more serious offense (e.g., aggravated assault). Officers indicated that half of all the arrests were 209A arrests (51.1%), even though that was not the most frequent charge.

FIGURE 1
OFFENSE CHARGES



N=861

The outcome of all the domestic violence reports resulted in a total of 268 arrests. One hundred and thirty-seven were mandatory 209A arrests (15.9%); 95 (11%), probable cause arrests; and 36 (4.2%), protective custody (see Table 3). Two hundred and eleven (24.5%) cases showed that the officers had read and left information on domestic violence, whereas 181 (21%) reports indicated that the 'other' (any outcome other than those listed) category was indicated. One hundred and four (12.1%) reports indicated that the officers responding on the scene restored the peace, whereas 36 (4.2%) incidents resulted in protective custody detainments. Twenty-eight (3.3%) reports indicated that nothing was done, while 24 (2.8%) cases disclosed that the alleged assailant was transported to another location. Eighteen reports indicated that help had been refused when the authorities reached the scene. Five (.6%) reports showed no one home. Twenty-two (2.5%) reports did not provide information on outcome.

TABLE 3
OUTCOME OF REPORTS

<u>OUTCOME</u>	<u>FREQUENCY</u>	<u>PERCENT</u>
209A Arrest (Mandatory)	137	15.9
Probable Cause Arrest	95	11.0
Read and Left Information	211	24.5
Other	181	21.0
Restored Peace	104	12.1
Protective Custody Arrest	36	4.2
No Action Taken	28	3.3
Transported	24	2.8
Help Refused	18	2.1
No One Home	5	.6
Action not listed	22	2.5
Total	861	100.0

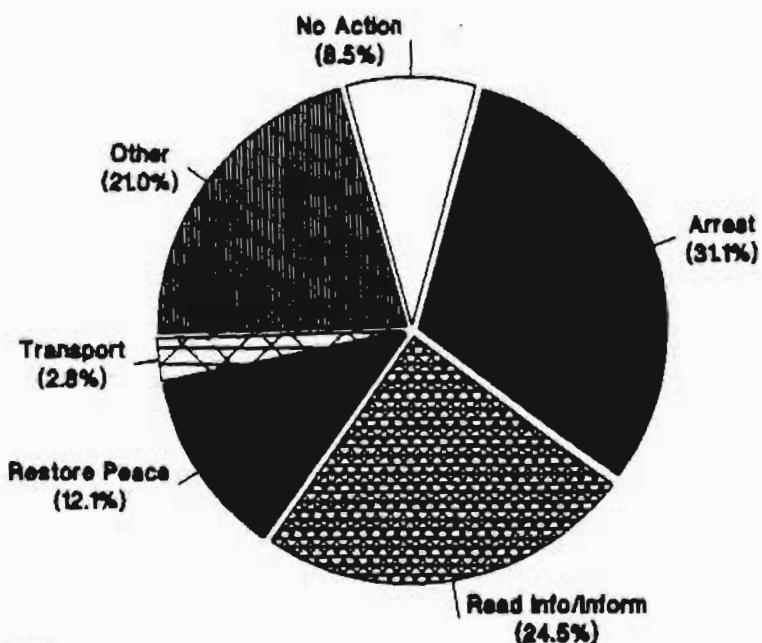
When these outcomes are grouped in similar responses, it is apparent that arrest is the most frequent action (31.1%), followed by reading and leaving information (24.5%) (see Figure 2). It should not be inferred from this that statutorily required information was provided in only one-quarter of the cases. "Read and leave" was recorded as the outcome only if that was the only action taken. Restoring peace, transporting, and "no action" were the major other responses (12.1%, 2.8%, and 8.5%, respectively). A variety of diverse actions fell into the "other" category.

VICTIMS

Women were the vast majority of victims, 658 (76.4%) (see Table 4). Of the 861 cases, 113 (13.1%) involved males being the victims of domestic violence abuse. The sex of the victim was not listed in 10% of the reports. Ninety (10.4%) reports did not list the sex of the victim.

Whites were the victims of domestic abuse in 430 (49.9%) cases reported to the police agencies. African American victims tallied 44 (5.1%) cases while Hispanics victims made up 32 (3.7%) incidents reported. Asian victims of domestic violence abuse totaled 30 (3.5%) cases, whereas the race category 'other' (any race other than those listed) amounted to six (.7%) reports. Three hundred and nineteen reports (37.1%) did not list the victims race (see Table 4).

FIGURE 2
OFFICER RESPONSES



N=861

TABLE 4
VICTIM CHARACTERISTICS

<u>CHARACTERISTIC</u>	<u>FREQUENCY</u>	<u>PERCENT</u>
<u>Sex</u>		
Male	113	13.1
Female	658	76.4
Sex Not Listed	90	10.4
<u>Race</u>		
White	430	49.9
Black	44	5.1
Hispanic	32	3.7
Asian	30	3.5
Other	6	.7
Race Not Listed	319	37.1
Total	861	100.0

The association of the victim with the abuser varied. It included a spousal relationship, relatives, boyfriends/girlfriends, as well as other non-relative affiliations. Partners or ex-partners were the most frequent relationships -- especially current partners, rather than ex-partners. Spousal victims accounted for 27.6 percent (238 cases, see Table 5), while ex-spouses equaled 3.3 percent (28 reports). Boyfriends and girl~friends amounted to 31.8 percent of the reports (274), while the ex-boyfriend or girlfriend accounted for another 7.9 percent (68 cases). A parent was the victim of abuse in 8.1 percent of the reports (70), whereas a child or children were victim(s) at half that rate (4.1%, 35 cases). The category other/relative represented 3.5 percent (30 reports), while the category other/non-relative accounted for 2.4 percent (21 cases). One in nine (11.2%) of the reports did not list the relationship between the victim and the offender.

TABLE 5
VICTIM/OFFENDER RELATIONSHIP

<u>RELATIONSHIP</u>	<u>FREQUENCY</u>	<u>PERCENT</u>
<u>Interpersonal</u>		
Spouse	238	27.6
Ex-Spouse	28	3.3
Boyfriend/Girlfriend	274	31.8
Ex-Boyfriend/Girlfriend	68	7.9
Parent	70	8.1
Child/Children	35	4.1
Other/Relative	30	3.5
Other/Non-Relative	21	2.4
Did Not List Relationship	97	11.2
<u>Living Situation</u>		
Victim/Offender Living Together	462	53.7
Not Living Together	199	23.1
Unknown	200	23.3
Total	861	100.0

The living situation was also an important factor in the domestic violence reports. Of the 861 cases, 462 incidents (53.7%) involved the victim living with the offender. For 199 reports (23.1%) the victim did not live in the same residence as the offender. The reports did not list if the victim and offender occupied the same dwelling in 200 (23.3%) instances (see Table 5).

CHILDREN

Similar to the earlier study, children were involved in the incident one-third of the time, most frequently as victims (43.2% of the incidents involved children). Children were witnesses nearly one-quarter of the time (23.1%) and a few others were aware, but did not witness, the incident (3%). The remainder of the children involved had a variety of other roles in the incident.

ARRESTS

After passage of the statute, arrests increased dramatically. Overall, 37.8 percent of the incidents resulted in arrest, more than a five-fold increase in arrests since the change in the statute. When a 209A protection order was in effect, offenders were arrested nearly half the time (49.4%). This is a doubling of the arrest rate for 209A violators compared to the 1986 study by Holmes and Bibel, but it falls short of the 100 percent expected under the mandatory arrest statute. Some offenders fled the scene before police arrived, accounting for some of the non-arrests. Subsequent analysis will examine additional reasons for not arresting 209A violators.

Most of the arrests were not for 209A violations (15.5% of the arrests were for 209A arrests). Aggravated assault and simple assault were more frequent charges (33.2 and 29.7 percent, respectively). This results from a pattern of charging perpetrators with the most serious offense allowed.

CORRELATES OF ARREST

The association between arrest and characteristics of the victims, offenders, and the incidents was analyzed using crosstabulation. Some of these relationships were significant at the .05 or .01 alpha level using a chi-square test of significance. Some of the subgroup differences were not statistically significant. The non-significant correlates are not included in the tables that follow.

Offender Arrest

Arrest was more likely when a 209A court protection order was in force. It occurred in half of the incidents involving 209A orders. In contrast, perpetrators were arrested for about a third of the calls when no 209A order was in effect (see Table 6).

Offenders were more often arrested when they had suffered injury. Arrest occurred 27.3 percent of the time when offenders had not been injured. Arrest rates ranged from 55 to 89 percent of the time when the offender was injured (depending upon the type of injury)(see Table 6). Only two offenders were hospitalized for injuries, neither of whom were arrested.

Offender use of alcohol slightly increased the probability of arrest. When alcohol was used, arrest occurred in 42 percent of the cases. When alcohol was absent, arrest occurred in 35 percent of the cases. (see Table 6).

Arrest of the victim was strongly associated with arrest of the offender, although the nature of this relationship can be debated. Offenders were arrested 61 percent of the time when victims were arrested. They were arrested less than half that rate when victims were not arrested (28.3%) (see Table 6).

Perpetrators who injured their victims were more likely to be arrested. Arrest occurred in about one in five cases where the victim was not injured. When the victim was injured arrest rates varied between two in five and two in three, depending upon the severity of the injury (see Table 6).

Witnesses increased the chance of offenders being arrested. When a witness was present, arrest occurred in 48.6 percent of the incidents. When a witness was not present, arrest was the result in one-third of the cases (see Table 6).

Use of a weapon increased the liklihood of arrest. When perpetrators used a weapon, they had an even chance of being arrested (52.4%). When a weapon was not used, the odds of arrest declined to one chance in five (20.3%).

The offender was more likely to be arrested when the victim lived with the

offender. The offender was arrested eighty percent of the time when the victim lived with the offender; 65 percent of the time when the offender did not live with the offender (see Table 6).

The amount of domestic violence training the police officers had was a significant factor in arresting offenders. Arrest was most likely if an officer had one hour of training (52% arrests). It was less likely if officers had 3.5 or 20 hours of domestic violence training (38% and 35% arrests, respectively). Arrest was least likely for officers having "other" domestic violence training (28.2%). The low rate for those with "other" training may reflect training received prior to the change in the law or from curricula other than that approved by the state's Criminal Justice Training Council. Some of those with 20 hours or "other" training had not yet received training in the new domestic violence law. These also tended to be officers with more seniority, which are noted below as having lower arrest rates.

Less experienced officers tended to arrest more frequently. The arrest rates for police officers of differing experience were as follows: 1 year or less, 36.4 percent; 2 to 5 years, 39.3 percent; 6 to 10 years, 36.3 percent; 11 to 15 years, 38 percent; 16 to 20 yrs, 29.7 percent; and 21 or more years, 21.6 percent. (see Table 6). Officers having more than 15 years of experience were significantly less likely to arrest offenders.

TABLE 6
CORRELATES OF OFFENDER ARREST

<u>CORRELATE</u>	<u>ARRESTED</u>		<u>NOT ARRESTED</u>	
	<u>N</u>	<u>PCT.</u>	<u>N</u>	<u>PCT.</u>
<u>209A in Force*</u>				
Yes	41	49.4	42	50.6
No	180	35.9	321	64.1
<u>Offender Injured**</u>				
None	150	27.3	399	72.7
Minor (not visible)	17	54.8	14	45.2
Minor (visible)	35	68.6	16	31.4
Serious (med. attention)	8	88.9	1	11.1
Hospitalized	2	66.7	1	33.3
<u>Victim Arrested**</u>				
Yes	14	60.9	9	39.1
No	157	28.3	398	71.7
<u>Offender Use of Alcohol*</u>				
Yes	46	42.2	53	57.8
No	70	34.5	133	65.5

TABLE 6 (CONT'D)
CORRELATES OF OFFENDER ARREST

<u>CORRELATE</u>	<u>ARRESTED</u>		<u>NOT ARRESTED</u>	
	N	PCT.	N	PCT.
<u>Victim Injured**</u>				
None	94	22.1	331	77.9
Minor (not visible)	39	42.9	52	57.1
Minor (visible)	66	66.7	33	33.3
Serious (med. attention)	11	55.0	9	45.0
Hospitalized	2	50.0	2	50.0
<u>Witness**</u>				
Yes	87	48.6	92	51.4
No	133	33.2	268	66.8
<u>Weapon Use**</u>				
Yes	170	52.3	155	47.7
No	84	20.3	329	79.7
<u>Victim Living with Offender**</u>				
Yes	177	80.1	44	20.9
No	263	64.6	144	35.4
<u>Amount of DV Training**</u>				
15 Minutes	17	43.6	22	56.4
1 Hour	26	52.0	24	48.0
3.5 Hours	43	38.4	69	61.6
20+ Hours	47	35.9	84	64.1
Other	96	28.2	244	71.8
<u>Years Policing*</u>				
1 Year or less	8	36.4	14	63.6
2-5 Years	94	39.3	145	60.7
6-10 Years	77	36.3	135	63.7
11-15 Years	35	38.0	57	62.0
16-20 Years	33	29.7	78	70.3
21+ Years	22	21.6	80	78.4

Subgroup totals may not equal 861 due to data missing for a given correlate.

* Significant at or less than .05 level.

** Significant at or less than .01 level.

Victim Arrest

Arrest of the victim was associated with injury of the offender and of the victim, arrest of the offender, a weapon being used in the incident, and race of the victim.

Victims were more likely arrested when the offender also had injuries. When the offender was not injured, victims were arrested 14 (3.1%) times. When a minor (not visible) injury was present, only one of the victims was arrested (5%). In contrast, with visibly minor injury victim arrest occurred five times (15.6%). This outcome occurred in 50 percent of the cases in which the offender had a serious injury. No victims were arrested when the offenders were hospitalized.

Victims were four times as likely to be arrested if the offender was arrested. When the offender was arrested, 14 victims were also arrested (8.2%). When the offender was not arrested, a victim was arrested on nine occasions (2.2%) (see Table 6).

Blacks were more likely to be arrested; Hispanics, less likely. The victim's race for those arrested was as follows: White - fifteen (4.7%), Black - five (17%), Hispanic - zero, Asian - one (25%), and Other - one (5%). The victim's race for those not arrested was as follows: White - 303 (95.3%), Black - 23 (82.1%), Hispanic - 22 (100%), Asian - 19 (95%), and Other - one (75%) (see Table 7).

Arrested victims were not injured 15 (4.7%) times; suffered a minor (not visible) injury five times (6.5%); had a visibly minor injury six times (7.9%); a serious injury once (7.7%) and was hospitalized once (50%) (see Table 7).

Injury to the victim increased the chances of his or her arrest. This, however, is correlated with offender injury. The relationship between arrest and victim injury may be indicative of the overall severity of the conflict. The victim, when not arrested, was also not injured on 366 (97.1%) occasions, suffered a minor (not visible) injury in 73 incidents (93.6%), suffered a visibly minor injury 70 times (92.1%), a serious injury on 12 occasions (92.3%), and was hospitalized once (50%) (see Table 7).

A weapon increased the rate of arrest. A weapon was used in 17 incidents where the victim was arrested (7.4%), while a weapon was not used in nine incidents when the victim was arrested (2.62%). When a victim was not arrested, a weapon was used 214 times (92.6%), whereas 333 (97.4%) reports indicated that a weapon was not used (see Table 7).

TABLE 7
CORRELATES OF VICTIM ARREST

<u>CORRELATE</u>	<u>VICTIM ARRESTED</u>		<u>VICTIM NOT ARRESTED</u>	
	<u>N</u>	<u>PCT.</u>	<u>N</u>	<u>PCT.</u>
Offender Injured**				
None	14	3.1	439	96.9
Minor (not visible)	1	5.0	19	95.0
Minor (visible)	5	15.6	27	84.4
Serious (med. attention)	3	50.0	3	50.0
Hospitalized	0	0.0	3	100.0
Offender Arrested**				
Yes	14	8.2	157	91.8
No	9	2.2	398	97.8
Victim Race*				
White	15	4.7	303	95.3
Black	5	17.9	23	82.1
Hispanic	0	0.0	22	100.0
Asian	1	5.0	19	95.0
Other	1	5.0	3	75.0
Victim Injured*				
None	11	2.9	366	97.1
Minor (not visible)	5	6.4	73	93.6
Minor (visible)	6	7.9	70	92.1
Serious (med. attention)	1	7.7	12	92.3
Hospitalized	1	50.0	1	50.0
Weapon Use*				
Yes	17	7.4	214	92.6
No	9	2.6	333	97.4

Subgroup Ns may not total to 861 due to missing or inapplicable data.

* Significant at or less than .05 level.

** Significant at or less than .01 level.

DUAL ARREST

Victim and offenders were both arrested in 2.4 percent of the cases. This is substantially less than the experience of other states introducing mandatory arrest statutes. Qualitative interviews with police suggest that these dual arrests primarily

occur in cases in which it is difficult to tell who is the primary aggressor and both parties have been injured or have used weapons.

CIRCUMSTANCES

Victims who were arrested were most often charged with aggravated assault or simple assault (35.7 and 21.4 percent, respectively). The data do not indicate whether the victim's assaultive action originated as defensive behavior or whether it was mutually assaultive. Qualitative comments from officers suggests that some victim assaultive behavior may have began as defensive, but then escalated beyond what was regarded by the officers as necessary for defense. Officers also felt that sometimes the conflict involved mutual assault.

CORRELATES OF DUAL ARREST

The efforts of the training program, the statute, and the departmental policies in trying to minimize dual arrest were highly successful. There was such a small percentage of cases of dual arrest (2.4%) that correlates were difficult to statistically identify. Qualitative reports focussed primarily on issues of mutual assault and mutual injury where it was difficult or impossible for the officers to determine who started the altercation. Other cases of dual arrest occurred when the victim assaulted the officers.

There was a significant association between victim arrest and offender arrest. Sixty percent of the victim arrests occurred when the offender was also arrested. Victims were four times as likely to be arrested if the offender was arrested (8.2% versus 2.2%).

Victims were more likely to be arrested when the offender had serious injuries. Half of the incidents of offenders having serious injuries resulted in arrest of the victim (3 out of 6 cases of serious injury). Most of the victim arrests did not occur with offender injury; however, only 12 percent of the offenders were injured. Other factors than injury to the offender are needed to more fully explain arrest of the victim.

REDUCTION OF DUAL ARREST

The findings indicate very low levels of dual arrest, although anecdotal reports from some officers suggests there may be isolated pockets of dual arrest in a few areas. It appears that the statutory, policy, and training efforts to prevent an increase in dual arrest were very effective. Given the low level of dual arrest, further reduction will depend upon actions tailored to very specific situations.

NIBRS

Data were obtained from the NIBRS for Massachusetts for 1990. These were to be used as a design model for analyzing NIBRS data for 1991 and 1992. It became apparent that there were complications in matching the incident, victim, offender, and arrest records for each incident. When the data were transformed from variable record case files to fixed record case files (the most easily analyzed form for the data), it was uncertain which offense of multiple offenses matched which charge of multiple

charges, especially if the arrest charge was for a "lesser included offense" that might derive from more than one of the incident offenses. This difficulty and similar ones were noted by a panel on NIBRS at the American Society of Criminology in 1992. The problem was also discussed with FBI NIBRS staff and personnel from OJJDP (which have had to deal with a similar problem for data from a national study of juvenile adjudication). An unequivocal solution to this problem has not yet been developed by several teams of researchers across the nation that have been working on this problem. Consequently, the initial promise of the use of NIBRS data for analysis of domestic violence is held in abeyance. The Sac Director is keeping in touch with these researchers and will address this issue when a solution is found.

The failure of NIBRS data to provide information on domestic assaults raises issues for monitoring domestic violence. If the problems in use of NIBRS are not dealt with expeditiously, law enforcement and advocacy organizations may use alternative sources of information. This may undermine support for NIBRS and fragment efforts to collect reliable information on domestic violence.

STATEWIDE PATTERNS

Twenty-four police departments across the Commonwealth participated in the study. The following presents the variations among these departments with regard to characteristics in the domestic violence response.

Fourteen percent of the total incidents already had domestic violence restraining orders or 209A's in force before the domestic violence call. Eighty-six percent of these incidents did not have a restraining order in force at the time of the call. As many as 30 percent of the calls in a department involved 209A orders. In some of the smaller departments, none of the victims had a 209A in effect.

When responding to domestic violence call, 15 of the 24 departments involved in the study had a higher percentage of non-arrest than arrest of the offender. Thirty-five percent of all the offenders were arrested when the police arrived at the scene, whereas 65 percent of the offenders were not arrested when police reached the outbreak. In the community providing the largest number of reports (295), three-fourths of the incidents did not require an arrest by the law enforcement authorities.

Ten of the 24 police departments had a lower percentage of weapon possession than non-weapon possession by the offender. From the 24 departments, 43 percent of the offenders were to have used a weapon in the domestic violence incident. However, 57 percent of the 24 police departments had no weapons in possession by the offender when the officers arrived on the scene of a domestic violence episode.

All of the 24 police departments had a greater percentage of victim non-arrest than victim arrest when responding to a domestic violence call. Ninety-six percent of the total incidents did not result in arrest the victim during a domestic violence

response, while four percent of the victims were arrested. However, the arrest rate ranged from 0 to 21 percent.

Injury was also an issue also concerning the victim arrest. Injury, when viewed from a 24 police departmental perspective, did not occur as often as it did in the individual police department reports. Sixty-six percent of the incidents reported that the victims did not receive injuries, while 37 percent of the victims had received injuries. The rate of victim injury ranged from 30 to 70 percent.

TABLE 8
DEPARTMENTAL PATTERNS

<u>CHARACTERISTICS</u>	<u>OVERALL PERCENT</u>	<u>DEPARTMENTAL RANGE OF PERCENT</u>
209A in Force	14	0 - 30
Weapon Use	43	3 - 88*
Victim Injured	37	30 - 73*
Alcohol Involvement	37	0 - 100*
Drug Involvement	11	0 - 21
Offender Arrest	35	0 - 68*
Victim Arrest	4	0 - 21
Officer Training	95	75 - 100*
Officer Experience < 1 Year	5	0 - 77*

*Significant variation across departments using a chi-square test and a .05 alpha level.

DEPARTMENTAL VARIATION

There were several characteristics in the incidents that differed among the departments. Characteristics of the incidents varied in the extent to which weapons and alcohol were involved and in the extent of injury to the victims (see Table 8). Differences also occurred in officer training and experience and in the arrest rates for the offenders. Arrest rates and the frequency of arrest of victims were so small that no significant differences among departments were detected. There was no significant variation in occurrence of 209A cases or in drug involvement.

Weapon Use

The departments varied in the prevalence of weapons being used. It occurred in only three percent of the incidents in one department and in as many as 88 percent of the incidents in another department. This compares with an average weapon use 43 percent of the time.

Victim Injury

The rate of victim injury varied across departments. Victims were injured two-thirds of the time in the community having the most frequent injuries. Only seventeen percent of the victims were injured in the community having the lowest rate of injury. This compares with an average injury rate of 33 percent.

Alcohol Involvement

The extent to which offenders used alcohol before or during the incident differed among the departments. Perpetrators had been drinking in all of the incidents handled by some departments and in none of the incidents in other communities. Overall it was involved 37 percent of the time.

Arrest Rates

There was considerable variation in the rates of arrest of the offenders (see Table 8). In three departments, no offenders were arrested. In one department more than two-thirds of the alleged perpetrators were arrested (68%). On the average about 35 percent of the offenders were arrested. This variation among the departments in the arrest rate was statistically significant using a chi-square test and a .05 alpha level.

Officer Training

In all departments at least three-fourths of the calls were responded to by officers having training in domestic violence cases. In a number of departments (10 of 24) all such calls were investigated by officers having domestic violence training. Even with these high rates of training, however, the differences among the departments in the rates of officer training was statistically significant.

Officer Experience

Departments differed in the experience of their officers responding to these calls. In one department over three-fourths of the calls were answered by officers having less than one year of experience. In other departments all incidents were handled by officers having at least five years of experience. This variation was affected by some departments having to lay off younger officers and other departments having a small number of officers who responded to the calls. Nevertheless, the result was differences in the experience of officers handling the calls.

IMPLEMENTATION

The new domestic violence statute was implemented in a number of ways. All local law enforcement agencies in the Commonwealth received copies of the new law. In addition, a model policy for departmental responses to these calls for service was issued by the state Executive Office of Public Safety. All agencies in the study had

adopted the model policy, many with additions to include elder or child abuse.

The state's Criminal Justice Training Council also modified its curriculum so that new officers and those taking advanced courses were informed of the legal changes and their implication for officer conduct. Domestic violence training was an important issue because officers were expected to change their behavior when arriving at the scene of the incident. All of the departments had officers who received some training. An overwhelming percentage of the incidents were handled by officers who received some type of training on the new domestic violence law (95%, see Table 9). Training on domestic violence matters ranged from fifteen minutes of training to 20 plus hours of training. Another type of training listed on the reports listed some "other" type of training (any type of training other than those listed) used by the police officers. Within the context of this training was the type of training acquired by the police officers. The domestic violence reports indicated that 48 percent of the law enforcement officers, almost half, received the other type of training. Nine percent of the incidents were handled by police who received 15 of training, while eight percent were responded to by officers having one hour of training. Another 16 percent of the calls were covered by police officers who received three and a half hours of training. The remaining 20 percent of calls had officers who received 20 plus hours of training.

TABLE 9
TYPE OF DOMESTIC VIOLENCE TRAINING

TRAINING TYPE	PERCENT	N
Any Training	95	817
15 Minutes	9	77
One Hour	8	69
3 1/2 Hours	16	138
20 hours or more	20	172
Other	48	413
No Indicated Training	5	43

CHANGES IN PATTERNS

This section examines changes in police response between 1986 and 1992 for the seven communities that were in both the earlier and current study. The most striking change was the extent to which arrest occurred. It increased five-fold, from seven to thirty-five percent. Clearly, the law had some impact on officer behavior.

Correlates of arrests also changed. The presence of a weapon had a much stronger influence on arrest in the current study than in the earlier study. Presence of a weapon did not increase the probability of arrest in the earlier study. In the

current study it did (see Table 6).

It is notable that certain patterns did not change. Violation of a 209A order continued to be associated with arrest. However, the arrest rate for violating a court restraining order doubled from 25 to 50 percent. The arrest rate of those not violating a 209A order increased five-fold from 7 to 36 percent.

The overall injury rate for the victims remained about one-third of the cases. This may be due to the fact that most injuries occurred prior to officer intervention. Additional strategies will be needed to address this issue.

OFFICER AND ADVOCATE PERCEPTIONS

Qualitative interviews with officers and with personnel at family shelters identified three important perceptions. Officers felt that the statutory and policy changes greatly clarified the responsibility of the officers and what actions they should do. Most were glad to have the clarification. Second, advocates felt that the changes encouraged women to take action against the offenders, especially with respect to getting court orders and seeking shelter. Third, both officers and advocates report increased cooperation between the shelters and the police in actions needed to provide security for the victims and their children. Almost all the respondents attributed these outcomes to result in part from clarification of roles of police in responding to these calls.

SUMMARY AND RECOMMENDATIONS

IMPLEMENTATION

Training, information, and policies for changes in the domestic violence statute have been widely implemented. There has also been a significant increase in the arrest of perpetrators, especially for those who violate 209A court protection orders. There is, however, still variation among departments in the extent of arrests. Further analysis of these data are needed to identify why this is the case.

STATUTORY ISSUES

Police liability for false arrest or failure to arrest was not dealt with explicitly by the Tucker Bill. Officers report, however, that the greater clarity of arrest requirements makes them feel less at risk for liability suits in these cases.

TRAINING

Training has been widespread. Arrest patterns vary significantly by the training officers receive. It is curious that officers receiving the most training (3.5 hours or more) arrest less frequently. Whether this represents officers acquiring skills that reduce the need for arrest or whether this represents older training curricula that did not emphasize arrest for 209A violations needs further investigation.

DEPARTMENTAL POLICIES

All of the departments in the study have implemented new, approved policies regarding responses to domestic violence. All included the recommended content of

the state Executive Office of Public Safety. Some added language to include elder and child abuse.

STATISTICAL ISSUES

The arrest process and reasons for arrest seem more clear to the officers. By increasing the consistency and clarity of when arrest should occur and by requiring written explanations of exceptions to arrest, this is likely to increase the validity and reliability of arrest as a measure of police intervention. It will also clarify the meaning of non-arrest.

FUTURE EFFORTS

Even though the arrest rates for 209A violations has increased substantially, there still are many cases in which arrest does not occur. Some of these represent offenders who fled before arrival of the police. Research and training will both need to address this issue further. For example, information is needed on the extent to which warrants are sought for 209A violators who have fled before the officers arrived. Training in this may also be needed.

APPLICABILITY TO OTHER STATES

Given the tremendous variation among states in the extent to which arrest is mandated, it raises questions regarding how applicable the findings are to other states. However, more than half the states do have mandatory arrest statutes, especially for violation of court protection orders. This increases the relevance of the findings to other states. Even in other states that do not have a mandatory arrest statute, individual departments may have such a policy.

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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF PUBLIC SAFETY
POLICY FOR LAW ENFORCEMENT
RESPONSE TO DOMESTIC VIOLENCE
1991



The Commonwealth of Massachusetts

Executive Office of Public Safety
One Ashburton Place
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William F. Weld
Governor

Thomas C. Rapone
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July 17, 1991

To the Criminal Justice Community:

I am pleased to provide you with a copy of the recently promulgated Massachusetts Policy for Law Enforcement Response to Domestic Violence.

As you are aware, Chap. 403 of the Acts of 1990 entitled "An Act Relative to the Protection of Abused Persons" was enacted by the General Court on December 16, 1990 and became effective on January 31, 1991.

Section 14 of the new law requires the Secretary of Public Safety to issue a model domestic violence law enforcement policy for local police. The statute also requires local departments to submit operational guidelines within sixty days of the promulgation of this policy. Departments may adopt the model guidelines in whole or in part and submit to the attention of Assistant Secretary Priscilla H. Douglas by September 30, 1991. The Executive Office of Public Safety will review and approve these specific guidelines.

For the past seven months, a diverse group of criminal justice and human service professionals has provided the Executive Office of Public Safety with guidance in regard to this policy. As a result I have promulgated the attached policy as required by the new law.

It is our hope and intent that this standardized policy will provide law enforcement professionals with a tool that will enhance their efforts in enforcing the recently enacted statute, and protecting the victims of abuse.

Our thanks and gratitude are extended to all those who helped in this endeavor. Massachusetts can be proud of its efforts on behalf of the victims of domestic violence.

Sincerely,

Thomas C. Rapone

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF PUBLIC SAFETY

POLICY FOR LAW ENFORCEMENT RESPONSE TO DOMESTIC VIOLENCE

1.0 AUTHORITY AND EFFECTIVE DATE. This policy is established pursuant to Section 25 of Chapter 403 of the Acts of 1990, and shall take effect as of August 1, 1991.

1.1 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 bitterer'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 s. 6: ABUSE PREVENTION LAW (effective March 26, 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 facil-

- ity, 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 the abuser will be eligible for bail and may be promptly released;
 - G. arrest any person the officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contact order or judgment.
 - H. Where there are no vacate, restraining or no-contact orders or judgments in effect, arrest shall be the preferred response whenever an officer witnesses or has probable cause to believe that a person:
 - (1) has committed a felony; or
 - (2) has committed an assault and battery in violation of G.L. c. 265, s. 13A; or
 - (3) has committed a misdemeanor involving abuse.

NOTE: Arrest for a misdemeanor not committed in an officer's presence is a statutory exception to the long-standing 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 (G.L. c. 275 s. 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 no cost, upon request to the police department.

Family or household members are persons who:

1. are or were married to one another;
 - * 2. are or were residing together in the same household;
 3. are related by blood or are or were related by marriage;
 4. have a child in common regardless of whether they have ever been married or lived together; or
 - * 5. are or have been in a substantial dating relationship as determined by a court. (See "Procedures" below regarding criteria courts use and officer's role in assisting court in making such determination.)
- * 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 G.L. c. 276, s. 28 concerning arrests without a warrant for a violation of certain statutes, among which are listed c. 209 A, uses the word "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 vacate order issued pursuant to G.L. c. 208, s. 34B, 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 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".

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 officers shall state their reason for being present.
2. They must be considerate and attentive toward all parties and their problems regardless of the officers' own view or personal reactions toward the matter.
3. Upon entering, they shall prevent the physical movement of the parties as much as possible and control their access to any potential weapons.

B. Officers are authorized by 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 officers must take immediate control of the situation and should separate the parties to prevent any violent action. However, if there are two officers present at the scene, they should remain within view of each other to avoid any subsequent allegations of mistreatment.
- D. The use of alcohol and drugs, or a condition of mental illness, can aggravate a domestic violence situation, requiring far greater patience on the part of the responding officers.
- E. The provisions of G.L. c. 209A impose specific responsibilities upon the police in regards to a domestic abuse situation. All officers are expected to be thoroughly familiar with the contents of this statute (as amended from time to time) and to act 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. Officers may enter private premises at the request of someone in lawful control of the premises, or to enforce the provisions of a protective court order or to take reasonable measures to prevent any further abuse under the authority of G.L. c. 209A.
 - 2. Officers may enter private premises where there is probable cause to believe that a felony has been or is being committed or that there is imminent danger of violence which could result in death or serious physical injury or where a breach of the peace has been committed in the officers' presence.
 - 3. Officers must leave if both parties request that they do so unless 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.
 - 4. "Private premises" includes a house, an apartment, a condominium, a hotel room, a mobile home, a dormitory room or a house trailer.

- B. In attempting to ascertain the facts in the dispute, the officers should allow each party to present his or her story individually, avoiding any unnecessary interruptions or undue interference by either party. While keeping all parties and officers in view, separate the parties sufficiently to allow each to relate matters to an officer without being overheard by the other party.
- C. To deal with the situation, the officers must ask pertinent questions, and certain fundamentals must be followed:
1. Obtain information regarding relationships, including children. Obtain the phone number of the residence and include said number in the incident report for use by the bailbondsperson in informing victim of the abuser's release on bail. Inform victim that if the victim intends to leave the residence, and wishes to be informed of such release, the victim must inform the police department of a number where the victim can be reached, or where a message of such release can be safely relayed to the victim.
 2. Obtain information about the ownership or presence of firearms.
 3. Unless necessary, avoid emphasis or in depth questioning on personal matters if there is an indication that the person would rather not discuss them more fully.
 4. Ascertain if there is a prior history of such disputes and whether there are any vacate, restraining, no-contact or other protective orders currently in effect.
 5. Determine, when appropriate, who has lawful custody of any minors involved and whether court approved visitation rights are being violated.
 6. As a standard precaution, police should check for outstanding arrest warrants on persons encountered during a domestic dispute. Since official court orders and other court papers are the best source for much of this information, police should ask the parties to produce copies of court orders or other court papers to verify their claims. In addition, the police records bureau may be checked, or appropriate courts, social service agencies or attorneys contacted.
 7. 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 Response 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.

8. Provide the addresses and telephone numbers of available crisis centers or emergency shelters and, where appropriate, advise any victims or witnesses of the Victim-Witness Assistance Program administered by the 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 an oral and written report 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 C. 119, s. 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 includes 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 officers are informed that a firearm or weapon has been or may be involved in the dispute, the officers 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.

NOTE: If the officer determines that the weapon cannot be seized:

1. the judge can order defendant to surrender guns, a license to carry and an FID card; and
2. the chief can revoke any such license or F.I.D. card issued by him for felony convictions, drug use, possession or sale; and mental illness.

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. c. 209A s. 7 requires that "the law enforcement agency shall promptly make its return of service to the court".

* Once a vacate, no contact or restraining order

is issued, officers should not accompany defendants to the property for any reason without specific judicial authorization.

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

Thomas C. Rapone
Secretary of Public Safety

ABUSED PERSON'S NOTICE OF RIGHTS

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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 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 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 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.

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