

Domestic Violence

ANSWERS TO COMMON LEGAL QUESTIONS

Q: WHAT IS DOMESTIC VIOLENCE?

A: Domestic violence or family violence is the abuse of power or control. It is behavior used by one person to control another through force or threats. A batterer makes a choice to strike, hit, kick, punch, or threaten the victim.

Domestic violence includes physical and sexual attacks and threats. These violent acts are criminal and the batterer can be prosecuted for committing them. These acts are a means of controlling the victim's thoughts, feelings and behavior. The violence does not lessen over time; in fact, the threats and beatings generally happen more often with time, last longer and cause greater physical injuries.

Emotional abuse and insulting words are almost always part of the abuse pattern, but are not considered criminal acts. The wounds from these injuries, however, may be more difficult to heal. Domestic violence is not caused by or provoked by the actions or inactions of the victim.

Domestic violence is not directly caused by alcohol or drug abuse, depression, lack of money, lack of a job, mental illness, or abuse as a child. However, existing problems often create additional stress in a relationship, and may increase the risk of violence. Many abusers blame the victim or other things for their violent acts, and do not take responsibility for the abusive behavior. There is never an excuse for violence.

Q: WHAT IS THE LEGAL DEFINITION OF ABUSE?

A: Chapter 209A, the Massachusetts Abuse Prevention Act, defines abuse as: actual physical abuse, or an attempt to harm another, or placing another in fear of serious physical harm, or causing another to engage in sexual relations by force, threat of force or duress.

Q: WHAT IS A 209A ORDER?

A: An Abuse Prevention Order, called a "209A Order," or a "protective order," or "restraining order," is a civil court order intended to provide protection from physical or sexual harm caused by force or threat of harm from a family or household member. A person can obtain an order against:

A spouse or former spouse

A present or former household member

A relative by blood or a present or former relative by marriage

The parent of your minor child

A person with whom you have or had a substantial dating relationship

Q: WHERE CAN I GET A 209A ORDER?

A: A 209A Order can be obtained in any district court, superior court or probate and family court in Massachusetts. An emergency 209A Order can be obtained from any police department after court hours, and on weekends and holidays. You do not need a lawyer to file for a 209A Order and there is no charge for filing.

Q: HOW CAN I GET AN ORDER IN DISTRICT COURT?

A: Should you decide to go to a district court for a 209A Order, you may go to the district court in the area where you live or, if you have fled to another area to avoid abuse, you may go to the district court in the area where you now live (Massachusetts Essex County Court Locations). Go to the Clerk's Office in the court and ask for a "protective order," or a "209A Order." You will receive a packet of forms to complete as an application for a protective order. In some courts, there may be a court advocate from a local battered women's service agency to help you with the form. A victim/witness advocate from the district attorney's office is also usually available for assistance, and to discuss the option of filing criminal charges against your abuser. Ask someone at the Clerk's Office to direct you to the district attorney's victim/ witness office for help. You do not have to file criminal charges in order to obtain a 209A Order. However, criminal charges can be helpful in holding a batterer responsible for criminal acts committed against you. If there is a criminal violation, the court can also require a batterer to obtain counseling or other treatment.

Q: WHAT QUESTIONS ARE ASKED ON THE FORM?

A: On the application or complaint forms for a 209A order, you need to make a sworn statement (affidavit) describing the facts of any recent or past incidents of abuse. It is important to provide as much information about the abuser as possible. You must also disclose any other existing 209A Orders from any court or any probate court action you are involved in, including any divorce or child custody proceedings.

Q: WHAT RELIEF CAN I ASK FOR ON THE APPLICATION?

A: You may request the judge to order that the abuser:

- Stop or refrain from abusing you
- Have no contact with you or a child in your custody
- Vacate the house or apartment where you live

You may also request that the judge order that you receive support and temporary custody of your children if the abuser has a legal duty to support, or shares custody. You may request payment for medical costs incurred due to injuries caused by the abuser and related loss of wages. You may ask that the abuser not contact you at work or at a

relative's home, and that your new address be kept confidential from the abuser for your safety.

Q: WHAT ABOUT CHILD CUSTODY AND VISITATION?

A: A 209A Order from a District Court can provide you with temporary support and custody of your minor children. Only the probate and family court, however, can decide child visitation rights. A 209A Order from that court may be more helpful in dealing with abuse protection that also involves divorce, long term financial support and child custody and visitation issues. You may want to speak with a private attorney for probate court, or call one of the legal services or victim's services listed here for an attorney referral list. *Pro bono* (free) or reduced fee legal services may be available.

Q: WHAT HAPPENS NEXT?

A: After you have completed the 209A complaint or application forms, return them to the Clerk's Office and ask when the judge will hear applications for protective orders. The Clerk's Office will tell you the time and courtroom location for your hearing. At your hearing, the judge will ask why you need a protective order, and will review your complaint or application forms and affidavit. The judge will decide whether it appears there is a substantial likelihood of immediate danger of abuse. He or she will probably ask you some clarifying questions. In some courts, a "209A Briefing Session " is held before the hearing and a court advocate or a district attorney's victim / witness advocate will explain the hearing process, and be with you in the courtroom.

Q: WHAT WILL THE JUDGE DO AFTER SPEAKING WITH YOU?

A: The judge may grant or deny the 209A Order after speaking with you. If the judge grants the Order, you will receive a Temporary Order for up to ten days. A court date will be scheduled within 10 court days for you to return to court for a Permanent Order, which lasts for a year and can be renewed. Keep your copy of the Order with you at all times. The judge will also order the abuser to surrender all guns and gun permits he or she possesses. The police will deliver (serve) a copy of the Order to your abuser and will keep a copy on file at the police station. It is important to provide the abuser's home, work, or other likely addresses so that the police can serve the Order as quickly as possible and provide the required notice of the next court date.

A violation of certain terms of a 209A Order (orders to vacate the premises, refrain from abuse and have no contact with you) requires that the police arrest your abuser. A violation of a 209A Order, once the abuser has notice of the Order, is a criminal offense.

Q: WHAT IS A TEN DAY HEARING?

A: The Ten Day Hearing requires that you return to the court on the date given on the

Order.

Q: WHAT HAPPENS AT THE END OF A YEAR OR THE END OF THE EFFECTIVE DATE?

A: If a 209A Order is issued by the judge for a year, you must return to the court for an extension of the Order at the end of that year or the Order will expire.

Q: WHAT SHOULD YOU DO IF YOU WANT TO CHANGE THE TERMS OF THE ORDER?

A: Any changes in the Order before that date must be made with both you and the abuser appearing in the same court where the Order was first given. A request to change or amend the Order can be made at the Clerk's Office, and a hearing will be arranged before a judge.

Q: CAN A MINOR OBTAIN A 209A ORDER?

A: A minor under 18 years old can obtain a 209A Order with some restrictions. Generally, a parent or guardian needs to be present, but the judge can decide to issue a 209A Order without a parent present if the minor appears to be in danger. In some cases, the Department of Social Services may offer assistance in gaining help for a minor. Many high schools and colleges also offer support groups for students in violent relationships. A parent may also obtain a protective order for his or her child.

Q: WHAT HAPPENS IF THE ORDER IS VIOLATED?

A: Once a 209A Order is issued, violation of certain terms of the Order is a criminal offense. Violations of orders to refrain from abuse, to have no contact, and to vacate a household, multiple family dwelling or workplace, can be prosecuted criminally under chapter 209A. If the abuser violates the order, call the police immediately. Show the Order to the police and explain how it was violated (a punch, slap, threat, entering your house or apartment, refusing to vacate, or any contact with you at home or your workplace, either in person, by telephone or mail). The police must arrest the abuser if they believe or can see that the terms of the Order were violated. If you do not call the police, you may be able to file an application for a criminal complaint on your own at the Clerk's Office in the District Court. A Victim/Witness Advocate can assist you with that process.

If you put yourself in contact with the abuser, he is vulnerable to arrest. Therefore, if you want any terms of the order to no longer apply, you should return to court and ask that the order be modified or vacated.

Q: WHAT HAPPENS IF AN ARREST IS MADE?

A: If the abuser is arrested, seek assistance from the Victim/ Witness Advocate in the

District Attorney's Office the next morning after a nighttime arrest or at any time during the day at the courthouse. A Victim/Witness Advocate will explain what the charges mean and what will happen next. The Advocate will also offer ongoing information, referral for services and cases updates throughout the time the case is in court.

Q: WHAT CRIMES CAN BE CHARGED?

A: In addition to the crime of violating a 209A Order, an abuser can be charged with a number of other crimes committed at or near the time of the violation, some of which may include:

Assault (G.L. c. 265, Section 13A), which is an attempt or offer to do bodily injury by force or violence or attempt to batter.

Assault and Battery (G.L. c. 265, Section 13A), which is a harmful or un permitted touching of another, no matter how slight, without a legal right to do so.

Assault and Battery by Means of a Dangerous Weapon (G.L. c. 265, Section 15), which is a battery with a dangerous weapon, such as a baseball bat, a shod foot, a knife or other object either inherently dangerous or used in a way that may cause serious injury or death to another.

Threats (G.L. c. 27, section 4), which are verbal or written threats to do harm which a victim reasonably believes the abuser can commit.

Trespassing (G.L. c. 266, section 120), which is entering or remaining in a house or on land in violation of a 209A Order.

Malicious Destruction of Personal Property (G.L. c. 266, section 127), which is the destruction of or injury to personal property, a house or building in a manner that is willful and malicious.

Stalking (G.L. c. 265, section, 43 (a)), which is the willful, malicious and repeated following or harassing of an individual and the making of threats with the intent to place that person in imminent fear of death or serious bodily injury. The penalties are greater for a conviction of a stalking crime committed in violation of a 209A Order.

Q: WHAT HAPPENS AFTER AN ARREST?

A: Once a criminal complaint has been issued or an arrest made, the abuser will be charged with the crime or crimes at an arraignment proceeding in the District Court. A bail hearing will be held to determine whether the defendant/abuser will be released from

custody, the court must make a reasonable effort to notify you of the release, even if you are not present in court.

Q: WHAT HAPPENS AT THE ARRAIGNMENT?

A: It is important to provide information to the Assistant District Attorney before the arraignment and bail hearing regarding the history of the abuse and a description of the most recent abuse, including any pictures or hospital records of injuries. You should also mention the location of any guns or other weapons that you believe the abuser has in his or her possession. The Assistant District Attorney will bring this information to the attention of the judge, along with your safety concerns and fears at this time. The judge may also consider whether the defendant/ abuser should be jailed until trial, or if the defendant/ abuser is to be released, what the bail and conditions of bail will be. The Assistant District Attorney represents the Commonwealth of Massachusetts in prosecuting the case, and works with the Victim/Witness Advocate to address your interests and assist you during trial.

Q: WHAT HAPPENS AFTER THE ARRAIGNMENT?

A: Interviews will be held with you before the trial, to gather information and evidence for prosecution. Every effort will be made to consider your needs and safety in going forward with the case. The safety of your children will also be priority. Prosecution may provide the means to gain batterer's intervention services for the defendant/abuser as part of a sentence recommendation. Very few batterers' seek or stay with these services on their own, without court orders and probation supervision. An Assistant District will speak with you about different sentences that can be imposed if the defendant /abuser is found guilty by a judge or jury or pleads guilty. The sentence asked for may include drug or alcohol counseling, required attendance at a batterer's intervention program, supervised probation and/or jail time.

Q: WHAT IS A CERTIFIED BATTERER'S INTERVENTION PROGRAM?

A: Certified batterer's intervention programs provide services in very strict group settings to try to help batterer's learn to accept responsibility for their violence, as well as understand and change their controlling and abusive behavior. The groups are led by certified batterer's intervention counselors trained in dealing with domestic violence offenders. The programs work with the courts and victim services to help make sure that partners of batterer's remain safe. The programs may involve weekly sessions of 1 to 2 hours in length. The batterer must participate in the program for a minimum of 80 hours. Group leaders feel your safety is a priority concern and will keep ongoing contact with you.

Q: WILL THE INTERVENTION STOP THE ABUSE?

A: There are no guarantees that the violence will stop because the abuser attends a certified batterer's intervention program. Many abusers drop out of programs or do not comply with the requirements, or only reduce their abuse temporarily. If the judge requires attendance as part of a sentence, dropping out may mean the defendant/abuser may have to serve jail time. The abuser must want to change the abusive behavior and work hard at making those changes. Promises to change, flowers and apologies are not enough. You deserve to be safe and free from abuse.

YOUR RISK OF HARM

Statistically, the most dangerous time for victim is when leaving the batterer. The abuser may feel he is losing control and become dangerously angry. Take steps to protect yourself from abuse or punishment from your abuser. Please trust your instincts. If you are afraid that something may happen, take your feelings seriously and protect yourself. You know your situation better than anyone else.

SUGGESTIONS FOR PROTECTION

Develop a safety plan that includes an escape plan for you and your children should a violent incident occur. During an incident, try to move away from an area or room where access to weapons might increase your risk, such as the kitchen, or where you can be trapped or easily injured.

Call the police or leave the house as soon as possible after an abusive incident. The police will respond and stay with you until you are safe or in a safe place. The police will also help you seek medical treatment, if needed. If you feel you may be in danger, dial the police number and hang up before it rings, so that the redial button will automatically call the police if you need them quickly.

Be alert when leaving the courthouse. If you have any reason to believe your abuser may be waiting for you, please ask someone in the District Attorney's Office or Court Advocate to help. A police officer or a court officer may be able to escort you to your car.

Guns or weapons will be ordered turned over to the police by the judge, along with any license to carry the guns and firearms identification card. Inform the police of any guns/weapons the abuser may keep in the house.

Consider changing the locks on your home. The judge can order the abuser to turn over the keys to your home and/or your car. Keep an extra set of keys in a safe place.

Inform your neighbors if a 209A order is in place. Encourage them to call the police if they see or suspect that something is wrong.

Make copies of important papers and keep them in a safe place. Make a list of the things you need to take with you (birth/medical records, marriage license, check/ bank books, credit cards, medications).

Keep emergency money and extra clothes for yourself and your children in a safe place or with someone you trust. Include a few toys and favorite things for the children.

Keep the victim's service agency number handy for emergency shelter and for support groups. You do not have to leave the abuser or have a 209A Order to attend the support groups. Information and support in making decisions are important.

Get Medical attention as you may be injured much more seriously than you realize. Go to a hospital emergency room or your private doctor as soon as possible for treatment. Ask for a copy of the treatment record.

Have pictures taken of your injuries and bruises at the hospital, police department, shelter or District Attorney's Office.

This information is provided by: Commonwealth of Massachusetts Office of the Attorney General One Ashburton Place Boston, Massachusetts 02108

RIGHTS OF THE ABUSED

You have the right to appear at the Superior, Probate and Family, District or Boston Municipal Court, if you reside within the approximate 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 directing your attacker not to contact you or a child in your custody;
- d. an order awarding you custody of a minor child;
- e. 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
- f. 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, cost for restoring utilities and replacing locks, reasonable attorney fees and other out-of-pocket losses for injuries and property damage sustained;

- g. That your current or new address be kept confidential from the abuser for your safety.

For an emergency on weekends, holidays, or week nights 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 other officer present remain at the scene until you or 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.

DOMESTIC VIOLENCE SAFETY PLAN

Develop a plan that includes an escape plan for you should a violent incident occur. During an incident, try to move away from an area or room where access to weapons might increase your risk, such as the kitchen, or where you can be trapped or easily injured. **Call the police (dial - 911 for emergencies in Hamilton)** or leave the house as soon as possible and call the police from a safe place. The police will respond and stay with you until you are safe or in a safe place. The police will also help you seek medical treatment, if needed.

RESTRAINING ORDER SAFETY CHECKLIST

Taking steps to protect yourself from abuse may cause an increase in the level or type of abuse or retaliation from your abuser. Please trust your instincts. If you are afraid something may happen, take your feelings seriously and protect yourself. You know your situation better than anyone else. We are only making suggestions that may work in your situation.

Be alert when leaving the courthouse. If you have any reason to believe the defendant named in your restraining order may be waiting for you, please ask someone from the

District Attorney's victim/Witness Program to help you.

It may not be a good idea to go directly home. You may want to spend a few hours or a few days at a family or friend's home.

If there are any guns or weapons of any kind in your home, the Judge can order the abuser to surrender the guns, the license to carry the guns and the FID card. The police can search for and take custody of a gun or weapon if you request it and give them permission to search your home.

You may want to consider changing the locks on your home. The Judge can order the defendant to turn over the keys to your home and/or your car, or the police may take the keys when the defendant is served with notice of the abuse prevention order. It may also be helpful to keep an extra set of keys for your car and home hidden in a safe place.

It is also suggested that you have extra copies of originals of important documents kept in a safe place. Documents would include license, birth certificate, social security numbers, bank account numbers and important phone numbers.

This is a very difficult and confusing time and it is not a good time to be alone. Seek the company of supportive friends and family. You can call a Battered Women's Hotline day or night for emergency services or shelter, or attend a battered women's support group in the community. You do not have to seek shelter or be a resident to receive support services from the battered women's shelter staff. The services are free and may be very helpful to you at this time. Services are available through HAWC (Healing Abuse Working for Change) at (978) 744-6841, located in Salem Massachusetts.

Inform your neighbors of the situation and let them know the defendant is not allowed on your property or near your apartment or house. Encourage them to call the police if they see the defendant or suspect something is wrong.

If the defendant appears, call the police immediately! Violation of the restraining order is a criminal offense. Sometimes it helps to dial the police and hang up before it rings, so that the re-dial button will automatically call the police if you need to call the police quickly.

If it is not safe for you to stay at your home, at a friend's or with family, there are shelters and "safe homes" available. HAWC can assist you in finding a safe place.

You may want to pack an emergency bag with clothes and needed items, and hide them or give them to a friend or family member in case you need to leave your home quickly.

Always keep a copy of your restraining order with you. Remember, that there are people who care about you and are concerned for your safety.

We want to help you remain safe and free from abuse. Please call us if you have any questions or need assistance.

WHAT NEIGHBORS AND FRIENDS CAN DO TO HELP

One of the most common dynamics of domestic violence is that the abusers will isolate the victims from their friends and families. This plays into their ability to control the victim. The victims of domestic violence must know that they have someone that they can turn to for help if they are ever going to be willing to leave and seek help.

Stay in contact with the victim, they may not be calling you because they are not allowed to by the abuser. Call at times when the abuser is not likely to be home.

Call the police if you hear sounds of a struggle or believe that someone may be in danger. The police will investigate and take appropriate actions to keep the victim safe. There is no such thing as "bothering the police." If you are not sure if the police are needed take the "better safe than sorry" attitude. If there is no problem the police will simply leave the area.

Don't take the attitude of "if they needed or wanted help they would call the police themselves!" There are many dynamics involved that may not allow the victim to leave, such as fear of further violence or financial issues. Intervention by the criminal justice system needed before they are willing to make a stand.

A NOTE TO ABUSERS

Batterers should seek help from counselors or batterer treatment centers. This behavior is voluntary and can be controlled if you truly want it to.

Be aware that changes in the laws give the police power of arrest if they have probable cause to believe that a crime has been committed involving abuse. The police will act and the District Attorney's office can prosecute even if the victim is not willing to testify in court.

Domestic violence will not be tolerated!

RESOURCES AND PHONE NUMBERS

Hamilton Police Department:

Non Emergency number: 978.468.1212

Emergency – dial 911

Healing Abuse Working for Change (H.A.W.C.):

Hot line: 978.744.6841

Office: 978.744.8552

24 HR. HOTLINE: 1-800-547-1649

DFS: Domestic Violence Unit:

781-727-3171

Elder Abuse Hotline (victims over 60):

1-800-922-2275

Child at Risk Hotline:

1-800-792-5200

DOMESTIC VIOLENCE LAWS

Chapter 209A of the General Laws of Massachusetts deals with abuse between intimate partners, family or household members.

Chapter 265, Section 43 of the General Laws of Massachusetts addresses the crime of stalking. This law was amended in August, 2000 to add Section 43A - "An Act Relative to the Crime of Criminal Harassment."

OUT-OF-STATE ABUSE ORDERS

Abuse prevention orders issued by another state or protection orders issued in another jurisdiction, MUST be enforced by police officers in Massachusetts. These orders may originate in any state, United States territory, Puerto Rico, the District of Columbia, or a tribal court. They must be for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to another person, including temporary and final orders. These orders must be treated as if they originated in Massachusetts, including mandatory arrest.

The law states that officers may presume the validity of, and enforce in accordance with the 209A law, a copy of a protection order issued by another jurisdiction which has been provided to the law enforcement officer by any source, provided that the

officer is also provided with a statement by the person protected by the order that such order remains in effect. Law enforcement officers may rely on such statement by the person protected such order. M.G.L. c209A s5A.

While it is not a necessary step in order to trigger enforcement protections, any person protected under an out-of-state order may file a certified copy of the order with any District, Probate, or Superior Court. This action will cause the order to be entered into the Commonwealth's Domestic Violence Record Keeping System. Prior to this change in the law in 1996, out-of-state restraining orders were not criminally enforceable Massachusetts.