

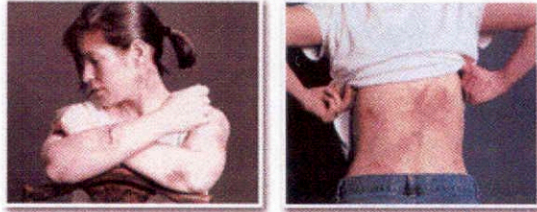
Fairhaven Police Department

Domestic Violence Division

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Definitions:

WHAT IS THE LEGAL DEFINITION OF ABUSE?

Chapter 209A, the Massachusetts Abuse Prevention Act, defines abuse as the occurrence of one or more of the following between family or household members:

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

WHAT IS AN ABUSE PREVENTION ORDER?

An Abuse Prevention Order, called a "209A Order," or a "protective order," or a "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.

WHO IS A FAMILY OR HOUSEHOLD MEMBER?

Chapter 209A, the Massachusetts Abuse Prevention Act, defines family or household members as persons who:

- a. are or were married to one another;
- b. are or were residing in the same household;
- c. are or were related by blood or marriage;
- d. having a child in common regardless of whether they have ever married or lived together; or
- e. are or have been in a substantive dating or engagement relationship, (including same sex relationships). The following should be considered:

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

Frequently Asked Questions:

WHERE DO I GET A 209A ORDER?

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 through any police department after court hours, on weekends and holidays. You do not need a lawyer to file for a 209A Order and there is no charge for filing. If you have fled to another area to avoid abuse, you may go to the respective court in the area where you have taken up residence.

In some courts, such as, Third District Court and Probate and Family Court, there may be a Court Advocate from a local battered women's service agency to help you with filing for a 209A Order. 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 desk 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.

WHAT QUESTIONS ARE ASKED ON THE FORM?

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 and to articulate the abuse. (writing down ^{he/she} threatens me can be too vague, instead articulate ^{he/she} threatens to knock my teeth out with one punch if I leave ^{him/her}). 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.

WHAT RELIEF CAN I ASK FOR ON THE APPLICATION?

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 or move out of the house or apartment where you live.

You may also request the judge to 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 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.

WHAT ABOUT CHILD CUSTODY AND VISITATION?

A 209A Order from 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, child custody and visitation issues. Pro bono (free) or reduced fee legal services may be available. Ask a Court Advocate for more information.

WHAT HAPPENS NEXT?

After you have completed the forms, return them to the Clerk's Office. The Clerk's Office will tell you which courtroom to go to for the 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 be deciding whether it appears there is a substantial likelihood of immediate danger of abuse. The judge will probably ask you some clarifying questions. In some courts the judge will hold the hearing beside the judge's bench with a Court Officer present.

WHAT HAPPENS WHEN THE JUDGE REVIEWS MY REQUEST?

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 ten court days for you to return to court for a Permanent Order, which may last 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 address so that the police can serve the Order as quickly as possible and provide the required notice of the next court date.

The mere issuance of a 209A Order is a civil action. It is intended to protect you from future abuse. It is not a criminal action and will not punish someone for what they may have already done to you. By itself, a 209A Order will not cause anyone to go to jail.

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 been served the Order, is a criminal offense.

WHAT IS A TEN-DAY HEARING?

The Ten-Day Hearing requires that you return to the court on the date given on the Order. It also allows the police time to find and serve your abuser with the 209A Order. The hearing offers the chance for parties, you and the abuser, to come before the judge and offer information (evidence) as to why a Permanent 209A Order, which can last for one year, should or should not be granted. The abuser may be present at the Ten-Day Hearing and may oppose the 209A Order. If the abuser is not present and has been served with the Order, the judge can still grant the Order for up to one year.

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

If the judge issues a 209A Order 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.

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

You must make any changes in the Order before the set hearing date 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. There are no restrictions to how many times a 209A Order can be amended, adding or taking away restrictions. It is recommended by the police a 209A Order be amended and not vacated once you have obtained it.

CAN A MINOR OBTAIN A 209A ORDER?

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 Children and Families may offer assistance in gaining help for a minor. A parent may also obtain a protective order for his or her child.

WHAT HAPPENS IF THE ORDER IS VIOLATED?

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 or 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 District Court. A Victim/Witness Advocate can assist you with that process.

If you put yourself in contact with the abuser, he or she 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.

WHAT CRIMES CAN BE CHARGED?

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, Sec. 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, Sec. 13A), which is a harmful or unjustified 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, Sec. 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. 275, Sec. 2), which are verbal or written threats to do harm which a victim reasonably believes the abuser can commit.
- ❑ *Trespassing* (G.L. C. 266, Sec. 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, Sec. 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, Sec. 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.

WHAT HAPPENS AFTER AN ARREST?

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.

WHAT HAPPENS IF I HAVE TO GO TO COURT?

It's important to provide information to the Assistant District Attorney assigned to handle your case regarding the history of the abuse and a description of the most recent abuse, including any pictures or hospital records of injuries. 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.

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 a 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 Attorney 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, and supervised probation and/or jail time.

WHAT IS A CERTIFIED BATTERER'S INTERVENTION PROGRAM?

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 lead 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.

Safety Planning

YOUR RISK OF HARM:

Statistically, the most dangerous time for a victim is when leaving the batterer. The abuser may feel he or she 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 are in danger, dial 9-1-1. Fairhaven Police Department has Enhanced 9-1-1 and the address where the call was placed from will automatically appear on the police dispatch screen along with the name and telephone number. If you have a cellular telephone pre-program your local police departments numbers for easy access in an emergency. Dialing 9-1-1 from your cellular telephone may cause delays in getting help.
- ❑ 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 in 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 and coworkers 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.



HELPFUL CONTACTS:

Fairhaven Police Department 1 Bryant Lane Fairhaven, MA. 02719

508-997-7421(Bus.) 508-997-3147(Fax) Emergency: Dial 9-1-1

<mailto:chief@fairhavenpolice.org>

<mailto:dvujb@fairhavenpolice.org>

Bristol County District Attorney's Office

888 Purchase St. New Bedford, MA. 508-999-6702

<http://www.bristolda.com/>

Third District Court 75 North Sixth St. New Bedford, MA.

Main Office: 508-999-9700 - Restraining Order Department: Ext. 329

<http://www.mass.gov/courts>

New Bedford Probate and Family Court 505 Pleasant St. New Bedford, MA.

508-999-5249

New Bedford Superior Court 441 County St. New Bedford, MA.

508-996-2051

The Women's Center - 405 County St. New Bedford, MA

Main Office: 508-996-3343 - 24 Hour Hotline: 508-999-6636

<http://www.gnbwc.org/>