

# Domestic Violence

## What is DOMESTIC VIOLENCE?

Domestic violence is a pattern of control used by one person to exert power over another. Verbal abuse, threats, physical, and sexual abuse are the methods used to maintain power and control. Domestic violence may occur in a particular pattern or may be random acts. It may happen frequently or may be a rare occurrence. Domestic violence crosses all social, economic, racial, cultural and religious boundaries. Experience indicates that incidents of violence tend to increase over time, as does the severity of the attacks.

Violent physical acts are criminal and the batterer can be prosecuted for committing them. Emotional abuse and insults are almost always part of the abuse pattern, but may not be criminal acts. It can be more difficult to recover from the emotional abuse; it whittles away at one's self esteem and sense of confidence.

Domestic violence is not caused or provoked by the action or inaction 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. Abusers blame the victim for their violent acts and do not take responsibility for their abusive behavior. There is never an excuse for violence.

## What is a "209A" order?

An Abuse Prevention Order, called a "209A" or a "Restraining Order", is a civil court action that provides immediate protection from physical or sexual harm caused by force, or threat of harm from a family or household member.

- a spouse or former spouse
- a present or former household member
- a relative by blood or marriage
- the parent of your minor child
- a person with whom you have had a substantial dating relationship.

## How can I get a 209A to help protect my family and I?

A 209A order may be obtained in any district or probate and family court in Massachusetts. An emergency 209A order can be obtained through the Franklin Police Department after court hours and on weekends. You do not need a lawyer to file for a 209A order. Call 508-528-1212 for more information.

Where do I get a 209A order?

You may apply for protection in the district or probate court which serves your community. If you find it necessary to flee your home to avoid abuse, you may go to the district or probate court serving the community where you are staying. If you need further assistance or do not know where the nearest courthouse is located, contact the local police department for assistance.

Go to the Civil Clerk's Office in any court and ask for a Restraining Order or a 209A order. You will receive the necessary forms to complete.

Ask someone at the clerk's office to direct you to the victim witness office for help.

In the courts of Norfolk County, there will be a Victim Witness Advocate from the District Attorney's Office to help you complete the paper work and to discuss the option of filing criminal charges against your abuser. You don't have to file criminal charges to obtain a 209A order. However, criminal charges may be necessary in holding a batterer responsible for acts committed against you. The advocate will assist you in preparing a safety plan.

What kind of questions will they ask me on the form?

On the application or complaint form for a 209A order you will need to make a sworn statement (affidavit), describing the facts of a recent or past incident(s) of abuse. It is also very important to provide as much information about the abuser as possible.

***In an emergency, always call the Franklin Police Department for assistance.***

What can I ask for on the application?

You may request the Judge to order that the abuser stop abusing you, have no contact with you or a child in your custody and move out of your house or apartment. You may also request the Judge to order that you receive support and temporary custody of your children. You may request payment for medical costs due to injuries and loss of wages. You may ask that the abuser not contact you and that your new address be kept confidential from the abuser for your safety. You must also disclose any other existing 209A order from any court or any probate court action in which you are involved.

What about child custody and visitation?

A 209A 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 the court may be helpful dealing with abuse protection that also involves divorce, long term financial support, child custody and visitation issues. You may want to speak with a private attorney for probate court issues, or call one of the legal or battered women's agencies listed in this guide for an attorney referral list. Pro bono or reduced-fee legal services may be available.

What happens next?

After you have completed the 209A application form, return it to the clerk and ask when the court will hear the restraining orders. They will tell you the time and courtroom location for the hearing.

At the hearing, the Judge will ask why you need restraining order protection and will review your application forms and affidavit. In some courts, a "209A Briefing Session" is held before the hearing and a Court Advocate will explain the hearing process and be with you in the courtroom.

What will the Judge do after speaking with me?

The Judge may grant or deny the 209A order after speaking with you. If the Judge approves the request, you will receive a Temporary Order for up to a ten day period. This means a court date will be scheduled within 10 business days for you to return to court for a Permanent Order.

If the order is denied, it is essential to work with the advocate to prepare a safety plan. The advocate may refer you to a battered women's program to discuss possible options (i.e. shelters, housing, public assistance, etc.).

Please keep your copy of the order with you at all times

The police will deliver (serve) a copy of the 209A order to your abuser and will keep a duplicate on file at the police station. It is important to provide the police with the abuser's current home and work addresses so they can serve the order.

More about the hearing

The Ten Day Hearing requires that you return to court on the date given on the order, or the order will not be in effect after that date. The hearing offers the chance for both parties, you and the abuser, to come before the Judge and offer information (evidence) as to why a permanent 209A order should or should not be granted. Bring any hospital records, photographs or police reports you may have for the Judge to review. You may also bring a support person with you. 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?

If a 209A order is issued by the Judge for a year, you must return to court for another order at the end of that year or it will be dismissed. Any changes in the order before that date must be made by a Judge 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.

Can a minor obtain a 209A?

A person under age 18, 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 limited 209A order 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.

What if the order is violated?

Once a 209A order is issued, violation of the terms is a criminal offense. Violations of orders to refrain from abuse, for no contact and to vacate a household, multiple family dwelling or workplace can be prosecuted under c. 209A.

**Call Franklin Police immediately if the abuser violates the order**

Show the order to the police and explain the violation. For example: a punch, slap, threat, refusal to vacate the house or apartment, unauthorized contact with you either in person or telephone at your home or work place. The police must arrest the abuser if they have reasonable cause to believe or witness that the terms of the order were violated. If you do not call the police, you may be able to file criminal complaints on your own at the Clerk's Office in the district court. A Victim Witness Advocate can assist you with that process.

What should I do if an arrest is made?

If an abuser is arrested, seek assistance from the Victim Witness Advocate in the District Attorney's Office the next morning after an evening 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.

What happens after the 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 or held in jail until trial. If they are 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 crimes can an abuser be charged with?

In addition to the crime of Violation of a 209A Restraining 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, s.13A) in an attempt or offer to do bodily injury by force or violence or an attempt to batter.
- **Assault and Battery** (G.L. c265, s.13A) is a harmful or unpermitted touching of another, no matter how slight, without a legal right to do so.

- **Assault and Battery By Means of A Dangerous Weapons** (G.L. c265, s.15) is a battery with an dangerous weapon, such as a baseball bat, shod foot, ashtray, knife or other object used in a way that may cause serious injury or death to another.
- **Threats** (G.L. c27, s.4) are verbal or written threats which a victim reasonably believes the abuser may commit.
- **Annoying Telephone Calls** (G.L. c.269 2.14A) are repeated telephone calls for the sole purpose of harassing or annoying an individual or a family.
- **Trespassing** (G.L. c.266, s.120) is entering or remaining in or on a house or land in violation of a 209A order.
- **Malicious Destruction of Personal Property** (G.L. c.266, s.127) is the destruction or injury to personal property, a house or building in a manner that is willful and malicious.
- **Stalking** (G.L. c.265, s43A) is the willful, malicious and repeated following or harassment 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 increased for a conviction on a stalking crime committed in violation of a 209A order.

What will happen at the court arraignment?

You will meet the victim witness advocate and the Assistant District Attorney who will be handling the arraignment at the courthouse.

**The Assistant District Attorney represents the Commonwealth of Massachusetts and the victim's interests in prosecuting the case, and works with the Victim Witness Advocate to assist you during the trial.**

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 the abuser might have in his possession.

The Assistant District Attorney will bring all of 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 is dangerous and a threat to you or the community. The information will help the Judge decide if the defendant should be jailed until trial; or, if the defendant/abuser is to be released, what the amount and conditions of bail will be.

What will happen after the arraignment?

Interviews with you will be conducted before the trial date 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 as part of a sentence recommendation. Very few batterers seek or stay with a program on their own, without court orders and probation supervision. The Assistant

District Attorney will speak with you about different sentences should the defendant be found guilty or plea to a guilty finding. The sentence asked for may also include drug or alcohol counseling, supervised probation and/or jail time.

What is a ***batterer's intervention*** program?

Batterer's intervention programs provide services in very strict group settings that help batterers 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 are based in community mental health or counseling centers and work with the courts and battered women's services to make sure that partners of batterers remain safe. The programs involve weekly, two-hour group sessions for a minimum total of 80 hours. Most programs also add a 4 to 6 week introduction period at the beginning. Group leaders feel your safety is a priority concern and will keep ongoing contact with you.

Will intervention stop the abuse?

There are no guarantees that the violence will stop because the abuser attends a Batterer's Intervention Program. Many abusers drop out of programs or do not comply with the requirements; but, if the Judge requires attendance as part of a sentence, dropping out may mean the abuser will have to serve jail time. The abuser must want to change the abusive behavior. Promises to change, flowers and apologies are not enough. You deserve to be safe and free from abuse.

Will I still be at risk?

The most dangerous time for a woman is when she is leaving her batterer. The person responsible for the abuse may feel he is losing control and become dangerously angry. Taking steps to protect yourself from abuse may cause the abuser to retaliate against you.

Please trust your instincts. If you are afraid something may happen, take your personal feelings seriously and protect yourself. You know the situation better than anyone else.