

CHAPTER 3

SAFETY AND PROTECTION ISSUES

SUSAN R. ELSEN, ESQ.

Massachusetts Law Reform Institute, Boston

MITHRA MERRYMAN, ESQ.

Greater Boston Legal Services, Boston

General Overview.....	67
Overview of Domestic Violence	67
209A Abuse Prevention Orders (Restraining Orders).....	68
What Can a Restraining Order Do for Me?	68
Seeking Advice and Legal Assistance	69
How to File for a Restraining Order.....	69
Where Do I File?	69
What to Consider When Selecting a Court.....	69
District Court/Boston Municipal Court	70
Probate and Family Court	70
Superior Court.....	70
Where to File During Business Hours of the Court (Generally 8:30 a.m. to 4:30 p.m.).....	70
Emergency Orders When the Court Is Closed	71
Eligibility.....	71
What You Need to Prove to Get a Restraining Order	71
Is There a Time Limit for Filing?	72
Evidence.....	72
Court and Probation Records	72
Photographs.....	72
Incident Reports.....	72
Medical and Hospital Records	73
Audiotapes	73
Letters or Other Documents Written by the Abuser.....	73
Bills, Paystubs, Damage Reports	73
The Initial Hearing	73
Ten-Day Hearings	74
Mutual Restraining Orders	74
How to Defend Yourself When an Abuse Prevention Order Is Entered Against You	74
Conflicts Between Court Orders.....	75
Probation Officers and Dispute Intervention	75
Violation of Restraining Order	76

Extension of Restraining Orders.....	76
Modification of Restraining Orders	76
Costs.....	76
Chapter 209A for Minors.....	77
Safety Planning Issues to Consider.....	77
Resources for Victims of Violence.....	78
Programs with Advocates Who Work One-on-One with Victims	78
Advocates Available for Limited Assistance	78
Counseling for You and Your Children	78
Warning Signs of Trauma-Related Stress	78
Safety Planning and Other Help	79
What Is Safety Planning?.....	79
Danger or Risk Assessment.....	79
Where Can You and Your Children Stay if You Flee?	80
How Do You Access Emergency Services and Domestic Violence Programs?	80
Could You Be Turned Away from a Domestic Violence Shelter?	80
Parenting Time, Visitation, and Access Issues	80
The Effects on Children of Witnessing Domestic Violence or Experiencing Violence.....	81
Signs and Symptoms that Children Have Experienced Trauma.....	81
Supervised Access to Children	82
Supervised Pick-Up and Drop-Off	82
Parenting Time for Limited Time—No Overnights.....	82
Supervised Access	83
The Probation Office and Domestic Violence.....	84
Keeping Your Address Hidden	84
Department of Children and Families Issues	84
General Overview of Law	84
G.L. c. 119, § 51A.....	85
What Constitutes Abuse?	85
What Constitutes Neglect?	85
What Happens After DCF Receives a 51A Report?.....	85
The Interview with the DCF Investigator.....	86
After the Investigation	86
How to Appeal a Decision to Support a 51A Report or File a Grievance Regarding a Finding of a Substantiated Concern	87
DCF Family Assessment	87
Care and Protection Proceeding	87
Relationship to Probate and Family Court Matters	88
EXHIBIT 3A—Complaint for Protection from Abuse (G.L. c. 209A)	90
EXHIBIT 3B—Abuse Prevention Order (G.L. c. 209A)	94
EXHIBIT 3C—Sample Motion to Impound Address	98
EXHIBIT 3D—Personalized Safety Plan	99

GENERAL OVERVIEW

This chapter covers information about how the law can help you if you are a victim of domestic violence and what help is available for children who have been abused or neglected. The chapter contains basic information on how to obtain a restraining order (i.e., an order that aims to protect you from abuse and also known as an abuse prevention order); how to defend yourself against the same kind of order; an overview of Department of Children and Families (DCF) child abuse investigations; and how all of this can affect a family law court case.

OVERVIEW OF DOMESTIC VIOLENCE

Domestic violence is an intractable social problem that causes great harm to those who are victimized and to the children who witness it. According to studies sponsored by the National Institute of Justice, every year approximately 1.3 million women and 835,000 men are physically assaulted by their partners. Women are significantly more likely than men to be injured during an intimate partner assault (39 percent compared with 24.8 percent). Out of all women murdered in the United States each year, 40 to 50 percent were murdered by their intimate partners. In 70 to 80 percent of the homicides that occurred during incidents of domestic violence, no matter which partner was killed, the man physically abused the woman before the murder. Sexual assault or forced sex occurs in approximately 40 to 45 percent of the relationships where there is domestic abuse. Among those surveyed, the lifetime occurrence of domestic violence for women age eighteen and older was nearly 25 percent and 7.6 percent for men.

In 2017, over 40,000 restraining orders were issued in Massachusetts District, Municipal, and Probate and Family Courts. And according to a study completed by the Massachusetts Commission on Probation, an estimated 43,000 children are exposed to domestic violence each year. These alarming statistics show that thousands of families in Massachusetts are unsafe in their own homes. If you were in an abusive relationship or are in one now, know that you are not alone.

Domestic violence involves a person who uses power to control another person. There are many types of power used to control another person, including physical, psychological, and economic power. When a power imbalance exists, and one person in an intimate relationship exerts control over another, what can result is a dynamic of coercive control which is commonly referred to as domestic violence or intimate partner violence. Obvious examples of domestic violence include physical assaults, forced sexual contact, and threats to kill or harm the abused person or their loved ones; in many abusive relationships physical assaults are rare, but the threat of harm is not. An abusive person may also terrorize a partner in a variety of ways intended to create and enforce a master-servant relationship. An abuser often isolates the victim from family members and friends; takes total control over the victim's daily schedule, activities, and financial resources; forces an economic dependence by controlling all the family finances or preventing the victim from working; and humiliates the victim through name-calling and insults. The victim is often further entrapped by the abuser's threats to harm the victim, children, or other family members if the victim leaves. Considering the number of domestic homicides committed by abusers, these threats cannot be ignored. In fact, people are in the most danger when they attempt to end an abusive relationship.

A variety of laws exist that enable law enforcement to prosecute abusers and protect victims and children. If you are a victim of domestic violence, you can file a criminal complaint against the abuser with the police or in the District Court or Superior Court. You can do this for many different forms of abuse that are crimes, including assault and battery, threats to kill, stalking, destruction of property, rape, and violation of a restraining order.

An important legal remedy for obtaining protection and increasing your physical safety is a restraining order, known as a Chapter 209A abuse prevention order. The section below, 209A Abuse Prevention Orders (Restraining Orders), will explain the procedures for obtaining a restraining order and the forms of relief it can provide.

There are now over thirty domestic violence service agencies across Massachusetts, which provide twenty-four-hour hotlines, emergency housing, and a variety of other services. Many domestic violence service providers offer job counseling, housing advocacy, mental health services, financial counseling, legal services, day care, children's therapy, and food and clothing banks. Refer to chapter 20, Resources, at the end of this book for more information.

209A ABUSE PREVENTION ORDERS (RESTRAINING ORDERS)

What Can a Restraining Order Do for Me?

If you file for a restraining order (commonly referred to as a “209A,” which is a reference to the chapter of Massachusetts’ laws that created them), you can ask for many different forms of relief to help protect you and your family from domestic violence. You can also ask for orders, such as child support, that can help you financially if you decide to separate from the abuser. Below is a list of orders you can ask for when you apply for a restraining order.

- **No abuse**—The court can order the abuser to stop abusing you, your children, or any other household member. G.L. c. 209A, § 3(a).
- **No contact**—The court can order the abuser to have no contact with you in person, by phone, by correspondence, through a third party, or by any other method. G.L. c. 209A, § 3(b).
- **Vacate the household**—The court can order the abuser to leave your home immediately. If you live together, the abuser can be ordered to move out even if he or she owns the property. If you live in an apartment, this is true even if the abuser is the only person on the lease. G.L. c. 209A, § 3(c).
- **Stay away from your home and workplace**—The court can order the abuser to stay away from your home address as well as your workplace. This order often includes a distance, in yards, which tells the abuser how far to stay away from you. G.L. c. 209A, § 3(c).
- **Custody**—The court can order that you have temporary custody of your children. G.L. c. 209A, § 3(d).
- **Support**—The court can order the abuser to pay temporary alimony and child support for any children you have in common. The amount of child support shall be based on the child support guidelines as discussed in chapter 8 of this book. G.L. c. 209A, § 3(e).
- **Damages**—If the abuser harmed you or your property, and this resulted in you having to pay for medical care or repairs, you may ask the court to order the abuser to reimburse you. This is true for expenses and damages directly related to the abuse, including but not limited to
 - loss of earnings or support,
 - costs for restoring utilities,
 - out-of-pocket losses for injuries sustained,
 - replacement costs for locks or personal property removed or destroyed,
 - medical and moving expenses, and
 - reasonable attorney fees.
 G.L. c. 209A, § 3(f).
- **Impound address**—Upon your request, the court can order that your address be kept secret, by impounding it. If your address is impounded, this means it is kept confidential and will not appear on any documents, public or otherwise, to which the abuser has access. If, at a future date, the abuser asks the court to change or lift the restraining order, the court is responsible for notifying you. Under no circumstances should the court disclose your address to the abuser in order to give you notice of a hearing date. G.L. c. 209A, § 3(g).
- **No abuse or contact of minor child**—The court can protect the minor children in your household by ordering your partner not to abuse them. The court may also bar the abuser from contacting the children, unless there is specific permission to do this through a visitation order in the Probate and Family Court. G.L. c. 209A, § 3(h). A District Court can suspend parenting time for thirty days if there is an emergency that could endanger your children, providing you time to file for a modification of parenting time in the Probate and Family Court case. G.L. c. 209A, § 3.
- **Treatment recommendation**—As part of the Chapter 209A restraining order, the court may recommend a batterer’s intervention program for the abuser. G.L. c. 209A, § 3(i).
- **Surrender of firearms, suspension and surrender of firearms license, or firearms identification**—The court, upon issuing a restraining order, must order the abuser to surrender all weapons and licenses to carry weapons. The abuser has a right to ask that this order be changed and can ask for a hearing on the issue within ten court business days. If the abuser asks for a quicker hearing and files an affidavit stating that the

weapon or weapons are necessary for employment, the abuser is entitled to a hearing within two court business days. *See* G.L. c. 209A, § 3B.

G.L. c. 209A, § 3.

Practice Note

When you file for a restraining order, you can ask the judge for any one or all of the provisions listed above. If you are trying to stop domestic abuse but you feel safe continuing to live with your partner, you can ask for a “no-abuse” order. This would order your partner to stop the abuse but would allow contact between the two of you. Alternatively, you may wish to file for a “vacate” order, which would require your partner to move out of your home and give over the keys, as well as stay away from your home and work addresses.

See **Exhibit 3B** for an example of a restraining order.

In limited circumstances, a person may want to pursue a harassment prevention order under G.L. c. 258E. For more information on this remedy, see <https://www.masslegalhelp.org/domestic-violence/harassment-prevention-orders>.

Seeking Advice and Legal Assistance

In Massachusetts there are many resources available to assist victims who need to seek restraining orders. If you go to your local District Court to obtain a restraining order, you will likely be referred to a victim-witness advocate who works with the district attorney’s office. The victim-witness advocate will explain the process to you, help you fill out the forms, accompany you in front of the judge, and offer you moral support. If you know you want to obtain a restraining order before you go to court, you can also contact your local domestic violence service provider and ask someone there to help you. This might be important to you if you do not wish to have any contact with the local prosecutor’s office. Some Probate and Family Courts also have domestic violence advocates.

Practice Note

Although domestic violence advocates are familiar with the process and will be able to provide you with assistance, they are not attorneys and therefore cannot provide you with legal representation and might not provide you full assistance to obtain all the relief you need, like child support. The domestic violence advocate can help you obtain a lawyer, so ask for a referral. If the advocate works for the district attorney’s office and is a “victim-witness” advocate, be aware that the information you give to them is not confidential and can be communicated to the police, the district attorney’s office, or the Department of Children and Families. If you work with an advocate, ask him or her whether the information you are providing is confidential.

In addition to the help of an advocate, you may want to obtain a lawyer. There are many resources for obtaining free lawyers who will represent you in a restraining order matter. A list of places to call can be found at <http://www.masslegalhelp.org/domestic-violence/find-an-advocate>.

How to File for a Restraining Order

Where Do I File?

You can file for a restraining order in the District Court, Probate and Family Court, or Superior Court with authority over the area where you live or where you lived prior to leaving your partner. G.L. c. 209A, § 1. If you have moved to get away from the abuser, you may still want to file for the restraining order where you lived originally in order to keep your new address a secret. For example, if you moved from Boston to Worcester for your safety, you can ask for a restraining order from a Boston court even though you no longer live there. This way, if you have also asked the court to keep your address confidential, you can avoid letting the abuser know that you have moved to Worcester.

What to Consider When Selecting a Court

You may want to consider the following information when selecting what type of court to use.

District Court/Boston Municipal Court

The most efficient way to obtain a restraining order is through the District Court. At most District Courts, advocates are available to explain the process and assist you with filling out the paperwork and filing for an order. They also may accompany you into the courtroom and support you when you appear before the judge. While the District Court may grant you custody of your children as part of the restraining order, it has limited authority over these matters. If the abuser asks for shared custody of the children or for visitation, a District Court does not have the power to order relief for the defendant. The abuser would then have to go to the Probate and Family Court to ask for custody and parenting time. The District Court, however, does have the power to order support for you and your children, and, as you will receive a hearing quickly, obtaining timely support may help cushion the disruption you and your children feel from the abuse.

Probate and Family Court

If you want to set up a parenting schedule quickly or wish to proceed with a paternity or divorce action immediately, you may wish to file for a restraining order in the Probate and Family Court. In this way, the judge will get a good background of your circumstances. Often these other matters can be addressed in the same court hearing as your restraining order. Be aware, however, that if you go to the Probate and Family Court for your restraining order, you must be prepared to address custody and parenting time at the hearings, the second of which will be scheduled within ten court days of your first request for a restraining order. Before you decide to do this, review the custody and visitation chapters in this book.

Practice Note

As of this writing, U.S. Immigration and Customs Enforcement (ICE) was vigorously arresting undocumented immigrants in the District Courts where criminal cases are heard alongside restraining order hearings. If you are in any way worried about having an encounter with ICE, it is recommended that you seek a restraining order in the Probate and Family Court, where there have been no reports of ICE presence in the courthouse.

Superior Court

The Superior Court is generally not organized to handle restraining orders because it is so rarely used for this purpose. Moreover, the Superior Court does not have authority under the Chapter 209A statute to enter a restraining order in cases brought under the “dating relationship” category. G.L. c. 209A, § 1. It is recommended that you file either in District Court or Probate and Family Court.

Where to File During Business Hours of the Court (Generally 8:30 a.m. to 4:30 p.m.)

You can file for a restraining order by going to the clerk’s office of your local court and filling out a complaint and affidavit stating the reasons why you are seeking the order. The complaint is a two-page form requiring general information about you, your children, and the abuser. The affidavit is a blank form on which you write a sworn statement that explains why you are asking for a restraining order. This statement will be read by the judge. Be aware that the abuser will also read this statement at or before the next court hearing. In the affidavit, you must tell the court why you need the court’s protection. This is an important document and you should be as complete and accurate as possible with the information. Specifically include what happened that caused you to fear for your safety, background on your relationship with the abuser, and any other abuse that your partner committed against you in the past. This will give the judge a complete picture of your circumstances and why you are afraid. See **Exhibit 3A** for examples of a complaint and an affidavit.

As part of the filing process, the court is required to do a criminal background check on the abuser. Note that some courts will perform this check on both you and the abuser. Immigration violations or anything having to do with immigration status will not appear on these criminal record checks.

Practice Note

The Probate and Family Court is open to everyone, no matter what their immigration status. However, if you have concerns because of your immigration status or because of past criminal arrests, speak with an attorney before going to court. There are various free legal resources that can help victims of crimes, no matter their income. Protection from abuse is available to everyone residing in the Commonwealth.

The judge will review the abuser’s criminal record when deciding your case.

Emergency Orders When the Court Is Closed

If you need a restraining order when the court is closed, or if you are unable to appear in court due to severe hardship related to your physical condition, the local police can help you obtain an emergency restraining order. G.L. c. 209A, § 5. To be granted an emergency restraining order, you need to state facts indicating that there is a substantial likelihood of immediate danger of abuse to you by the abuser. G.L. c. 209A, § 5. The police will then contact a judge who decides whether to issue the order. If an order is issued, it will be in effect until the court opens on its next business day. G.L. c. 209A, § 6. You must appear in court at that time.

If the abuser has been served with the restraining order by the police prior to the court date and the abuser appears at the court hearing, then the judge will generally hold a “ten-day hearing,” and make a final determination on your case. (Ten-day hearings are explained later in this chapter.) If the abuser has not been served and does not appear in court, you should ask for an order, which will extend your emergency order until the ten-day hearing is scheduled. This is detailed in The Initial Hearing, below.

Eligibility

You are eligible to apply for a restraining order if your relationship to the abuser falls into one of the following categories:

- you are or were married to one another;
- you are or were living together in the same household;
- you are related by blood;
- you have a child in common, regardless of whether you lived together or were married; or
- you are or were in a substantial dating or engagement relationship; to determine “substantial dating relationship,” the court looks at the following factors:
 - the length of the relationship,
 - the type of relationship,
 - the frequency of interaction between the parties, and
 - if the relationship has been terminated by either person and the length of time elapsed since the termination of the relationship.

G.L. c. 209A, § 1.

You can file a restraining order against your present or former partner or any other relation by blood or marriage. If you are in doubt about whether you are eligible, file anyway and let the judge decide.

Practice Note

You are eligible to file for a restraining order against a same-sex partner under whichever category describes your relationship. Although there is no basis in the abuse prevention law for treating same-sex-partner restraining orders differently from others, in contested cases where both parties seek an order, judges might have more difficulty in determining which partner is the primary aggressor, and might be more likely to enter mutual orders. For this reason it is particularly important to produce for the court any available written evidence or witnesses to support your testimony. An attorney can be helpful in cases where this might happen.

What You Need to Prove to Get a Restraining Order

You are entitled to receive a restraining order if you prove to the court that the other party abused or currently abuses you. Abuse is defined by the law as one or more of the following:

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

G.L. c. 209A, § 1.

As a rule, you need to show the court that the abuser has physically harmed you, or that, because of statements or actions, caused you to believe you could be physically harmed in the near future. You do not have to prove physical abuse to obtain a restraining order. If the abuser has threatened you or has done things that caused you to fear for your physical safety, this meets the requirements to obtain a restraining order. If you are not sure whether the abuser's actions fall into these categories, but you would like the protection of a restraining order, you should file and let the judge decide. You can also call your local domestic violence service provider and speak with someone there about your concerns.

Is There a Time Limit for Filing?

You do not have to file for a restraining order within a certain time after the abuse occurs, but if you wait you might want to explain to the judge why you waited. For instance, you may not have known about restraining orders when the abuse occurred, you may have been advised by family or friends not to file, your abuser may have threatened to hurt you or others if you did file, or you may have hoped the abuse would stop. These and other reasons are all valid and therefore the law does not set a time limit on when you must file. Any significant delay in filing will be considered along with all the other evidence by the judge in determining the credibility of the parties.

Evidence

Restraining orders are often granted at both initial and ten-day hearings based solely on the testimony—the parties' statements—in court. However, if you have any witnesses who have observed the other party's abusive behavior toward you, or you have any written evidence that shows you were abused, bring the witnesses or the documents with you to court. Below are examples of documentary evidence that can be helpful to your case.

Court and Probation Records

Any pending criminal charges filed against the other party for abusing you will appear in a criminal record and will be available for review by the judge. If you have knowledge of or records regarding the abuser's criminal case, any probation violations, or prior restraining orders, you may want to provide the judge with them. In ordinary circumstances, however, a judge will likely enter a restraining order if there are criminal charges of domestic abuse pending against the other party.

Photographs

If the abuser caused you visible injuries such as bruises, cuts, or scrapes, you should arrange to have them photographed. The police often take photographs of injuries if they are called to the scene during an incident. You can contact the police department and ask that they bring their photographs to the court for your restraining order hearing. If the police do not take photographs, you can take them yourself. Be sure to take a picture that shows both your face and the bruise, wherever it is. Then take another picture of just the part of your body with the bruise. Photographs provide compelling visual corroboration of your testimony.

Practice Note

If your injuries are visible on the date of your initial hearing, be sure to inform the court of this, as many judges will observe the injuries and write this down on the court record. This is particularly important with injuries such as bruises, which fade over time and may have disappeared by the date of the ten-day hearing.

Incident Reports

If the police were called to respond to a domestic violence incident at any time in your relationship with the other party, there will be a corresponding incident report that you can obtain from the records department of the police station involved. G.L. c. 209A, § 6. These reports support your testimony and establish a record of previous incidents of abuse.

Medical and Hospital Records

Medical records documenting the diagnosis and treatment of your injuries can establish the nature and seriousness of the abuse, the pain you suffered, and the costs you incurred for treatment.

Audiotapes

If the abuser made threatening or incriminating remarks to you while knowingly being taped—for example, by leaving a message on your cellphone—you should ask the court’s permission to play this message. If your cell carrier automatically deletes messages, contact your carrier and ask them to preserve the message or make an independent recording of it.

Practice Note

It is a crime in Massachusetts to record conversations without the speaker’s permission. When leaving a message, the other party has an expectation of being recorded, so this is not a crime.

Letters or Other Documents Written by the Abuser

Written correspondence, such as letters, e-mails, and text messages, from the abuser containing threats or admitting to acts of abuse against you can be used as evidence in your case. Try to print these out before appearing in court. Note that it is quite easy to send spoof text messages and e-mail, so if the abuser claims you have sent texts or e-mails you have not sent, explain this to the judge.

Bills, Paystubs, Damage Reports

If you are seeking money to pay for damages caused by the abuser, you should bring to court copies of all documents you have regarding the damages, including all bills, damage estimates, and paystubs showing loss of wages.

Practice Note

In most cases the only evidence presented by the person seeking the restraining order is testimony—the written statement contained in an affidavit and statements made in court. Additional written evidence and witnesses are helpful particularly in cases where the other party retains an attorney to contest the restraining order; however, they are not a requirement for obtaining a restraining order.

The Initial Hearing

The judge will hear your case the same day you go to court to fill out the papers and file them. If you filed for an emergency twenty-four-hour restraining order through the police, this hearing will take place on the first day that the court is open. After the paperwork has been completed and filed, you will be told to wait in the courtroom for your case to be called.

At the initial hearing, the court will generally just need to hear from you and read your statement. When you appear in front of the judge, the clerk will swear you in. The judge may read your affidavit and immediately grant you the temporary restraining order or may ask you to explain in your own words why you are seeking the order. If you state to the judge that you have been physically abused or threatened or you testify that due to the abuser’s behavior or verbal abuse you are concerned for your physical safety, then the judge will most likely enter the order. The initial order can last up to ten business days. The judge will tell you the date and it will also be printed on the order. If you want the order extended further, you must appear at the next court date.

In some cases the other party will be in court at your first hearing. Generally, this occurs if the abuser was arrested and is being arraigned on the same day you request a restraining order in the same court. If the abuser is there, the judge may hold a ten-day hearing and may enter an order extending up to a year. See “Ten-Day Hearings,” below, for a description of the process.

After seeing the judge, you will go to the clerk’s office and receive a copy of the order. Be sure to keep a copy of your restraining order with you always. You can ask for several copies of the order if you will need to give the order to others, such as day-care providers, schools, workplace security, or building security.

Copies of the temporary restraining order will be sent to the police in the city where you live, and the police will hand deliver a copy to the abuser. However, if the judge issued an order for the other party to leave your home (called a vacate order), you will have to bring a copy of the order to the police and have them go with you to your home. Once there, the police will inform the abuser of the order, give them a copy, and remove the abuser from the home.

Practice Note

If you are concerned that the other party may attempt to harm you when you return to court for the ten-day hearing, plan for your safety with an advocate from your local domestic violence provider. You can also call the police and ask for a police officer to escort you to the hearing. When you arrive at court that day, speak to the court officers of your concerns. There will be a court officer at security upon entering the court and he or she can direct you to another officer for assistance.

Ten-Day Hearings

To extend your temporary restraining order, you must appear in court at the ten-day hearing. If a domestic violence or victim-witness advocate helped you at the first hearing, check in with that person. Then go into the courtroom and wait for the court clerk or judge to call your case. Some courts have special seats inside or outside the courtroom for abuse prevention order plaintiffs to sit in safety.

When your name is called, a court officer will tell you where to stand. If the defendant is not there, the court will check if the police were able to give the abuser a copy of the order. If the police were not able to do so, the court usually extends the order for another ten days to allow the police more time to locate the other party and serve the order. There are times when the abuser is avoiding service, and it is important that if the abuser contacts you, you tell him you have an order. Also, even if the abuser does not know of the restraining order, it is still in effect; if the abuser, for example, contacts you, you may call the police to report this.

When your hearing begins, the clerk will swear both parties in. Judges then proceed in different ways. Sometimes the judge will read your affidavit and ask the defendant if he objects to the restraining order being entered. If he does not object, the judge will enter the order. Most judges will ask you to state again why you are seeking a restraining order. With as much detail as possible, describe the most recent incident of abuse. Also review for the judge any other incidents of abuse that have occurred in your history with the abuser. If you have collected photographs, medical records, or other evidence, you can present it during your testimony. After you are finished, either the abuser or his or her attorney will be allowed to ask you questions regarding your testimony. If you bring any witnesses, they will have the opportunity to speak and then answer any questions asked by the abuser or his or her attorney.

After you have presented your case, the abuser will be allowed to respond. If the other party opposes the restraining order, the judge will allow the abuser to describe the events, and to present any witnesses or evidence having to do with the matter. You will be given the opportunity to ask questions of the other party as well as of any witnesses. The judge will then decide. If the judge grants the restraining order, it will be extended for up to one year from the date the first order was entered.

Mutual Restraining Orders

When you file for a restraining order, it is possible that the other party will ask for a restraining order against you. It is common for abusers to lie to the court about what happened and to accuse victims of physically harming them. You should oppose any request for a restraining order against you. Mutual orders can confuse police, as it can become unclear who is the abuser and who is the victim when they respond to the incident. Having an order against you can trigger your own arrest if the abuser accuses you of violating the restraining order. Do not agree to mutual restraining orders and ask for time to obtain an attorney if you need it. If the abuser does make this request, the judge must state, in writing, why mutual orders are needed in your case.

How to Defend Yourself When an Abuse Prevention Order Is Entered Against You

After an act of abuse occurs, it is becoming increasingly common for an abuser to race the victim to the courthouse. The abuser may do this to falsely claim that the victim is the abusive party. Although many judges are aware of this pattern of behavior and attempt to identify these situations, if this happens it is important that you have as much

evidence as possible to support your own version of events and prove that the abuser's claims are false. It would also be in your best interest to obtain an attorney for the ten-day hearing.

If you are served with a restraining order, it will contain a hearing date, which is the ten-day hearing. This will be your opportunity to oppose the restraining order, if that is what you wish to do. If the person seeking the restraining order against you has been abusive to you, bring to the court any evidence that can prove to the judge what really happened. Such evidence may include the following:

- previous restraining order(s) entered on your behalf against the person accusing you of abuse;
- any documents that show that you have been abused in the past, such as medical records, police reports, and criminal records (see “Evidence,” above);
- witnesses who have seen the accuser's abusive behavior toward you;
- witnesses who were there during the events who can disagree with the accuser's account of what happened; and
- any other witnesses or evidence that can show to the court that the restraining order request was made by the other party to retaliate against you.

If you are defending yourself against a restraining order at the same time you are seeking your own order, you can argue that you are not in a mutually abusive relationship and that it is the other party who has been the primary aggressor. You can also argue that the entry of mutual orders is inappropriate and unsafe for you. These arguments are most effective when they are supported by witnesses and other evidence, which you would present to the court during the hearing. See “Conflicts Between Court Orders,” below.

Conflicts Between Court Orders

Often, in cases of abuse where the parties have children, there may be orders in both the District Court and the Probate and Family Court, so it is important to know what it is possible for each court to do.

Most times victims get a restraining order from the District Court first, then go to the Probate and Family Court to file a divorce or paternity action. In those cases, the Probate and Family Court may make orders that will override the District Court restraining order. For example, the Probate and Family Court may enter an order for the abuser to have parenting time with a child even if the District Court order stated that the abuser could not have any contact with the child. Any provisions relating to custody, parenting time, or child support in the first order can be changed by the Probate and Family Court order. G.L. c. 209A, § 3. You will get a new, amended restraining order after the hearing that incorporates the Probate and Family Court order. However, be aware that the Probate and Family Court cannot vacate (i.e., get rid of) or shorten the duration of a valid restraining order granted to you by a District Court.

Sometimes you will have an order from the Probate and Family Court that gives you custody and allows the other party parenting time. If abuse occurs, you may choose to go to either the District Court or the Probate and Family Court to obtain a restraining order. If you go to the District Court because, for example, it is close to your home or because the abuser was arrested, the District Court will have the power to enter the restraining order, but will not have the power, generally, to change the custody, parenting time, or child support orders already in place. However, in limited circumstances, such as when there is a threat of serious harm to you or a child, the District Court may enter an order that conflicts with the Probate and Family Court order for up to thirty days. For example, if there is a risk that a child will be harmed during visits, a District Court can stop the visits, but only temporarily. In sum, if there is an order from the Probate and Family Court granting parenting time to the abuser and you are concerned about your safety and your children's safety, you can only get a time-limited suspension of parenting time from the District Court even though you can get protection for yourself for up to a year. You will have to return to the Probate and Family Court to change the parenting time orders.

Probation Officers and Dispute Intervention

If you are filing for your restraining order in the Probate and Family Court, you may be referred to speak with a probation officer. The probation officer will meet with you and the other side separately to find out background information and to see if there are any areas of agreement. You are not required to reach an agreement on any part of your case if you are seeking a restraining order, and a probation officer should never make you meet with the abuser in the same room.

Violation of Restraining Order

If the other party does not follow the orders in a restraining order, and, for instance, comes to your house despite an order to stay away from your home, this is a crime. The abuser can be arrested for this and can be prosecuted. This is called a “209A violation.” If the abuser violates your restraining order, call the police immediately. There can be serious consequences for an abuser who violates an order. The most serious consequence is jail time. If the abuser is convicted, the punishment will depend upon the seriousness of the violation, the other party’s prior criminal record, and your wishes.

Extension of Restraining Orders

The restraining order you receive will state the date of expiration, which is usually one year from the date the first order was entered. This means that the order will expire if you do not ask for it to be extended. To ask for an extension, you must go to court on the expiration date, which is also the date of the next hearing. The hearings are generally scheduled for first thing in the morning, usually 8:30 a.m., but you should check the order in the event it specifies another time. The restraining order is the only notice you will receive of the expiration or the next hearing date. The court will not remind you before the hearing date, so you must keep track of it yourself. At that hearing, the judge will allow you to explain why you want the restraining order to continue for a longer period.

You can request an extension for the same reasons that you sought the original order: that you are still afraid of the other party and you need the order to keep you safe. If the abuser has violated the order, or abused you since you received the order, tell the judge. It is not a requirement, however, that violations or abuse have occurred after the restraining order for you to ask for more time. If the other party also appears at the hearing, he or she will have the opportunity to speak to the judge. If the judge is convinced that you continue to need an order to protect you, the court may extend it for another period and can make it permanent so that it never expires. Typically, the order is extended for another year but if the abuse was particularly bad or there was a criminal case accompanying it, you may want to request an extension longer than one year. The judge will note the expiration date on the new order, and you will be given a copy. If, on that date, you still believe you need an order for your protection, you would go to court and go through the same process.

If you do not appear on the date a restraining order is to expire, it expires at 4:00 p.m. on that day. If you know you will not be able to appear in court on the expiration date, go to the court well before the expiration date and ask the court to schedule a different hearing date. If neither party appears on the expiration date, the order will expire.

Modification of Restraining Orders

Either party can ask the court to change or vacate a restraining order. If you wish to do this, you must go to court and file a request, which is called a motion. This motion will be scheduled and you will have to give the other party both a copy of the motion and notice of the hearing date. If you have done this, the court will hear your motion. You can change the restraining order to add provisions to it, such as child support.

You may also subtract provisions from the original order. If, for example, you find a need to speak to the other party about such things as your children, you can ask that the court change the “no contact” provision to allow contact over the telephone. If you need to change the order or want it to be dropped completely, it is important that you go to court to change it rather than ignore the order. Although you cannot “violate” your own restraining order, the court generally frowns upon any party that does not follow its orders. However, the court does understand that situations change, and orders may have to change. If you request to drop provisions from a restraining order, most judges will question you to make sure that the change will not jeopardize your safety. If they are satisfied that you will be safe with the change, they will modify the order. Although this process may seem time consuming, doing it will benefit you in the event you need the court’s assistance again in the future.

Costs

You will not have to pay any court costs for a restraining order. There is no fee for filing it, having it served on the other party, or enforcing the order. If you miss work to obtain a restraining order, you can ask the court for an order that the defendant compensate you for your lost wages.

Chapter 209A for Minors

If you are a minor (that is, you are under eighteen), you can request a restraining order in court if your parent or guardian asks for one on your behalf. In some situations, with minors close to age eighteen, the court may issue an order without a parent or guardian present. To seek a restraining order, follow the same procedures outlined in this chapter.

Practice Note

If you are seeking a restraining order as a minor, and you and the other party attend the same school, the judge may be concerned that the restraining order will prevent the abuser from going back to school. Because of this, be prepared to offer a practical solution to any concerns the judge may have regarding the other party's access to class and teachers. If you both attend the same class, find out in advance if the school can move the abuser to another class.

SAFETY PLANNING ISSUES TO CONSIDER

If your spouse or partner has been physically, verbally, or emotionally abusive to you or your children and you are now involved in a divorce, custody, child support, parenting time, or other dispute, you must consider your and your children's safety as part of your court case. The judge and court officials also have an obligation to consider your safety.

There are many important reasons to make safety a priority always. First, studies show that the most dangerous time for an abused parent and children is during the first three months after separation. This danger remains high for up to two years after separation. Second, the court is going to make decisions that will be in place for a long time. Third, studies show that violence by one parent against another has a great impact on children; arrangements made during a divorce or separation can minimize the emotional harm done to your children. It is important to your safety and your children's wellbeing that the court's orders contain measures to protect you.

It is common for victims of violence to act in ways that could hurt their case. For example, you may want to avoid anything that reminds you of the pain or violence you experienced in your relationship; you may not want to talk about these experiences in front of strangers or in open court; you may want to just agree to whatever the other party wants to avoid any further assaults or arguments. These reactions are all understandable and normal. It is possible, however, that not raising the issue of abuse will deprive the court of an important piece of information that the judge will need when deciding your case. For the court to protect you, the judge needs to hear about the violence that you or your children experienced.

Domestic violence is not just a "thing of the past"—it is long-term behavior that can show how your spouse is likely to act in the future. Do not push it aside during this process. Make sure that others take it as seriously as it should be taken. The highest court in Massachusetts said:

Quite simply, abuse by a family member inflicted on those who are weaker and less able to defend themselves—almost invariably a child or a woman—is a violation of the most basic human right, the most basic condition of civilized society: the right to live in physical security, free from fear that brute force will determine the conditions of one's daily life.

Custody of Vaughn, 422 Mass. 595 (1996).

The court said that domestic violence must be kept "well in the foreground of [a] judge's thinking." Do not hesitate to talk about something that the highest court in Massachusetts has instructed Probate and Family Court judges to take seriously.

This section will first discuss resources available for you and your children during this initial period. A separation causes many changes in your life. Advocates, counselors, and other resources can help you deal with these changes and maximize your safety. Advocates can also help you work through a detailed safety plan, something which is also discussed in this section. This section also addresses three court-related issues that are important for survivors of violence: assuring safe visitation for the children, mediating your court case without coming into contact with the abuser, and filing a motion to impound your address so that the court will not reveal it to the abuser.

Resources for Victims of Violence

This section discusses different resources available to victims of domestic violence. Specifically, it lists advocates and counselors. Advocates are often key in helping you find other resources and providing you with support at a difficult time.

Programs with Advocates Who Work One-on-One with Victims

If you have experienced violence, the best thing you can do is to find an advocate who regularly works with people who have had similar experiences to yours and, if possible, find a lawyer with the same qualifications.

Domestic violence advocates can make the entire court process and separation process easier. They understand what you have experienced and are there for you to use as a resource and a sounding board. They can work with you on developing a safety plan. They can suggest appropriate counseling resources. They can also help you with a wide range of everyday activities that may seem overwhelming, from finding new housing to finding the right after-school program for your children. An advocate is someone whose job it is to be there for you, and in this difficult time you deserve and need all the assistance you can find.

All domestic violence service providers have one-on-one advocacy for victims who live in the community. For more information, see chapter 20, Resources, at the end of this book. Most major hospitals now have highly trained and qualified domestic violence advocates on their staff. If you or your children have been seen at one of these hospitals, you qualify for their services, no matter how long ago you were seen there. More information on domestic violence programs can be found at <http://www.janedoe.org>, and a map with domestic violence and sexual assault providers can be found at http://www.janedoe.org/site/assets/docs/FindHelp/JDI_Map_of_DV_and_SA_Service_Providers.pdf.

Similarly, many local health centers also have a domestic violence advocate on staff. Ask your doctor, nurse practitioner, or your child's pediatrician if there is an advocate you can speak with.

If you or your children have experienced sexual abuse, you can call the rape crisis center in your local area for assistance. See chapter 20, Resources, at the end of this book for a list of rape crisis centers.

Advocates Available for Limited Assistance

District Courts, some Probate and Family Courts, and some police departments may have advocates who assist with restraining orders. Often these are victim-witness advocates who work for the district attorney's office. In addition, the advocates will be able to direct you to services in your area and to resources that might be of assistance to you.

Counseling for You and Your Children

Because domestic violence can cause stress and pain, you may want to consider counseling to address its effects on you and your children. Even in the absence of abuse, a breakup of a family causes difficulties for many, especially children. A court case may add to this stress.

Counseling can help you identify strategies the abuser is using to manipulate or hurt you. It can help you respond to this behavior in a way that is safe for you. Counseling can address your feelings of sadness and grief over the end of the relationship, anger over the violence or your partner's other actions, and confusion over what to do next. Counseling can help you identify and deal with symptoms common to survivors of domestic violence.

Warning Signs of Trauma-Related Stress

Practice Note

The text in this section is adapted from the American Psychological Association, "Warning Signs of Trauma-Related Stress," available at <http://www.trauma-pages.com/h/ts-warng.php>.

Individuals who have experienced a traumatic event or a series of traumatic events oftentimes suffer psychological stress related to the event(s). In most instances these are normal reactions to abnormal situations.

Some of the symptoms to watch for include

- recurring thoughts or nightmares about the event(s);
- trouble sleeping;
- changes in appetite;
- anxiety and fear, especially when exposed to events or situations that remind you of the trauma;
- edginess, being easily startled, or becoming overly alert;
- depression, sadness, and low energy;
- memory problems, including difficulty remembering aspects of the trauma;
- a “scattered” feeling and inability to focus on work or daily activities;
- difficulty making decisions;
- irritability, agitation, anger, and resentment;
- emotional “numbness,” in which you feel withdrawn, disconnected, or different from others;
- spontaneous crying, despair, and hopelessness;
- extreme protectiveness of loved ones or fear for their safety; and
- an inability to face certain aspects of the trauma and an avoidance of activities, places, or even people that remind you of the event.

If you are a victim of violence and your child has experienced *or witnessed* violence, it is best if you or your child see a counselor who is a “trauma specialist.” A specialist will understand normal responses to trauma. For example, often children are diagnosed with Attention Deficit Disorder (ADD) when they are experiencing Post-Traumatic Stress Disorder because the symptoms are very similar. It takes someone trained in trauma to recognize the subtle differences.

Counseling services and referrals are available from your primary care physician or your pediatrician and from your local domestic violence service provider.

Safety Planning and Other Help

What Is Safety Planning?

Safety planning is an individualized and detailed process of anticipating leaving an abusive relationship or avoiding a violent situation. The purpose of safety planning is to engage in a thought process of safely leaving the violent situation. Be aware that it is this *thought process* of planning and not the drafting of a piece of paper that is important. In devising a safety plan, always keep in mind that if the abuser is present in the home, discovery of anything written down could endanger you.

A critical part of safety planning is assessing the risk of violence and death in your own situation. Remember that the most dangerous time for you and your children is when you take actions to change the relationship. These acts include leaving the relationship, filing for a restraining order, or filing for divorce. Before you begin your safety plan, you may want to assess the risks with an advocate. If this is not practical, you can do this on your own. A sample safety plan is included as **Exhibit 3D**. Review it carefully if you are considering leaving an abusive relationship or having the abuser vacated from the home. You will find that these guidelines are useful in evaluating the danger to you and your children; however, you may wish to include additional factors and considerations in planning for your own situation.

Danger or Risk Assessment

Many domestic violence advocates can also screen for your safety using a danger or risk assessment checklist. There is now some research to show that abusers who engage in certain acts (for example, strangulation and extreme control of everyday activities) are more likely to reassault than other abusers. Engaging in a danger or risk assessment with a domestic violence advocate can help with your safety planning and help you learn more about the risks in your situation and what you can do to keep yourself safe.

Where Can You and Your Children Stay if You Flee?

Every community in Massachusetts is served by a domestic violence program. Depending on the program, any number of services may be offered, including emergency shelter services.

Shelters are frequently occupied by several women and children. There are facilities for sleeping, bathing, and cooking. Often there are many more amenities. Most shelters offer private rooms; others will require you to share a room with your children. Some programs offer a network of safe homes instead of group shelters. Safe homes are frequently apartments or rooms in other people's homes.

Should you decide that it is safer to take your children and leave the abuser rather than having him or her vacated from the home under a restraining order, you will be assisted in finding a safe place for you and your children to spend the night. After you are safe, the emergency shelter staff or program advocates will help you to access additional assistance in obtaining permanent housing. Other services offered by domestic violence programs include counseling and support groups, parenting skills classes, legal and administrative advocacy and referral, housing search assistance, and transitional living programs that aid in obtaining skills and employment.

How Do You Access Emergency Services and Domestic Violence Programs?

In an emergency, dial 911. Massachusetts has an "enhanced 911" service that immediately tells the 911 operator the location from which you are calling. If you cannot stay on the phone long enough to tell the operator where you are, the police will automatically be dispatched to the address from which you are calling.

In addition, all telephone operators, including the information (411) operators, have access to domestic violence shelter programs statewide and can connect you immediately with the domestic violence shelter nearest you.

You may also call any shelter directly and obtain emergency services twenty-four hours a day or nonemergency services during normal business hours. The twenty-four-hour hotlines to access emergency assistance are (800) 992-2600 or (877) 785-2020.

Could You Be Turned Away from a Domestic Violence Shelter?

It is highly unlikely that you will be denied access to an emergency shelter, but because domestic violence shelters are in high demand it may take some time to get placed. In addition, there are restrictions at some shelter programs that may limit your options and require that you be placed in specific programs. For example, if you are an active drug or alcohol abuser or if you have a mental illness, you may be referred to a shelter program equipped to address substance abuse and mental health issues in addition to domestic violence. If you are employed and the abuser knows where you work, you may be asked to take a leave of absence from your job. This is to protect you as well as the other shelter residents from the potential harm of your being followed from your place of employment.

Parenting Time, Visitation, and Access Issues

When a parent has been abusive either to the other parent or to children, the courts must pay special attention to granting the abusive parent parenting time with the children. Neither parent has an absolute right to see a child. If one of the parents has caused harm to the child and is still capable of causing harm to that child, then that parent can be limited to seeing the child only in a supervised setting. In extreme situations, that parent can be denied visits.

If you are afraid of what the abusive parent may do or say to your children or if you feel that the abusive parent could cause the children further harm, ask the courts to order that the abusive parent be supervised when with the children. You should take the potential harm to your children very seriously. Studies show that in 30 to 60 percent of homes where a woman is battered, the children are also abused. The more frequent and severe the violence is against the mother, the greater the risk is of child abuse. Studies also show that children witness domestic violence at a much greater rate than parents think they do.

This section will discuss the effects of witnessing violence on children, the symptoms and signs that indicate that the child has been harmed by witnessing or experiencing the violence, and the types of supervised child access available through the court systems. The section will end with a list of resources.

The Effects on Children of Witnessing Domestic Violence or Experiencing Violence

Practice Note

The text in this section is taken from materials prepared by the Child Witness to Violence Project at Boston Medical Center and included in “Working Together for Children Who Witness Domestic Violence,” Middlesex Regional Training Conference (Jan. 30, 1998).

No human being can experience traumatic events, such as being hit or watching a loved one be hit, without having a reaction to it. Some people will be less affected by trauma than others, and science still has not been able to determine why this is. The following is a list of short-term effects on children who witness or experience domestic violence:

- intrusive thoughts and recollections;
- hyperarousal, hyper-alertness;
- sleep disturbances, such as nightmares, insomnia, night terrors, and waking up frequently;
- attachment difficulties, such as difficulty trusting or loving others;
- foreshortened sense of the future; and
- constriction of emotion.

Long-term effects include the following:

- anxiety;
- depression;
- lowered self-esteem;
- intergenerational transmission—boys may learn to abuse their intimate partners and girls may learn that it is “normal” to be beaten in an intimate relationship; and
- antisocial/violent behavior in adolescence and adulthood.

Signs and Symptoms that Children Have Experienced Trauma

Practice Note

The text in this section is taken from materials prepared by the Child Witness to Violence Project at Boston Medical Center and included in “Working Together for Children Who Witness Domestic Violence,” Middlesex Regional Training Conference (Jan. 30, 1998).

Children’s behavior usually provides clues as to how the trauma has affected them. Here is a list of what to look for, broken down by age group.

- Infants:
 - irritability, crankiness;
 - anxiety, clinginess;
 - inconsolability;
 - sleep disturbances; and
 - temper tantrums related to difficulty in separation.
- Preschoolers:
 - difficulty with developing autonomy;
 - regression to earlier stages of behavior;
 - separation anxiety; and
 - disordered play.
- School-age children:
 - cognitive constriction/confusion;
 - somatization—constantly complaining of body aches that have no identifiable cause; and
 - preoccupation with the trauma.

- Adolescents:
 - guilt;
 - difficulties establishing a strong sense of self;
 - tendency to blame the victim; and
 - anger, revenge.

Supervised Access to Children

There are many options for making the abuser's access to the children safe for you and your children, such as scheduled, structured parenting time. When a schedule is in place there is no need for continued contact between you and the abuser, and therefore less opportunities for harm. Do not agree to an access plan that calls for the abusive parent to have access to the child at "reasonable times as agreed to by the parties." This would require extensive contact between you and the person who has abused you, making it an uncomfortable and likely dangerous order.

Some parents can be a danger to their children and, if they are, the court may seek to protect the children by ordering supervised access of the children to occur at a center equipped to monitor parent-child access or with an independent person trained to do so. Often parent-child access may start off supervised at a center and then move to a less restricted setting if appropriate.

When a relationship is over, you may believe that the violence or the arguments will stop. However, if the other parent of your children was abusive, it is unlikely that this will happen. While you may want to just forget about the past and move on, the abusive parent can only change if they want to do so. You cannot control another person's actions. However, you can control, to some extent, your contact and your children's contact with the other parent. Use the areas of your life you can control to create a safer and more stable environment.

Your children may not understand why they cannot see the other parent whenever they want to. They may not understand why the parent cannot come to the house anymore to see them. It is natural for children to feel this way. However, as a parent, you set limits on your child in many different areas. The courts require that separating parents attend a parent education class, which can give you suggestions on how to talk to your child about a separation.

Supervised Pick-Up and Drop-Off

Even if you have no concerns about your children being alone with the abusive parent, you may not want to have any contact yourself with the parent. In these situations, you can arrange to drop off and pick up the child in a supervised setting. The supervised setting may be a supervised access center or the home of a relative or friend.

Example

Sally has a restraining order against Jim. Jim has visits with his child on Saturday afternoons from 2:00 to 5:00 p.m. Sally takes the child to her mother's house and leaves by 1:45 p.m. From 1:45 to 2:00 p.m. her mother watches the child. At 2:00 p.m., Jim picks up the child and takes the child for a visit. At 5:00 p.m. Jim returns the child to Sally's mother's house and leaves. Sally's mother watches the child from 5:00 to 5:15 p.m. At 5:15 p.m. Sally returns for the child. Because the restraining order is in place, Sally can call the police if she needs to if Jim comes early or leaves late.

Another option to avoid contact between parents that is used when children are older is that the abusive parent (alone, or you could ask for a relative to be present) may drive up to the outside of either the other parent's house or a different location, beep the horn, and wait for the children to walk on their own to the car.

Some parents will meet with the abuser to exchange the child, but will do so at a public place, such as in front of a police station or at a McDonald's. If you choose a public place, try to choose one with a security camera and stand in view of the camera when exchanging the child.

Parenting Time for Limited Time—No Overnights

If you want the abusive parent to have parenting time, but you want it for only limited time periods, you may ask the court for no overnight access. Many parents do this for the following reasons:

- the child is very young (e.g., breastfeeding);
- the abusive parent is with a new partner whom he or she may be abusing;
- the abusive parent has an alcohol or substance abuse problem that is not being addressed; or
- the abusive parent is living in a place that cannot safely accommodate the child overnight.

Supervised Access

Supervised access can be broken down into three levels of restrictiveness:

- access supervised by relatives or friends;
- access supervised by a professional supervisor in an informal setting (some courts have lists of persons who will do this, and some centers have off-site visitation);
- access supervised by a professional supervisor in a supervised access center.

When asking the court to supervise the other parent's access, you must articulate clear reasons why it is necessary. The most common reasons include the following:

- the other parent of your children hit you in front of your children and your children are experiencing trauma-related symptoms as a result;
- the other parent of your children hit your children;
- the other parent of your children neglected your children (e.g., left them alone, did not watch them carefully enough, drank while he or she was supposed to be watching them);
- the other parent of your children has a drug or alcohol abuse problem and is not in treatment for it;
- the other parent of your children is living with someone whom he or she is abusing and your children would be exposed to this;
- the other parent of your children sexually abused or made improper advances toward one or more of your children;
- your children have special needs or medical needs the other parent cannot address; or
- your children are afraid of their other parent.

Because you are asking for restrictions, it is best if you have as much evidence as possible, such as

- police reports;
- prior restraining orders;
- testimony from relatives or friends who know about the situation;
- hospital reports;
- letters from the children's pediatrician or school counselor; or
- any other information.

Supervised access with a professional supervisor or at a visitation center may involve some cost. If the abuser's behavior is the reason you need access in a center, then he or she may be responsible for payment. The cost should *not* be deducted from your child support.

Because of high demand, supervised access centers often have a wait list of several months. If the abuser's behavior is serious enough that supervised access is appropriate, then a long wait for the center is *not* a reason to have unsupervised access. If the facts merit supervised access, then the court should order it despite any inconvenience to the other party.

The abuser's attorney will often argue that supervised access is sterile and uncomfortable for the children. However, often children who have witnessed abuse will feel safer and more at ease knowing that they are not alone with the abusive parent or that they are not responsible for keeping the parent from hurting them or you. See chapter 9, Child Custody, for more information.

The Probation Office and Domestic Violence

The Probate and Family Court handles thousands of cases each year. To help with this process, each family court has a probation department. The people who work in this office are called probation officers. These officers have two primary functions: they conduct dispute intervention sessions and they act as investigators. If you have a case in the Probate and Family Court, you will be dealing with one or more probation officers. It is important for you to understand what they do, how to deal with them, and the special rules that apply if the opposing party has abused you.

A probation officer's most common function is dispute intervention. When you go to the Probate and Family Court for a hearing, the probation officer will first meet with you and the other party to see if the two of you can resolve the issue and come to an agreement on what should happen, without having to go before a judge. If you have been abused by the other party or have had or currently have a restraining order, you will not be forced to sit in the same room with the abuser to try to resolve the case. Simply tell the officer that you feel uncomfortable because of the past abuse. The probation officer will then meet with you and the other party separately and shuttle back and forth between the two of you to see if you can come to an agreement. If for some reason the probation officer states that you cannot meet separately, calmly ask to speak to the supervisor or to the judge first. Explain your concerns to the supervisor or the judge.

The second function of the probation officer is to investigate. Sometimes parties disagree on custody or visitation, and each party accuses the other of doing something harmful to the children. The court will sometimes appoint a probation officer to investigate the allegations, interview the parties, and interview other people (such as doctors, teachers, relatives, and friends) who have information about the situation. Then the probation officer will write a report of the investigation for the judge. The officer will also include in the report recommendations as to what the judge should do to resolve the dispute. The judge will read this report and consider it in making his or her decision.

In both capacities, probation officers relay information to the judge. For this reason, it is extremely important that you treat the officer with respect and fully explain your situation. Always be truthful to the probation officer. Keep calm even if you are talking about issues that upset you, and never yell at or ignore a probation officer. If you have documents that back up your claim, show them to the probation officer. You can make a large impact on your case by explaining to the officer what you want and why you want it.

Remember that you do not need to come to an agreement. If you do not agree to what the probation officer is recommending, you can go before the judge and tell the judge what you want and why.

Keeping Your Address Hidden

Courts require basic information from everyone who files papers in the court, including your address. If you are in hiding because of abuse or have moved to a new address the abuser does not know, you can file a motion to impound your address so that you do not have to place your address on the court papers. A sample motion to impound address is included as **Exhibit 3C**. The court will then write your address in a separate place and keep it in a separate file.

There are other papers you will have to fill out for court that include personal information. On the financial statement and Family Service intake form you will have to write your phone number, Social Security number, and employment address. Do not write any of these down if your abuser does not already know what they are.

DEPARTMENT OF CHILDREN AND FAMILIES ISSUES

General Overview of Law

The Department of Children and Families (DCF) is the state agency responsible for protecting children and helping families whose children may not be safe at home. DCF is required to investigate all reports of children at risk of abuse or neglect and to provide services to help families with difficulties in caring for their children. DCF may become involved with your family in one of several ways:

- you can request their services;
- DCF can ask that you accept services as a way of keeping your children safe at home with you if they believe the children have been abused or neglected; or

- a court can order you to accept services in order to keep your children out of foster care or to have them returned safely home from foster care.

G.L. c. 119, § 51A

DCF usually becomes involved with families after receiving a report of suspected abuse or neglect. The report is often referred to as a “51A” report. “51A” refers to G.L. c. 119, § 51A. Provisions relating to the investigation of reports of abuse and neglect, mandatory reporting to the district attorney in certain instances, reports required, etc., are found at G.L. c. 119, §§ 51A–51F. Certain people who regularly see children, such as doctors, teachers, child care workers, counselors, members of the clergy, and coaches are required by law to report suspected abuse or neglect. They are called “mandated reporters.” However, anyone can make a 51A report, even anonymously, and unfortunately sometimes angry neighbors, relatives, or ex-spouses make false accusations.

What Constitutes Abuse?

According to DCF regulations, it is abuse when a caretaker of a child, such as a parent or babysitter, physically or emotionally injures a child, has sexual contact with a child, or does something to a child that is likely to cause physical or emotional injury. Examples are beating or burning a child or intentionally withholding food.

What Constitutes Neglect?

DCF defines neglect as when a caretaker does not provide a child with the basic things that the child needs, such as adequate food, clothing, supervision, or needed medical care. DCF also defines neglect as physical dependence on an addictive drug at birth. DCF may also consider it to be neglect when one parent fails to protect a child from abuse by another parent. Definitions of abuse and neglect are found in DCF regulations at 110 C.M.R. § 2.0.

What Happens After DCF Receives a 51A Report?

It is rare that the filing of a 51A report results in the removal of children from their home, but it can happen in serious situations. It is more likely that if DCF has concerns that a child is at risk, DCF will open a case to provide oversight and services to ensure that the child remains safe at home. The process is described below.

After DCF receives a 51A report, the agency will decide whether to “screen in” or “screen out” the report based on what is in the report. If it is “screened in,” a DCF investigator, who is a social worker, will decide whether there are facts showing that a child has been abused or neglected by a caretaker. In an emergency situation, where DCF believes that the child is in immediate danger, the investigation must be started within two hours and an initial report completed within twenty-four hours, with the final report completed within five business days. In nonemergency situations, DCF has two business days to start the investigation and fifteen business days to complete it. During the investigation, the social worker will want to see the child and will want to talk to you and possibly to the other parent if he or she is involved in the child’s life. The investigator will also try to talk to other people, such as the child’s doctors and teachers, about how you care for your children.

The DCF investigator will usually contact you by phone to let you know about the 51A report and to arrange a time to talk to you and see your child(ren). If a social worker arrives at your door without calling first, and asks to come in to talk with you and you feel that it is not a good time, you can ask to set up an appointment and have him or her come back later, within the ten-day investigation period, when you are more prepared to talk. However, if the social worker has shown up without calling first, that may indicate that DCF has significant concerns or considers the situation to be an emergency, and DCF may inform you that they will get help from the court or the police to gain access to your home or to remove your children, if you do not let them into the house immediately.

Practice Note

In most instances it will be better for you to cooperate with DCF as much as you are able. At the same time, it is best to be thoughtful about what you say. Always remember that anything you say to a DCF social worker can affect your case and may be used against you.

The Interview with the DCF Investigator

At the beginning of the interview with the DCF investigator, ask the social worker to tell you why the 51A report was filed so that you can explain your side of the story. Answer the questions the social worker asks you about the charges in the 51A report, but do not provide information that you are not asked about. Also, do not feel that you must tell the social worker everything about your life.

It is important to have everything in order when DCF comes to visit. For example, make sure that

- you have food for the children,
- your house is clean, and
- you do not yell at your children or treat them badly in front of the social worker.

Even though the 51A report might say one thing about how you neglect your children, the social worker can support the report based on anything that concerns him or her about the safety of the children, even if it was not mentioned in the original report that DCF received.

It is often a good idea to have someone else present with you while you meet with the DCF investigator. It can be particularly helpful to have a professional with you such as a counselor or lawyer or a friend who works with children. You or the other person can take notes during the interview and you can ask to tape record the conversation. DCF has the right to talk to anyone who is a mandated reporter about your children (such as teachers, doctors, counselors, and coaches, even if they were not the person who filed the 51A in your case). In addition, the DCF worker may ask you to sign releases to allow DCF to speak to other people. If you believe that any person for whom you are asked to sign a release will not be helpful to you, ask for additional time to consider the request, and seek legal advice if possible. If you know people who will support you, especially professionals, you may want to ask DCF to contact those people also.

Practice Note

Do not sign blank releases. Have the social worker fill in the name of the person, a statement of the information DCF is seeking, and the length of time that the release is valid. Ask for copies of whatever you sign. Do not sign anything that you do not understand. You may want to talk to a lawyer before signing anything.

After the Investigation

After DCF has completed the investigation, they will either “support” or “unsupport” the report of abuse or neglect, or make a finding of a “substantiated concern.”

- If the report is unsupported, DCF has not found adequate evidence that your children were abused or neglected. DCF will not open a case for you, unless you request that they do so to provide you with services.
- If the case is supported, the DCF investigator has found enough facts to believe that one or more of your children has been abused or neglected. After a support decision, DCF will open the case and conduct an assessment to determine what services would help your family. You have a right to request a fair hearing to appeal a support decision (see below).
- If DCF makes a finding of a substantiated concern, DCF has found enough facts to believe that one or more of your children was neglected, but has found that there is no immediate danger to the children’s safety or wellbeing. You do not have a right to request a fair hearing to appeal a substantiated concern finding, but you can file a grievance to challenge it (see below).

DCF does not file criminal charges against parents who abuse or neglect their children and does not have the power to arrest parents. However, if DCF supports a 51A report for sexual abuse or exploitation, serious physical injury, or death, it is required by law to make a report to the district attorney, who will decide whether to bring criminal charges.

How to Appeal a Decision to Support a 51A Report or File a Grievance Regarding a Finding of a Substantiated Concern

If you disagree with the decision to support the 51A, you have a right to appeal it and request a fair hearing. To do this, you must send a letter within thirty days of the date of the support decision saying that you want to appeal the decision. Your appeal must be sent to the following address:

Fair Hearing Office
Department of Children and Families
600 Washington Street
Boston, MA 02111

In the letter, state your name, address, phone number, the date the 51A was supported, the address of the DCF office that conducted the investigation, the name(s) of the child(ren), and a statement that you are appealing a 51B support decision and want a fair hearing. You must also send a copy of your letter to the area director of the office that supported the 51A. Also, keep a copy for yourself.

You have a right to get a copy of the 51A report and the 51B investigator's report for your fair hearing, unless DCF decides that it would be harmful to your children to give it to you. When you get a copy of the reports, the name of the person who filed the 51A will be covered as DCF is required by law to keep that name confidential; any other names in the report will be covered also. To request a copy of the 51A and 51B reports, send a letter requesting them to the DCF area director in the office where the 51A was filed. If your case has been open before the filing of the 51A, you also have a right to request your entire DCF file if you think you will need information in it that is not contained in the 51A and 51B reports.

If you would like to challenge a finding of a substantiated concern, you may file a grievance by sending a written complaint to the DCF area office that made that decision or to the regional office that oversees that area office. The complaint should state that you want to file a grievance challenging the finding of a substantiated concern, provide your name, address, phone number, the date that the finding of a substantiated concern was made, the address of the DCF office that conducted the investigation, the name(s) of the child(ren), and an explanation of why you believe the finding of a substantiated concern was incorrect or not justified.

DCF Family Assessment

After a 51A report is supported or a concern is substantiated, DCF has sixty business days to conduct a thorough evaluation of the family, to identify problems and to decide what services could be provided to help address those problems, and provide a safe home for the children. During this "assessment" period, a DCF social worker, different from the one who conducted the investigation, will talk to you, your children, and others who know about your family's situation. At the end of the sixty days, in most cases, the social worker will write a "family action plan" (formerly called a service plan) and offer services to the family. In a small number of cases, the social worker will determine that your family does not need services and will close the case at the end of the assessment, and may even decide to "unsupport" the 51A based on the additional information obtained during the assessment period.

The action plan is a written agreement between you and DCF that describes the services you will receive as well as the tasks that will be expected of you in order to have the case closed or, if your children are in foster care, to have them returned home. It will also include tasks for your children, the other parent if he or she is involved, and the DCF social worker. Services that DCF might offer include day care, counseling, a parent aide, respite care, or intensive in-home services. You have a right to participate in the development of your action plan, and if you do not agree with it, you can state your disagreement on the plan or refuse to sign it. The action plan is supposed to be reviewed and updated every six months and will end when you and DCF believe that your family no longer needs services. The action plan is an important document and DCF will hold you responsible for following what it requires. You may wish to contact a lawyer before you sign the action plan.

Care and Protection Proceeding

In most situations, when DCF opens a case, it provides services and support to keep the children safe at home. However, in some cases DCF decides it is necessary to seek custody of the children. At any time after DCF learns

about a family, DCF may decide that the children are unsafe in the home and cannot be protected with supportive services. When this happens, DCF goes to court to try to get custody of the children and have them placed in foster care. This court action is called a care and protection proceeding and usually takes place in Juvenile Court or District Court. G.L. c. 119, §§ 24–29. If you receive notice that DCF has filed a care and protection case (often referred to as a “c & p”) and you cannot afford an attorney, the court will appoint one for you. The children will also have an attorney appointed for them. G.L. c. 119, § 29. Contact the court immediately after receiving the notice in order to get an appointed attorney and go to the court on the date stated in the notice for the next hearing.

In rare cases involving serious sexual abuse or extremely serious neglect, it is possible that DCF could remove children at the first visit to the home. Even in those cases, DCF is required to do what is possible under the circumstances to determine whether there are any ways to keep the children safe without removing them. If there are relatives or close friends that your children could stay with while the situation gets sorted out, suggest them to the social worker at the time the social worker seeks to remove the children from your care. In cases in which DCF makes an emergency removal, DCF is required to get a custody order from the court within twenty-four hours of removing the children. In most courts, except for in Boston, you will not be present at the emergency hearing. However, you will receive notice to attend a hearing within seventy-two hours from the time your children went into DCF custody.

In any case in which DCF seems to remove the children from your home, there will be several court hearings, including a “seventy-two-hour hearing,” a pretrial conference, and a trial. (Again, you may be eligible to obtain a court appointed attorney if you are very low income.) Your lawyer will be able to explain the court proceedings to you and what you need to do to prepare for each one. In a care and protection proceeding, DCF may first get temporary custody of your children. After the trial, DCF may obtain permanent custody of the children if the court believes that you and the other parent are unfit to be adequate parents.

While your children are in foster care, you will be able to visit them unless the court determines it would not be in the children’s best interest to see you. DCF is required to try to place children with their relatives or with other adults who know them before placing them with people whom they do not know. You should suggest to DCF the names of friends or relatives who might be able to act as foster parents for your children. Be aware that DCF may require an evaluation of the people you suggest to make certain that they are suitable placements. The goal when your children are removed is almost always to return them to your home, unless that would be unsafe for them. You will have an action plan that says what is expected of you and of DCF in order to have the children returned home to you. That plan is reviewed every six months in a foster care review. Even after DCF gets permanent custody, children continue to have the right to see their parents and siblings.

If DCF feels that the children should never be returned to your home, they will ask the court to terminate your parental rights so that the children are free for adoption. The law provides strict timelines for how long a child may remain in foster care before DCF must begin court proceedings to end a parent’s rights. G.L. c. 210. It is important that you talk to your attorney about your service plan and what you need to do to get your children returned home.

RELATIONSHIP TO PROBATE AND FAMILY COURT MATTERS

Although DCF is not involved in most cases between parents in Probate and Family Court, it is possible for DCF to become involved by being granted custody of a child or by being a witness for one party or the other in a custody or visitation dispute.

DCF may become involved when two parents are fighting for custody of their children in a divorce or paternity case. The judge may decide that neither the mother nor the father is able to adequately care for the children, and order that DCF have custody. Power to grant custody to a third party in a divorce is given in G.L. c. 208, § 28 and in a paternity action under G.L. c. 209C, § 10. General Laws c. 119, § 23C states that DCF shall accept responsibility for any child on order of the Probate and Family Court. An example of when this might happen would be in a situation where the father has physically abused both the mother and the children and the mother has a serious drug problem that causes her to neglect her children. It is possible that such a family might never have come to the attention of DCF through the filing of a 51A. However, based on the facts in front of him or her, the judge may order that DCF shall have temporary or permanent custody.

If the court gives custody to DCF, the parents are entitled to have lawyers appointed to represent them in court if they cannot afford an attorney. The children are entitled to have a lawyer also. If you are in the middle of a divorce

or paternity case and do not have a lawyer and the court orders that your children be placed in DCF foster care, you should ask the judge to appoint a lawyer for you. You can also go to the Probate and Family Court register's office and explain that you want a court-appointed lawyer because DCF has been granted custody of your children by the Probate and Family Court. Someone in that office will give you the forms you need to fill out, including an affidavit of indigency, and advise you on the procedure that that court follows in appointing counsel. See **Exhibit 2A** for a sample affidavit of indigency. Do not delay in asking for a lawyer, because action that occurs early in the case may have an important impact on what eventually happens to the children.

A second way that DCF may become involved in a custody or visitation dispute in Probate and Family Court is by being a witness for one of the parents or by providing documents to the court. If DCF has been working with your family because of a 51A investigation, they may have information that is helpful to your case. For example, a social worker may be able to testify that a 51A was supported against your spouse because he or she hit you and your child during an argument. As another example, if your spouse argues to the court that you are a neglectful parent because your apartment is filthy, a social worker may be able to testify that no 51A reports have been supported against you for neglect and that he or she has been in your home during an investigation and found it appropriate for your children.

If you want to have a social worker testify on your side, you will usually need to subpoena him or her. Call the social worker in advance and talk about what you would like him or her to say, and ask whether he or she could appear in court at a certain date and time without a subpoena. If he or she cannot, then prepare a subpoena and send it to the social worker along with the witness fee. For information on subpoenas, see chapter 2, Overview of the Probate and Family Court.

It is also possible to have DCF records submitted as evidence. You might want to use information in the DCF record, such as 51A reports, family action plans, or case reviews, to provide evidence of facts that support your arguments about custody or visitation. If you use DCF records as evidence, the judge is likely to require that the social worker who completed the DCF documents be in court so that he or she can be cross-examined. If you think you will want to use DCF records, be sure to review the file first so you know exactly what is in it and whether it will help your case. You are entitled to get a copy of your entire DCF file by requesting it in writing from the area director of the DCF office that handled your case. DCF will remove the names of all third parties and also any information it feels will harm the children's best interest. 110 C.M.R. § 12.10. Try to request the DCF file early in the court case in order to have time to review it adequately.

MCLE and the authors are grateful to Valenda L. Applegarth, Esq., Abbe L. Hershberg, Esq., Kelly A. Leighton, Esq., Laurie A. Freeman, Esq., and Barbara H. Mitchell, Esq., for their contributions to previous versions of this chapter.

EXHIBIT 3A—Complaint for Protection from Abuse (G.L. c. 209A)

COMPLAINT FOR PROTECTION FROM ABUSE (G.L. c. 209A) Page 1 of 2		COURT USE ONLY – DOCKET NO. _____	TRIAL COURT OF MASSACHUSETTS
A	☐ BOSTON MUNICIPAL COURT ☐ DISTRICT COURT ☐ PROBATE & FAMILY COURT ☐ SUPERIOR COURT _____ DIVISION		
B	Name of Plaintiff (<i>person seeking protection</i>) _____	Name of Defendant (<i>person accused of abuse</i>) _____	Defendant's Alias, if any _____ Sex: ☐ M ☐ F
C	☐ I am 18 or older. ☐ I am under the age of 18, and _____, my _____ (<i>relationship to Plaintiff</i>) has filed this complaint for me. ☐ The Defendant is 18 or older.	The Defendant and Plaintiff: ☐ are currently married to each other ☐ were formerly married to each other ☐ are not married but we are related to each other by blood or marriage; specifically, the Defendant is my _____ ☐ are the parents of one or more children ☐ are not related but live in the same household ☐ were formerly members of the same household ☐ are or were in a dating or engagement relationship.	
D	To my knowledge, the Defendant possesses the following guns, ammunition, firearms identification card, and/or license to carry: _____	G Does the Plaintiff have any children under the age of 18? ☐ No ☐ Yes If Yes, the Plaintiff shall complete the appropriate parts of Page 2.	
E	Are there any prior or pending court actions in any state or country involving the Plaintiff and the Defendant for divorce, annulment, separate support, legal separation or abuse prevention? ☐ No ☐ Yes If Yes, give Court, type of case, date, and (if available) docket no.	H Does the Plaintiff have any children under the age of 18? ☐ No ☐ Yes If Yes, the Plaintiff shall complete the appropriate parts of Page 2.	
I	On or about (dates) _____ I suffered abuse when the Defendant: ☐ attempted to cause me physical harm ☐ placed me in fear of imminent serious physical harm ☐ caused me physical harm ☐ caused me to engage in sexual relations by force, threat or duress		
J	THEREFORE, I ASK THE COURT: ☐ 1. to order the Defendant to stop abusing me by harming, threatening or attempting to harm me physically, or placing me in fear of imminent serious physical harm, or by using force, threat or duress to make me engage in sexual relations. ☐ 2. to order the Defendant not to contact me, unless authorized to do so by the Court. ☐ 3a. to order the Defendant to leave and remain away from my residence: <i>See Plaintiff Confidential Information Form.</i> <i>If this is an apartment building or other multiple family dwelling, check here</i> ☐ ☐ 3b. to order the Defendant to leave and remain away from my workplace: <i>See Plaintiff Confidential Information Form.</i> ☐ 3c. to order the Defendant to leave and remain away from my school: <i>See Plaintiff Confidential Information Form.</i> ☐ 4a. to order that my residential address not appear on the order. ☐ 4b. to order that my workplace address not appear on the order. ☐ 4c. to order that my school address not appear on the order. ☐ 5. to order the Defendant to pay me \$ _____ in compensation for the following losses suffered as a direct result of the abuse: _____ ☐ 6. to order the Defendant, who has a legal obligation to do so, to pay temporary support to me. ☐ 7. to order the relief requested on Page 2 of this Complaint pertaining to my minor child or children. ☐ 8. to order the following: _____ ☐ 9. to order the relief I have requested, except for temporary support for me and/or my child(ren) and for compensation for losses suffered, without advance notice to the Defendant because there is a substantial likelihood of immediate danger of abuse. I understand that if the Court issues such a temporary Order, the Court will schedule a hearing within 10 court business days to determine whether such a temporary Order should be continued, and I must appear in Court on that day if I wish the Order to be continued.		
DATE _____		PLAINTIFF'S SIGNATURE X _____	Please complete affidavit on reverse of this page
This is a request for a civil order to protect the Plaintiff from future abuse. The actions of the Defendant may also constitute a crime subject to criminal penalties. For information about filing a criminal complaint, you can talk with the District Attorney's Office for the location where the alleged abuse occurred.			

FA-1 (5/15)

COURT COPY

COMPLAINT FOR PROTECTION FROM ABUSE (G.L. c. 209A) Page 1 of 2		COURT USE ONLY – DOCKET NO. _____		TRIAL COURT OF MASSACHUSETTS	
A ☐ BOSTON MUNICIPAL COURT ☐ DISTRICT COURT ☐ PROBATE & FAMILY COURT ☐ SUPERIOR COURT _____ DIVISION					
B Name of Plaintiff (<i>person seeking protection</i>) _____		F Name of Defendant (<i>person accused of abuse</i>) _____		Defendant's Alias, if any _____	
				Sex: ☐ M ☐ F	
C ☐ I am 18 or older. ☐ I am under the age of 18, and _____, my _____ (<i>relationship to Plaintiff</i>) has filed this complaint for me. ☐ The Defendant is 18 or older.		G The Defendant and Plaintiff: ☐ are currently married to each other ☐ were formerly married to each other ☐ are not married but we are related to each other by blood or marriage; specifically, the Defendant is my _____ ☐ are the parents of one or more children ☐ are not related but live in the same household ☐ were formerly members of the same household ☐ are or were in a dating or engagement relationship.			
D To my knowledge, the Defendant possesses the following guns, ammunition, firearms identification card, and/or license to carry: _____					
E Are there any prior or pending court actions in any state or country involving the Plaintiff and the Defendant for divorce, annulment, separate support, legal separation or abuse prevention? ☐ No ☐ Yes If Yes, give Court, type of case, date, and (if available) docket no. _____		H Does the Plaintiff have any children under the age of 18? ☐ No ☐ Yes If Yes, the Plaintiff shall complete the appropriate parts of Page 2.			
I On or about (dates) _____ I suffered abuse when the Defendant: ☐ attempted to cause me physical harm ☐ placed me in fear of imminent serious physical harm ☐ caused me physical harm ☐ caused me to engage in sexual relations by force, threat or duress					
J THEREFORE, I ASK THE COURT: ☐ 1. to order the Defendant to stop abusing me by harming, threatening or attempting to harm me physically, or placing me in fear of imminent serious physical harm, or by using force, threat or duress to make me engage in sexual relations. ☐ 2. to order the Defendant not to contact me, unless authorized to do so by the Court. ☐ 3a. to order the Defendant to leave and remain away from my residence: <i>See Plaintiff Confidential Information Form.</i> <i>If this is an apartment building or other multiple family dwelling, check here</i> ☐ ☐ 3b. to order the Defendant to leave and remain away from my workplace: <i>See Plaintiff Confidential Information Form.</i> ☐ 3c. to order the Defendant to leave and remain away from my school: <i>See Plaintiff Confidential Information Form.</i> ☐ 4a. to order that my residential address not appear on the order. ☐ 4b. to order that my workplace address not appear on the order. ☐ 4c. to order that my school address not appear on the order. ☐ 5. to order the Defendant to pay me \$_____ in compensation for the following losses suffered as a direct result of the abuse: _____ ☐ 6. to order the Defendant, who has a legal obligation to do so, to pay temporary support to me. ☐ 7. to order the relief requested on Page 2 of this Complaint pertaining to my minor child or children. ☐ 8. to order the following: _____ ☐ 9. to order the relief I have requested, except for temporary support for me and/or my child(ren) and for compensation for losses suffered, without advance notice to the Defendant because there is a substantial likelihood of immediate danger of abuse. I understand that if the Court issues such a temporary Order, the Court will schedule a hearing within 10 court business days to determine whether such a temporary Order should be continued, and I must appear in Court on that day if I wish the Order to be continued.					
DATE _____		PLAINTIFF'S SIGNATURE X		Please complete affidavit on reverse of this page	
This is a request for a civil order to protect the Plaintiff from future abuse. The actions of the Defendant may also constitute a crime subject to criminal penalties. For information about filing a criminal complaint, you can talk with the District Attorney's Office for the location where the alleged abuse occurred.					

FA-1 (5/15)

PROBATION COPY

AFFIDAVIT Describe in detail the most recent incidents of abuse. The Judge requires as much information possible, such as what happened, each person's actions, the dates, locations, any injuries, and any medical or other services sought. Also describe any history of abuse, with as much of the above detail as possible. Note: Unless the Court allows a motion to impound, this affidavit will be public record, including any names or specific addresses included in the affidavit.

On or about _____, 20____, the Defendant

If more space is needed, attach additional pages and check this box: ☐

I declare under penalty of perjury that all statements of fact made above, including those provided on P.1, Section E and P.2, Sections A and B of the Complaint form regarding prior and pending court actions, and in any additional pages attached, are true to the best of my knowledge.

DATE SIGNED _____

PLAINTIFF'S SIGNATURE

WITNESSED BY

PRINTED NAME OF WITNESS

TITLE OF WITNESS

Signature

Print Name

- ☐ Court Certified Interpreter
☐ Court Screened Interpreter
☐ Other _____
☐ Remote Translation Via Telephone/Video

INSTRUCTIONS TO THE PLAINTIFF**PROTECTION FROM ABUSE**

Under chapter 209A of Massachusetts General Laws, Judges can make Orders to protect people from abuse by family or household members. These Orders will be recorded and enforced by law enforcement agencies. They are commonly called "Abuse Prevention Orders" or "Restraining Orders" or "209A Orders." In an emergency that occurs after court hours or on weekends, you may ask your local police to put you in contact with a Judge.

CHECKLIST OF FORMS

COMPLAINT FORM: To request an Abuse Prevention Order, you must fill out a two-page Complaint form and any other appropriate forms. There is no filing fee. You are the "Plaintiff." The person who you allege has abused you is the "Defendant."

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

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

Part J: In number 5, financial losses may include, but are not limited to, lost earnings or support, costs for restoring utilities, replacement costs for locks or personal property removed or destroyed, medical and moving expenses, and reasonable attorneys' fees.

AFFIDAVIT: On the back of the first (white) copy of the Complaint form is an affidavit where you should describe the abuse. When you are requesting relief after court hours, you must fill it out, unless a Judge indicates otherwise.

PLAINTIFF CONFIDENTIAL INFORMATION FORM. Enter the appropriate information (addresses and telephone numbers). The information provided on this form is accessible only by the Plaintiff, those authorized by the Plaintiff, those authorized by statute and by court order. However, the Plaintiff's residential address and workplace address shall appear on the order and be accessible to the Defendant and the Defendant's attorney unless the Plaintiff specifically requests that the information be withheld from the order. The form is kept by the court but is not part of the public record.

AFFIDAVIT DISCLOSING CARE OR CUSTODY PROCEEDINGS: If you have any children, check "Yes" in Part H on Page 1 of the Complaint form, complete the top and any other appropriate parts of Page 2, and follow instructions in Part A on Page 2 for completing an Affidavit Disclosing Care or Custody Proceedings.

DEFENDANT INFORMATION FORM: This form describes the Defendant and where that person can be found. It will help law enforcement officers find that person to deliver the Order.

EXHIBIT 3B—Abuse Prevention Order (G.L. c. 209A)

ABUSE PREVENTION ORDER (G.L. c. 209A) Page 1 of 2		DOCKET NO. _____		TRIAL COURT OF MASSACHUSETTS	
Plaintiff's Name _____		Defendant's Name & Address _____		Alias, if any _____	
Name & Address Of Court _____				Date of Birth _____ Sex ☐ M ☐ F Place of Birth _____	
				SS # (Last four digits only) _____ XXX-XX-_____	
				Daytime Ph # () _____ Cell Phone # () _____	

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

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

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

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

☐ **1. YOU ARE ORDERED NOT TO ABUSE THE PLAINTIFF** by harming, threatening or attempting to harm the Plaintiff physically or by placing the Plaintiff in fear of imminent serious physical harm, or by using force, threat or duress to make the Plaintiff engage in sexual relations.

☐ **2. YOU ARE ORDERED NOT TO CONTACT THE PLAINTIFF**, in person, by telephone, in writing, electronically or otherwise, either directly or through someone else, and to stay at least _____ yards from the Plaintiff even if the Plaintiff seems to allow or request contact. The only exceptions to this order are: a) contact as permitted in Sections 8, 9, 10 and 11 below; or b) by sending the Plaintiff, by mail, by sheriff or by other authorized officer, copies of papers filed with the court when that is required by statute or court rule.

☐ **3. YOU ARE ORDERED TO IMMEDIATELY LEAVE AND STAY AWAY FROM THE PLAINTIFF'S RESIDENCE**, except as permitted in Sections 8 and 10 below, located at _____ or wherever else you may have reason to know the Plaintiff may reside. The Court also **ORDERS** you (a) to surrender any keys to that residence to the Police; (b) not to damage any belongings of the Plaintiff or any other occupant; (c) not to shut off or cause to be shut off any utilities or mail delivery to the Plaintiff; and (d) not to interfere in any way with the Plaintiff's right to possess that residence, except by appropriate legal proceedings.

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

☐ **4a. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF'S WORKPLACE** located at _____

☐ **4b. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF'S SCHOOL** located at _____

☐ **5a. THE COURT ORDERS** that the Plaintiff's residential address not appear on the order.

☐ **5b. THE COURT ORDERS** that the Plaintiff's workplace address not appear on the order.

☐ **5c. THE COURT ORDERS** that the Plaintiff's school address not appear on the order.

☐ **6. CUSTODY OF THE FOLLOWING CHILDREN IS AWARDED TO THE PLAINTIFF:**

NAME _____	AGE _____	NAME _____	AGE _____
NAME _____	AGE _____	NAME _____	AGE _____

☐ **7. YOU ARE ORDERED NOT TO CONTACT THE CHILDREN LISTED ABOVE OR ANY CHILDREN IN THE PLAINTIFF'S CUSTODY LISTED BELOW**, either in person, by telephone, in writing, electronically or otherwise, either directly or through someone else, and to stay at least _____ yards away from them unless you receive written permission from the Court to do otherwise.

☐ You are also ordered to stay away from the following school(s), day care(s), other: _____

NAME _____	AGE _____	NAME _____	AGE _____
NAME _____	AGE _____	NAME _____	AGE _____

☐ **8. VISITATION WITH THE CHILDREN LISTED IN SECTION 6 IS PERMITTED ONLY AS FOLLOWS (may be ordered by Probate and Family Court only):**

☐ Visitation is only allowed if supervised and in the presence of _____ (name) at the following times _____ to be paid for by _____ (name)

☐ Transportation of children to and from this visitation is to be done by _____ (name) (third party), and not by you.

☐ You may only contact the Plaintiff to arrange this visitation. Contact may be made only by ☐ phone, ☐ e-mail, ☐ text, ☐ other _____

☐ **9. YOU ARE ORDERED TO PAY SUPPORT IN THE FOLLOWING MANNER:**

☐ \$ _____ child support per _____ [week/month] by income withholding through the Department of Revenue. Defendant shall send payments to DOR at P.O. Box 55144, Boston, MA 02205-5144 until employer deductions begin.

☐ \$ _____ child support per _____ [week/month] directly to the Plaintiff by mailing payments to _____.

☐ \$ _____ support for the Plaintiff per _____ [week/month] directly to the Plaintiff by mailing payments to _____.

☐ Other orders: _____

☐ **10. YOU MAY PICK UP YOUR PERSONAL BELONGINGS** in the company of police at a time agreed to by the Plaintiff.

☐ **11. YOU ARE ORDERED TO COMPENSATE THE PLAINTIFF** for \$ _____ in losses suffered as a direct result of the abuse, to be paid in full on or before _____, 20____ ☐ by mailing directly to the Plaintiff ☐ through the Probation Office of this Court.

☐ **12. THERE IS A SUBSTANTIAL LIKELIHOOD OF IMMEDIATE DANGER OF ABUSE. YOU ARE ORDERED TO IMMEDIATELY SURRENDER** to the _____ Police Department or to the police officer serving this order all guns, ammunition, gun licenses and FID cards. Your license to carry a gun, if any, and your FID card, if any, are suspended immediately.

- You must immediately surrender the items listed above, and also comply with all other Orders in this case.
- Subject to certain exceptions, purchase and/or possession of a firearm and/or ammunition while this order is in effect is a federal crime. 18 U.S.C. §§ 922(g)(8) and 925.

☐ **13. ON THE NEXT SCHEDULED HEARING DATE**, the Court will hear testimony and other evidence regarding Section 9 of this order, which involves support for the Plaintiff and/or the minor children. You are hereby ordered to bring with you to the next scheduled hearing date any financial records in your possession (including your most recent tax return and your last four paystubs) that provide evidence of your current income.

☐ **14. YOU ARE ALSO ORDERED** _____

The Plaintiff must appear at scheduled hearings, or this Order will expire. The Defendant may appear, with or without attorney, to oppose any extension or modification of this Order. If the Defendant does not appear, the Order may be extended or modified as determined by the Judge. For good cause, either the Plaintiff or the Defendant may request the Court to modify this Order before its scheduled expiration date.

FA-2 (1/12)

ABUSE PREVENTION ORDER (G.L. c. 209A) Page 2 of 2		DOCKET NO. _____	TRIAL COURT OF MASSACHUSETTS
☐ 15. Police reports are on file at the _____ Police Department. ☐ 16. OUTSTANDING WARRANTS FOR THE DEFENDANT'S ARREST: (DOCKET #s) _____ (PCF #) _____ to _____ ☐ 17. An imminent threat of bodily injury exists to the Plaintiff. Notice Issued to _____ Police Department(s) by ☐ telephone ☐ other _____.			
B. NOTICE TO LAW ENFORCEMENT			
☐ 1. An appropriate law enforcement officer shall serve upon the Defendant in hand a copy of the Complaint and a certified copy of this Order (and Summons), and make return of service to this Court. If this box is checked ☐ , the following alternative service may instead be made, but only if the officer is unable to deliver such copies in hand to the Defendant: _____ ☐ 2. Defendant Information Form accompanies this Order. ☐ 3. Defendant has been served in hand by the Court's designee: Name _____ Date _____			
DATE OF ORDER	TIME OF ORDER ☐ A.M. ☐ P.M.	EXPIRATION DATE OF ORDER _____ at 4 P.M.	SIGNATURE OF JUDGE _____ PRINT/TYPE NAME OF JUDGE _____
The above and any subsequent Orders expire on the expiration dates indicated. Hearings on whether to continue and/or modify Orders will be held on dates and times indicated.			NEXT HEARING DATE: _____ at ☐ A.M. ☐ P.M. Courtroom _____
C. MODIFICATION/EXTENSION			
☐ This order was issued after a hearing at which the Plaintiff ☐ appeared ☐ did not appear and the Defendant ☐ appeared ☐ did not appear. The Court has ORDERED that the prior order issued _____, 20____ be MODIFIED as follows: _____ _____ _____ _____ _____ ☐ The expiration date of this order has been EXTENDED (See Below) ☐ OTHER MODIFICATION(S) _____			
☐ Firearm surrender order continued. The items surrendered under paragraph 12 will NOT be returned since doing so would present a likelihood of abuse to the Plaintiff.			
DATE OF THIS MODIFICATION:	EXPIRATION DATE OF ORDER: _____ at 4 P.M.	SIGNATURE OF JUDGE _____ PRINT/TYPE NAME OF JUDGE _____	
TIME OF MODIFICATION: ☐ A.M. ☐ P.M.	NEXT HEARING DATE: _____ at _____ ☐ A.M. ☐ P.M. Courtroom _____		
D. MODIFICATION/EXTENSION			
☐ This order was issued after a hearing at which the Plaintiff ☐ appeared ☐ did not appear and the Defendant ☐ appeared ☐ did not appear. The Court has ORDERED that the prior order issued _____, 20____ be MODIFIED as follows: _____ _____ _____ _____ _____ ☐ The expiration date of this order has been EXTENDED (See Below) ☐ OTHER MODIFICATION(S) _____			
☐ Firearm surrender order continued. The items surrendered under paragraph 12 will NOT be returned since doing so would present a likelihood of abuse to the Plaintiff.			
DATE OF THIS MODIFICATION:	EXPIRATION DATE OF ORDER: _____ at 4 P.M.	SIGNATURE OF JUDGE _____ PRINT/TYPE NAME OF JUDGE _____	
TIME OF MODIFICATION: ☐ A.M. ☐ P.M.	NEXT HEARING DATE: _____ at _____ ☐ A.M. ☐ P.M. Courtroom _____		
E. PRIOR COURT ORDER TERMINATED			
☐ This Court's prior Order is terminated. Law enforcement agencies shall destroy all records of such Order. ☐ TERMINATED AT PLAINTIFF'S REQUEST.			
SIGNATURE OF JUDGE _____ PRINT/TYPE NAME OF JUDGE _____		DATE OF ORDER	TIME OF ORDER ☐ A.M. ☐ P.M.
WITNESS - FIRST OR CHIEF JUSTICE _____		A true copy, attest (Asst.) Clerk-Magistrate/ (Asst.) Register of Probate _____	

FA-2A (1/12)

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

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

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

The BLUE COPY of this Order is for your records.

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

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

G.L. c. 209A, § 7

Atencion: Notificación oficial del tribunal; si no entiende inglés, obtenga una traducción.
 Attention: Avis officiel du tribunal, Anglais limite, veuillez faire traduire.
 Attenzione: avviso ufficiale del tribunale. Chi non capisce l'inglese lo faccia tradurre.
 Atenção: Este é um anúncio jurídico oficial. Mande traduzi-lo se você não compreende o Inglês.
 Atensyon: Es é um anúncio oficial di tribunal. Mandâ traduzil si bu ca ta entendê Inglês.
 Atansyon: Se avi ofisyal Tribunal la. Fe tradwi'l souple, si'w pa kon Angle.
 Внимание! Это повестка из суда. Если Вы не читаете по-английски, обратитесь к переводчику.
 សូមប្រុងប្រយ័ត្ន: នេះគឺជាសំបុត្រជាផ្លូវការពីតុលាការ។ បើសិនជាអ្នកមិនចេះភាសាអង់គ្លេសទេ សូមរកមន្ត្រីបំប្លែងភាសា។
 XIN CHÚ Ý: ĐÂY LÀ MỘT THÔNG CÁO CHÍNH THỨC CỦA TÒA ÁN. NẾU QÚI VỊ KHÔNG BIẾT TIẾNG ANH, VUI LÒNG NHỜ NGƯỜI DỊCH.
 注意: 這是正式的法院通告。如果您不懂英語, 請找人代為翻譯。

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

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

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

The BLUE COPY of this Order is for your records.

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

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

G.L. c. 209A, § 7

RETURN OF SERVICE

I certify that I have served a copy of this Order upon the Defendant named in this Order by

- ☐ delivering a copy in hand to the Defendant.
☐ leaving a copy at the Defendant's last and usual address as shown in this Order.
☐ Other (specify) _____

☐ I was unable to make service because _____

SIGNATURE OF OFFICER MAKING SERVICE		DATE & TIME OF SERVICE	
X _____			
PRINTED NAME OF OFFICER MAKING SERVICE		TITLE/RANK	POLICE DEPARTMENT

Atencion: Notificación oficial del tribunal; si no entiende inglés, obtenga una traducción.

Attention: Avis officiel du tribunal, Anglais limite, veuillez faire traduire.

Attenzione: avviso ufficiale del tribunale. Chi non capisce l'inglese lo faccia tradurre.

Atenção: Este é um anúncio jurídico oficial. Mande traduzir-lo se você não compreende o Inglês.

Atenção: Es é um anúncio oficial di tribunal. Mandâ traduzil si bu ca ta entendê Inglês.

Atansyon: Se avi ofisyel Tribunal la. Fe tradwi'l souple, si'w pa kon Angle.

Внимание! Это повестка из суда. Если Вы не читаете по-английски, обратитесь к переводчику.

សូមប្រុងប្រយ័ត្ន: នេះគឺជាសំបុត្រផ្លូវការពីតុលាការ។ បើលោកអ្នកមិនចេះភាសាអង់គ្លេសទេ សូមរកមន្ត្រីបកប្រែ។

XIN CHÚ Ý: ĐÂY LÀ MỘT THÔNG CÁO CHÍNH THỨC CỦA TÒA ÁN. NẾU QÚI VỊ KHÔNG BIẾT TIẾNG ANH, VUI LÒNG NHỜ NGƯỜI DỊCH.

注意: 這是正式的法院通告。如果您不懂英語, 請找人代為翻譯。

EXHIBIT 3C—Sample Motion to Impound Address

COMMONWEALTH OF MASSACHUSETTS

[____], ss.

Probate and Family Court Dept.
Docket No: 000000

_____	)
Jane Smith,	)
Plaintiff	)
v.	)
Michael Smith,	)
Defendant	)
_____	)

PLAINTIFF'S MOTION TO IMPOUND ADDRESS

Now comes Plaintiff, Jane Smith, and moves that this Honorable Court order the Plaintiff's address impounded and further order that Jane Smith is excused from revealing her home or work address, phone number and any other information that could disclose her whereabouts on her financial statement, on Family Service intake forms, or in answer to any discovery.

In support thereof, the Plaintiff states that she fled the marriage due to domestic abuse on March 25, 2008 and has had a restraining order against Michael Smith since that time. She is currently living in a battered women's shelter. She will be moving to independent housing shortly. She is in fear of the Defendant attempting to locate her and hurt her. During the marriage, Michael Smith threatened that if Jane Smith ever left him, he would "hunt [her] down and kill [her]." Plaintiff attaches her affidavit in support of this motion.

Wherefore, Plaintiff respectfully requests that this Honorable Court impound her address and order that Plaintiff is excused from revealing her home or work address, phone number, and any other information that could disclose her whereabouts on her financial statement, on Family Service intake forms, or in answer to any discovery.

Respectfully submitted,
Jane Smith,
by her attorney,

Adam Shaughnessy
BBO # 0000000
Legal Services
123 Lawyer Street
Boston, MA 00000
(617) 123-4567

Dated:

EXHIBIT 3D—Personalized Safety Plan

Name: _____
 Date: _____
 Review Dates: _____

PERSONALIZED SAFETY PLAN

The following steps represent my plan for increasing my safety and preparing in advance for the possibility of further violence. Although I do not have control over my partner's violence, I do have a choice about *how* to respond to him or her and how to best get myself and my children to safety.

Step One: Safety During a Violent Incident

- A. If we are going to have an argument, I can try to move to a space that is lowest risk, such as _____. (Try to avoid arguments in the bathroom, garage, kitchens, near weapons or in rooms without access to an outside door.)
- B. If it is not safe to stay, I can _____. (Practice how to get out safely. What doors, windows, elevators, stairwells or fire escapes would you use?)
- C. I can keep my purse or wallet and car keys ready and put them _____ so that I can leave quickly.
- D. I can tell _____ and _____ about the violence and ask them to call the police if they hear suspicious noises coming from my home.
- E. I can use _____ as my code word with my children or my friends so they can call for help.
- F. I can teach my children how to use the telephone to contact the police and the fire department.
- G. If I have to leave my home, I can go to _____, _____ or _____.

(Decide this even if you don't think there will be a next time.)

Use your judgment. If the situation is very serious, calm him or her down. You have to protect yourself until you (and your children) are out of danger.

Always remember: YOU DESERVE BETTER THAN THIS!

Step Two: Safety When Preparing to Leave

Battered people frequently leave the residence they share with the battering partner. Leaving must be done strategically in order to increase safety. Batterers often strike back when they believe that their battered partner is leaving the relationship.

- A. I can leave money and an extra set of keys with _____ so that I can leave quickly.
- B. I can keep copies of important documents or keys and some extra clothes with _____.
- C. I can open a savings account to increase my independence (preferably opened in a separate bank that you and your spouse use jointly).
- D. Other things I can do to increase my independence include:

- E. The domestic violence program's hotline number is (617) 661-7203. I can keep change for phone calls with me at all times. I understand that if I use my telephone credit card, the following month's telephone bill will tell

my batterer those numbers that I called after I left. To keep my telephone communications confidential, I can either use coins or I might get a friend to permit me to use his or her telephone credit card for a limited time when I first leave.

- F. I can check with _____, _____ and _____ to see who would be able to let me stay with them or lend me some money.
- G. I can sit down and review my safety plan every _____ so that I know the safest way to leave my home.
- H. I can rehearse my escape plan and, as appropriate, practice it with my children.

Remember: If you tell your partner that you'll leave him or her if he or she ever hits you again, think about whether you're giving him or her permission to hit you "just one more time."

Step Three: Safety in My Own Residence

There should be something about safety when he or she still lives in the home.

- A. If my partner no longer lives with me, I can take action to ensure my safety and my children's safety in my home.
 - 1. I can change the locks on my doors and windows as soon as possible.
 - 2. I can replace wooden doors with steel/metal doors.
 - 3. I can install security systems including additional locks, windows bars, poles to wedge against doors, an electronic system, etc.
 - 4. I can purchase a rope ladder to be used for escape from second floor windows.
 - 5. I can install smoke detectors and purchase a fire extinguisher for each floor in my home.
 - 6. I can install an outside lighting system that lights up when a person is coming close to my home.
- B. I can teach my children to _____ when I am not available.
- C. I can inform _____, _____ and _____ about who has permission to pick up my children.
- D. I can teach my children how to use the telephone to make a collect call to me and to in the event that my partner abducts them.
- E. I can inform _____, _____ and _____ that my partner no longer resides with me and that they should call the police if he is observed near my home.

Step Four: Safety with a Protective Order

- A. I can keep my protective order _____. (Always keep it on or near your person.)
- B. If my partner breaks the protective order, I can _____.
- C. If the police are not responsive, I can _____.
- D. I can inform _____ and _____ that I have a protective order in effect.
- E. If my partner destroys my protective order, I can get another copy from the _____.

Step Five: Safety on the Job and in Public

- A. I can inform _____ and _____ at work of my situation.
- B. I can use voice mail, the receptionist or a coworker to help screen my telephone calls at work.

- C. When leaving work, I can _____.
- D. If problems occur when I am driving home, I can _____.
- E. If I use public transportation, I can _____.
- F. I can also _____.

Step Six: Safety and Drug or Alcohol Consumption

The use of any alcohol or other drugs can reduce people's awareness and ability to act quickly to protect themselves from their battering partners. Furthermore, the batterer's use of alcohol or other drugs may give him or her an excuse to use violence. Therefore, in the context of alcohol or other drug consumption, a battered partner needs to make specific safety plans.

If drug or alcohol or other drug consumption has occurred in my relationship with my partner, I can enhance my safety in these ways:

- A. If I am going to consume alcohol or other drugs, I can do so in a safe place and with people who understand the risk of violence and are committed to my safety.
- B. I can also _____ or _____.
- C. If my partner is consuming alcohol or drugs, I can _____.
- D. To protect my children, I might _____ or _____.

The legal outcomes of using illegal drugs can be very hard on a battered person, may hurt the relationship with his or her children and put him or her at a disadvantage in other legal actions with his or her battering partner. Therefore, battered people should carefully consider the potential cost of these illegal drugs.

Step Seven: Safety and My Emotional Health

- A. If I feel down and ready to return to a potentially abusive situation, I can _____.
- B. When I have to communicate with my partner in person or by telephone, I can _____.
- C. I can try to use positive self-talk with myself and be assertive with others. I can tell myself that I don't deserve to be beaten whenever I feel others are trying to control or abuse me.
- D. I can read _____ to help me feel stronger.
- E. I can call _____, _____ and _____ as additional resources to support me.

What I Need to Take When I Leave

- Identification for myself
- Driver's license
- Children's birth certificates
- My birth certificate
- Money
- Lease, rental agreement, house deed, mortgage payment book
- Bank books
- Check books
- Credit cards
- Insurance papers
- Keys to house, car and office

■ CHAPTER 3: SAFETY AND PROTECTION ISSUES

- Medications for me and my children
- Small sellable objects
- Address book
- Pictures
- Medical records for all family members
- Social Security cards
- Welfare identification
- School records
- Work permits
- Green card
- Passport(s)
- Divorce papers
- Jewelry
- Children's favorite toys and/or blankets
- Items of special sentimental value

I can keep the items concerning me in one location. If I have to leave in a hurry, I can grab these items quickly.

IMPORTANT TELEPHONE NUMBERS:

Police department (home): _____

Police department (school): _____

Police Department (office): _____

Battered Women's program: _____

Shelter: _____

Other: _____