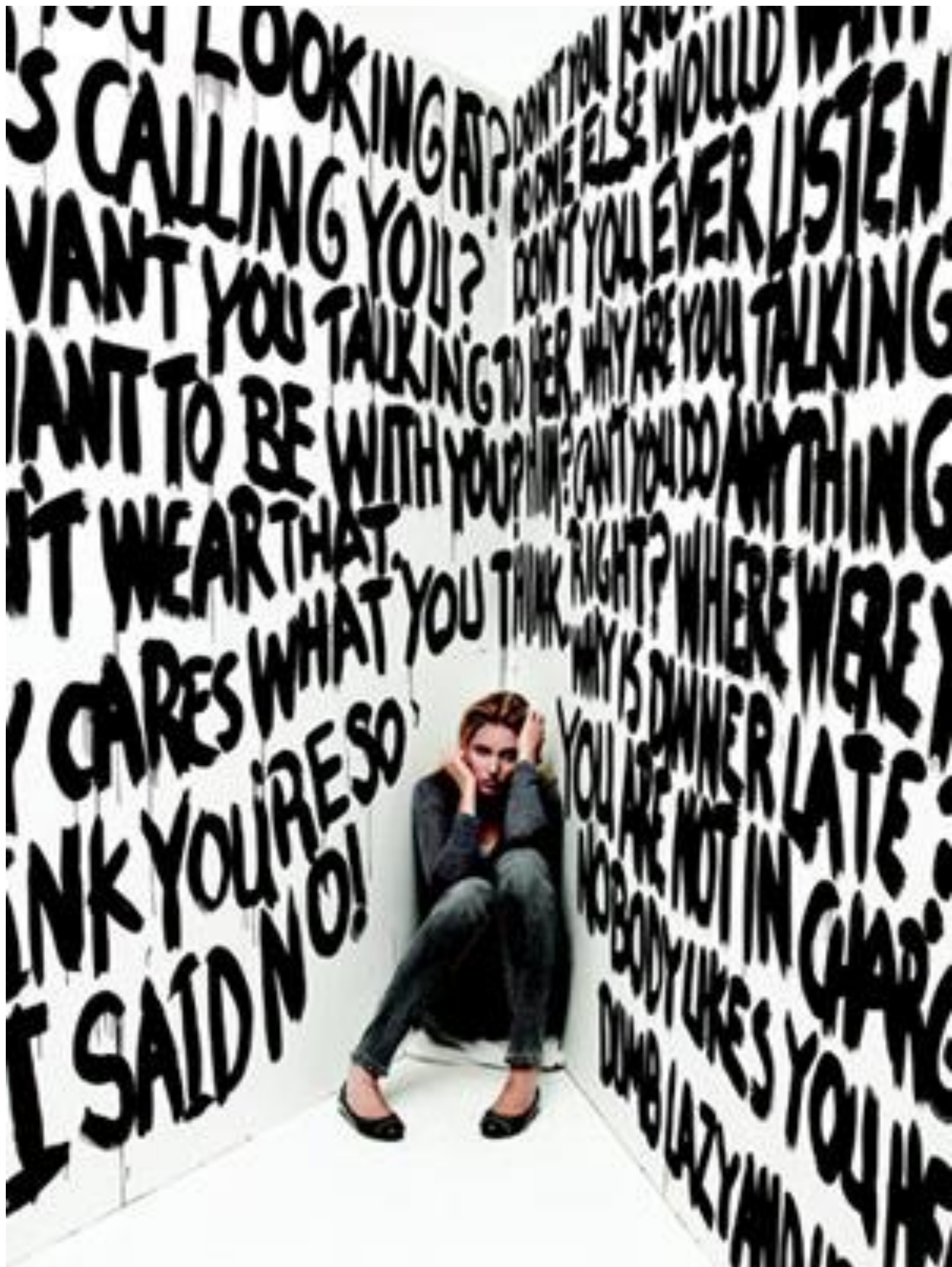


For more information go to http://www.masslegalhelp.org/domestic-violence/where-do-we-go-from-here

A Note to Readers

In this guide, the term "domestic violence" means abuse by a spouse, partner, boyfriend, girlfriend, or date. Two people do not have to be living together for abuse between them to be domestic violence. We use the term "domestic violence," to mean the same thing that other authors mean by the terms “intimate partner violence” (IPV) and "domestic abuse."

In this guide, we use female pronouns (her, she) to refer to domestic violence survivors and male pronouns (his, him, he) to refer to the abusive partner. We do this because it is easier and less confusing than mixing the pronouns. Statistics show that most domestic violence is male on female. There are cases of women abusing men, men abusing men, and women abusing women. The information in this guide should help you if you are a survivor of domestic violence, if you are a woman or a man and if your partner is a woman or a man.

Where Do We Go From Here? was originally produced as a printed manual by a group of Western Massachusetts Legal Services (WMLS) Americorps attorneys through a National Services Legal Corps Battered Women's Legal Assistance Project. Over the years it was updated three times by other groups of AmeriCorps attorneys. **THERE IS NOW AN ONLINE VERSION WHICH CAN BE FOUND AT http://www.masslegalhelp.org/domestic-violence/where-do-we-go-from-here** This online version has been updated and revised by theMassachusetts Law Reform Institute in collaboration with WMLS in 2009. All of the opinions in this guide are those of WMLS and MLRI, unless we note otherwise. This guide explains the law as we understand it at the time of publication. **The law changes frequently.** Parts of this guide may be incorrect or outdated when you use it. You should always check with a lawyer if you can. This guide is not meant to replace the advice of a lawyer. If you are low-income, you may be able to get free legal help from the legal services program near you

Contents

What is domestic violence?....7

Getting Help to Stop the Violence....9

Getting Help for Elders and Those with Disabilities....13

Getting Help If You Are An Immigrant....13

Programs that Help With Money....15

Cash Assistance....15

Transitional Aid to Families with Dependent Children (TAFDC)....15

Emergency Aid for the Elderly, Disabled and Children's Program (EAEDC)....15

Unemployment Insurance....16

Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)....16

Veterans Benefits....17

"Flex Funds" from a domestic violence program....17

Victims of Violent Crime Compensation....18

Food....19

SNAP/Food Stamps....19

The Women, Infants, and Children program (WIC) 19

Surplus Food Giveaways....19

Food Pantries and Soup Kitchens....19

The SHARE Program....19

Health insurance....20

MassHealth....20

Shelter, or housing, and help with utilities....21

Childcare..25

TAFDC for Survivors of Domestic Violence...25

Domestic Violence and Welfare..37

Teen Parents: Your Rights Under Welfare Reform..42

Applying for Benefits from DTA..49

Child Support...54

Criminal Complaints...70

209A Protective Orders..82

Custody...99

Separation and Divorce...119

The Department of Children and Families..138

Personal property...154

What is domestic violence?

Sometimes I feel my partner is abusing me, but he has never hit me. What is domestic violence anyway?

Abuse does not have to be physically violent in order to be domestic violence. When one person in a relationship tries to control and overpower the other person, that is domestic violence. There are many kinds of domestic violence. This is a list of some kinds of domestic violence:

- **Physical abuse:** pushing, shoving, hitting, biting, kicking, throwing things at a person, using a weapon, forced sex or touching, rape, choking;
- **Isolation:** keeping you from seeing people; controlling who you see and talk to; wanting to control where you are all the time;
- **Emotional abuse:** calling you names; putting you down; playing mind games; humiliating you in public;
- **Economic abuse:** taking your money; making you ask for money; controlling all the money;
- **Sexual abuse:** treating you like a sex object; forcing you to have sex or do sexual things when you don't want to;
- **Using children:** using visitation as a way to harass you; pumping the children for information about you; insulting you in front of the children;
- **Threats:** saying he will take the children; telling you that you will never see the children again; threatening to hurt you; threatening to report you to welfare or DSS; threatening to hurt your family; threatening to hurt himself;
- **Insisting on being in charge:** treating you like a servant; making the big decisions;
- **Intimidation:** using looks; hurting pets; destroying your property.

The "Equality Wheel" and the "Power and Control Wheel" prepared by the Duluth (Minnesota) Abuse Intervention Project give more examples of abusive and non-abusive behavior. The examples on these wheels might help you think about your situation.

I feel so alone. Are many women in this situation?

Domestic violence is one of the most serious public health threats to women in the United States today. Thousands of women are beaten by their partner or ex-partner every year. In 2007, over 35,000 restraining order complaints were filed in Massachusetts courts. Most of these complaints were filed by women. See Custody.

Is domestic violence a crime?

Some forms of domestic violence are crimes. For example, physical violence and forced sex are crimes. It is also a crime if your partner threatens to use physical force against you or your children. Other forms of domestic violence may also be crimes. See 209A Protective Orders.

I am afraid my children are being abused. What are the different kinds of child abuse?

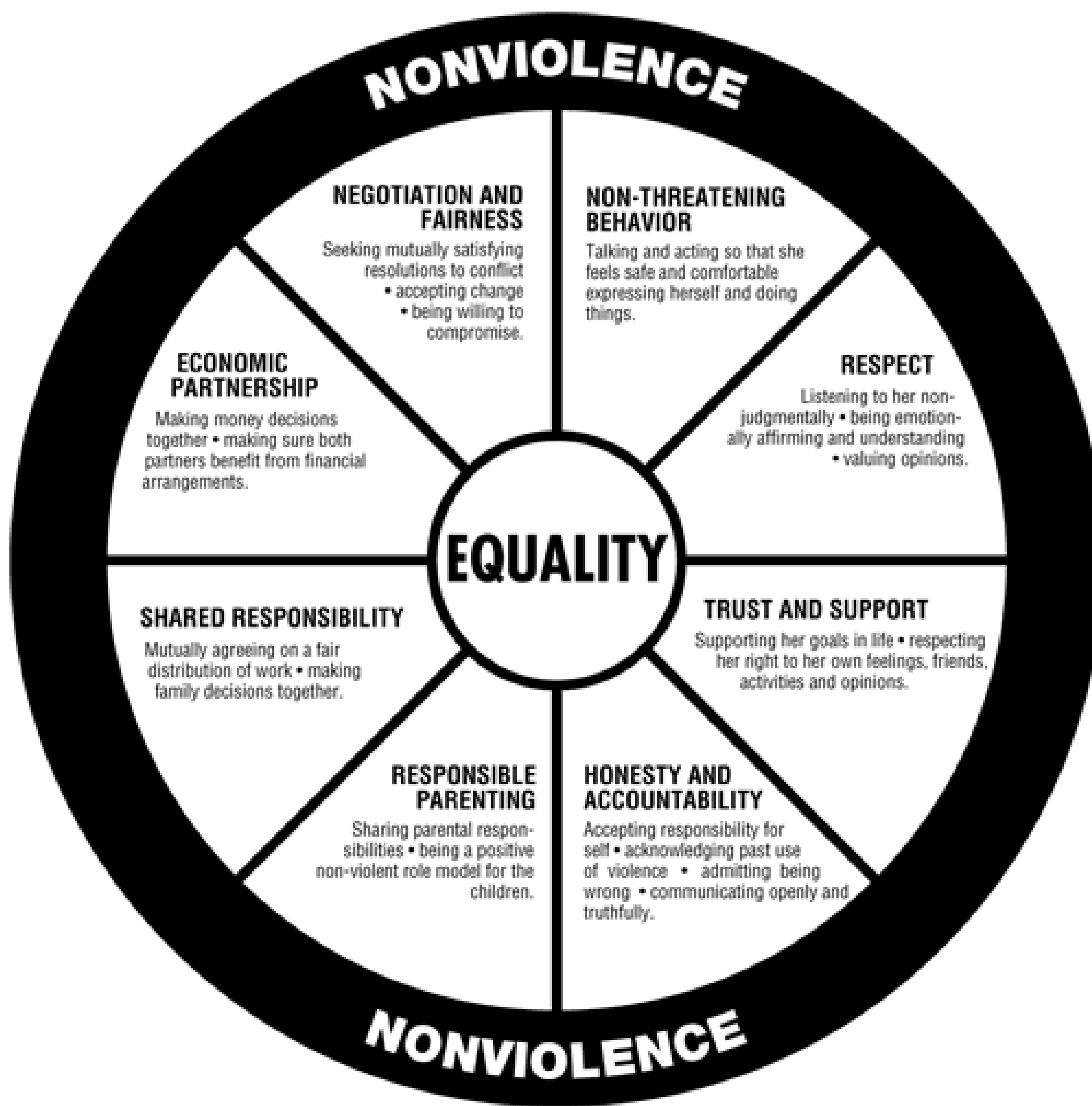
Some types of child abuse are:

- making a child witness domestic violence

- sexually assaulting a child and
- is physically assaulting a child.

Is it a crime to abuse children?

Yes, it can be. Some forms of child abuse are crimes. See 209A Protective Orders.



Getting Help to Stop the Violence

You and your children have the right to be safe. This means that you have the right to stop the violence. More than that, you have the right to live a violence-free life. This guide is one way to help you find ways to stop the violence.

Things have been difficult for a long time. Is there someone I can talk to about what to do next?

Yes. You may want to talk with someone before you decide whether to stay or go. You can talk with the staff at women's centers, battered women's programs, or mental health agencies. You can find a list of domestic violence programs on Jane Doe's website. Jane Doe, Inc., with the Massachusetts Coalition Against Sexual Assault and Domestic Violence, has a Directory of Domestic Violence Programs in Massachusetts and a map of services on their website. You can find some of these programs in the first few pages of your local telephone book in the self-help section. You can also call Safelink, a statewide hotline that can tell you where to find help near you.

What if I can't leave now?

Sometimes women are threatened with worse harm if they leave. Some women depend on their abusive partner for the money to live, which makes leaving hard.

A first step is to look at what is possible for you and your family right now. Talking to a counselor (see above) may help you decide whether or not you want to continue the relationship. You may be able to use the information in this guide even if you do not leave your partner.

Abusive partners often play "games" and make promises that do not last long. Take a look at Games Batterers Play. Has your partner done or said some of the things described there? If so, his promises to change may be empty promises. You know your situation better than anyone else. Only you can decide what the best decision is for now.

Should I have a plan?

Yes. Domestic violence can make you feel trapped and afraid of physical harm. A Personalized Safety Plan will help you think ahead about things such as:

- what you can do to protect yourself when he gets violent;
- how to leave quickly and where you can go;
- if you live separately from your partner, how to protect yourself if he tries to find you;
- how to stay safe on the job, at school, in public; and
- how to use the courts to help keep you safe.

I am thinking about moving out of state with my children. Would this be a problem?

You should check with a lawyer if you plan to move your children out of state. The answer to this question is beyond the scope of this manual. Whether you may move or not depends on the specific facts of your situation. Important facts include:

- why you want to move out of state;
- whether the move will improve the children's quality of life;
- whether you are married to the father of your children or not;
- whether you are divorced or in the process of getting a divorce;
- what kind of relationship the other parent has with the children;
- whether there are any existing court orders involving the children;
- whether you suspect their father has filed or will file for custody; and
- many other considerations.

Often women need court permission to move to a new state. The court weighs many factors in deciding whether or not to allow it. If you move the children to another state without the father's written permission or permission from a court, the father may ask a court to give him custody and order that they be returned. For more information about custody, see Custody, Visitation, and Moving out of Massachusetts with your children.

To see if you qualify for free legal services, call the legal services program near you.

Can I get a restraining order even if we are still together?

Yes. **Even if you are still living together**, you can still get a restraining order. In Massachusetts a restraining order is called a 209A protective order. If you are living together and you do not want to leave, the protective order will tell your partner not to abuse you, not to threaten you, not to harm you, and/or not to force you to have sex. See 209A Protective Orders and other articles about Abuse Prevention Orders.

What about a treatment program for my abusive partner?

A criminal court can order your partner to go to a treatment program called a "certified batterer intervention program." If you file for a 209A protective order (restraining order), the court may recommend or refer him to this kind of treatment program or to alcohol or drug treatment.

These treatment programs are all different. Massachusetts Department of Health and Human services has a web page about Certified Batterer Intervention Programs in Massachusetts where you can find the phone numbers and addresses of batterer intervention programs in your area.

If your partner is in a program, the program may contact you. You do not have to agree to anything they suggest. See 209A Protective Orders. If your partner is violent, it means that he has a problem and needs to be willing to change.

What about a treatment program for me?

Many battered women's programs offer individual counseling and peer support groups. You may find a support group helpful. You can find out about these programs by calling Safelink.

If your partner is in a batterer intervention program, the program may have a support group for survivors of domestic violence that you can join. These groups are confidential and **entirely voluntary**. You do not have to join the' group that is connected with the batterer intervention program.

If you have an open case with the Department of Children and Families (DCF), you may have to go to a group as a condition of your service plan. See Department of Children and Families.

I want to leave, but the children want the family to stay together. What can I do?

It is important to trust your own judgment. You are the adult and responsible for making decisions that affect your children.

Sometimes, after people have been battered for a long time, they start thinking they aren't worth very much. They may not be able to make decisions. Sometimes, they start depending on their children to decide because they don't trust themselves.

You can make the decisions. Trust your own thinking.

My children love their father and want to see him. What can I do?

It is always hard for children to separate from a parent. It is also hard for children to see violence in their home. 'Witnessing domestic violence can seriously affect children's development, mental and emotional health, relationships with family and friends, and education.' Children who grow up seeing violence between their parents often have problems later in life.

You have to decide what is best for your family. If you separate from your partner, you may be able to work out ways for the children to visit with him, as long as visiting does not put them in danger. You also need to make sure that you keep yourself safe in the process. See Visitation for information on how your children can spend time with their father and still make sure everyone is safe.

Who can I talk to about my children and their safety?

You may want to talk to a battered women's program for referrals and guidance. Jane Doe has a map of Domestic Violence Programs in Massachusetts on their website. You can find some of these in the first few pages of your local telephone book in the self-help section. You can also call Safelink, a statewide hotline that can tell you where to find help near you.

What can I do if I think my child is being abused?

If you think someone is abusing your child, take steps to stop or limit contact between your child and that person. This may mean limiting visitation with a parent see Visitation. You can also take your child to a doctor for an exam and talk with the doctor.

You can try to file a **criminal complaint**. See 209A Protective Orders.

If you suspect child abuse or neglect, you can also call the **Child Abuse Hotline: 1-800-792-5200**.

You can also call DCF. DCF is the state's child welfare agency.. DCF can investigate abuse, write a report, offer services, or go to court to get custody of the children.

What if I can't protect my children?

Even though you are not the one abusing your child, it is a crime to "recklessly" let anyone physically harm a child. (Mass. Gen. Laws. ch. 265, sec. 13J.)

Try to get help for your children if you can't protect them.

You may want to call Safelink for help finding a battered women's program near you that can help you take steps to protect your child. Or look up a program on Jane Doe's website.

You may be able to get help from friends, family or other agencies.

You can also call the Department of Children and Families (DCF), the child welfare agency in Massachusetts.' DSS can help you, but DCF can also take custody of your children in certain situations.' See Department of Children and Families for more information on DCF.

Getting Help for Elders and Those with Disabilities

Who can I contact if I think an elderly person is being abused, neglected or injured?

Special laws protect elders (60 and older) from abuse. If you know or think that an elder is being abused, injured or neglected, you can call the **Elder Abuse Hotline at 1-800-922-2275**. You will not have to give your name if you do not want to.

Who should I contact if I think someone with a disability is being abused, neglected or injured?

Special laws also protect disabled adults who are abused, injured or neglected. If the person is under 60, you can call the **Disabled Persons Protection Hotline at 1-800-426-9009**. For persons over 60, call the **Elder Abuse Hotline at 1-800-922-2275**. You will not have to give your name if you do not want to.

Getting Help If You Are An Immigrant

I don't speak English well. Can I get help in my own language?

If you speak Spanish, you can read this guide online in Spanish.

Legal Services offices use interpreters. If you can get free legal help you should get that help in your own language. Shelters and programs for battered women also should get you an interpreter if you need one.

If you go to court, you have the right to an interpreter. You need to tell the court that you need an interpreter. You need to ask for an interpreter as soon as you find out you are going to court.

If you are an Asian woman and you have been abused, there is a special project called the Asian Task Force Against Domestic Violence. There are offices in Boston and Lowell. The phone number for general calls is 617-338-2350 and for the hotline it is 617-338-2355. This project provides services in several Asian languages.

Women who are hearing impaired can call the Mass. Commission for the Deaf and Hard of Hearing in Boston at 1-800-882-1155 (voice) or 1-800-530-7570 (tty) for information about getting interpreters.

I am not a citizen of the United States. Who can I call with questions about immigration issues?

Immigration law is a complex area of law. We cannot answer general immigration questions in this guide.

Talk to a lawyer before contacting the United States Citizen and Immigration Services (USCIS), formerly known as the Immigration and Naturalization Service (INS). You can safely look at theUSCIS website for general information.

You may be able to get free legal services to help you with immigration issues. You can call theNational Immigration Project of the National Lawyers Guild at 617-227-9727.' MetroWest Legal Services can also help. You can contact MetroWest at 508-620-1830 or 1-800-696-1501.

You can get information and referrals from the Massachusetts Immigrant And Refugee Advocacy Coalition (MIRA). Their phone number is 617-350-5480.

I am an immigrant and the person who is battering me is the one who is supposed to help me get my immigration status. Is there special help for me?

Yes. Immigrant survivors of domestic violence have rights under a federal law called the "Violence Against Women Act." You should talk to an immigration specialist. Call one of the organizations listed above in Who can I call with questions about immigration issues? They may be able to help you file for immigration status under the Violence Against Women Act.

Programs that Help With Money

If I leave my partner, I won't have any money. Can I get help?

There are different programs that may be able to help you if you decide to leave. Some programs might be helpful even if you stay. The major programs help you get:

Cash Assistance

- Transitional Aid to Families with Dependent Children (TAFDC)
- Emergency Aid for the Elderly, Disabled and Children"s Program (EAEDC)
- Unemployment Insurance
- Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)
- Veterans Benefits
- "Flex Funds" from a domestic violence program
- Victims of Violent Crime Compensation

Transitional Aid to Families with Dependent Children (TAFDC)

You may be able to get TAFDC if you have a child or you are at least 5 months pregnant. TAFDC, or "welfare", can give you:

- cash every month
- MassHealth health insurance
- $150 clothing allowance for each child in September
- crib and layette allowance for newborn babies on the grant
- access to education and training programs
- child care and transportation payments if you are working or going to certain kinds of school or training programs; and
- "relocation money" if you are moving out of a shelter.

You can apply for TAFDC at your local Department of Transitional Assistance (DTA) office. You can read more about TAFDC for survivors of Domestic Violence. See Applying to DTA for information about applying for TAFDC. See Appealing denials for information about what to do if you apply and DTA tells you that you cannot get benefits.

Emergency Aid for the Elderly, Disabled and Children's Program (EAEDC)

You may be able to get EAEDC if you are:

- disabled (serious emotional scars from domestic violence are sometimes a disability); or
- a person caring for a disabled person; or
- 65 years old, or older; or
- in a Massachusetts Rehabilitation Commission program.
- Also, some children who cannot get TAFDC can get EAEDC.

EAEDC pays you cash every month, but not as much as TAFDC pays. EAEDC comes with MassHealth health insurance. There is a chart on MassLegalHelp with EAEDC payment amounts.

The rules for EAEDC are better for non-citizens than the rules for TAFDC and SSI. You may be able to get EAEDC even if you are not able to get TAFDC or SSI because of your immigration status.

You can apply for EAEDC at your local DTA office.

See Applying to DTA for information about applying for EAEDC. See Appealing denials for information about what to do if you apply and DTA tells you that you cannot get benefits.

Unemployment Insurance

You may be able to get Unemployment benefits if you lost your job because of domestic violence. Some examples of how living with domestic violence might be reasons you lost your job are:

- if you were fired for too many absences and you were absent because of domestic violence,
- or if you were forced to quit because you were fleeing domestic violence, or
- you were forced to quit because your abuser was bothering you at work or made you stop working, or
- if you had to quit because your abuser was looking after your child and you had no child care when you left him.

Unemployment insurance pays cash benefits for up to 30 weeks. It also pays for some kinds of training. If you are in an approved training program, you may be able to get benefits for an extra 18 weeks (48 weeks total, or almost a year).

To apply, call the TeleClaim Center.

- If you are calling from the area codes: **351**, **413**, **508**, **774**, and **978**, call 1-877-626-6800;
- If you are calling from any other area code, call the TeleClaim Center at 617-626-6800;."
- TTY/TTD: 1-888-527-1912.

Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)

If you are disabled (Serious emotional scars from domestic violence are sometimes a disability.), blind or over 65, you can apply for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits. Some people can apply for both programs. Both programs pay cash every month, and they pay more than TAFDC or EAEDC.

SSDI is for people who are:

- blind,
- over 65 or who have" disabilities, **and**
- have enough work history to qualify for the program. The amount of your payment depends on how much you have worked (and paid into Social Security).

SSI is also for people who are

- blind,
- over 65, or who have disabilities, **but**
- do not have enough work history to qualify for SSDI **and**
- who have very little savings or income.

If you get SSI you will also get MassHealth at the same time. There is a chart on MassLegalHelp with SSI payment amounts.

If your child is disabled and your family is low-income, your child may be able to get SSI benefits.

You or your child also may be able to get "dependent Social Security benefits". These are monthly cash payments. You may be able to get this money if your spouse or your parent earned enough wages and is now retired, disabled or has died. Your child may be able to get this money if your child"s other parent earned enough wages and is now retired, disabled or has died.

You can apply for SSDI and SSI at your local Social Security office. You can also start your application by calling **1-800-772-1213.** It can take months for the Social Security office to process your Social Security or SSI application, so apply as soon as possible. Most people apply for EAEDC or TAFDC at their local Department of Transitional Assistance office while they are waiting for Social Security or SSI. If you get SSI, your children can still get TAFDC.

Veterans Benefits

State and federal veterans benefits pay cash. State Veterans Services benefits are based on military service and income level. These benefits are for people who have low incomes. The benefits include medical coverage and some emergency benefits. You may be able to get state or federal veterans benefits if you or someone in your family is a veteran. If you or your child has a parent who is a veteran, or if your child is a veteran, or if you are the spouse of a veteran (even if you are separated), you may be able to get these benefits as a dependent. Call your local city or town hall to find out where you can apply.

"Flex Funds" from a domestic violence program

Domestic violence programs have access to "Flex funds." They can use this money to help you get on your feet." Flex funds are not regular cash payments."" They can be used to help you in an emergency, when you don"t have the cash. You can use this money to help pay for things like:

- first month"s rent on a new place,
- some back rent to help you keep your old place,
- child care while you look for work or go to work, or
- transportation to and from work."

Flex funds are usually one time grants. You can find a domestic violence program by visiting Jane Doe, Inc's website. Jane Doe, Inc., is the Massachusetts Coalition Against Sexual Assault and Domestic Violence.

Victims of Violent Crime Compensation

Victims Compensation pays up to $25,000 for some losses related to violent crime, including domestic violence." You may be able to get money from the fund for:

- medical and dental expenses (including equipment, supplies and medications),
- counseling expenses (for victims and for children who witness domestic violence)
- lost wages (for victims only)
- homemaker expenses, and
- funeral/burial costs up to $4,000.

The fund does not pay for: property losses, compensation for pain and suffering, and all other losses.

To get Victims Compensation for domestic violence:

- The domestic violence must have happened in Massachusetts;
- You must have reported the domestic violence to the police within five days, unless you had a good reason for waiting longer;
- You must cooperate with the police and prosecutor, unless you have a good reason not to; and
- You must apply for compensation within three years of the domestic violence that you reported to the police.

To apply, fill out an Application For Crime Victim Compensation in Massachusetts on the Attorney General's website.

Mail the application to:

Office of Attorney General Martha Coakley
Victim Compensation & Assistance Division
One Ashburton Place, 19th floor
Boston, MA 02108-1698
(617) 727-2200
(617) 742-6262 fax

In general, you will receive a decision 4 to 6 months later. Your claim can be reopened for future expenses.

Food

SNAP/Food Stamps

You can apply for SNAP/Food Stamps online or at your local DTA office. You can use SNAP/Food Stamps to buy food at supermarkets, grocery stores, and some restaurants and senior meal programs. The amount of SNAP/Food Stamps you get depends on how many people are in your house, how much money you have coming in, your housing or shelter costs, and child care costs. If you are a senior or you have a disability, your medical expenses will also be taken into account. Read about Basic SNAP/Food Stamp Rights.

See Applying to DTA for information about applying for SNAP/Food Stamps. See Appealing denials for information about what to do if you apply and DTA tells you that you cannot get benefits.

Call Project Bread's FoodSource Hotline at 1-800-645-8333.

The Women, Infants, and Children program (WIC)

WIC gives vouchers for nutritional foods to low-income pregnant women and children under five. You can use WIC checks for food like milk, cheese, eggs, tuna, iron-fortified cereal, peanut butter, infant formula, carrots, beans, and vitamin C-rich juices. You can also get nutrition counseling, health screenings, and referrals to other benefit programs. Go online to find out where you can apply or call Massachusetts WIC toll-free at 1-800-942-1007.

Surplus Food Giveaways

The U.S. Government buys extra food like peanut butter, canned goods, and cheese from farmers and then gives it away to local food pantries and Community Action Programs. Check the Community Service Guide in the first few pages of your phone book, or call Project Bread's FoodSource Hotline at 1-800-645-8333 (phone) or 1-800-377-1292 (TTY) to find out where to get these foods.

Food Pantries and Soup Kitchens

Most towns and cities have a food pantry that gives away free food at certain time of the month. They also have soup kitchens or other places where you can go with your family to get hot meals. Check the Community Service Guide in the first few pages of the phone book, or look at the Project Bread resource guide to find out where to get food in your city or town.

The SHARE Program

You can get packages of food including meats, fresh vegetables, fruits, and cereals from Share for $15. Share also asks you to give them two hours of your time for community service or help with putting together food packs. You should be able to find a SHARE program by asking your localCommunity Action Program.

Health insurance

MassHealth

MassHealth is health insurance for families with children, for youths under 19, for people who are disabled or blind, for seniors who are at least 65 years old, and for people who have earned very little money in the past year. You get MassHealth automatically if you receive TAFDC, EAEDC or SSI. You can also apply for it separately.

Other health insurance

In Massachusetts, nearly everyone must get health insurance. The Massachusetts Health Connector can help you find the best health insurance for you and your family.

Shelter, or housing, and help with utilities

Help with Rent for Survivors of Domestic Violence

What if I cannot pay my rent and I am going to be evicted?

In most cases, even if you owe your landlord back rent, your landlord cannot put you out of your apartment without taking you to court. You do not have to leave your apartment right away just because your landlord says you must.

The landlord first has to send you a letter called a Notice to Quit. You do not have to leave just because you get a Notice to Quit.

After the date on the Notice to Quit passes, if your landlord wants to evict you, your landlord has to send you a summons and complaint to come into Housing Court or District Court.

In court, a judge will decide **if** you have to leave, and **when**. The judge might decide that you do not have to leave. The judge might even decide that your landlord owes **you** money if your landlord has not acted properly under the law. If the judge says you have to leave, you can still ask for time before you have to move out. Even if the judge doesn't give you more time, you have at least 10 days after the court date before the landlord can hire a sheriff to start evicting you. At that point, you have the right to a 48 hour notice before the sheriff can put you out of your apartment.

If you get a Notice to Quit, call your local legal services program for advice on your case. Some legal services offices run clinics, or classes, which help you to fight evictions.

Remember

Only a judge can decide whether your landlord can evict you. You do not have to leave before a judge says you must.

RAFT is a program that might help you with paying your back rent.

If you end up needing shelter, you can call Safelink for information about battered women's shelters or apply for Emergency Assistance at your local DTA office.

You can read more about your about the laws that protect you against eviction and housing discrimination in MassLegalHelp's Domestic Violence and Housing section and Evictions in MassLegalHelp's Housing section.

Help with Utilities for Survivors of Domestic Violence

What if my utility bills are in my former boyfriend's or husband's name?

If you get a 209A protective order (a restraining order),you can ask the Court to write in the order that your former boyfriend or husband is not allowed to shut off your phone or other utilities. You can read

more about how to keep your utilities on if they are in your boyfriend or husband's name in the article 209A Protective Orders.

What if the gas and electric companies are threatening to cut me off?

You may be able to stop utility companies from shutting off your electricity or gas, even if you cannot pay your bills. You have a legal right to keep your services on if **you are low-income**(below 200% of the federal poverty level), **you cannot pay your bills and**:

- You have a seriously ill person in your home. "Serious illness" can include any kind of physical or mental illness, such as asthma, migraines, cancer, ADHD, depression, post-traumatic stress disorder, diabetes; or
- You have a baby under a year old living in your house; or
- It is between November 15 and March 15 and you need the utility for heat.

If everyone in your house is 65 or older, you should be able to keep the company from shutting off your services even if you are not low-income.

If any of these situations apply to you, the gas or electric company is not allowed to end your service. In most cases the company will have to turn your service back on if they have already shut it off.

Call the gas or electric company and explain that you cannot pay your bills, but you are protected from shut-off because someone in your house is seriously ill, or there is a baby under a year old, or shutting off the utility will shut off your heat (many oil or gas burners are started up with electricity), or everyone in the house is 65 or older.

The company may ask you to get a letter from a doctor saying that there is a seriously ill person in the house, or a letter from a social worker, clergyman, or doctor stating that there is a baby under a year old in the house. The utility company should give you some time to get the letter. In cases of serious illness, your doctor can call the company. The phone call should protect your account for at least 7 days while your doctor writes a letter.

If you fit into one of the “protected situations” (serious illness, child under one, etc. and you have a low-income) you should be able to keep your electricity and gas on for as long as you need to, even if you cannot pay your bills. You may need to send a new letter every few months.

If you have any trouble getting the company to leave your electricity or gas on (or getting the company to turn it back on if it has already been cut off), call the Department of Public Utilities' Consumer Division. Their phone line is staffed by people who will help you deal with the utility company. You can reach them at (617) 737-2836 or (877) 886-5066 (toll free). You can also fax the Consumer division at (617) 305-3742 or email them atDPUConsumer.Complaints@state.ma.us.

You can also call your local legal services office for help.

For more information about your rights to electricity and gas, see Utilities for People with low income or download the advocacy guide Utilities Advocacy for Low-Income Households.

Can oil and propane companies refuse to deliver if I can't pay for oil?

Yes. The legal protections against gas and electric shut-offs do not apply to oil and propane companies.

However, there are programs that can help you buy oil.

Can the telephone company cut off my services if I cannot afford to pay my bills?

You should be able to get **local** phone service, or keep it from being cut off, if you are unable to pay your bill **and** one of the following applies to you:

- You have a personal emergency; or
- There is a seriously ill person living in your house.

You can get personal emergency protection for your telephone service for 30 days.

Domestic violence counts as a personal emergency, because you may need to call police, doctors, friends or family, or social service agencies for safety reasons. To get the protection based on personal emergency, you need to write a letter to the phone company explaining the emergency and then fax or mail it to them.

- Call your phone company to let them know that you are sending the letter.
- The telephone worker on the phone may not know about the personal emergency rule. You may have to ask to speak to a supervisor.
- Say that there is an agreement with the Department of Telecommunications and Cable called DPU # 18448 which says you have the right to keep your phone on for thirty days in the case of a personal emergency.
- You can read the agreement to them over the phone.

If you have a seriously ill person at home, you can keep your phone on without paying the bill for a total of ninety days, but you have to submit a new doctor's letter every thirty days.

If you have trouble getting the phone company to leave your service on (or turn it back on), call the Department of Telecommunications and Cable's Consumer Division. Their phone line is staffed by people who will help you deal with the utility company. You can reach them at 617 305-3531 or 1 800 392-6066 (toll free). You can also fax the Consumer division at (617) 478-2591 or email them at consumer.complaints@state.ma.us.

You can also call your local legal services office for help.

What if I don't have a sick person in the house, and my 30 day emergency period runs out before I can pay my bill? How can I call the police?

In most areas, you can keep 911 service without paying any money you owe on the phone bill. Your phone line will only work for calling 911, but that is better than nothing. Ask the phone company for details.

You can also check with your local women's shelter or police department for information on free cell phones for emergency use. You can call the SafeLink hotline for details about this program.

Childcare

Child care vouchers from DTA

You can get a child care voucher from the Department of Transitional Assistance if:

1. You get TAFDC and you work or you are in an approved education or training program; **or**
2. You got TAFDC within the last 12 months and you are working or, in certain situations, finishing a training program;**or**
3. You live in a homeless or domestic violence shelter, even if you do not get TAFDC.

To ask for a voucher, contact your local DTA office.

Sliding scale low-income child care vouchers

If you are working, you can apply for these vouchers from your local Child Care Resource and Referral Agency.

TAFDC for Survivors of Domestic Violence

TAFDC helps low-income pregnant women and families with children. To get TAFDC as a family, you must be related by blood or marriage to the child or children living with you.

TAFDC pays cash every month. The amount of cash you get depends on:

1. the number of people in your family,
2. if you are "exempt" from time limits, and
3. if you live in private or subsidized housing.

If you get TAFDC, you automatically get MassHealth (Medicaid) and you will probably get Food Stamps too.

As part of the TAFDC program, you can get training, help finding a job, and help paying for child care and transportation. You **may** be able to get child care for a full year **after** you get off TAFDC. The child care benefit alone can make it worth applying for TAFDC, even if you only plan to stay on it for a short time.

Find basic information on TAFDC on MassLegalHelp.

Why does DTA want to know about the father of my child when I apply for TAFDC?

When you apply for TAFDC, the Department of Transitional Assistance (DTA) asks about the father of your child because they want him to pay child support.

After DTA gets information from you about the father, DTA gives the information to another agency called the Department of Revenue (DOR). DOR has lawyers who will take the father of your children to

court and try to get an order for child support (unless you already have one.) This can be helpful if you want child support.

You will have to give DTA this information and work with the DOR lawyers **unless** you are afraid of the father of your child. You do not have to give the DTA information about him if you can show you have "good cause" not to. Working with the DOR lawyers may mean going to court, and taking blood tests (genetic marker tests). If you do not work with the DTA and you cannot show "good cause" DTA will lower your TAFDC benefits.

How low does my income have to be to get TAFDC?

TAFDC is only for families who have a low income and pregnant women who have a low income. You may be able to get TAFDC if you have some income and own some things.

Income

There is a chart on MassLegalHelp that shows how much monthly income you can have and still be able to get TAFDC benefits. The Department of Transitional Assistance (DTA) does not count some kinds of income like work study income. You may be able to get TAFDC even if your income is above the levels in the chart.

Assets

There is a $2,500 limit on "assets." "Assets" are savings and things that you own. Some things that you own do not count. Your house and your personal belongings like furniture, appliances, and jewelry, do not count. One car per family does not count, up to a certain value. Also, things that you can not easily access or sell do not count. For example, if you own something with your spouse or boyfriend and can't sell it without his permission, it should not count against you. Also, if you have a joint account that you cannot use safely, this should not count against you.

Will owning a car stop me from getting TAFDC?

You cannot get TAFDC if you have more than $2,500 in "assets". Your car is included in this $2,500, but DTA only counts **some** of the value of your car.

DTA looks at two things:

1. The Fair Market Value of your car (how much you could sell your car for); and
2. The amount of equity you have in your car (how much you would have left after you sold the car and paid off your car loans).

DTA does not count:

The first $10,000 of the Fair Market Value of your car; **and**
the first $5,000 of the equity you have in your car.

Work out how DTA figures what the value of your car is

1. Subtract $10,000 from the price you could get for your car.
2. Subtract $5,000 from what you would have left if you sold your car and paid off your car loans.
3. Which is the bigger number?
4. DTA uses the bigger amount.
5. If the amount is more than $2,500, you have more than $2,500 in assets. You own too much to be able to get TAFDC.
6. If the amount is less than $2,500, and more than $0 add this number to the value of other assets you have " like your savings account. As long as adding everything together is $2,500 or less, you may be able to get TAFDC. If you add all of your assets together plus the number you get for your car from step 4, and you come up with more than $2,500, you have more than $2,500 in assets. You may own too much to be able to get TAFDC.

Note

You do not have to sell your car to get TAFDC. This is just a way to figure out how much your car counts as a part of your assets

If my child does not live with me right now, can I still get TAFDC?

The purpose of TAFDC benefits is to help you keep a home for your child. You can get TAFDC if your child is away, as long as you are still keeping a home for your child and he or she is coming back soon.

In general, you can get TAFDC if your child is away from home for less than 120 days (about four months). Sometimes you can get TAFDC if your child is away a little more than 120 days. You may be able to get TAFDC if your child is away at a residential school or if your child is visiting someone else's home, or if there is some temporary family crisis.

You may be able to get TAFDC if you have shared custody of your child and he or she lives with you for only part of the week.

Generally, you will not be able to get TAFDC for a child if he or she was removed from you by a court order after a care and protection hearing.

Do I have to do certain things (like work or study) to stay on TAFDC?

You may have to do things like go to an education or training program, do community service, or cooperate with child support enforcement to stay on TAFDC.

You do not need to do these things if current or past domestic violence makes it unsafe or hard for you to do them. If domestic violence or healing from domestic violence makes it hard for you to follow a welfare rule, you can apply for a "domestic violence waiver" of that rule.

You do not have to do things that you cannot do because of a disability. Domestic Violence often causes both physical and emotional disabilities. You can get an exception called a "disability exemption" from

the welfare work rules and the welfare time limit. If your disability makes it hard for you to meet other welfare rules, you can get extra help.

MassLegalHelp has more information about particular TAFDC rules and how to get exemptions from them:

TAFDC work requirement

How Can I Meet the TAFDC Work Requirement?

How many hours do I need to work each week if I am under the work requirement?

It depends on the age of the youngest child in your home who is not under the Family Cap.

- If the youngest child who is not under the Family Cap is **age 9 or older**, you have to work or be in a program for **30 hours per week.**
- If the youngest child who is not under the Family Cap is **age 6 through 8,** you have to work or be in a program for **24 per week.**
- If the youngest child who is not under the Family Cap is **age 2 through 5,** you have to work or be in a program for **20 per week**.

If the only child in the family is under the Family Cap, you have to work or be in a program for 20 hours per week starting when the child is 3 months old instead of when the child is 2 years old.

What kind of things count to meet the work requirement?

Education and training

Any hours that you spend at a school program approved by DTA will count toward meeting your work requirement for up to a total of 12 months. Any time you spend in school while you have an "exemption" (when the work requirement does not apply to you) does not count against this 12 month limit.

Housing search

If you are homeless and living in a shelter, then doing housing search (no matter how many hours) counts as meeting your work requirement. If you are doing the number of hours of housing search that is in your shelter plan, then DTA has to treat you as meeting the TAFDC work requirement.

Internship

Any hours you spend in a paid or unpaid internship that is connected with education, training, or job preparation counts toward meeting your work requirement.

Community service

Any hours you spend doing unpaid community service at a non-profit organization or government agency count toward meeting your work requirement. You can find a placement yourself, or DTA can give you one. If DTA does not find a placement for you, then DTA must treat you as meeting the work requirement even though you are not working or doing an activity.

Paid employment

Any hours you work in a paid job or in a program through DTA like Supported Work or the Full Employment Program count toward meeting your work requirement.

Job Readiness/Job Search program

Any hours you spend under a DTA-approved program doing job readiness activities (such as preparing a resume) or job search counts toward meeting your work requirement.

Combination of activities

You can combine hours in two or more of these activities in order to meet your work requirement.

Can I get child care?

Yes. You can get free child care for the hours you are meeting the work rules. You can also get child care for the time it takes you to travel between the child care placement and your work activity.

What if I can't meet the TAFDC work requirement?

I can't work at all right now. What can I do?

You may be able to get an exception to the work rule. There are three kinds of exceptions:

- exemption
- domestic violence waiver
- good cause

What is an exemption?

An "exemption" means the work requirement and TAFDC time limit do not apply to you.

You can apply for an exemption **at any time**.

You can ask your worker for an exemption, if you can't work for one of the following reasons:

- you have a physical or mental health problem,
- you are caring for a family member with a health problem,
- you are in your third trimester of pregnancy,

- your youngest child who is **not under the family cap** is under two years old,
- you have a baby who is less than three months old,
- you are sixty or older,
- you are a relative (not parent) of the child and chose not to get benefits yourself, or
- you are a teen parent and are going to school.

What is a domestic violence waiver?

If you can't work because of current or past domestic violence, you may be able to get a "waiver" of the work requirement for a certain amount of time, such as six months or a year. But if you have physical or mental health problems due to domestic violence, it is better to request an exemption (see above), because exemptions give you more rights.

Tell your worker if you want to apply for a domestic violence waiver. You can apply for a waiver **at any time**. When it runs out you can apply for another one.

What if I don't qualify for an exemption or waiver?

If you have a good reason for needing to miss work or a program, or if you can't start work or a program for a good reason, you can ask your worker to give you "**Good Cause**."

If DTA enters "Good Cause" into the computer for you, your family will not lose your benefits even though you are not meeting the work requirement.

What counts as Good Cause?

The following reasons for missing work or a program count as good cause:

- **Child care** - if you are not able to find safe child care;
- **Transportation** - if you do not have reliable transportation that you can afford;
- **Housing search** - if you need to look for housing because you need to move;
- **Lack of community service placement** - if DTA has not given you a community service placement;
- **Health** - if you or a family member is sick, hurt, or disabled;
- **Illegal working conditions** - if the job you were offered pays less than minimum wage, discriminates against you because of age, sex, race, religion, ethnic origin, or physical or mental disability, does not meet health and safety standards; or is not available because of a strike or lockout; or
- **All other good reasons** - A **family crisis**, an **emergency** or **any other** important situation that you cannot control and that needs your attention during the hours you would normally be working or in **a program.**

How do I get "Good Cause"?

Tell your worker that you need Good Cause and why. Also give your worker a note saying what your Good Cause reason is and ask that she enter it into the computer.

If DTA sends you a warning notice with a form listing Good Cause reasons, circle the Good Cause reasons that apply to you and get it to your DTA worker within 10 days.

If you have proof of your Good Cause reason, get a copy to your worker. If you need help getting proof and ask for help, your worker is required by law to help you.

What if DTA lowers or stops my benefits even though I said I have Good Cause?

You can file an appeal asking for a hearing. Look on the back of the notice that says DTA is lowering or stopping your benefits. There should be an appeal form. Fill it out and send it to DTA's Division of Hearings **right away**. Send it by fax, if possible. Call your local Legal Services for help.

What if I didn't ask for Good Cause before I got a notice lowering or stopping my benefits?

It is best to ask for Good Cause right away, but you can ask for it **even after** DTA sends you a sanction notice lowering or stopping your benefits. Send in an appeal of the notice. Also contact your DTA worker or the duty worker to ask for Good Cause. If you need help, call Legal Services.

Getting TAFDC after hitting the time limit

If your family is or was on TAFDC (welfare) and you have hit your 24 month time limit, you may still be able to get benefits.

You may be able to get an "exemption," which means the time limit stops applying to you.

The time limit should not apply to your family if you cannot work for one of the following reasons:

- You have a physical or mental health problem
- You are caring for a family member with a health problem
- You are in your third trimester of pregnancy
- Your youngest child who is **not under the family cap** is under two years old
- You have a baby who is less than three months old
- You are 60 or older
- You are a relative (not parent) of the child and chose not to be included in the TAFDC grant
- You cannot get TAFDC for yourself and cannot work because of your immigration status
- You are a teen parent and are going to school

If any of these apply to you, tell your worker that you need to apply for an "exemption." You can apply for an exemption at any time.

You may be able to get a "domestic violence waiver," which means that the time limit stops for a while.

If you are not able to work because of domestic violence that is happening now or happened in the past, you can apply for a "domestic violence waiver." But if you have physical or mental health problems due to domestic violence, it is better to request an exemption, because exemptions give you more rights.

You can apply for a domestic violence waiver of the time limit at any time, but DTA may deny the waiver if you apply before your 22nd month. If you want to apply before then, call Legal Services for help.

You may be able to get an "extension," which means that your benefits will continue past the time limit.

If your family can ot get an "exemption" or "domestic waiver," you should apply for an "extension."

DTA **has** to give you an extension if you are **working 35 hours a week** but you are still below the income limit for welfare.

DTA **has** to give you an extension of up to 3 months if you need it to finish **an education or training program** that was approved by DTA before you reached the time limit. If you need another 3 months after that, you should be able to get it, but you may need help from Legal Aid.

DTA **should** give you an extension if you are willing to go to a **Job Search/Job Readiness program** at a Career Center, a **Supported Work Program** (like CPM), or a program leading to a job with a specific employer. If DTA does not consider you to be "job ready," it may refer you to another activity or program. You will probably have to go to the program for 2 weeks before getting the extension.

You can apply for an extension in or after your 22nd month of benefits. If you have already lost your benefits due to the time limit, you can apply for an extension at any time.

When your extension ends, you can apply for another one.

What if I need an Extension but I can't start job search, or can't continue it, for a good reason?

Request "Good Cause" - If you have a good reason for not being able to go, such as a sick family member or an emergency of any kind, tell your worker and ask for "good cause. " "Good cause" allows you to get or keep an Extension even though you cannot go to a program for a while. Read <u>Good Cause</u> flyer,

- **Request Child Care -** If you have a child under age 13 or an older child with a disability, ask your worker for a child care referral. DTA has to pay for child care if you need it to go to a program.
- **Request a different program or different hours -** If you are working part-time and you can't go to the program because it is during the same hours as work, ask for a different program or different hours.

Parents with Disabilities

1. I have a disability and cannot work full-time. Can I get cash assistance for myself and my children?

YES. If you are low income and meet the other welfare rules, you and your children are likely eligible for TAFDC (welfare). You do not have to be a disabled parent to qualify for TAFDC, but if you are, your family is **exempt** from the TAFDC 24 month time limit, the work rules and grant cut. If you are getting TAFDC now, you can still ask for a disability exemption at any time. If you are approved as disabled, **your 24 month clock and work rule obligations stop**.

To be disabled under the TAFDC rules you must either receive SSI or Social Security disability recipient, **or** have a physical or mental impairment that **lasts at least 30 days** and **substantially reduces or eliminates your ability to support yourself**. For example, you may be disabled if you suffer from migraine headaches, asthma, cancer, severe arthritis, back pain. You may also be disabled if you suffer from depression, anxiety, post-traumatic stress disorder, eating disorders. If have a physical or mental impairment, or combination of impairments, that make it hard for you to work regularly and full-time, you should ask for a disability exemption.

2. How do I show I am disabled?

DTA will first give you a "Disability Supplement" to fill out. DTA sends the completed Supplement to the Disability Evaluation Service(DES) at U. Mass Medical. DES will then contact your doctors directly for medical information, or they may set up a consultative exam for you to attend. You are not required to chase down medical reports or tests from your doctors, but it may help your case if you can. If you need to have a specialist evaluate your disability, be sure to say this on the Supplement. If DES does schedule you for a consultative exam, it is very important you attend unless you havea really good reason not to. After getting all you medical information, DES reviews your case and makes a decision about your disability.

3. What is the Disability Supplement?

The Disability Supplement is a form DTA should give you whenever you indicate you have a disability. You can get the form when you first apply, or whenever you request an exemption. **You**, not your doctor, must fill out this form.

The Supplement asks for personal information about your age, health, education and work experience. Be sure to list **all** your physical or mental health problems, and **all** of the health care professionals who have treated you. Be sure to describe if you have pain, unusual fatigue, your medications, treatment and any side effects. If you have a medical condition that has not been diagnosed or treated, write this on the Disability Supplement and ask your DTA worker for help to see a doctor. Include as much information as you can about how your health problems affect your ability to do things that you used to do.

You can complete the Disability Supplement at the DTA local office with the help of a DES Disability Assistant, **or** you can take it with you and have a friend or advocate help you fill it out. form is available in English and Spanish, but you can also get an interpreter to help you fill it out. Ask your DTA worker about interpreter services.

4. My family has already used up our 24 months of welfare. Can I reapply for TAFDC and ask for an exemption?

Yes. You have the right to reapply for TAFDC **at any time**, even if you have used up 24 months of benefits. When you reapply, tell the DTA worker you are seeking an exemption from the time limit. Be sure to get the Disability Supplement form. Contact your local Legal Services office if you are denied the right to reapply or denied an exemption.

5. DTA denied my request for an exemption, but sometimes I need to stay home from work when I am sick. Will DTA cut off my benefits for not cooperating with work or community service?

DTA must allow you to show you have **“good cause”** for not cooperating with the work rules. If you are a family that must work or do community service for your benefits, you can still claim good cause if you need to stay home because you or your child is sick. Be sure to tell your worker as well as your community service employer why your cannot come to work. As long as you notify your DTA worker, DTA should not cut your TAFDC benefits(or “sanction” your case). If DTA denies your claim of good cause, you can appeal.

6. I have been denied an exemption. What should I do?

You have the right to ask for a fair hearing. For example, if your treating physician says you are disabled, but DES says you are not, they may have been wrong in denying your disability. DES may also have wrongfully denied your disability if they failed to pursue all your medical records, schedule an exam or provide you with translations or interpreters.

If you received a notice denying your disability exemption or that your TAFDC will be cut off, contact your local Legal Services office immediately. You can also fill out the back and ask for a fair hearing. It's best to contact Legal Services, but if there is not enough time be sure to file for a hearing immediately.

Important:

If you are a victim of domestic violence, you can also ask for a domestic violence waiver, whether or not DES thinks you are disabled under the TAFDC disability rules. Ask your DTA worker to arrange for you to speak with a Domestic Violence specialist immediately.

Parents Caring for a Disabled Child or Family Member

Your Rights Under Welfare Reform

1. I have a disabled child who needs my care. Are there special welfare rules that can help my family?

Yes. If you are low-income and meet the other welfare rules, you and your children may be eligible for TAFDC (welfare). If you care for a disabled child in your home, the 24-month welfare time limit and work rules may not apply. Your family may be excused from - get an “exemption” - from these rules. Different rules apply to families with both parents of the child in the home.

2. How do I show my child is disabled?

DTA has a special form which you bring to your child's doctor. This form asks the doctor to state the medical condition of your child, how severe the condition is and if you are needed at home to care for the child. Be sure to ask your DTA worker to give you a copy of this form (a TAFDC-4 form). Your child does not have to be permanently and totally disabled for your family to get an exemption.

Examples of a child's illness that may be severe enough to require a lot of care include serious behavioral or developmental problems, severe asthma, depression, mental retardation, chronic polio,

cystic fibrosis, sickle cell disease, diabetes, epilepsy, lead poisoning, severe allergies, juvenile rheumatoid arthritis, congenital heart disease or other illnesses. **This is not a complete list.** Any child's illness that requires a lot of care may qualify.

Some children may also have problems from witnessing domestic violence in the home. If you want, you can talk with a domestic violence specialist at DTA about this when you apply for an exemption. We also urge you to talk with an advocate about your options.

3. Does my child have to receive SSI (Supplemental Security Income) for us to qualify?

No. A disabled child does not need to get SSI benefits for you to qualify for an exemption. You can request an exemption whether or not you are getting or have applied for SSI for the child. Even though SSI is not required, SSI pays more than TAFDC so you should apply for SSI for a child with severe disabilities. An advocate can help you appeal if you are denied.

4. Can I get an exemption if my disabled child is in school?

Yes, if you have to respond to a child's special needs during the school day or after school, and cannot work full-time. Some parents are up during the night caring for a child and cannot work because they need to sleep during the daytime.

5. My family has already used up our 24 months of welfare. Can I reapply and ask for an exemption?

Yes. You have the right to reapply at any time, even if you have used up 24 months of benefits. When you reapply, ask your worker for an exemption from the time limit. Be sure to get a form to take to your child's doctor. Contact your local Legal Services office if you are denied the right to reapply or denied an exemption.

6. I am caring for a disabled adult. Can I ask for an exemption?

Yes. Under DTA rules, you may also qualify for an exemption if you are caring for a family member who is a disabled adult such as a spouse, sibling, half-sibling grandparent, great grandparent or adult child. If you have a disabled family member in your home who needs your care, ask the DTA worker for a DTA form to have the disabled member's doctor fill out.

You have the right to reapply at any time, even if you have used up 24 months of benefits. When you reapply, ask your worker for an exemption from the time limit. Be sure to get a form to take to your child's doctor. Contact your local Legal Services office if you are denied the right to reapply or denied an exemption.

7. My child is not severely disabled, but sometimes I need to stay home from work when she is sick. Will DTA cut off my benefits for not working or doing job search?

You should not be cut off if you can show "good cause". You should be able to stay home with a sick child when you need to. If you have to stay home, be sure to tell your DTA worker and job search program that you have a "good cause" reason for not working or doing job search. As long as you

provide proof to your worker, DTA should not cut your TAFDC benefits (or “sanction” your case). You can also claim “good cause” if you miss an appointment at the DTA local office.

8. I have been denied an exemption. What should I do?

If you get a notice telling you your TAFDC will be cut off or denied and you disagree with this action, fill out the back and ask for a fair hearing immediately. You should also contact Legal Services for free legal help.

You should be able to stay home with a sick child when you need to. If you have to stay home, be sure to tell your DTA worker and job search program that you have a “good cause” reason for not working or doing job search. As long as you provide proof to your worker, DTA should not cut your TAFDC benefits (or “sanction” your case). You can also claim “good cause” if you miss an appointment at the DTA local office. If you get a notice telling you your TAFDC will be cut off or denied and you disagree with this action, fill out the back and ask for a fair hearing immediately. You should also contact Legal Services for free legal help.

Domestic Violence and Welfare

Two-thirds of mothers who get TAFDC have lived with domestic violence. The effects of domestic violence can last for a long time, even after a person is no longer with their abuser. Domestic violence is the reason that many people lose their jobs, can't work, or lose their homes.

I have lived with domestic violence. Are there special TAFDC rules that can help me?

Yes.TAFDC has special rules that help survivors of domestic violence:

- rules that provide extra help getting the proofs that you need to get TAFDC, while helping you stay safe
- a rule that says you do not have to give information about your child's other parent if doing so could put you or your child in danger
- rules that give exceptions and waivers from the family cap rule
- rules that allow you to be excused from time limit and work requirement rules if you or your child are suffering from the effects of domestic violence

The rest of this article explains these rules.

Can I get welfare if I can't give the Department of Transitional Assistance (DTA) all the documents they want?

Yes.

DTA can ask for proof of certain facts to make sure that you qualify for welfare. But if you left a relationship where there was domestic violence, you may not have all of your paperwork, and it might not be safe for you to try to get it.

Your worker should help you figure out how to get the documents safely. Your worker also should help you get the documents if you are having trouble getting them on your own. For every fact that you need to prove, there are different ways to prove it. For some proofs, your worker should accept a written statement from you, called a "**self-declaration**," if you can't get other types of documents.

Tell your DTA worker if you are having trouble getting the proofs that he or she has asked for. The law says that your worker must help you.

Do I have to give DTA information about the father of my child and let DTA go after him for child support?

There is a rule saying that you have to give the state information about the father of your child and help the state get child support from him if you want to get TAFDC. But this rule does not apply to people who have survived domestic violence.

You do not have to give DTA the information about the father of your child, or help DTA get child support from him, if you are worried that your or your child would not be safe.

Example

If you are afraid that going after child support will mean that the father will threaten or harm you or your children, you do not have to give DTA information about him. Or, you may want the state to help you get child support, but you may be afraid of going to court while the father is there.

If this is the case, tell your worker that you have **"good cause for noncooperation with child support enforcement."** Your worker should give you a form to fill out.

If you ask for "good cause," your worker will ask you for some proof of the domestic violence. The following documents count as proof for "good cause":

- a copy of a restraining order, **or**
- a medical or police report, **or**
- a letter from a social service agency, **or**
- a letter from someone else who knows about the domestic violence, like a family member or friend.

One of my children does not get any TAFDC benefits because of the "family cap" rule. What can I do to change this?

The "family cap rule" says you cannot get TAFDC benefits for a child who is born more than ten months after you first start getting TAFDC.

But the family cap rule does not always apply. There are **"exceptions"** and **"waivers."** If you qualify for either, the family cap rule will stop applying to your child.

You should be able to get an **exception to the family cap rule** if:

- You got pregnant from rape or sexual assault, including rape or assault by your spouse or boyfriend. **or**
- You got pregnant because you were afraid of the father and did not feel like you could say no to sex with him, even if he did not physically force you to have sex with him. **or**
- you were afraid of the father of your child and he kept you from using birth control.

If one of these situations applies to you, tell your worker that you "qualify for an exception to the family cap rule." Also, there are other exceptions to the family cap rule that are not related to domestic violence. If you have other reasons for asking for an exception to the family cap rule, call your local legal services program.

A **"domestic violence waiver"** of the family cap rule will also make the rule stop applying to your child. You may be able to get a domestic violence waiver of the family cap rule if:

- you were afraid of the father of your child and he kept you from getting an abortion; **or**

- the family cap rule makes it harder for you to keep yourself and your children safe; **or**
- the family cap rule makes it harder for you to recover from domestic violence.

If any of the above apply to you, tell your worker that you want to apply for a domestic violence waiver of the family cap rule. Exceptions are quicker to get than waivers. Exceptions also have less paperwork and do not require you to answer as many private questions. **So if you qualify for both an exception and a waiver, you probably will want to ask for an exception.** If you get a **family cap exception or domestic violence waiver of the family cap rule**, the child should be added to the TAFDC grant (unless there is some other reason that the child does not qualify for benefits). If your child is added to your TAFDC grant, **your benefits will increase by about $100 each month.** Also, depending on the age of the child, **your welfare time clock may stop and you may not have to meet the work requirement.**

What if I have health problems that make it hard for me to work?

Many people who survive domestic violence have depression, anxiety, post-traumatic stress disorder, and/or other mental or physical effects of the abuse. These effects may last for a long time after the abuse ends.

If physical or mental effects of domestic violence make it too hard for you to work, you can ask to be excused from the time limit and work requirement. You can do this by telling your worker that you want to request a "**disability exemption.**" Your worker will give you a form called a "Disability Supplement." You will need to write on the form why your health problems make it too hard to work right now.

It is best to write **all** of your physical and mental health problems on the form. It is also best to write **all** of your symptoms, including things like trouble sleeping, recent weight gain or loss, trouble concentrating, trouble getting up in the morning or going out, or feeling anxious or very stressed.

If you need help filling out the Disability Supplement, you have the right to get help. Your worker must help you. Also, some welfare offices have disability specialists who can help you. If you prefer, you can take the form home and ask someone else to help you. You can call your local legal services program for help.

If you get a disability exemption you can still care for your children and go to school or training. You can still work in the future. It just means that DTA can’t force you to work while you have the exemption.

What if I can't work because I need to take care of a disabled child or family member?

Children often have health effects from domestic violence. Sometimes this is because they were hit or abused. Sometimes it is because they heard or saw one parent abusing the other.

If you can't hold a full-time job because your child has health problems and needs your care, you can ask for a **caretaker exemption.** Your worker will give you a form for your child's doctor to fill out.

You can also get a caretaker exemption if you need to care for another relative in your home, like a parent or sister or brother.

What if current or past domestic violence makes it hard for me to follow a welfare rule?

You can ask for a **"domestic violence waiver"** of the rule. A "domestic violence waiver" means that a TAFDC rule does not apply to you because you have survived domestic violence. If you get a waiver of the rule, the rule will stop applying to you, either for a set amount of time or permanently.

You can ask for a domestic violence waiver of a TAFDC rule if:

- it is hard for you to follow the rule, because of current or past domestic violence; **or**
- following the rule makes it difficult for you or your family to escape or recover from the abuse; **or**
- applying the rule to you would be unfair, because of the domestic violence.

DTA allows domestic violence waivers of the time limit, the work rules, the family cap rule, and the teen parent school attendance rules. You can ask for a waiver of other rules too, but you may need legal help to get it. Call your local legal services program to see if you qualify for free legal help.

If you ask for a waiver, you will need to fill out an application form. DTA will ask you for proof of the domestic violence and proof of why you need the waiver. There are different ways to prove the domestic violence and your need for the waiver. One way is to have a friend or family member, or a social worker, write a letter about it.

What if I don't have a restraining order or police report?

Many people suffer domestic violence without being able to get help. For some people, getting a restraining order or calling the police is helpful. Other people find that calling the police or getting a restraining order puts them in more danger. Everyone’s situation is different.

DTA can ask you for proof of the abuse. DTA **cannot** ask for a specific kind of proof. DTA cannot make you get a restraining order or file a police report. If you do not have proof, DTA is supposed to try to help you get the proof you need. In most cases, you can give DTA a letter from someone else who knows about the abuse.

What are Domestic Violence Specialists?

DTA has specially trained workers called "domestic violence specialists." Domestic Violence Specialists are there to help you. They can help you apply for good cause and domestic violence waivers, and can refer you to services outside of DTA.

Your DTA worker is supposed to refer you to a specialist if you tell him or her that you have experienced domestic violence. It is up to you whether or not you want to talk to the specialist.

You can talk to the specialist at any time, even if you decide not to at first. You can call the specialist directly. Call the welfare office and ask to speak to the domestic violence specialist. Each domestic violence specialist covers several offices, so call ahead if you want to talk with a specialist.

If your worker says that you must speak to a specialist and you do not want to, call your local legal services program for help or advice.

Can I get legal help?

Because these rules are complicated, you may want to get legal help or advice. Local legal services offices work with survivors of domestic violence and have experience helping families with all of these welfare rules. Call your local legal services program to see if you qualify for free legal help.

Teen Parents: Your Rights Under Welfare Reform

If you are **under age 20** and pregnant or a parent, you must be in school full-time or have graduated from school. If you are **under age 18 years**, you must also meet special living arrangement rules. You still have a **right** to file your **own application** for TAFDC benefits without your parents, even if you live with them.

1. How do the school attendance rules work?

Unless you have graduated, if you are under 20 you must be in high school, middle or elementary school OR a in a full-time GED (high school equivalency) program of at least 20 hours per week. If your GED program is less than 20 hours a week, you may be asked to do community service or other training as well. This rule does **not** apply if you are within 60 days of turning age 20. You must be in school or a GED program at least 75% of the time (15 hours out of a 20 hour program) to be eligible for TAFDC benefits. If you need help getting into school, ask your DTA worker. The worker is supposed to help you find a program and help you get day care and pay for transportation costs to school and day care. **But,** you cannot be sanctioned if you are not in school because of lack of child care **or** because of domestic or teen dating violence (like where your current or former boyfriend is stalking or has threatened you).

2. Are there good reasons for absence from school?

Yes. You can have good cause for absences due to lack of transportation or child care, bad weather, a health problem, an emergency or crisis you need to attend to. If you do not have good cause and you are absent more than 25% of the time, you will first lose about $92 of you TAFDC grant for 30 days. After 30 days, you will lose the entire TAFDC grant. Your SNAP/Food Stamps and MassHealth should continue.

3. How does the living arrangement rule work?

If you are **under age 18** and not married, you must:

- Live with your parents, **or**
- Live with another relative (related to you or your baby) who is age 20 or over, **or**
- Live with a legal guardian, **or**
- Be a "graduate of a DSS independent living program," **or**
- Be 17 years old and meet special "waiver" rules (see below).

If you do not meet one of the above, you may be asked to live in a teen living program — if one is available. If you are under 18 and married, you must be living with your spouse to be exempt.

Important:

18- and 19- year old teens (and teens within 60 days of turning age 18) do not need to live with parents, relatives or in group homes. But you do need to meet the school rules above.

4. Who are the relatives you can live with?

Teens still meet the living arrangement rules if living with an aunt, uncle, grandparent, older sibling or other relative who is age 20 or older. You can also live with a former stepparent—like your father's ex-wife or the paternal grandparents of your child (but this does not include living with the child's father if you are unmarried). Your relatives **do not** have to get legal guardianship. If you live with an unrelated adult, that person does need to be legal guardian.

Note

The income of relatives or legal guardians does **not count** in calculating your TAFDC grant.

5. What if you can't live with your parents?

If you are under 18 and can't live with your mother or father, tell DTA. A teen specialist under contract with DSS will contact you and look at whether you can continue with your parents, in a teen living program, or on your own. You **should not be forced to live at home** if you fear abuse, if your parent(s) refuse to support you, there is substance abuse in the home, if the home has code violations, **OR** if there are any other "extraordinary circumstances." The teen specialist's job is to find out why you cannot live at home and make a recommendation Be sure to tell her ALL the reasons. You can also ask your school guidance counselor or other professionals who know you to call or write the teen specialist. If the teen specialist agrees you cannot go home, DTA may find you a teen living program to go or advise you of the waiver rules for 17 year olds.

Waiver:

Teens who are 17 years old and cannot live with your parents can request a special "waiver" to live on their own if: a) in a good living situation, b) in school full-time in good standing, c) have stable child care and d) are participating in a teen parenting program.

Note:

If you are within 60 days of turning age 18, you do not need a waiver and are exempt from the rule.

6. How is Parental Income counted?

If you are **under age 18 and live at home,** your parents' income **above 200% of the poverty level** counts in deciding how much TAFDC you and your baby get. This level is currently $1,990/month for two persons. If your parents refuse to tell DTA their income, you may be denied TAFDC but you can still apply for SNAP/Food Stamps and MassHealth.

Note:

Your parent's income does not count once you turn age 18. The income of non-parent relatives you live with does not count —regardless of your age.

7. Challenging denial of benefits:

If your TAFDC is being cut, you have a the right to an **advance** written notice. If you ask for a hearing within 10 days of the date of notice, your benefits should continue during the appeal.

You have a right to bring in any new evidence about why you cannot live at home. If DTA says you missed too much school, bring to the hearing any information that explains why you missed classes. You have a right to see your TAFDC case record, including school attendance records and/or reports from the DSS contracted teen specialist. You have the right to make copies of any documents in your file, to ask questions of DTA worker or the teen specialist at the hearing and to bring a friend or advocate to assist you.

Call your local Legal Services for more advice or legal representation. You can also contact theMassachusetts Alliance on Teen Pregnancy: 1-617- 482-9122 for advice and referrals.

The Immunization Rule

Under the TAFDC immunization rules, applicants and recipients must show either their TAFDC eligible children are up to date with all immunizations, that the shots have been scheduled **or** that there is a medical or religious reason to refuse immunizations. If your child is in school, you do not need proof of immunizations. If your child is in a Head Start or licensed day careprogram, you only need to prove your child is enrolled.

How does the immunization rule work?

When DTA notifies you about the immunization rule (usually when you first apply), you have 60 days to bring in proof that your children's immunizations are up to date, or that you have an appointment scheduled with their doctor or clinic. Proof includes either a DTA immunization form **or**a notice from your MassHealth care provider for a well-child visit **or** proof of enrollment in a Head Start or licensed day care program (unless DTA paysfor the Head Start or day care in which case DTA has the proof already).

If your child is **under age two**, you may be asked to show your child is still up-to-date on immunizations after he or she turns age two.

Note:

The immunization rule does not apply to children once they start school because schools require children to be immunized.

If you fail to bring in proof of up-to-date immunizations, or proof that you have an appointment scheduled, you will lose your portion of the TAFDCgrant - about $95/month You may also lose income deductions on any earnings and other DTA support services (transportation or child care) you need to work or go to school. If your provider has lost the records or cannot schedule an appointment for you, you can ask your DTA worker for help to get the documents or get an appointment for a well child visit.

Your MassHealth should not be cut. But your SNAP/Food Stamps will not increase if your TAFDC goes down due to an immunization sanction.

Are there any exceptions?

You are exempt from this rule if immunizing your kids is against your religious beliefs **or** you or your doctor believe it would be medically harmful for your child.

If you do not want your children immunized, be sure to tell your DTA worker. If there are medical reasons, bring a statement from your doctor OR write a statement you have discussed this with your doctor and you have decided not to immunize your children. If you do not have your child's records and the doctor will not provide them, you can ask the clinic or doctor to give the shots again. Most doctors say this is not bad for your child.

If you need help finding a doctor

You will receive MassHealth coverage automatically with your TAFDC benefits. Medicaid will pay for all required shots, as well as checkups and other medical services. If you need help finding a doctor, call the MassHealth Customer Service number at 1-800-841- 2900. Ask them to give you the name of a MassHealth doctor. You can also call your local neighborhood healthcenter or hospital pediatric clinic for information and help.

If you want to challenge denial of benefits

Ask your DTA worker for help getting immunization records if you needhelp. Under the TAFDC rules, the worker must help if you need help and ask for it. If you get a written notice saying your TAFDC benefits will be reduced because of this new rule, you have the right to a hearing. If your worker refused your request for help in getting proofs, be sure to tell this to the hearings officer.

If your benefits are being reduced and you appeal within 10 days of thedate of the notice, your benefits will continue during the appeal. Be sure to bring with you any proofs that might help your case. You have a right to see your DTA case record and make copies of any documents in your file. You also have the right to bring a friend or advocate with you.

More information and legal advice

Free Legal Services may be available to give you more advice or representation. Call the local Legal Services program in your community for help.

Remember:

- You can ask your DTA worker for help getting proof of your immunization records for your children.
- You can object to immunizations if it is against your religion or medically harmful for your children.
- You do not need to bring in proofs for any school age children. If you child is in Head Start or licensed day care, bring proof of enrollment.

Child Support

The TAFDC Child Support rules require all recipients to "cooperate" in identifying and locating the absent father (or mother) of each child. Child support cooperation has always been part of the TAFDC

program. You must make a good faith effort to help identify and cooperate with child support enforcement unless you have a good cause reason not to.

1. Do you have to tell DTA anything about the father of your child?

Unless you have good cause, you have to cooperate with the Child Support Enforcement Unit of the Department of Revenue (DOR) to get child support from the child's father, prove he is the father (establish paternity), and get a support order. You will be asked for specific information about the child's father. If you do not have specific information, you will have to provide all the information you have and a sworn statement documenting your efforts to get the information. Once you provide this information, DTA will give it to the Department of Revenue (DOR) and DOR will check to see if it is accurate. You may also have to go to court if there is a court proceeding. However, you may have good cause for not doing this if you are afraid it will cause you or your child any physical or emotional harm or if you got pregnant by rape or incest. SEE "good cause" below.

Note that the support rules apply to mothers as well as fathers. A mother who does not live with the child can also be ordered to pay child support. Nonparent caretaker relatives must also meet child support cooperation rules for at least one of the child's parents. If a child is living with other relatives because both parents are absent, the relative must give whatever information she has on the parents.

Remember

You cannot be sanctioned (lose benefits) if you do not have the information as long as you cooperate in good faith.

2. What is "good cause" not to cooperate?

You are not required to cooperate if you have one of the following "good cause" reasons:

- the pregnancy was the result of rape or incest,
- you are planning to give up your child for adoption, **or**
- you or your child would suffer from "serious emotional or physical harm" by cooperating with these rules. For example, if you know who the father is and he was abusive or has threatened you, you can claim good cause. You can prove that cooperating will be harmful to you or your child with a copy of a restraining order (209A) **or** medical records **or** a written statement from a social service agency or shelter, or someone else who knows your situation, **or** in other ways (contact a Legal Services or battered women's advocate for help).

Your DTA worker has the duty to explain to you what "good cause" is and the benefits of cooperation. Your worker must also help you get the proofs needed if you need help.

Note

DOR may try to seek support from the father even if you are not required to cooperate because of good cause. You should get notice of this. Check with an advocate if it is a problem for you.

3. What if you don't have information about the father?

Thanks to a court ruling, DTA cannot cut your benefits or sanction you just because you do not have information about the father. Contact your local Legal Services right away if DTA or DOR threatens to cut you off for lack of information of if DOR unreasonably requires you to track down information you don't have.

4. How can you challenge the loss of benefits?

If you think you may have good cause to not cooperate, tell the DTA worker. You have a right to provide any information you have that shows why it would harm you or your child to cooperate. You have the right to see the records from your child support file and get copies of any documents about you.

You have the right to appeal any denial or reduction of benefits. If you get a written notice saying you have failed to cooperate with the child support rules, you can request a hearing.

If your benefits are being reduced and you appeal **within 10 days of the date of the notice** or at least 24 hours before the reduction is due to take effect, your benefits will continue until your hearing. Bring with you to the hearing any proofs that might help your case. You have a right to see your case record and make copies of any documents in your file. You also have the right to bring a friend or advocate with you to the hearing.

Can I get child support if I am on TAFDC?

If you are getting TAFDC and the Department of Revenue (DOR) is collecting child support, the child support will go to the Department of Transitional Assistance (DTA) instead of to you.

If the other parent pays less than $50 in any month, DTA will give you your regular TAFDC payment plus the child support the other parent pays.

If the child support amount is more than $50, DTA will give you your regular TAFDC grant plus $50.

If your child support is more than $50 over your TAFDC grant, DTA will give you the difference. If this happens for a few months in a row, DTA will close your TAFDC case and you will get the child support directly.

The money that DOR collects in child support should start going directly to you if your TAFDC case closes for any other reason. You can read Child Support for Survivors of Domestic Violence for more information.

Child support from other parent	What you get
Less than $50	TAFDC grant + child support other parent pays
More than $50	TAFDC grant + $50
More than $50 + TAFDC grant	For the first couple of months you get your regular TADC payment + the portion that is more than your TAFDC grant. This will be in 2 payments.If the other parent continues to

Child support from other parent	What you get
	pay this much, DTA closes your TAFDC case and sends all of the child support to you.

Examples

You have a child support order for $100.00 per month.

1. If the other parent pays the full $100 for the month of April, DTA will give you $50 of it plus your TAFDC grant.
2. If the other parent does not pay any of the child support he owes for May, DTA will just give you your TAFDC grant and nothing extra.
3. If the other parent then pays double ($200) in June to make up for the missed payment in May, DTA will just give you $50 of it plus your TAFDC grant.

Note

If the child support is for a child who is **not** on your TAFDC grant because of the "family cap" rule, the DTA will give you the first $90 of child support paid for that child, each month, and they will not lower your TAFDC grant.

Applying for Benefits at DTA

What if DTA does not let me apply or tells me I would not qualify before I even fill in an application?

Sometimes a woman walks into the Department of Transitional Assistance (DTA), and a worker tells her that she cannot get benefits. The worker tells the woman she should not even bother applying.

Insist on filing an application. The worker may be wrong. Anyone and everyone has the right to file an application. You may not be able to get benefits, but you have the right to apply. Do not take, “No” for an answer. Ask to see a supervisor or the assistant director of the office if you need to.

If you have signed and dated an application, and DTA believes you cannot get benefits, they will send you a "denial" notice in writing. You can appeal denials.

What should I do to make sure my application for TAFDC, EAEDC, SNAP/Food Stamps, or Emergency Assistance goes smoothly?

- It is important to **get a folder** to keep all your welfare papers in;
- Make copies of everything, and keep the copies in your folder;
- Make a chart to keep in your folder. Every time you talk to someone make a note of:
  - the date you talked to the DTA,
  - who you talked to at the DTA, and
  - what was said.

Sample chart for tracking conversations with DTA

date you talked to DTA	who you talked to	what happened
6/10/2010	Ann Brown	DTA never received some verifications, I will see if I can find them.
6/12/2010	Richard Price	Wrote a note asking for what else I could use since it is so difficult and expensive to get my birth certificate from Pennsylvania.

Getting all the proofs (verifications) that DTA asks for can be hard. You may have to do a lot of running around. If you don't get all the proofs in on time, it may take the DTA more than thirty days to open your case. **Keep in touch with your worker.** If you are having trouble completing forms or getting proofs, tell your worker. The law says **your worker must help you get the proofs if you can not get them yourself.** The law also says that DTA has to help you if you cannot get a document because a third party (like your landlord or past employer) is not cooperating.

This is how the application process works:

- Go to your local DTA office and ask for help. You will have to sign and date an application. Write in your folder the date you signed your application at DTA. This is important because DTA pays you back to the day that you sign an application. You will be given an appointment to return for an

interview. A DTA worker should ask you within 24 hours if you need immediate help. Tell her if you do.

- Within a few days, you have an interview with a worker. For cash assistance (TAFDC or EAEDC) and Emergency Assistance shelter, the interview usually happens at the DTA office. For Food Stamps, it may happen over the phone. The worker will ask you questions and fill in forms on a computer. The worker will ask you about the father of your child, your income, address, and other details. If you are afraid of the father of your child, tell your worker.
- After the interview, the worker will give you a written list of "verifications" (proofs) that you need to bring in. (See Checklist of Verifications) Examples of "verifications" are birth certificates, bank books, notes from landlords, social security numbers for all family members who will be getting benefits, and proof your children have been vaccinated. If you can't get the documents that are on the list, ask your worker about other kinds of documents that you can give her instead. Your worker has to let you use other documents to prove the things that you need to prove.
- If you bring all the required proofs to the DTA office within 22 days of signing your application, you should get your first payment on or before the 30th day.

Some tips for making the process go smoothly

- If you need more time to get the documents together, ask your worker **in writing** for an "extension" (more time). Put the date on your note to the worker. Keep a copy of the note in your folder.
- If a worker at DTA asks you to give her something you don't have and cannot easily get (for example, an expensive copy of a birth certificate from another state), write a note, put the date on it and explain why you cannot get what the worker is asking for. In the note, ask the worker to help you, or ask what other kinds of documents you can give her instead (there are many!). Keep a copy of this letter for your records.
- DTA is a big place and sometimes loses documents and notes you give them. Always keep a record of what you give them and the date that you give it to them. If you drop off papers in person, ask the receptionist to make a copy, "date stamp" the copy, and give you back the originals. Also ask for a copy of the date-stamped pages. That will be your receipt, and your proof that you dropped off the documents.

It helps if you can talk easily with your DTA worker. Start out with a positive attitude. If your worker gives you a hard time or does not follow the rules, you can ask to speak with your worker's supervisor and explain the problem, or ask for another worker.

How long will it take to get the first payment for TAFDC, EAEDC, or SNAP/Food Stamps?

You have to give DTA all the proofs they need. If you give them all the proofs, they have to start paying you within 30 days from the day you applied. Sometimes they start payments before the 30 days are up.

While you are waiting, you can get "immediate needs" met. If you do not have food or clothing, or you need medical care, DTA should help you right away by giving you a voucher, emergency food stamps, and/or a temporary medical insurance card. DTA will subtract the cost of any vouchers that they give you from your first monthly payment.

Appealing Denials

What if DTA denies my TAFDC, EAEDC, Emergency Assistance, or SNAP/Food Stamps application or I disagree with what DTA does?

If you disagree with what the Department of Transitional Assistance (DTA) does, there are things you can do:

- Talk to your worker. See if your worker can solve the problem.
- Talk to your worker's supervisor.
- Call the client services line at 1-800-445-6604.
- Appeal. Be sure to file your written appeal before the deadline.

Even if you are trying to solve the problem by talking to someone at the welfare office, you may want to file an appeal. It can take a while to get a hearing, so it is good to start the process right away. This way you will have a hearing scheduled in case DTA does not fix the problem. If DTA does fix the problem, you can always "withdraw" (cancel) the appeal.

How do I file a DTA appeal?

When DTA sends you a letter denying, stopping, reducing, or changing your benefits, they include information about how to appeal.

The sample notices have sample appeal requests filled out. There is an address and a fax number on the back of the notices for the Division of Hearings in Boston. Make a copy of any appeal requests you fill out and put the copies in your folder. Mail or fax your filled-out appeal to the Division of Hearings. Check your appeal form, as addresses sometimes change. The appeal should be sent to:

Division of Hearings, DTA
P.O.Box 120167
Boston, MA 02112

or fax it to: (617) 348-5311.

After mailing or faxing the appeal, be sure to call the Division of Hearings at (617) 348-5321 or 1-800-882-2017 to make sure they got it. Make note of your phone call on the tracking worksheet in your folder.

You have **90 days** from the date on the notice to file the appeal. If you are already getting TAFDC benefits and want to keep getting the same amount while you are waiting for the hearing and decision, you need to file the appeal within **10 days** of the date on the notice.

Call your local legal services office if you want help or you are confused about whether you should appeal. Remember to keep copies of everything you send to DTA!

What happens if I lose my DTA appeal?

If you lose your appeal, DTA can take back the extra money they paid you while you were waiting for your appeal decision. That money will be considered an "overpayment." If you are still on TAFDC, DTA

can't take the money back all at once, but they will lower your family's benefits by up to 10% per month until the overpayment is repaid.

You may be able to appeal the hearing decision in court. Call your local legal services office to talk about your appeal.

Make sure your application for TAFDC, EAEDC, Food Stamps, or Emergency Assistance goes smoothly

1. Get a folder to keep all your welfare papers in;
2. Make copies of everything, and keep the copies in your folder;
3. Use this chart to keep in your folder. Every time you talk to someone at DTA make a note of:

    1. the date you talked to the DTA,
    2. who you talked to at the DTA, and
    3. what was said.

date you talked to DTA	who you talked to	what happened

date you talked to DTA	who you talked to	what happened

Child Support

In Massachusetts there are child support laws to make sure that parents who do not live together share the cost of raising their children. Massachusetts expects parents who do not live with their children to meet their share of the cost by paying child support. Sometimes a child lives part-time with one parent and part-time with the other parent. In these cases, the parent who lives with the child for less time usually pays child support to the other parent. The parent paying child support usually also pays for the child's health insurance.

Child support helps pay for your child's:

- Housing,
- Health insurance and/or medical costs, including birth-related costs,
- Child care costs,
- Education costs, and
- Food and clothing.

Can I get child support?

You can ask the court for child support if your child lives with you most of the time, and the other parent does not live with you and your child. You do not need to have been married to your child's other parent to get child support. Your child has a right to support from both parents whether or not you were ever married.

You need to file a complaint in court to get child support.

See How do I file for child support? to learn how to do this.

If I get TAFDC, can I get child support too?

If the child support is less than your TAFDC grant, you can keep the TAFDC grant and $50 of the child support. The rest of the child support goes to the state.

If the child support is more than the TAFDC grant every month, your TAFDC case will close.

See Can I Get Child Support if I am on TAFDC?. The answer explains more about what happens with child support and TAFDC.

Do I have to help the welfare office get child support from my child's father?

If you get TAFDC, the law says you have to help the Department of Transitional Assistance (DTA) and the Department of Revenue (DOR) get a child support order against your child’s other parent. But if you are afraid of the other parent, you can ask for a “good cause waiver.” With a “good cause waiver,” you do not have to help the state get child support. You do not even have to give DTA the other parent’s name. You may be able to stop DTA and DOR from going after child support at all.

Can I get child support if my child is over 18?

In Massachusetts, you can get child support for any child who is 18 or under.

You also may be able to get child support for a child who is over 18 if:

- your child is 18, 19, or 20, lives with you, and depends on you for support; or
- your child is 21 or 22, is going to college or a vocational program, and lives with you when not in school; or
- your child is over 18 (any age) but cannot support himself or herself because of disability.

If your child's other parent is dangerous and has abused you or your child, you may want to think carefully about filing for child support.

Filing a child support case could give the other parent a chance to see you in the court room or follow you home from the courthouse. Filing for child support might make him angry. He may be more likely to threaten you or hurt you.

If the other parent is angry about paying child support, he might ask the court for custody, or the right to visit your child, or to make decisions about your child's life, The other parent always has the right to ask the court for custody or visitation, but not all parents are interested in their child. Sometimes parents only ask the court for custody or visitation when they have to go to court for child support. If the other parent gets an order from the court saying that he can visit your child, it might be hard for you to avoid him.

If you do file for child support, there are some things you can do to try to stay safe:

- You can file a Motion to Impound your address. This asks the court to keep your address secret from the other parent so he cannot find out where you live by reading the court papers.
- If you are working with the Department of Revenue (DOR), legal services, or a private lawyer, tell them about the abuse right away so they can help you stay safe. Tell them if you need your address kept secret from the other parent.

Are there other reasons I might not want to file for child support?

There may be other reasons you might not want to file for child support.

If you are not married to your child's father, then legally he is not your child’s father unless

- a court order says he is the father; **or**
- the two of you sign a "voluntary acknowledgment" form. This form says that you both agree he is the father.

If you were never married to your child’s father, he does not have any right to custody or visitation unless there is a court order or signed acknowledgment form. **You are the only parent with custody** if there is no court order or signed acknowledgment form. You have the right to decide whether the father may visit with your child.

The father of your child can go to court at any time to prove that he is the father and to ask for custody or visitation, but he might not ever do this. However, if you take him to court for child support, the court will make a “finding” that he is the father. Then, it will be easier for him to ask for custody or visits with your child. If he gets an order that says he can visit your child, you might have to be in contact with him.

Example

This is a true story. Lisa had a very violent, abusive boyfriend, Dan, who was sentenced to three years in jail for beating her, threatening to kill her, and violating a restraining order. Lisa had Dan's baby while Dan was in jail. Dan never met the baby. There was never any order from court that said Dan was the father. Since he wasn't legally the father, he had no right to visit the baby, and he did not have to pay child support. He seemed to have no interest in the baby, and he left Lisa alone.

Lisa applied for TAFDC. She did not know about the "domestic violence waiver." Six months after Dan got out of jail, DOR filed a child support case. In order to get child support, DOR had to get a court order saying that Dan was the baby's father. In the court room, after the judge declared that Dan was the father and ordered support, Dan turned to Lisa and yelled, "I want visits now. I want to see my kid next Saturday."

Now it is easier for Dan to go to court and ask for visits because the court says he is the baby's father. If he does ask for visits, and Lisa is concerned about the safety of the baby, Lisa can ask the court to order that Dan may only visit in a place where he will be supervised. But, the judge may let Dan visit without supervision. Either way, Dan will have contact with Lisa through their child.

While Dan always had the right to go to court and ask to be declared the father and ask for visits, he might never have done so if DOR had not filed a child support case. And, Lisa could have avoided having a case filed by DOR if she had known about the "domestic violence waiver."

It may be worth it to get a child support order. All parents should support their children. If you believe that asking for child support is dangerous, you might be better off not asking for it. Child support might not be worth risking your health and safety, or the health and safety of your child. Talk to a legal advocate about your options. Call your local legal services office to see if you qualify for free legal advice. Or call a lawyer referral service to try to find a lawyer who will work with you at a price you can afford.

Could it be helpful for me to get a court order that says who my child's father is?

Getting a court to name the father of your child is called "establishing paternity." Some reasons that you might want to do this are:

- If your child's father dies or becomes disabled, it will be easier for you to collect Social Security benefits for your child.
- If your child's father dies, your child will be able to inherit from him or his family. It is much more difficult to prove who the father of a child is after the father has died.
- You may be able to get a more complete medical history for your child.

But be careful. “Establishing paternity” may make it easier for your child's father to ask the court for custody or visits with your child.

How do I file for child support?

You can file for child support by going to your local Probate and Family Court. Ask the clerk for the forms and fill them out. You do not have to have a lawyer to file for child support.

You can get child support by filing a Complaint for Support. **Only file this complaint if you are married to the other parent**. You can **also** ask for child support when you file any one of these **other complaints**:

- Complaint for Protection from Abuse (G.L. c. 209A): Get an order protecting you from further violence.
- Complaint to Establish Paternity: Get an order saying who your child’s father is.
- Complaint for Support - Custody - Visitation: Get an order about child support and custody and visitation.
- Complaint for Divorce
- Complaint for Separate Support: Get an order of child support and/or support for yourself if you are married and living separately.
- Complaint for Modification: Change your child support order if the facts in your case have changed a lot.

You can file any of these complaints in the Probate and Family court in your area. You can get complaint forms at the clerk's office. **If the other parent files any of these complaints** in Probate and Family Court, you can ask for child support in your "answer" to his case.

If you have **been abused** you can file for a 209A protective order in your local District Court and get child support that way. The District Court clerk's office should have forms for 209A protective orders. Do not be surprised if the clerk tells you to go to Probate and Family Court. Clerks sometimes do not know that you have the right to ask for child support through a 209A protective order in District Court.

After you file your complaint, you will need to get it served by a sheriff or a constable.

To learn more about how to to get an order for child support read the section Probate and Family Court.

How much does it cost to get a child support order?

When you file for child support you will file a “complaint”. All complaints except the Complaint for Support of Spouse or Child and the Complaint for Protection from Abuse (G.L. c. 209A) have:

1. a filing fee and a $15 surcharge.
2. You will also need a $5 summons.
3. A deputy sheriff or a constable to serve the complaint and summons usually charge $35-$45. There is no charge to serve a Complaint for Protection from Abuse.

Filing fees for Complaints

The filing fee for a Complaint for Divorce is $200.

The filing fee for a Complaint for Separate Support is $100.

The filing fee for a Complaint to Establish Paternity is $100.

The filing fee for a Complaint for Support - Custody - Visitation is $100.

There is no filing fee, surcharge or summons fee for a Complaint for Support of Spouse or Child or for a Complaint for Protection from Abuse (G.L. c. 209A).

I cannot afford these fees

If you get public assistance or your income is very low, you may be able to get the filing fees "waived". If you cannot afford the fees, fill out an Affidavit of Indigency. Ask the clerk at the desk who gave it to you, to approve it. You will not have to pay the fees and the state will also pay the cost of serving the papers

What if I need child support right away?

We are getting divorced

If you getting divorced, you can file a Motion for Temporary Support. You will get a hearing and the court can make a temporary order of support for your children or you. The temporary order lasts until the court changes the order. The court may change the order when the judge hears your divorce case.

I am filing a 209A Complaint for Protection from Abuse

If you ask for child support through a Complaint for Protection from Abuse, you should be able to get the order fairly quickly.

Other complaints

Getting child support by filing another type of complaint can take longer. You can get child support more quickly by filing a Motion for Temporary Support along with the complaint.

Ask the clerk for a "motion form." There is no extra filing fee for the motion.

1. **If you filed the complaint**, you must give the motion to the sheriff or constable to serve with the complaint.
2. If **you have already filed and served** your complaint, you can file and serve the Motion for Temporary Support separately.
3. If **you have been served** with a complaint, you can file and serve the Motion for Temporary Support separately.

When you file your motion, you need to schedule a date for a hearing about it. Ask the clerk which days the judge hears motions. Pick a date for your hearing and fill in that date on the motion form.

The other parent will have to go to court on the date the motion will be heard by the judge if he wants to argue against it. You also will need to go to the hearing and bring:

- your filled out Financial Statement,
- your filled out Child Support Guidelines Worksheet,
- your wage assignment form, and
- any proof you might have of what the other parent is making.

If the other parent shows up, the court will ask both of you to meet with a probation officer. This is to see if you can work out an agreement. If you have a 209A protective order, ask to sit in a separate room. You have the legal right to sit in a different room from the other parent. The probation officer can go back and forth between you and try to help you reach an agreement. Do not agree to something that you feel is unfair. You have the right to talk to the judge. The judge will usually decide that the other parent must pay you the amount that the Child Support Guidelines say, or close to it. If you decide to agree to less than that in the meeting with the probation officer, make sure you have really thought about it.

After the hearing, the judge will probably write a temporary order of support. The temporary order will last until you get the final order in your divorce or support case.

How do I find out how much the other parent is making?

Here are three ways to show how much the other parent is making:

1. After you file the complaint, send the other parent a pink financial statement to complete and send back to you. He must send it back to you within a certain number of days.
2. If you have any of his recent pay check stubs, bring them to your hearing and show the judge.
3. Subpoena his wage records.

Financial Statement

After you file the complaint, send the father of your child a blank Financial Statement and a letter asking him to fill it out by a certain date. The other parent is supposed to give it to you within 10 days of you asking for it. When he sends it back, you will know what he is making - as long as he tells the truth on the form.

If you don't send a letter asking for the filled out Financial Statement, the other parent is still supposed to give it to you by 45 days after the sheriff serves him the Complaint.

If you file a Motion for Temporary Support, the other parent is supposed to send you the completed Financial Statement at least two days before the hearing date for the motion.

What if the other parent won't fill out the Financial Statement?

The law says that the other parent has to fill out the Financial Statement and send you a copy. He can get in trouble with the court for refusing to do so. If he does not send you the form within the time limit, you can file a motion asking the court to make him send it to you. This is called a Motion to Compel.

Subpoena his wage records

If you don't have wage stubs, you can "subpoena" wage records. A subpoena (pronounced "suh-pee-nah") is an official notice that requires a person to come to court to testify and be a witness. The subpoena can also require the person to bring certain documents.

As long as you have a court case, you can send a subpoena to the other parent's employer. The subpoena says the payroll staff has to come to court and tell the court how much money they pay the other parent. If the payroll staff does not want to come to court, they can send "certified" records of the other parent's wages directly to the court. If the employer ignores the subpoena, the court can issue an arrest warrant for the employer.

You can use a deputy sheriff or constable to serve the subpoena. You do not need to be a lawyer or a public official to serve a subpoena. You can ask a friend to do it. Using a deputy sheriff or constable might help you be sure that it will be done properly, and the process will be easier. But it will cost money. If you have a friend who will be serving the subpoena, he or she needs to serve it correctly so you can be sure that your witness will come to court.

Here are the steps:

1. **Get a subpoena form from** MassLegalHelp or from the clerk's office at the court
2. Look at the sample subpoena form to see how to fill out the form.
3. **Figure out how much the "witness fee" will be in your case.** The witness fee in Massachusetts is $6.00 for each day that the witness attends court plus a travel expense of 10 cents per mile to and from the witness' home and the court. If the witness has a place of business or employment in the city or town where the court is located, then the 10 cents per mile is measured from where the witness works to the court. The witness fee and travel expense for one day's attendance at court must be given to the witness in advance. You can estimate the mileage. (More on this in step 11)
    - You may not need the person you are serving with a subpoena to go to court. If what you really want is a document like pay records, you can ask the person to send a "certified true and complete copy" of the document instead. When you serve the subpoena, you can attach a letter that tells the person how to send documents instead of going to court. There are things that the person has to do if he or she wants to send the document instead of going to court.
4. **Look up the address of the person you want to subpoena.** If you want wage records, look up the other parent's work place in the phone book. Call them and get the address, and find out who is in charge of the payroll records (also called the "Keeper of the Records.")
5. *Using the address and the name, fill out a subpoena form. When you fill out the form, include:*
    1. what you are requesting,
    2. the person you are requesting it from,
    3. the court that person needs to go to,
    4. when that person needs to be there, and

5. the name of your case (Your Name vs. Other Parent). Look at a sample subpoena
6. **The subpoena must be notarized.** Take your filled out subpoena to any notary public. There is usually a notary public at your local City Hall or bank. The notary should notarize the subpoena with her stamp for free or for a few dollars.
7. **Make two photocopies** of the notarized subpoena form and the affidavit of service that is attached to the subpoena.
8. **You can ask a friend to serve the subpoena., but your friend must be:**

- over eighteen, and
- not a witness for your case, and
- not related to the person you are serving.

9. **Give your friend the "witness fee", to give to the witness.** Write the amount of the witness fee on the back of all three copies of the affidavit of service. Your friend can take the copies of the subpoena to the other parent's work place. Your friend has to fill out all three copies of the affidavit of service (the statement attached to the subpoena that says she has given the subpoena to the witness).
10. Your friend can give the subpoena to the witness (the person in charge of payroll) or the receptionist or the owner of the business. When your friend serves the subpoena she needs to:

- tell the person she is serving that she is giving them a subpoena;
- give the person she is serving the **original** notarized subpoena form;
- give the person she is serving one of the **copies** of the affidavit of service your friend has filled in saying that she has served the subpoena; and
- give the person she is serving the witness fee.

11. Bring the second **copy of the subpoena** and the **original affidavit of service** with you when you go to court. You may need to show that the witness was properly subpoenaed.

It costs money to serve a subpoena. Costs include a witness fee, and a service fee if you use a deputy sheriff or constable. If you cannot afford the costs, you can ask the state to pay the service and witness fees.

Can I Get Help with my Child Support Case?

You can file a complaint through a lawyer if you do not want to file it yourself. You may qualify for free legal help-- call your local legal services program to find out.

If you get TAFDC (welfare), you will automatically get help from the Department of Revenue (unless you have "good cause" for not going after child support).

If you are not on TAFDC, you can apply for free child support services from the Department of Revenue (DOR).

- If I file for child support by myself, is there anyone who can help me?
- How can DOR help me?

- What if I am in court with DOR on a child support case and the other parent asks for visits the next weekend?
- If the judge orders child support, how can I make sure the other parent pays it?
- My child's other parent is always changing jobs and/or is paid “under the table”. What can I do?
- What about private child support agencies?

If I file for child support by myself, is there anyone who can help me?

Many Probate and Family Courts have free help for people with low incomes. Some courts have volunteer lawyers, called "lawyers for the day." Other courts have people called “Family Law Facilitators”. All of these people can talk to you about your case and help you fill out court forms. But they will not go into the court room and speak for you.

Call your local Probate and Family Court to see if it has a “lawyer of the day” or “Family Law Facilitator”. If you talk to a "lawyer for the day" or “Family Law Facilitator” ask for help filling out the Affidavit of Indigency, to get the state to pay your filing fee and other court costs.

You can also call your local legal services office for help. Legal services may be able to represent you in court, or refer your case to a free lawyer, or help you file the case yourself. Some legal services programs offer free classes for do-it-yourself divorce.

Many battered women's programs and some courthouses have legal advocates who can help you get a 209A protective order that includes an order for child support.

How can DOR help me?

DOR helps collect child support for all "custodial parents" (parents who have physical custody of their children) in Massachusetts.

A DOR lawyer can file a child support complaint for you and argue your case to the judge.

DOR will get a court order telling the other parent's employer to take the child support out of his wages and send it to the state. DOR will then send the payments to you (or, if you get TAFDC, to the Department of Transitional Assistance).

It is important to understand that DOR only helps with child support. DOR does not get involved with custody or visitation issues.

If you are on TAFDC, the Department of Transitional Assistance will help you get services from DOR.

If you are not on TAFDC, you can still get **free child support services** from DOR. You can apply online. You can also download an application from the Department of Revenue's Child Support Enforcement website, or get one from your local Probate and Family Court. Fill it out and send it in.

You may have to wait for a long time before DOR gets to your case. You may want to file for child support yourself in the meantime. Call your local legal services office to see if you qualify for free legal help. Or call a lawyer referral service to try to find a private lawyer to help you at a price you can afford.

What if I am in court with DOR on a child support case and the other parent asks for visits the next weekend?

The Department of Revenue (DOR) only handles child support cases. They do not help with custody or visitation.

If the other parent did not serve you with court papers that say he wanted to bring up custody or visits, then the court should not let him talk about custody or visits. This hearing is just about child support. If the other parent wants to ask the court for visits or custody, he has to file paperwork and send you a notice for another day in court so that you can have time to think about what to say and prepare your case.

If the other parent does ask for custody or visits while you are in court for child support, tell the judge:

- about the abuse issues in your case;
- that the other parent did not give you any papers saying that he was going to bring up these issues; and
- that you would like to get legal advice.

If you are working with DOR, you should tell DOR about the abuse right away and remind them when you go to court.

If the judge orders child support, how can I make sure the other parent pays it?

The court usually orders the other parent's employer to take the child support right out of his paycheck. This is called "wage assignment," “income assignment,” or “garnishing.” The employer takes the child support out of each paycheck, just like taxes and other deductions. The employer sends the money to the Department of Revenue (DOR). DOR then sends the money to you. (If you are on TAFDC, DOR only sends you part of the child support. See If I am on TAFDC, can I get child support too?.)

Ask the court to write an order telling the employer to take the child support directly out of the other parent’s paycheck. The judge or the clerk will fill out a wage assignment form and send it to the other parent's employer. If the other parent gets Unemployment, the court will send the form to the Unemployment Office.

The same form can order the other parent's employer to put you and/or your child on his health insurance plan.

My child's other parent is always changing jobs and/or is paid “under the table”. What can I do?

If the judge can not order a wage assignment, then the judge will order the other parent to pay the child support himself.

If you have a support order and the other parent refuses to pay or stops paying, you can file aComplaint for Contempt. This is a complaint that asks the court to make the other parent obey the child support order. You file it in the same court where you got your original support order. There is no charge for filing this, but there is a fee for the sheriff to serve it on the other parent with a "summons" (an official

document that tells the other parent that the court is going to hold a hearing. At the hearing, the court may make a new order.). If you have a low income, file anAffidavit of Indigency to get the state to pay the sheriff's fee.

You must come to court on the date on the summons. If the other parent says he has no money and no job, you will have a chance to explain to the judge why you think this is not true.

Example

You can explain that the other parent is working under the table, or working for his relatives, or that he is driving a new car. Bring in witnesses who have seen him working or who have seen that he has money. Bring in photographs of his nice car. Bring in a record of his child support payments to show the times that he missed paying you.

After hearing the case, the judge decides how much child support the other parent owes (called “arrears”). If the judge decides that the other parent owes money or has disobeyed the order, the judge will write a new order. The new order might say the other parent has to pay what he owes by a certain date. The judge might put him in a holding cell in the courthouse, or send him to jail until he pays, or longer. Sometimes parents who have insisted that they can't pay child support are able to come up with money at that point.

If the judge sends the other parent to jail, you can ask the judge to let him out during the day for work so he does not lose his job-- this is called “work release.”

If the other parent has a history of unemployment or quitting his jobs, you can ask the judge to order him to do job search supervised by the Probation Office of the Court. If the judge agrees, he will order him to apply to a certain number of jobs each week until he gets one, and to report back to the court about it.

If the other parent still doesn't pay support after all this, you may need to file another Complaint for Contempt and ask the judge to bring him into court again. If he still doesn't pay, and you keep having him brought in, the judge may put him in the holding cell in the courthouse or send him to jail.

If the other parent doesn't show up in court for the contempt hearing, the judge will probably issue a “capias," which is like an arrest warrant. The county sheriff or a private constable is then supposed to go out and arrest him and bring him into court. This is not the same as a criminal arrest. The purpose of arresting the other parent on a capias is just to make him come into court. If you are low income and have filed an Affidavit of Indigency, the court should pay the cost of having the sheriff arrest the father of your children. But, you should check with the court clerk to make sure you do not have to file a new Affidavit of Indigency to cover this extra cost.

What about private child support agencies?

Once you get an order, you can ask a private child support agency to get the money for you.

Most private child support agencies will not go to court to help you get a support order, but they will try to collect support that has already been ordered.

Private collection agencies may get faster results than the Department of Revenue (DOR). They use high-pressure tactics like:

- Contacting the other parent directly at his or her home;
- Talking to the other parent's neighbors and co-workers;
- Threatening to put liens on the other parent's property; and
- Contacting the other parent over and over.

Be careful about using these agencies. Private agencies usually keep some of your child support as their fee. Sometimes they keep as much as 40% of all child support collected.. Once you have an agreement with a private child support collection agency, they may even take a cut of child support that you collect yourself or that DOR collects for you.

If you decide to work with a private collection agency:

- Always ask any private child support collection agency about their fees before you decide to work with them.
- Make sure that you understand the terms of any contract before you sign it. Some private agencies put things into their contracts that keep the contracts going for a long time.
- Make sure that they have been in business for a while and they have a phone number and street address where you can contact them.

To find a private child support collection agency near you, try looking in the yellow pages of the phone book or asking lawyers in your area.

If I file for child support, how much money will I get?

Massachusetts has "Child Support Guidelines" that judges must use to figure out how much child support the parent without custody has to pay each week.

You can figure out the amount of child support you should get by using the Child Support Guidelines Worksheet. You will need information from the other parent’s financial statement to fill in this worksheet. It can be hard to use if you are new to it. You can look at a sample worksheetto see how to fill it out. The Department of Revenue Child Support Services has an online calculator you can use to estimate how much child support the court may order. The court will look at the Child Support Guidelines Worksheet to decide how much support the other parent will pay. In some rare cases, the court might order a different amount.

Usually, the court will order the other parent to pay at least $80.00/month. In rare cases, if the other parent has very little money, the court may not order him to pay any child support at all.

If the other parent is not working, the court may order him to do job searches and to report his job search efforts to the court.

How will it affect my child support if the father has other children?

If the father of your child has other children, you may get less child support. Under the Child Support Guidelines, the judge has to consider the amount of child support the father pays under another child support order before deciding the amount of support for your child.

To figure out how this will affect your child support, you need to know how much money the father pays in support for the other children. Subtract that amount from the father's income before taxes. Use that number for the father's income when you use the Child Support Guidelines Worksheet to figure out how much support he has to pay for your child.

Example

Say the other parent makes $100/week before taxes, and he pays $25/week in support for another child. Subtract $25 from $100, and you get $75. Write $75 on the line for the father's weekly income when you use the Child Support Guidelines Worksheet to figure out how much support he must pay for your child.

Can I change my child support order to get more?

You might be able to get more child support if your "financial circumstances" have changed a lot since the last order. Some examples of changes that make a difference are:

- the other parent's income goes up by at least 20%;
- your oldest child turns thirteen;
- you made at least $20,000 when you got the order and now you make less; or
- one of your children was not living with you but has now moved back in with you.

The steps to find out if the changes are big enough to get your child support order changed are:

1. Check the Child Support Guidelines Worksheet or the online calculator.
2. Fill in the new information.
3. Divide the answer you get on the Worksheet or online calculator by the amount of child support you get now.
4. If the answer is 1.2 or more, you may be able to get a new order.

You will need to file a Complaint for Modification to ask for a new child support order.

You will need to get a sheriff or constable to serve the complaint on the other parent with a summons (an official document that tells the other parent that the court is going to hold a hearing. At the hearing, the court may make a new order.). If you have a low income, file an Affidavit of Indigency form to ask the state to pay the sheriff's fee.

You must then go to court on the hearing date. You will need to bring the following:

- your completed Financial Statement,
- your completed Child Support Guidelines Worksheet,

- your wage assignment form,
- any proof you have that the facts of your case (your "financial circumstances") have changed.

If the other parent doesn't show up at the hearing

If the other parent doesn't show up, the judge will ask for proof that the other parent knew about the court date. Show the judge the summons that the sheriff signed after he served the other parent with the court papers. You will still need to show the judge that the other parent's income or the facts of your case have changed a lot. If you do these things, the judge should order more child support.

If the other parent does show up at the hearing

If the other parent does show up, the court will ask you and him to meet with a probation officer. This is to see if you can work out an agreement. If you have a 209A protective order, ask to sit in a separate room. You have the legal right to be able to sit in a different room from the other parent.. The probation officer can go back and forth between you and try to help you reach an agreement. You do not have to agree to something that you feel is unfair. You have the right to talk to the judge. The judge will usually decide that the other parent must pay you the amount that the Child Support Guidelines say, or close to it. If you decide to agree to less than that, make sure you have really thought about it.

What if I need more child support right away?

When you file your complaint you can also file a Motion for Temporary Support that asks the court to order child support (or more child support) right away. If you win your motion, you will get a temporary order of child support that will last until the final hearing in the case. If you don't file a Motion for Temporary Support, you will have to wait for the decision from the final hearing. You may end up waiting for months. A motion can be decided a lot faster than the entire case.

If you file a Complaint for Modification, and you can show that the other parent agrees on the basic facts (like how much he earns now), you can file a **Motion for Summary Judgment**. This lets you get a final judgment more quickly. But filing a Motion for Summary Judgment is only for cases where there is no real argument about the facts. If you think that the facts are clear and cannot be argued about, it is a good idea to talk to someone with legal training. You can call your local legal services office to see if they can help you.

Out-of-state Questions

I have a child support order from another state. How can I make sure the order works in Massachusetts?

You must make sure the child support order from the other state is "certified" in Massachusetts. Call the Massachusetts Department of Revenue (DOR) and give them a copy of the order and request certification. DOR may have you fill out paperwork or request paperwork related to your child support records from the state where it was issued. Once the order is certified in Massachusetts, DOR can help you with wage assignment collection and other services.

What happens if the other parent now lives in another state and I need to enforce or change the Massachusetts order?

There is a federal law called the "Uniform Interstate Family Support Act" (UIFSA) that says that states have to work together to make sure parents get court-ordered child support.

There are two ways that you can get your order enforced in another state:

1. You can file a Complaint for Contempt or Complaint for Modification in Massachusetts and then hire a constable or other "process server" in the other parent's state to serve it on him. Hopefully, the other parent will show up at the hearing.
2. You can call the Customer Service Bureau at the Department of Revenue and ask them to help you get the order enforced in the other state. If you don't think that the other parent will show up at a hearing in Massachusetts, this may be the better choice. You will have to fill out a long form with information about the other parent and your current order. The Massachusetts Department of Revenue (DOR) will then send an order to the parent's employer in the other state telling him or her to take money out of the parent's pay check and send it to DOR. If DOR does not have enough information about the other parent or the employer to do this, DOR will contact the child support agency in the other parent's state and ask them to enforce or modify the Massachusetts order. This process can take up to six months, but it can work very well.

I already have a child support order in Massachusetts but I have moved to another state. Is my order still good?

Yes. If your order was good (was "in effect") in Massachusetts when you left, the order will continue to be in effect until a court changes it. Give the Massachusetts Department of Revenue (DOR) your new contact information so they can keep sending your support payments to you. If you fled Massachusetts because of abuse and you do not want the other parent to know where you are, tell DOR that you need to keep your address secret and ask them to be sure your address does not appear on any court forms.

If I wasn't getting child support and I moved out of Massachusetts, how do I get it now?

All fifty states have child support agencies. They work with each other to enforce child support orders. But each state handles child support orders a little differently.

You may be able to file for child support in your new state. Or you may be able to file in Massachusetts. It depends on:

- how long you have been out of Massachusetts;
- whether there is still an open case in Massachusetts; and
- whether the other parent still lives in Massachusetts.

Some states are better than others at keeping abused parents' addresses secret. Call a local battered women's organization where you live now for information on your new state's child support enforcement practices.

A lawyer can help you figure out where to file your case. Call the legal services program in your new state to see if you qualify for free legal help. You can also call the legal services program where you used to live in Massachusetts to see if they can give you advice about where to file your case.

Criminal Complaints

Is what happened to me a crime?

It may be. The law says that physical abuse is a crime. Verbal threats can also be a crime. Emotional abuse by itself is not a crime.

If your boyfriend or spouse did something **physical** to you or your child without permission, that is probably a crime. If he **threatened to do something physical** to you or your child, that also may be a crime.

"Emotional" abuse can be just as painful as physical abuse. Sometimes emotional abuse is more painful than physical abuse. But emotional abuse is not a crime.

A verbal threat can be a crime if it is a threat to physically hurt you, your child, or someone else. For example, it is a crime if your partner says:

- he is going to hit you or kill you,
- he has a way to do it, and
- his saying it scares you.

It is not a crime for your partner to threaten to do something that would not hurt you physically, like report you to the Department of Children and Families (the agency that used to be called the Department of Social Services).

What are some examples of when domestic violence is a crime?

The Massachusetts General Laws say which actions are crimes. The most common domestic violence crimes are:

- **Threat to Commit a Crime:** The abusive person says things that make you afraid for your safety or your child's safety, and he really is able to hurt you or your child physically.
- **Assault:** The abusive person tries to physically hurt you or your child. He does not have to actually touch you or hurt you for it to be an assault. It is an assault if he tries to hurt you and makes you scared. He might try to hurt you by holding his fist in front of your face or throwing things at you.
- **Assault and Battery:** The abusive person touches you or your child without permission. Battery can be anything from a slap with an open hand to punching, kicking, choking, or other kinds of unwanted touching.
- **Assault and Battery with a Dangerous Weapon:** The abusive person touches you or your child on purpose with a "weapon" and makes you or your child afraid you will be hurt. The weapon does not have to be a gun or knife or anything else that you usually think of as a weapon. Assault and battery with a dangerous weapon includes kicking you with a boot, hitting you with a car, burning you with cigarettes, or using a heavy object to hit you. This crime may be charged as a felony.
- **Assault with the Intent to Rape:** The abusive person tries to rape you.
- **Rape:** The abusive person makes you have sex against your will by physically forcing you or threatening to hurt you if you refuse. It is still rape even if you are married to the person.

- **Stalking:** It is "stalking" when the abusive person does things over and over that threaten you with physical injury and would scare or upset a reasonable person. An example of stalking is when someone follows you to work and calls you there several times to say that he is watching you and is going to hurt you.
- **Criminal Harassment**: The abusive person keeps doing things that seriously scare you or upset you. If the things the abusive person is doing would seriously scare or upset a reasonable person, it is called "criminal harassment". The kinds of things someone might do to seriously scare or upset you include calling you on the phone, sending you emails, faxing you, instant messaging you, or text messaging you again and again.
- **Violation of a 209A Protection Order:** You went to court and got a 209A Abuse Prevention Order against the person. He then abuses you, contacts you directly or indirectly, or does not stay away from you like the court ordered. In other words he "violates" the order. For example, the order says that he can not contact you in any way, but he calls you, goes to your house, sends you mail, or tries to see you or send messages to you.

Sometimes when you are living with domestic violence, you also have to cope with other crimes like:

- Kidnapping;
- Intimidation of a Witness;
- Annoying Telephone Calls;
- Attempt to Commit a Crime;
- Disorderly Conduct;
- Disturbing the Peace;
- Criminal Trespass;
- Breaking and Entering;
- Cruelty to Animals; and/or
- Willful and Malicious Destruction of Property.

Remember

It is also a crime to abuse an elder or child.

What can I do if what happened to me was a crime?

You can talk to the police. The police will write a report. Ask for a copy of the report. You may need the report in the future. If you talk to the police, they **may** arrest the abusive person and he may end up in criminal court. The police may not arrest him.

Dial 911 if you want to call the police while the abuse is happening or right afterwards. If you want to talk to the police later, call the police non-emergency number or go to the police station.

You can also file a criminal complaint yourself if you **want** the abuser to go to criminal court and maybe to jail. Go to your local district court and tell the clerk that you want to file a criminal complaint.

Working with the police

Do I have to call the police?

No, you do not have to call the police. It is up to you if you want help from the police. But remember, sometimes other people, like neighbors, may call the police.

One thing to keep in mind is that the police are "mandated reporters" of child abuse or neglect. The police **must** report to the Department of Children and Families (DCF) if they think your child is being abused or neglected. DCF used to be called the Department of Social Services (DSS)

If you want to stop the abuse but you do not want to go to the police, you can file for a 209A protective order. 209A protective orders are also called restraining orders. See 209A Protective Orders for details. Getting a protective order does **not** use the criminal courts. Getting a 209A protective order will **not** send your abuser to jail. But if you get a protective order and the abusive person does something that the order says he can't do, he is "violating" the order. Violating a 209A protective order can be a crime. He may end up going to jail if he "violates" a 209A protective order.

What will the police put in their report?

If you call the police or go to the police station, they will make a report. Some of the things that they may put in their report are:

- what you tell them. This is called your "statement;"
- what the abusive person tells them, if they speak with him. This is his "statement;"
- statements from other people who may have seen or heard the abuse;
- a description of the place where the abuse happened;
- things that they see, like you or your child looking upset, furniture turned over, broken objects, red marks or bruises or other injuries on you or your child;
- the time they got the call from you or someone else, the time they responded, and the name of the officers who responded; and
- any other information they think is important, like your abuser was drunk, or telling you about a hospital or shelter;
- they may attach photographs if you have injuries that can be seen. You can ask the police to take pictures of your injuries, if they do not do so on their own. You can also give them pictures that you or someone else took.

If I call the police and they write a report, will they file criminal charges against the abusive person?

The police might file criminal charges against the abusive person. They might not. If they have "reasonable cause to believe" a crime happened, they can file a criminal complaint or make an arrest.

Can I get a copy of the police report?

Yes, it is a good idea to get a copy of the report. Victims of domestic violence have the right to get a free copy of police reports about the domestic violence. If you want a copy of your police report, you can ask for one from the police department. You can usually get a copy in a day or two. If you have any trouble getting a copy, ask to speak to a supervisor at the police station.

If your case is in criminal court, you can also call the District Attorney's office for your county to get a copy of the police report. You can find the DA's office on the website for the Massachusetts District Attorneys Association. You can search for your local District Attorney by your county or bythe town you live in. You can also call your local district court, ask for the clerk's office and they can refer you to the DA's office.

Why would I want to file criminal charges against the abusive person?

You might want to file criminal charges against the abusive person because:

- It might show the abusive person that you are serious about stopping the abuse.
- Filing criminal charges means there will be a court record about the abuse. If the abuse happens again, the court might be more likely to send the abusive person to jail or counseling.
- The court might order your abuser to attend a batterers intervention program .
- In the future you may need to prove that you were abused so that you can get custody of your child, or get emergency public housing or other benefits. A criminal conviction of the abusive person for crimes is a good way to prove you were abused. There are also other ways to prove it.

Why might I not want to file criminal charges against the abusive person?

Many women decide not to file criminal charges against the people who abused them. Sometimes women think the court will not do anything. Sometimes women are scared that the abusive person will hurt them **more** if they decide to press charges.

These are things to think about. In some cases pressing criminal charges could make the person who abused you more likely to hurt you again in the future. It is also true that the courts do not always send a person to jail for a first offense, especially if the crime is not a felony. (A felony is a crime that can be punished by more than a year in jail.) Some domestic violence crimes are felonies, but some are not.

If you decide to press criminal charges, your safety plan should include how you will stay safe during this process. It is always a good idea to call a battered women's program and speak to an advocate who can help you decide what to include in your safety plan.

If I file a criminal complaint, will I have any say in how the criminal case goes?

You can decide to call the police or not. You can decide to file a criminal complaint yourself or not.

But if the police arrest the abusive person, the decision to start a criminal case is not always yours. The process will start whether you are ready for it or not.

Once the police arrest the abusive person or you file a criminal complaint, it is up to the District Attorney's (DA's) office to prosecute the case (make it go forward). The DA's office might ask you what you want to happen in the case, but it is **their** case, not yours. The criminal case is the state against the abusive person, not you against the abusive person. The name of the case will be the **Commonwealth of Massachusetts v. (your abuser's name).**

If you change your mind and want to stop the criminal case, the DA's office might agree to "drop" the charges. But keep in mind that the DA's office might not be willing to drop the case if they have enough evidence to go forward without you. If the DA's office wants to go forward with the case and needs your testimony, they can "subpoena" you. This means they can get the court to order you to testify.

The District Attorney might talk to you about the case, and might ask your opinion about the following things:

- the kind of sentence the abusive person should get,
- if he gets probation, the rules he should have to follow (the "terms of his probation"),
- if he should go to a certified batterers intervention program, and
- the types of "plea bargains" that sound fair to you. A "plea bargain" is when someone accused of a crime agrees to plead guilty and give up his right to trial, in exchange for being charged with a less serious crime and getting a lighter sentence.

If the abusive person does not plead guilty

It will be up to the judge or the jury to decide if the person who abused you is guilty or not guilty. If he is found guilty, the District Attorney's office will ask the judge to give the abusive person a particular sentence. You might be able to give your opinion on what should happen, but in the end it will not be your decision. The judge will decide the sentence.

How do I file a Criminal Complaint?

Go to the clerk's office in the District Court and ask for a Criminal Complaint form .

Part of the form will ask you what happened. You should fill this out carefully because it will be part of your statement to the court.

If you have trouble filling out this form or you need other help with your case, you can ask for help from the court's Victim/ Witness Advocate. The clerk at the desk may be able to tell you how to find someone to help you with the paperwork.

Once you have filled the form out, give it to the clerk to file.

Where can I file a criminal complaint?

You can file a criminal complaint at the District Court in or near the town where the abuse happened .

If the crime is a violation of a 209A Protective Order from a district court, you have two choices about where to file a criminal complaint.

1. You can file the criminal complaint in the District Court where the crime happened , or
2. in the District Court where you got the protective order.

Example

You live in Ware. You have a 209A protective order from Ware District Court. The abuser violated the order while you were shopping in Pittsfield. You can file a criminal complaint in either Ware District Court or Pittsfield District Court.

But if the crime is a violation of a 209A protective order from a Probate and Family Court, you probably **have** to file the criminal complaint in the District Court near where the crime happened.

If it is too hard for you to file in the District Court near where the crime happened because of distance or safety reasons, you can talk with the Victim/Witness Advocate in the District Court nearest to you. The Victim/Witness Advocate might help you file the complaint in the right court or ask the Victim/Witness Advocate in that court to help you.

You might want to file in the District Court where the crime happened even if you have the choice of a closer court because:

- possible witnesses are there;
- the police report is from there;
- the police officers who were involved are there; or
- there might be a related crime, like assault and battery, that is being prosecuted in there.

If I decide to file a criminal complaint, will there be anyone in court to help me?

If your case goes to criminal court, the District Attorney's office will prosecute the case. There are two kinds of people you will probably speak with in the DA's office:

- **The Assistant District Attorney (ADA):** ADAs are the lawyers who **prosecute** crimes. You will see them handle the arraignment, the trials, and any other hearings during criminal cases. The ADAs should talk to you about the case and help prepare you for talking to the court about what happened ("testifying").
- **The Victim/Witness Advocate (VWA):** Each District Attorney's office has a Victim/Witness Assistance Program. The people who work in this office help victims and witnesses of crimes. You will probably meet the VWA right at the start of the case. You should write down the name of the VWA who is on your case, and call them whenever you have questions or concerns about the case. The VWA often has a hotline telephone number. The VWA can help you:
- understand what will happen in criminal court,
- understand your rights,
- prepare for testifying against the abusive person in criminal court,
- write a "Victim Impact Statement" for the court,
- file for a 209A protective order (also called a restraining order),
- apply for help to pay some of your bills from the Victims' Compensation Fund ,
- understand how to file your own criminal complaint,
- find out if and when the abusive person will be let out of jail,
- get services that you need.

It is sometimes hard to remember who all of the people at the DA's office and the court are. It is fine to ask court staff, "Who are you? What do you do here?"

What will happen after I file a Criminal Complaint?

There is a person at the court called the "clerk-magistrate." The clerk-magistrate will schedule a hearing. The hearing is called a "show cause" hearing. The show cause hearing is to see if there are enough facts to show that what happened was a crime. The hearing may not be in a courtroom. It may be in a very small room. The court will ask the abusive person to go to the hearing. The abusive person may be at the hearing.

You have the right to make a statement at the show cause hearing. The clerk-magistrate will ask you to testify under oath about what happened. Tell the truth. Be sure that what you say is the same as what you told the police and what was on your complaint form.

You can bring any witnesses with you. Your witnesses can make statements too. Show the clerk-magistrate any photographs, police records, hospital reports, or property damage bills that you have. It is okay if you do not have any of these. You will still have evidence, because your statements made under oath **are** evidence.

The abusive person also has the right to make a statement. He may have a lawyer there. That lawyer may ask you questions.

The clerk-magistrate will decide whether or not he or she has enough facts to know if a crime happened. If she decides that she has enough information, she will issue a criminal complaint. If she decides that she does not have enough information to know if a crime happened, she will not issue a complaint. If she does not issue the complaint, the case is over.

What happens after the clerk-magistrate issues the complaint?

If the clerk-magistrate issues a complaint, he or she will then do one of two things:

1. serve the abuser with a "summons" ordering him to go to court for an "arraignment" or
2. issue a "warrant" for his arrest.

If the clerk-magistrate issues an arrest warrant, how will the arrest happen and how will I know about it?

If the clerk-magistrate issues an arrest warrant, then the police will find the abusive person and bring him to District Court for arraignment.

If the court is closed when the police arrest the abusive person, the police may put him in a jail cell until the arraignment. He might "post bond" (give the police money to hold). If he posts bond, he will be allowed to go free until the arraignment.

The police are supposed to tell you when they arrest the person who abused you. They are also supposed to tell you if they decide to let him go and when. They do not always remember to call and tell

you. If you do not hear from the police, you can call the Victim/Witness Advocate in the District Attorney's Office for help.

How is this different from the police arresting the abusive person without me filing a criminal complaint?

If the police arrest the abuser, the District Attorney's Office may file a criminal complaint. If the District Attorney's office files its own complaint, you do not need to file a complaint yourself. The case goes right to an "arraignment." There is no “show cause” hearing and no warrant for an arrest.

If the District Attorney's office decides not to file a complaint, you may choose to file the complaint yourself.

What happens at the arraignment?

An arraignment is a hearing. It is where the court formally charges your abuser with the crime.

If the person who abused you is arrested and the District Attorney files a criminal complaint against him, the first thing that will happen in court is the arraignment. If you file the criminal complaint yourself, the arraignment happens after the “show cause” hearing.

At the arraignment:

- the court tells the abuser the crimes it is charging him with;
- the court tells the abuser that he has the right to a lawyer;
- the abuser says if he is pleading guilty or not guilty;
- the judge sets bail (the amount of money that the abuser has to pay to get out of jail until his trial) and any conditions of bail (such as he can’t leave the state).

You do not have to go to the arraignment, but you can go if you want. The court will not ask you to speak at the arraignment. The Assistant DA may ask you to speak at another hearing, later on. He or she will send you a witness summons telling you the date you are to appear and testify about the abuse.

How does the judge set bail?

Setting bail is a way for the court to make sure that the abusive person shows up for his trial. By setting bail, the court makes the abuser pay money to the court. The abuser will only get his money back if he shows up for the trial. The courts believe that the higher the bail, the more likely he will be to show up again in court.

Usually when the court decides how much bail to ask someone to pay it is only thinking about how much money it will take to make the abuser come back to court.

But in some cases, the judge can think about the safety of the victim or other people in the community when he or she decides to set bail. This is called a "dangerousness hearing." The more dangerous the abuser seems to be, the higher the bail will be. If you think the person who abused you is dangerous,

you should ask the DA's office for a dangerousness hearing. Be prepared that you will probably have to testify in court if there is a dangerousness hearing. You should talk about that with the DA's office too.

In many cases, the abuser does not have to pay any bail. The court says that the defendant is "released on personal recognizance." “Released on personal recognizance” means the court trusts he will show up for the next hearings even without giving money to the court to hold (bail).

Will the abusive person have to go to jail after the arraignment?

The judge **may** send the abuser to jail after the arraignment, but probably not. If the judge does not set any bail, the court will let your abuser go until the trial. If the judge does set bail, your abuser will stay in jail until he pays the bail.

Will someone tell me if he gets released on bail?

The police should tell you if he pays bail and the court lets him go. Sometimes the police do not tell you. You can call the courthouse or the Victim/Witness Advocate to check. You should also review your plans to stay safe if he is released.

What happens after the arraignment?

Some time after the arraignment, the abuser will have to go to court for a pre-trial conference. At that conference, he may plead guilty to something that settles the case. If he does not plead guilty, the court will set a trial date. The Victim/Witness Advocate at the DA's Office should tell you about any dates.

Do I have to go to the Pre-trial Conference?

You may have to go to the pre-trial conference, you might not. The answer depends on the court and the prosecutor. The prosecutor is the District Attorney's office. The prosecutor might want you to come to the pre-trial conference. The prosecutor may be thinking of making a deal with your abuser and letting him plead guilty to a lesser crime than he was charged with. The prosecutor may want to talk to you about the facts of the case and what you want to see happen.

If the District Attorney thinks the only thing that will happen at the pre-trial conference is that a trial date will be decided, it might be a waste of your time to be there.

You should call the District Attorney's Office or your Victim/Witness Advocate to see if you need to go to the pre-trial conference. If you want to be sure that you know what is going on and that the District Attorney will consider what you have to say, you should think about going to the pre-trial conference.

If you go, you will not have to testify. But the District Attorney or the court might ask for your opinion.

What happens if the abusive person pleads guilty at the pre-trial conference?

If the abusive person pleads guilty at the pre-trial conference, the case will be settled that day.

If you are at the pre-trial conference, the Assistant District Attorney (ADA) who is prosecuting the case will probably ask you what you want to see happen. He may or may not follow your wishes.

Then the judge will sentence the abusive person. The ADA can tell the judge what he thinks the sentence should be, but it is up to the judge to decide. You can ask the ADA what types of sentences are possible in the case.

What happens if the abusive person pleads not guilty at the pre-trial conference?

If he pleads not guilty at the pre-trial conference, the case will be set for trial. If it is a complicated case, there may be more hearings before a trial. The District Attorney's office should send you a letter telling you about any hearings and whether or not you need to go to them.

The abuser could change his plea to guilty at any of these hearings. He could even change his plea to guilty on the day of trial!

What does a trial mean for me?

The District Attorney's office will probably call you or write to you before the trial date. They will probably want to interview you.

You should let the District Attorney's office know as soon as possible if you have names of witnesses, medical records, tape recordings, photographs, property damage bills, or anything else that will help them prepare their case.

You do not have to tell everything to the District Attorney's office or the Victim Witness Advocate. It is important to help the DA's office as much as you can, but you do not have to tell them everything about your life. For example, if the DA wants you to sign a release so they can talk to your therapist, you can refuse to sign it. It's okay to say no to some things.

What do I do if the person who abused me contacts me or wants to talk to me?

He should not contact you if you have a 209A protective order or if the court told him at his arraignment not to contact you. If there is an order telling him not to contact you and he contacts you anyway, then he is violating the court order. You can report this to the District Attorney's office, the Victim/Witness Advocate, or to the police.

He should not contact you. If he wants to talk to you about the case he should do it through his lawyer. You should not contact him either.

What if his lawyer contacts me or wants to talk to me?

His lawyer is not doing anything wrong by trying to talk to you. But you do not have to talk to his lawyer before the trial. If you do not want to talk to the lawyer, just say so. If the lawyer wants to try to settle the case, he or she should do it with the District Attorney's office, not with you. If the lawyer wants to ask you questions, he or she can do that during the trial, while you are in court testifying.

But if you want to talk to the abuser's lawyer before the trial, you can. It is up to you.

It is very important that you figure out who the abuser's lawyer is, and to be careful when you speak to him or her. That lawyer is there to represent the abuser. He or she may try to confuse you. The abuser's lawyer may use whatever you tell her to confuse your testimony in court.

When do I get to tell what happened?

If there is a trial, the District Attorney's office will ask you to tell the court what happened. Telling the court what happened is called "testifying," You will have to swear to tell the whole truth and nothing but the truth. You will testify on the witness stand, in front of the judge and maybe a jury. An Assistant District Attorney will ask you questions about what happened. The abusive person's lawyer will also ask you questions.

The abusive person and his attorney **will** be in the courtroom. Other people may be sitting in the courtroom. You can bring friends and family members to be in the courtroom if you want.

Sometimes there is no trial. The abusive person may agree to a "plea bargain." If the abusive person agrees to a plea bargain, you may not get to tell a judge or jury what happened.

What else happens at the trial?

If there were other witnesses, including the police, they will also be asked to testify. The abuser may testify, too, but he does not have to. Once everyone has testified, either the judge or a jury will make a decision.

What happens if the judge or jury decides the abusive person is guilty?

Many things can happen if the judge or jury decides the abusive person is guilty. The court might send him to jail or give him probation. The court may order him to go to counseling or do other things. It depends on a lot of things, like the type of crime and his past criminal record.

You can talk to the Assistant District Attorney about the types of sentences your abuser might get.

What happens if a judge or jury decides the abusive person is not guilty?

The abusive person will be free to leave the court after the trial if the judge or jury decides he is not guilty. You cannot file another criminal complaint about the same event. If he abuses you again, you can file a new criminal complaint about the new abuse.

There is always the chance that the abuser will walk out of the court after the trial. You need to think about your safety. It is good to do some safety planning before the trial about how to get home safely that day and how to stay safe afterwards.

I am still confused about how this works. Who can I talk to about it?

You can call the District Attorney's office and ask to speak to a Victim/Witness Advocate. Tell them you are trying to decide whether to file a criminal complaint and that you are not sure what to expect. They can explain everything to you.

Some Victim/Witness Advocates might pressure you to go forward with the criminal complaint. It is their job to guide victims of crime through the criminal justice system. For this reason, you may want to talk to a battered women's counselor before you speak with a Victim/Witness Advocate. If you want to talk to a counselor from a program focusing on same-sex violence, you can also call the Violence Recovery Program, the Network for Battered Lesbians and Bisexual Women, or theGay Men's Domestic Violence Project.

Also, you may want to call a private lawyer. Legal aid programs in Massachusetts do not handle criminal cases. There are a number of lawyer referral programs that can refer you to a private lawyer. If you have low income, they may charge you a lower rate. Some private lawyers do not charge for a first visit or phone call.

Do I have any rights in the criminal system?

In Massachusetts, we have a "Victim Bill of Rights." As the victim of a crime, you have the following rights:

- The right to information about the Criminal Justice System;
- The right to information about the criminal case involving you;
- The right to go to court hearings and be heard;
- The right to prepare a "Victim Impact Statement;"
- The right to talk to the District Attorney's Office at important points in the case;
- The right to money for certain items and costs from the Victim Compensation fund, witness fees, and "restitution" (money that the court might charge the person who abused you);
- The right to be told where the person who abused you is, such as: if he moves to a less secure facility; if he has been let go for some period of time or permanently; if he escapes; or if he will get parole;
- You may have the right to get more information about the abuser's criminal record and whether or not he is meeting the terms of his sentence;
- The right to other protections in the Criminal Justice System.

For more information on these rights, call the Victim/Witness Advocate.

The person who abused me is in jail, but not for a crime against me. I am afraid of him. How can I find out when he is getting out of jail?

There is a form that you can use to find out when the abuser is getting out of jail, even if he is in jail because of a crime against someone else. The form is called an Application for Notification of an Offender's Release.

You can get this form from the Victim/Witness Advocate. You can also get it online from theCriminal History Systems Board ("CHSB") in Chelsea. There are Victim Services Advocates at the CHSB, also. You can call the CHSB at (617) 660-4600, TTY: (617) 660-4606

209A Protective Orders

What is a 209A protective order?

A 209A protective order is a court order that protects you from being abused by a member or former member of your household or family or someone you have been dating. It is called a 209A protective order because the law that created it is Massachusetts General Laws Chapter 209A.

Is it the same thing as a "restraining order"?

Protective orders are also called "restraining orders," "abuse prevention orders," or "209A's." In this manual we use the term 209A protective order, because the order does more than just "restrain" your abuser. It protects you in other ways too. 209A protective orders say “Abuse Prevention Order” at the top of the order.

You may also hear about "Domestic Relations Protective Orders." These orders are like 209A protective orders but they are given as part of divorce, paternity and support cases in Probate and Family Court. Domestic Relations Protective Orders can give you the same protections as 209A protective orders. You should talk to a lawyer if you think you need a Domestic Relations Protective Order under one of these cases. You may qualify for free legal services. The information in this manual does not cover Domestic Relations Protective Orders.

There are other types of restraining orders that are not 209A protective orders. For example, you get a restraining order to stop harassment. You can get a restraining order to keep a neighbor from dumping garbage on their front lawn. Or one person can get a restraining order to keep another person from spending all the money in a joint bank account until the court says it is ok. But we do not talk about **those** types of orders in this manual. We will be talking only about the kind of order that protects you from abuse by a member or former member of your household or family or someone you have been dating.

What is the difference between criminal charges and a 209A protective order?

Criminal charges are cases handled by the district attorney. The district attorney is the one who files the complaint, or who goes forward with a complaint filed by the victim. Criminal cases are for breaking criminal laws like laws against assault and battery, stalking, or criminal harassment. If a person is found guilty in a criminal case, he can go to jail or prison, get probation, have to go to a counseling program, and/or have to pay a fine.

A 209A protective order case is a **civil case.** This means that it is filed by one person against another person. The district attorney does not get involved in civil cases. The person who abused you will not be arrested or fined just because you get a 209A protective order. Instead, the court orders him to do or not to do certain things.

If the court gives you a 209A protective order and the person abuses you again, the person may be violating your order. Violating a 209A order is a crime. 209A orders say so right at the top. The violation might be a crime. The police can arrest someone for violating a restraining order.

You can file for a 209A protective order even if there are already criminal charges against your abuser. The 209A protective order does different things than criminal charges.

You also can get a 209A protective order if you do not file criminal charges against the person who abused you. If you get a 209A protective order without filing criminal charges, you can still decide to file criminal charges later as long as you do not wait too long.

How Can a 209A Protective Order Help Me?

You can ask for a 209A protective order against a person if:

- you are married to the person;
- you used to be married to the person;
- you are dating the person;
- you used to date the person;
- you have a child with the person;
- you live in the same home as the person;
- or you used to live in the same home; **or**
- you are related by blood or marriage to that person (for example, a cousin, brother-in-law, brother).

If you need protection from someone who is in your "family" but who is not on this list, you might still be able to get a 209A protective order. You may also be able to file a criminal complaint against the person. See Criminal Complaints.

Can I get a 209A protective order if my partner did not hit me?

You can get a 209A protective order against any person on the list in Question 3 who has:

- **hurt** you physically;
- **tried** to hurt you physically;
- **made you scared** of getting physically hurt; or
- **forced you** to have sex or sexual contact, or **made you** have sex or sexual contact by threatening you or making you feel that you have no choice.

What does a 209A protective order do?

A 209A protective order is a court order that says the abusive person must not do certain things. If the person does these things anyway, he is "violating" the order. It is a crime to violate a 209A protective order and the police can arrest him. A 209A protective order can also order the abusive person to do things like pay utility bills or child support.

You can ask the court to order whatever you need to be safe. Some examples of what the court can do as part of a 209A protective order are:

- order the person to stop threatening, hurting, or abusing you or your child;
- order the person not to contact you or your child in any way;

- order the person to stay away from your home or apartment building, or other places like your job, your school, or your child's school or day care. The order might say that the person has to stay at least 100 yards away from you and these places.
- order the person to move out of your home, if he lives with you;
- keep your addresses secret so the person does not find out where you live or work.
- give you temporary custody of your child;
- order the person to support you;
- order the person to support your child;
- order the other person to pay you for any expenses that his abuse caused, like lost wages, medical bills, broken locks, changing locks, or damaged property;
- say that the person can't see your child's school records or go to meetings at the school;
- order the person not to turn off utilities which are in his name, or order him to turn them back on if he has already turned them off;
- order the person to give his firearms identification card and any guns or weapons to the police;
- order the person to give you **all** the keys to the house;
- order the person to give you the family car and the spare keys;
- order the person not to spend or take money from a bank account for a short period of time;
- tell the police to go with you to pick up your things;
- order the person to take the police with him if he is picking up his things;
- send the person to a certified batterer's intervention program. A **Probate and Family Court**judge can **order** him to go to a program before he visits your child. A **District Court** judge can **only recommend** that he go to a program as part of a 209A protective order. If he violates the 209A protective order, the District Court can then order him to go to a certified batterers program;
- order any other reasonable thing that you need to feel safe. If you need to get your pets out of the home, ask the judge to order the other person to let you get your animals. If you need something else, ask the judge to order it.

Will a 209A protective order help me stay safe?

If you get a 209A protective order, it might help you stay safe. But it might not. Sometimes, trying to get a 209A protective order can make things worse.

A 209A protective order is an official order from a court. It tells the other person that you are serious about stopping the abuse. It also lets the police arrest the other person for doing things that are against the order.

Example

You have an order that says the person must stay at least 100 yards away from your house. If he walks up to your front door and rings the doorbell, you can call the police and ask them to arrest him.

But a 209A protective order is not a bullet proof vest. It is a piece of paper. It might scare the other person into staying away from you. If you have a 209A order the police can do more to help you. But the order might not be enough to stop the other person from hurting you. Sometimes a court order makes an abusive person angrier and more likely to hurt you.

You know the person who is abusing you. **You** know if he is someone who will respect an order from a court. **You** know if he is someone who won't care if there is a court order and will do whatever he wants anyway. **You** also know if getting an order from a court is likely to make him mad enough to want to hurt you more.

If you do get a 209A protective order, it should only be one part of your personal safety plan. You should make a full safety plan that says what you will do to escape or to protect yourself if the other person abuses you even though you have an order. You can get help with making a safety plan. Most battered women's programs have counselors who can talk to you and help you make a plan. Call Safelink to find a program near you.

Where Can I Get a 209A Protective Order?

You can get a 209A protective order at the District Court near where you live or the Probate and Family Court in your county.

You can also go to the Superior Court in your county. If you live in Boston, you can go to the Boston Municipal Court near where you live. Most people get 209A protective orders from District Court, Boston Municipal Court, or Probate and Family Court.

If you have moved to another town in Massachusetts since the abuse, you can go to the court where you live now **or** to the court where the abuse happened. It is your choice.

In this chapter, everything we say about the District Court also applies to the Boston Municipal Court and the Superior Court.

Is it better to go to District Court or to Probate and Family Court?

It is up to you. Some things to think about when you are deciding which court is better for you are:

Travel and distance

- If it is hard for you to get places that are far away, find out which court is closer to you. You might want to pick the closest court. There are more District Courts than Probate and Family Courts, so the District Court may be closer to your home.
- Find out when the courts near you are open. In some counties, the Probate and Family Court is only open part of the day. If you go to a Probate and Family Court when it is not open, they will send you to the District Court. You might want to call both the District Court near you and the Probate and Family Court in your county to find out when they are open.

Help with the papers and the hearing

Many courts have advocates in the courthouse who can help you file for a 209A protective order. Advocates may be from:

- SAFEPLAN, a program of the Massachusetts Office of Victim Assistance (MOVA). SAFEPLAN advocates work with local domestic violence programs.

- the District Attorney's office Victim/Witness Advocate program;
- a battered women's program; or

If you want **someone to help you**, find out which court near you has an advocate at the courthouse.

If the other parent wants to visit your child

The District Court is not supposed to order visitation between the other parent and your child as part of a 209A case. If the District Court judge asks you if you want to set up a visitation schedule, **you have the right to say no.**

- The Probate and Family Court **can** write a visitation schedule into a 209A protective order,**but only if you agree to it.**

If you want to get visitation settled right away, you might want to go to the Probate and Family Court to file for the 209A protective order. If you don't want the court to decide about visitation, you might want to go to the District Court for your 209A protective order. If you start in the District Court and the other parent wants to visit your child, he will have to go to the Probate and Family Court and file a new case there.

If you go to the Probate and Family Court, you should be prepared to talk about visitation. If it is not safe for the other parent to visit your child, you can ask for no visitation. If it is safe for the other parent to visit your child, you should think about what kind of visitation schedule you want. Write it down and be prepared to give it to the court. That way, your 209A protective order can set a visitation schedule that will work for you.

If you have a custody or child support order from the Probate and Family Court

District Courts are not supposed to put anything about custody or child support in a 209A protective order if the Probate and Family Court has already made orders about custody or child support. You can still get a 209A protective order from a District Court, but it will not say anything about custody or child support. If you need the order to give you custody or child support, you have to file for your 209A protective order in the Probate and Family Court that made the custody or child support order.

If you go to the District Court, the clerk may try to send you to the Probate and Family Court. You have the right to file for a protective order in the District Court, even if the Probate and Family Court has made custody or child support orders. The District Court can still give you a protective order to keep you safe, even if the judge can't make a decision about custody or child support. Tell the clerk that you want to be heard by the District Court judge.

In an emergency, a District Court judge can make custody or visitation order that conflicts with an order of the Probate and Family Court. Read more about what District Court judges can do about conflicting custody or visitation orders in an emergency.

If the abusive person is facing criminal charges related to the domestic violence, you might want to file for your 209A protective order at the District Court where that case is. That way, you may be able to work with the same Victim/Witness Advocate for both cases.

What if the courts are closed when I need the order?

There is always a judge on call through the "Emergency Judicial Response System." Call the police if you need a 209A protective order at night, on the weekend, or on a holiday. They will help you get an emergency 209A protective order from the judge who is on call.

An order from an on-call judge is good until the court opens the next business day. The police will tell you when and where to go to get the emergency order continued.

What if I go to the "wrong" court?

If you need a 209A protective order, you are supposed to go to the court that covers the area where you live. If you moved away because you were being abused, you can still go to the court where you used to live. You can also go to the court that covers your new residence.

You may end up at the “wrong” court, a court that does not cover either your new or your old residence. If that happens, the judge is not supposed to just send you away to the "right" court.

What if I go to court and there is no judge on duty?

If you go to a court and there is no judge on duty, the court clerk should help you get a hearing with a judge at another court, over the telephone.

How Do I File for a 209A Protective Order?

Go to the court. If you have police reports, medical records, or pictures showing the abuse, bring them with you. Don't worry if you don't have any of these things.

When you get to the court, go to the civil clerk's office. Tell the clerk that you want to file for a 209A protection order. The court clerk will give you some forms to fill out, including:

1. Instructions for Plaintiffs: A person who files a complaint in court is called a "plaintiff." This form tells you how to fill out the other forms. The instructions are on the third page of the Complaint for Protection from Abuse form.
2. Complaint for Protection from Abuse: This form is two pages. The first page has blanks for you to fill in with names and basic information about you, your relationship to the defendant, and what you are asking the court to order.
3. There is a separate Confidential Information form for your address and phone number so you can keep them secret from the abusive person.
4. You fill out the second page of the Complaint if you have a child and you want the court to include anything about your child in the order.
5. Affidavit of Abuse: This form is on the back page of the **Complaint for Abuse Prevention** form. You need to write on this form why you need the 209A protection order. You do not need to write a lot, but you need to be clear and you need to write down **exactly** what happened. Do not just say, "He threatens me." Instead, write down the things he said or did: "He told me he would get his gun and shoot me." Write down the things that happened most recently. Also write down what he did before.

6. Affidavit Disclosing Care and Custody Proceedings: The clerk should only give you this form if a child is involved. The form asks if there have been any other court cases about your child's custody or child support.
7. Confidential Information form: You put your name, home address, home phone number, workplace name, work address, and work phone number on this form. This information is "confidential," which means it is secret.
8. If you do not want the abusive person to find out your home address, workplace, or school address from the order, go to section J on the Complaint form, check the appropriate boxes 4a, 4b, or 4c.
9. Defendant Information form: This form asks for information about the abusive person. The court uses it to look up his criminal record and to serve him with a copy of the order.

Fill out these forms and give them back to the clerk.

Can I keep my address secret from the abusive person if I fill out these forms?

Yes!

When you file for your abuse prevention order, you do not put your home address, home phone number, the name of your workplace, work address, work phone number, the name of your school, or your school address on your Complaint for Protection from Abuse. You put that information on a Confidential Information form. This form is kept in a different file somewhere in the court so the abusive person can't see it.

Also, if you do not want this information to appear on your Abuse Prevention Order, be sure to check boxes 4a, 4b, and 4c in section J of your Complaint for Protection from Abuse.

You still need to be careful even if you get the court to keep your address secret. There are many other ways that the abusive person can find out where you live.

Is the Confidential Information form the same as the Address Confidentiality Program?

No. The Address Confidentiality Program is something different. It tells government agencies to keep your address secret. It sets up another mailing address for you. Government agencies send mail to the other address. You can use this other address on any form that asks for your home, work, or school address. The Address Confidentiality Program staff will forward mail to you at your real address. This way nobody knows your real address except the Address Confidentiality Program and the post office.

To use this program, you must:

- Live at a new address that the abusive person does not know **and**
- Showthat your life or your child's life will be in danger if the abusive person learns your address

If you use this program, you must **never** tell the abusive person or any government agency what your address is. If you want to apply for this program, ask the court clerk about it. The clerk at the District Court or the Probate and Family Court may be able to help you. Your local domestic violence agency also may be able to help you. You can also apply by calling the Address Confidentiality Program at 1-866-SAFE-ADD.

Is there someone in the courthouse to help me fill out the forms for the 209A protective order?

In some courts, the clerk will help you fill out these forms. But the clerk cannot go in front of the judge with you or give you any legal advice.

There may be an advocate in the courthouse who can help you with the paperwork and stand with you in front of the judge. Ask the court clerk if there is an advocate who can help you. The clerk will know.

If there is an advocate at the courthouse, the advocate will not be someone who works for the court. The advocate probably will not be a lawyer. The advocate may be:

- a Victim/Witness Advocate from the District Attorney's (DA's) office; **or**
- a SAFEPLAN advocate. SAFEPLAN is a program of the Massachusetts Office of Victim Assistance (MOVA). SAFEPLAN advocates work with local domestic violence programs; **or**
- an advocate from a battered women's program/shelter or another social service agency.

What happens after I file the papers?

- After you fill out the forms, give them to the clerk.
- The Probation Department will run a "check" of the abusive person's criminal history. They will find out if there have been any other protective orders against him. After the probation department runs their "check", the clerk will bring your forms and the information from the Probation Department into the courtroom.
- Then you will go to the courtroom for a "hearing." The courtroom is where you talk to the judge.
- What will happen in the courtroom?
- In the courtroom, you will have an "ex-parte" hearing. “Ex parte” means that you will talk to the judge without the abusive person there. The judge will look at the forms that you filled out and read your statement.
- The judge may ask you questions about why you need a 209A protective order. Tell the judge what happened. Talk about the facts that you wrote down in your statement. If you brought police reports, medical records, or pictures about the abuse, show them to the judge.
- If there is an advocate with you, the judge may let the advocate talk for you. The judge may ask her questions about your case. Or the judge may let the advocate stand with you, but may want you to do the talking.
- The judge will tell you right away if she is going to give you the protective order.
- If the judge decides to give you a protective order, she will fill out and sign an Abuse Prevention Order form.

What Happens After the Temporary Order?

If the judge gives me the order, what happens next?

The 209A protective order that you get from the first hearing is temporary. The temporary order will last for up to ten days. The abusive person has the right to talk to the court at a second hearing. You will need to go back to court for the second hearing to get an order that lasts longer. There are ways to stay safe at the second hearing.

At the end of your first hearing, the judge will tell you the date for the second hearing. The judge will then give the file back to the clerk's office to type up the order. It might take a little while for the clerk's office to type it.

You should wait to get a copy of the order from the clerk's office. **Read the order before you leave the courthouse to** make sure that the information on it is right. If something is not right, go back to the clerk and explain what is wrong. If the clerk can't help you, you will need to go back in front of the judge to get the order corrected.

Once you have the order, **keep a copy of it on you at all times.** It is important to have the order on you so you can show it to the police if the abusive person does something that is against the order.

If the order says the abusive person must stay away from your work or your child's school, make sure you give those places a copy so that they know. You may also want to keep spare copies of the order in other places, like your car, with your babysitter, your child's doctors, your friend's house, your parent's house, etc.

If you lose your copy of the order, you need to go back to the same court and ask them for another copy.

What happens after I get my copy of the temporary order?

The police have to serve the abusive person with the order so that he knows about it. The order does not start working until he gets notice of it.

The clerk's office will tell you whether they will send the order to the police or whether you must take the order to the police.

Note

The order does not start working until the police serve the abusive person with a copy of the order. It may take the police a little while to find him. The police should tell you when they have given him a copy of the order. Check with the police if you do not hear from them within a few hours.

If your order says that the abusive person must leave your home, the police will serve him and they will wait while he leaves.

If I have my temporary order, why do I have to go back to court so soon for a second hearing?

If you want to keep your 209A protective order, you must go back to court on the date the judge sets for the second hearing. The order runs out on the date of the second hearing. The second hearing is set up to give the abusive person a chance to tell the judge his side of the story.

The date for the second hearing is **usually** 10 days after the first hearing. Sometimes the second hearing is called the "10-day hearing." But some courts will set a date for the second hearing in less than ten days.

What happens at the second hearing if the abusive person did not get a copy of the order from the police?

If the police are not able to serve the abusive person with a copy of the order before the date for the second hearing, the judge will set a new date for the second hearing. The new date will probably be another 10 or so days later. The judge will write something saying that your temporary order is good until the new date.

What happens if he got a copy of the order but does not show up for the second hearing?

The hearing will go forward as long as he got "notice" of the hearing (he was served with the papers). If he does not show up, the judge can go ahead and give you a new order that lasts longer. The judge may ask you a few questions about:

- what happened,
- why you need the order, and
- what you want the order to say.

Be prepared to explain what happened again, just in case.

What happens at the second hearing if he does show up in court?

If the abusive person gets a copy of the order and shows up for the second hearing, there are a few things you should know. He will have had a chance to read your statement. You will both need to be in the courtroom for the hearing. This can be very scary. Maybe you have not seen him since the last time he abused you, and you are afraid of seeing him. If you can, bring someone with you for support: a friend, a family member, or an advocate.

- If he threatens you while you are there, you can tell the clerk or the “court officer” right away. The “court officer” is the man or woman in a security uniform in the courtroom.

The judge will let both you and the abusive person explain what happened. You will get a chance to explain why you need the order. He will get a chance to say why he thinks you do not need the order. The judge will probably want you both to stand up close to her bench. If your abuser tries to stand next to you, you can ask the court officer or your advocate to stand between you.

Before the hearing, try to think of **all** the things (including untrue things) that the abusive person might say. You want to know what to expect. At the hearing, make sure to keep your cool, no matter what he says. **Never** talk directly to the abusive person while you are in front of the judge. Speak to the judge.

If the abusive person says something that is not true, tell the judge that he is not telling the truth. Most of the time, you should try not to interrupt the abusive person while he is talking to the judge. But, if he says really crazy things, you can say: "Objection, your honor. May I interrupt for a minute?" or, "May I be allowed to respond when he is finished?" If the judge lets you respond, do **not** stoop to your abuser's level. Instead, explain **why** what he said is wrong, and tell the judge what really happened.

If you have any of the following things, be sure to bring them with you and show them to the judge:

- medical records about your injuries from the abuse,
- police reports about the abuse,
- photos of what you looked like after the abuse,
- objects or clothing that the abusive person broke or tore,
- any person who saw the abuse and is willing to talk to the judge about it,
- any other documents you think would help the judge understand what really happened.

Do not worry if you do not have any of these things. What you say in court also counts as "evidence."

At the end of the hearing, the judge will tell you if she is going to give you the 209A protective order.

How long should the order last?

Guideline 6:02 (page 117) says that the order should be extended for one year.

The order can last for less than a year if you ask for a shorter period or if the judge decides that a shorter period is justified. The Guidelines say that it should not be court routine or policy to issue orders for less than a year.

What can I do if the judge does not grant the order?

In some cases, the judge decides not to give a 209A protective order. If this happens to you, and you still think you need the order, talk to an advocate about what you can do to appeal the judge's decision.

What Happens When the Order "Expires" (ends)?

Your order will only be good for a set amount of time. For example, it might be good for six months or for a year. When you read the order, you will see that it says when the order will expire (end).

When you get your order, you will also see that you have a court date set up for the day that your order expires. If you still want the order at that point, you can go back to court and ask the judge to make the order good for another year. It does not matter if anything new has happened between court hearings. What matters is if you are still afraid that the abusive person will harm you or your child.

If you do not go back to court on that day, your order will expire on that day.

Remember

Any orders for custody, child support or visitation that you had on the 209A protective order will also expire with the protective order.

If you want the custody, support, or visitation orders to continue but you do not want your 209A order to continue:

- you must file a new case in the Probate & Family Court;

- You must also file a motion for temporary custody, child support or visitation orders when you file the new case. Temporary orders might allow you to keep the custody, support and visitation the same while you wait for your new case to be decided.

Can I get a permanent 209A protective order?

Yes. A judge can give you a permanent protective order. The judge cannot make your first order permanent, but the judge can make the next order permanent. When your first order expires, you can ask the judge to give you a permanent order. You can also ask for a permanent order at later hearings, when you ask the court to extend the order for a second or third time.

Judges do **not** make orders permanent in most cases. They only make orders permanent when people need permanent orders. If you think you need a permanent order, tell the judge why you need it.

It is a good idea to talk to an advocate or a lawyer for more information about getting a permanent protective order. To talk to an advocate, contact SAFEPLAN. Call your local legal services office to see if you can get free legal help.

Who Keeps Copies of My 209A Protective Order?

The court record system, the court probation department, and the police keep records of each 209A protective order.

The court keeps a copy of your protective order in your case file in the Court Activity Records Information (CARI) database.

The court's probation department also gets a copy of your protective order on the same day that the judge signs it. The probation department puts information about your order into the "Statewide Registry of Civil Protection Orders." This is a computer database that has records of new and old 209A protective orders from all over Massachusetts.

The court also sends two copies of your order to the "appropriate law enforcement agency." That usually means the police in the city or town where the abusive person lives. If no one knows where to find the abusive person, then the court sends two copies of the order to the police department of the city or town where you live. The police department keeps one copy and serves the other on the abusive person. The police should put information about the order into a database.

What if I need help from the police but I don't have a copy of my protective order with me?

The police can enforce (act on) a 209A protective order even if you do not have a copy of it when you call them for help. The police officers can check the police database and see information about the order there.

Is it still a good idea to keep a copy of my protective order with me?

Yes.

If you have a copy of your 209A protective order with you, the police won't have to check the database first when you call them for help. This might mean that they can help you more quickly.

Also, there may be other people who need to know about your protective order, such as people at your workplace or at your child's school. These people won't have any way to know about the order unless you show or give them a copy of it.

How does the probation department use its database of protective orders?

The probation department checks the "Statewide Registry of Civil Protection Orders" each time a person asks for a new protective order or an extension of an old order. The probation department tells the judge if the abusive person has had other 209A protective orders against him. The probation department also tells the judge if there is a warrant against the abusive person.

If I get a 209A protective order in one town, will it work in other towns or states?

Your 209A protective order is good in every town in Massachusetts. It does not matter which town you got it in.

In fact, you should bring a copy of your 209A protective order to the police departments:

- where you live,
- in the town where you work **and**
- in the town where your child goes to school or day care.

You should also give a copy of the order to someone in your workplace and to your child's school or daycare so that they know to call the police if the abusive person shows up.

What if I go out of state?

There is a United States law that says that every state must enforce protective orders from other states. This law is called the "Violence Against Women Act."

But states do not all follow this law in the same way. If you have a 209A protective order from Massachusetts and you are planning on leaving the state, you may want to call a battered women's program in the state where you are going to find out how **that** state treats out-of-state orders. You can also call the **National Domestic Violence Hotline** **1-800-799-SAFE; TTY 1-800-787-3224** to see if they can give you information.

What happens if the abusive person does something against the 209A protective order?

If the abusive person does something that your 209A protective order says he can not do, it is called a "violation" of the protective order.

It is a crime if the abusive person violates the order by abusing you, contacting you, or coming nearer to you than the order says he can.

The part of the 209A protective order that says “no contact” means that the abusive person is not allowed to contact you himself or through other people, letters or mail, phone calls, gifts or in any other way. **No contact means NO contact**! If he tries to contact you in any of these ways, he is violating the order.

If he does violate the order, report it to the police. The police can arrest him. If the police saw the violation themselves, or if they have good reason to believe he violated the order, they **must**arrest him. If the police arrest him and charge him with a crime, you will have to go to court. ReadCriminal Complaints for more information.

If the police are not involved or do not arrest him or file a criminal complaint against him, you still have the right to go to the District Court and file a criminal complaint against him yourself.

Will I be violating the 209A protective order if I let him back in the house, or call him or go to see him?

No. The abusive person who is named as the "defendant" on your 209A protective order is the only person who can violate it. **You** can't violate the order that is against him. If **you** call or go to see**him** because you need to talk about the kids or something else, **you are not** violating the Order. But if the order says **he** can't contact **you** and he does anyway, then **he is** violating the order.

Important

If you **do** call him or go see him or invite him over, the police and the court might think about this if you need their help in the future. If you contact him, the police might not be willing to arrest him or charge him with a crime in the future just for contacting you.

What should I do if we are getting back together?

If you want to get back together, or even just talk to him or see him, you can:

- ask the court to change the order. The court can drop the "no contact" part of the order but **keep the "no abuse"** part of the order. You can still have an order saying that he can't abuse you, but he won't get in trouble just for contacting you or being with you. You can also ask the court to drop other parts of the order. Make sure that you read the order and think about the parts you want to keep and the parts you want to let go. Then go to the court and tell the clerk that you want to make a motion to change your order. Use the Plaintiff's Motion to Modify or Terminate Abuse Prevention Order form. Check the box on the form saying that you want the 209A order to be modified. Write on it how you want the order to change. Make sure you say which parts of the order you want to drop and which parts you want to keep, and why. **Or**
- Get the 209A protective order "terminated." This will end the order completely.

How do I get the 209A protective order ended?

If you want to end your 209A protective order, you can ask the court to end it. This is called getting the order "terminated." You might want to do this if you have gotten back together with the other person. Sometimes people get orders terminated because they feel the order has put them in **more** danger.

You can get the order terminated any day during the court's regular business hours. Go to the court that gave you the order. Tell the clerk that you want to ask the judge to terminate the 209A protective order. Use the Plaintiff's Motion to Modify or Terminate Abuse Prevention Order form. Check the box on the form saying that you want the 209A order to be terminated. Write why you want it terminated.

You may want to keep the order but ask that certain parts of it be dropped. You can ask that the "stay away" and "no contact" parts of the order be dropped, but still keep the parts of the order that say he can't abuse you. This way, even if you get back together or you want to be able to talk to him, he will still know that he can be arrested and go to jail if he hurts or threatens you.

What if the abuser files a protective order or criminal case against me?

Many times abusers try to get 209A protective orders against their victims in order to get back at them. Judges know this. The judge may not give the abuser a protective order against you even if he asks for one. But sometimes abusive people **are** able to get protective orders against their victims.

If you try to get a protective order and the person who abused you also asks for one against you, the court may write up "mutual restraining orders." This means that each of you has a protective order against the other. If a judge orders mutual restraining orders, the law says that the judge has to write down the reasons why she is writing restraining orders against both of you. She also has to write down who the "primary aggressor" is. This means that the judge has to decide which person is most likely to abuse the other. She needs to write this down so that the police will know what to do if there is a problem. See Abuse Prevention Guidelines 6:07 (page 136).

If you get served with a 209A protective order against you, take it seriously. Go to the hearing, no matter what anyone tells you. If you don't go to the hearing, the judge may give the person who abused you a protective order against you. You do not want that to happen, for many reasons:

- The abuser may lie about you or make up things you did so he can get a criminal case filed against you.
- If the abuser gets an order against you, it takes attention away from his own abusive behavior. It makes it seem like the domestic violence was your fault as much as it was his fault.
- It is dangerous for you. If you each have protection orders against each other, the police may not know what to do when there is a problem. You might have trouble getting the police to arrest him for violating your order. This makes you less safe.
- It lets the abuser hurt you by using the very system that was set up to protect you.

Go to court on the date of the hearing and tell the judge what really happened. If you can, talk to an advocate or a lawyer before going to court. Try to get an advocate or lawyer to help you in this hearing. If you cannot find an advocate or lawyer to help you, there are some things you should make sure you tell the judge at the hearing. If any of the following things are true in your case, remember to tell the judge:

- You are the victim of domestic violence. If you can, tell the judge about the history of how the other person has abused you, past injuries, medical records, police calls, etc. Bring police or medical reports, pictures, or witnesses if you can. If you don't have any of these things, make sure to tell the judge some details about what happened.

- If you think the abuser is only trying to get an order against you because you left him, or because you have an order out against him, or because he is trying to get custody, or because you have a new boyfriend, or because his buddies told him to, etc. - tell the judge.
- If you never physically hurt or tried to physically hurt the person who abused you, tell the judge.
- If you never made him scared of being physically hurt by you, tell the judge.
- If you never made him have sex with you against his will, tell the judge.

Before you go into the courtroom, read the statement ("affidavit") that the abuser filled out when he got his temporary order. You can get this affidavit from the file in the clerk's office. If there are statements in that affidavit that are not true, tell the judge the truth.

The judge should only issue a mutual 209A protective order (one that is against both of you) if she believes that you are each **truly** in danger from the other. If the judge does issue an order against both of you, she must write down the facts that made her decide that you are both in danger from each other. Her written report of these facts is called her "findings." If the judge gives the abuser a protective order against you, ask for a written copy of the findings. You may want to show them to a lawyer or advocate and think about filing an appeal.

What do I do if the abuser files a criminal complaint against me?

Sometimes, abusers try to "get revenge" by filing criminal charges against their victims. You should take this very seriously. If he files criminal charges against you, you will need a lawyer. If you cannot afford a lawyer, the court should appoint one for you if any jail time is possible.

Make sure you tell your lawyer the history of domestic violence and that **you** are the true victim. Each District Attorney's office has different ways of dealing with these "retaliatory" cases (cases where an abuser files criminal charges against his victim as a way of getting back at her). The Assistant District Attorney may know the history of your case and may not believe the abuser's story. The Assistant DA might drop the charges and not go forward with a criminal case against you. That is the best thing that can happen. But you cannot be sure the DA will drop the case. (See Criminal Complaints for more information about what happens in criminal cases)

What is a certified batterer's intervention program?

Batterer's intervention programs are counseling programs for people who abuse their partners.

The court can only order an abuser to go to a program that has been "certified" by the state.

Most certified batterers intervention programs work in the following way:

- The abusive person has to go to a few intake sessions.
- The program might not accept him. Not all abusive people are a good fit for these programs.
- If he gets into the program, he must sign an agreement saying that he will finish the program, that he will not be violent, and that he will not use drugs or alcohol while he is in the program.
- He will have to pay for the program. Not all programs cost the same. Some programs may have a sliding fee. If he has a low income, he might be able to get help paying for the program.

- He will probably have to go to 80 hours of sessions. The sessions are usually 2 hours long and run for 40 weeks. Most sessions are in groups, but he may get to talk to a counselor by himself too.
- This is not like a private counseling program. The program can share things he says and does with the court and some other agencies. The program will also tell the court how many sessions the person attends.
- If you want, the program will tell you when the abuser finishes the program. The program may also warn you about things he says, such as threats or any violent things he says about you.
- The program will refer the abusive person to other services he needs, like drug/alcohol programs, employment training, parenting skills classes, etc.

A person does not have to wait for a court to order him to go to one of these programs. He can go on his own.

These programs usually use group counseling sessions to teach the abusive person what is wrong with the way he has been acting. The programs try to do two things:

- Stop the person from acting abusive and controlling, and
- Keep the abusive person's victims safe.

Read more about Batterer Intervention programs on the Massachusetts Health and Human Services website.

Custody

There are two types of custody:

1. **Legal custody** is the right to make the major decisions in your child's life. Major decisions are decisions about things like your child's religion, education, and medical treatment.
2. **Physical custody** means who your child lives with.

The two types of custody can either be "joint" (shared) or "sole" (one parent only).

- **Joint or shared legal custody** means both parents make the major decisions together.
- **Sole legal custody** means only one parent has the right to make major decisions.
- **Joint physical custody** means your child lives with each parent part of the time. Parents can split up the days of the week or the months of the year.
- **Sole physical custody** means your child lives with one parent most of the time. The court usually lets the other parent visit with the child.

Do I have custody?

If you have a court order about custody, the order will say who has legal and physical custody. If you do not have a court order, who has custody depends on whether you are married to the other parent.

You and the other parent have joint legal and joint physical custody if:

1. you are married to the other parent **and**
2. there is no court order about custody.

You may both live with your child and make decisions about your child's life. As long as there is no court order about custody, it is legal for a married parent to leave home with his or her child. It is not illegal. It is not kidnapping.

You have sole custody of your child if you are the mother and:

1. you were never married to your child's father **and**
2. there is no court order about custody of your child.

You still might need to get a court order that says you have custody if you want the police to get your child back from the father.

Note

If both parents are mothers and are not married, the "biological" mother has custody unless there has been a second parent adoption or there is a court order about custody.

How do I ask for a custody order from a court?

You have to start a case in a Probate and Family Court to get an order that gives you custody of your child. You can go to the Probate and Family Court in the county where you live, or to the Probate and Family Court in the county where the other parent lives. You need to file a form called a "complaint."

If you are married to the other parent

You can get court-ordered custody by filing a Complaint for Divorce or a Complaint for Separate Support:

- File a Complaint for Divorce if you want to divorce your spouse. You can ask for custody of your child at the same time.
- File a Complaint for Separate Support if you live apart from your spouse or you **want** to live apart from your spouse. You can ask the court for custody of your child **and** get support from your spouse.

If you are not married to the other parent

You can get a custody order by filing a Complaint to Establish Paternity or a Complaint for Support - Custody - Visitation:

A Complaint to Establish Paternity asks the court to name the father of the child. You can ask for custody with this complaint. First, the court has to decide that the other parent is in fact the father of your child. After that, the court will decide custody.
File a Complaint to Establish Paternity if:

1. the father's name is not on the child's birth certificate; **and**
2. there is no court judgment that he is the father.

File a Complaint for Support - Custody - Visitation if:

1. you and the father signed a Voluntary Acknowledgement of Parentage **or**
2. there is a court judgment that he is the father.

How to file the complaint

The steps are the same for filing the different complaints:

1. Go to the Probate and Family Court.
2. Go to the clerk's office.
3. Ask for the complaint form that you want.
4. Fill out the complaint form and give it back to the court.
5. You also need to get a "summons" from the clerk. A summons is an official court paper that tells the other parent that the court will have a hearing on your complaint. See a sample summons.
6. You need to "serve" a copy of the complaint on the other parent. You need to get a sheriff or constable to give the form and the summons to him.

7. It might be months before you get a final custody order.
8. If you need a custody order right away, you can file a Motion for Temporary Orders. This is a way to get a temporary order of custody while you wait for your case to work its way through the court system.

Can I get custody under a 209A Protective Order?

If you have survived domestic violence, sometimes you can get a custody order as part of a 209A Protective Order (a restraining order). It depends on whether there is already a custody order in Probate and Family Court.

You can file a Complaint for a 209A Protective Order in a Probate and Family Court, a District Court, or a Boston Municipal Court.

You can get custody from any of these courts as part of a 209A Protective Order. But if the Probate and Family Court has already ordered custody for your child, no other court can change that order. A judge in a District Court or Boston Municipal Court **cannot** give you custody as part of a 209A Protective Order if there is a current Probate and Family Court order about custody.

A Probate and Family Court custody order overrides a 209A custody order from one of the other courts.

Only Probate and Family Courts can change existing Probate and Family court custody orders. The Probate and Family Court can also change custody orders from other courts.

Some District Court and Boston Municipal Court judges and clerks tell women that they have to go to Probate and Family Court to get a 209A protective order when children are involved. You have the right to get a 209A order from a District Court or Boston Municipal Court to protect you from abuse. If you feel it is unsafe to wait to get to the Probate and Family Court, tell the judge or clerk that you need a 209A protective order to keep you safe and that you will go to the Probate and Family Court about custody later.

Read 209A Protective Orders for more information about where and how to get a 209A Protective Order.

How does the judge decide who should get custody?

The law says that the judge's decision must be "in the best interest of the child."

The judge will look at many things to see what is in your child's best interest:

- Will the child have a safe place to live?
- Will the child be well-fed and clothed?
- Will the child be supervised enough?
- Will the child get enough emotional support?
- Which parent has been taking care of the child?
- Does either parent abuse the child?

- Does either parent abuse drugs or alcohol?
- Does either parent expose the child to domestic violence?

When a judge decides custody, will she consider the way the other parent has abused me?

The law says that the judge has to consider the domestic violence when deciding custody. It does not matter what type of court case you have (divorce, separation, custody, etc.). The law says the judge has to decide if the other parent has repeatedly abused you or has abused you badly. If the judge decides that the other parent has abused you repeatedly or badly, then the judge cannot give the other parent any legal or physical custody unless the judge has a very good reason. The judge has to explain the reason in writing.

The judge should give you sole legal and physical custody if the other parent seriously abused you, even if the other parent never hit your child. Domestic violence hurts children in ways we cannot always see. Children suffer when they see or hear one parent abusing the other parent. Living with abuse changes the way children grow and learn. Children should not have to see or hear domestic violence. This is why courts have to look at domestic violence when they make custody decisions.

You do not have to have a 209A Protective Order to prove to the judge that the other parent abused you. The Probate and Family Court judge must decide for herself if the other parent has abused you a lot or badly. At the same time, a 209A Protective Order does not mean the judge will decide that the other parent abused you enough to give you sole custody.

Be prepared to testify to the judge about the abuse. "Testifying" means swearing that you are telling the truth. Be prepared to show the judge pictures, medical reports, and/or police reports. You can bring witnesses to testify about how the domestic violence has changed your child. For example, your child's therapist or day care worker might be able to testify that your child gets very upset by watching or hearing you be abused.

While the judge can **only** give custody to an abusive parent if she writes down very good reasons, she may still let the abusive parent **visit** with the child. Read more about visitation and how to keep you and your child safe.

If I have a 209A Protective Order, can the judge still order joint custody?

If there is a 209A protective order, the parents should not have joint legal custody. Most 209A Protective Orders say that the abusive parent is not allowed to contact the other parent. This makes it hard to make decisions together. Also, a 209A Protective Order shows that one parent has abused the other parent. It is difficult to make good decisions about your child when you must work with someone who has abused you. An abusive person can use joint legal custody as a way to control and harass you instead of planning what is best for your child.

It may also be hard to have joint physical custody if you were abused. If your child has to keep going back and forth between parents, you will have to talk to the other parent. If you have a protective order, talking to the other parent will be complicated. Also, it may not be a good idea for a child to live part-time with a parent who has been abusive.

The law says the judge **cannot** order joint legal or physical custody for **married** parents if there is a 209A Protective Order **unless** she writes down why she thinks joint custody will work.So, if you have a 209A Protective Order against your husband, the court cannot make you share legal or physical custody of your child unless the judge explains in writing why joint custody is a good decision.

If the parents are **unmarried** the judge can only order joint custody if the parents were able to make good decisions together about their child before the case began. The parents must be able to talk to each other and plan what is best for their child. Abuse makes it hard for parents to talk to each other. So the judge should not order joint custody for unmarried parents when there is a protective order in place, unless the judge has very good reasons for doing it.

How can I show the judge that my child will be better off with me?

If you think you should have custody of your child, you will need to show the judge:

1. you have a good relationship with your child;
2. you are able to meet your child's needs; **and**
3. why it would be bad for your child to live with the other parent.

Think about people who can give the court information about your relationship with your child and the way that you take care of him or her. Are there any teachers, day care workers, therapists, doctors, or other people who know how you take care of your child? Do you think they might be willing to help? Ask them to come to court with you to testify. If they do not want to go to court, you can send them a "subpoena," which is a court order that says they have to go to court. Or you might be able to get an "affidavit" (a sworn statement in writing) from them so they do not have to go to court.

If you are asking for temporary custody at a "motion hearing," the judge will probably accept sworn statements instead of listening to witnesses. People may need to show up in court and testify at the trial, later on in the case.

You can also ask the judge to appoint a "Guardian Ad Litem" (GAL) to help the judge decide which parent should have custody. A GAL is a social worker, lawyer, or other person who is "neutral" about the custody decision. A GAL should not have ideas about the case before they start working on the case.You can file a motion asking the judge to appoint a GAL. If the other parent asks for custody, you can respond by asking the judge to appoint a GAL.

The GAL will talk to both parents and to other people who know your child, like relatives, teachers and day care providers. The GAL may also talk with your child. The GAL reports to the judge in writing. The GAL may say in the report where the GAL thinks your child should live.

The GAL may disagree with you. The GAL may think that the other parent should have custody. Before you ask for a GAL, you should think about how strong your case is. Judges do not always agree with the GAL, but they usually pay a lot of attention to the GAL's report.

The court will decide who should pay for the GAL. Sometimes parents split the costs. Other times one parent pays for the GAL. You can ask the court to order the state to pay the fees if neither parent is able to pay.

The judge may decide on her own to appoint a GAL, even if neither parent asks for one.If the judge appoints a GAL, you should cooperate with the GAL. Give the GAL names and phone numbers of people who know your child and people who agree with you about what is in your child'sr best interest.

What does it mean if the judge appoints someone to look into my custody case?

The judge may appoint someone to look into your custody case even if neither parent asks for it. The judge will do this if the judge does not have enough information to make a decision. The judge can appoint:

- a "Guardian Ad Litem" (GAL);
- a social worker connected to the court, **or**
- a Family Service Officer (Probation Officer) who works in the court.

If the judge appoints someone to look into your case, the person will meet with you, the other parent, and possibly with other people who know your child. The person will report back to the judge and say what he or she thinks is best for your child. Even if you did not ask the judge to appoint someone to look into your case, you should cooperate and give the person the names and phone numbers of people who can agree with you about what is best for your child.

The judge may also appoint a lawyer to represent your child. A lawyer who represents your child is different from a GAL. A lawyer that represents your child has your child as a client. Your child's lawyer is supposed to ask the court to do what your child wants. The GAL uses the "best interest" standard and can recommend something to the court that your child may not want.

If the judge thinks your child is being abused, she can ask the Department of Children and Families (DCF) to take temporary custody. DCF used to be called DSS. For more about DCF, see The Department of Children and Families.

If DCF is already involved, the judge may want to hear from your worker.

Some courts use "Court Appointed Special Advocates" (CASAs) to investigate custody cases. CASAs are volunteers from the community who are trained to investigate and give opinions to the judge.

The judge will want to know if there are any problems that make it hard for either of you to be a good parent.

If both parents are telling the judge different things (for example, you are telling the judge that he abused you in front of the children, and he is saying you are unfit, or crazy, or you drink too much), the judge may want more information from a neutral third party. The judge may appoint a Guardian Ad Litem or Probation Officer to find out which stories are true.

What if the other parent tries to control my parenting?

If we have joint legal custody can the other parent take me to court if I do not do what he says?

Joint legal custody means both parents have a say in making **big** decisions. Big decisions include things like where a child should go to school and what religion the child should be raised in. What a child will wear or eat are not big decisions.

If you are the parent with physical custody, you are the one who makes the day-to-day decisions. You decide what your child wears, eats, and watches on television each day. The other parent can dress, feed and entertain your child as he likes on his visitation days.

Even with big decisions, you do not have to do what the other parent wants just because you have joint legal custody. If the two of you cannot agree on something, either of you can go back to court and ask a judge to decide.

If the other parent goes to court about small decisions like what the child wears, the judge may think he is wasting the court's time. You can ask the judge to order the other parent to pay you for wasting your time and the court's time.

If the other parent keeps bothering you about little decisions, you may want to go back to court and ask the judge to change your custody order to sole legal custody.

What if I want to change a custody order?

If your custody order is a "temporary order," you can go back to the Probate and Family Court and file a "motion" asking for a change. Write on the motion form why you and your child need the change.

If your custody order is a "judgment" (final order), you can go back to Probate and Family Court and file a Complaint for Modification. You will need to show that the situation has changed a lot and that your child now needs a different kind of custody order. This kind of case can take a long time. If you need to change custody quickly, you can file a Motion for Temporary Orders. You can ask the judge for a temporary custody order that makes the changes that you need. You will need to show that there is some kind of emergency that makes it important for your child's custody to change so quickly. Emergencies that are good reasons for changing custody quickly are things that put your child in danger like;

- the other parent has started using drugs,
- the other parent has started abusing your child; **or**
- the other parent is abusing another woman.

Can the other parent take my child?

The other parent is threatening to take my child. Can he do that?

It is a **crime** for the other parent to take your child from you **if you have physical custody**. The crime is called "parental kidnapping."

You have physical custody if:

- you are an unmarried mother and no one has been to court to "establish paternity" (legally say who the father is); **or**
- you are an unmarried mother and there is a paternity finding (a court order saying who the father is) but no court order of custody. For example, if the Department of Revenue brought a case for child support, the judge probably decided paternity (who the father is) but probably did not decide custody. In this case, you still have custody;**or**
- you are an unmarried parent and you have a court order giving you custody; **or**
- you are a married or divorced parent and you have a **court order** giving you custody. The custody order can be part of a divorce, separate support, complaint for custody, or 209A Protective Order.
- If you are married and there is no court order of custody, then both parents have physical custody. It is not a crime for the other parent to leave the home with the child if you are married to him and there is no court order of custody.

Legal custody is different from physical custody. If a court gave you sole physical custody, then the other parent cannot take the child from your home outside his visitation hours. It does not matter if he has joint legal custody. If he does not have physical custody and he tries to take your child, then he may be guilty of “parental kidnapping” or "custodial interference." If you have court-ordered physical custody, and the other parent takes your child without your permission when it is not his visitation time, or if he refuses to return your child after visitation, this may be kidnapping.

What can I do if the other parent kidnaps my child?

If you are the only parent with physical custody of your child, it is kidnapping for the other parent to take your child outside of his visiting hours without your permission. If the other parent kidnaps your child, you can do any or all of the following things:

- **Call the police**. The police can file criminal charges. The police can also activate the Amber Alert system, to help find missing children.

  Note:

  If you are an unmarried mother without a court order, the police may not want to do anything, even though the law says you have physical custody without a court order. You may need to go to Probate and Family Court to get a custody order that you can show the police to get them to help.

- **File criminal charges**
  Call the police and ask them to file criminal charges, or you can do it yourself at the criminal clerk's office at the District Court near you. You should also call the District Attorney's office to tell them the other parent has kidnapped your child.
- **Go to Probate and Family Court**
  Ask the Probate and Family Court for a **"Writ of Ne Exeat"** or a "**Writ of Habeas Corpus**." These are court orders that say
  1. the other parent cannot leave the state with your child, and
  2. that the child must be brought to the court.

- **File a Complaint for Contempt**
  against the other parent if you have a custody order from the court and the other parent violated it. There will be a hearing and the other parent will have to tell the judge why he violated the custody order.The judge may write a new order about where your child should live or change the rules about visiting.
- **Call your local legal services program**
  or call a private lawyer to see if they can help.
- **You can try to contact the local media**
  Contact the newspaper, TV, radio stations and/or government officials - your mayor, state representative, or local congressional office, to let more people know your child has been kidnapped. and to get help finding your child. The National Center for Missing and Exploited Children is also helpful. Their number is 1-800-843-5678.
- **You can contact the U.S. Department of State - Office of Children's Issues**
  for help if the other parent has taken your child to another country.

What if the other parent takes my child but we are married and there is no court order of custody?

If you are married and there has never been a court order on custody, then it is not a crime for the other parent to take your child from your home. It is not kidnapping under the law.

But you can still try to get your child back. You can:

1. Go to Probate and Family Court and file a Complaint for Custody; **and**
2. When you file the Complaint for Custody, also file an "ex parte emergency Motion for Temporary Custody" to get your child back. "Ex parte" means you testify to the judge by yourself without waiting for a hearing that the other parent can attend. Tell the clerk and the judge that your motion is “ex parte” because of the emergency of the other parent taking your child.If the judge gives you an order of temporary custody, the police will try to find the other parent and serve him with a copy of the order. The other parent will have to give your child back to you. You will then have to go to another hearing, later on. At the hearing, the court will decide what to do next about custody.

Can I move out of state with my child?

The answer to this question is very complicated. It depends on many things:

- why you want to move out of state;
- whether the move will improve your and/or your child's life;
- whether you are married to the other parent;
- whether you are divorced or in the middle of getting divorced;
- the kind of relationship the other parent has with your child;
- whether there are any court orders about your child;
- whether you think the other parent has filed for custody or will file for custody; **and**
- many other things.

If the other parent will not agree to let you move your child out of state, you will need to get permission from the court. The judge will look at the kinds of things in the list above. The judge will then decide whether or not you can move out of state with your child.

If you move your child out of state without a court order or the other parent's permission, the other parent can go to court and ask the judge to order you to return your child to Massachusetts.

Check with a lawyer if you plan to move your child out of state. Call your local legal services officeto see if you qualify for free legal help or call a private lawyer.

Read more about moving out of Massachusetts with your child.

If I have custody, can the other parent see my child's school and health records?

Usually, both parents can see their child's school records. If there is any court order that says the other parent is not allowed to see your child, then he is not allowed to see your child's school records either, **unless** the court writes in an order that he can see the records.

A parent **who does not have** custody **cannot** see or get copies of school records **if** there is any court order that says:

- the other parent cannot see your child;
- the other parent cannot visit your child;
- the other parent can only visit your child with supervision, and the order says the reason forsupervised visitation is danger to your child ;
- the other parent cannot have "legal custody", and the order says the reason for no legal custody is danger to your child ; **or**
- there is a Probate and Family Court order that says the parent cannot see the student records.

If any of these things are true, then the school must not let the other parent see the school records. If you do not want the other parent to see the school records, give the school a copy of the court order. The school should agree not to send records to the other parent. Also, the school should take your child's address and telephone number off any information that it sends to the other parent.

This law only applies to **school** records. The other parent has the right to see your child's medical, hospital, and other health records. If you are afraid for your safety, you can ask the medical office to take your child's address and telephone number off any records that they give to the other parent.

Visitation

"Visitation" is the time "noncustodial" parents spend with their children. A "noncustodial" parent is a parent who does not have physical custody of the child. Visitation often goes by a schedule that is included in a court order. Depending on what's best for the child, a visitation schedule can be for a few hours a week, a day each week, overnights, weekends or several weeks at a time. Sometimes the court order will say something like "reasonable rights of visitation with twenty-four hours notice." This means that the parents must work out visitation as they go along, and that the noncustodial parent must give the parent with custody at least a day's notice before picking up the child. "Reasonable visitation" can

work if the parents can talk to each other. If the parents can't talk to each other, it usually works out better if there is a schedule so everyone can plan ahead.

Sometimes the court decides it is not safe for a child to spend time alone with the noncustodial parent. If the court decides it is not safe for a child to spend time alone with the noncustodial parent, the judge may order supervised visitation.

What are "visitation rights"?

Visitation rights are what a court order says about when and where the noncustodial parent can visit with your child. A court order about visitation rights is often called a "visitation order." The law says that visitation rights must be "in the child's best interests."

Can the non-custodial parent get visitation rights even if we were never married?

Yes.

If you are the mother and you were never married to the father of your child, he can still get visitation rights. But he will first have to show the court that he is the child's father.

Do I have to let the other parent visit even if he does not pay child support?

Legally, visitation and child support do not have anything to do with each other. Parents do not have to pay child support in order to visit with their children. At the same time, paying child support does not automatically mean that the noncustodial parent gets visitation rights.

A court will decide visitation rights by looking at what is best for your child. The court will let the other parent visit if it is in your child's best interests to see the other parent. The court will order the other parent not to visit your child if it is clearly bad for your child.

What if I don't want the other parent to visit my child?

Sometimes a judge will order that a parent cannot see his child at all. A judge only orders "no visitation" in very rare cases where the danger to the child is extreme.

It is more likely that a judge will say the other parent can visit. But if there is some danger to you or your child, the judge can put special rules for the visits in the visitation order

How does a parent get a visitation order from a court?

When parents split up, sometimes they work out their own parenting plan. They plan where the children will live, visits and many other things that parents have to decide for their children. It is hard to make a parenting plan when one parent has abused the other parent If parents are unable to agree or if they want their agreement to be part of a court order, either parent can file a complaint in the Probate and Family Court that asks for a visitation order.

If the parents are married, a parent who wants visitation can file one of the following in Probate and Family Court:

- Complaint for Divorce
- Complaint for Separate Support
- Complaint for Custody

If the parents are not married, a parent who wants visitation can file one of the following in Probate and Family Court:

- Complaint to Establish Paternity
- Complaint for Support - Custody - Visitation

If a parent wants visitation quickly, he or she can file a Motion for a Temporary Order of Visitationwith any of the above complaints.

The Probate and Family Court can also order visitation under a 209A protective order if the person asking for the order agrees to visitation. A District Court cannot order visitation but will sometimes ask the parties if they want to set it up. This can feel like being pressured. You do not have to agree to setting up visitation in a District Court 209A case.

What is the court supposed to do about visitation if there has been abuse?

If the court decides that a pattern or serious incident of abuse has occurred, then if it orders visitation for the abusive parent the court must provide for the safety and well-being of the child and the safety of the abused parent.

In ordering visitation for an abusive parent the court may consider:

- supervised visitation;
- a safe setting for drop off and pick up;
- ordering the abusive parent to attend and complete a certified batterer's treatment program as a condition of visitation;
- ordering the abusive parent not to posess or consume alsohol or controlled substances during or before visitation;
- ordering the abusive parent to pay the cost of supervised visitation;
- prohibiting overnight visits;
- requiring a bod from the abusive parent for the return and safety of the child;
- ordering an investigation; and
- ordering any other condiiton that is necessary for the safety and well-being of the child and the safety of the abused parent.

Can I ask the judge to appoint someone to help her decide about visitation in my case?

If you and the other parent cannot agree about visitation and you think the judge is not getting the whole story, you can ask the judge to appoint a “Guardian Ad Litem” (GAL). A GAL is a social worker, lawyer, or other person who is not on anyone’s side. A GAL’s job is to look into the case and report back

to the judge with information that will help the judge decide about visitation. The judge can also ask the GAL for a recommendation about visitation. The GAL will talk to both parents, and may talk to your child. The GAL may also talk to other people who know your child, like relatives, teachers or day care providers. If you want to ask the judge to appoint a GAL you need to file a motion.

You can also ask the judge to appoint a GAL if the other parent asks for visitation and you think visitation is a bad idea.

The court will decide who should pay the GAL. Sometimes parents split the costs. Other times one parent pays the cost of a GAL. The court can order the state to pay the fees if neither parent is able to pay because they are "indigent". "Indigent" means that your income is too low to pay court fees.

If the judge appoints a GAL, you should cooperate with him or her. Give the GAL names and phone numbers of people who know your child and agree with you about what is best for your child.

The GAL may disagree with you about visitation. Before you ask for a GAL, think about how strong your case is. Judges do not always follow a recommendation from the GAL, but they usually pay a lot of attention to it.

The judge may decide on her own to appoint a GAL, even if neither parent asks for one. Or the judge might appoint a Probation Officer from the court or someone else to help the judge decide about visitation. Probation Officers used to be called "Family Service Officers."

Can the other parent get visitation when I go to court for a 209A protective order against him?

You can work out visitation as part of a 209A Protective Order if it's what you want. To work out visitation as part of a 209A Protective Order, you have to file for your order in Probate and Family Court and ask the judge to decide visitation. The judge should only order visitation if **you** are the one asking for it.

District Court and Boston Municipal Court

If you get a 209A Protective Order in District Court or Boston Municipal Court, the other parent should not be able to get visitation as part of that hearing. These courts are not supposed to decide visitation in 209A Protective Order hearings.

Probate and Family Court

The Probate and Family Court can decide visitation as part of a 209A Protective Order **if you ask the court to decide it**. The other parent should not be able to ask for visitation as part of your 209A Protective Order hearing. The court can only order something in a 209A hearing if the person who filed the complaint asks for it.

If you file for a 209A Protective Order in Probate and Family Court, there is a section on the complaint form that asks about visitation. Fill it out carefully and write down exactly what you want. When you go before the judge, tell the judge what you want and why. If you think it is not safe for your child to visit with the other parent at all, tell the judge why.

The other parent can go to court and file a separate case asking for visitation, and he may get it. You may want to ask the judge to order visitation as part of your 209A Protective Order if you think there is a way to make visits safer or if certain times are better for visits than others.

Examples

You can tell the judge you need your brother to take your child to and from visits with the other parent because you are afraid of the other parent.

You can ask the judge to order visitation on Saturdays only.

We are in court because the Department of Revenue (DOR) filed a child support case. Do I have to let the other parent visit my child?

If you get TAFDC (welfare), DOR can file a case in court to get the other parent to pay child support. See Can I get TAFDC without going to court or helping DTA find him?

DOR is not supposed to help make agreements about visitation or custody. DOR is only supposed to deal with child support. If the other parent has abused you, tell DOR. Tell them when they first call or write to you, and tell them again when you are in court.

If the other parent did not serve you with any court papers telling you he wanted to bring up visits or custody, then he should not be allowed to talk about these things at the child support hearing. If he wants to ask the court for visits or custody, he has to send you a notice for **another** day in court. That means you get time to prepare an argument to explain why visits are not in your child's best interests.

If the other parent does try to talk about visits when you are in court for child support with DOR, explain to the judge that there is abuse in your case. Also tell the judge that the other parent did not tell you that he would bring up these issues, and that you would like to get legal advice. SeeChild Support and Paternity.

How can a Visitation Order make visitation safe?

Sometimes it is unsafe for a child to visit with a parent because the parent drinks a lot, takes drugs, or is abusive.

A judge can order some things to make visitation safe:

- "**Supervised visitation**" means that the other parent can only see your child with someone else watching. Supervised visitation centers are places where social workers who know about domestic violence watch over the visits between parents and children. You can ask the judge to order visitation to take place at a supervised visitation center. You can also have friends, relatives, or people from your church supervise. If you want someone like that to supervise the visits, be prepared to tell the judge who that person is and why he or she is a good person to supervise. Make sure the person is willing to supervise visits before you give his or her name to the judge.

- **Limits on time**: The judge can make visitation only be a few hours at a time and order that no overnight visits are allowed.

- **Limits on place**: The judge can order that the other parent has to visit with your child in a specific place, like the mall or a playground.

- **Other orders**: The judge can order the other parent to do certain things, or not do certain things, before visiting your child. Some things the judge can order are:
  - No drinking for 24 hours before visitation.
  - The parent must go to Alcoholics Anonymous (AA) each week to have a weekly visit.
  - The parent must attend parenting classes.
  - The parent must attend a batterer's intervention program.
  - The parent cannot have the child around a certain person.

If you want the judge to order any of these things, you will have to prove that they are needed. You will need to prove that it is harmful to your child to visit with the other parent without the special rules.

What if the other parent abused me but not our child?

Domestic violence harms children. Judges understand that watching or hearing violence scares and upsets children. Tell the judge if visiting with the other parent makes your child very upset and scared. Tell the judge if your child is afraid of the other parent.

- You may be able to get the judge to order special rules for the visits. It will help if you get an "affidavit" (written sworn statement) from your child's therapist or doctor that explains why your child needs special rules for the visits.

You may also need special visitation rules in order to keep **you** safe. For example, it may not be safe for you to see the other parent. You may need the judge to order rules to keep you safe, such as:

- Visits can only happen if a third person (a friend or relative or social worker) takes your child to and from visits with the other parent;
- Visits can only happen if you drop off and pick up your child at a friend or relative's house, or at a supervised visitation center;
- Visits can only happen if you bring the child to the other parent in a public place, like a street corner or playground;
- Any other plan that will keep you safe.

What if the other parent does not obey the visitation order?

It is a good idea to keep a "visitation journal" or notebook. Write down the date of each visitation day and what happens. If the other parent does not visit when the order says he should visit, write down the days and times he misses. If he is drinking or does something dangerous around your child, or abuses you or your child, write down the dates and exactly what happened.

If the other parent is not obeying the court order, you can:

- File a Motion to change the visitation. You can file a motion if there is no final order in your case;

- File a Complaint for Modification. You can file this if there is already a final order in your case. This complaint starts a new case and asks the court to change the old order; **or**

- File a Complaint for Contempt. This asks the court to decide that the other parent violated (did not obey) the court order. Only file this kind of complaint if there is a serious and ongoing problem, like the other parent is drinking around your child against the court's specific order. If the other parent is late one time for a scheduled visit, this is not a big enough problem for a Complaint for Contempt.

What if the other parent takes me to court for contempt?

If the other parent takes you to court for contempt, he is asking a judge to decide that you are not obeying the court's order. If the other parent files a Complaint for Contempt, a sheriff or constable will serve you with a copy of the complaint and a "Contempt Summons." A "Contempt Summons" is a paper that tells you to go to court on a certain day.

Contempt hearings are very serious

1. File an Answer to the Complaint for Contempt.
2. Write on the Answer what really happened:
    - **If anything the other parent says in his complaint is wrong**, write down what really happened. For example, maybe he told you that you could keep your child on a weekend that he was supposed to visit. Then he changed his mind.It is important to write down the whole story in your Answer.
    - **If you did not obey the court order,** write down your reasons. Why did you not obey the court order? For example, if you did not let the other parent see your child because the other parent was drinking and it wasn't safe to let your child go, explain your reasons.
3. Check the summons to see when the Answer is due.
4. Send the Answer to the court by that day.
5. Mail a copy of the Answer to the other parent or to his lawyer if the lawyer filed the Complaint for Contempt.
6. Make sure you go to court on the day of the hearing. Tell the judge if the other parent wrote something about you in the Complaint for Contempt that is not true, or if the facts in his complaint are not the whole story. The judge may get upset that you did not follow the visitation order. Be polite to the judge. Tell the judge that you know it is important to obey court orders.
7. If you have witnesses, bring them to court. If you have documents, bring them. For example, a doctor's note can show that your child was sick on a day you did not let her visit with the other parent.

If the judge finds that you are in contempt, the judge might order you to let the other parent make up the missed visits. The judge can also order you to pay the other parent's court costs or lawyer's fee.

Note

You should try to follow the court's visitation order. Do not take matters into your own hands unless there is an emergency. If there is no emergency but you want visitation to be different, go back to court and ask the judge to change the visitation order.

If the other parent says that you can keep your child on a day he normally visits, or that you can change the time of the visits, ask him to put it in writing. If you cannot get it in writing from him, write down what he said in your visitation journal. Either way, it will be clearer that something different was supposed to happen. It will be harder for him to claim later that you did something wrong.

How can I get the visitation order changed?

Temporary order

If the order about visitation is a "temporary order," you are still in the middle of the case. You can go back to Probate and Family Court and file a "motion" asking for a change. Write on the motion form why you and your child need the change.

Final order

If the order about visitation is a “final order,”(your case is over and you have a "judgment," you can go back to Probate and Family Court and file a Complaint for Modification. When you file a complaint for modification you are starting a new case. The new case asks the court to change the old order. You will need to show that things are very different now (there has been a “material and substantial change of circumstances”) and that your child now needs a different kind of visitation order.

If you file a Complaint for Modification, the case can take a long time. If you need the visits to change right away, you can file a Motion for Temporary Orders. Write on the motion form what you want the judge to change about visitation. You will need to show that there is some kind of emergency that makes it important to change the visits right away. For example, the other parent has started using drugs, or is being violent, or has threatened you or your child.

If you need to change or stop the visitation because of domestic violence, you can file for a 209A Protective Order in Probate and Family Court. You can ask the judge to order the other parent to stay away from your child and have no visits. If you already have a 209A Protective Order and want to change the visitation rights in it, you can file a motion to change the 209A order.

Problems with the Visits

The other parent starts fights when he picks up and drops off our child. What can I do?

If the other parent uses drop-off and pick-up time to abuse or harass you, there are things you can do to make it safer. For example:

- You can ask a friend or relative to pick up and drop off your child for visits with the other parent. If you have been dropping your child off and picking your child up, you can make this change yourself

without a court order. If the other parent has been picking up the child at your home and will not agree to let someone drop the child off somewhere else, you may need to ask a court to order this plan;

- You can use a friend or relative's home for pick-up and drop-off. If the other parent does not agree to this, you can ask a court to order this plan;

- You can use a "supervised visitation center." You can use a supervised visitation center as a place to drop off and pick up your child for visits. Each parent uses a separate door and comes at a different time, so they never have to see each other. If the other parent does not agree to this, you can ask a court to order this plan; **or**

- You can use public places, like fast food restaurants or the mall, for drop-off and pick-up. If the other parent does not agree to this, you can ask a court to order this plan.

The other parent refuses to visit. What can I do?

There is nothing you can do in court to force the other parent to see or spend time with your child.

If the other parent does not visit when the court order says he should and his no-shows are messing up your schedule or your child's schedule, you can ask the court to change the visitation order.

Example

The other parent is supposed to spend Saturday mornings with your child. You are missing your Saturday classes because you are waiting for him and he does not show up. Your child is missing soccer because your child is waiting for him. You can go to court and ask the judge to change the order to say the other parent can not visit on Saturdays anymore.

If the other parent is not showing up, it is important to go to court to get the visitation order changed. Do not take your child somewhere else just because you think the other parent is not coming. If you take your child somewhere else and the other parent decides he wants to visit, he may file a Complaint for Contempt against you.

If the other parent files a Complaint for Contempt against you, tell the judge how often he did not show up for visits with your child. It helps to keep a "visitation journal" or notebook. Write down the times he visits and the times he does not show up. If you can show the judge that the other parent hardly ever shows up, the judge will be less likely to decide you are in contempt of the court order.

The other parent's new girlfriend is with my child during the visits. What can I do?

There is not much you can do to stop the other parent's girlfriend from being there when the other parent visits with your child. You can only stop the girlfriend from being there if she harms your child or makes the visit **unsafe** for your child.

If the girlfriend puts your child in danger, you can go to court and ask the judge to change the visitation order. Ask the judge to add to the visitation order that your child cannot be around the other parent's girlfriend. You will need to explain what the girlfriend does to make the visits unsafe for your child.

If the other parent just leaves your child with his girlfriend during his visitation time, he is not spending time with your child. You can ask the judge to give the other parent less visitation.

If you are upset only because the girlfriend is around when your child visits the other parent, there is not anything you can do in court. Visitation is the other parent's time to be with your child. The other parent has a right to have a new relationship and spend time with his child and his new partner together.

The other parent puts me down in front of my child and asks my child about my love life. What can I do?

The other parent should not put you down in front of your child or ask your child to be a spy for him. If the other parent does these things, you can ask the judge to write something in the visitation order like:

- the other parent cannot put you down in front of your child; or

- the other parent cannot use the child to get information about you.

If these rules are in the order and he does not follow the rules, then you can file a Complaint for Contempt to ask the judge to make him obey the visitation order. Or you can file a Complaint for Modification to ask the judge to change the visitation order**.**

You can also ask the judge to order the other parent to go to parent education classes to learn how to behave with his child. But there is not much you can do to change **him**. Words on paper will not make him a good parent. If you can show that problems with the visits are harming your child, you can ask the court to change the visitation order. Sometimes a therapist can help you show the court how the problems are harming your child.

Do grandparents have the right to visit?

Sometimes grandparents have the right to visit their grandchildren.

You do not have to let grandparents visit your child if they do not have a court order. But they might be able to get a court order that says they can visit.

In Massachusetts, the law says that grandparents have the right to ask a court for visits if:

- the parents were married and got divorced;
- the parents are still married, but are living apart and there is a court order about the separation; **or**
- the parents were never married , they are living apart, and the father has signed an "acknowledgment of paternity" or there is a court judgment saying that he is the father.

The court can give the grandparents some visitation if they show at a hearing that:

- it is in your child's best interest; **and**

- they had an important relationship with your child before the case began; **and**
- it will be very harmful to your child's health, safety, or welfare if your child cannot see them.

Even if the grandparent did not have an important relationship with the child before the case began, the court can still grant visitation rights. The court can grant visitation rights if the grandparent can prove that visitation is still necessary to protect the child from "significant harm".

If you think it would be harmful for your child to visit with his or her grandparents, tell the judge why.

If you think that it is not in your child's best interest to visit with his or her grandparents, tell the judge why.

Examples

- There is a court order saying the other parent cannot see your child, and he is planning to use **his parents'** visitation rights to see your child;
- The grandparents drink alcohol around your child; or
- Any other reason it would be harmful to your child to see his or her grandparents.

Who else has the right to visits?

In special situations the court may decide that someone's relationship with your child is so close and important that they should be treated like a "parent". The courts call this person a "de facto parent". If the court decides that a person is a "de facto parent", the "de facto parent" might be able to get visitation rights.

Separation and Divorce

The main difference between separation and divorce is that divorce ends your marriage. Separation means you are still married, but you do not live with your spouse. You have to go to court to be divorced. You do not have to go to court to be separated.

What is a divorce?

A divorce is a judgment of the Probate and Family Court that ends your marriage.
Divorce judgments also include:

- custody of children;
- child support;
- visitation with the children;
- what happens to "assets" (like pensions, bank accounts, or stocks);
- what happens with taxes (like who gets to claim the child as a dependent);
- alimony (support for the spouse);
- what happens to personal property (like a car or furniture);
- what happens to real estate, like your house;
- who gets to live in the home;
- who has to pay the debts (like credit cards, electric bills, mortgages);
- changing your name to the one you had before you were married;
- possibly, an order for protection from abuse.

If you and your spouse can agree about all of these things, you can write up an agreement and ask the judge to approve it. If you can agree on some things but not on others, you will have a chance to tell the judge. The judge will decide the things that you and your spouse cannot agree on. She will review your agreements to be sure they are fair. If you cannot agree on any of these things, the judge will decide all of them at a trial. You and your spouse will both get a chance to testify. You will also be able to show the court documents and have witnesses testify.

Do I have to get a divorce if I want to live apart from my spouse?

No. You do not have to get a divorce if you want to live apart. You can stay married and live in different places. You do not have to go to court to be “legally separated” in Massachusetts. It is legal to live apart from your spouse.

You still have to make decisions about money, property, and child custody and support. If you and your spouse cannot agree, you can ask the judge to decide these things in a Complaint for Separate Support or Complaint for Support.

What is the difference between a Judgment of Divorce and a Judgment of Separate Support?

The main difference between a Judgment of Divorce and a Judgment of Separate Support is that a Judgment of Divorce ends the marriage. A Judgment of Separate Support does not end the marriage.

A Judgment of Separate Support can include orders of support for you, child support, custody and visitation. It can also decide who gets to stay in your home and what happens to things like bank accounts and personal property. You can get this judgment and still stay legally married.

Deciding to separate or get a divorce

Should I go to court?

Every case is different. There are a lot of things to think about before you decide to go to court.

You should gather information, get legal advice, and talk it over with people you trust. Only you know what is best for you.

Remember this:

When you go to court is not always up to you. Your spouse can file for divorce or separate support, too.

If you have children, your relationship with your spouse does not end when you separate or divorce. You will probably have to keep talking to your spouse about support, visitation, and other parenting questions. You will not have to keep talking to him if you have a 209A protective orderthat says "no contact."

Counseling

Going through separation or getting a divorce can be very hard emotionally. Counseling can help you through the process. Your doctor can refer you to a counselor or therapist, or you can ask at your local health center or look in the Yellow Pages.

Counseling can help couples figure out how to deal with divorce or separation.

Most domestic violence advocates say it is a bad idea to go to counseling with the person who abused you if you are trying to separate from that person.

Do I need a lawyer?

You do not need to be a lawyer to file a divorce, separate support, custody, or child support case. You can file your own case. In Massachusetts, you have the right to represent yourself in any legal case, including divorce and separate support.

Cases like divorce and custody can be very complicated. The stakes are high. Having a lawyer to help you can be very important, especially if your spouse is violent, abusive, or controlling.

If you can get a lawyer, it will be easier than doing the case by yourself. A lawyer can help you decide what kind of case to file, and can help you file it. A lawyer can work with you on an agreement with the other parent. If there is no agreement, a lawyer can help you with the trial. If your spouse has abused you or disagrees with you on how to do the divorce or separation, or if there are complicated questions in your divorce or separation, it is best to get a lawyer to represent you.

How do I find a lawyer?

If you get public benefits or your income is low, call your local legal services office to see if you can get free legal services. The legal services office may be able to help you, or they may refer you to a private lawyer who will handle your case for free ("pro bono").

If legal services cannot represent you for free, you can try to find a private lawyer who will charge you a "sliding scale fee." Sliding scale fees are higher for people with more money and lower for people with less money. Tell the lawyer right at the start if you are worried about paying him or her.

Often lawyers charge a "retainer." This means that you pay them money up front. As they work, they pay themselves from the money you gave them. When they use up the money, they give you a bill that shows how they used the retainer. Then they ask for another retainer. Try to find a private lawyer who will agree to handle your case without a "retainer" or with a very small retainer.

Private lawyers charge by the hour. It will cost you less if the lawyer does not have to spend a lot of time gathering information. Whenever you can get the information or documents that the lawyer needs, you are saving money. Keep your own file. Be prepared for meetings or telephone conversations with your lawyer. If your lawyer tells you she will need certain information, have it ready for her. All these steps will help to keep the costs down.

In some cases, the court can order your spouse to pay your attorney's fee. Read Requesting an Order for Your Spouse to Help Pay for Your Attorney.

If you do not find a lawyer or you choose to represent yourself, you still might be able to get some help. Some women's centers and legal services programs offer "do it yourself" divorce clinics to guide you in doing your own divorce. There is also a chapter called Divorce in the Family Law Advocacy for Low and Moderate Income Litigants that explains in detail how to get a divorce. Yourlocal library or county law library has a family law section, where you may be able to find some of these books.

Filing for Support

Can I file for support or custody without getting divorced?

Yes. You may want to stay married, but you need support and health insurance. You may also need custody of your children, while you are married, and you may need support and health insurance for them.

To get support while staying married, you can file:

- a Complaint for Support if you do **not** need a custody order but you need support or health insurance for yourself or your child and you stay married; or
- a Complaint for Separate Support if you stay married and you need
  - a custody order, **and**
  - support or health insurance for your child, and/or
  - support or health insurance for yourself.

File a Complaint for Support if you do not need a custody order but you need support or health insurance for yourself or your child and you stay married.

What court do I file in?

There is a Probate and Family Court in each county in Massachusetts.

If you are **only** asking for child support, you must file your Complaint for Support in the county where the child lives. You can file a Complaint for Support in the county where you live or in the Probate and Family Court in the county where your spouse lives.

How much does it cost to file a case?

The Probate and Family Court charges fees for filing and handling certain documents. As of July 1, 2009, there is no fee to file a Complaint for Support, but there is a charge of $5 for a summons. Also, deputy sheriffs and constables usually charge $35-$45 to serve the papers on your spouse.

Case	Filing Fee	Surcharge	Summons	Deputy Sheriff or Constable Costs
Support	$0	$0	$5	$35-$45

What if I cannot afford to pay the court fees?

You do not have to pay these fees if:

- you get any kind of public benefits (welfare, Food Stamps, etc.); or
- your income is less than 125% of the federal poverty level; or
- you can show that paying the fees would make it hard for you to pay your rent or mortgage or buy food or clothing.

If you cannot pay the fees, use the Affidavit of Indigency form to ask the court to let you file without paying the fees. This is called a "fee waiver." The form also asks the court to order the state to pay the deputy sheriff or constable to serve the court papers.

You will need to write your income (how much money you get every month) on the Affidavit. Write down all the fees that you need help with: filing fees, the costs of getting the deputy sheriff or constable to serve the papers, and any other costs that you need covered. The Affidavit form has spaces where you can write this information. The court may ask you for documents showing why you need the court to pay your costs.

Can I keep my address secret?

Yes. You can keep your address secret from your spouse if you need to do this to stay safe. File amotion that asks the court to "impound" (hide) your address. Write on the motion form why it is not safe for your spouse to find out where you live. Look at a sample Motion to Impound Address and attached Affidavit.

Filing a Complaint for Support

1. Get a Complaint for Support form and instructions from the Probate and Family court websiteor from any probate and family court in Massachusetts. The full name of this form is "Complaint for Support Pursuant to G.L. c. 209 §32F." If you need child support you will also need a copy of the Child Support Guidelines Worksheet.
2. **Fill out the Complaint for Support.**
   - If you are asking for child support, fill out the Child Support Guidelines Worksheet
3. **File the Complaint**. You can file a Complaint for Support in the Probate and Family Court in the county where you live or in the county where your spouse lives.
   When you file the Complaint:
   - Fill out an Affidavit of Indigency form if you cannot pay for a summons or the cost to serve the papers. If you can check either box A or box B on the form, check the box. The clerk will approve the form, stamp it, and give you a copy. This means the court will cover your costs.
   - File a motion to "impound" your address if you need to keep your address secret from your spouse to stay safe. Write on the motion form why it is not safe for your spouse to find out where you live. Look at a sample Motion to Impound Address and attached Affidavit.
   - File a motion for temporary orders if you need the court to order something right away (like child support). File the motion when you file the complaint and Affidavit of Indigency. Ask the clerk for a date for a hearing on your motion. Write the date on the motion form. There's a place on the form where you do that. You can also file it later if you need to.
4. **Serve the papers.** The clerk will give you a Domestic Relations Summons. This is an official paper that tells your spouse when he must file his Answer to your case. The court can only decide your case after your spouse is served with the summons. Bring or send the summons and a copy of all the papers that you filed to a sheriff or constable to deliver to your spouse. If the court approved your Affidavit of Indigency, use a deputy sheriff to serve the papers. Give the deputy sheriff a copy of the Affidavit of Indigency so the state can pay his or her fees. When the deputy sheriff gives the papers to your spouse, it is called "service of process."
5. **Wait for the sheriff or constable to return the summons and "Proof of Service" to you.**After the sheriff or constable serves the papers, he or she will return the original summons to you. On the summons, the sheriff or constable fills out, signs, and dates the section called "Proof of Service". Be sure to tell the deputy sheriff or constable to send the summons with the "proof of service" back to you.
6. **Make a "return of service".** Return the signed original Domestic Relations Summons to the court. This is called making "return of service." Remember to make a copy of the signed original summons for your records.

What happens after I return the summons to the Court?

When you return the summons to the court, the clerk will look up your case to see if any court date has already been scheduled. If you filed a Motion for Temporary Orders, you will already have a court date. If your spouse files an Answer to your Complaint before you return the summons to the court, you will already have a court date.

If no court date has been scheduled, the clerk will schedule a "Case Management Conference". The Case Management Conference will be at least 30 days after you file the return of service.

What happens at a Case Management Conference?

At a Case Management Conference the judge will talk to you about your case. The judge can hear the case and grant a Judgment of Support if:

- your spouse has not filed an Answer, or
- you and your spouse have "settled" the case and the judge approves. "Settling" means that the two of you have agreed in writing about all the things that must be decided in a support case, like how much support for you, how much support for your children, and what kind of health insurance you or your children should have and who should pay for it.

If the court does not grant the Judgment of Support at the Case Management Conference, the court will assign the next court date. The next court date could be a Pre-Trial Conference or a trial date.

Going to trial - Getting a Judgment of Support

There will be a final hearing, also called a trial. At the trial the judge will decide your support case. Even at a trial, you and your spouse can settle the case with a written agreement that you sign and ask the judge to approve. The judge will issue a Judgment of Support. If the trial took a day or less, the judge must issue the judgment within 30 days of the trial.

Judgments are final. They cannot be changed later on unless there is a "significant change" in your or your spouse's situation. If there is a significant change, and you need a change in the judgment, you can file a Complaint for Modification.

Support and Custody

Can I file for support or custody without getting divorced?

Yes. You may want to stay married, but you need support and health insurance. You may also need custody of your children, while you are married, and you may need support and health insurance for them.

To get support while staying married, you can file:

- a Complaint for Support if you do **not** need a custody order but you need support or health insurance for yourself or your child and you stay married; or
- a Complaint for Separate Support if you stay married and you need
    - a custody order, **and**
    - support or health insurance for your child, and/or
    - support or health insurance for yourself.

File a Complaint for Separate Support if you need a custody order as well as support for you and your children.

What court do I file in?

There is a Probate and Family Court in each county in Massachusetts.

If your spouse still lives in the county where you last lived together, you have to file for separate support in the Probate and Family Court in that county. If your spouse does not live in the same county where you last lived together, you can file a Complaint for Separate Support in the Probate and Family Court in the county where you live or in the Probate and Family Court in the county where your spouse lives.

How long will it take?

The court has a tracking system for all types of cases. Under the tracking system, complaints for separate support are assigned to the 8 Month Track. That means that complaints for separate support should go to trial, be settled, or dismissed within 8 months.

How much does it cost to file a case?

The Probate and Family Court charges fees for filing and handling certain documents. Check out the Probate and Family Court Department Uniform Fee Schedule to find out how much it will cost. As of July 9, 2012, it cost $120 to file a Complaint for Separate Support and there is a charge of $5 for a summons. Also, deputy sheriffs and constables usually charge $35-$45 to serve the papers on your spouse.

Case	Filing Fee	Surcharge	Summons	Deputy Sheriff or Constable Costs
Separate Support	$100	$15	$5	roughly $35-$45

What if I cannot afford to pay the court fees?

You do not have to pay these fees if:

- you get any kind of public benefits (welfare, Food Stamps, etc.); or
- your income is less than 125% of the federal poverty level;
- you can show that paying the fees would make it hard for you to pay your rent or mortgage or buy food or clothing.

If you cannot pay the fees, use the Affidavit of Indigency form to ask the court to let you file without paying the fees. This is called a "fee waiver." The form also asks the court to order the state to pay the deputy sheriff or constable to serve the court papers.

You will need to write your income (how much money you get every month) on the Affidavit. Write down all the fees that you need help with: filing fees, the costs of getting the deputy sheriff or constable to serve the papers, and any other costs that you need covered. The Affidavit form has spaces where you can write this information. The court may ask you for documents showing why you need the court to pay your costs.

Can I keep my address secret?

Yes. You can keep your address secret from your spouse if you need to do this to stay safe. File amotion that asks the court to "impound" (hide) your address. Write on the motion form why it is not safe for your spouse to find out where you live. Look at a sample Motion to Impound Address and attached Affidavit.

Filing a Complaint for Separate Support

1. Get a **Complaint for Separate Support form** and instructions from the Probate and Family court website or from any probate and family court in Massachusetts. If you need child support you will also need a copy of the Child Support Guidelines Worksheet
2. **Fill out the Complaint**for Separate Support:
   a. Choose a "grounds" (legal reason). The form has a checklist of grounds:
      i. Your spouse is not providing support;
      ii. your spouse has deserted you;
      iii. you are living apart from your spouse for "justifiable cause" (with good reason). Write down the reasons in the spaces provided;
   b. If you are asking for child support, fill out the Child Support Guidelines Worksheet
3. Check out the **Probate and Family Court Department Uniform Fee Schedule** to find out how much it will cost. As of July 1, 2009, it cost $120 to file a Complaint for Separate Support ($100 filing fee + $15 surcharge + $5 for a summons). There are also fees, about $35-$45, to have a deputy sheriff or constable serve the papers on your spouse.
4. **File the Complaint**. You can file a Complaint for Separate Support in the Probate and Family Court in the county where you live or in the Probate and Family Court in the county where your spouse lives. However, if your spouse still lives in the county where you last lived together, you have to file for separate support in the Probate and Family Court in that county.
   a. Fill out an Affidavit of Indigency form if you cannot pay for a summons or the cost to serve the papers. If you can check either box A or box B on the form, check the box. The clerk will approve the form, stamp it, and give you a copy. This means the court will cover your costs.
   b. File a motion to "impound" your address if you need to keep your address secret from your spouse to stay safe. Write on the motion form why it is not safe for your spouse to find out where you live. Look at a sample Motion to Impound Address and attached Affidavit.
   c. File a motion for temporary orders if you need the court to order something right away (like child support). File the motion when you file the complaint and Affidavit of Indigency. Ask the clerk for a date for a hearing on your motion. Write the date on the motion form. There's a place on the form where you do that. You can also file it later if you need to.

When you file the Complaint:

1. **Serve the papers.** The clerk will give you a "Divorce/Separate Support Summons". This is an official paper that tells your spouse when he must file his Answer to your case. The court can only decide your case after your spouse is served with the summons. Bring or send the summons and a copy of all the papers that you filed to a sheriff or constable to deliver to your spouse. If the court

approved your Affidavit of Indigency, use a deputy sheriff to serve the papers. Give the deputy sheriff a copy of the Affidavit of Indigency so the state can pay his or her fees. When the deputy sheriff gives the papers to your spouse, it is called "service of process."

2. **Wait for the sheriff or constable to return the summons and "Proof of Service" to you.**After the sheriff or constable serves the papers, he or she will return the original summons to you. On the summons, the sheriff or constable fills out, signs, and dates the section called "Proof of Service". Be sure to tell the deputy sheriff or constable to send the summons with the "proof of service" back to you.
3. **Make a "return of services".** Return the signed original Divorce/Separate Support Summons to the court. This is called making "return of service." Remember to make a copy of the signed original summons for your records.

What happens after I return the summons to the Court?

When you return the summons to the court, the clerk will look up your case to see if any court date has already been scheduled. If you filed a Motion for Temporary Orders, you will already have a court date. If your spouse files an Answer to your Complaint before you return the summons to the court, you will already have a court date.

If no court date has been scheduled, the clerk will schedule a "Case Management Conference". The Case Management Conference will be at least 30 days after you file the return of service.

What happens at a Case Management Conference?

At a Case Management Conference, the judge can hear the separate support case and grant a Judgment of Separate Support if

- your spouse has not filed an Answer to your case, or
- you and your spouse have "settled" the case and the judge approves. "Settling" means that the two of you have agreed in writing about all the things that must be decided in a separate support case, like who will have custody and how much support for you, how much support for your children, and what kind of health insurance you or your children should have and who should pay for it.

If the court does not grant the Judgment of Separate Support at the Case Management Conference, the court must/will assign the next court date. The next court date could be a Pre-Trial Conference or a trial date.

Going to trial - getting a Judgment of Separate Support

There will be a final hearing, also called a trial. At the trial the judge will decide your separate support case. Even at a trial, you and your spouse can settle the case with a written agreement that you sign and ask the judge to approve. The judge will issue a "Judgment of Separate Support." If the trial took a day or less, the judge must issue the judgment within 30 days of the trial.

A "judgment" is "final." That means that it cannot be changed later on unless there is a "significant change" in your or your spouse's situation. If there is a significant change, and you need a change in the judgment, you can file a Complaint for Modification.

How do I file for divorce?

To get a divorce, you can file:

- a Complaint for Divorce, if you are the only one who wants a divorce
- a Joint Petition for Divorce, if you and your spouse want to file a "no fault" divorce together. If you and your spouse file a joint petition, you also need to file an affidavit that your marriage has broken down and cannot continue (called an affidavit of irretrievable breakdown of the marriage) and a notarized separation agreement.

File a Complaint for Divorce if you are the only spouse that wants the divorce.

Can I file in Massachusetts?

You can file for divorce in Massachusetts if:

- you have lived in the state for a year, or
- you lived together as a married couple in Massachusetts and what happened to cause the divorce (the "grounds" for divorce) happened in Massachusetts.

If either of these two things is true, then you can file for divorce in Massachusetts, even if your spouse lives in another state, or you do not know where he lives.

What court do I file in?

There is a Probate and Family Court in each county in Massachusetts. You can file for divorce in the Probate and Family Court in the county where you live or in the Probate and Family Court in the county where your spouse lives. **However**, if your spouse still lives in the county where you last lived together, you have to file for divorce in the Probate and Family Court in that county.

How long will it take?

The court has a tracking system for all types of cases, including divorces. Under the tracking system, divorces are assigned to the 14 Month Track. That means that divorces should go to trial, be settled, or dismissed within 14 months.

How much does it cost to file a Complaint for Divorce?

The Probate and Family Court charges fees for filing and handling certain documents. Check out the Probate and Family Court Department Uniform Fee Schedule to find out how much it will cost. As of July 9, 2012, it cost $220 to file a divorce case ($200 filing fee + $15 surcharge + $5 for a summons). There are also fees to have a deputy sheriff or constable serve the papers on your spouse.

Case	Filing Fee	Surcharge	Summons	Deputy Sheriff or Constable Costs
Divorce	$200	$15	$5	Varies

What if I cannot afford to pay the court fees?

You do not have to pay these fees if:

- you get any kind of public benefits (welfare, Food Stamps, etc.); **or**
- your income is less than 125% of the federal poverty level; **or**
- you can show that paying the fees would make it hard for you to pay your rent or mortgage or buy food or clothing.

If you cannot pay the fees, ask for an Affidavit of Indigency form. This form asks the court to let you file without paying the fees. This is called a "fee waiver." The form also asks the court to order the state to pay the deputy sheriff or constable to serve the court papers.

You will need to write your income (how much money you get every month) on the Affidavit. Write down all the fees that you need help with: filing fees, the costs of getting the deputy sheriff or constable to serve the papers, and any other costs that you need covered. The Affidavit form has spaces where you can write this information. The court may ask you for documents showing why you need the court to pay your costs.

Can I keep my address secret?

Yes. You can keep your address secret from your spouse if you need to do this to stay safe. File amotion that asks the court to "impound" (hide) your address. Write on the motion form why it is not safe for your spouse to find out where you live. Look at a sample Motion to Impound Address and attached Affidavit.

Filing a Complaint for Divorce

1. **Choose a "grounds**" (legal reason) for your divorce. One grounds for getting divorced is called "Irretrievable Breakdown of the Marriage." It means that you do not get along with your spouse and you do not want to be married anymore. Simply put: the marriage is broken down and cannot be fixed.
2. Get the correct form and instructions for the kind of divorce you need.
    a. If your grounds for divorce is "Irretrievable Breakdown of the Marriage", get the formComplaint for Divorce under G.L. c. 208, Section 1B, and instructions from the Probate and Family court website or from any probate and family court in Massachusetts.
    b. If your grounds for divorce is **other than** irretrievable breakdown of the marriage, you need the form Complaint for Divorce and instructions on the Probate and Family court website or from any probate and family court in Massachusetts.
    c. If you need child support you will also need a copy of the Child Support Guidelines Worksheet.
3. Use the **sample** Complaint for Divorce under G.L. c. 208, Section 1B or a **sample** Complaint for Divorce to help you fill in the form you need. (See samples?)
4. Check out the Probate and Family Court Department Uniform Fee Schedule to find out how much it will cost. As of July 9, 2012, it cost $220 to file a divorce case ($200 filing fee + $15 surcharge + $5 for a summons). There are also fees, about $35-$45 to have a deputy sheriff or constable serve the papers on your spouse.
5. Fill out the Joint Petition for Divorce

6. Get a certified copy of your marriage certificate.
7. If you and your spouse have children together,

   a. fill out an Affidavit of Care and Custody form.
   b. If you need child support, fill out the Child Support Guidelines Worksheet.
8. Fill out a Certificate of Absolute Divorce or Annulment Statistical Information form.
9. **File the Complaint**. Take your Complaint for Divorce, a certified copy of your marriage certificate, and your Certificate of Absolute Divorce or Annulment form to the clerk's office in the Probate and Family Court. Ask the clerk to file it. If you filled out the Affidavit of Care and Custody or the Child Support Guidelines worksheet, also remember to give these to the clerk to file. If your spouse still lives in the county where you last lived together, you have to file for divorce in the Probate and Family Court in that county. If your spouse has moved out of that county, then you can file in the county where you live or in the county where your spouse lives now. When you file the Complaint and other documents:
   a. Fill out an Affidavit of Indigency form if you cannot pay for a summons or the cost or the costs to file the case and serve the papers. If you can check either box A or box B on the form, check the box, the clerk will approve the form, stamp it, and give you a copy. This means the court will cover your costs.
   b. File a motion to "impound" your address if you need to keep your address secret from your spouse to stay safe. Write on the motion form why it is not safe for your spouse to find out where you live. Look at a sample Motion to Impound Address and attached Affidavit.
   c. File a motion for temporary orders if you need the court to order something right away (like child support or custody, or that your spouse has to let you stay in the house). File the motion when you file the complaint and Affidavit of Indigency. Ask the clerk for a date for a hearing on your motion. Write the date on the motion form. There is a place on the form to put the date.You can also file a motion later, if you need to. Read more about this in Chapter 7 Custody and Chapter 8 Visitation.
10. **Serve the papers**: The clerk will give you a Summons. This is an official paper that tells your spouse when he must file his Answer to your case. The court can only decide your case after your spouse is served with the Summons. Bring or send the Summons and a copy of all the papers that you filed to a sheriff or constable to deliver to your spouse. If the court approved your Affidavit of Indigency, use a deputy sheriff to serve the papers. Be sure to give a copy of the Affidavit of Indigency to the deputy sheriff so the state can pay his or her fees. When the deputy sheriff gives the papers to your spouse, it is called "service of process."
11. **Wait for the sheriff or constable to return the Summons and "Proof of Service" to you**. After the sheriff or constable serves the papers, he or she returns the original Summons to you. On the summons the sheriff or constable fills out, dates, and signs the section called "Proof of Service". Remind the deputy sheriff or constable to send the summons with the "proof of service" back to you.
12. **Make a "return of service**" Return the signed original Summons to the court. This is called making "return of service." Be sure to make a copy of the signed original summons for your records.

What happens after I return the Summons to the court?

You may have to wait some time before you get a trial date. The time you have to wait before you get a trial date, depends on how you file for divorce:

The reason (or "grounds") you have for getting a divorce make a difference to what happens after you file your Complaint. It also makes a difference if your spouse files an Answer to your Complaint.

If you filed a complaint for "fault" divorce

(see Question 16, below), when you return the summons to the court, the court clerk looks at the case to see if any court date has been scheduled. If no court date has been scheduled, the clerk will schedule; a "Case Management Conference" and send you notice of it. The Case Management Conference will be at least 30 days after you file the return of service.

At the Case Management Conference, the next court date will be assigned or the judge can hear the case and make a decision if the case is uncontested.

If you filed a complaint for a "no fault" divorce

(a complaint where you say that the marriage has irretrievably broken down), the court clerk looks at the case 120 days after you filed the case to see if any court date has been scheduled. If the return of service or an answer has been filed, but no court date has been scheduled, the clerk will schedule a "Case Management Conference" and send you notice of it. The Case Management Conference will be at least 30 days after you file the return of service.

At the Case Management Conference, the next court date will be assigned. If you filed a complaint for a "no fault" divorce, you must wait at least 6 months for a hearing.

If your spouse files an Answer, and no future court date has been scheduled, the court will schedule a Case Management Conference to talk about your case.

If your spouse does not file an Answer, the court will schedule a Case Management Conference to talk **about your case. The court will only do this if you have returned the summons to the court.**

What happens at a Case Management Conference?

At a Case Management Conference, the judge can hear the divorce case and grant the divorce if your spouse has not filed an Answer to your case or if you and your spouse have settled the case. "Settling" means that the two of you have agreed in writing about all the things that must be decided in a divorce case, like who will have custody and how much support for you, how much support for your children, what kind of health insurance you or your children should have and who should pay for it, and how your property will be divided.

If the court does not grant the divorce at the Case Management Conference, the next court date must be assigned. The next court date could be a Pre-Trial Conference or a trial date.

Going to trial – Getting a Judgment of Divorce

There will be a final hearing, also called a trial. At the trial the judge will decide your divorce case. Even at a trial, the parties can settle the case with a written agreement that they sign and ask the judge to

approve. After your trial if the court grants your divorce, it will issue what is called a "Judgment of Divorce Nisi." If the trial took a day or less, the judge must issue the judgment within 30 days of the trial.

Your divorce will become "absolute" (final) 90 days after Judgment of Divorce Nisi.

How do we file a Joint Petition for Divorce?

To get a divorce, you can file:

- a Complaint for Divorce, if you are the only one who wants a divorce
- a Joint Petition for Divorce, if you and your spouse want to file a "no fault" divorce together. If you and your spouse file a joint petition, you also need to file an affidavit that your marriage has broken down and cannot continue (called an affidavit of irretrievable breakdown of the marriage) and a notarized separation agreement.

Can I file in Massachusetts?

You can file for divorce in Massachusetts if:

- you have lived in the state for a year, or
- you lived together as a married couple in Massachusetts and the irretrievable breakdown of the marriage happened in Massachusetts.

If either of these two things is true, then you can file for divorce in Massachusetts, even if your spouse lives in another state, or you do not know where he lives.

What court do I file in?

If your spouse still lives in the county where you last lived together, you have to file for divorce in the Probate and Family Court in that county.

If your spouse has moved out of that county, then you can file in the county where you live or in the county where your spouse lives now.

How much does it cost to file a Joint Petition for Divorce?

The Probate and Family Court charges fees for filing and handling certain documents. Check out the Probate and Family Court Department Uniform Fee Schedule to find out how much it will cost. As of July 9, 2012, it cost $220 to file a divorce case ($200 filing fee + $15 surcharge + $5 for a summons).

Case	Filing Fee	Surcharge	Summons	Deputy Sheriff or Constable Costs
Divorce	$200	$15	not applicable	not applicable

What if I cannot afford to pay the court fees?

You do not have to pay these fees if:

- you get any kind of public benefits (welfare, Food Stamps, etc.); **or**
- your income is less than 125% of the federal poverty level; **or**
- you can show that paying the fees would make it hard for you to pay your rent or mortgage or buy food or clothing.

If you cannot pay the fees, ask for an Affidavit of Indigency form. This form asks the court to let you file without paying the fees. This is called a "fee waiver." The form also asks the court to order the state to pay the deputy sheriff or constable to serve the court papers.

You will need to write your income (how much money you get every month) on the Affidavit. Write down all the fees that you need help with: filing fees, the costs of getting the deputy sheriff or constable to serve the papers, and any other costs that you need covered. There are spaces on the Affidavit where you can write this.

Filing a Joint Petition for Divorce

1. Write out a separation agreement with your spouse that shows how you have agreed to divide your responsibilities for your children and the things you own.
2. Get the separation agreement notarized.

   You need to have the separation agreement **notarized** (this means, have a person certified as a **notary public** witness your signing of the agreement). Fill out the agreement, but wait until you go to the notary to sign it. You can find a notary public in city and town clerks' offices, local banks, real estate offices, lawyers' offices, and travel agencies. In Massachusetts, notaries may charge no more than $1.25 for notarizing a document.

3. Write out an affidavit of irretrievable breakdown of the marriage that says your marriage has broken down and cannot continue. Your affidavit has to say that you swear what you are saying is true.
4. Fill out the Joint Petition for Divorce
5. Get a certified copy of your marriage certificate.
6. If you and your spouse have children together,
   a. fill out an Affidavit of Care and Custody form.
   b. If you need child support, fill out the Child Support Guidelines Worksheet.
7. Fill out a Certificate of Absolute Divorce or Annulment Statistical Information form.
8. Take your notarized separation agreement, your affidavit of irretrievable breakdown, a certified copy of your marriage certificate, your Certificate of Absolute Divorce or Annulment form, and your Joint Petition to the clerk's office in the Probate and Family Court and ask to file. If you filled out the Affidavit of Care and Custody or the Child Support Guidelines worksheet, also remember to give these to the clerk to file. When you file the petition:
   a. Fill out an Affidavit of Indigency form if you cannot pay the costs to file the case. If you can check either box A or box B on the form, check the box, the clerk will approve the form, stamp it, and give you a copy. This means the court will cover your costs. The Court may require both parties to file an Affidavit of Indigency in order to waive the filing fee.

How long will it take?

Joint Petitions for Divorce are scheduled for hearing within 30 days of filing all of the documents described above. In addition to the joint petition, affidavit, and separation agreement, the parties must file financial statements before the case can be scheduled for a final hearing.

What happens after I file?

After you file, the court schedules the final hearing which is within 30 days of filing all of the required documents.

What happens at the final hearing?

At the final hearing, you present your affidavit of irretrievable breakdown of the marriage and your separation agreement to the judge. You and your spouse must show the judge in the affidavit that the marriage has broken down. You must show the judge that the agreement is fair and reasonable about custody, child support, alimony and dividing your property. At the hearing you ask the judge to approve the agreement and "incorporate" it in the divorce judgment. "Incorporating" the agreement in the divorce means that the judge grants the divorce and orders you and your spouse to obey the agreement.

The divorce that the judge grants is called a "Judgment of Divorce Nisi."

Your divorce will become "absolute" (final) 90 days after Judgment of Divorce Nisi.

Do I need to have a reason to get a divorce?

You need to choose a "grounds" (legal reason) for your divorce. One grounds for getting divorced is that you simply do not get along with your spouse anymore and you do not want to be married. You can always get a divorce if you want one, no matter what your situation is.

What are the different grounds for divorce?

There are two "no fault" grounds and seven "fault" grounds. The "no fault" grounds means that the marriage needs to end but neither person is to blame. The "fault" grounds mean that one person did something so wrong that the marriage needs to end.

"No fault" grounds

In Massachusetts, the "no fault" grounds for divorce is called "Irretrievable Breakdown of Marriage." There are two kinds of irretrievable breakdown divorces. They are called "1A" and "1B," because those are the sections in the Massachusetts divorce law that apply.

1. **1A–Irretrievable Breakdown, both spouses file together:**You and your spouse file for divorce together. You agree on all of the decisions you have to make in the divorce, like child custody, support, money, and property.

    a. You both write and sign a statement that says you swear the marriage is over. This statement is called an "Affidavit of Irretrievable Breakdown of the Marriage.
    b. You and your spouse make a separation agreement and sign it in front of a Notary Public. (You can find a Notary Public at a bank).
    c. You file the
        i. "Joint Petition for Divorce,"
        ii. Affidavit of Irretrievable Breakdown of the Marriage, and
        iii. the notarized separation agreement in the Probate and Family Court.
    d. You can ask for a hearing date when you file your papers. You do not have to wait.
    e. Both spouses have to go to court for the hearing. At the hearing, the judge makes sure you agree and that everything is fair.
2. **1B–Irretrievable Breakdown, only one spouse files**: If you and your spouse cannot agree on everything, you can file this complaint by yourself. It does not matter if your spouse wants a divorce. If you want one, you can file this complaint.

Once you file, you must serve the Domestic Relations Summons. You need to wait six months after filing the papers before you can ask for a trial date. But you can file motions for temporary orders with your complaint and have them heard within ten(10) days.

You can get the divorce even if your spouse does not show up for the hearing. If you do not have an agreement, the judge will decide things like support, custody, visitation, and what happens to your property.

"Fault" grounds

There are 7 "fault" grounds for divorce. With a "fault" grounds, one spouse files for the divorce and blames the other spouse for the end of the marriage. Although there are several fault grounds, "cruel and abusive treatment" is the one that survivors of domestic violence use the most.

You can ask for a hearing 21 days after the sheriff or constable serves your spouse with the Domestic Relations Summons and the Complaint for Divorce. You can get the divorce even if your spouse does not show up for the hearing. After the judge hears your case, the court issues a Judgment of Divorce Nisi. The divorce becomes final 90 days after Judgment of Divorce Nisi.

The "fault" grounds for divorce are:

1. **Cruel and Abusive Treatment** is the most common fault grounds for divorce. You need to show that your spouse did something on purpose that hurt or upset you. Physical abuse is cruel and abusive treatment. Emotional abuse is cruel and abusive treatment if it caused you physical harm (made you sick). For example, his drinking and staying out all night caused you headaches and stomach problems.
2. **Desertion**You will have to show that your spouse:
    a. left you,
    b. has been gone at least a year, and
    c. is not planning to return.
    d. You will also have to show that he left on his own, you didn't agree and he did not have a good reason to leave.

In some cases, there is desertion even though the spouse never physically left the home. In those cases, the judge has to look at the facts of the case to see if it amounts to desertion.

1. **Gross and confirmed habits of intoxication** means that your spouse has a pattern of using a lot of drugs or alcohol. You have to prove that your spouse uses "excessive" amounts of (too much) drugs or alcohol, and that he does it on his own without being forced. You also need to prove that he does this regularly, rather than just every once in a while.
2. **Gross or wanton and cruel refusal or neglect to provide suitable support** means that your spouse refuses to give you enough money to live on. To use this ground, you have to show that your spouse is able to support you but refuses or fails to do so. You also have to show that this has hurt you physically (you have gotten sick) or puts you in danger of physical harm.
3. **Adultery** is not used very often. It means that your spouse had sex with someone else. You will have to prove that your spouse had sex with someone else. This is very difficult to prove. Most people do not use this ground even if they think their spouse had sex with someone else.
4. **Impotency**: This means your spouse is unable to have sex. This grounds for divorce is rarely used.
5. **Sentence of Confinement in a Penal Institution**: This means your spouse has been sentenced to spend five years or more in prison. This grounds is based on how long the sentence is, not how much time he actually spends in prison.

What is a separation agreement? Do I need one?

In a divorce case, you and your spouse may sign an agreement that says how you want to handle things. The agreement is called a "separation agreement." Sometimes the separation agreement is a binding contract between you and your spouse. Sometimes it is not binding until the judge approves it and includes it in the divorce judgment. It all depends on what you and your spouse put in the separation agreement. It is very wise to get legal advice before you sign one.

Separation agreements cover things like:

- alimony,
- child support,
- child custody,
- visitation,
- what happens to personal property,
- what happens to the family home,
- what will happen with taxes,
- who will pay the debts,
- change of name, and
- protective orders (for example, an order that says your spouse cannot go to your house or workplace).

A separation agreement is only good if both spouses sign it. Get advice from a lawyer before you sign a separation agreement that your spouse or his lawyer wrote. Your spouse cannot force you to sign a separation agreement. If your spouse pressures you to sign one, walk away and talk to your own lawyer.

Talk to a lawyer if you think you might want a separation agreement. A separation agreement can affect your life for a long time, and some of the questions are complicated (like taxes). It is important to spend

some time thinking about your particular situation, your needs, and the needs of your child if you are a parent. Keep in mind that things change over time. It is better to talk to a lawyer and have the lawyer write up the agreement than to try to write it yourself.

A separation agreement usually becomes part of the divorce judgment. But the judge can refuse to accept an agreement if she believes it is unfair or if she thinks your spouse pushed or forced you to sign it.

Also, the judge will not approve the parts of the separation agreement that affect your children (such as custody) unless she believes that they are in the child's "best interest."

Paternity

A paternity case is a case that decides who the father of a child is. Using the courts to decide who the father of your child is called “establishing paternity.” The biological parents of a child only file this kind of case when they were never married to each other. If the biological parents of a child are married to each other, they do not need to file a paternity case. The law assumes that the mother's husband is the father of the child.

In a paternity case, the court can order genetic marker tests (gene tests) to decide who the father is. A judge will order these tests if the man denies that he is the father, or if there is a question about who the father is. If the judge orders testing, then the mother, father, and child all have to get tested. But they do not have to get tested at the same time. The test is just a swab of the inside of your cheek. No one has to give any blood.

The judge’s decision about who is the father is a “judgment.” Getting this kind of judgment is called "establishing paternity." The court can then order child support, custody, visitation, medical insurance, and other things that are in the best interests of your child.

The Department of Children and Families

The Department of Children and Families (DCF) is the state agency that has the job of looking out for children and protecting them from abuse and neglect. DCF used to be called the Department of Social Services (DSS).

Why did the Department of Children and Families contact me?

The Department of Children and Families (DCF) usually contacts a family because someone told DCF that a child in that family may be abused or neglected. When someone tells DCF that they think a child is being abused or neglected, it is called a "51A report." The name "51A" comes fromsection 51A of Chapter 119 of the Massachusetts General Laws.

DCF must listen to every report of child abuse or neglect. They must either "screen in" the report or "screen it out". If DCF "screens in" the report, see Does the Department of Children and Families investigate every report?, they must find out if the report is true. They do that by investigating the report. They need to talk to the child's family and people who know the child and the family. If DCF learns that the child is abused or neglected, DCF must protect the child.

Sometimes DCF tries to protect a child by taking the child from his or her home. DCF workers can also refer cases to the District Attorney for criminal charges if they think a crime was committed.

More often, DCF tries to help a family solve its problems so the child can get the care he or she needs.

Does the Department of Children and Families investigate every report?

No. the Department of Children and Families (DCF) does not have to find out if every report is true. DCF workers "screen out" reports that are clearly untrue. They also "screen out" reports that are very old and reports that are about an adult who is not the child’s caretaker. DCF does not investigate the reports that it screens out.

DCF workers have to look into all of the reports that they screen in to see if they are true or false. When a DCF worker investigates a case, it does not mean that DCF thinks the report is true. DCF needs to find out if the report is true. The DCF worker may decide that the report is false once the worker learns more.

Can I find out who reported me and read the report?

The Department of Children and Families (DCF) is not allowed to tell you the name of the person who reported you. Sometimes the person who makes the report does not even give DCF their name.

Some people who work with children have to report to DCF when they think a child is being abused or neglected. These people are called "mandated reporters". They include:

- doctors,
- teachers,
- day care workers, and

- social workers.

Even though the DCF worker cannot tell you who reported you, the worker does have to tell you the details of what the person said. Sometimes you can figure out who made the report. If you think that the person who reported you to DCF is the same person who abused you, tell the social worker. Tell the social worker if you think he reported you because he is angry at you or he wants to hurt you

Can I read the report?

You have the right to see a copy of the report. The report is called a "51A report". You also have the right to see DCF's report about the investigation. The report about the investigation is called a "51B report." The name "51B" comes from section 51B of Chapter 119 of the Massachusetts General Laws.

The steps for asking for a copy of these reports are:

1. Write to the DCF Regional Director
   You can find the address on the Department of Children and Families website.
2. In the letter, ask to see the 51A report and the 51B report.
3. Make a copy of the letter for yourself before you mail it.

DCF will send you either a copy of the report(s) or a letter that explains why they are not sending you the reports. It takes some time to get a response. If you get the report, the name of the person who reported you to DCF will not be on it.

What can I do if the Department of Children and Families is investigating my family?

The Department of Children and Families (DCF) has a very serious job - protecting children. Sometimes DCF takes children away from their parents to try to keep the children safe. It is important to remember that DCF can take your child from you. They have to go to court to take your child, but they can get a court order very quickly if they need to.

Try not to upset your DCF worker. It is best to speak nicely to the worker. Do not swear or yell at the worker. This is a difficult time. You may be angry at what you feel are false statements and judgments by strangers. Remember what the worker is trying to do - protect your child. Remember what the worker is able to do – go to court to take your child away from you.

Try to cooperate with DCF. Go to your appointments. Call your worker back when she calls. If you need to miss an appointment, call your worker to tell her why. If you do not cooperate, DCF may hold this against you.

Important

What you say to DCF is not "confidential." This means that your DCF worker can tell a judge everything that you say to her.

DCF cares about everything that affects your child. DCF cares about the party your sister throws while babysitting your child. DCF cares about how the person who abused you has treated your child. DCF wants to know what you are doing to try to protect your child.

Can the Department of Children and Families take my child before I even know that someone reported me?

If DCF thinks that your children are in immediate danger, they can go to a judge at Juvenile Court and ask for an emergency order that gives custody to DCF right away. To get a custody order, DCF must testify under oath about the immediate danger. If DCF gets the order, they can go and pick up your children immediately, before you even know about the order. Your home is not the only place DCF will look for your children. DCF must go out, find your children, wherever they are and take them into DCF custody.

The emergency order that gives custody to DCF is good for up to 72 hours. When the court gives custody to DCF ,it must also give notice to at least one parent at the same time. The notice tells the parent to come to court for a hearing. At the hearing, the judge will decide if DCF will keep custody of your children after 72 hours. This kind of hearing is sometimes called a “72 hour hearing” or a “three day hearing.”

If there is 72 hour hearing and you do not get notice, call your local Juvenile Court to get information about the hearing.

You have the right to a lawyer. If you cannot afford lawyer, the court must appoint one for you. You do not have to pay the lawyer if the court appoints one for you. The court must tell you about your right to have a lawyer appoint one for you if you cannot afford one.

The sooner you can get a lawyer the better. The lawyer can use as much time as she can get to learn about your case.

Your children also have the right to a lawyer, and the court must appoint a lawyer for your children if you cannot afford one. You do not have to pay for your children’s lawyer.

You have a right to a hearing within three days. This hearing is for the judge to decide whether your child can stay with you while DCF investigates your case. You might be able to get a lawyer before your three day hearing. If you can get a lawyer, ask the lawyer to go to the hearing with you.

Department of Children and Family investigations

What happens during a Department of Children and Families (DCF) investigation?

Emergency investigations

Sometimes a report sounds so serious that the Department of Children and Families (DCF) thinks it is an emergency. In an emergency investigation, a DCF social worker must investigate a report within 24 hours.

Non-emergency investigations

Most investigations are non-emergency. In non-emergency investigations, a DCF social worker must complete a basic investigation within ten days. The worker will call or visit you. The worker will try to find out if someone is abusing or neglecting your child.

If the social worker comes to your home, it is a good idea to have an advocate or a friend there with you. Ask that person to take notes about what happens. The social worker will want to talk to you about the things in the 51A report. But the social worker may also talk to you about other things. She can ask you questions about almost any part of your life.

The social worker may want to see your child or children when they are at home with you. The worker also may look around your home. She may talk to day-care workers, relatives, doctors, and other people who may know something about you and your child.

At the end of this first investigation, DCF will decide if your child is being neglected or abused. DCF can decide that your child is abused or neglected even if the report that started the investigation turns out to be false. If the DCF worker finds any condition that he or she thinks is dangerous to your child, the DCF worker will "support" the claim of abuse or neglect. If the DCF worker believes the child is being abused or neglected, the worker will "support" the claim of abuse or neglect.

Example

A nurse reports to DCF that she found a bruise on your child's arm and she thinks the child is being abused. The DCF worker finds your child got the bruise during recess at school, rather than at home. But the DCF worker also learns from your child that there is domestic violence in your home. The worker may "support" the report of abuse (decide that your child is being abused) because of the domestic violence.

Do I have to talk to the social worker?

You do not have to talk to the social worker. You have the right to refuse to talk to her. You also have the right to refuse to let her into your home.

But if you do not talk to the worker or let her in your home, she may think this means there is a problem. If DCF thinks your child is in danger, they may go to the police. They also may go to court to try to take your child away because they think it is an emergency.

Try to talk to a lawyer or advocate before you decide not to cooperate with DCF. Call your local legal services program to see if you qualify for free legal help. You can also call a lawyer referral service to try to find a private lawyer to help you at a price you can afford.

What can I do about the investigation?

Ask what the specific charges are: "What did the person who called in the report say?" Try to talk only about the things in the report-- the "specific charges". The worker may say things that upset you.**Try not to lose your temper**. Take notes if you can.

The worker may want you to sign "releases" for information. If you sign these forms, you are giving permission for someone else to talk to DCF about you and your child.

Example

If you sign a "release" that is addressed to a hospital, you are giving the hospital permission to talk to DCF about you and your child. The release may also give the hospital permission to share your medical records or your child's medical records with DCF.

Read everything carefully.**Only sign papers you are sure you understand**. You can ask for a few days to show the releases to a lawyer before you sign them.

It is extra important to talk to a lawyer if the release lets DCF see information that you may have to explain later, like:

- you have (or had) a serious problem with alcohol or drugs;
- you did something that is a crime; or
- you abused your child.

Remember that DCF can refer your case to the District Attorney if they think you committed a crime.

If you choose to sign releases, only sign ones that have all the blanks filled in. Make sure that you know who DCF is sending the release to.

You can also write on the release that it will "expire" (stop working) on a certain date. This way DCF will only be able to collect information about you and your child for a limited time.

Example

You can write, "This release will expire on June 1, 2011."

Get copies of everything the worker wants you to sign.

What happens after the investigation?

After the investigation is finished, DCF will decide if the original report of abuse is "supported" or "not supported."

If DCF says the report is "not supported," this means the DCF worker did not find any evidence that your child was abused or neglected. DCF will close your case.

If DCF says the report is "supported," this means the DCF worker thinks there is evidence your child was abused or neglected or is in danger of being abused or neglected by a caretaker.

DCF should send you a letter that tells you whether the report was "supported" or "not supported."

What if the report is supported?

If the report is supported, DCF has 45 days to do an "assessment" of your family. The assessment is to see if your family needs services. At this point, you will get a new social worker to handle your case. The first social worker was the investigator.

The new social worker will try to get to know you and your family during the assessment period. This is a good time for you to find out what services DCF offers and whether those services can help your family. DCF services include:

- Day-care,
- parent-aides to help you with some of the things you need to do for your child,
- counseling for you and your children,
- parenting education,
- help with housing and utilities, and/or
- other things to help your family.

Usually you will get a "service plan" at the end of the assessment. The service plan describes the services you will get. The service plan also says things that you have to do. The service plan may include things like:

- Go to counseling,
- Make sure your child gets to school on time,
- Make sure your child does his or her homework.

It is important to understand what your service plan says. Talk to your DCF worker about the service plan before you sign it.

Tell your worker if:

- you need transportation to get to places that the service plan says you have to go;
- you think there are too many appointments for you to get to all of them; or
- there are other problems with the service plan.

You may want to talk to a lawyer or advocate before you sign your service plan. Once you sign the service plan, you have to follow it. If you do not do everything that the service plan says you have to do, DCF may try to get custody of your child.

If you sign the service plan and then have trouble following it, ask your DCF worker to change the plan. Ask for a meeting with your worker, or write to your worker and explain why you feel you have to stop. Do not stop doing what you agreed to do unless your worker changes your plan.

DCF can do other things during the assessment period if the worker thinks your child is in danger. DCF can:

- ask you to agree to place your child in foster care. If the social worker asks you to sign a "voluntary placement agreement," **ask for time to talk to a lawyer or advocate before you sign.**

- go to Juvenile Court to try to get custody of your child. DCF only does this if the worker thinks your child is in danger. If DCF goes to Juvenile Court, this is called a "Care and Protection" case. You have the right to a lawyer for this type of case. The court will appoint a lawyer to represent you if you cannot afford to pay for one. The court will also appoint a different lawyer for your child at no cost to you. Your child's other parent also gets to have a lawyer.

In most cases DCF does not ask you to place your child in foster care or go to Juveile Court to get custody.

If the Department of Children and Families opens a case based on domestic violence

I didn't do anything. Why is this case open on me?

The Department of Children and Families (DCF) knows that it hurts a child to see or hear domestic violence. DCF's job is to protect your child. If your DCF worker knows that your child hears or sees the other parent abuse you, your worker may open a case to protect your child.

You did not choose to be abused, and you may not be able to control the violence. But DCF opens cases in the name of the parent who is taking care of the child. If DCF opens a case because of domestic violence against you, DCF will say it's a case of "neglect". This means that DCF thinks you are "neglecting" your child by letting your child see and hear the abuse.

Your DCF worker should try to help you and your child without blaming you for the abuse. Your worker should try to protect your child and also help you stay safe.

If DCF opens a case because someone is abusing you, call the local DCF office and ask to talk to a Domestic Violence Specialist. DCF Domestic Violence Specialists are trained about domestic violence and will understand what you are going through. A Domestic Violence Specialist should be able to help you. You can also get help from DCF by calling the Domestic Violence Consultation line at 617-748-2335.

My DCF worker told me to get a 209A protective order (restraining order). Do I have to?

Your DCF worker may tell you to get a 209A protective order ("restraining order") against the person who is abusing you. A 209A protective order orders the abusive person to stay away from you or to stop abusing you. It can also order the abusive person to stay away from your child. The DCF worker might think you need the 209A protective order to protect your child.

If you think a 209A protective order might help you and your child, you can:

- talk to a domestic violence counselor;
- talk to a SAFEPLAN advocate. SAFEPLAN advocates are at many courthouses. They work with battered women's programs to help victims of violence; and/or
- go right to the courthouse and file for a 209A protective order yourself. Read more about how to get a 209A protective order.

But if you think getting a 209A protective order will put you or your child in **more** danger, explain this to your DCF worker. If your DCF worker does not understand, call the DCF office and talk to the worker's supervisor or to a DCF Domestic Violence Specialist.

If DCF still insists that you get a 209A protective order, you can file for one and tell the judge that you are only there because DCF asked you to get the order. The judge may disapprove of DCF trying to make you get an order, and may deny the order for this reason.

In the end, it is up to you. DCF cannot force you to get a 209A protective order. But DCF may try to take your child if you do not figure out a way to protect your child from the domestic violence.

My DCF worker says DCF will take my child if I go back to the person who abused me. What can I do?

Is your DCF worker wrong in thinking your boyfriend or spouse is dangerous to you or your child? If you do not think your boyfriend or spouse will abuse you or your child, explain this to your worker and try to show her why she is mistaken.

You have a tough choice to make if you cannot convince your DCF worker that it is safe for you to go back to your boyfriend or spouse. DCF may file a "Care and Protection" case in court and ask for custody of your child if your worker thinks that getting back together put your child in danger. It will be up to the judge to decide, but it is hard to keep custody when DCF is against it.

It is very important to have a lawyer if DCF tries to take your child in a Care and Protection case. You have a right to have the court appoint a lawyer for you if you cannot afford one. Be sure to talk to your lawyer if you are thinking about going back to your boyfriend or spouse after DCF told you to stay away from him.

My worker says I have to go to counseling. Do I?

It is usually good to cooperate with DCF and get the services that your worker thinks you should get.

DCF may want you to join a support group. It might help you to talk to other women about what goes on in your home. A battered women's support group can also help you decide what's best for you and your child.

DCF may want you to talk to a therapist, like a mental health counselor, social worker, or psychologist. If you go to a therapist, this does not mean you are "crazy." It is a good thing to talk to someone about what happens in your relationship. Talking to a therapist can help you figure out what to do. It is important to talk to your therapist about what can happen in court. Also, it is better to "vent" to a therapist than to your DCF worker.

Remember

If you signed releases, DCF may be able to get information from your therapist. Your therapist may even have to report to DCF how you are doing. Also, DCF can call the therapist to testify in court.

I heard that a therapist can report what I say to DCF. Is that true?

While therapy is usually "confidential" (secret), it is not confidential in child custody cases. Therapists are also "mandated reporters." This means that your therapist has to tell DCF (file a 51A) if something you say makes it seem like your child is in danger (for example, if you tell the therapist that your partner hits your child).

Battered women's counselors are also "mandated reporters" under the law. If you talk to a battered women's counselor, ask her what kinds of things make her feel she needs to file a report with DCF.

What does DCF tell mandated reporters to do when there is domestic violence?

DCF tells mandated reporters to be very careful about your safety, if they suspect domestic violence. DCF has a pamphlet for mandated reporters called "Promising Approaches: Working with families, child welfare and domestic violence". The pamphlet has suggestions for mandated reporters to think about when they learn there is domestic violence. The pamphlet encourages mandated reporters to look at each family's situation and to think carefully about whether or not to file a report. The pamphlet explains that it is important to name the abusive person in the 51A report. It tells reporters to ask you about your concerns. It gives practical examples to help reporters file a report **with** you instead of against you.

The person who abused me reported me to the Department of Children and Families. What can I do?

Sometimes abusive people call the Department of Children and Families (DCF) to get back at their victims for leaving or getting a 209A protective order against them. Sometimes they try to control their victims by threatening to call DCF. Sometimes they do call DCF.

The person who abused you may call DCF and lie about you. He may say that you are abusing or neglecting your child or that you are an alcoholic or drug addict. DCF will investigate and find out what is true and what isn't. But DCF may also learn about the domestic violence when they investigate. DCF may decide your child is in danger from the domestic violence.

When DCF investigates, try to be as calm and organized as possible. Try to have a friend or advocate with you when the DCF worker comes to talk to you. Ask to speak to a DCF Domestic Violence Specialist (you can contact the DCF Domestic Violence Unit at 617-748-2000). Explain to the worker and the DCF Domestic Violence Specialist that the abusive person called DCF to get back at you for leaving him or getting a 209A protective order. Tell the worker and the Domestic Violence Specialist what you have done to protect your child from the domestic violence.

DCF needs to see that you are protecting your child from domestic violence. DCF might want you to go to counseling or get other services.

It is best to cooperate with DCF in these situations. DCF will also want to talk to the abusive person about your child, especially if he is the child's other parent. Let him be the one who does not cooperate when DCF wants to visit his home, make an appointment, or give him a service plan. Try to be the parent that DCF can trust, by doing what your worker asks you to do as best you can. Let the abusive person be the person that DCF does not trust.

The abusive person lied to Department of Children and Families about me and then filed for custody in Probate and Family Court. What can I do?

Sometimes abusive people make false reports to the Department of Children and Families (DCF) so they can get custody. When they go to the Probate and Family Court to get custody they make those reports all over again.

Tell the judge that his report is not true. Tell the judge about the abuse. Explain that the report to DCF is a way to abuse you more. Show the judge that DCF decided that you do not neglect or abuse your child. If DCF did not support a 51A report against you, or if DCF has not filed a Care and Protection case to try to take your child, tell the judge.

It is usually best to cooperate with DCF so your worker can see that the abusive person's report is not true. DCF can tell the judge that the report was false. DCF may also tell the judge that your child should stay with you because the other parent is so abusive. DCF does not like to be in the middle of custody battles. But the judge may ask for the worker's opinion about what is best for your child.

If your abuser takes you to Probate and Family Court to get custody, it is very important to have a lawyer. Find your local legal services program.

Can a Probate and Family Court judge call the Department of Children and Families?

I have a case in the Probate and Family Court. Can the court contact the Department of Children and Families to get information about me?

Yes. But there is a special process the court must follow to get information from DCF.

The process also applies to getting DCF information about the other parent.

When the court wants DCF information about you or you want the court to have DCF information about the other parent, you have important rights. We describe your rights in our article about the special process.

Can the Probate and Family Court give custody to DCF?

Yes. A Probate and Family Court judge can order the Department of Children and Families (DCF) to take temporary custody of your children if the judge is worried that they are not safe with either parent. The judge can do this even if neither parent wants it.

Example

You have a divorce or custody case in the Probate and Family Court and the parents accuse each other of serious drug abuse, child abuse, or violence.

This does not happen very often. If it does happen, you have the right to a lawyer. If you cannot afford a lawyer, the court must appoint one for you. You do not have to pay the lawyer that the court

appoints. The court must tell you about your right to have a lawyer and the court must appoint a lawyer for you if you cannot afford one.

If the abusive person lies to the judge, tell the judge the truth. Tell the judge if you have witnesses or documents that can back you up.

Example

The other parent says that you are a drug abuser and this is not true. If your mother sees you every day and is in the courtroom and she can testify that she sees you every day and you are not abusing drugs, tell the judge. Or, maybe you went through rehab, attend NA regularly, and never touch drugs. Explain this to the judge and offer to bring a witness or documents to prove it.

If the judge decides to give DCF temporary custody of your child, you may want to:

- ask the judge to reconsider his or her decision,
- file an appeal, or
- do both.

Warning

You do not want to do any of these things without a lawyer. Make sure you get a lawyer if you decide to do any of these things. You will need a lawyer to help you decide what to do. You will need a lawyer to do whatever you decide.

What if I disagree with DCF's decision or I don't like my worker?

Try to get along with your worker. The Department of Children and Families (DCF) may hold it against you if you cannot get along with your worker or if it seems like you are not cooperating. But remember that working together does not mean you are friends. You need to be able to get along with your worker, but you do not have to like him or her.

Try to talk to your worker about any problems you are having. If you think there are misunderstandings, tell your worker what is bothering you. Speak nicely to your worker, even if you are upset with him or her. You may need your worker to help you in Probate and Family Court. For example, if you have a custody case against the person who abused you, your DCF worker might be able to show the judge that the abusive person should not have custody because your child is afraid of him.

If there is a real problem with your worker, call the DCF office and ask to speak to the worker's supervisor. DCF also has Domestic Violence Specialists that you can call for help. Be specific about your complaints. Do not just say that you do not like your worker. Tell the supervisor or Domestic Violence specialist the things that the worker has done or said which seem wrong. Explain that you want to cooperate with DCF but need help with the problems you are having with your worker.

What can I do if I disagree with the Department of Children and Families' decision?

You can file an appeal and ask for a "fair hearing." This is a chance to argue about certain DCF decisions. A hearing officer who is not part of your case will listen to what you have to say and what your DCF worker has to say. The hearing officer will then decide whether DCF was right or wrong. If the hearing officer thinks DCF was wrong, the hearing officer will order DCF to change its decision.

Some of the reasons you can ask for a Fair Hearing are:

- you want to appeal DCF's decision that a report of abuse or neglect is "supported;"
- you want to appeal DCF's decision to put your name on the "Registry of Alleged Perpetrators" (a list of people DCF says abused or neglected children);
- you want to appeal DCF's decision to stop or reduce your services;
- DCF stopped or reduced your services without giving you any advance notice; or
- you think DCF did not follow its own regulation and this caused a lot of harm.

Write to the DCF Fair Hearing Office, 24 Farnsworth St., Boston, MA 02210, to ask for a Fair Hearing. You have to ask for a Fair Hearing within 30 days after you get the decision that you want to appeal. Be sure to include the following in your letter:

1. your name;
2. your address;
3. your phone number;
4. the name of your child;
5. the name and address of the DCF office;
6. a copy or description of the decision you want to appeal; and
7. the date of the decision.
8. If you need an interpreter for the hearing, say so and tell DCF what language you speak.

Make two copies of the letter before you mail it to the DCF Fair HearingOffice. Send one copy to the director of the local DCF office that made the decision you are appealing. Keep the other copy of the letter for yourself.

If you lose a fair hearing, you can file an appeal in Superior Court.

Try to talk to a lawyer if you think you might want a Fair Hearingor if you want to appeal a Fair Hearingdecision in court. Call your local legal services program to see if you can get free legal help. You can also call a lawyer referral service to try to find a private lawyer to help you at a price you can afford.

What if I don't speak English well enough to do a Fair Hearing?

DCF regulations say that you can bring an interpreter to the hearing or ask DCF to give you an interpreter. DCF's notice about your right to a hearing tells you how to get them to appoint an interpreter for you. If you want DCF to give you an interpreter, tell them in your letter that asks for a Fair Hearing and make sure you tell them what language you speak.

What if I disagree with a different kind of DCF decision?

You can only get a Fair Hearing about certain kinds of DCF decisions. Some are on the list in the question "What can I do if I disagree with the Department of Children and Families' decision?" The complete list of decisions that you can appeal to a Fair Hearing is in the DCF regulations.

You can appeal the kinds of DCF decisions that are not on the list through DCF's "grievance process." For example, you can file a grievance about the way that a DCF worker or other employee treats you.

To start a grievance, file a written complaint at the office that you are complaining about. You can file a grievance at:

- the DCF Area Office;
- the DCF Regional Office;
- the Contracted Provider Agency (an agency that provides DCF services to you); or
- the DCF Foster Care Review Unit.

You have to file the written complaint within 30 days of the date that you had the problem with DCF. When you write the complaint, include all of the facts and arguments that you want DCF to consider.

DCF has to send you its decision within 21 days.

Is there anyone else I can call with questions or concerns about DCF?

DCF has an "Office of the Ombudsman." This office helps parents who feel DCF treated them unfairly. It is for people who have tried to solve a problem with a local DCF office and are still unhappy. Staff at the Ombudsman's Office can work with you and your local DCF office to solve problems. The phone number is (617) 748-2444.

Can I keep my personal property and leave an abusive relationship?

"Personal property" is something you own that you can move. It is not real estate. It is not land or a house. Personal property includes things like:

- cars,
- clothes,
- furniture,
- appliances,
- jewelry,
- bank accounts,
- dishes, and
- toys.

The law about splitting up personal property is different for married and unmarried people.

If you are married and you decide to get divorced, you go to court. At court, the judge divides your property between you and your spouse.

If you are not married, and you decide your relationship is over, you do not go to court. So a judge does not divide property between you and your partner. There is no law about dividing your property when you leave your partner.

If you leave a relationship because of domestic violence you may go to court because you need a 209A protective order. If you think it is safe to stay at home, you can ask the judge to order the abusive person to leave. If you can stay at home, you can probably keep most of your things.

You may decide it is not safe to stay. If it is not safe to stay at home, you can ask the judge to make an order that you can go back and get your things. Sometimes you cannot get your property back, but the court can order "compensation." The judge can order the person who abused you to pay for some of the things you had to leave behind.

Your safety is always the most important thing to keep in mind.

- Sometimes you need to get away as quickly as you can. You have no time to get your things.
- Sometimes you have time to think ahead so you can figure out how to have your things when you leave and stay safe.
- Sometimes it is safe to stay home. But you need to know what to do so you can stay safe.

If are thinking of leaving the person who abuses you, try to speak with a domestic violence advocate. She can help you plan the safest way to keep your personal property.

How can a 209A Protective Order help me with personal property?

If you get a 209A order, the judge can order the person who abused you to "compensate" (pay) you for certain things that you need because of the abuse. Things you need because of the abuse can be things you had to leave behind, things he destroyed or things like:

- money you could not earn because you were in a relationship where there was domestic violence
- the financial support you were getting from the person who abused you while you were in the relationship
- the cost of installing utilities in your new place, or restoring them if you are staying in the same place,
- medical expenses because of the abuse,
- the cost of replacing locks or personal property that the abusive person took or destroyed,
- moving expenses, and
- reasonable attorney's fees.

The judge can also order the person who abused you to compensate you for other losses that are not on this list.

I'm getting a 209A protective order. Who should move out?

You can ask the court to order the abusive person to move out as part of a 209A protective order. But there are many things to think about.

The most important thing to think about is whether you are safe at home. If it is dangerous for you to stay, even with a protective order, you may want to move out. A counselor at a battered women's program may be able to help you decide.

But think about this, too: under a 209A order, the person who gets to stay in the apartment gets to keep the personal property that is in the apartment. The person who leaves must go to court if he wants to get any property left behind.

Do you and your child need things like cooking pots, favorite toys, knives and forks, beds, and a kitchen table? When you get the 209A protective order, you may want to ask the court to order the abusive person to leave your home so that you can stay in it. If you want to move somewhere else after that, at least you will have time to find a place so that you can move and keep your furniture.

I just want to get away from the person who is abusing me. Should I even worry about my belongings?

Your safety and your child's safety are most important. You may not have time to think about personal property if you have to leave quickly.

If you have time, remember that you and your children will need furniture, beds, clothes, money, and maybe a car when you are on your own. It may be hard to leave if you have to move into an empty apartment. You may have to spend all of your money on first and last month's rent in a new apartment. You may not have any money left to buy dishes, furniture, or a car. It may be easier to stay safe and independent if you take household things with you. If you decide to take your things or just what you need, make sure it is safe.

Some women worry that they will look bad to a court if they take or ask for personal property or money. On the other hand, the court may expect you to take care of yourself and your safety. The court may also expect you to look out for your child. It is sensible and careful to get enough money and property to support yourself and your child.

It may not be safe to try to get money or property from the person who abused you. You are the best person to decide what is safe. A counselor at a battered women's program may be able to help you think about how to get the property you need.

Who gets the personal property if I move out?

There is no simple answer to “Who gets the personal property if I move out?” but some general rules to remember are:

- Just because he bought it, does not mean it is his.
- If he bought something, that does not mean he gets to keep it.
- If you bought something, that does not mean you get to keep it.
- If you are married, you can have your own property, separate from your spouse.
- And, if you are married your spouse can own his own property, separate from you.

The law about splitting up personal property is different for married and unmarried people. If you want a judge to help you keep some of your personal property or make the person who abused you pay for property you lost, you will have to go to court.

If you are getting a 209A Protective Order, getting divorced, or getting an order for separate support because of abandonment, you will already be in court. The judge can decide about property when you are in court. If you are not going to court for a 209A Protective Order, divorce, or separate support order, and you still need a judge to decide about personal property, you can go to Small Claims court.

If you are married

The court decides about the property of married people in **divorce** and **separate support** cases.

Property

When you get a divorce, the judge divides your property.

Getting a divorce can take some time. While the case is going on, the judge can order your spouse to let you **use** certain personal property and real estate. For example, the judge can let you stay in the house or use the car while the case is going on. If your spouse has abandonedyou and your children and you cannot pay for the things you need, the judge can order your spouse to let you **have** certain personal property and real estate.

When you get a divorce, the judge will divide all of the property that you and your spouse own. The judge divides the property you own together **and** the property you own separately. The judge decides what's fair. The judge will not just look at who bought an item or who actually owns it. Instead, the judge will look at many things. The things the judge looks at are called "factors". The judge **must** look at some factors. He or she **may** look at other factors.

The judge **must** look at factors for both you and your spouse like:

- how long you have been married,
- how you acted during the marriage,
- your age,
- your health,
- how easy it is for you to get a job,,
- the kind of work you do,
- your job skills,
- your income (how much and where it comes from),
- how much money and property you have,
- your debts,
- your needs,
- your children's needs, and
- how hard it will be for you to get money, property, and income in the future.

The judge **may** consider factors for both you and your spouse like:

- how much each of you paid to buy, maintain and increase the value of your property, and
- what each of you did for the family as a "homemaker". Shopping, cooking, cleaning, and child care can be as important as bringing in money. You have the right to a share of the personal property even if you did not earn the money and did not buy the property.

The division of property when you get divorced is sometimes a division of actual things, usually expensive things, like cars, art work, furniture, and jewelry. For ordinary things, like pots and pans and household tools and appliances, the judge decides how much one spouse has to pay the other.

Separate Support

If your spouse abandoned you and your children and you have no way to take care of yourself, you can file a Complaint for Separate Support. If your spouse has abandoned you and you do not have enough

resources to care of yourself and your children, the judge can order your spouse to let you have some personal property and real estate.

If I move out, what can I take with me?

If you own it, you can take it.

If you own it together with the abusive person, you can take it, but if you are married you may have to include its value along with other property when the Probate and Family Court judge divides your property. See How can a 209A Protective Order help me with personal property?

If your child is going with you, it is reasonable to take your child's clothes, furniture, toys, and so forth.

It is important to have good reasons about what you take, like, "I own it," "I use it," or "I need it".

How can I get the rest of my things after I move out?

Sometimes you do not have time to get your personal belongings before you leave.

You may be able to get your things back in a court case after you leave. It will probably take some time.

If you get a 209A Protective Order, you can ask for the replacement costs of property lost as the result of abuse when you go to court to get the order. See How can a 209A Protective Order help me with personal property?

If you are married you can ask for your property back in a divorce or separate support and maintenance case. See If you are married.

If the property is worth $2,000 or less, you can file a small claims court case. In a small claims case you have to show that the personal property belongs to you. In small claims court, you ask for "money damages." That means that you ask for an order that the other person pay you what the property is worth. When you ask for money damages , the judge can order the defendant to return your property to you.

Who gets the personal property if he moves out?

What can I do if I'm at a 209A hearing and the abusive person asks the judge for an order allowing him to take personal property with him?

Judges order many kinds of abuse prevention in 209A orders. A judge can order a person not to abuse you, to stay away from you, and other things. All of these orders are to protect you, the abused person. Judges should not include anything in 209A Protective Orders to benefit an abusive person. The law, Chapter 209A, does not say that the judge can allow the person who abused you to take personal property.

Some judges may consider a request from the person who abused you to get his property anyway.

But, you may **want** the abusive person to take some of his personal property, **if it can be done safely**. You might not want his clothes and personal items lying around. If the tools that he uses for work are in the apartment, you may want him to have them because you want him to be working.

If the judge is thinking about an order that will allow the person who abused you to get his stuff from your home, make sure you ask the judge to include plans in the order for this to happen safely. Some plans you can ask the judge to include in the order include:

- A police escort for the person who abused you, when he comes to collect his things;
- Name the specific things the person who abused you is allowed to take;
- that the personal property be truly personal: clothes, toiletries, identification and similar personal papers, tools he uses at work; not the TV, radio, computer, appliances, furniture;
- that the person who abused you is not allowed to come into your home, even to get his personal property. You can collect the things and leave them at the door, or at someone else's house.

What do I need to know about filing a small claims court case?

If you go to small claims court to get your property or the value of your property from the person who abused you, the property must be worth $7,000 or less.

- There is a small claims court in every District Court and Boston Municipal Court.
- To file a small claims case you fill out a complaint form.
- The filing fee is between $30.00 and $40.00, depending on how much the property you are claiming is worth.
- If your income is low enough, you can file an Affidavit of Indigency so that you do not have to pay court costs.
- In your complaint you have to show that the personal property belongs to you. In small claims court, you ask for "money damages." That means that you ask for an order that the other person pay you what the property is worth. When you ask for money damages , the judge can order the defendant to return your property to you.
- The court can ask you and person who abused you to go through mediation., You do not have to go through mediation. You can refuse mediation and you do not have to have a reason for refusing.
- You can learn more about the steps for filing a claim in small claims court on the Small Claims Advisory Service website, Filing a Claim.

What about bank accounts?

You may need the money in your bank account to pay first and last month's rent on an apartment, or to pay the mortgage, or to buy food. If you do not protect your bank account, the abusive person might take all the money out of it. Sometimes the abusive person goes right to the bank and takes all of the money out of the account right after he gets served with a 209A protective order.

The most common types of bank accounts that couples have are:

- joint savings accounts;
- joint checking accounts; and
- individual checking and savings accounts.

Joint accounts

All the money in joint accounts belongs to both of you. Either of you can go to the bank and take out all of the money in a joint account. This is true whether or not you are married.

Individual accounts

For individual accounts, only the person whose name is on the account can go to the bank and take out money. If your name is not on the individual account, you must have a court order to take money out of it.

If you are married

If you are married, the Probate and Family Court can divide up the money in all the joint accounts and individual accounts. When you are married, all of your property belongs to the two of you together, no matter whose name it is in.

If you are married, and you file for Divorce or a Complaint for Separate Support, you can get a court order about bank accounts . As soon as you file one of these complaints, the Probate and Family Court will issue an "automatic restraining order" about the bank accounts. The order will say that:

1. the two of you can only spend money from joint or individual bank accounts for “reasonable expenses of living,” like rent, food, and utilities and
2. you can only spend money on anything else if you both agree to it or the court orders that you can.

An automatic restraining order temporarily “freezes” your bank accounts. It also says that you cannot borrow money that your spouse will have to pay off and you cannot cut off health, dental, or car insurance. An automatic restraining order is not the same as the 209A protective order, that can protect you from abuse.

Sometimes the abusive person will spend the money in a bank account even after the court orders him not to. It is important to keep as many records as you can about your bank accounts in case the person who abused you spends the money. You will need to prove that the money was in the account when the judge made the order. You also need to prove that you were not the one who spent it.

What about tax refund checks?

A tax refund check is personal property. When you are married and you file a joint return, the tax refund belongs to both of you. If the tax refund is deposited in a joint account, either one of you can withdraw the money. See What about bank accounts?

If you get the tax refund as a check, it can only be cashed if both of you endorse it (sign the back of the check).

What about the car?

You can try to get the car as part of a 209A protective order. You can ask the judge to order the abusive person to give you the car and the keys to it. Or, you can ask the judge to order the abusive person to pay you the value of the car.

The judge is more likely to order that you get to use the car if you need the car to take care of a child or you need it to get to work. The judge may see that you need a car to drive your child to school, day care, or medical appointments, or to buy your child food and other things he or she needs. In any case, you need to show that your need for the car is the result of the abuse. For example, because of abuse you moved out and got a protective order. If you needed the car to take your child to day care, you may still need it.

If the judge decides that you need the car, the 209A protective order might only say that you can use the car. A 209A protective order cannot say that you own the car permanently.

I am married to the abusive person and the car is in his name. Can I take it?

Married people can own separate property. Your can own a car in your own name. Your spouse can own a car in his own name.

If you get divorced, the court divides the couple's property. Cars are included. A car or its monetary value, whether yours or his, is included in the total amount to be divided.

If the car is in your spouse's name, just taking it can have serious legal consequences.

If you get a 209A order and it does not say that you can use the car, you may be able to get the car if you go to court for divorce. In your divorce case, you can ask the judge to order that you can use the car until the case is finally decided.

If you want to own the car permanently, you need to ask for this as part of a divorce or separate support case. At the end of the case, the judge will decide who gets the car, or its value, when she divides your property.

Remember

If you do file for divorce or separate support, the judge decides every issue in your marriage, from custody and visitation to alimony and child support. Be prepared to deal with all these things when you file for divorce or separate support.

I am not married to the abusive person. Can I take the car?

If the car is in your name, you can take it.

You can also take the car if it is in both of your names, since it belongs to both of you. If the abusive person calls the police, show the police officer the title to the car with your name on it.

If the car is only in the abusive person's name, it is not legal for you just to take it.

What about gifts that the abusive person gave me?

Gifts are permanent. He cannot take them back.

He can file a case in court and say that they are not gifts and he should get them back.

Of course, he has to prove in court that it is not a gift.

My engagement ring – Can I keep it?

If you did not marry him

If you are engaged, but haven't married your fiancé:

- You may be able to keep your engagement ring, or
- Your fiancé may be able to get it back.

It all depends on what happened. It depends on why you did not get married.

Your fiancé may be able to get it back if he can convince a judge that

- it would be very unfair for you to keep it, and
- it is not his fault that you did not marry him.

On the other hand, if your fiancé did something that caused the breakup, like being abusive, he might not be able to convince a judge that

- it is unfair for you to keep the ring, and
- it was your fault that you did not marry him.

If your fiancé wants to get the engagement ring back, he must bring a case in court. It must be a separate case, not part of your restraining order case. If the ring is worth less than $7,000, he can file a case in small claims court to get it back. He would have to prove that it would be unfair for you to keep the ring because you caused the breakup.

If you are married

If you are married, your engagement ring counts as "marital property." If you get divorced, the judge will divide all of the marital property between you and your spouse.

The judge looks at a number of factors. The judge may give the ring to because you contributed certain things to your marriage. The judge may give the ring to your partner and give you your piano, or car, or other property. If your partner takes the ring before you both go to court, the judge may order him to return it to you or pay you money for it.