



Town of Lexington

Police Department

Subject: Prosecution	
Effective Date: 11-01-2011	Review Date: Annually
By Order of: Mark J. Corr, Chief of Police	

Policy & Procedure

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GENERAL CONSIDERATIONS AND GUIDELINES

The successful prosecution of law offenders is the positive culmination of all the Police Department's investigative efforts. In order to enhance the quality of each case to be prosecuted, the Lexington Police Department is committed to cooperative efforts with other law enforcement and regulatory agencies, and the Middlesex District Attorney's Office. The procedures outlined in this policy are established to ensure that all cases are properly prepared, presented, and when appropriate, prosecuted in the court of competent jurisdiction.

Among the general prosecution guidelines are two areas of particular importance, they are:

- Identifying individuals who can be classified as habitual or serious offenders so that the court can impose harsher or more effective penalties.
- Identifying cases that are weak or are unlikely to result in a conviction without the help of additional agencies resources i.e. child abuse or rape cases with the Sexual Abuse Investigation Network (SAIN) Unit of the Middlesex District Attorneys Office (MDAO).

PROCEDURES

A. Case Preparation

1. The Chief of Police, or his designee, will review all police reports and shall have the discretion to:

- a. Require additional reports or further investigation of any given case;
 - b. Direct the Police Prosecutor to seek a criminal or non criminal disposition, warrant, or hearing in the appropriate court; or
 - c. Exercise administrative discretion, within the parameters of the law, not to proceed with court action.
2. The Police Prosecutor is a direct subordinate to the Lieutenant Detective Commander. Both shall keep the Chief of Police regularly informed about the status and disposition of unusual or important Department cases. In addition, the Police Prosecutor should:
- a. Review all applications for complaint to insure that they are complete and include the Defendant's full name, address, date of birth, social security number, and physical identifiers;
 - b. Review and file as soon as possible with the court all applications for complaint which result from an arrest;
 - c. Ensure that the Chief of Police is advised of any application for complaint resulting from an arrest and/or provided with a copy of the arrest report; and
 - d. Ensure that officers are informed in a timely manner of their required attendance in court by posting appearance dates on the Department's Court Boards. When necessary, officers and other witnesses should also be given a telephone call to confirm their appearance in the appropriate court (especially on short notice).
 - e. Maintain a liaison with the Framingham Juvenile Court, Superior Court, Grand Jury, and other court agencies and departments to insure the timely exchange of information regarding court dispositions, bills, status information, bail hearings, etc.
 - f. Ensure that all relevant information, which may be available through the Law Enforcement Administrative Processing System (LEAPS), National Crime Information Center

(NCIC), or Criminal Justice Information System (CJIS) has been obtained and is included with the arrest reports.

3. No case which has been brought before a court of competent jurisdiction shall be dismissed or "nolle prosequi" without the approval of the Chief of Police, his designee, or the District Attorney's Office. (NOTE: references to the District Attorney include Assistant District Attorneys).
4. If it comes to the attention of the Chief of Police that a case cannot be prosecuted, or is dismissed by reason of the Department not adhering to its procedural guidelines, the Chief or a designee shall:
 - a. Investigate the incident to determine how and when the case was mishandled;
 - b. Determine if there are any patterns or trends relating to other cases which may have been mishandled or were unsuccessfully prosecuted; and
 - c. If necessary, draft a report of findings so that appropriate procedural, training, and/or disciplinary action can be taken to prevent the mishandling from occurring again in the future.

B. Serious or Habitual Offenders

1. **Habitual Offender.** M.G.L. Chapter 279, section 25 defines a habitual criminal as:

"Whoever has been twice convicted of a crime and sentenced and committed to prison in this or another state, or once in this and once in another state, for terms of not less than three years each, and does not show that he/she has been pardoned for either crime on the grounds that he/she was innocent, shall upon conviction of a felony, be considered an habitual criminal."

2. **Serious Offenders** shall include those individuals who are charged with a second or subsequent offense of any law violation, which has a statutory increase in penalties. These include, but are not limited to:

Chapter 265

section 13B - Indecent A&B, child under 14;
section 13C - A&B to collect a loan;

section 17 - Armed robbery;
section 22A - Rape of child; use of force;
section 23A - Rape and abuse of child;
section 24B - Assault of child;

Chapter 266

section 14 - Burglary, armed;
section 15 - Burglary, unarmed;
section 40 - Common and notorious thief;
section 40 - 2nd Larceny of bicycles;
section 62 - Receiving stolen property;

Chapter 267

section 11 - Utterers, counterfeit bills;
section 19 - Utterers, counterfeit coins;

Chapter 269

section 10 - Dangerous weapons;
section 11E - Serial ID numbers on guns;

Chapter 272

section 35A - Unnatural & lascivious acts w/ child under 16;
section 40 - Disturbing schools/assembly;
section 62 - 3rd conviction, nightwalker;

Chapter 90

section 22F - Habitual traffic offender;
section 24 - Safe Roads Act.

3. The Police Prosecutor or investigating officer should review any known criminal and/or motor vehicle records which may be available from Department records, the Board of Probation, the Registry of Motor Vehicles or the Federal Bureau of Investigation (F.B.I.) Triple-I record system.
4. If a Defendant is identified as a serious or habitual offender, the Police Prosecutor will review the case with the Assistant District Attorney to insure that the case has been properly prepared.

C. Police Prosecutor's Role

1. The Police Prosecutor Training handbook distributed by the Middlesex County District Attorney's office shall be used by the Police Prosecutor as a guide in handling all court cases. When offered by the District Attorney, the Detective Sergeant responsible for Prosecution will attend D.A. seminars and trainers specifically for police prosecutors.
2. **Crimes to be Handled by the Police Prosecutor**. The following offenses will be handled by the police prosecutor if there are no victims involved:
 - a. Certain motor vehicle offenses, including but not limited to:
 - attaching plates;
 - failure to stop for a police officer;
 - failure to stop for a school bus;
 - operating an uninsured or unregistered vehicle;
 - operating an uninspected vehicle;
 - operating without a license or registration;
 - speeding;
 - use of a false motor vehicle document;
 - abandoning a motor vehicle;
 - failure to keep to the right;
 - failure to obey a traffic signal;
 - stop sign violation;
 - marked lanes violation;
 - one way street violation;
 - operating a motor vehicle with defective equipment;
 - operating a vehicle making unnecessary noise.
 - b. First offense operating under the influence cases and any uncontested second or subsequent offense.
 - c. Operating a motor vehicle after revocation or suspension of license or right to operate.
 - d. Operation of a motor vehicle negligently or recklessly so as to endanger.
 - e. Certain other misdemeanors, by-law or ordinance violations not involving individual victims, including but not limited to:
 - minor transporting alcohol;
 - trespassing;

- shoplifting;
- drinking in public;
- prostitution;
- disorderly conduct;
- disturbing the peace;
- common law affray;
- common nightwalker;
- indecent exposure.

- f. Uncontested simple possession of controlled substances.
- g. Any other case assigned at the discretion of the (Assistant) District Attorney.

D. Police Prosecutor and the Assistant District Attorneys (ADA)

- 1. The Police Prosecutor will handle all aspects of the cases listed in **section III** above, including:
 - a. Arraignments and bail arguments.
 - i. The pretrial release of any individual shall be controlled by the Massachusetts bail statutes as defined in M.G.L. Chapter 276, section 42 and Chapter 119, section 67 (Juveniles).
 - ii. The District Attorney's office will handle bail reviews in the Superior Court, but will rely the Police Prosecutor to provide information as to reasons for bail;
 - b. Pre-trial conferences;
 - c. Plea negotiations with defense counsel; and
 - d. Admissions and trials.
- 2. The Police Prosecutor will apply and follow the policies of the District Attorney's office with respect to the cases they handle, including charging, plea negotiation, and sentencing recommendation policies, where applicable.
- 3. During preliminary court proceedings and arraignments, the Police Prosecutor will use or read to the court (when permitted) police reports, sworn affidavits, motor vehicle citations or other documentation in lieu of an officer's presence.

4. When necessary, the Police Prosecutor should ask questions and seek the advice of the Assistant District Attorney assigned to assist the Lexington Police Department.
5. The Police Prosecutor should consult with the Detective Commander (and Chief of Police when necessary) and the Assistant District Attorney whenever he/she believes the case is particularly controversial, sensitive, or complex. If necessary, the Assistant District Attorney should be asked to handle the case if the case involves a potential conflict of interest, a complex legal issue (i.e., motions to suppress) or a complicated issue of proof.

E. Recording Case Dispositions

1. **Police Prosecutor.** Upon the finding by the court, the Police Prosecutor shall note the disposition of the case on the arrest sheet. This information shall then be forwarded to the Central Records for filing.
2. If the Police Prosecutor is not present (i.e., Framingham Juvenile or Superior Court), the officer responsible for the case should record the finding of the court on the arrest sheet. This information shall then be forwarded to the Police Prosecutor or Central Records for filing. If there is no officer assigned to be present at the disposition or findings, the Police Prosecutor shall contact the District Attorney's office (subsection) that is handling the case and obtain and record the disposition from them.
3. If at the conclusion of a case a disposition is not available, the Police Prosecutor should request a copy of the disposition or otherwise obtain the disposition information from the District Attorney's office.
4. Upon the completion of a case, the Police Prosecutor should also seek the return of all reports and evidence, obtain destruction orders when necessary, and insure that the case is closed in a complete and orderly fashion.
5. The Police Prosecutor shall notify, or designate someone to notify, the victims of crimes when the cases are brought to conclusion.