



# Town of Lexington

## Police Department

<b>Subject:</b> Legal Process Handling	
Reference: 74.1.1; 74.1,2; 74.2.1; 74.3.1; 74.3.2	
<b>Effective Date:</b> 11-01-2011	<b>Review Date:</b> Annual
<b>By Order of:</b> Mark J. Corr, Chief of Police	

### Policy & Procedure

# 73C

*The Municipal Police Institute, Inc. (MPI) is a private, nonprofit charitable affiliate of the Massachusetts Chiefs of Police Association. MPI provides training and model policies and procedures for police agencies. This policy is an edited version of MPI Policy 1.10 "Legal Process."*

## GENERAL CONSIDERATIONS AND GUIDELINES

A police department has specific responsibilities in the service of legal processes as established by law. These legal processes include but are not limited to summonses, subpoenas, arrest warrants, search warrants and abuse/harassment orders. Each legal process serves as a directive to the members of the Lexington Police Department when issued by any court of law within the Commonwealth; and which are sent, delivered, carried, or otherwise conveyed to this Department for the purpose of being served or executed upon the person or place named therein.

Since the functioning of the courts is affected by the prompt service of these documents, and since the Department has certain legal responsibilities regarding such service, it is necessary to have precise and appropriate record keeping procedures to minimize issues of liability or loss of evidence.

The Lexington Police Department will receive legal processes as a result of activities initiated by this Department, or by other persons or agencies. Specific guidelines have been established to insure the proper handling of each legal process, depending on how the document was received, and where it will be served or executed. Typically, one of the following situations will exist:

- The legal process is in our possession, and the service will be executed on persons or places within Lexington;
- The legal process is in the possession of another agency, and the person named in the process is located in Lexington;

- The legal process is in our possession, and the service of the process would occur outside our jurisdiction (including portions of Hanscom Air Force Base within Lexington);
- Seizure of property or money according to M.G.L. Chapter 94C, Section 47 (property subject to forfeiture under the Controlled Substance Act) and M.G.L. Chapter 276, Section 3 (disposition of property seized under a search warrant).
- Service of civil process under M.G.L. Chapter 209A (Abuse Law), M.G.L. 258E, and M.G.L. Chapter 273A (Uniform Reciprocal Enforcement of Support).

The procedures outlined in this policy are designed to ensure adequacy of information, accuracy, timeliness, accessibility, and accountability in the delivery of legal processes. Department personnel will adhere to guidelines listed below to ensure information is transmitted completely and accurately both to and from outside agencies when it comes to serving legal processes.

## **PROCEDURES**

### **A. Accountability and Control**

1. The Captain of Administration, or designee, shall be responsible for administering and managing the Department's legal process system.
2. Personnel from the Central Records, under the direction of the Captain of Administration, will record and otherwise process each warrant, summons, subpoena or other legal process.
3. Other personnel, as directed in this policy, may be responsible for various duties associated with the handling of legal processes.

### **B. Record Keeping**

1. Access to Records
  - a. Every officer shall have access to the Department's criminal records file system 24 hours a day by requesting the assistance of a command staff officer or personnel assigned to Central Records.
  - b. Abuse orders shall be filed at the front desk for immediate 24-hour access to all officers and Dispatch personnel.

- c. An audible "beep" will alert personnel using the central computer system that a Lexington abuse order is **active and in effect** for the person being queried. This information should be confirmed by examining the abuse file before making an arrest.
  - d. Arrest warrants are available 24-hours a day in the Warrant Management System (WMS) available on-line.
2. Legal processes (except abuse orders) to be served by the Department shall be forwarded to Central Records for recording and processing.
  3. Recording Information
    - a. Lexington Warrants:
      - i. Lexington will use the WMS system for recording all warrants.
      - ii. As needed, arrest warrants obtained when the Courts are closed will be entered into the Criminal Justice Information System (CJIS) and the National Crime Information Center (NCIC).
      - iii. The Captain of Administration will direct the entry into CJIS or NCIC any WMS warrant that Lexington wishes to have served outside the Commonwealth of Massachusetts.
      - iv. Legacy warrants are warrants that were issued prior to the Commonwealth of Massachusetts shifting to WMS. Lexington has purged all legacy warrants by recording all warrants at the Concord District Court.
    - b. Abuse Orders:
      - i. All abuse orders, which involve a plaintiff who lives or works in Lexington, will be **immediately** entered into the central computer system.
      - ii. Entry of abuse orders will be done by the Desk Officer or a designee.

- c. Non-Lexington Warrants, Summonses & Subpoenas:
  - i. All warrants received from another law enforcement agency, summonses and subpoenas will be forwarded to Central Records for recording. When necessary, execution of the legal process should be completed without delay and the recording of the document done after the fact.
  - ii. Each non-Lexington warrant, summons and subpoena shall be retained at the front desk under the supervision of the Commanding Officer on duty until such time as the order is served. Once served (or if service is not possible), the process should be returned to Central Records for mailing to the requesting jurisdiction.
4. All log books and/or computer entries will contain the following information, when appropriate:
  - a. Date and time legal process was received; [74.1.1(a)]
  - b. Type of legal process (civil or criminal); [74.1.1(b)]
  - c. Nature of document (warrant, summons, etc.); [74.1.1(c)]
  - d. Source of document (court, police department); [74.1.1(d)]
  - e. Name of plaintiff, defendant, complainant or respondent; [74.1.1(e)]
  - f. Officer assigned to make service; [74.1.1(f)]
  - g. Date of assignment; [74.1.1(g)]
  - h. Court docket number (warrant or abuse order number); [74.1.1(h)]
  - i. Date service due; [74.1.1(i)]
  - j. Offense; and
  - k. Disposition (mailed, served, recalled, etc.).
5. No money shall be accepted or disbursed by the Lexington Police Department for the purposes of serving or administering the legal process system.
6. Seized Property or Money:
  - a. Property seized as a result of a search warrant shall be recorded, retained, maintained and disposed of as required by M.G.L. Chapter 276, Section 3. See also the Department policies **83B - Property and Evidence Control** and **41M - Search and Seizure**.
  - b. Property seized under the provisions of the "Controlled Substance Act", shall be recorded, retained, maintained and disposed of as required by M.G.L. Chapter 94C, Section 47.

See also the Department policies **83B - Property and Evidence Control** and **41M - Search and Seizure**.

- c. M.G.L. Chapter 41, Section 98 states in pertinent part:
  - i. **"The Chief and other police officers of all cities and towns shall have all the powers and duties of constables except serving and executing civil process (underline added for emphasis)."**
  - ii. Property will not be seized by the Lexington Police Department by means of a civil process.
  - iii. Abuse Law, Harassment Law, and Uniform Reciprocal Enforcement of Support Law are two statutory exceptions that require police officer service. These matters are addressed later in this policy.

7. Warrant Auditing:

- a. The Captain of Administration, or a designee assigned to CJIS, shall audit on a monthly basis the Department's warrant file in accordance with procedures outlined by the Commonwealth's Criminal History Systems Board.
- b. The Captain of Administration will require the annual inspection of all Lexington arrest warrants which have not been served. This inspection process should include, at a minimum:
  - i. Examining available resources (i.e. RMV records, telephone books) to determine if the wanted person can be located;
  - ii. Checking each warrant for accuracy and completeness; and
  - iii. Identifying any warrants that may be non-prosecutable (i.e. death of the wanted person).

C. Record of Service

- 1. Whenever a legal process is served the following information will be recorded:
  - a. The date and time served; [74.1.2(a)]
  - b. Name of server; [74.1.2(b)]

- c. To whom the process was served or on whom executed;  
[74.1.2(c)]
- d. Method of service (i.e. in hand) or reason for non service;  
[74.1.2(d)] and
- e. Location of service. [74.1.2(e)]

2. **“Record of Service”** forms will be used to record all pertinent information and will be used in the following instances:

The Record of Service form can be located on the “G” drive in the computer system. Once in the “G” drive, locate “forms and documents.” The “Record of Service” document will be within this file that is listed alphabetically. Typing “G:\Forms & documents” will bring you to the open folder with this document in it as well.

recorded. The primary location for this is a log entry in the central computer system.

- ii. The completed "Return of Service" form will be returned to the Central Records Office.
- b. Lexington warrants, subpoenas and summonses unsuccessfully served.
- i. If the first attempt to serve the process is unsuccessful, a **"Record of Service"** will be prepared by the Commanding Officer on-duty and attached to the process.
  - ii. A **"Record of Service"** should be kept with each active summons or subpoena until served.
  - iii. After service, the **"Record of Service"** will be submitted to the Central Records for recording and may be retained in the Master Name File in order to demonstrate the Department's attempts to serve the process.
  - iv. Warrants. Each attempt to serve a warrant should be fully documented in the police journal and on the **"Return of Service"**. The defendants name should be attachment to the journal note and the docket number and offenses recorded in the comment field.
- c. Successful service of Lexington processes
- i. A journal entry for each successful service will be prepared.
  - ii. A journal entry will be used in lieu of the **"Record of Service"** form when successfully served on the first

attempt. The Commanding Officer will review the log to insure all the information is accurately recorded.

iii. After service, the document will be submitted to the Central Records.

3. Using the "**Record of Service**" form:

a. Central Records personnel will attach a "**Record of Service**" form to legal processes.

b. A Commanding Officer, when given a legal process to serve, will:

i. Assign an officer to serve the process;

ii. Write the officer's name and the date on the "**Record of Service**";

iii. Insure that a process is served and the "**Return of Service**" information provided;

iv. If unable to serve, insure the return of the process to the police station; and forward any non-served processes to the Commanding Officer coming on-duty at the end of the duty shift.

D. Arrest Warrants

1. Arrest warrants executed by the Lexington Police Department shall be served by sworn police officers only. [74.3.2]

2. Prioritizing of Warrants

a. All warrants received by the Department shall be reviewed by the Captain of Administration, or a designee, and prioritized by the manner in which they will be processed.

b. Warrants that are issued for violent crimes, sex offenses, or Abuse Orders shall have priority for immediate service.

3. Rendition

a. Warrants entered into N.C.I.C.: The Lexington Police Department, in cooperation with the District Attorney's Office, may seek rendition of any person wanted in connection with a serious crime from outside the Commonwealth of

Massachusetts. These warrants shall be entered into the N.C.I.C. computer system.

- b. Warrants entered into L.E.A.P.S.: Warrants entered into the Commonwealth's L.E.A.P.S. computer system give Commanding Officers the authority to dispatch personnel to pickup and return the person named in the warrant to Lexington.

4. Jurisdiction

- a. The General Laws of Massachusetts grant any sworn police officer the authority to arrest any person with a warrant within the Commonwealth.
- b. Lexington Police Officers **will not** arrest persons outside the boundaries of Lexington unless one of the following conditions exist: [74.3.1]
  - i. The officer is on-duty and has been instructed to serve the warrant by a command staff officer; or
  - ii. An emergency or exigent circumstances exist.
- c. As a matter of policy and courtesy, officers should contact the local police department having jurisdiction in the community where an arrest warrant or search warrant is to be served. Whenever possible, that department should be asked for their assistance and cooperation in serving the warrant. [74.3.1]
- d. Absent fresh and continued pursuit, Lexington Police officers have no arrest powers (with or without a warrant) outside the Commonwealth of Massachusetts.

5. Lexington Warrants -- Served in Lexington

- a. Whereas all documentation on warrants is managed by WMS, the Commanding Officer on-duty will print an updated version of the warrant before attempting to service any and all arrest warrants.
- b. The Patrol Division will attempt to serve the warrant in a manner consistent with the Department's policy on "Arrest Warrants."
- c. At least three attempts should be made to serve a warrant unless circumstances indicate that the warrant cannot be served (i.e. incorrect address, person moved away).

- d. Warrants remaining un-served should be brought to the attention of the Captain of Administration. When directed, warrants should also be entered in the NCIC and/or LEAPS computer system.
  - e. Successfully served warrant: The Commanding Officer on-duty, or a designee, shall:
    - i. Cancel the warrant from the central computer system, LEAPS, and NCIC, as necessary; and
    - ii. Attach the warrant, with completed return of service, to the arrest papers.
6. Lexington Warrants -- Hanscom Air Force Base
- a. The service of Lexington warrants on Hanscom Air Force Base (HAFB) is governed by jurisdictional issues and an interagency agreement between the Chief of Police, the District Attorney and the Base Commander.
  - b. The following procedures will apply:
    - i. Prior to service, the HAFB Legal Office will be notified of the warrant during regular business hours, Monday through Friday, 0700 to 1800 hours.
    - ii. A copy of the warrant must be delivered or faxed [617-377-3729] to the Legal Office for review.
    - iii. If no problems are found, a security police officer will assist by locating the wanted person and escorting Lexington officers serving the warrant.
    - iv. Unless exigent circumstances exist, a warrant cannot be served outside regular business hours.
7. Lexington Warrants -- Non-Lexington Residents
- a. Warrants for non-Lexington residents, involving a serious crime or an important investigation, may at the direction of the Chief of Police, or a designee, be served by Lexington officers anywhere in the Commonwealth. [74.3.1]
  - b. Mailed Arrest Warrants.
    - i. The Central Records personnel will maintain a list of communities that are willing to serve arrest warrants received in the mail.

- ii. Each warrant that is mailed to another community will be accompanied by a letter requesting the return of that warrant after 7 days.
  - iii. Central Records personnel will audit on a monthly basis any warrants designated as mailed to another agency.
  - iv. Warrants returned to Lexington without being served shall be brought to the attention of the Captain of Administration.
  - v. When a wanted person is detained in a correctional facility, a copy of the arrest warrant will be mailed to the facility for service when the person is released.
- c. Warning Letters
- i. Central Records or another designee may in some situations mail a warning letter or call a person for whom an arrest warrant is active.
  - ii. The warning letter/phone call will provide the person with the following information:
    - (a) Name of court issuing warrant;
    - (b) The warrant number;
    - (c) The offense(s) charged; and
    - (d) A warning that they are subject to arrest without further notice.
  - iii. A "**Record of Service**" (for phone calls) or a copy of the warning letter will be attached to the Master Name folder indicating that a warning was given to the subject.

d. Warrant Confirmation

When other agencies call to confirm a warrant entered into CJIS/NCIC, the Commanding Officer on-duty, or a designee, should confirm the existence of the warrant. A WMS printout is sufficient proof that the warrant is active.

8. Non-Lexington Warrants -- Service In Lexington

- a. All non-Lexington warrants mailed or delivered to this Department for service will be submitted to the Central Records for recording and processing.

- b. After completion of intake procedures, the warrant will be forwarded to the Commanding Officer on-duty with a "**Record of Service**" form attached.
- c. 

The Record of Service form can be located on the "G" drive in the computer system. Once in the "G" drive, locate "forms and documents." The "Record of Service" document will be within this file that is listed alphabetically. Typing "G:\Forms & documents" will bring you to the open folder with this document in it as well.
- d. The Central Records personnel shall return the warrant to the originating agency with the "**Record of Service**" form(s) attached.
- e. Successfully served warrant: The Commanding Officer on-duty, or designee, will contact the originating agency to notify them of the arrest and give them the option of taking custody of the person. Otherwise, all persons arrested on WMS warrants will be transported to the Concord District Court.
- f. Upon locating a non-WMS warrant (legacy or emergency warrant) in the LEAPS/NCIC computer system, the Commanding Officer on-duty, or designee, shall:
  - i. Contact the originating agency and confirm the existence of the warrant; and
  - ii. Ascertain whether or not that agency will come and pick-up the prisoner if arrested.
  - iii. If the originating agency **will** pick-up the prisoner, then that person should be arrested (or bailed on any unrelated charges) and released to the custody of the originating agency.
  - iv. If the originating agency **will not** pick-up the prisoner, then that person should be informed of the warrant and released.

Older warrants that originate from other agencies may be called "Legacy Warrants." It is important to understand that these types of warrants may or may not be recognized by the court. It is necessary to contact the originating agency to see if that warrant is still physically in existence (in hand). Also, it is important to make sure that the originating agency is willing to come pick up the prisoner we have arrested based on the (legacy) warrant. See D.8.f.iv above.

1. Lexington Summons or Subpoena – Lexington Resident

- a. All summonses and subpoenas received from a court for Lexington matters will be forwarded to the Central Records for recording and processing.

- b. After intake procedures have been completed, the summons or subpoena will be mailed whenever permissible. The date of mailing will be recorded.
- c. When necessary, the Commanding officer on-duty will be given the summons or subpoena for service by the Patrol Division. Attempts to serve the summons or subpoena should be made when people would ordinarily be found awake (0600 to 2200 hours), unless specific reasons can be given why service was necessary outside the hours given.
- d. Continuous attempts should be made to serve a summons or subpoena up to 24 hours before the return date and time, unless circumstances indicate that the process cannot be served (i.e. incorrect address, person moved away).
- e. The serving officer should complete the "**Return of Service**" portion on the document itself and submit the summons or subpoena to the Central Records for processing and subsequent return to the courts.
- f. Summonses and subpoenas remaining un-served should be submitted to the Central Records with the "**Record of Service**" attached.

2. Lexington Summons or Subpoena – Hanscom Air Force Base

- a. The service of Lexington summonses and subpoenas on Hanscom Air Force Base (HAFB) is governed by jurisdictional issues and an interagency agreement between the Chief of Police, the District Attorney and the Base Commander.
- b. The procedures for serving a summons or subpoena are the same as those previously outline for serving warrants at Hanscom AFB.

3. Lexington Summons or Subpoena – Non-Resident

- a. After intake procedures have been completed, Central Records personnel will mail, by first class post, the summons or subpoena to the person's last known address.
- b. Juveniles or "In-Hand" requirements. If the subject named in the summons or subpoena is a juvenile, or an "In-Hand" requirement is ordered, then the process will be mailed to the police department in whose jurisdiction that person can be found.
- c. The date of mailing and destination will be recorded by the Central Records personnel.

4. Non-Lexington Summons or Subpoena for Resident
  - a. Each non-Lexington summons or subpoena which is mailed or delivered to this Department for service will be submitted to Central Records for recording and processing.
  - b. After completion of intake procedures, the Central Records personnel will attach a "**Record of Service**" form and forward the summons or subpoena to the Commanding Officer on-duty for service by the Patrol Division.
  - c. The Patrol Division will attempt to serve the summons or subpoena when people would ordinarily be found awake (0600 to 2200 hours), unless specific reasons can be given why service was necessary outside the hours given.
  - d. Attempts to serve the summons or subpoena will continue for a period of 7 days, or until the return date, whichever is sooner. If un-served, the process should be submitted to Central Records.
  - e. Successfully served summons or subpoena: The serving officer will complete the return of service and submit the summons or subpoena to Central Records.
  - f. The Central Records personnel shall return the summons or subpoena to the originating agency (with the "**Record of Service**" form(s) attached if un-served).

F. Civil Process: Abuse and Harassment Orders [74.2.1]

1. Generally
  - a. Abuse Orders refer to restraining orders, no contact orders and orders to vacate issued under M.G.L.:
    - i. Chapter 208;
    - ii. Chapter 209;
    - iii. Chapter 209A; or
    - iv. Chapter 209C.<sup>ii</sup>
  - b. Harassment Orders are similar in nature to Abuse Orders, however they fall under M.G.L. 258E
  - c. Careful attention should be paid to such court orders to determine:
    - i. Effective date;

- ii. Expiration date;
    - iii. Due date for return to court;
    - iv. Any specific instructions as to where or when the orders are to be served or enforced;
    - v. Information regarding the person(s) named as plaintiff(s);
    - vi. Protected parties; and
    - vii. Other details.
  - d. For further information, see Department policy **41E - Domestic Violence**.
2. Receipt of Order: When Abuse or Harassment orders are received at this Department; the following information shall be documented in our in house computer system (PROIV, Crimetrack System).
  - a. Name and address of the defendant;
  - b. Department or court issuing the order;
  - c. Violation;
  - d. Date of court appearance; and
  - e. If mailed or faxed to another jurisdiction, name of department and date mailed or faxed.
3. Service of Order
  - a. Abuse and Harassment orders shall be promptly served and the return of service returned to the issuing court.<sup>iii</sup>
  - b. The officer assigned to serve an abuse order shall make a concerted attempt to serve the order. Abuse orders must be served in hand unless otherwise authorized by the issuing court.
  - c. If the address is incorrect, the officer shall attempt to obtain a new address and make the service. If the subject is located in another jurisdiction, the order shall be faxed or delivered to that jurisdiction for service.
  - d. Officers who are unsuccessful in serving an abuse order shall, prior to the end of their shift, turn the abuse order into the officer-in-charge for further attempts at service.
  - e. Every attempt to serve an abuse order, whether successful or not, shall be documented in the Department Crimetrack system.

4. Return of Service

- a. When an abuse or harassment order has been served, the officer making the service shall sign the “return of service “ portion of the document and place it in the prosecutor’s tray to returned to the correct court.
- b. If serving the order for another police agency, the officer will still sign the return of service, however the signed document may be faxed back to the agency requesting the service. In turn, that agency will return the paperwork to the appropriate court.
- c. A journal note will be created upon successful service of either an abuse order or harassment order.

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<sup>i</sup>M.G.L. c. 123, §35.

<sup>ii</sup> M.G.L. c. 208, §§18, 34B, 34C; M.G.L. c. 209, §32; M.G.L. c. 209A, §§3, 4, 5; M.G.L, §§15, 20.

<sup>iii</sup> M.G.L. c. 209A, §7.