

 <b>Lexington Police Department</b>	<b>Subject:</b>					<b>Policy Number:</b>	
	<b>Prosecution</b>					<b>73B</b>	
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<b>By Order of:</b> Mark J. Corr, Chief of Police							

## 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 Attorney's 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, and date of birth, social security number, and physical identifiers. In the case of a juvenile matter whether it is prosecuted or some type of diversion is made ensure the parent(s) or guardian(s) are properly identified.
  - 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 Waltham 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.
  - g. Share important information as may be required with the Victim Witness Advocate.
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.
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 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.

**D. Recording Case Dispositions from the Court**

1. Police Prosecutor Present:
  - a. Shall note the case disposition on the arrest sheet and ProPhoenix system.
  - b. Shall then forward that information to the Central Records for filing.
2. Police Prosecutor not present (i.e., Waltham Juvenile or Superior Court):
  - a. The officer responsible for the case shall record the court finding on the arrest sheet. The information shall then be forwarded to the Police Prosecutor.
  - b. 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 the disposition from them.
  - c. The Police Prosecutor shall note the case disposition on the arrest sheet and ProPhoenix system.
  - d. Shall then forward that information to the Central Records for filing.
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.