

**HOUSE . . . . . No. 01283**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*William N. Brownsberger, (BY REQUEST)*

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act further amending Chapter 209A.

\_\_\_\_\_  
PETITION OF:

NAME:

DISTRICT/ADDRESS:

.....  
*Dwight Doane*

.....  
*9 Agassiz Ave.*

*Belmont, MA 02478*

.....  
*William N. Brownsberger*

.....  
*24th Middlesex*

# HOUSE . . . . . No. 01283

By Mr. William N. Brownsberger of Belmont (by request), petition (accompanied by bill, House, No. 01283) of William N. Brownsberger relative to domestic relations and abuse prevention. Joint Committee on the Judiciary.

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act further amending Chapter 209A.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

- 1 Chapter 209A of the General Laws shall be amended as follows:
- 2 Section 1(b) The following word (PLACING ) is to be removed and replaced with the word
- 3 (THREATENING) at the beginning of the sentence and before " another in fear of imminent
- 4 serious physical harm"
- 5 (b) placing another in fear of imminent serious physical harm; (current )
- 6 (B) Threatening another with imminent serious physical harm (proposed)
- 7 Section 2 Venue The following words shall be deleted "probate and family or"
- 8 Proceedings under this chapter shall be filed, heard and determined in the superior court
- 9 department or the Boston municipal court department or respective divisions of the district court
- 10 departments having venue over the plaintiff's residence. If the plaintiff has left a residence or

11 household to avoid abuse, such plaintiff shall have the option of commencing an action in the  
12 court having venue over such prior residence or household, or in the court having venue over the  
13 present residence or household.

14 Section 3. Insert the words in the first paragraph ( provided there is clear and convincing  
15 evidence) after the words "requesting protection from such abuse" and before the words  
16 'including, but not limited to, the following orders":

17 Change to be as rewritten below

18 A person suffering from abuse from an adult or minor family or household member may file a  
19 complaint in the court requesting protection from such abuse ( provided there is clear and  
20 convincing evidence) , including, but not limited to, the following orders:

21 Section 3 PARAGRAPH TO BE ADDED :

22 Any false allegations will result in the case against the

23 accuser BEING REFERRED to THE attorney general or A district

24 attorney for the charge of perjury. Any person making false claims under this section SHALL  
25 pay the costs of the hearing(s) AND any attorney's feed incurred to the accused.

26 Section 4. (Note : Items in Red are to be inserted )

27 The following is to be inserted into the first sentence of the first paragraph after the words "under  
28 this chapter" and before the words "the court may enter such temporary orders"

29

30 Upon the filing of a complaint under this chapter and giving clear and convincing evidence of  
31 abuse, the court may enter such temporary orders as it deems necessary to protect a plaintiff from  
32 abuse, including relief as provided in section three. Such relief shall not be contingent upon the  
33 filing of a complaint for divorce, separate support, or paternity action.

34 Section 3(d) remove a preponderance of the evidence that a pattern And replace with clear and  
35 convincing evidence after the words " family court a finding by such court by" and before " or  
36 serious incident of abuse"

37 remove preponderance and replace with clear and convincing evidence after the words " Such  
38 presumption may be rebutted by" and before "of the evidence that such custody"

39 Change to be as rewritten below

40 (d) awarding the plaintiff temporary custody of a minor child; provided, however, that in any  
41 case brought in the probate and family court a finding by such court by a preponderance of the  
42 evidence that a pattern (clear and convincing evidence ) or serious incident of abuse, as defined  
43 in section 31A of chapter 208, toward a parent or child has occurred shall create a rebuttable  
44 presumption that it is not in the best interests of the child to be placed in sole custody, shared  
45 legal custody or shared physical custody with the abusive parent. Such presumption may be  
46 rebutted by a preponderance (clear and convincing evidence ) of the evidence that such custody  
47 award is in the best interests of the child. For the purposes of this section, an "abusive parent"  
48 shall mean a parent who has committed a pattern of abuse or a serious incident of abuse;

49 Section 3. Remove the words " plaintiff nor the plaintiff's attorney" and replace with " parties  
50 nor their attorneys " after the words "No filing fee shall be charged for the filing of the  
51 complaint. Neither" and before " shall be charged for certified copies of any orders entered by

52 the court, or any copies of the file reasonably required for future court action or as a result of the  
53 loss or destruction of plaintiff's copies. "

54 Change to be as rewritten below

55 No filing fee shall be charged for the filing of the complaint. Neither parties nor their attorneys  
56 shall be charged for certified copies of any orders entered by the court, or any copies of the file  
57 reasonably required for future court action or as a result of the loss or destruction of plaintiff's  
58 copies.

59

60 Section 4. PARAGRAPH TO BE ADDED

61 If the plaintiff does not appear at any hearing with out reasonable cause and notice to the court  
62 with in ten days after the hearing the 209A order shall be automatically vacated 14 days from the  
63 hearing date. Should the plaintiff not appear for reasonable causes and notifies the court  
64 (personally or through an agent) the court shall notify the defendant of the new hearing date to be  
65 held within 45 days of the original hearing date (hearing may not be extended unless the plaintiff  
66 is hospitalized for an extended period of time (30 days or more).

67 Section 6. (7) replace the words "The victim" and replace it with "Both parties"

68 So the sentence shall read :

69 Both parties shall be provided a copy of the full incident report at no cost upon request to the  
70 appropriate law enforcement department.

71 Section 6. Paragraph 2

72 shall be modified by adding the words "along with a copy of the affidavit filed with the court"  
73 after the words "complaint and summons" and before the words " forthwith to the appropriate  
74 law enforcement "

75 And inserting the words "and Affidavit" after the words "order and summons" and before the  
76 words "and notice of any suspension "

77 So that the second paragraph reads as follows

78 Whenever the court orders under sections eighteen, thirty-four B, and thirty-four C of chapter  
79 two hundred and eight, section thirty-two of chapter two hundred and nine, sections three, four  
80 and five of this chapter, or sections fifteen and twenty of chapter two hundred and nine C, the  
81 defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or  
82 the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of  
83 each such order and one copy of the complaint and summons "along with a copy of the affidavit  
84 filed with the court" forthwith to the appropriate law enforcement agency which, unless  
85 otherwise ordered by the court, shall serve one copy of each order upon the defendant, together  
86 with a copy of the complaint, order and summons "and Affidavit" and notice of any suspension  
87 or surrender ordered pursuant to section three B of this chapter. The law enforcement agency  
88 shall promptly make its return of service to the court.

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