

SENATE No. 1897

Senate, October 24, 2013 – Text of the Senate Bill enhancing protection for victims of domestic violence,-- being the text of (Senate, No. 1892, printed as amended).

The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen
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An Act enhancing protection for victims of domestic violence.

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

1 SECTION 1. Chapter 149 of the General Laws is hereby amended by inserting after
2 section 52D the following section:-

3 Section 52E. (a) For purposes of this section, the following words shall, unless the
4 context clearly indicates otherwise, have the following meanings:

5 “Abuse”, (i) attempting to cause or causing physical harm; (ii) placing another in fear of
6 imminent serious physical harm; (iii) causing another to engage involuntarily in sexual relations
7 by force, threat or duress or engaging or threatening to engage in sexual activity with a
8 dependent child; (iv) engaging in mental abuse, which includes threats, intimidation or acts
9 designed to induce terror; (v) depriving another of medical care, housing, food or other
10 necessities of life; or (vi) restraining the liberty of another.

11 “Abusive behavior”, (i) any behavior constituting domestic violence, (ii) stalking in
12 violation of section 43 of chapter 265, (iii) sexual assault which shall include a violation of
13 sections 13B, 13B½, 13B¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24, 24B, 26D, 50 or 51
14 of chapter 265 or sections 3 or 35A of chapter 272 and (iv) kidnapping in violation of the third
15 paragraph of section 26 of chapter 265.

16 “Domestic violence”, abuse against an employee or the employee’s family member by:
17 (i) a current or former spouse of the employee or the employee’s family member; (ii) a person
18 with whom the employee or the employee’s family member shares a child in common; (iii) a
19 person who is cohabitating with or has cohabitated with the employee or the employee’s family
20 member; (iv) a person who is related by blood or marriage to the employee; or (v) a person with
21 whom the employee or employee’s family member has or had a dating or engagement
22 relationship.

23 “Family member”, (i) persons who are married to one another; (ii) persons in a
24 substantive dating or engagement relationship and who reside together; (iii) persons having a
25 child in common regardless of whether they have ever married or resided together; (iv) a parent,
26 step-parent, child, step-child, sibling, grandparent or grandchild; or (v) persons in a guardianship
27 relationship.

28 (b) An employer shall permit an employee to take up to 15 days of leave from work in
29 any 12 month period if:

30 (i) the employee, or a family member of the employee, is a victim of abusive
31 behavior;

32 (ii) the employee is using the leave from work to: seek or obtain medical
33 attention, counseling, victim services or legal assistance; secure housing; obtain a protective
34 order from a court; appear in court or before a grand jury; meet with a district attorney or other
35 law enforcement official; or attend child custody proceedings or address other issues directly
36 related to the abusive behavior against the employee or family member of the employee; and

37 (iii) the employee is not the perpetrator of the abusive behavior against such
38 employee’s family member.

39 The employer shall have sole discretion to determine whether any leave taken under this
40 section shall be paid or unpaid.

41 (c) This section shall apply to employers who employ 50 or more employees. As used in
42 this subsection, “employees” shall mean individuals who perform services for and under the
43 control and direction of an employer for wages or other remuneration.

44 (d) Except in cases of imminent danger to the health or safety of an employee, an
45 employee seeking leave from work under this section shall provide appropriate advance notice of
46 the leave to the employer as required by the employer's leave policy.

47 If there is a threat of imminent danger to the health or safety of an employee or the
48 employee's family member, the employee shall not be required to provide advanced notice of
49 leave; provided, however, that the employee shall notify the employer within 3 workdays that the
50 leave was taken or is being taken under this section. Such notification may be communicated to
51 the employer by the employee, a family member of the employee or the employee's counselor,
52 social worker, health care worker, member of the clergy, shelter worker, legal advocate or other
53 professional who has assisted the employee in addressing the effects of the abusive behavior on
54 the employee or the employee's family member.

55 If an unscheduled absence occurs, an employer shall not take any negative action against
56 the employee if the employee, within 30 days from the unauthorized absence or within 30 days
57 from the last unauthorized absence in the instance of consecutive days of unauthorized absences,
58 provides any of the documentation described in paragraphs (1) to (6), inclusive, of subsection
59 (e).

60 (e) An employer may require an employee to provide documentation evidencing that the
61 employee or employee's family member has been a victim of abusive behavior and that the
62 purpose of the leave is to satisfy any 1 of the purposes enumerated in clauses (i) to (iii),
63 inclusive, of subsection (b); provided, however, that an employer shall not require an employee
64 to show evidence of an arrest, conviction or other law enforcement documentation for such
65 abusive behavior. An employee shall provide such documentation to the employer within a
66 reasonable period after the employer requests documentation relative to the employee's absence.
67 An employee shall satisfy this documentation requirement by providing any 1 of the following
68 documents to the employer.

69 (1) A protective order, order of equitable relief or other documentation issued by a
70 court of competent jurisdiction as a result of abusive behavior against the employee or
71 employee's family member.

72 (2) A police report or statement of a victim or witness provided to police,
73 including a police incident report, documenting the abusive behavior complained of by the
74 employee or the employee's family member.

75 (3) Documentation that the perpetrator of the abusive behavior against the
76 employee or family member of the employee has: admitted to sufficient facts to support a finding
77 of guilt of abusive behavior; or has been convicted of, or has been adjudicated a juvenile
78 delinquent by reason of, any offense constituting abusive behavior and which is related to the
79 abusive behavior that necessitated the leave under this section.

80 (4) Medical documentation of treatment as a result of the abusive behavior
81 complained of by the employee or employee's family member.

82 (5) A sworn statement, signed under the penalties of perjury, provided by a
83 counselor, social worker, health care worker, member of the clergy, shelter worker, legal
84 advocate or other professional who has assisted the employee or the employee's family member
85 in addressing the effects of the abusive behavior.

86 (6) A sworn statement, signed under the penalties of perjury, from the employee
87 attesting that the employee has been the victim of abusive behavior or is the family member of a
88 victim of abusive behavior. Any documentation provided to an employer under this section may
89 be maintained by the employer in the employee's employment record but only for as long as
90 required for the employer to make a determination as to whether the employee is eligible for
91 leave under this section.

92 (f) All information related to the employee's leave under this section shall be kept
93 confidential by the employer and shall not be disclosed, except to the extent that disclosure is:

94 (i) requested or consented to, in writing, by the employee;

95 (ii) ordered to be released by a court of competent jurisdiction;

96 (iii) otherwise required by applicable federal or state law; or

97 (iv) as required in the course of an investigation by the attorney general

98 (g) An employee seeking leave under this section shall exhaust all annual or vacation
99 leave, personal leave and sick leave available to the employee, prior to requesting or taking leave
100 under this section, unless the employer waives this requirement.

101 (h) No employer shall coerce, interfere with, restrain or deny the exercise of, or any
102 attempt to exercise, any rights provided under this section or to make leave requested or taken
103 hereunder contingent upon whether or not the victim maintains contact with the alleged abuser.

104 (i) No employer shall discharge or in any other manner discriminate against an employee
105 for exercising the employee's rights under this section. The taking of leave under this section
106 shall not result in the loss of any employment benefit accrued prior to the date on which the leave
107 taken under this section commenced. Upon the employee's return from such leave, the employee
108 shall be entitled to restoration to the employee's original job or to an equivalent position.

109 (j) The attorney general shall enforce this section and may seek injunctive relief or other
110 equitable relief to enforce this section.

111 (k) Employers with 50 or more employees shall notify each employee of the rights and
112 responsibilities provided by this section including those related to notification requirements and
113 confidentiality. As used in this subsection, "employees" shall mean individuals who perform
114 services for and under the control and direction of an employer for wages or other remuneration.

115 (l) This section shall not be construed to exempt an employer from complying with
116 chapter 258B, section 14B of chapter 268 or any other general or special law or to limit the rights
117 of any employee under said chapter 258B, said section 14B of chapter 268 or any other general
118 or special law.

119 SECTION 2. Section 150 of said chapter 149, as appearing in the 2012 Official Edition,
120 is hereby amended by inserting after the figure "33E", in line 20, the following figure:- , 52E.

121 SECTION 2A. Section 7 of chapter 209A of the General Laws, as so appearing, is
122 hereby amended by striking out, in lines 49 and 50, the words "\$25 that shall be transmitted to
123 the treasurer for deposit into the General Fund" and inserting in place thereof the following
124 words:- \$50 to be expended for shelter and support services for people at risk of domestic

125 violence in item 4800-3110 of the Massachusetts management and accounting reporting system,
126 and \$25 that shall be transmitted to the treasurer for deposit into the General Fund.

127 SECTION 3. The fifth paragraph of section 7 of chapter 209A, as so appearing, is hereby
128 amended by inserting after the first sentence the following sentence:-

129 Whoever violates such order or a protection order issued by another jurisdiction and (i)
130 has been previously convicted of violating an order issued under this chapter or a protection
131 order issued by another jurisdiction or (ii) has been previously convicted of clause (iii) of
132 subsection (b) of section 13A or subsection (b) of section 43 of chapter 265 shall be punished by
133 imprisonment in state prison for not more than 5 years or imprisonment in the house of
134 correction for not more than 2 ½ years.

135 SECTION 3A. Subsection (a) of section 3 of chapter 209C of the General Laws, as so
136 appearing, is hereby amended by adding the following sentence:- No court shall make an order
137 providing visitation rights to a parent who was convicted of rape and is seeking to obtain
138 visitation with the child who was conceived during the commission of that rape.

139 SECTION 3B. The first paragraph of subsection (e) of section 10 of said chapter 209C,
140 as so appearing, is hereby amended by adding the following sentence:- For the purposes of this
141 section, if the child was conceived during the commission of a rape and the parent was convicted
142 of said rape, said conviction shall be conclusive evidence of a serious incident of abuse by the
143 convicted parent.

144 SECTION 4. Chapter 265 of the General Laws is hereby amended by striking out section
145 13M, as appearing in the 2012 Official Edition, and inserting in place thereof the following
146 section:-

147 Section 13M. (a) Whoever commits an assault or assault and battery on a family or
148 household member shall be punished by imprisonment in the house of correction for not more
149 than 2 ½ years or by a fine of not more than \$5,000 or both.

150 (b) Whoever is convicted of a second or subsequent offense of assault or assault and
151 battery on a family or household member shall be punished by imprisonment in the house of

152 correction for not more than 2 ½ years or by imprisonment in the state prison for not more than
153 5 years.

154 (c) For the purposes of this section, "family or household member" shall be limited to
155 persons who: (i) are married to each other or were married to each other within the 5 years
156 preceding the date of the alleged offense; (ii) are residing together in the same household or were
157 residing together in the same household within the 5 years preceding the date of the alleged
158 offense; (iii) are related by blood; (iv) have a child in common; or (v) are or have been in a
159 substantive dating or engagement relationship within the 5 years preceding the date of the
160 alleged offense; provided, however, that in determining that relationship, the court shall consider
161 the following factors: (1) the length of time of the relationship; (2) the type of relationship; (3)
162 the frequency of interaction between the parties; and (4) if the relationship has been terminated
163 by either person, the length of time that has elapsed since the termination of the relationship.

164 (d) For any violation of this section, or as a condition of a continuance without a finding,
165 the court shall order the defendant to complete a certified batterer's intervention program unless,
166 upon good cause shown, the court issues specific written findings describing the reasons that
167 batterer's intervention should not be ordered or unless the batterer's intervention program
168 determines that the defendant is not suitable for intervention.

169 The court shall impose an assessment of \$300 against any person who has been referred
170 to a certified batterer's intervention program. Said assessment shall be in addition to the cost of
171 the treatment program. The court may, at its discretion, reduce or waive such assessments, if the
172 court finds that the person is indigent or that payment of the assessment would cause the person,
173 or the dependents of the person, severe financial hardship. Assessments made pursuant to this
174 paragraph shall be in addition to any other fines, assessments or restitution imposed in any
175 disposition. All funds collected by the court pursuant to this paragraph shall not be transmitted
176 to the General Fund of the commonwealth but shall be credited to item 4800-3110 of the
177 Massachusetts management and accounting reporting system and shall be used by the department of
178 children and families to support domestic violence prevention services.

179 SECTION 5. Said chapter 265 is hereby further amended by inserting after section 15C
180 the following section:-

181 Section 15D. (a) For the purposes of this section the following words shall, unless the
182 context clearly indicates otherwise, have the following meanings:

183 "Serious bodily injury", bodily injury that results in a permanent disfigurement, loss or
184 impairment of a bodily function, limb or organ or creates a substantial risk of death.

185 "Strangulation", the intentional interference of the normal breathing or circulation of
186 blood by applying substantial pressure on the throat or neck of another.

187 "Suffocation", the intentional interference of the normal breathing or circulation of blood
188 by blocking the nose or mouth of another.

189 (b) Whoever strangles or suffocates another person shall be punished by imprisonment in
190 state prison for not more than 5 years or in the house of correction for not more than 2 ½ years,
191 or by a fine of not more than \$5,000, or by both such fine and imprisonment.

192 (c) Whoever: (i) strangles or suffocates another person and by such strangulation or
193 suffocation causes serious bodily injury; (ii) strangles or suffocates another person, who is
194 pregnant at the time of such strangulation or suffocation, knowing or having reason to know that
195 the person is pregnant; (iii) is convicted of strangling or suffocating another person after having
196 been previously convicted of the crime of strangling or suffocating another person under this
197 section, or of a like offense in another state or the United States or a military, territorial or Indian
198 tribal authority; or (iv) strangles or suffocates another person, with knowledge that the individual
199 has an outstanding temporary or permanent vacate, restraining or no contact order or judgment
200 issued under sections 18, 34B or 34C of chapter 208, section 32 of chapter 209, sections 3, 4 or 5
201 of chapter 209A or sections 15 or 20 of chapter 209C, in effect against such person at the time
202 the offense is committed, shall be punished by imprisonment in state prison for not more than 10
203 years, or in the house of correction for not more than 2½ years and by a fine of not more than
204 \$10,000.

205 SECTION 5A. Section 42A of chapter 276 of the General Laws, as appearing in the 2012
206 Official Edition, is hereby amended by inserting after the words "terms of" , in line 7, the
207 following words:-bail or;.

208 SECTION 6. Section 55 of chapter 276 of the General Laws, as so appearing, is hereby
209 amended by inserting after the word "felony", in line 5, the following words:- , or would

210 constitute abuse as defined in section 1 of chapter 209A, or a violation of an order issued under
211 sections 3, 4 or 5 of chapter 209A or under sections 34B or 34C of chapter 208.

212 SECTION 7. Section 58A of chapter 276 of the General Laws, as so appearing, is hereby
213 amended by adding the following subsection:-

214 (8) If after a hearing under subsection (4) detention under subsection (3) is ordered or
215 pretrial release subject to conditions under subsection (2) is ordered, then:

216 (A) the clerk shall immediately notify the probation officer of the order; and

217 (B) the order of detention, issued under subsection (3), or the order of pretrial
218 release subject to conditions, issued under subsection (2), shall be recorded in the defendant's
219 criminal record as compiled by the commissioner of probation under section 100.

220 SECTION 8. Section 58B of said chapter 276, as so appearing, is hereby amended by
221 striking out, in line 2, the words "section 58 or section 58A" and inserting in place there of the
222 following words:- sections 42A, 58, 58A or 87.

223 SECTION 9. The department of children and families shall ensure that not less than the
224 amount credited to the trust for private donations under the fifth paragraph of section 7 of chapter
225 209A of the General Laws, and contained in item 4800-3110 of the Massachusetts management
226 and accounting reporting system, shall be used to support domestic violence prevention services
227 provided through item 4800-1400.

228 SECTION 10. The department of children and families shall ensure that not less than the
229 amount credited to the trust for private donations under the last paragraph of section 13M of
230 chapter 265 of the General Laws, and contained in item 4800-3110 of the Massachusetts
231 management and accounting reporting system, shall be used to support domestic violence
232 prevention services provided through item 4800-1400.