

Senate, No. 2212

[November 17, 2009 – Recommended new draft from the committee on Ways and Means for Senate, No. 2185]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO HARASSMENT PREVENTION ORDERS.

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. The General Laws are hereby amended by inserting after chapter 265 the
2 following chapter:-

3 CHAPTER 265A.

4 HARASSMENT PREVENTION ORDERS.

5 Section 1. As used in this chapter the following words shall, unless the context clearly indicates
6 otherwise, have the following meanings:--

7 "Abuse", the occurrence of 1 or more of the following acts: (i) attempting to cause or causing
8 physical harm to another; or

9 (ii) placing another in fear of imminent serious physical harm.

10 "Harassment", (i) 3 or more acts of willful and malicious conduct aimed at a specific person
11 committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact
12 cause fear, intimidation, abuse or damage to property; or

13 (ii) an act that: (A) causes results in another engaging in involuntarily in sexual relations by
14 force, threat or duress; or (B) constitutes a violation of section 13B, 13B½, 13B¾ 13F, 13H, 22, 22A,
15 22B, 22C, 23, 23A, 23B, 24, 24B, 26C, 43 or 43A of chapter 265 or section 3 of chapter 272.

16 “Court”, the superior, juvenile, district or Boston municipal court departments of the trial court.

17 “Law officer”, any officer authorized to serve criminal process.

18 “Malicious”, an act of cruelty, hostility or revenge.

19 “Protection order issued by another jurisdiction”, any injunction or other order issued by a court
20 of another state, territory or possession of the United States, the Commonwealth of Puerto Rico, or the
21 District of Columbia, or tribal court that is issued for the purpose of preventing violent or threatening acts,
22 abuse, or harassment against, or contact or communication with or physical proximity to another person,
23 including temporary and final orders issued by civil and criminal courts filed by or on behalf of a person
24 seeking protection.

25 Section 2. Proceedings under this chapter shall be filed, heard and determined in the superior
26 court department or the Boston municipal court department or the respective divisions of the juvenile, or
27 district court departments having venue over the plaintiff’s residence. The juvenile court shall have
28 jurisdiction over all proceedings under this chapter when both the plaintiff and the defendant are under the
29 age of 17.

30 Section 3. (a) A person suffering from harassment may file a complaint in the court requesting
31 protection from such harassment including, but not limited to, the following orders:

32 (i) ordering the defendant to refrain from abusing or harassing the plaintiff, whether the defendant
33 is an adult or minor;

34 (ii) ordering the defendant to refrain from contacting the plaintiff, unless authorized by the court,
35 whether the defendant is an adult or minor;

36 (iii) ordering the defendant to remain away from the plaintiff’s household, multiple family
37 dwelling and workplace, whether the defendant is an adult or minor;

38 iv) ordering the defendant to pay the plaintiff monetary compensation for the losses suffered as a
39 direct result of harassment. Compensatory losses shall include, but not be limited to, loss of earnings, out-
40 of-pocket losses for injuries sustained or property damaged, cost of replacement of locks, medical
41 expenses, cost for obtaining an unlisted phone number, and reasonable attorney's fees;

42 (v) ordering information in the case record to be impounded in accordance with court rule.

43 (b) No filing fee shall be charged for the filing of the complaint. Neither the plaintiff nor the
44 plaintiff's attorney shall be charged for certified copies of any orders entered by the court, or any copies
45 of the file reasonably required for future court action or as a result of the loss or destruction of plaintiff's
46 copies.

47 (c) Any relief granted by the court shall be for a fixed period of time not to exceed 1 year. Every
48 order shall on its face state the time and date the order is to expire and shall include the date and time that
49 the matter will again be heard. If the plaintiff appears at the court at the date and time the order is to
50 expire, the court shall determine whether or not to extend the order for any additional time reasonably
51 necessary to protect the plaintiff or to enter a permanent order. When the expiration date stated on the
52 order is on a weekend day or holiday, or a date when the court is closed to business, the order shall not
53 expire until the next date that the court is open to business. The plaintiff may appear on such next court
54 business day at the time designated by the order to request that the order be extended. The court may also
55 extend the order upon motion of the plaintiff, for such additional time as it deems necessary to protect the
56 plaintiff from harassment. The fact that harassment has not occurred during the pendency of an order shall
57 not, in itself, constitute sufficient ground for denying or failing to extend the order, of allowing an order
58 to expire or be vacated, or for refusing to issue a new order.

59 (d) The court may modify its order at any subsequent time upon motion by either party. When
60 the plaintiff's address is inaccessible to the defendant as provided in section 8 and the defendant has filed
61 a motion to modify the court's order, the court shall be responsible for notifying the plaintiff. In no event
62 shall the court disclose any such inaccessible address.

63 (e) The court shall not deny any complaint filed under this chapter solely because it was not filed
64 within a particular time period after the last alleged incident of harassment.

65 (f) Any action commenced under this chapter shall not preclude any other civil or criminal
66 remedies. A party filing a complaint under this chapter shall be required to disclose any prior or pending
67 actions involving the parties.

68 Section 3A. Upon the filing of a complaint under this chapter, a complainant shall be informed
69 that the proceedings hereunder are civil in nature and that violations of orders issued hereunder are
70 criminal in nature. Further, a complainant shall be given information prepared by the appropriate district
71 attorney's office that other criminal proceedings may be available and such complainant shall be
72 instructed by such district attorney's office relative to the procedures required to initiate criminal
73 proceedings including, but not limited to, a complaint for a violation of section 13B, 13F, 13H, 22, 22A,
74 23, 24, 24B, 26C, 43 and 43A of chapter 265 and section 3 of chapter 272 of the General Laws.
75 Whenever possible, a complainant shall be provided with such information in the complainant's native
76 language.

77 Section 4. Upon the filing of a complaint under this chapter, the court may enter such temporary
78 orders as it deems necessary to protect a plaintiff from harassment, including relief as provided in section
79 3.

80 If the plaintiff demonstrates a substantial likelihood of immediate danger of harassment, the court
81 may enter such temporary relief orders without notice as it deems necessary to protect the plaintiff from
82 harassment and shall immediately thereafter notify the defendant that the temporary orders have been
83 issued. The court shall give the defendant an opportunity to be heard on the question of continuing the
84 temporary order and of granting other relief as requested by the plaintiff not later than 10 court business
85 days after such orders are entered.

86 Notice shall be made by the appropriate law enforcement agency as provided in section 7.

87 If the defendant does not appear at such subsequent hearing, the temporary orders shall continue
88 in effect without further order of the court.

89 Section 5. When the court is closed for business or the plaintiff is unable to appear in court
90 because of severe hardship due to the plaintiff's physical condition, any justice of the superior, juvenile,
91 district or Boston municipal court departments of the trial court may grant relief to the plaintiff as
92 provided under section 4 if the plaintiff demonstrates a substantial likelihood of immediate danger of
93 harassment. In the discretion of the justice, such relief may be granted and communicated by telephone to
94 an officer or employee of an appropriate law enforcement agency, who shall record such order on a form
95 of order promulgated for such use by the Chief Justice of Administration and Management and shall
96 deliver a copy of such order on the next court day to the clerk or clerk-magistrate of the court having
97 venue and jurisdiction over the matter. If relief has been granted without the filing of a complaint
98 pursuant to this section of this chapter, then the plaintiff shall appear in court on the next available
99 business day to file said complaint. If the plaintiff in such a case is unable to appear in court without
100 severe hardship due to the plaintiff's physical condition, a representative may appear in court on the
101 plaintiff's behalf and file the requisite complaint with an affidavit setting forth the circumstances
102 preventing the plaintiff from appearing personally. Notice to the plaintiff and defendant and an
103 opportunity for the defendant to be heard shall be given as provided in said section 4.

104 Any order issued under this section and any documentation in support thereof shall be certified on
105 the next court day by the clerk or clerk-magistrate of the court issuing such order to the court having
106 venue and jurisdiction over the matter. Such certification to the court shall have the effect of commencing
107 proceedings under this chapter and invoking the other provisions of this chapter but shall not be deemed
108 necessary for an emergency order issued under this section to take effect.

109 Section 5A. Any protection order issued by another jurisdiction, as defined in section 1, shall be
110 given full faith and credit throughout the commonwealth and enforced as if it were issued in the
111 commonwealth for as long as the order is in effect in the issuing jurisdiction.

112 A person entitled to protection under a protection order issued by another jurisdiction may file
113 such order in the superior, juvenile, district or Boston municipal court departments of the trial court by
114 filing with the court a certified copy of such order. Such person shall swear under oath in an affidavit, to

115 the best of such person's knowledge, that such order is presently in effect as written. Upon request by a
116 law enforcement agency, the clerk or clerk-magistrate of such court shall provide a certified copy of the
117 protection order issued by the other jurisdiction.

118 A law enforcement officer may presume the validity of, and enforce in accordance with section
119 6, a copy of a protection order issued by another jurisdiction which has been provided to the law
120 enforcement officer by any source; provided, however, that the officer is also provided with a statement
121 by the person protected by the order that such order remains in effect. Law enforcement officers may rely
122 on such statement by the person protected by such order.

123 Section 6. Whenever any law officer has reason to believe that a person has been abused or
124 harassed or is in danger of being abused or harassed, such officer shall use all reasonable means to
125 prevent further abuse or harassment. Officers should make every effort to do the following as part of the
126 emergency response:

127 (i) Assess the immediate physical danger to the victim and provide assistance reasonable
128 to mitigate the safety risk.

129 (ii) If there is observable injury to the victim or if the victim is complaining of injury,
130 encourage the victim to seek medical attention and arrange for medical assistance or request an
131 ambulance for transport to a hospital.

132 (iii) If a sexual assault has occurred, notify the victim that there are time sensitive
133 medical/forensic options that may be available. Encourage the victim to seek medical attention and
134 arrange for medical assistance or request an ambulance for transport to a hospital.

135 (iv) Provide the victim with referrals to local resources that may assist the victim in
136 locating and getting to a safe place.

137 (v) Provide adequate notice to the victim of his rights including, but not limited to,
138 obtaining a harassment prevention order.

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140 Section 7. When considering a complaint filed under this chapter, a judge shall cause a search to
141 be made of the records contained within the Court Activity Record Information System and the Statewide
142 Registry of Domestic Violence Record Keeping System maintained by the commissioner of probation and
143 shall review the resulting data to determine whether the named defendant has a civil or criminal record
144 involving violent crimes or abuse. Upon receipt of information that an outstanding warrant exists against
145 the named defendant, a judge shall order that the appropriate law enforcement officials be notified and
146 shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to
147 such officials. In all instances in which an outstanding warrant exists, a judge shall make a finding, based
148 upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In
149 all instances in which such an imminent threat of bodily injury is found to exist, the judge shall notify the
150 appropriate law enforcement officials of such finding and such officials shall take all necessary actions to
151 execute any such outstanding warrant as soon as is practicable.

152 Whenever the court orders under sections 3, 4 or 5 that the defendant refrain from harassing the
153 plaintiff or have no contact with the plaintiff, the clerk or clerk-magistrate shall transmit ; (i) to the office
154 of the commissioner of probation information for filing in the Court Activity Record Information System
155 or the Statewide Registry of Domestic Violence Record Keeping System or a record keeping system
156 created by the commissioner of probation to record the issuance of or violation of prevention orders
157 issued pursuant to this chapter; and (ii) 2 certified copies of each such order and 1 copy of the complaint
158 and summons forthwith to the appropriate law enforcement agency which, unless otherwise ordered by
159 the court, shall serve 1 copy of each order upon the defendant, together with a copy of the complaint and
160 order and summons. The law enforcement agency shall promptly make its return of service to the court.
161 The commissioner of probation may develop and implement a statewide harassment prevention order
162 record keeping system.

163 Law enforcement officers shall use every reasonable means to enforce such harassment
164 prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer
165 on the scene of an alleged violation of such order may be informed of the existence and terms of such

166 order. The court shall notify the appropriate law enforcement agency in writing whenever any such order
167 is vacated and shall direct the agency to destroy all record of such vacated order and such agency shall
168 comply with that directive.

169 Each harassment prevention order issued shall contain the following statement:

170 VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

171 Any violation of such order or a protection order issued by another jurisdiction shall be
172 punishable by a fine of not more than \$5,000, or by imprisonment for not more than 2 ½ years in a house
173 of correction, or by both such fine and imprisonment. In addition to, but not in lieu of, the forgoing
174 penalties and any other sentence, fee or assessment, including the victim witness assessment in section 8
175 of chapter 258B, the court shall order persons convicted of a violation of such an order to pay a fine of
176 \$25 that shall be transmitted to the treasurer for deposit into the General Fund. For any violation of such
177 order, the court may order the defendant to complete an appropriate treatment program based on the
178 offense.

179 In each instance in which there is a violation of a harassment prevention order or a protection
180 order issued by another jurisdiction, the court may order the defendant to pay the plaintiff for all damages
181 including, but not limited to, loss of earnings, out-of-pocket losses for injuries sustained or property
182 damaged, medical expenses, cost for obtaining an unlisted telephone number, and reasonable attorney's
183 fees.

184 Any such violation may be enforced in the superior, juvenile, district or Boston municipal court
185 departments. Criminal remedies provided herein are not exclusive and do not preclude any other available
186 civil or criminal remedies. The court may enforce by civil contempt procedure a violation of its own court
187 order. Section 8 of chapter 136 shall not apply to any order, complaint or summons issued pursuant to
188 this section.

189 Section 8. The records of cases arising out of an action brought under this chapter in which the
190 plaintiff or defendant is a minor shall be withheld from public inspection except by order of the court;

191 provided, however, that such records shall be open, at all reasonable times, to the inspection of the minor,
192 such minor's parent, guardian, attorney and to the plaintiff and the plaintiff's attorney, or any of them.

193 The plaintiff's residential address, residential telephone number and workplace name, address and
194 telephone number, contained within the court records of cases arising out of an action brought by a
195 plaintiff under this chapter, shall be confidential and withheld from public inspection, except by order of
196 the court, except that the plaintiff's residential address and workplace address shall appear on the court
197 order and be accessible to the defendant and the defendant's attorney unless the plaintiff specifically
198 requests that this information be withheld from the order. All confidential portions of the records shall be
199 accessible at all reasonable times to the plaintiff and plaintiff's attorney, to others specifically authorized
200 by the plaintiff to obtain such information, and to prosecutors, victim-witness advocates as defined in
201 section 1 of chapter 258B, sexual assault counselors as defined in section 20J of chapter 233, and law
202 enforcement officers, if such access is necessary in the performance of their duties. This paragraph shall
203 apply to any protection order issued by another jurisdiction, as defined in section 1, filed with a court of
204 the commonwealth pursuant to section 5A. Such confidential portions of the court records shall not be
205 deemed to be public records under clause Twenty-sixth of section 7 of chapter 4.

206 Section 9. The chief justice for administration and management shall adopt a form of complaint
207 for use under this chapter which shall be in such form and language to permit a plaintiff to prepare and
208 file such complaint *pro se*.

209 Section 10. The court shall impose an assessment of \$350 against any person who has been
210 referred to a treatment program as a condition of probation. Such assessment shall be in addition to the
211 cost of the treatment program. In the discretion of the court, such assessment may be reduced or waived if
212 the court finds that such person is indigent or that payment of the assessment would cause the person, or
213 the dependents of such person, severe financial hardship. Assessments made pursuant to this section shall
214 be in addition to any other fines, assessments or restitution imposed in any disposition. All funds
215 collected by the court pursuant to this section shall be transmitted monthly to the state treasurer, who shall
216 deposit such funds into the General Fund.