

HOUSE No. 4443

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act 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 258D the
2 following chapter:-

3 CHAPTER 258E.

4 HARASSMENT PREVENTION ORDERS.

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

7 “Abuse”, (i) attempting to cause or causing physical harm to another; or (ii) placing
8 another in fear of imminent serious physical harm.

9 “Harassment”, (i) 3 or more acts of willful and malicious conduct aimed at a specific
10 person committed with the intent to cause fear, intimidation, abuse or damage to property and
11 that does in fact cause fear, intimidation, abuse or damage to property; or (ii) an act that: (A) by
12 force, threat or duress causes another to involuntarily engage in sexual relations; or (B)

13 constitutes a violation of section 13B, 13F, 13H, 22, 22A, 23, 24, 24B, 26C, 43 or 43A of
14 chapter 265 or section 3 of chapter 272.

15 “Court”, the district or Boston municipal court, the superior court or the juvenile court
16 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
20 a court of another state, territory or possession of the United States, the Commonwealth of
21 Puerto Rico, or the District of Columbia, or tribal court that is issued for the purpose of
22 preventing violent or threatening acts, abuse or harassment against, or contact or communication
23 with or physical proximity to another person, including temporary and final orders issued by
24 civil and criminal courts filed by or on behalf of a person seeking protection.

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

30 Section 3. (a) A person suffering from harassment may file a complaint in the
31 appropriate court requesting protection from such harassment. A person may petition the court
32 under this chapter for an order that the defendant:

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

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

37 (iii) remain away from the plaintiff's household or workplace, whether the defendant is
38 an adult or minor;

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

44 The court may order that information in the case record be impounded in accordance with
45 court rule.

46 (b) No filing fee shall be charged for the filing of the complaint. The plaintiff shall not
47 be charged for certified copies of any orders entered by the court, or any copies of the file
48 reasonably required for future court action or as a result of the loss or destruction of plaintiff's
49 copies.

50 (c) Any relief granted by the court shall not exceed 1 year. Every order shall on its face
51 state the time and date the order is to expire and shall include the date and time that the matter
52 will again be heard. If the plaintiff appears at the court at the date and time the order is to expire,
53 the court shall determine whether or not to extend the order for any additional time reasonably

54 necessary to protect the plaintiff or to enter a permanent order. When the expiration date stated
55 on the order is on a date when the court is closed to business, the order shall not expire until the
56 next date that the court is open to business. The plaintiff may appear on such next court business
57 day at the time designated by the order to request that the order be extended. The court may also
58 extend the order upon motion of the plaintiff, for such additional time as it deems necessary to
59 protect the plaintiff from harassment. The fact that harassment has not occurred during the
60 pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to
61 extend the order, of allowing an order to expire or be vacated or for refusing to issue a new
62 order.

63 (d) The court may modify its order at any subsequent time upon motion by either party;
64 provided, however, that the non-moving party shall receive sufficient notice and opportunity to
65 be heard on said modification. When the plaintiff's address is inaccessible to the defendant as
66 provided in section 10 and the defendant has filed a motion to modify the court's order, the court
67 shall be responsible for notifying the plaintiff. In no event shall the court disclose any such
68 inaccessible address.

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

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

74 Section 4. Upon the filing of a complaint under this chapter, a complainant shall be
75 informed that the proceedings hereunder are civil in nature and that violations of orders issued

76 hereunder are criminal in nature. Further, a complainant shall be given information prepared by
77 the appropriate district attorney's office that other criminal proceedings may be available and
78 such complainant shall be instructed by such district attorney's office relative to the procedures
79 required to initiate criminal proceedings including, but not limited to, a complaint for a violation
80 of section 13B, 13F, 13H, 22, 22A, 23, 24, 24B, 26C, 43 and 43A of chapter 265 and section 3 of
81 chapter 272. Whenever possible, a complainant shall be provided with such information in the
82 complainant's native language.

83 Section 5. Upon the filing of a complaint under this chapter, the court may enter such
84 temporary orders as it deems necessary to protect a plaintiff from harassment, including relief as
85 provided in section 3.

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

92 Notice shall be made by the appropriate law enforcement agency as provided in section 9.

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

95 Section 6. When the court is closed for business or the plaintiff is unable to appear in
96 court because of severe hardship due to the plaintiff's physical condition the court may grant
97 relief to the plaintiff as provided under section 5 if the plaintiff demonstrates a substantial

98 likelihood of immediate danger of harassment. In the discretion of the justice, such relief may be
99 granted and communicated by telephone to an officer or employee of an appropriate law
100 enforcement agency, who shall record such order on a form of order promulgated for such use by
101 the chief justice for administration and management and shall deliver a copy of such order on the
102 next court day to the clerk or clerk-magistrate of the court having venue and jurisdiction over the
103 matter. If relief has been granted without the filing of a complaint pursuant to this section, the
104 plaintiff shall appear in court on the next available business day to file said complaint. If the
105 plaintiff in such a case is unable to appear in court without severe hardship due to the plaintiff's
106 physical condition, a representative may appear in court on the plaintiff's behalf and file the
107 requisite complaint with an affidavit setting forth the circumstances preventing the plaintiff from
108 appearing personally. Notice to the plaintiff and defendant and an opportunity for the defendant
109 to be heard shall be given as provided in said section 5.

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

116 Section 7. Any protection order issued by another jurisdiction shall be given full faith
117 and credit throughout the commonwealth and enforced as if it were issued in the commonwealth
118 for as long as the order is in effect in the issuing jurisdiction.

119 A person entitled to protection under a protection order issued by another jurisdiction
120 may file such order with the appropriate court by filing with the court a certified copy of such
121 order. Such person shall swear under oath in an affidavit, to the best of such person’s knowledge
122 that such order is presently in effect as written. Upon request by a law enforcement agency, the
123 clerk or clerk-magistrate of such court shall provide a certified copy of the protection order
124 issued by the other jurisdiction.

125 A law enforcement officer may presume the validity of, and enforce in accordance with
126 section 8, a copy of a protection order issued by another jurisdiction which has been provided to
127 the law enforcement officer by any source; provided, however, that the officer is also provided
128 with a statement by the person protected by the order that such order remains in effect. Law
129 enforcement officers may rely on such statement by the person protected by such order.

130 Section 8. Whenever a law officer has reason to believe that a person has been abused or
131 harassed or is in danger of being abused or harassed, such officer shall use all reasonable means
132 to prevent further abuse or harassment. Law officers should make every effort to do the
133 following as part of the emergency response:

134 (i) assess the immediate physical danger to the victim and provide assistance
135 reasonable to mitigate the safety risk;

136 (ii) if there is observable injury to the victim or if the victim is complaining of
137 injury, encourage the victim to seek medical attention and arrange for medical assistance or
138 request an ambulance for transport to a hospital;

139 (iii) if a sexual assault has occurred, notify the victim that there are time sensitive
140 medical or forensic options that may be available and encourage the victim to seek medical
141 attention and arrange for medical assistance or request an ambulance for transport to a hospital;

142 (iv) provide the victim with referrals to local resources that may assist the victim
143 in locating and getting to a safe place; and

144 (v) provide adequate notice to the victim of his rights including, but not limited to,
145 obtaining a harassment prevention order.

146 Section 9. When considering a complaint filed under this chapter, the court shall order a
147 review of the records contained within the Court Activity Record Information System and the
148 Statewide Registry of Domestic Violence Record Keeping System maintained by the
149 commissioner of probation and shall review the resulting data to determine whether the named
150 defendant has a civil or criminal record involving violent crimes or abuse. Upon receipt of
151 information that an outstanding warrant exists against the named defendant, a judge shall order
152 that the appropriate law enforcement officials be notified and shall order that any information
153 regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all
154 instances in which an outstanding warrant exists, the court shall make a finding, based upon all
155 of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In
156 all instances in which such an imminent threat of bodily injury is found to exist, the judge shall
157 notify the appropriate law enforcement officials of such finding and such officials shall take all
158 necessary actions to execute any such outstanding warrant as soon as is practicable.

159 Whenever the court orders under sections 3, 5 or 6 that the defendant refrain from
160 harassing the plaintiff or have no contact with the plaintiff, the clerk or clerk-magistrate shall

161 transmit: (i) to the office of the commissioner of probation information for filing in the Court
162 Activity Record Information System or the Statewide Registry of Domestic Violence Record
163 Keeping System or a record keeping system created by the commissioner of probation to record
164 the issuance of or violation of prevention orders issued pursuant to this chapter; and (ii) 2
165 certified copies of each such order and 1 copy of the complaint and summons forthwith to the
166 appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve 1
167 copy of each order upon the defendant, together with a copy of the complaint and order and
168 summons. The law enforcement agency shall promptly make its return of service to the court.
169 The commissioner of probation may develop and implement a statewide harassment prevention
170 order record keeping system.

171 Law enforcement officers shall use every reasonable means to enforce such harassment
172 prevention orders. Law enforcement agencies shall establish procedures adequate to ensure that
173 an officer on the scene of an alleged violation of such order may be informed of the existence
174 and terms of such order. The court shall notify the appropriate law enforcement agency in
175 writing whenever any such order is vacated and shall direct the agency to destroy all record of
176 such vacated order and such agency shall comply with that directive.

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

178 VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

179 Any violation of such order or a protection order issued by another jurisdiction shall be
180 punishable by a fine of not more than \$5,000, or by imprisonment for not more than 2 ½ years in
181 a house of correction, or both. In addition to, but not in lieu of, the forgoing penalties and any
182 other sentence, fee or assessment, including the victim witness assessment in section 8 of chapter

183 258B, the court shall order persons convicted of a violation of such an order to pay a fine of \$25
184 that shall be transmitted to the treasurer for deposit into the General Fund. For any violation of
185 such order, the court may order the defendant to complete an appropriate treatment program
186 based on the offense.

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

192 Any such violation may be enforced by the court. Criminal remedies provided herein are
193 not exclusive and do not preclude any other available civil or criminal remedies. The court may
194 enforce by civil contempt procedure a violation of its own court order.

195 Section 8 of chapter 136 shall not apply to any order, complaint or summons issued
196 pursuant to this section.

197 Section 10. The records of cases arising out of an action brought under this chapter in
198 which the plaintiff or defendant is a minor shall be withheld from public inspection except by
199 order of the court; provided, however, that such records shall be open, at all reasonable times, to
200 the inspection of the minor, such minor's parent, guardian and attorney and to the plaintiff and
201 the plaintiff's attorney.

202 The plaintiff's residential address, residential telephone number and workplace name,
203 address and telephone number, contained within the court records of cases arising out of an
204 action brought by a plaintiff under this chapter, shall be confidential and withheld from public

205 inspection, except by order of the court; provided, however, that the plaintiff's residential
206 address and workplace address shall appear on the court order and be accessible to the defendant
207 and the defendant's attorney unless the plaintiff specifically requests that this information be
208 withheld from the order. All confidential portions of the records shall be accessible at all
209 reasonable times to the plaintiff and plaintiff's attorney, to others specifically authorized by the
210 plaintiff to obtain such information and to prosecutors, victim-witness advocates as defined in
211 section 1 of chapter 258B, sexual assault counselors as defined in section 20J of chapter 233 and
212 law enforcement officers, if such access is necessary in the performance of their duties. This
213 paragraph shall apply to any protection order issued by another jurisdiction filed with a court of
214 the commonwealth pursuant to section 7. Such confidential portions of the court records shall not
215 be deemed to be public records under clause Twenty-sixth of section 7 of chapter 4.

216 Section 11. The chief justice for administration and management shall adopt a form of
217 complaint for use under this chapter which shall be in such form and language to permit a
218 plaintiff to prepare and file such complaint pro se.

219 Section 12. The court shall impose an assessment of \$350 against any person who has
220 been referred to a treatment program as a condition of probation. Such assessment shall be in
221 addition to the cost of the treatment program. In the discretion of the court, such assessment may
222 be reduced or waived if the court finds that such person is indigent or that payment of the
223 assessment would cause the person, or the dependents of such person, severe financial hardship.
224 Assessments made pursuant to this section shall be in addition to any other fines, assessments or
225 restitution imposed in any disposition. All funds collected by the court pursuant to this section
226 shall be transmitted monthly to the state treasurer, who shall deposit such funds into the General
227 Fund.