

SENATE No. 2185

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to prevent harassment.

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. Definitions.

2 As used in this chapter the following words shall have the following meanings:

3 “Abuse”, the occurrence of one or more of the following acts: (a) attempting to
4 cause or causing physical harm to another; or (b) placing another in fear of imminent
5 serious physical harm.

6 “Harassment”,

7 (a) three or more acts of willful malicious conduct aimed at a specific person done with
8 the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause
9 fear, intimidation, abuse or damage to property; or (b) a single act or course of conduct that (i)
10 causes another to engage involuntarily in sexual relations by force, threat or duress; or
11 (ii) constitutes a violation of Chapter 265 of the General Laws sections 13B, 13F, 13H, 22, 22A,
12 23, 24, 24B, 26C, 43, or 43A or Chapter 272 of the General Laws section 3. “Court”, the
13 superior, probate and family, juvenile, district or Boston municipal court departments of the trial

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

21 SECTION 2. Venue. Proceedings under this chapter shall be filed, heard and determined
22 in the superior court department or the Boston municipal court department or respective
23 divisions of the probate and family, juvenile, or district court departments having venue over the
24 plaintiff’s residence. SECTION 3. Persons Suffering From Harassment; Complaint Requesting

25 Protection From Harassment. A person suffering from harassment may file a complaint in the
26 court requesting protection from such harassment, including, but not limited to, the following
27 orders: (a) ordering the defendant to refrain from abusing or harassing the plaintiff, whether the
28 defendant is an adult or minor; (b) ordering the defendant to refrain from contacting the
29 plaintiff, unless authorized by the court, whether the defendant is an adult or minor;

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

32 (d) ordering the defendant to pay the plaintiff monetary compensation for the losses
33 suffered as a direct result of harassment. Compensatory losses shall include, but not be limited
34 to, loss of earnings, out-of-pocket losses for injuries sustained or property damaged, replacement
35 of locks, medical expenses, cost for obtaining an unlisted phone number, and reasonable

36 attorney’s fees; (e) ordering information in the case record to be impounded in accordance

37 with court rule. No filing fee shall be charged for the filing of the complaint. Neither the
38 plaintiff nor the plaintiff's attorney shall be charged for certified copies of any orders entered by
39 the court, or any copies of the file reasonably required for future court action or as a result of the
40 loss or destruction of plaintiff's copies. Any relief granted by the court shall be for a fixed
41 period of time not to exceed one year. Every order shall on its face state the time and date the
42 order is to expire and shall include the date and time that the matter will again be heard. If the
43 plaintiff appears at the court at the date and time the order is to expire, the court shall determine
44 whether or not to extend the order for any additional time reasonably necessary to protect the
45 plaintiff or to enter a permanent order. When the expiration date stated on the order is on a
46 weekend day or holiday, or a date when the court is closed to business, the order shall not expire
47 until the next date that the court is open to business. The plaintiff may appear on such next court
48 business day at the time designated by the order to request that the order be extended. The court
49 may also extend the order upon motion of the plaintiff, for such additional time as it deems
50 necessary to protect the plaintiff from harassment. The fact that harassment has not occurred
51 during the pendency of an order shall not, in itself, constitute sufficient ground for denying or
52 failing to extend the order, of allowing an order to expire or be vacated, or for refusing to issue a
53 new order. The court may modify its order at any subsequent time upon motion by either
54 party. When the plaintiff's address is inaccessible to the defendant as provided in section 8 of
55 this chapter and the defendant has filed a motion to modify the court's order, the court shall be
56 responsible for notifying the plaintiff. In no event shall the court disclose any such inaccessible
57 address. A court shall not deny any complaint filed under this chapter solely because it was
58 not filed within a particular time period after the last alleged incident of harassment. Any action
59 commenced under the provisions of this chapter shall not preclude any other civil or criminal

60 remedies. A party filing a complaint under this chapter shall be required to disclose any prior or
61 pending actions involving the parties. SECTION 3A. Information Required to be Given to
62 Complainant. Upon the filing of a complaint under this chapter, a complainant shall be informed
63 that the proceedings hereunder are civil in nature and that violations of orders issued hereunder
64 are criminal in nature. Further, a complainant shall be given information prepared by the
65 appropriate district attorney's office that other criminal proceedings may be available and such
66 complainant shall be instructed by such district attorney's office relative to the procedures
67 required to initiate criminal proceedings including, but not limited to, a complaint for a violation
68 of sections 13B, 13F, 13H, 22, 22A, 23, 24, 24B, 26C, 43, and 43A of Chapter 265 and section 3
69 of Chapter 272 of the General Laws. Whenever possible, a complainant shall be provided with
70 such information in the complainant's native language. SECTION 4. Temporary Orders.

71 Upon the filing of a complaint under this chapter, the court may enter such temporary
72 orders as it deems necessary to protect a plaintiff from harassment, including relief as provided
73 in section three. If the plaintiff demonstrates a substantial likelihood of immediate danger
74 of harassment, the court may enter such temporary relief orders without notice as it deems
75 necessary to protect the plaintiff from harassment and shall immediately thereafter notify the
76 defendant that the temporary orders have been issued. The court shall give the defendant an
77 opportunity to be heard on the question of continuing the temporary order and of granting other
78 relief as requested by the plaintiff no later than ten court business days after such orders are
79 entered. Notice shall be made by the appropriate law enforcement agency as provided in
80 section seven. If the defendant does not appear at such subsequent hearing, the temporary orders
81 shall continue in effect without further order of the court. SECTION 5. Granting of Relief
82 When Courts Closed; Notice; Next-Day Certification. When the court is closed for business

83 or the plaintiff is unable to appear in court because of severe hardship due to the plaintiff's
84 physical condition, any justice of the superior, probate and family, juvenile, district or Boston
85 municipal court departments of the trial court may grant relief to the plaintiff as provided under
86 section four if the plaintiff demonstrates a substantial likelihood of immediate danger of
87 harassment. In the discretion of the justice, such relief may be granted and communicated by
88 telephone to an officer or employee of an appropriate law enforcement agency, who shall record
89 such order on a form of order promulgated for such use by the chief administrative justice and
90 shall deliver a copy of such order on the next court day to the clerk-magistrate of the court
91 having venue and jurisdiction over the matter. If relief has been granted without the filing of a
92 complaint pursuant to this section of this chapter, then the plaintiff shall appear in court on the
93 next available business day to file said complaint. If the plaintiff in such a case is unable to
94 appear in court without severe hardship due to the plaintiff's physical condition, then a
95 representative may appear in court on the plaintiff's behalf and file the requisite complaint with
96 an affidavit setting forth the circumstances preventing the plaintiff from appearing personally.
97 Notice to the plaintiff and defendant and an opportunity for the defendant to be heard shall be
98 given as provided in said section four. Any order issued under this section and any
99 documentation in support thereof shall be certified on the next court day by the clerk-magistrate
100 or register of the court issuing such order to the court having venue and jurisdiction over the
101 matter. Such certification to the court shall have the effect of commencing proceedings under
102 this chapter and invoking the other provisions of this chapter but shall not be deemed necessary
103 for an emergency order issued under this section to take effect. SECTION 5A. Protection
104 Orders Issued By Another Jurisdiction. Any protection order issued by another jurisdiction,
105 as defined in section one, shall be given full faith and credit throughout the commonwealth and

106 enforced as if it were issued in the commonwealth for as long as the order is in effect in the
107 issuing jurisdiction. A person entitled to protection under a protection order issued by another
108 jurisdiction may file such order in the superior, probate and family, juvenile, district or Boston
109 municipal court departments of the trial court by filing with the court a certified copy of such
110 order. Such person shall swear under oath in an affidavit, to the best of such person's knowledge,
111 that such order is presently in effect as written. Upon request by a law enforcement agency, the
112 register or clerk of such court shall provide a certified copy of the protection order issued by the
113 other jurisdiction. A law enforcement officer may presume the validity of, and enforce in
114 accordance with section six, a copy of a protection order issued by another jurisdiction which has
115 been provided to the law enforcement officer by any source; provided, however, that the officer
116 is also provided with a statement by the person protected by the order that such order remains in
117 effect. Law enforcement officers may rely on such statement by the person protected by such
118 order. SECTION 6. Powers and Duties of Law Officers; Notice of Rights.

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

123 (1) Assess the immediate physical danger to the victim and provide assistance reasonable
124 to mitigate the safety risk.

125 (2) If there is observable injury to the victim or if the victim is complaining of injury,
126 encourage the victim to seek medical attention and arrange for medical assistance or request an
127 ambulance for transport to a hospital.

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

131 (4) Provide the victim with referrals to local resources that may assist the victim in
132 locating and getting to a safe place.

133 (5) Provide adequate notice to the victim of her/his rights, including but not limited to
134 obtaining a harassment prevention order. SECTION 7. Search of Records; Outstanding
135 Warrants; Service of Order, Complaint and Summons; Enforcement; Violations. When
136 considering a complaint filed under this chapter, a judge shall cause a search to be made of the
137 records contained within the criminal justice information system maintained by the office of the
138 commissioner of probation or the criminal history systems board and shall review the resulting
139 data to determine whether the named defendant has a civil or criminal record involving violent
140 crimes or abuse. Upon receipt of information that an outstanding warrant exists against the
141 named defendant, a judge shall order that the appropriate law enforcement officials be notified
142 and shall order that any information regarding the defendant's most recent whereabouts shall be
143 forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall
144 make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily
145 injury exists to the petitioner. In all instances where such an imminent threat of bodily injury is
146 found to exist, the judge shall notify the appropriate law enforcement officials of such finding
147 and such officials shall take all necessary actions to execute any such outstanding warrant as
148 soon as is practicable. Whenever the court orders under sections three, four and five of this
149 chapter the defendant to refrain from harassing the plaintiff or to have no contact with the
150 plaintiff, the register or clerk-magistrate shall transmit two certified copies of each such order

151 and one copy of the complaint and summons forthwith to the appropriate law enforcement
152 agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the
153 defendant, together with a copy of the complaint and order and summons. The law enforcement
154 agency shall promptly make its return of service to the court. Law enforcement officers
155 shall use every reasonable means to enforce such harassment prevention orders. Law
156 enforcement agencies shall establish procedures adequate to insure that an officer on the scene of
157 an alleged violation of such order may be informed of the existence and terms of such order. The
158 court shall notify the appropriate law enforcement agency in writing whenever any such order is
159 vacated and shall direct the agency to destroy all record of such vacated order and such agency
160 shall comply with that directive. Each harassment prevention order issued shall contain the
161 following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE. Any
162 violation of such order or a protection order issued by another jurisdiction shall be punishable by
163 a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-
164 half years in a house of correction, or by both such fine and imprisonment. In addition to, but not
165 in lieu of, the forgoing penalties and any other sentence, fee or assessment, including the victim
166 witness assessment in section 8 of chapter 258B, the court shall order persons convicted of a
167 crime under this statute to pay a fine of \$25 that shall be transmitted to the treasurer for deposit
168 into the General Fund. For any violation of such order, the court may order the defendant to
169 complete an appropriate treatment program based on the offense. In each instance where there
170 is a violation of a harassment prevention order or a protection order issued by another
171 jurisdiction, the court may order the defendant to pay the plaintiff for all damages including, but
172 not limited to, loss of earnings, out-of-pocket losses for injuries sustained or property damaged,
173 medical expenses, cost for obtaining an unlisted telephone number, and reasonable attorney's

174 fees. Any such violation may be enforced in the superior, juvenile, district or Boston municipal
175 court departments. Criminal remedies provided herein are not exclusive and do not preclude any
176 other available civil or criminal remedies. The court may enforce by civil contempt procedure a
177 violation of its own court order. The provisions of section eight of chapter one hundred and
178 thirty-six shall not apply to any order, complaint or summons issued pursuant to this section.

179 SECTION 8. Confidentiality of Plaintiff's Address; Records Involving Minors. The
180 records of cases arising out of an action brought under the provisions of this chapter where the
181 plaintiff or defendant is a minor shall be withheld from public inspection except by order of the
182 court; provided, that such records shall be open, at all reasonable times, to the inspection of the
183 minor, said minor's parent, guardian, attorney, and to the plaintiff and the plaintiff's attorney, or
184 any of them. The plaintiff's residential address, residential telephone number and workplace
185 name, address and telephone number, contained within the court records of cases arising out of
186 an action brought by a plaintiff under the provisions of this chapter, shall be confidential and
187 withheld from public inspection, except by order of the court, except that the plaintiff's
188 residential address and workplace address shall appear on the court order and be accessible to the
189 defendant and the defendant's attorney unless the plaintiff specifically requests that this
190 information be withheld from the order. All confidential portions of the records shall be
191 accessible at all reasonable times to the plaintiff and plaintiff's attorney, to others specifically
192 authorized by the plaintiff to obtain such information, and to prosecutors, victim-witness
193 advocates as defined in section 1 of chapter 258B, sexual assault counselors as defined in section
194 20J of chapter 233, and law enforcement officers, if such access is necessary in the performance
195 of their duties. The provisions of this paragraph shall apply to any protection order issued by
196 another jurisdiction, as defined in section 1, that is filed with a court of the commonwealth

197 pursuant to section 5A. Such confidential portions of the court records shall not be deemed to be
198 public records under the provisions of clause twenty-sixth of section 7 of chapter 4.

199 SECTION 9. Form of Complaint. The administrative justices of the superior, probate
200 and family, juvenile, district and Boston municipal court departments shall jointly promulgate a
201 form of complaint for use under this chapter which shall be in such form and language to permit
202 a plaintiff to prepare and file such complaint pro se.

203 SECTION 10. Assessment Upon Assignment to a Treatment Program The court may
204 impose an assessment against any person who has been referred to a treatment program as a
205 condition of probation. Said assessment shall be in addition to the cost of the treatment program.
206 In the discretion of the court, said assessment may be reduced or waived when the court finds
207 that the person is indigent or that payment of the assessment would cause the person, or the
208 dependents of such person, severe financial hardship. Assessments made pursuant to this section
209 shall be in addition to any other fines, assessments, or restitution imposed in any disposition. All
210 funds collected by the court pursuant to this section shall be transmitted monthly to the state
211 treasurer, who shall deposit said funds in the General Fund.