

SENATE, No. 2185

[Senate, October 26, 2009 - New Draft of Senate, No. 1611 reported from the committee on the Judiciary]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND 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:

4 **(a)** attempting to cause or causing physical harm to another; or

5 **(b)** placing another in fear of imminent 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

10 (b) a single act or course of conduct that (i) causes another to engage involuntarily in
11 sexual relations by force, threat or duress; or (ii) constitutes a violation of Chapter 265 of the
12 General Laws sections 13B, 13F, 13H, 22, 22A, 23, 24, 24B, 26C, 43, or 43A or Chapter 272 of
13 the General Laws section 3.

14 “Court”, the superior, probate and family, juvenile, district or Boston municipal court
15 departments of the trial court.

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

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

23 SECTION 2. Venue.

24 Proceedings under this chapter shall be filed, heard and determined in the superior court
25 department or the Boston municipal court department or respective divisions of the probate and
26 family, juvenile, or district court departments having venue over the plaintiff’s residence.

27 SECTION 3. Persons Suffering From Harassment; Complaint Requesting Protection
28 From Harassment.

29 A person suffering from harassment may file a complaint in the court requesting
30 protection from such harassment, including, but not limited to, the following orders:

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

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

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

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

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

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

48 Any relief granted by the court shall be for a fixed period of time not to exceed one year.
49 Every order shall on its face state the time and date the order is to expire and shall include the
50 date and time that the matter will again be heard. If the plaintiff appears at the court at the date
51 and time the order is to expire, the court shall determine whether or not to extend the order for

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

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

66 A court shall not deny any complaint filed under this chapter solely because it was not
67 filed within a particular time period after the last alleged incident of harassment.
68 Any action commenced under the provisions of this chapter shall not preclude any other civil or
69 criminal remedies. A party filing a complaint under this chapter shall be required to disclose
70 any prior or pending actions involving the parties.

71 **SECTION 3A. Information Required to be Given to Complainant.**

72 Upon the filing of a complaint under this chapter, a complainant shall be informed that
73 the proceedings hereunder are civil in nature and that violations of orders issued hereunder are
74 criminal in nature. Further, a complainant shall be given information prepared by the

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

81 **SECTION 4. Temporary Orders.**

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

85 If the plaintiff demonstrates a substantial likelihood of immediate danger of harassment,
86 the court may enter such temporary relief orders without notice as it deems necessary to protect
87 the plaintiff from harassment and shall immediately thereafter notify the defendant that the
88 temporary orders have been issued. The court shall give the defendant an opportunity to be
89 heard on the question of continuing the temporary order and of granting other relief as requested
90 by the plaintiff no later than ten court business days after such orders are entered.

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

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 5. Granting of Relief When Courts Closed; Notice; Next-Day**
96 **Certification.**

97 When the court is closed for business or the plaintiff is unable to appear in court because

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

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

119 **SECTION 5A. Protection Orders Issued By Another Jurisdiction.**

120 Any protection order issued by another jurisdiction, as defined in section one, shall be

121 given full faith and credit throughout the commonwealth and enforced as if it were issued in the
122 commonwealth for as long as the order is in effect in the issuing jurisdiction.

123 A person entitled to protection under a protection order issued by another jurisdiction
124 may file such order in the superior, probate and family, juvenile, district or Boston municipal
125 court departments of the trial court by filing with the court a certified copy of such order. Such
126 person shall swear under oath in an affidavit, to the best of such person's knowledge, that such
127 order is presently in effect as written. Upon request by a law enforcement agency, the register or
128 clerk of such court shall provide a certified copy of the protection order issued by the other
129 jurisdiction.

130 A law enforcement officer may presume the validity of, and enforce in accordance with
131 section six, a copy of a protection order issued by another jurisdiction which has been provided
132 to the law enforcement officer by any source; provided, however, that the officer is also
133 provided with a statement by the person protected by the order that such order remains in effect.
134 Law enforcement officers may rely on such statement by the person protected by such order.

135 **SECTION 6. Powers and Duties of Law Officers; Notice of Rights.**

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

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

142 (2) If there is observable injury to the victim or if the victim is complaining of injury,

143 encourage the victim to seek medical attention and arrange for medical assistance or request an
144 ambulance for transport to a hospital.

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

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

150 (5) Provide adequate notice to the victim of her/his rights, including but not limited to
151 obtaining a harassment prevention order.

152 **SECTION 7. Search of Records; Outstanding Warrants; Service of Order,**
153 **Complaint and Summons; Enforcement; Violations.**

154 When considering a complaint filed under this chapter, a judge shall cause a search to be
155 made of the records contained within the criminal justice information system maintained by the
156 office of the commissioner of probation or the criminal history systems board and shall review
157 the resulting data to determine whether the named defendant has a civil or criminal record
158 involving violent crimes or abuse. Upon receipt of information that an outstanding warrant
159 exists against the named defendant, a judge shall order that the appropriate law enforcement
160 officials be notified and shall order that any information regarding the defendant's most recent
161 whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant
162 exists, a judge shall make a finding, based upon all of the circumstances, as to whether an
163 imminent threat of bodily injury exists to the petitioner. In all instances where such an imminent
164 threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement

165 officials of such finding and such officials shall take all necessary actions to execute any such
166 outstanding warrant as soon as is practicable.

167 Whenever the court orders under sections three, four and five of this chapter the
168 defendant to refrain from harassing the plaintiff or to have no contact with the plaintiff, the
169 register or clerk-magistrate shall transmit two certified copies of each such order and one copy
170 of the complaint and summons forthwith to the appropriate law enforcement agency which,
171 unless otherwise ordered by the court, shall serve one copy of each order upon the defendant,
172 together with a copy of the complaint and order and summons. The law enforcement agency
173 shall promptly make its return of service to the court.

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

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

181 VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

182 Any violation of such order or a protection order issued by another jurisdiction shall be
183 punishable by a fine of not more than five thousand dollars, or by imprisonment for not more
184 than two and one-half years in a house of correction, or by both such fine and imprisonment. In
185 addition to, but not in lieu of, the forgoing penalties and any other sentence, fee or assessment,
186 including the victim witness assessment in [section 8 of chapter 258B](#), the court shall order
187 persons convicted of a crime under this statute to pay a fine of \$25 that shall be transmitted to

188 the treasurer for deposit into the General Fund. For any violation of such order, the court may
189 order the defendant to complete an appropriate treatment program based on the offense.

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

195 Any such violation may be enforced in the superior, juvenile, district or Boston
196 municipal court departments. Criminal remedies provided herein are not exclusive and do not
197 preclude any other available civil or criminal remedies. The court may enforce by civil
198 contempt procedure a violation of its own court order.

199 The provisions of section eight of chapter one hundred and thirty-six shall not apply to
200 any order, complaint or summons issued pursuant to this section.

201 **SECTION 8. Confidentiality of Plaintiff's Address; Records Involving Minors.**

202 The records of cases arising out of an action brought under the provisions of this chapter
203 where the plaintiff or defendant is a minor shall be withheld from public inspection except by
204 order of the court; provided, that such records shall be open, at all reasonable times, to the
205 inspection of the minor, said minor's parent, guardian, attorney, and to the plaintiff and the
206 plaintiff's attorney, or any of them.

207 The plaintiff's residential address, residential telephone number and workplace name,
208 address and telephone number, contained within the court records of cases arising out of an
209 action brought by a plaintiff under the provisions of this chapter, shall be confidential and
210 withheld from public inspection, except by order of the court, except that the plaintiff's

211 residential address and workplace address shall appear on the court order and be accessible to
212 the defendant and the defendant's attorney unless the plaintiff specifically requests that this
213 information be withheld from the order. All confidential portions of the records shall be
214 accessible at all reasonable times to the plaintiff and plaintiff's attorney, to others specifically
215 authorized by the plaintiff to obtain such information, and to prosecutors, victim-witness
216 advocates as defined in [section 1 of chapter 258B](#), sexual assault counselors as defined in
217 [section 20J of chapter 233](#), and law enforcement officers, if such access is necessary in the
218 performance of their duties. The provisions of this paragraph shall apply to any protection order
219 issued by another jurisdiction, as defined in section 1, that is filed with a court of the
220 commonwealth pursuant to section 5A. Such confidential portions of the court records shall not
221 be deemed to be public records under the provisions of clause twenty-sixth of [section 7 of](#)
222 [chapter 4](#).

223 **SECTION 9. Form of Complaint.**

224 The administrative justices of the superior, probate and family, juvenile, district and
225 Boston municipal court departments shall jointly promulgate a form of complaint for use under
226 this chapter which shall be in such form and language to permit a plaintiff to prepare and file
227 such complaint *pro se*.

228 **SECTION 10. Assessment Upon Assignment to a Treatment Program**

229 The court may impose an assessment against any person who has been referred to a
230 treatment program as a condition of probation. Said assessment shall be in addition to the cost
231 of the treatment program. In the discretion of the court, said assessment may be reduced or
232 waived when the court finds that the person is indigent or that payment of the assessment would
233 cause the person, or the dependents of such person, severe financial hardship. Assessments

234 made pursuant to this section shall be in addition to any other fines, assessments, or restitution
235 imposed in any disposition. All funds collected by the court pursuant to this section shall be
236 transmitted monthly to the state treasurer, who shall deposit said funds in the General Fund.