

## **AN ACT TO PREVENT HARRASSMENT AND WITNESS INTIMIDATION.**

This act may be cited as the Harassment Prevention Orders Act.

SECTION 1: The General Laws are hereby amended by inserting after section 46 in chapter 265 the following section:-

### **Section 47.**

#### **HARRASSMENT AND WITNESS INTIMIDATION PREVENTION ORDERS**

**Section 1. Definitions.** In this chapter, the following words shall have the following meanings:

“Court”, the Superior, District, Boston Municipal, or Juvenile court departments of the trial court.

“Harassment”, the occurrence of one or more of the following: (a) willfully and maliciously engaging in conduct or acts directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer emotional distress; or (b) engaging in intimidation of witnesses under the provisions of chapter 268 section 13B of the Massachusetts General Laws; or (c) causing another to engage involuntarily in sexual conduct; or (d) causing another to engage involuntarily in sexual conduct by force, threat, or duress, included but not limited to, incapacitation through chemical restraint, drugs or intoxication; or (e) engaging in the enticement of a child under the age of 16 under the provisions of chapter 265 section 26C of the Massachusetts General Laws.

“Harassment Prevention Orders”, an order or emergency order granted under this chapter.

“Involuntarily”, a lack of freely given consent.

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

“Petitioner”, any named petitioner for a Harassment Prevention Order or any named victim of harassment on whose behalf the petition is brought.

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

“Sexual Conduct” any intentional or knowing touching or fondling, either directly or through clothing, of the sex organs, anus or breast, or any part of the body, or any transfer or transmission of semen upon any part of the clothed or unclothed body, for the purpose of sexual gratification or arousal; OR any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person, or any intrusion, however slight, of any part of the body of one person or object into the sex organ or anus of another, including but not limited to cunnilingus, fellatio or anal penetrations. Evidence of emission of semen is not required to prove sexual conduct.

“Victim”, any person who suffers harassment, without the need of a report of the offense to the police or the issuance of a complaint or indictment.

**Section 2. Venue.** Proceedings under this chapter shall be filed, heard and determined in the Superior, District, Boston Municipal or Juvenile (if the petitioner or

respondent is a juvenile) court departments of the trial court having venue over where: (1) the petitioner resides; (2) the respondent resides; or (3) the alleged harassment occurred.

**Section 3. Persons Protected By This Act.** A petition for a Harassment Prevention Order may be filed:

- (1) by any person who is a victim of harassment; or
- (2) by a person on behalf of a minor child or an adult who is a victim of harassment but, because of age, disability, and health cannot file the petition.

**Section 4. Remedies; Period of Relief.** (a) A petitioner may file a petition requesting protection including, but not limited to, the following orders:

- (1) ordering the respondent to refrain from attempting to cause or causing physical harm or harassment of the petitioner, whether the petitioner is an adult or minor;
- (2) ordering the respondent to refrain from contacting the petitioner, either directly or indirectly, unless authorized by the court, whether the petitioner is an adult or minor;
- (3) ordering the respondent to stay away from the petitioner, the petitioner's household, multiple family dwelling and workplace; or
- (4) ordering the respondent to pay the petitioner monetary compensation for the losses suffered as a direct result of such harassment. Compensatory loss shall include, but not be limited to, loss of earnings, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical costs, moving expenses, cost for obtaining an unlisted telephone number and reasonable attorney's fees.

(b) Any relief granted by the court shall be for a fixed period of time not to exceed 1 year. Every order shall on its face state the time and date the order is to expire. If the

petitioner appears at the court on or before the close of business on the date the order is to expire, the court shall determine whether or not to enter a permanent order, or to extend the order for another period of time reasonably necessary to prevent future harassment or intimidation of the petitioner by the respondent, or contact between the petitioner and the respondent. When the expiration date stated on the order is on a weekend day or holiday, or a date when the court is closed to business, the order shall not expire until the close of business on the next date that the court is open to business. The petitioner may appear on such next court business day to request that the order be extended. At a hearing to extend the order for such additional time, the court shall consider the totality of the circumstances. The fact that harassment or contact between the parties has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order, or allowing an order to expire or be vacated, or for refusing to issue a new order.

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

(d) A court shall not deny any petition filed under this chapter solely because it was not filed within a particular time period after the last alleged incident of harassment.

**Section 5. Commencement of action; filing fees.** (a) An action for a Harassment Prevention Order is commenced:

(1) independently, by filing a Harassment Prevention Order petition in any court, and shall not be contingent upon reporting the alleged harassment to a law enforcement agency nor shall it be contingent upon prosecuting such case criminally; or

(2) in conjunction with a delinquency petition or a criminal prosecution for the same act, by filing a petition for a Harassment Prevention Order under the same case number as the delinquency petition or criminal prosecution and treated as a civil and separate matter, to be granted during pre-trial release of a respondent, with any dispositional order issued under section 58 of chapter 119, or as a condition of release, supervision, conditional discharge, probation, periodic imprisonment, parole, or mandatory supervised release, or in conjunction with imprisonment or a bond forfeiture warrant, provided that (i) the violation is alleged in an information, petition, indictment, or delinquency petition on file and the alleged victim is a person that may be afforded protection under this chapter, and (ii) the petition, which is filed by the district attorney, names a victim of the alleged crime as a petitioner.

(b) Withdrawal or dismissal of any petition for a Harassment Prevention Order prior to adjudication shall operate as a dismissal without prejudice.

(c) Any action commenced under the provisions of this chapter shall not preclude any other civil or criminal remedies. Dismissal of the delinquency petition or criminal prosecution for the same act, or a finding of not guilty, shall not require dismissal of the action for a Harassment Prevention Order.

(d) No filing fee shall be charged by the clerk of the court for the filing of the petition. Neither the petitioner nor the petitioner's attorney shall be charged for certified copies of any orders entered by the court, or any copies of the file reasonably required for future court action or as a result of the loss or destruction of petitioner's copies.

**Section 6. Form of complaint; promulgation.** The chief justices for Administration and Management, in consultation with the chief justices of the Superior, District, Boston Municipal or Juvenile court departments shall promulgate a form of petition

for use under this chapter which shall be in such form and language to permit a petitioner to prepare and file such petition pro se.

**Section 7. Pleading; confidentiality of records.** (a) A petition for a Harassment Prevention Order shall be in writing and verified or accompanied by affidavit and shall allege that the petitioner has been the victim of harassment and there exists a substantial likelihood of immediate danger of harassment.

(b) The records of cases arising out of an action brought under this chapter where the petitioner or respondent is a minor shall be withheld from public inspection except by order of the court; provided, that such records shall be open, at all reasonable times, to the inspection of the minor, said minor's parent, guardian, attorney, and to the petitioner and the petitioner's attorney, or any of them.

(c) The petitioner's cellular telephone number, residential address, residential telephone number and workplace name, address and telephone number, contained within the court records of cases arising out of an action brought by a petitioner under this chapter, shall be confidential and withheld from public inspection at all times, except by order of the court and pursuant to the provisions of chapter 265 section 24C of the general laws. All confidential portions of the records shall be accessible at all reasonable times to the petitioner and petitioner's attorney, to others specifically authorized by the petitioner to obtain such information, and to prosecutors, victim-witness advocates as defined in section 1 of chapter 258B, sexual assault counselors as defined in section 20J of chapter 233, and law enforcement officers, if such access is necessary in the performance of their duties. This paragraph shall apply to any protection order issued by another jurisdiction that is filed with a court of the commonwealth pursuant to section 14. Such confidential portions of the court

records shall not be deemed to be public records under Clause Twenty-sixth of section 7 of chapter 4.

(d) Upon the filing of a petition under this chapter, the court may enter such temporary orders as it deems necessary to protect a petitioner from further contact by the respondent. Such relief shall not be contingent upon reporting the alleged harassment to a law enforcement agency nor shall it be contingent upon prosecuting such case criminally nor may the court consider such factors in rendering its decision.

(e) In any proceeding to obtain a Harassment Prevention Order, a petitioner must establish by a preponderance of the evidence that he/she is a victim of harassment and that there is a substantial likelihood of immediate danger of harassment.

(f) If the court finds reasonable grounds to believe that the petitioner is the victim of harassment and there is a substantial likelihood of immediate danger of harassment, the court may enter such temporary relief orders without notice as it deems necessary to protect the petitioner from harassment and shall immediately thereafter notify the respondent that the temporary orders have been issued. The court shall give the respondent an opportunity to be heard on the question of continuing the temporary order and of granting other relief as requested by the petitioner no later than 10 court business days after such orders are entered. It is recommended that all such hearings be conducted at sidebar.

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

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

**Section 8. Hearing.** When a petitioner seeks relief under sections 3, 4, 7, or 10, it is recommended that any such hearing be heard at sidebar in order to protect the petitioner's

privacy. The rules of evidence do not apply. If the petitioner is a minor, or the application is filed on behalf of a minor, it is recommended that the hearing be closed to the public as in juvenile proceedings.

**Section 9. Harassment Prevention Order; record search; service of order; enforcement; violations.** An order under this statute shall also be filed in the Statewide Domestic Violence Record Keeping System. When considering a petition filed under this chapter, a judge shall cause a search to be made of the records contained within the Statewide Domestic Violence Record Keeping System maintained by the office of the commissioner of probation and shall review the resulting data to determine whether the named respondent has a civil or criminal record involving domestic or other violence. Upon receipt of information that an outstanding warrant exists against the named respondent, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the respondent's most recent whereabouts shall be forwarded to such officials. In all instances where an outstanding warrant exists, a judge shall make a finding, based upon all of the circumstances, as to whether a substantial likelihood of immediate danger of harassment to the petitioner exists. In all instances where a substantial likelihood of immediate danger of harassment is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

Whenever the court orders under this chapter that an order from this jurisdiction and /or another jurisdiction become effective in the Commonwealth and that the respondent refrain from harassing the petitioner or have no contact with the petitioner, the clerk-magistrate shall transmit 2 certified copies of each such order and 1 copy of the petition and summons forthwith to the appropriate law enforcement agency which, unless otherwise

ordered by the court, shall serve 1 copy of each order upon the respondent, together with a copy of the petition, order and summons and notice of any suspension or surrender ordered pursuant to section 12. The law enforcement agency shall promptly make its return of service to the court.

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

Each Harassment Prevention Order issued shall contain the following statement:

**VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

Any violation of such order or a protection order issued by another jurisdiction shall be punishable by a fine of not more than \$5,000, or by imprisonment for not more than 2 ½ years in a house of correction, or by both such fine and imprisonment. In addition to, but not in lieu of, the forgoing penalties and any other sentence, fee or assessment, including the victim witness assessment as provided in section 8 of chapter 258B, the court shall order persons convicted of violating a provision of this chapter an additional assessment of \$25 that shall be transmitted to the treasurer for deposit into the General Fund.

In each instance of a violation of a Harassment Prevention Order or a protection order issued by another jurisdiction, the court may order the respondent to pay the petitioner for all damages including, but not limited to, loss of earnings, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical

costs, moving expenses, cost for obtaining an unlisted telephone number, and reasonable attorney's fees.

Any such violation may be enforced in the superior, district, Boston municipal or juvenile (if the petitioner or respondent are juveniles) court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, district, Boston municipal or juvenile court departments may each enforce by civil contempt procedure a violation of its own court order.

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

**Section 10. Granting of relief when court is closed; certification.** When the court is closed for business or the petitioner is unable to appear in court because of severe hardship due to the petitioner's physical condition, any justice of the Superior, District, Boston Municipal, or Juvenile (if the petitioner or respondent are juveniles) court departments may grant relief to the petitioner as provided under section 8 if the petitioner has been a victim of harassment and demonstrates a substantial likelihood of immediate danger of harassment. In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of an appropriate law enforcement agency, who shall record such order on a form of order promulgated for such use by the Chief Justice for Administration and Management and shall deliver a copy of such order on the next court day to the clerk-magistrate of the court having venue and jurisdiction over the matter. If relief has been granted without the filing of a petition pursuant to this section, the petitioner shall appear in court on the next available business day to file said petition. If the petitioner in such a case is unable to appear in court without severe hardship due to the petitioner's physical condition, then a representative may appear in court on the petitioner's behalf and file the requisite

petition with an affidavit setting forth the circumstances preventing the petitioner from appearing personally. Notice to the petitioner and respondent and an opportunity for the respondent to be heard shall be given as provided in section 7.

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

**Section 11. Order for suspension and surrender of firearms license; surrender of firearms; petition for review; hearing.** Upon issuance of a temporary or emergency order under sections 7 or 10, the court shall, if the petitioner demonstrates a substantial likelihood of immediate danger of harassment, order the immediate suspension and surrender of any license to carry firearms and or firearms identification card which the respondent may hold and order the respondent to surrender all firearms, rifles, shotguns, machine guns and ammunition which the respondent then controls, owns or possesses in accordance with the provisions of this chapter and any license to carry firearms or firearms identification cards which the respondent may hold shall be surrendered to the appropriate law enforcement officials in accordance with the provisions of this chapter and, said law enforcement official may store, transfer or otherwise dispose of any such weapon in accordance with section 129D of chapter 140; provided however, that nothing herein shall authorize the transfer of any weapons surrendered by the respondent to anyone other than a licensed dealer. Notice of such suspension and ordered surrender shall be appended to the copy of Harassment Prevention Order served on the respondent pursuant to section 7. Law enforcement officials,

upon the service of said orders, shall immediately take possession of all firearms, rifles, shotguns, machine guns, ammunition, any license to carry firearms and any firearms identification cards in the control, ownership, or possession of said respondent. Any violation of such orders shall be punishable by a fine of not more than \$5,000, or by imprisonment for not more than 2 1/2 years in a house of correction, or by both such fine and imprisonment.

Any respondent aggrieved by an order of surrender or suspension as described in the first sentence of this section may petition the court which issued such suspension or surrender order for a review of such action and such petition shall be heard no later than 10 court business days after the receipt of the notice of the petition by the court. If said license to carry firearms or firearms identification card has been suspended upon the issuance of an order issued pursuant to sections 7 or 10, said petition may be heard contemporaneously with the hearing specified in section 7. Upon the filing of an affidavit by the respondent that a firearm, rifle, shotgun, machine gun or ammunition is required in the performance of the respondent's employment, and upon a request for an expedited hearing, the court shall order said hearing within 2 business days of receipt of such affidavit and request but only on the issue of surrender and suspension pursuant to this section.

**Section 12. Continuation or modification of order for surrender or suspension.**

Upon the continuation or modification of an order issued pursuant to section 8, or upon petition for review as described in section 11, the court shall also order or continue to order the immediate suspension and surrender of a respondent's license to carry firearms, including a Class A or Class B license, and firearms identification card and the surrender of all firearms, rifles, shotguns, machine guns or ammunition which such respondent then controls, owns or possesses if the court makes a determination that the return of such license to carry firearms, including a Class A or Class B license, and firearm identification card or firearms,

rifles, shotguns, machine guns or ammunition presents a likelihood of harassment to the petitioner. A suspension and surrender order issued pursuant to this section shall continue so long as the protection order to which it relates is in effect; and, any law enforcement official to whom such weapon is surrendered may store, transfer or otherwise dispose of any such weapon in accordance with section 129D of chapter 140; provided, however, that nothing herein shall authorize the transfer of any weapons surrendered by the respondent to anyone other than a licensed dealer. Any violation of such order shall be punishable by a fine of not more than \$5,000 or by imprisonment for not more than 2 ½ years in a house of correction or by both such fine and imprisonment.

**Section 13. Protection order issued by another jurisdiction; enforcement; filing; presumption of validity.** Any protection order issued by another jurisdiction shall be given full faith and credit throughout the commonwealth and enforced as if it were issued in the commonwealth for as long as the order is in effect in the issuing jurisdiction.

A person entitled to protection under a protection order issued by another jurisdiction may file such order in the Superior, District, Boston Municipal, or Juvenile (if the petitioner or respondent are juveniles) court departments by filing with the court a certified copy of such order which shall be entered into the Statewide Domestic Violence Record Keeping System pursuant to section 10. Such person shall swear under oath in an affidavit, to the best of such person's knowledge that such order is presently in effect as written. Upon request by a law enforcement agency, the clerk of such court shall provide a certified copy of the protection order issued by the other jurisdiction.

A law enforcement officer may presume the validity of, and enforce in accordance with section 9, a copy of a protection order issued by another jurisdiction which has been provided to the law enforcement officer by any source; provided, however, that the officer is

also provided with a statement by the person protected by the order that such order remains in effect. Law enforcement officers may rely on such statement by the person protected by such order and cannot be subjected to civil or criminal liability so long as they have acted in good faith reliance upon the representations.

**Section 14. Powers of police.** Whenever any law officer has reason to believe that an individual has been harassed or is in danger of being harassed, such officer shall use all reasonable means to prevent further harassment. The officer shall take, but not be limited to the following action:

(1) remain on the scene of where said harassment occurred or was in danger of occurring as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of a law officer. This shall include, but not be limited to remaining in the dwelling for a reasonable period of time;

(2) assist the victim in obtaining medical treatment necessitated by the harassment, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility, notwithstanding any law to the contrary. If possible, the officer shall take the victim of a sexual assault to a location where a sexual assault nurse examiner is present. The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances;

(3) assist the victim in locating and getting to a safe place including, but not limited to, a designated meeting place for a shelter or a family member or friend's residence;

(4) give such person immediate and adequate notice of his or her rights. Such notice shall consist of handing said person a copy of the statement that follows below and reading the same to said person. If said person's native language is not English, the statement shall be then provided in said person's native language whenever possible.

"You have the right to appear at the Superior, District, Boston Municipal, or Juvenile (if the petitioner or respondent is a juvenile) court, if you reside within the appropriate jurisdiction, and file a petition requesting any of the following applicable orders: (a) an order directing your attacker to refrain from contacting you, an order directing your attacker to stay away from you, your dwelling and your workplace; and (b) an order directing your attacker to pay you for losses suffered as a result of the harassment including, but not limited to, loss of earnings, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical costs, moving expenses, cost for obtaining an unlisted telephone number and reasonable attorney's fees.

Initiation of a petition under this statute is not contingent upon going forward with a criminal proceeding nor is it contingent upon ongoing cooperation with law enforcement.

For an emergency on weekends, holidays, or weeknights the police will refer you to a justice of the Superior, District, Boston Municipal, or Juvenile (if the petitioner or respondent is a juvenile) court departments.

You have the right to go to the appropriate Superior, District, Boston Municipal, or Juvenile (if the petitioner or respondent is a juvenile) court and seek a criminal complaint for related offenses.

If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment. If you are the victim of sexual assault and if possible, the officer shall take you to a location where a sexual assault nurse examiner is present. The officer shall consider your preference in this regard and what is reasonable under all the circumstances.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you can leave or until your

safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or a friend's residence, or a similar place of safety.

You may request a copy of the police incident report at no cost from the police department."

The officer shall leave a copy of the foregoing statement with such person before leaving the scene or premises.

(5) assist such person by activating the emergency judicial system when the court is closed for business;

(6) inform the victim that the assailant will be eligible for bail and may be promptly released; and

(7) arrest any person a law officer witnesses or has probable cause to believe has violated a temporary or permanent Harassment Prevention Order or judgment issued. When there are no Harassment Prevention Orders or judgments in effect, arrest shall be the preferred response whenever an officer witnesses or has probable cause to believe that a person:

(a) has committed a felony; or

(b) has committed a misdemeanor involving harassment as defined in section one of this chapter

(c) has committed an assault and battery that involved harassment

The safety of the victim shall be paramount in any decision to arrest. Any officer arresting both parties must submit a detailed, written report in addition to an incident report, setting forth the grounds for dual arrest.

No law officer investigating an incident of harassment shall threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.

No law officer shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a harassment incident for an arrest based on probable cause when such officer acted reasonably and in good faith and in compliance with this chapter.

Whenever any law officer investigates an incident of harassment, the officer shall immediately file a written incident report in accordance with the standards of the officer's law enforcement agency and, wherever possible, in the form of the National Incident-Based Reporting System, as defined by the Federal Bureau of Investigation. The latter information may be submitted voluntarily by the local police on a monthly basis to the crime-reporting unit of the criminal history systems board.

The petitioner shall be provided a copy of the full incident report at no cost upon request to the appropriate law enforcement department.

When a judge or other person authorized to take bail grants bail for any person arrested under this chapter, he shall make reasonable efforts to inform the petitioner of such release prior to or at the time of said release.

When any person charged with or arrested for a crime involving harassment under this chapter is released from custody, the court or the emergency response judge shall issue, upon the request of the petitioner, a written no contact order prohibiting the person charged or arrested from having any contact with the petitioner, either directly or indirectly, and shall use all reasonable means to notify the petitioner immediately of release from custody. The petitioner shall be given at no cost a certified copy of the no contact order.

