



Acts
2010

CHAPTER 23 AN ACT RELATIVE TO HARASSMENT PREVENTION ORDERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

The General Laws are hereby amended by inserting after chapter 258D the following chapter:-

CHAPTER 258E
HARASSMENT PREVENTION ORDERS

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

“Abuse”, attempting to cause or causing physical harm to another or placing another in fear of imminent serious physical harm.

“Harassment”, (i) 3 or more acts of willful and malicious conduct aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause fear, intimidation, abuse or damage to property; or (ii) an act that: (A) by force, threat or duress causes another to involuntarily engage in sexual relations; or (B) constitutes a violation of section 13B, 13F, 13H, 22, 22A, 23, 24, 24B, 26C, 43 or 43A of chapter 265 or section 3 of chapter 272.

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

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

“Malicious”, characterized by cruelty, hostility or revenge.

“Protection order issued by another jurisdiction”, an 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 a tribal court that is issued for the purpose of preventing violent or threatening acts, abuse or harassment against, or contact or communication with or physical proximity to another person, including temporary and final orders issued by civil and criminal courts filed by or on behalf of a person seeking protection.

Section 2. Proceedings under this chapter shall be filed, heard and determined in the superior court

department or the Boston municipal court department or the respective divisions of the juvenile or district court departments having venue over the plaintiff's residence. The juvenile court shall have jurisdiction over all proceedings under this chapter in which both the plaintiff and the defendant are under the age of 17.

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

- (i) refrain from abusing or harassing the plaintiff, whether the defendant is an adult or minor;
- (ii) refrain from contacting the plaintiff, unless authorized by the court, whether the defendant is an adult or minor;
- (iii) remain away from the plaintiff's household or workplace, whether the defendant is an adult or minor; and
- (iv) pay the plaintiff monetary compensation for the losses suffered as a direct result of the harassment; provided, however, that compensatory damages shall include, but shall not be limited to, loss of earnings, out-of-pocket losses for injuries sustained or property damaged, cost of replacement of locks, medical expenses, cost for obtaining an unlisted phone number and reasonable attorney's fees.

(b) The court may order that information in the case record be impounded in accordance with court rule.

(c) No filing fee shall be charged for the filing of the complaint. The plaintiff shall not 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 plaintiff's copies.

(d) Any relief granted by the court shall not extend for a period exceeding 1 year. Every order shall, on its face, state the time and date the order is to expire and shall include the date and time that the matter will again be heard. If the plaintiff appears at the court at the date and time the order is to expire, the court shall determine whether or not to extend the order for any additional time reasonably necessary to protect the plaintiff or to enter a permanent order. When the expiration date stated on the order is on a date when the court is closed to business, the order shall not expire until the next date that the court is open to business. The plaintiff may appear on such next court business day at the time designated by the order to request that the order be extended. The court may also extend the order upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff from harassment. The fact that harassment 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.

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

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

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

Section 4. Upon the filing of a complaint under this chapter, a complainant shall be informed that the proceedings hereunder are civil in nature and that violations of orders issued hereunder are criminal in nature. Further, a complainant shall be given information prepared by the appropriate district attorney's office that other criminal proceedings may be available and such complainant shall be instructed by such district attorney's office relative to the procedures required to initiate criminal proceedings including, but not limited to, a complaint for a violation of section 13B, 13F, 13H, 22, 22A, 23, 24, 24B, 26C, 43 and 43A of chapter 265 or section 3 of chapter 272. Whenever possible, a complainant shall be provided with such information in the complainant's native language.

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

If the plaintiff demonstrates 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 plaintiff from harassment and shall immediately thereafter notify the defendant that the temporary orders have been issued. The court shall give the defendant an opportunity to be heard on the question of continuing the temporary order and of granting other relief as requested by the plaintiff not later than 10 court business days after such orders are entered.

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

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

Section 6. When the court is closed for business or the plaintiff is unable to appear in court because of severe hardship due to the plaintiff's physical condition, the court may grant relief to the plaintiff as provided under section 5 if the plaintiff 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 or clerk-magistrate of the court having venue and jurisdiction over the matter. If relief has been granted without the filing of a complaint pursuant to this section, the plaintiff shall appear in court on the next available business day to file a complaint. If the plaintiff in such a case is unable to appear in court without severe hardship due to the plaintiff's physical condition, a representative may appear in court, on the plaintiff's behalf and file the requisite complaint with an affidavit setting forth the circumstances preventing the plaintiff from appearing personally. Notice to the plaintiff and defendant and an opportunity for the defendant to be heard shall be given as provided in said section 5.

Any order issued under this section and any documentation in support thereof shall be certified on the next court day by the clerk or 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 the other provisions of this chapter but shall not be deemed necessary for an emergency order issued under this section to take effect.

Section 7. 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 with the appropriate court by filing with the court a certified copy of such order. 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 or clerk-magistrate of such court shall provide a certified copy of the protection order issued by the other jurisdiction.

A law officer may presume the validity of, and enforce in accordance with section 8, a copy of a protection order issued by another jurisdiction which has been provided to the law 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 officers may rely on such statement by the person protected by such order.

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

- (i) assess the immediate physical danger to the victim and provide assistance reasonably intended to mitigate the safety risk;

- (ii) if there is observable injury to the victim or if the victim is complaining of injury, encourage the victim to seek medical attention and arrange for medical assistance or request an ambulance for transport to a hospital;
- (iii) if a sexual assault has occurred, notify the victim that there are time-sensitive medical or forensic options that may be available, encourage the victim to seek medical attention and arrange for medical assistance or request an ambulance for transport to a hospital;
- (iv) provide the victim with referrals to local resources that may assist the victim in locating and getting to a safe place; and
- (v) provide adequate notice to the victim of his rights including, but not limited to, obtaining a harassment prevention order.

Section 9. When considering a complaint filed under this chapter, the court shall order a review of the records contained within the court activity record information system and the statewide domestic violence recordkeeping system, as provided in chapter 188 of the acts of 1992 and maintained by the commissioner of probation, and shall review the resulting data to determine whether the named defendant has a civil or criminal record involving violent crimes or abuse. Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances in which an outstanding warrant exists, the court shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances in which such an imminent threat of bodily injury 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 that the defendant refrain from harassing the plaintiff or have no contact with the plaintiff under section 3, 5 or 6, the clerk or clerk-magistrate shall transmit: (i) to the office of the commissioner of probation information for filing in the court activity record information system or the statewide domestic violence recordkeeping system as provided in said chapter 188 of the acts of 1992 or in a recordkeeping system created by the commissioner of probation to record the issuance of, or violation of, prevention orders issued pursuant to this chapter; and (ii) 2 certified copies of each such order and 1 copy of the complaint 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 defendant, together with a copy of the complaint and order and summons. The law enforcement agency shall promptly make its return of service to the court. The commissioner of probation may develop and implement a statewide harassment prevention order recordkeeping system.

Law officers shall use every reasonable means to enforce such harassment prevention orders. Law enforcement agencies shall establish procedures adequate to ensure 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 2½ years in a house of correction, or both. In addition to, but not in lieu of, the foregoing penalties and any other sentence, fee or assessment, including the victim witness assessment in section 8 of chapter 258B, the court shall order persons convicted of a violation of such an order to pay a fine of \$25 that shall be transmitted to the treasurer for deposit into the General Fund. For any violation of such order, the court may order the defendant to complete an appropriate treatment program based on the offense.

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

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

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

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

The plaintiff's 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 plaintiff under this chapter, shall be confidential and withheld from public inspection, except by order of the court; provided, however, that the plaintiff's residential address and workplace address shall appear on the court order and be accessible to the defendant and the defendant's attorney unless the plaintiff specifically requests that this information be withheld from the order. All confidential portions of the records shall be accessible at all reasonable times to the plaintiff and plaintiff's attorney, to others specifically authorized by the plaintiff 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 officers, if such access is necessary in the performance of their duties. This paragraph shall apply to any protection order issued by another jurisdiction filed with a court of the commonwealth pursuant to section 7. 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.

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

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

Approved, February 9, 2010.
