

New Harassment Prevention Law

By Francine Traiger Poor

On February 9, 2010, Governor Deval Patrick signed "An Act Relative to Harassment Prevention Orders." The new law takes effect in 90 days on May 11th and will fill an important gap in Massachusetts restraining order law. It promises to provide much needed protection for victims of stalking, abuse and sexual assault.

Previously, under Massachusetts General Laws ch. 209A, protection from abuse and a restraining order was available to a victim only if the perpetrator was a family member, roommate, current or former spouse, or a person with whom the victim had a substantial dating relationship. With the enactment of Massachusetts General Laws ch. 258E, victims of abuse or harassment may petition for a protection order regardless of the perpetrator's relationship to the victim.

The new law defines "harassment" as

- "Three 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 an act that "by force threat or duress causes another to involuntarily engage in sexual relations";

- Or an act that violates the laws against indecent assault and battery on a child, indecent assault and battery on a mentally retarded person, indecent assault and battery, rape, forcible rape of a child, statutory rape, assault to rape, assault to rape a child, enticing a child, criminal stalking, criminal harassment or drugging for sexual intercourse.

The legislation was enacted by unanimous votes in both the House and Senate last month. "A criminally enforceable restraining order for these situations creates a legal option to interrupt intimidation and harassment and help increase safety for victims," said Stephanie DeCandia, manager of system advocacy and policy development at the Boston Area Rape Crisis Center.

The provisions of the new law are substantially the same as Massachusetts General Laws ch. 209A, with two important exceptions; the new law eliminates the requirement that the victim have a family or dating relationship with perpetrator and applies to "anyone suffering from harassment"; and, unlike Massachusetts General Laws ch. 209A,

restraining orders under the law cannot be issued by the Probate and Family Court.

The similarities between the two laws are equally important. Like 209A, violations of chapter 258E orders are criminal offenses, there are no filing fees, the orders can be entered without advance notice, initial orders are valid for 10 court business days after which the court will schedule an extension hearing date and there need not be any violations of the order for the order to be extended after its original expiration date.

Under the new law, the Perpetrator may be ordered not only to refrain from abusing or harassing the Victim, but also not to contact the Victim, stay away from the Victim's home or work and pay restitution for directly resulting losses. Unlike 209A however, the new law does not authorize firearms surrender and the issuing Judge does not have the authority to order child support or custody.

Both Massachusetts General Laws chapter 209A and the new chapter 258E have their place in protecting victims of abuse and harassment. Massachusetts General Laws ch. 258E extends the legal protections available to stalking and sexual abuse victims by permitting them to receive protective orders against people who are neither domestic partners nor family members.