



Town of Lexington

Police Department

Subject: Harassment and Abuse
M.G.L. Ch. 258E

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By Order of: Mark J. Corr, Chief of Police

**Policy &
Procedure**

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GENERAL CONSIDERATIONS AND GUIDELINES

Chapter 23 of the Acts of 2010 was enacted to address issues of harassment and abuse under the newly created Chapter 258E of the Massachusetts General Laws. This legislation provides protections to classes of people, not previously protected under Chapter 209A or under workplace harassment laws, because of limitations included within those statutes. Chapter 258E provides options for those previously unprotected persons.

Chapter 258E is similar to Chapter 209A but does not provide a statutory right of arrest for harassment and abuse. However, a violation of a harassment and abuse court order is arrestable. Victim rights and police officer duties are very similar to those defined under M.G.L. Chapter 209A. Officers dealing with any harassment and/or abuse incident must be sure to consider the relationship between the victim and abuser and be sure not to confuse the enforcement options of this statute with those of Chapter 209A.

It is the policy of the Lexington Police Department to assist victims of harassment and abuse pursuant to Chapter 258E of the Massachusetts General Laws.

PROCEDURES

A. Definitions

1. **Abuse:**ⁱ
 - a. Attempting to cause or causing physical harm;
 - b. Placing another in fear of imminent physical harm.

2. **Harassment:**ⁱⁱ
- a. Three (3) or more acts of willful and malicious conduct:
 - i. Aimed at a specific person;ⁱⁱⁱ
 - ii. Committed with the intent to cause fear, intimidation, abuse, or damage to property; and
 - iii. Does in fact cause fear, intimidation, abuse, or damage to property; or
 - b. An act that by force, threat, or duress causes another to involuntarily engage in sexual relations;^{iv} or
 - c. Constitutes a violation of Chapter 265, section^v:
 - 13B – indecent assault and battery on a child under fourteen;
 - 13F – assault and battery or indecent assault and battery on a mentally retarded person;
 - 13H – indecent assault and battery on a person fourteen or older;
 - 22 – rape;
 - 22A – rape of a child, use of force;
 - 23 – rape and abuse of a child;
 - 24 – assault with intent to commit rape;
 - 24B – assault of a child, intent to commit rape;
 - 26C – enticement of a child under age 16;
 - 43 – stalking; or
 - 43A – criminal harassment; or
 - Constitutes a violation of Chapter 272 section 3, drugging a person for sexual intercourse^{vi}.
3. **Law Officer:**^{vii} Any officer authorized to serve criminal process.
4. **Malicious:**^{viii} Actions and / or words characterized by cruelty, hostility, or revenge.
5. **Protection Order Issued by Another Jurisdiction:**^{ix} An injunction or other orders issued by a court of another state, territory, possession, etc. for the purpose of preventing violent or threatening acts, abuse, or harassment against, or contact or communications with, or physical proximity to another person.^x
- B. Venue for issuance of an order:
1. Harassment prevention orders can be filed, heard and determined in the superior court department or the respective divisions of the district

court department or the Boston municipal court department having venue over the plaintiff's residence.^{xi}

2. The juvenile court department shall have exclusive jurisdiction of proceedings under this chapter in which the defendant is under the age of 17. Harassment prevention orders shall be filed, heard and determined in the division of the juvenile court department having venue over the plaintiff's residence.^{xii}

C. Obtaining an Order

1. Generally

- a. Harassment and abuse orders are civil in nature and violations of such orders are criminal in nature.^{xiii}
- b. A person suffering from harassment may file a complaint in the appropriate court requesting protection from harassment, whether the defendant is an adult or minor. The order may include ordering the defendant to:^{xiv}
 - i. Refrain from abusing or harassing the plaintiff;
 - ii. Refrain from contacting the plaintiff, unless authorized by the court;
 - ii. Remain away from the plaintiff's household or workplace;
 - iv. Pay the plaintiff monetary compensation for losses suffered as a direct result of the harassment, including:
 - (a) Loss of earnings;
 - (b) Out out-of-pocket losses for injuries sustained or property damaged;
 - (c) The cost of replacement of locks;
 - (d) Medical expenses;
 - (e) Cost of obtaining an unlisted phone number; and
 - (f) Reasonable attorney's fees.
- c. The court shall not deny any request for an order solely because it was not filed within a particular time period following the last alleged incident of harassment.^{xv}

2. Issuance of Order

- a. Temporary Order:^{xvi}
 - i. If the plaintiff demonstrates a substantial likelihood of immediate danger of harassment, the court may issue a temporary order.

- ii. If the defendant does not appear at the subsequent hearing, the order shall continue in effect without further order of the court.
- b. Emergency Orders:^{xvii}
 - i. An emergency order may be issued at the discretion of a justice:^{xviii}
 - (a) When the court is closed for business; or
 - (b) If a plaintiff is unable to appear in court because of a severe physical hardship.
 - ii. The issuing justice may communicate the order to an appropriate law enforcement employee.^{xix}
 - (a) The agency must record the order on the appropriate court form, and
 - (b) Deliver a copy of the order to the court on the next court day.
 - iii. The plaintiff must:^{xx}
 - (a) Appear in court to file a complaint the next court business day.
 - (b) If the plaintiff is unable to appear in court due to a severe hardship due to the plaintiff's physical condition, a representative may appear on behalf of the plaintiff.
- 3. Duration of Order:
 - a. Orders shall be valid for not more than one year.^{xxi}
 - b. An order may be extended for a period of time to protect the plaintiff to include a permanent order.^{xxii}
 - c. If an order expires on a date when the court is not open for business, it shall remain in effect until the next court business day.^{xxiii}
 - d. The court may modify the order at any time upon motion of either party.^{xxiv}
- D. Police Responsibility
 - 1. Police Response to Harassment Incidents: Whenever a law officer has reason to believe that a person has been or is in danger of being

abused or harassed, the officer shall use all reasonable means to prevent further abuse or harassment. Officers shall make every effort to do the following as part of the emergency response:^{xxv}

- a. Assess the immediate physical danger to the victim and provide assistance reasonably intended to mitigate the safety risk;^{xxvi}
- b. If there is observable injury to the victim, or if the victim complains of injury:^{xxvii}
 - i. Encourage the victim to seek medical attention and arrange for medical assistance; or
 - ii. Request an ambulance for transport to a hospital.
- c. If a sexual assault has occurred:^{xxviii}
 - i. Inform the victim that there are time-sensitive medical or forensic options that may be available;
 - ii. Encourage the victim to seek medical attention and arrange for medical assistance; or
 - iii. Request an ambulance for transport to a hospital.
- d. Provide the victim with referrals to local resources that may assist the victim in locating and getting to a safe place;^{xxix}
- e. Provide adequate notice to the victim of his or her rights, including, but not limited to, obtaining a harassment prevention order.^{xxx}
- f. Properly document any injuries or assault.

2. Enforcement of Orders

- a. Law enforcement officers shall use every reasonable means to enforce harassment prevention orders.^{xxxi}
- b. Confirmation of Order: Police officers investigating an allegation of a harassment order violation shall confirm the validity of the order, its terms and conditions:^{xxxii}
 - i. A copy of such an order may be held by the department.
 - ii. The order may be queried within the defendants BOP (Board of Probation record) available through the LEAPS system.

- c. Arrest and Prosecution
 - i. Arrest Warrant: Police shall take all necessary actions to execute an outstanding arrest warrant for a defendant in a case of harassment.^{xxxiii}
 - (a) Upon notification by the court that a defendant represents an imminent threat of bodily injury to a victim; and
 - (b) An outstanding arrest warrant is in effect for the defendant.
 - ii. A violation of a harassment order alone is a misdemeanor with a statutory right of arrest. A police officer may arrest an offender for a harassment order violation alone.
- d. Out of State Orders
 - i. Validity of the Order: 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.^{xxxiv}
 - ii. Presumption of Validity: ^{xxxv}
 - (a) A law enforcement officer may presume the validity of and enforce a copy of a protection order issued by another jurisdiction which has been provided to a law enforcement officer by any source provided that the officer is provided with a statement by the person protected by the order that the order remains in effect.
 - (b) Law enforcement officers may rely on such statement by the person protected by the order.
- e. Service of Harassment Orders:^{xxxvi}
 - i. Lexington Police Officers shall serve in hand (unless otherwise allowed by the court) to the defendant one (1) copy of each order to a defendant.
 - ii. Service of this civil order may be made on a Sunday.^{xxxvii}
 - iii. The officer serving the order shall sign the return of service for return to the court.

- iv. In the event that the defendant has moved or otherwise no longer is reasonably able to be served by this department, such shall be noted by the officer attempting service on the return of service, along with the forwarding address or location of the defendant, if known, and the return shall be forwarded to the court.

E. Incident Reports and Victim Confidentiality

1. Officers' Reports

A written report shall be submitted by the investigating officer for an incident involving an allegation of harassment or abuse.

2. Confidentiality: ^{xxxviii}

- a. The records of cases arising out of an action brought under the provisions of this chapter where the plaintiff or defendant is a minor shall be withheld from public inspection except by order of the court, provided that:
 - i. Such records shall be open, at all reasonable times, to the inspection of the minor, said minor's parent, guardian, attorney; and
 - ii. Such records shall be open, at all reasonable times, to the plaintiff and the plaintiff's attorney, or any of them.
- b. The plaintiff's residential address, residential telephone number and workplace name, address and telephone number, shall be confidential, except that the data 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.
- c. This confidentiality applies to protective orders of other jurisdictions.
- d. The confidential portions of the court records shall not be deemed public records under M.G.L. c. 4 § 7(26).

F. Related Criminal Statutes

1. Chapter 265 § 43. **Stalking**

- a. Elements of the Crime of Stalking: Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which:

- i. Seriously alarms or annoys that person; and
 - ii. Would cause a reasonable person to suffer substantial emotional distress; and
 - iii. Makes a threat with the intent to place the person in imminent fear of death or bodily injury.
 - b. Punishment: Such person shall be guilty of the crime of stalking and shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars, or imprisonment in the house of correction for not more than two and one-half years or both.
 - c. Such conduct, acts or threats described in this paragraph shall include, but not be limited to, conduct, acts or threats conducted by mail or by use of a telephonic or telecommunication device including, but not limited to, electronic mail, internet communications and facsimile communications.
 - d. Restraining Orders
 - i. Whoever commits the crime of stalking in violation of a temporary or permanent vacate, restraining, or no-contact order or judgment; or a protection order issued by another jurisdiction; or a temporary restraining order or preliminary or permanent injunction issued by the superior court, shall be punished by imprisonment in a jail or the state prison for not less than one year and not more than five years.
 - ii. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of one year.
 - e. Jurisdiction: **Chapter 277: Section 62B. Stalking; jurisdiction:** The crime of stalking, as set forth in section forty-three of chapter two hundred and sixty-five, may be prosecuted and punished in any territorial jurisdiction of the commonwealth wherein an act constituting an element of the crime was committed.
2. Chapter 265 § 43A. **Criminal Harassment**
 - a. Elements of the Crime of Criminal Harassment: Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which:
 - i. Seriously alarms that person; and

- ii. Would cause a reasonable person to suffer substantial emotional distress.
 - b. Such person shall be guilty of the crime of criminal harassment and shall be punished by imprisonment in a house of correction for not more than two and one-half years or by a fine of not more than \$1,000, or by both such fine and imprisonment.
 - c. Such conduct or acts described in this paragraph shall include, but not be limited to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device including, but not limited to, electronic mail, internet communications or facsimile communications.
 - d. Whoever, after having been convicted of the crime of criminal harassment, commits a second or subsequent such crime, or whoever commits the crime of criminal harassment having previously been convicted of a violation of section 43, shall be punished by imprisonment in a house of correction for not more than two and one-half years or by imprisonment in the state prison for not more than ten years.
- 3. Chapter 268 § 13B. **Intimidation of a Witness**
 - a. Whoever, directly or indirectly, willfully
 - b. Threatens, or attempts or causes physical injury, emotional injury economic injury or property damage to:
 - c. Conveys a gift, offer or promise of anything of value to; or
 - d. Misleads, intimidates or harasses another person who is;
 - i. A witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type;
 - ii. A person who is or was aware of information records, documents or objects that relate to a violation of a criminal statute, or a violation of conditions of probation, parole or bail;
 - iii. A judge, juror, grand juror, prosecutor or police officer, federal agent investigator, defense attorney, clerk, court officer, probation officer or parole officer;

- iv. A person who is or was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type; or
- v. A person attending or made known their intent to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impede, obstruct, delay, harm, punish or otherwise interfere thereby with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type, shall be punished by imprisonment in jail or house of correction for not more than 2 ½ years, ten years in the state prison or by a fine of not less than \$1,000 nor more than \$5,000.
- vi. Investigator, as used in this section shall mean an individual or group lawfully authorized by a department or agency of the federal government, or any political subdivision thereof, or a department or agency of the commonwealth, or any political subdivision thereof, to conduct or engage in an investigation of, prosecution for, or defense of a violation of the laws of the United States or of the Commonwealth in the course of their official duties.
- vii. Harass, as used in this section shall mean to engage in any act directed at a specific person or persons, which act seriously alarms or annoys such persons and would cause a reasonable person to suffer substantial emotional distress. Such act shall include, but not be limited to, an act conducted by mail, electronic mail, Internet communications, facsimile communications or other telephonic or telecommunications device.
- viii. Prosecution may be brought in the county in which the criminal investigation, grand jury proceeding, trial or other criminal proceeding is being conducted or took place, or in the county in which the alleged conduct constituting an offense occurred.

ⁱ M.G.L. c. 258E §1.

ⁱⁱ M.G.L. c. 258E §1.

ⁱⁱⁱ M.G.L. c. 258E §1(i).

^{iv} M.G.L. c. 258E §1(ii) (A).

^v M.G.L. c. 258E §1(ii) (B).

- vi M.G.L. c. 258E §1(ii) (B).
- vii M.G.L. c. 258E §1.
- viii M.G.L. c. 258E §1.
- ix M.G.L. c. 258E §1.
- x M.G.L. c. 258E §1.
- xi M.G.L. c. 258E §2.
- xii M.G.L. c. 258E §2.
- xiii M.G.L. c. 258E § 4.
- xiv M.G.L. c. 258E § 3(a).
- xv M.G.L. c. 258E § 3(f).
- xvi M.G.L. c. 258E § 5.
- xvii M.G.L. c. 258E § 6.
- xviii M.G.L. c. 258E § 6.
- xix M.G.L. c. 258E § 6.
- xx M.G.L. c. 258E § 6.
- xxi M.G.L. c. 258E § 3(d).
- xxii M.G.L. c. 258E § 3(d).
- xxiii M.G.L. c. 258E § 3(d).
- xxiv M.G.L. c. 258E § 3(e).
- xxv M.G.L. c. 258E § 8.
- xxvi M.G.L. c. 258E § 8(i).
- xxvii M.G.L. c. 258E § 8(ii).
- xxviii M.G.L. c. 258E § 8(iii).
- xxix M.G.L. c. 258E § 8(iv).
- xxx M.G.L. c. 258E § 8(v).
- xxxi M.G.L. c. 258E § 9.
- xxxii M.G.L. c. 258E § 9.
- xxxiii M.G.L. c. 258E § 9.
- xxxiv M.G.L. c. 258E § 7.
- xxxv M.G.L. c. 258E § 7.
- xxxvi M.G.L. c. 258E § 9.
- xxxvii M.G.L. c. 258E § 9, the last section exempts service from the prohibition of service of civil process on a Sunday pursuant to M.G.L. c. 136 § 8.
- xxxviii M.G.L. c. 258E § 10.