



Committee for Public Counsel Services Youth Advocacy Division

HARASSMENT PREVENTION ORDERS - G.L. c. 258E

Harassment Prevention Orders (Order) are similar to Restraining Orders since they can prevent contact between two persons, however with an Order pursuant to c. 258E, the parties do not have to be related to, have lived with, or had a dating relationship with the other party. Orders are civil in nature and violations are criminal.

What is Harassment? - c. 258E §1

- ☐ Three or more acts of willful and malicious conduct
 - aimed at a specific person with the intent to cause fear, intimidation, abuse or damage to property, and
 - 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
 - constitutes a violation of an enumerated sex offense (i.e., indecent assault & battery, rape, statutory rape, assault with intent to rape, enticing a child, criminal stalking, criminal harassment, drugging for sexual intercourse)

An Order can only be issued if all the elements are met. If you represent a youth at the hearing on the issuance of an Order or on a violation of an Order, make sure all the above factors are on the record.

Jurisdiction - c. 258E §2

If the juvenile is under age 17, juvenile court has exclusive jurisdiction over the case and it will be heard in the venue where the plaintiff resides. Superior court, district court and the Boston municipal court can all issue and hear Orders and cases in the venue where the plaintiff resides.

What Can the Court Order ? - c. 258E §3

The court can order a juvenile or defendant to:

- ☐ refrain from abuse or harassment
- ☐ refrain from contacting the plaintiff, unless otherwise ordered
- ☐ remain away from the plaintiff's home or workplace, and
- ☐ pay the plaintiff monetary compensation for the losses suffered as a direct result of the harassment

An Order "shall" not exceed one year and the Order must state "the time and date the order is to expire and shall include the date and time that the matter will again be heard ." Orders can be extended after the expiration period and the court can enter a permanent order.

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Important Definitions

Abuse - “attempting to cause or causing physical harm to another or placing another in fear of imminent serious physical harm. “ c. 258E §1.

Malicious - “characterized by cruelty, hostility or revenge,” c. 258E §1, this is an intentional act motivated ill-will; the same concept of “malice” required for willful and malicious property damage. This is different than the “malice” required for criminal harassment, c. 265 § 43A, which does not require that the conduct be motivated by cruelty, hostility or revenge. See *Commonwealth v. O’Neil*, 67 Mass. App. Ct. 284, 293 (2006).

Intimidation/Fear - c. 258E does not define “fear,” or “intimidation.” It also does not define what the plaintiff must fear, or what the goal of the intimidation must be. The word “intimidation” has been construed in the Massachusetts Civil Rights Act, c. 12 §11H, to mean “putting in fear for the purpose of compelling or deterring conduct.” *Planned Parenthood League, Inc. v. Blake*, 417 Mass. 467, 474, cert. denied, 513 U.S. 868 (1994). In the context of the witness intimidation statute, c. 268 § 13B, *Commonwealth v. Potter*, 39 Mass. App. Ct. 924, 925 (1995), indicated that “[a]s commonly understood and as defined in [the dictionary], the essence of intimidation is fear.” However, “intimidation” as construed in c. 268 § 13B does not require an overt threat or that the victim be put in fear of a specific harm. *Commonwealth v. Gordon*, 44 Mass. App. Ct. 233, 235 (1998).

Willful - c. 258E does not define “willful.” In other contexts, there are two different definitions of “willful.” One definition, which is used for willful and malicious property damage, c. 266 § 127, requires that the actor intend both the act and the resulting harm. See *Commonwealth v. Armand*, 411 Mass. 167, 170-171 (1991). Another definition, which is applicable to criminal harassment, c. 265, § 43A, requires only that the actor intend the act and does not require evil intent or ill will. See *Commonwealth v. O’Neil*, 67 Mass. App. Ct. 284, 293 (2006).

Other Issues

- ☐ If either party is a juvenile, the records are not open for public inspection. c. 258E § 10.
- ☐ An order can be modified by either party, with sufficient notice to the non-moving party. c. 258E § 3.
- ☐ Temporary orders can be issued if the court deems it necessary “to protect a plaintiff from harassment” and the order can be issued without notice, if the court deems it “necessary to protect the plaintiff from harassment .” The court shall immediately thereafter notify the defendant that the temporary order has been issued. If a temporary order is issued the juvenile/defendant shall have an opportunity to be heard, such hearing must be done no later than ten business days from when the order was entered. c. 258E § 5.