

258E: AN ACT RELATIVE TO HARASSMENT PREVENTION ORDERS

An Act Relative to Harassment Prevention Orders, G.L. c. 258E ("258E"), fills a critical gap in the law by providing victims of criminal harassment, stalking and sexual assault, regardless of their relationship with the defendant, with the ability to obtain harassment prevention orders against their perpetrators. Under G.L. c. 209A ("209A"), only those victims who are family members, reside in the same household, or have a substantial dating relationship with the defendant could obtain a restraining order; the new law has no such requirement. **Please note 209A has not been amended and is still in full force and effect.**

FREQUENTLY ASKED QUESTIONS

Q: WHO QUALIFIES FOR 258E RELIEF?

A: An individual who has been the victim of "harassment" and who demonstrates a substantial likelihood of immediate danger of "harassment" may qualify for 258E relief. "Harassment" is specifically defined in 258E as: (i) 3 or more acts of willful and malicious¹ 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 several specifically enumerated criminal statutes.²

Difference from 209A: Plaintiffs seeking relief under 258E need not be in a familial, household, or substantive dating relationship, as required by 209A.

Q: WHERE CAN A PLAINTIFF APPLY FOR 258E RELIEF?

A: A plaintiff seeking a restraining order under 258E may apply in the district, Boston municipal, or superior court departments having venue over that plaintiff's residence. In addition, if the defendant is under the age of 17, the juvenile court shall have exclusive jurisdiction over the 258E proceedings, in the juvenile court having venue over the plaintiff's residence.

Difference from 209A: As there is no family, household, or dating relationship requirement, the Probate and Family Courts do not have jurisdiction to issue 258E orders.

Q: IS THE PROCEDURAL PROCESS DIFFERENT THAN 209A?

A: The procedural process is very similar to that in 209A. The remedy is considered civil in nature, but a violation of the restraining order is criminal. Plaintiff does not pay a fee for filing the complaint. A plaintiff's residential and workplace address may be kept confidential (unless the plaintiff chooses to request an order for the defendant to stay away from those addresses). A plaintiff may also ask the judge to impound, under current court rules, any part of the file. The court may issue the following: emergency relief after hours, temporary relief without the defendant present, relief to the plaintiff for up to one year after a hearing with notice to the defendant, and a modified order upon notice to the non-moving party. On the complaint form, the plaintiff must disclose all prior and pending actions involving the parties, including court actions, administrative proceedings and disciplinary proceedings. The Chief Justice for Administration and Management is responsible for creating all forms, including the Complaint and Order – not the individual courts.

Difference from 209A: Under 209A, the plaintiff only has to provide information on the complaint regarding actions for divorce, annulment, paternity, custody or support, guardianship, separate support or legal separation, or abuse prevention; under 258E, all actions must be included (e.g. court actions, administrative proceedings and disciplinary proceedings).

Q: WHAT ARE THE REMEDIES AFFORDED BY A 258E HARASSMENT ORDER?

A: A person suffering from harassment, as defined by 258E, may petition the court for an order that the defendant, whether an adult or a minor:

- Refrain from abusing or harassing the plaintiff;
- Refrain from contacting the plaintiff, unless authorized by the court;
- Remain away from the plaintiff's household or workplace;
- Pay the plaintiff monetary compensation for the losses suffered as a result of the harassment, 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 number and reasonable attorney's fees.

¹ Malicious is defined as conduct characterized by "cruelty, hostility or revenge". G.L. c. 258E, § 1.

²Chapter 265 of the General Laws Sections 13B (indecent assault and battery on a child under the age of 14); 13F (indecent assault and battery on a mentally retarded person); 13H (indecent assault and battery on persons 14 years 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 with the intent to commit rape); 26C (enticement of a child); 43 (criminal stalking) or 43A (criminal harassment). Chapter 272 of the General Laws Section 3 (drugging persons for sexual intercourse).

Difference from 209A: The following remedies provided for in 209A are not available under 258E: (1) an order to vacate the home; (2) an order addressing custody, visitation or temporary support; and (3) compensatory losses for moving expenses.

Q: WHAT IS THE PUNISHMENT FOR A VIOLATION OF 258E?

A: A violation of 258E is a criminal offense punishable by a fine of not more than \$5,000, or by imprisonment for not more than 2 ½ years, or both. Persons convicted under 258E must also pay a fine of \$25 for deposit into the General Fund. Additionally, the court may order that the defendant complete an appropriate treatment program based on the offense and may also order the defendant to pay the plaintiff for certain specified damages. Although not a punishment, the court shall also impose an assessment of \$350 against any person who has been referred to a treatment program as a condition of probation.

Difference from 209A: A violation of 258E will not result in the removal of firearms or other firearms modifications included in 209A. Under 209A, the court may consider ordering the abusive partner to attend and complete a certified batterer's treatment program as a condition of visitation; 258E allows the court, upon a violation of the restraining order, to order the defendant to complete a treatment program, but does not specify which one(s) may be appropriate.

Q: WHAT ARE LAW ENFORCEMENT'S OBLIGATIONS UNDER 258E?

A: Law officers should make every reasonable effort to do the following as part of the emergency response:

1. Assess the immediate physical danger to the victim and provide assistance reasonable to mitigate the safety risk;
2. 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;
3. If a sexual assault has occurred, notify the victim that there are time sensitive medical or forensic options that may be available and encourage the victim to seek medical attention and arrange for medical assistance or request an ambulance for transport to a hospital;
4. Provide the victim with referrals to local resources that may assist the victim in locating and getting to a safe place; and
5. Provide adequate notice to the victim of his/her rights including, but not limited to, obtaining a harassment prevention order;
6. Assist the victim by activating the emergency judicial system when the court is closed for business;
7. Inform the victim that the abuser will be eligible for bail and may be promptly released; and
8. Arrest any person that a law officer witnessed or has probable cause to believe violated a temporary or permanent vacate, restraining, stay-away or no-contact order or judgment issued under this chapter or similar protection order issued by another jurisdiction; provided, however, that if there are no vacate, restraining, stay-away or no-contact orders or judgments in effect, arresting the person shall be the preferred response if the law officer witnessed or has probable cause to believe that a person: (i) has committed a felony; (ii) has committed a misdemeanor involving harassment or abuse as defined in section 1; or (iii) has committed an assault and battery in violation of section 13A of chapter 265; provided further, that the safety of the victim shall be paramount in any decision to arrest; and provided further, that if a law officer arrests both parties, the law officer shall submit a detailed, written report in addition to an incident report, setting forth the grounds for arresting both parties.

Whenever a law officer investigates an incident of harassment, the officer shall immediately file a written incident report in accordance with the standards of the law officer's law enforcement agency.

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

Difference from 209A: 258E provides law enforcement the flexibility to protect victims and provide resources without mandating how law enforcement must act. The right to arrest is not mandatory and provides law enforcement flexibility in determining the appropriate response.

Q. IF SOMEONE QUALIFIES FOR BOTH A 209A AND 258E RESTRAINING ORDER, WHICH ONE SHOULD THEY OBTAIN?

A: If an individual qualifies for a 209A restraining order based on both relationship and actions that fall under the definition of abuse, there are several factors to consider:

- Defendant's access to a firearm, and the court's ability to remove firearms in 209A but not 258E.
- Reliance on established case law that has developed under 209A, and the certainty of interpretation, which is not available under 258E.
- Need for specific remedies the plaintiff seeks in obtaining the restraining order, and whether 209A or 258E is better for the victim based on that need.