Police Response to Bullying

Incident reported to school personnel

- The school administration should investigate all reports of Bullying incidents involving students. Incidents may occur on or off school property.
- Investigation should consist of, but not limited to the following:
  - Identify nature of bullying
  - Identify all individuals involved (victim, aggressor, bystanders, witnesses)
  - Interview all individuals.
  - Gather any evidence supporting incident.
- Determine if the incident is criminal. If criminal the Franklin Police Department should be contacted immediately. All information and evidence gathered by the school administration can be used to assist in the police department's investigation. If the bullying incident does not rise to a criminal level the Franklin Police Department can be contacted as a resource to assist the administration.

Incident reported directly to Franklin Police Department

- The Franklin Police Safety Division will immediately contact the school administration advising them of the incident.
- The police will conduct a full investigation of all bullying incident reported.
- The school administration will be kept apprised of all investigations.

These are a few potential crimes that could occur in a bullying incident.

- Assault mgl 265 s13a
- Assault and battery mgl 265 s13a
- Threat to commit a crime mgl 275 s32
- Stalking mgl 265 s43
- Criminal Harassment mgl 265 s43a
- Identity fraud mgl 266 s37e
- Hazing mgl 269 s17-19
- Possession of child pornography (sexting) mgl 272 s29
- Possession/Disseminating of obscene matter (sexting) mgl272 s28

An Act Relative to Harassment Prevention Orders
G.L. c. 258E

SGT

Effective on May 10, 2010

- *G.L. c. 258E allows victims of stalking, sexual assault and/or harassment to obtain a harassment prevention order against his/her perpetrator.*
- *G. L. c. 209A - has not been amended and is still in full force and effect.*

Many victims of stalking, sexual assault, and harassment did not have such a relationship with their perpetrator; not able to obtain 209A restraining orders.

So what did the legislature have in mind in crafting chapter 258E?

- victim can file a complaint in court without needing legal representation.
- not required to pay a filing fee.
- violation of the harassment order is criminally enforceable.

"HARASSMENT"

- 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;

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

- One 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*

"Enumerated Statutes"?
Chapter 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/statutory rape);*

—*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)

A plaintiff seeking a harassment order under 258E may apply in one of these courts having venue over the plaintiff's residence:

—*Boston Municipal Court*

—*District Court*

—*Superior Court*

—*Juvenile Court*

Note: A plaintiff may only seek relief in Juvenile Court if the plaintiff and defendant are both under the age of 17.

Remedies

—*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; and/or*

—*Pay the plaintiff "monetary compensation" for the losses suffered as a result of the harassment.*

Keep in mind that all actions involving the parties must be listed on the complaint (*e.g.* civil matters, school disciplinary matters).

"Monetary compensation" for the losses suffered as a result of the harassment includes, but is 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/or*

—*Reasonable attorney's fees.*

The following court remedies are **not** authorized under 258E:

-*An order to vacate the home.*
-*An order addressing custody, visitation or temporary support.*
-*Compensatory losses for moving expenses.*

Note: The above remedies are available under 209A, which focuses on domestic violence in a family/household relationship, making the above remedies relevant.

-*Suspension and surrender of firearms, firearms licenses, or firearms identification.*

Some way to help a victim get relief when a court is closed?

Provides for relief if court is closed or if plaintiff unable to appear because of severe hardship due to plaintiff's physical condition.
The emergency judicial response system will be the same as with 209A restraining orders.

***Ex Parte* Order/Temporary Relief**

Upon the filing of a complaint, the court may issue the following:

•Temporary relief without the defendant present

-*Court may order temporary relief orders without notice if the plaintiff demonstrates a "substantial likelihood of immediate danger of harassment."*

Note that "harassment" is statutorily defined, so a plaintiff who has previously been stalked will likely demonstrate that there is a substantial likelihood of immediate danger of, for example, one act of stalking.

Review by Judge

If outstanding warrant exists, a judge shall notify appropriate law enforcement officials. Judge shall also make a finding as to whether plaintiff faces imminent threat of bodily injury.

If imminent threat of serious bodily injury exists, judge shall notify appropriate law enforcement officials of such finding and law enforcement officials shall take all necessary action to execute the outstanding warrant promptly.

10-Day Hearing

Court will state on its temporary order when the plaintiff needs to come back to court.
Defendant shall be given notice for the 10-day hearing.
Defendant will have an opportunity to be heard on the question of whether the temporary order should continue.
Court may grant any other relief requested by plaintiff at the 10-day hearing.
Court may grant relief to the plaintiff for up to one year.
Court will not require plaintiff to demonstrate a *"substantial likelihood of immediate danger of harassment"* as it did at ex parte hearing.

Extension

At the expiration of the initial order, the court may:

—*Extend the order for additional time as it deems necessary to protect the plaintiff; or*

—*Enter a permanent order.*

Confidentiality

The following information shall remain confidential and withheld from public inspection, except by order of the court:

- *Residential address and telephone number of plaintiff*
- *Workplace name, address and telephone number of plaintiff*

However, plaintiff's confidential information shall appear on the court order and accessible to defendant and defendant's attorney unless plaintiff specifically requests that this information be withheld from the order.
The information will be available to plaintiff and plaintiff's counsel and to others specifically authorized by plaintiff (such as victim-witness advocates, sexual assault counselors, and any officer authorized to serve criminal process) as long as such access is "necessary in the performance of their duties."
In addition to the confidentiality provided for the residence and workplace information, under the Trial Court impoundment rules, the court may order that any other information in the case record be impounded and unavailable for public inspection.

Full Faith & Credit

Any protection order issued by another jurisdiction shall be given full faith and credit in the Commonwealth.

Any protection order issued by another jurisdiction shall be enforced as if it were issued in the Commonwealth for as long as the order is in effect.

Punishment

A violation of 258E is a misdemeanor criminal offense punishable by:

—*A fine of not more than $5,000; or*

—*By imprisonment for not more than 2 ½ years in the house of correction; or*

—*Both.*

Upon a violation, the court may also 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.

—*To provide judges greater discretion, 258E does not specify which treatment programs may be appropriate.*

—*Under 209A, in contrast, for any violation a court shall order the abusive partner to attend and complete a certified batterer's intervention program unless the judge issues written findings as to good cause why this should not be ordered.*
Although not 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.

Persons convicted under 258E must also pay a fine of $25 for deposit into the General Fund.

Police requirements

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

—*Assess the immediate physical danger to the victim and provide assistance reasonable to mitigate the safety risk;*

—*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;*

–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;

–Provide the victim with referrals to local resources that may assist the victim in locating and getting to a safe place; and

–Provide adequate notice to the victim of his/her rights including, but not limited to, obtaining a harassment prevention order

Law enforcement shall use reasonable means to enforce such orders.

Compared to 209A

In contrast to 209A, the statute does ***not*** *currently include a right to arrest by law enforcement if he/she has probable cause to believe that a restraining order has been violated.*
Although there is no right to arrest, a best practice for law enforcement would be for the Officer to seek a criminal complaint in District Court through a show cause hearing on behalf of the victim.
A victim may seek their own criminal complaint in this same manner.

Recordkeeping System of Defendants

Whenever the court orders that the defendant refrain from harassing or have no contact with the plaintiff, the court or clerk-magistrate shall transmit:

—The issuance of, or violation of, such prevention order to the office of the commissioner of probation information for filing in the court activity record information system or statewide domestic violence recordkeeping system; and

—Two (2) certified copies of the order and one (1) copy of the complaint and summons to the appropriate law enforcement agency, which shall serve one copy of each on the defendant.

G.L. c. 209A or G.L. c. 258E?

- *Court's ability to remove firearms in 209A but not 258E*
- *The violation of 209A as an arrestable offense, not under 258E currently*
- *The remedies available under 209A (i.e. vacate the home, custody, etc.) are somewhat different, and may be preferable depending on the victim's circumstances.*

For example, if the individual filing for the restraining order has children, 209A provides remedies related to custody, visitation, and child support, which 258E does not contain.

Chapter 92 of the Acts of 2010

AN ACT RELATIVE TO BULLYING IN SCHOOLS

Summary of Provisions Affecting Police

1. Effective date: May 3, 2010
2. **SECTION 9.** Section 43 of chapter 265 of the General Laws, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-□□(a) Whoever (1) 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 seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and (2) makes a threat with the intent to place the person in imminent fear of death or bodily injury, shall be guilty of the crime of stalking and shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than $1,000, or imprisonment in the house of correction for not more than 2 ½ years or by both such fine and imprisonment. The conduct, acts or threats described in this subsection shall include, but not be limited to, conduct, acts or threats conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.□□

3. **SECTION 10.** Section 43A of said chapter 265, as so appearing, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph:-□□(a) 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 seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress, shall be guilty of the crime of criminal harassment and shall be punished by imprisonment in a house of correction for not more than 2 ½ years or by a fine of not more than $1,000, or by both such fine and imprisonment. The 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 or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.□□

4. **SECTION 11.** Subsection (3) of section 13B of chapter 268 of the General Laws, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:- Such act shall include, but not

be limited to, an act conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including but not limited to any device that transfers signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.□□

5. **SECTION 12.** Chapter 269 of the General Laws is hereby amended by striking out section 14A, as so appearing, and inserting in place thereof the following section:-□□Section 14A. Whoever telephones another person or contacts another person by electronic communication, or causes a person to be telephoned or contacted by electronic communication, repeatedly, for the sole purpose of harassing, annoying or molesting the person or the person's family, whether or not conversation ensues, or whoever telephones or contacts a person repeatedly by electronic communication and uses indecent or obscene language to the person, shall be punished by a fine of not more than $500 or by imprisonment for not more than 3 months, or by both such a fine and imprisonment.□□ For purposes of this section, "electronic communication" shall include, but not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system.□□

6. **SECTION 18.** There shall be a special commission to consist of 7 members: 1 of whom shall be the attorney general or a designee who shall chair the commission; 1 of whom shall be a representative of the Massachusetts District Attorneys Association; 1 of whom shall be a representative of the Massachusetts Chiefs of Police Association; 1 of whom shall be a representative of the Massachusetts Sheriffs' Association; 1 of whom shall be a representative of the Massachusetts Association of School Committees; 1 of whom shall be a representative of the Massachusetts Association of School Superintendents; and 1 of whom shall be a representative of the Association of Independent Schools in New England who represents a Massachusetts school, for the purpose of making an investigation and study relative to bullying and cyber-bullying. The commission shall review the General Laws to determine if they need to be amended in order to address bullying and cyber-bullying; provided, further, that the commission shall also investigate parental responsibility and liability for bullying and cyber-bullying. The commission shall report to the general court the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry out such recommendations, by filing the same with the clerks of the senate and the house of representatives who shall forward the same to the chairs of the joint committee on education, the chairs of the joint committee on the judiciary, and the chairs of the house and senate committees on ways and means on or before June 30, 2011.

7. The following are among the requirements applicable to public, private and charter schools. Schools must use the following definitions:
    a. "Bullying", the repeated use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof, directed at a victim that: (i) causes physical or emotional harm to the victim or damage to the victim's property; (ii) places the victim in reasonable fear of harm to himself or of damage to his property; (iii) creates a hostile environment at school for the victim; (iv) infringes on the rights of the victim at school; or (v) materially and substantially disrupts the education process or the orderly operation of a school. For the purposes of this section, bullying shall include cyber-bullying.
    b. "Cyber-bullying", bullying through the use of technology or any electronic communication, which shall include, but shall not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications. Cyber-bullying shall also include (i) the creation of a web page or blog in which the creator assumes the identity of another person or (ii) the knowing impersonation of another person as the author of posted content or messages, if the creation or impersonation creates any of the conditions enumerated in clauses (i) to (v), inclusive, of the definition of bullying. Cyber-bullying shall also include the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons, if the distribution or posting creates any of the conditions enumerated in clauses (i) to (v), inclusive, of the definition of bullying.□□
    c. □□"Hostile environment", a situation in which bullying causes the school environment to be permeated with intimidation, ridicule or insult that is sufficiently severe or pervasive to alter the conditions of the student's education.
8. Section □□5 (d) of the new law also provides: Each school district, charter school, non-public school, approved private day or residential school and collaborative school shall develop, adhere to and update a plan to address bullying prevention and intervention in consultation with teachers, school staff, professional support personnel, school volunteers, administrators, community representatives, **local law enforcement agencies,** students, parents and guardians. The consultation shall include, but not be limited to, notice and a public comment period; provided, however, that a non-public school shall only be required to give notice to and provide a comment period for families that have a child attending the school. The plan shall be updated at least biennially.□Each plan shall include, but not be limited to: (i) descriptions of and statements prohibiting bullying, cyber-bullying and retaliation; (ii) clear procedures for students, staff, parents, guardians and others to report bullying or retaliation; (iii) a provision that reports of bullying or retaliation may be made anonymously;

provided, however, that no disciplinary action shall be taken against a student solely on the basis of an anonymous report; (iv) clear procedures for promptly responding to and investigating reports of bullying or retaliation; (v) the range of disciplinary actions that may be taken against a perpetrator for bullying or retaliation; provided, however, that the disciplinary actions shall balance the need for accountability with the need to teach appropriate behavior; (vi) clear procedures for restoring a sense of safety for a victim and assessing that victim's needs for protection; (vii) strategies for protecting from bullying or retaliation a person who reports bullying, provides information during an investigation of bullying or witnesses or has reliable information about an act of bullying; (viii) procedures consistent with state and federal law for promptly notifying the parents or guardians of a victim and a perpetrator; provided, further, that the parents or guardians of a victim shall also be notified of the action taken to prevent any further acts of bullying or retaliation; **and provided, further, that the procedures shall provide for immediate notification pursuant to regulations promulgated under this subsection by the principal or person who holds a comparable role to the local law enforcement agency when criminal charges may be pursued against the perpetrator**; (ix) a provision that a student who knowingly makes a false accusation of bullying or retaliation shall be subject to disciplinary action; and (x) a strategy for providing counseling or referral to appropriate services for perpetrators and victims and for appropriate family members of said students. The plan shall afford all students the same protection regardless of their status under the law.□□

9. **If the school principal or a designee determines that bullying or retaliation has occurred, the school principal or designee shall (i) notify the local law enforcement agency if the school principal or designee believes that criminal charges may be pursued against a perpetrator**; (ii) take appropriate disciplinary action; (iii) notify the parents or guardians of a perpetrator; and (iv) notify the parents or guardians of the victim, and to the extent consistent with state and federal law, notify them of the action taken to prevent any further acts of bullying or retaliation.□□
10. If an incident of bullying or retaliation occurs on school grounds and involves a former student under the age of 21 who is no longer enrolled in a local school district, charter school, non-public school, approved private day or residential school or collaborative school, the school district or school informed of the bullying or retaliation shall **contact law enforcement consistent with the provisions of clause (viii) of the second paragraph of subsection (d).**□

John Sofis Scheft, Esq.
Law Enforcement Dimensions, LLC

policing with perspective

HARASSMENT PREVENTION ORDERS
G.L. c. 258E, §§ 1-12

Summary	Chapter 23 of the Acts of 2010 created a procedure for anyone to obtain a protective order for harassment. The process is almost identical to that employed in domestic violence cases under G.L. Chapter 209A, but unlike 209A orders, Harassment Prevention Orders (HPO) are available to anyone, not just "family or household members." This makes the HPO a potentially useful tool in cases of chronic bullying within the school environment. *This law takes effect on May 10, 2010.*
Basis for HPO § 1[1]	**Harassment is:** • ***3 acts of intimidation, abuse or property damage.*** 3 or more acts of willful and malicious conduct[2] aimed at a specific person with the intent to cause fear, intimidation, abuse or damage to property, and which does result in fear, intimidation, abuse or property damage; *or* • ***Involuntary sexual relations.*** An forceful or threatening act that causes another to involuntarily engage in sexual relations; *or* • ***Specific crimes.*** A violation of the crime of indecent A&B on a child under 14 (265, § 13B) or on a person 14 and over (§ 13H); or A&B or indecent A&B on a person with mental retardation (265, § 13F); or rape, rape of a child, statutory rape (265, §§ 22, 22A, 23); or assault with intent to rape (265, §§ 24, 24B); or enticement (265, § 26C); or stalking or criminal harassment(265, §§ 43, 43A); or drugging to engage in intercourse (272, § 3).

[1] All sections, unless otherwise noted, appear in G.L. Chapter 258E.
[2] Under § 1, "malicious [means] characterized by cruelty, hostility or revenge."

846 Massachusetts Avenue
Arlington, Massachusetts 02476-4728
Telephone: (781) 646-4377 Fax: (781) 643-3069

www.ledimensions.com

Components of HPO § 3	**The following provisions of an HPO may apply** whether the defendant is an adult or a minor: • ***Refrain from abusing or harassing the plaintiff.*** • ***No contact*** (unless authorized by the court). • ***Remain away from the plaintiff's household or workplace.*** • ***Pay compensation for any losses suffered as a direct result of the harassment*** (e.g., loss of earnings, out-of-pocket losses for injuries or property damage, replacing locks, medical expenses, obtaining an unlisted phone number and reasonable attorney's fees).
Consequences for Violating HPO §§ 9 and 12	**Criminal offense.** An HPO states: "Violation of this order is a criminal offense." **Criminal penalty.** HC NMT 2½ years, and/or Fine NMT $5,000. • ***Mandatory assessment.*** Victim/witness fee *and* a $25 fine. • ***Treatment assessment.*** $350 assessment, in addition to the cost of the program, if the defendant is required to undergo treatment during probation. This assessment may be waived for financial hardship. **Civil contempt.** In addition to the criminal penalty, a court may hold a defendant in "civil contempt" for an HPO violation.
Police Enforcement Options	**No right of arrest.** G.L. Chapter 258E has no language authorizing a warrantless arrest for the violation of an HPO. **Complaint.** Officers should apply for a complaint unless the HPO violation occurs in their presence and constitutes a breach of peace. **Detain pending warrant.** Finally, since § 9 specifically mandates that "[police officers] shall use every reasonable means to enforce . . . harassment prevention orders," this author firmly believes that, for a serious violation, officers may detain a violator pending the issuance of an arrest warrant from the district court.

Police Duties §§ 8 and 9	**Police officers shall:** • ***Use "all reasonable means to prevent further abuse or harassment."*** • ***Assess the immediate physical danger to the victim and "mitigate the safety risk."*** • ***Encourage the victim to seek medical attention and, if necessary, arrange for an ambulance to a hospital.*** If a sexual assault has occurred, be sure to inform the victim that there are time-sensitive medical and forensic tests, and arrange for transportation to a hospital. • ***Provide referrals to local resources to assist the victim in getting to a safe place.*** • ***Provide notice to the victim of her rights, including obtaining an HPO.*** • ***Serve a copy of the HPO, complaint and summons on the defendant and file a return of service.*** Orders may be served on any day, including Sunday.
Police Enforcement of Out-of-state HPO § 7	**Enforce as if issued in Massachusetts.** Any protection order issued by another state, tribal or territorial court within the United States for the purpose of preventing harassment shall be "enforced as if it were issued in the commonwealth for as long as the order is in effect."[3] **Proof of out-of-state order.** A police officer may presume the validity of a copy, from *any* source, of an HPO issued by another jurisdiction. In addition, the officer should obtain a statement from the plaintiff that the HPO is in effect before enforcing it.[4] The statement does *not* have to be written or signed
Court Process for HPO § 3 unless otherwise noted	**Venue.** Under § 2, a district, superior or juvenile court where the plaintiff resides may issue an HPO. The juvenile court shall have jurisdiction whenever both the plaintiff and defendant are under the age of 17. **Process** • ***Filing form.*** Under § 11, the administrative office of the trial court must develop a filing form for HPOs (it will probably be similar to the 209A packet currently in use).

[3] § 9 also provides that a court may order restitution for any out-of-pocket costs incurred by the victim of an out-of-state HPO violation.

[4] Although it has been rarely done in the domestic violence context (see G.L. c. 209A, § 5A), the HPO law also allows an out-of-state resident to file a certified copy of her out-of-state HPO with a Massachusetts court. This order then becomes part of the commonwealth's domestic violence registry.

Court Process *Continued*
§ 3 unless otherwise noted

- ***No filing or copying fee.*** The plaintiff may not be charged a filing or copying fee.
- ***Disclose other proceedings.*** A party filing for an HPO must disclose any prior or pending actions involving the defendant.
- ***Information about criminal process.*** Under § 4, a complainant must be given information by the district attorney about other criminal proceedings that may be available (whenever possible in the complainant's native language).
- ***No limitation period.*** The court shall not deny any complaint solely because it was not filed within a particular time period after the last alleged incident of harassment.
- ***Record and warrant check.*** Under § 9, the court shall have the domestic violence system checked to determine whether the defendant has a civil or criminal record involving abuse. Also, if the defendant has an outstanding warrant, a judge shall determine whether an imminent threat of bodily injury exists to the plaintiff. If so, the judge must direct the police to execute the warrant "as soon as is practicable."
- ***Limited or no access to case file.*** Under § 10, if the plaintiff or defendant is a minor, the case file shall be withheld from public inspection (except for the parties, parents, guardians and their attorneys).

  The plaintiff's residential address, telephone number and workplace name, address and telephone number shall be automatically withheld from public inspection, but the plaintiff's residential and workplace address shall appear on the order provided to the defendant unless she specifically requests that this information also be withheld from the order. All confidential portions of the records shall be accessible to others specifically authorized by the plaintiff (e.g., prosecutors, victim-witness advocates, sexual assault counselors, and police officers in the performance of their duties).
- ***HPO filed in domestic violence system.*** Under § 9, HPOs are filed in the domestic violence recordkeeping system.
- ***Other remedies available.*** An HPO does not preclude any other civil or criminal remedies.

Court Process *Continued* § 3 unless otherwise noted	**Duration of HPO** • ***Initial HPO lasts up to 1 year; extension possible.*** If the plaintiff appears in court at the date and time the order expires, the court may extend it for a specified period or permanently.[5] The fact that harassment does not occur while the order is in effect shall not, by itself, be grounds for refusing to extend it. • ***Modifying an order.*** The court may modify its order at any time, provided that the non-moving party receives sufficient notice and an opportunity to be heard. When the plaintiff's address is inaccessible to a defendant who files a motion to modify, the court must notify the plaintiff without disclosing her impounded address. • ***Vacating an order.*** Under § 9, the court shall notify the appropriate law enforcement agency in writing whenever any order is vacated and direct the agency to destroy all records of the order.

Emergency & Temporary HPO §§ 5 and 6	**Emergency order**
	• ***3 grounds for emergency order.***
	  • **Plaintiff demonstrates a substantial likelihood of immediate danger of harassment; or**
	  • **The court is closed and there is immediate danger of harassment** (e.g., the classic case of officers responding at night); or
	  • **The plaintiff is unable to appear in court because of a severe physical condition and there is immediate danger of harassment.**
	• ***Issue over the telephone.*** The court may issue an emergency order over the telephone to a police officer or department employee.
	The police must deliver a copy of the order to the court on the next business day, and the plaintiff must appear in court and file a complaint on the next business day. If the plaintiff is unable to appear because of severe physical hardship, a representative may arrive on the plaintiff's behalf and file a complaint.
	Temporary order. The defendant must be served with a temporary order and given an opportunity to appear at a hearing within 10 court business days. If the defendant does not show up, the temporary order will remain in effect.

[5] If the court is closed on the expiration date, the order shall not expire until the next court business day. The plaintiff may appear then. The court may also extend the order upon motion of the plaintiff, for such additional time as it deems necessary

SUBSTANTIVE DIFFERENCES BETWEEN G.L. c. 209A and G.L. c. 258E

	Abuse Prevention Orders (G.L. c. 209A)	*Harassment Prevention Orders (G.L. c. 258E)*
Jurisdiction	• District Court & BMC • Probate & Family Court • Superior Court *(except for dating relationships)*	• District Court & BMC • Juvenile Court *(if both parties under 17)* • Superior Court
Venue	• Plaintiff's residence • Plaintiff's former residence left to avoid abuse	• Plaintiff's residence
Eligibility for relief	"Suffering abuse" "<u>Abuse</u>" is any of the following acts between family or household members: • attempting to cause or causing physical harm • *or* placing another in fear of imminent serious physical harm • *or* causing another to engage involuntarily in sexual relations by force, threat or duress. "<u>Family or Household Members</u>" • are or were married to one another • *or* are or were residing together in the same household • *or* are or were related by blood or marriage • *or* have a child in common regardless of whether they have ever married or lived together • *or* are or have been in a substantive dating or engagement relationship.	"Suffering harassment" "<u>Harassment</u>" is defined as: • 3 or more acts– ▫ Each aimed at a specific person ▫ Each was willful and malicious ▫ Each was done with intent to cause fear, intimidation, abuse or property damage ▫ Each did in fact cause fear, intimidation, abuse or property damage • *or* one act that "by force, threat or duress causes another to involuntarily engage in sexual relations" • *or* one act that constitutes one of the following: ▫ Indecent A&B on a child (G.L. c.265, §13B) ▫ Indecent A&B on a mentally retarded person (§13F) ▫ Indecent A&B (§13H) ▫ Rape (§22) or Statutory rape (§23) ▫ Forcible rape of a child (§22A) ▫ Assault with intent to rape (§24) ▫ Assault with intent to rape a child (§24B) ▫ Enticement of a child (§26C) ▫ Criminal stalking (§43) ▫ Criminal harassment (§43A) ▫ Drugging for sexual intercourse (c. 272, §3) "<u>Abuse</u>" is: • attempting to cause or causing physical harm to another • *or* placing another in fear of imminent serious physical harm. "<u>Malicious</u>" is "characterized by cruelty, hostility or revenge."
Eligibility for ex parte relief	Substantial likelihood of immediate danger of abuse	Substantial likelihood of immediate danger of harassment
Available relief	Relief may include, but is not limited to: • Do not abuse the plaintiff • Do not contact the plaintiff • Vacate and remain away from the plaintiff's household, multiple family dwelling, and workplace • Pay restitution for directly-resulting losses • Impounding information pursuant to court rules • Pay temporary support for the plaintiff and/or child • Temporary custody of a minor child • Surrender firearms, gun licenses and FID cards	Relief is limited to: • Do not abuse or harass the plaintiff • Do not contact the plaintiff • Remain away from the plaintiff's household or workplace • Pay restitution for directly-resulting losses • Impounding information pursuant to court rules

49.06: Notice to Law Enforcement Agency

(1) Upon receipt and review of a report of bullying or retaliation, the principal shall make a preliminary determination whether to notify the local law enforcement agency of the reported incident. The principal shall notify the law enforcement agency if the principal has a reasonable basis to believe that the incident may result in criminal charges against the alleged perpetrator. The principal shall, consistent with school policy and procedure, consult with the school resource officer, if any, and such other individuals the principal deems appropriate in making such determination.

(a) If the principal decides to notify the local law enforcement agency, the principal shall document the reasons for the decision and immediately contact the local law enforcement agency to discuss the incident and the law enforcement agency's involvement. Nothing in this section shall prevent the principal from taking appropriate disciplinary or other action pursuant to school policy and state law.

(b) If the principal decides not to notify the local law enforcement agency, or the local law enforcement agency determines that its involvement is not necessary under the circumstances, the principal shall respond to the incident of bullying or retaliation as provided in the bullying prevention and intervention plan. If the principal subsequently determines facts that cause him or her to believe that the perpetrator's conduct may be criminal, the principal shall notify the local law enforcement agency.

(2) The principal shall notify the local law enforcement agency of a report of bullying or retaliation consistent with 603 CMR 49.06(1) if bullying or retaliation occurs on school grounds and involves a former student under the age of 21.

(3) Each public school district, approved private day or residential school, collaborative school, and charter school shall include the requirements and procedures for communicating with the local law enforcement agency in the bullying prevention and intervention plan required by M.G.L. c. 71, § 37O.

49.07: Confidentiality of Records

(1) A principal may not disclose to a parent any student record information regarding an alleged victim or perpetrator who is a student and who is not the parent's child.

(2) A principal may disclose a report of bullying or retaliation to a local law enforcement agency under 603 CMR 49.07(1)(a) without the consent of a student or his/her parent. The principal shall communicate with law enforcement officials in a manner that protects

the privacy of victims, student witnesses, and perpetrators to the extent practicable under the circumstances.

(3) A principal may disclose student record information about a victim or perpetrator to appropriate parties in addition to law enforcement in connection with a health or safety emergency if knowledge of

the information is necessary to protect the health or safety of the student or other individuals as provided in 603 CMR 23.07(e) and 34 CFR 99.31(10) and 99.36. This provision is limited to instances in which the principal has determined there is an immediate and significant threat to the health or safety of the student or other individuals. It is limited to the period of emergency and does not allow for blanket disclosure of student record information. The principal must document the disclosures and the reasons that the principal determined that a health or safety emergency exists.

Excerpt from Direct From the Field: A Guide to Bullying Prevention

By Laura Parker-Roerden, David Rudewick, and Donald Gorton

Cooperate with Law Enforcement

[This section is adapted from Protecting Students Against Harassment and Hate Crimes: A Guide for

Schools, U.S. Departments of Justice and Education (1999).]

No school district or community is immune from the harm that can be done by bullying that amounts to criminal harassment or bias crime. Such crimes can happen even in schools with excellent reputations and can create or exacerbate tensions that contribute to communitywide conflicts and civil disturbances. At the same time, bias offenses committed outside of school may quickly affect the school climate and relationships among students. Schools also need to be aware of incidents in the community and become involved in preventing and addressing them.

School officials should contact law enforcement officials when civil rights crimes are committed or suspected on school property or in connection with off-site school activities.

School officials should also contact law enforcement officials when they become aware of any criminal behavior that endangers the life or safety of students or other persons, whether or not the behavior occurs on school property or in school activities.

School officials should consider developing guidelines for referral of less serious incidents to appropriate authorities. Circumstances that may be considered in determining whether a referral is appropriate or necessary include the nature and seriousness of the conduct, whether a pattern of biased conduct is evident, and the risk that the conduct poses to the health, safety, or well-being of students, employees, and the public. For example, school officials should tell law enforcement officials about apparently less serious instances of harassment if these could lead to violent retaliation or serious confrontations outside of school.

Schools are encouraged to establish ongoing lines of communication with law enforcement agencies. In addition, schools with onsite security personnel should involve them in efforts to address and prevent criminal harassment and hate crimes.