

## 2.06 Harassment Prevention Orders



# HARRASSMENT PREVENTION ORDERS

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Chief Kenneth M. Paulhus			

### I. GENERAL CONSIDERATIONS AND GUIDELINES

On February 9, 2010, Chapter 23 of the Acts of 2010 was enacted to address the issues of harassment and abuse. This new law, under the newly created Chapter 258E of the Massachusetts General Laws, provides protection to classes of persons who were not previously protected due to the limitations of existing legislation. The lack of a special relationship between victims and abusers required for protection by a 209A restraining order or under workplace harassment left victims with little recourse and police with few options when trying to deal with harassers. Chapter 258E was enacted to provide options for those previously unprotected persons. However, the original law lacked the statutory authority for a police officer to effect an arrest for a violation of such an order.

Amendments to this chapter were included in sections 29 through 31 of Chapter 112 of the Acts of 2010, an appropriations bill, which was signed by the Governor on May 22, 2010. The changes included additional jurisdiction for the Juvenile Courts to hear all cases where the defendant is a juvenile, rather than only where both the defendant and plaintiff are under the age of 18. In addition, the new legislation provides statutory authority for a police officer to arrest any person the officer witnesses, or for whom the officer has probable cause to believe has violated an order. And, like a 209A restraining order, in the event that no order is in effect, arrest is the preferred response whenever an officer witnesses or has probable cause to believe a person has committed abuse or harassment as defined in section one. The legislation also shields an officer from civil liability for personal injury or property damage brought by a party to an incident of

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abuse or for an arrest based on probable cause when the officer acted reasonably and in good faith and compliance with Chapter 258E of the Massachusetts General Laws.

### **II. POLICY**

- A. It is the policy of this department to assist victims of harassment and abuse pursuant to Chapter 258E of the Massachusetts General Laws.

### **III. DEFINITIONS**

A. *Abuse*:<sup>1</sup>

1. Attempting to cause or causing physical harm;
2. Placing another in fear of imminent physical harm;

B. *Harassment*:<sup>2</sup>

1. Three (3) or more acts of willful and malicious conduct:
  - a. Aimed at a specific person;<sup>3</sup>
  - b. committed with the intent to cause fear, intimidation, abuse, or damage to property; and
  - c. does in fact cause fear, intimidation, abuse, or damage to property; or
2. An act that by force, threat, or duress causes another to involuntarily engage in sexual relations; <sup>4</sup>or
3. Constitutes a violation of Chapter 265, section<sup>5</sup>:
  - a. 13B – indecent assault and battery on a child under fourteen;
  - b. 13F – assault and battery or indecent assault and battery on a mentally retarded person;
  - c. 13H – indecent assault and battery on a person fourteen or older;
  - d. 22 – rape;
  - e. 22A – rape of a child, use of force;
  - f. 23 – rape and abuse of a child;
  - g. 24 – assault with intent to commit rape;
  - h. 24B – assault of a child, intent to commit rape;
  - i. 26C – enticement of a child under age 16;
  - j. 43 – stalking; or
  - k. 43A – criminal harassment; or

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4. Constitutes a violation of Chapter 272 section 3, drugging a person for sexual intercourse<sup>6</sup>.
- C. *Harassment Prevention Order*: An order issued by a justice pursuant to MGL c. 258E which may:
1. Prohibit a person from abusing another;
  2. Prohibit a person from contacting another;
  3. Order a person to remain away from the home or workplace of another;
  4. Compensating another for losses suffered as a direct result of harassment; and/or
  5. Order other actions or prohibitions.
- D. *Law Officer*:<sup>7</sup> Any officer authorized to serve criminal process.
- E. *Malicious*:<sup>8</sup> Characterized by cruelty, hostility, or revenge.
- F. *Protection Order Issued by Another Jurisdiction*:<sup>9</sup> 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.<sup>10</sup>

## IV. PROCEDURE

### A. Harassment/Abuse: Duties of Police Officers

1. GENERALLY: The duties of police officers in responding to reports of Harassment or Abuse are established in M.G.L. c. 258E section 8.
2. 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 including:<sup>11</sup>
  - a. ASSESS DANGER: Assess the immediate physical danger to the victim and provide assistance reasonably intended to mitigate the safety risk;<sup>12</sup>
  - b. MEDICAL TREATMENT: If there is observable injury to the victim, or if the victim complains of injury:<sup>13</sup>
    - 1) Encourage the victim to seek medical attention and arrange for medical assistance; or
    - 2) Request an ambulance for transport to a hospital.

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c. IF A SEXUAL ASSAULT HAS OCCURRED:<sup>14</sup>

- 1) Notify the victim that there are time-sensitive medical or forensic options that may be available;
- 2) Encourage the victim to seek medical attention and arrange for medical assistance; or
- 3) Request an ambulance for transport to a hospital.

d. GETTING TO A PLACE OF SAFETY: Provide the victim with referrals to local resources that may assist the victim in locating and getting to a safe place; including but not limited to a designated meeting place for a shelter or a family member's or friend's residence (or a similar place of safety). The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances. <sup>15</sup>

e. NOTICE OF RIGHTS: Give abuse victims immediate and adequate notice of their rights by handing them and reading A FORM DETAILING THEIR RIGHTS (see Attachment A)]. Where the person's native language is not English, the statement shall then be provided in the person's native language whenever possible. The form shall be left with the person prior to the officer's departure. <sup>16</sup>

f. ACTIVATING THE EMERGENCY JUDICIAL RESPONSE SYSTEM (EJR): Assist the abused person by activating the emergency judicial system (generally by contacting the state police, unless some other procedure has been established) when the court is closed for business. <sup>17</sup>

3. ARREST WHEN APPROPRIATE

a. VICTIM SAFETY: The safety of the victim shall be paramount in any decision to arrest.<sup>18</sup>

b. MANDATORY ARREST: Arrest any person a law officer witnesses or has probable cause to believe has violated a temporary or permanent Harassment Prevention Order issued pursuant to:

- 1) Chapter 258E of the Massachusetts General Laws<sup>19</sup>; or
- 2) A similar order issued by another jurisdiction (see Out of State Orders in this policy).<sup>20</sup>

c. ARREST AS A PREFERRED RESPONSE: When there is not a valid Harassment Prevention Order, arrest shall be the preferred response whenever an officer witnesses or has probable cause to believe that a person:

- 1) Has committed a felony;<sup>21</sup>

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- 2) Has committed a misdemeanor involving harassment or abuse as defined in section one of this chapter.<sup>22</sup>
- 3) Has committed an assault and battery in violation of section thirteen A of chapter two hundred and sixty-five.<sup>23</sup>

d. ABUSE OF PROCESS:

- 1) Officers are reminded that the definition of “Harassment” under section one is three or more willful and malicious acts (see definition of Harassment under definitions). A single act of harassment does not meet the definition, although a single act of abuse may.
- 2) Officers should be mindful that some abusers may use this chapter and the police response to further harass their victim. If such an instance is suspected, officers should **[CAREFULLY USE THEIR DISCRETION BEFORE MAKING AN ARREST OR CONFER WITH A SUPERVISOR PRIOR TO MAKING AN ARREST, IF CIRCUMSTANCES PERMIT]**.

e. IF THE SUSPECT HAS FLED THE SCENE: When probable cause to arrest exists, and the suspect has fled the scene:

- 1) The officer will advise the dispatcher to inform area patrols, including other jurisdictions where the suspect is believed to be going, to attempt to locate and arrest the suspect based upon the probable cause of the investigating officer.
- 2) If another police department has determined that probable cause to arrest exists, that probable cause shall be honored. The dispatcher will ask the other department to explain the basis of such probable cause, preferably also sending a written or electronic request that the suspect be arrested. The dispatcher will also convey this information to the shift supervisor and any officers attempting to make an arrest, and record the same. This department shall immediately attempt to locate the suspect and effect an arrest as requested, based upon the documented probable cause of the investigating department.
- 3) Officers will attempt to make a warrantless arrest when the suspect is not found immediately. However, as soon as is practical, the investigating department shall seek an arrest warrant from the appropriate court.

f. DUAL ARRESTS

- 1) Any officer arresting both parties is required by law to submit a detailed, written report, in addition to an incident report, setting forth the grounds for dual arrest.<sup>24</sup>

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- 2) Dual arrests, like the issuance of mutual Harassment Prevention Orders, are strongly discouraged because they trivialize the seriousness of abuse and increase the danger to victims.
  - 3) Officers should attempt to identify the primary aggressor, and take action based on that determination. In the majority of cases, an effective investigation will reveal the primary aggressor.
4. ABUSER BAIL:
- a. Inform the victim that the abuser will be eligible for bail and may be promptly released.<sup>25</sup>
  - b. Reasonable efforts shall be made to inform the victim of the abuser's release, prior to such release.

### ***B. Harassment Prevention Orders***

1. GENERALLY:
- a. Harassment Prevention Orders are civil in nature and violations of such orders are criminal in nature.<sup>26</sup>
  - 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:<sup>27</sup>
    - 1) Refrain from abusing or harassing the plaintiff;
    - 2) Refrain from contacting the plaintiff, unless authorized by the court;
    - 3) Remain away from the plaintiff's household or workplace;
    - 4) 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.<sup>28</sup>

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### 2. VENUE:

- a. Authority to hear complaints of harassment has been granted to all Superior Courts, the Boston Municipal Court Department or Juvenile or District Courts, depending upon which such court has jurisdiction over the plaintiff's residence.<sup>29</sup>
- b. Juvenile courts shall have exclusive jurisdiction over all proceedings in which the defendant is under the age of eighteen (18).<sup>30</sup>

### 3. ISSUANCE OF ORDER

#### a. Temporary Order:<sup>31</sup>

- 1) If the plaintiff demonstrates a substantial likelihood of immediate danger of harassment, the court may issue a temporary order.
- 2) 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:<sup>32</sup>

- 1) An emergency order may be issued at the discretion of a justice:<sup>33</sup>
  - 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.
- 2) The issuing justice may communicate the order to an appropriate law enforcement employee.<sup>34</sup> The agency for which such officer works must:
  - a) Record the order on the Harassment Prevention Order form, and<sup>35</sup>
  - b) Deliver a copy of the order to the court on the next court day.
- 3) The plaintiff must:<sup>36</sup>
  - 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.

### 4. DURATION OF ORDER:

- a. Orders shall be valid for not more than one year.<sup>37</sup>

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- b. An order may be extended for a period of time to protect the plaintiff to include a permanent order.<sup>38</sup>
  - 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.<sup>39</sup>
  - d. The court may modify the order at any time upon motion of either party.<sup>40</sup>
5. OUT OF STATE ORDERS:
- a. 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.<sup>41</sup>
  - b. Presumption of Validity: <sup>42</sup>
    - 1) 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.
    - 2) A law enforcement officer may rely on such statement by the person protected by the order.

### ***C. Service of Orders***

- 1. Law enforcement officers shall serve in hand (unless otherwise allowed by the court) one (1) copy of each order to a defendant.
- 2. Service of this civil order may be made on a Sunday.<sup>43</sup>
- 3. The officer making service shall complete and sign the return of service for return to the court.
- 4. 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.

### ***D. Supervisor's Role***

#### **1. ASSURANCES OF PRACTICES**

- a. **Supervisors will ensure that the provisions of G.L. c. 258E and the following guidelines are met.**



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- b. Dispatch logs will be reviewed to ensure that an incident report has been filed, even in cases where no arrest was made.**
- c. Incident and arrest reports will be carefully reviewed by a supervisor in order to ensure that the provisions of G.L. c. 258E and these guidelines are met.**
- d. If upon review of an incident report it is believed that probable cause exists, the supervisor may ensure that criminal charges are initiated according to the statute and these guidelines.**
- e. Whenever a supervisor identifies a particular case as posing significant danger, this case should be discussed at roll call.**

### ***E. Incident Reports and Victim Confidentiality***

1. OFFICERS' REPORTS: A report shall be submitted by the investigating officer for an incident involving an allegation of harassment or abuse.<sup>44</sup>
2. VICTIM COPY OF REPORT: A copy of the report shall be made available to the victim upon request at no cost.<sup>45</sup>
3. CONFIDENTIALITY: <sup>46</sup>
  - a. The records of cases arising out of an action brought under the provisions of Chapter 258E where the plaintiff or defendant is a minor shall be withheld from public inspection except by order of the court, provided that:
    - 1) Such records shall be open, at all reasonable times, to the inspection of the minor, said minor's parent, guardian, and attorney; and
    - 2) 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.
    - 1) 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.
    - 2) A "Plaintiff Confidential Information Form" is part of the Harassment Prevention Order package. This form should be sealed in an envelope marked "PLAINTIFF'S ADDRESS – CONFIDENTIAL". This information shall not be made available to a defendant or a defendant's attorney, or to anyone outside of law enforcement without judicial authorization.

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- 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).
- e. For further information, see the department policy on **Records Requests**.

**F. Immunity:** No law officer shall be held liable in a civil action for personal injury or property damage brought by a party to an incident of abuse or for an arrest based on probable cause when the officer acted reasonably and in good faith and compliance with Chapter 258E of the Massachusetts General Laws.<sup>47</sup>

### **G. Firearms**

1. GENERALLY: There is no provision for the surrender of firearms with Harassment Orders under Chapter 258E.
2. FEDERAL FIREARMS PROVISIONS
  - a. If the Plaintiff is a spouse or former spouse, or the defendant is a child or child of the plaintiff, or if the plaintiff and defendant cohabitate or did cohabitate, the purchase or possession of a firearm or ammunition, while a Harassment Order is in effect, may be a violation of federal law. This warning appears at the bottom of the Harassment Prevention Order (HA-2). Although officers cannot enforce the following federal provisions, the chief should be notified whenever an officer identifies a case involving the following circumstances, because there may be federal action which can be taken.<sup>48</sup>
  - b. Persons Named in Harassment Orders: Under the Federal Crime Control and Law Enforcement Act of 1994, it is unlawful for an individual subject to a "permanent" restraining order involving "intimate partners" to receive, ship, transport, or possess guns (including handguns, rifles, and shotguns) or ammunition that traveled in interstate commerce.
  - c. Misdemeanors Involving Domestic Violence: Under 18 U.S.C. § 922(g)(9), it is unlawful for any person convicted of certain misdemeanor crimes involving domestic violence to ship, transport, possess, sell or otherwise dispose of, or receive, firearms or ammunition.
  - d. Federal Felon in Possession of a Firearm: Under 18 U.S.C. § 922(g)(1), it is unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year to possess any gun or ammunition. Law

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enforcement officers are exempt from this federal firearms disability.

NOTE: Misdemeanors are excluded from consideration if they are punishable by a term of two years or less. Therefore, misdemeanors which are punishable by a term of imprisonment of more than two years fall within this provision.

### ***H. Criminal Statutes***

#### 1. CHAPTER 265: SECTION 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:
  - 1) seriously alarms or annoys that person; and
  - 2) would cause a reasonable person to suffer substantial emotional distress; and
  - 3) 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
  - 1) 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.
  - 2) No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of one year.
- e. 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

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wherein an act constituting an element of the crime was committed.<sup>49</sup>

### 2. CHAPTER 265: SECTION 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:
  - 1) Seriously alarms that person; and
  - 2) 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.

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### Attachment A:

#### **Harassment/Abuse Victims Rights**

“You have the right to appear at the Superior, Juvenile (only if the attacker is under 18), District or Boston Municipal Court, if you reside within the appropriate jurisdiction, and file a complaint requesting any of the following applicable orders: (i) an order restraining your attacker from harassing or abusing you; (ii) an order directing your attacker to refrain from contacting you; (iii) an order directing your attacker to stay away from your home and your workplace; (iv) an order directing your attacker to pay you for losses suffered as a result of the harassment or abuse, including loss of earnings, out-of-pocket losses for injuries sustained or property damaged, costs of replacement of locks, medical expenses, cost for obtaining an unlisted phone number, and reasonable attorneys’ fees.

For an emergency on weekends, holidays or weeknights, the police will assist you in activating the emergency response system so that you may file a complaint and request a harassment prevention order.

You have the right to go to the appropriate court and apply for a criminal complaint for sexual assault, threats, criminal stalking, criminal harassment, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you can leave or until your safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place including, but not limited to, a designated meeting place for a shelter or a family member's or a friend's residence or a similar place of safety.

You may request and obtain a copy of the police incident report at no cost from the police department.”

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- <sup>1</sup> M.G.L. c. 258E §1.
  - <sup>2</sup> M.G.L. c. 258E §1.
  - <sup>3</sup> M.G.L. c. 258E §1(i).
  - <sup>4</sup> M.G.L. c. 258E §1(ii) (A).
  - <sup>5</sup> M.G.L. c. 258E §1(ii) (B).
  - <sup>6</sup> M.G.L. c. 258E §1(ii) (B).
  - <sup>7</sup> M.G.L. c. 258E §1.
  - <sup>8</sup> M.G.L. c. 258E §1.
  - <sup>9</sup> M.G.L. c. 258E §1.
  - <sup>10</sup> M.G.L. c. 258E §1.
  - <sup>11</sup> M.G.L. c. 258E § 8.
  - <sup>12</sup> M.G.L. c. 258E § 8(i).
  - <sup>13</sup> M.G.L. c. 258E § 8(ii).
  - <sup>14</sup> M.G.L. c. 258E § 8(iii).
  - <sup>15</sup> M.G.L. c. 258E § 8(iv).
  - <sup>16</sup> M.G.L. c. 258E § 8(v).
  - <sup>17</sup> M.G.L. c. 258E § 8(vi).
  - <sup>18</sup> M.G.L. c. 258E § 8.
  - <sup>19</sup> M.G.L. c. 258E § 8.
  - <sup>20</sup> M.G.L. c. 258E § 8.
  - <sup>21</sup> M.G.L. c. 258E § 8.
  - <sup>22</sup> M.G.L. c. 258E § 8.
  - <sup>23</sup> M.G.L. c. 258E § 8.
  - <sup>24</sup> M.G.L. c. 258E § 8.
  - <sup>25</sup> M.G.L. c. 258E § 7.
  - <sup>26</sup> M.G.L. c. 258E § 4.
  - <sup>27</sup> M.G.L. c. 258E § 3(a).
  - <sup>28</sup> M.G.L. c. 258E § 3(f).
  - <sup>29</sup> M.G.L. c. 258E §2.
  - <sup>30</sup> M.G.L. c. 258E §2.
  - <sup>31</sup> M.G.L. c. 258E § 5.
  - <sup>32</sup> M.G.L. c. 258E § 6.
  - <sup>33</sup> M.G.L. c. 258E § 6.
  - <sup>34</sup> M.G.L. c. 258E § 6.

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<sup>35</sup> Form HA-2

<sup>36</sup> M.G.L. c. 258E § 6.

<sup>37</sup> M.G.L. c. 258E § 3(d).

<sup>38</sup> M.G.L. c. 258E § 3(d).

<sup>39</sup> M.G.L. c. 258E § 3(d).

<sup>40</sup> M.G.L. c. 258E § 3(e).

<sup>41</sup> M.G.L. c. 258E § 7.

<sup>42</sup> M.G.L. c. 258E § 7.

<sup>43</sup> 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.

<sup>44</sup> M.G.L. c. 258E § 8.

<sup>45</sup> M.G.L. c. 258E § 8.

<sup>46</sup> M.G.L. c. 258E § 10.

<sup>47</sup> M.G.L. c. 258E § 8.

<sup>48</sup> 18 U.S.C. §§ 922(g)(8) and 925.

<sup>49</sup> Chapter 277, Section 62B.