



POLICY AND PROCEDURE NO. 454

Harassment Prevention Procedure

Date Issued: October 24, 2019

Date Effective: October 24, 2019

11 Pages

1.0 DEFINITIONS:

1. Abuse:

For the purposes of this policy, "ABUSE" is defined by M.G.L. c. 258E, § 1 as attempting to cause or causing physical harm to another or placing another in fear of imminent serious physical harm.

2. 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; 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 section 13B, 13F, 13H, 22, 22A, 23, 24, 24B, 26C, 43 or 43A of chapter 265 or section 3 of chapter 272.

3. Court:

The district or Boston municipal court, the superior court or the juvenile court departments of the trial court.

4. Law Officer:

Any officer authorized to serve criminal process.

5. Malicious:

Characterized by cruelty, hostility or revenge.

6. Protection Order issued by another jurisdiction:

An injunction or other order issued by a court of another state, territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or a tribal court that is issued for the purpose of preventing violent or threatening acts, abuse or harassment against, or contact or communication with or physical proximity to another person, including temporary and final orders issued by civil and criminal courts filed by or on behalf of a person seeking protection.

2.0 PROCEDURES:

Whenever a law officer has reason to believe that a person has been abused or harassed or is in danger of being abused or harassed, such officer shall use all reasonable means to prevent further abuse or harassment. Law officers shall 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 reasonably intended 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, 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.
5. Provide adequate notice to the victim of the victim's rights including, but not limited to, obtaining a harassment prevention order; provided, however, that the notice shall consist of providing the victim with a copy of the following statement before the officer leaves the scene or premises and after reading the statement to the victim; provided further, that if the victim's native language is not English, the statement shall be then provided in the victim's native language whenever possible:

"You have the right to appear at the Superior, Juvenile (only if the attacker is under 17), 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."

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.

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 such officer acted reasonably and in good faith and in compliance with this chapter.

Whenever a law officer investigates an incident of harassment, the officer shall immediately file a written incident report.

The victim shall be provided with a copy of the full incident report at no cost upon request to the Bureau of Records of the Worcester Police Department.

When any person arrested under Chapter 258E is bailed reasonable efforts shall be made to inform the victim of such release prior to or at the time of the release.

2.1 SERVICE OF ORDERS:

1. In-Hand Service:

Service of orders shall be made in hand unless otherwise ordered by the court. Chapter 258E requires that "the law enforcement agency shall promptly make its return of service to the court."

1. Orders shall be served promptly upon receipt. If service is initially unsuccessful, the department must continue to attempt service until it is completed. Service of orders will not be delayed in order to forward service by a specialized officer or unit.
1. Orders to be served shall accompany Operations Officers during their tour of duty.
2. The victim's safety should be considered in the timing of the service of the order. Officers should encourage the victim to contact an advocate (either through the D.A.'s Office, SAFEPLAN or the local battered women's program) in order to develop a safety plan around the service of the order.

3. Record of Service:

Departments must keep a record of all attempts at service.

1. The Operations Patrol Sergeants shall conduct weekly inspections of service attempts and establish an inspection log. The date of inspection shall be delineated along with the sergeant's signature and payroll number.
2. The Operations Patrol Lieutenants shall conduct a monthly review of the inspection log to ensure compliance with prompt service required by Chapter 258E. The date of review shall be delineated along with the lieutenant's signature and payroll number.

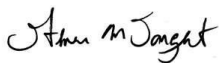
3. Return of Service:

All returns of service including service of Emergency Orders must be sent to the court.

4. Plaintiff Bringing Orders to The Department:

When a plaintiff brings an order to the department for service, officers should ensure that the department's responsibilities under M.G.L. c. 258E and these guidelines are met.

Per:


Steven M. Sargent
Chief of Police

SMS: KJD

ATTACHMENTS:

ABUSED PERSONS NOTICE OF RIGHTS CRIMINAL HARASSMENT STATUTE STALKING STATUTES

Abused Person's Notice of Rights

Directions to Police Officer:

Give a victim of domestic violence immediate and adequate notice of his or her rights. The notice shall consist of handing said person a copy of the statement, which follows below, and reading the same to the victim. Where the victim's native language is not English; the statement shall then be provided in the victim's native language whenever possible.

"You have the right to appear at the Superior, Probate and Family District or Boston Municipal Court, if you reside within the appropriate jurisdiction, and file a complaint requesting any of the following applicable orders: (a) an order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household, building or workplace; (c) an order awarding you custody of a minor child; (d) an order directing your attacker to pay support for you or any minor child in your custody, if the attacker has a legal obligation of support; and (e) an order directing your attacker to pay you for losses suffered as a result of abuse, including medical and moving expenses, loss of earnings or support, costs for restoring utilities and replacing locks, reasonable attorneys' fees and other out-of-pocket losses for injuries and property damage sustained."

"For an emergency on weekends, holidays, or week nights the police will refer you to a justice of the Superior, Probate and Family, District or Boston Municipal Court Departments."

"You have the right to go to the appropriate District Court or the Boston Municipal Court and seek a criminal complaint for threats, 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 and your children 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 a copy of the police incident report at no cost from the police department."

Massachusetts General Laws, Chapter 164 of the Acts of 2000
An Act Relative to the Crime of Criminal Harassment

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 265 of the General Laws is hereby amended by inserting after section 43 the following section: -

Section 43A. (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 two and one-half years or by a fine of not more than \$1,000, or by both such fine and imprisonment. 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.

(b) 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.

Approved August 1, 2000.

Massachusetts General Laws, Chapter 265, Section 43
Stalking; punishment

Chapter 265: Section 43. Stalking; Punishment.

(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 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. 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.

(b) Whoever commits the crime of stalking in violation of a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to sections eighteen, thirty-four B, or thirty-four C of chapter two hundred and eight; or section thirty-two of chapter two hundred and nine; or sections three, four, or five of chapter two hundred and nine A; or sections fifteen or twenty of chapter two hundred and nine C 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. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of one year.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole,

furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this subsection.

(c) Whoever, after having been convicted of the crime of stalking, commits a second or subsequent such crime shall be punished by imprisonment in a jail or the state prison for not less than two years and not more than ten years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of two years.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable

at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this section.

Massachusetts General Laws, Chapter 277
Stalking; Jurisdiction

Chapter 277: Section 62B. Stalking; Jurisdiction.

Section 62B. 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.

Massachusetts General Laws, Chapter 277
Stalking; Jurisdiction

Chapter 277: Section 62B. Stalking; Jurisdiction.

Section 62B. 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.