
 Cambridge Police Department	POLICY & PROCEDURES		No. 507
	Subject/Title: Harassment Prevention Orders		
	Issuing Authority:  Robert C. Haas Police Commissioner	Review Date: 12/22/2010	Issue Date: 1/31/2011
		Effective Date: 2/15/2011	Rescinds:
References/ Attachments: Chapter 23 of the Actions of 2010	Accreditation Standards:		

I. PURPOSE:

The purpose of this policy is to establish guidelines for responding to allegations of harassment, for assisting victims with harassment prevention orders, for enforcement of harassment prevention orders, and to describe police arrest powers for violation of harassment prevention orders.

Note that harassment prevention orders are not intended to replace the procedures for the issuance of M.G.L. c. 209A restraining orders, nor is this policy intended to take the place of long-standing practices for police response to domestic violence incidents. Harassment prevention orders are intended to provide protection for individuals who are suffering from harassment where there is no intimate or familial relationship, as required for the issuance of a M.G.L. c. 209A restraining order.

II. POLICY:

The Cambridge Police Department recognizes that restraining orders are an effective safety measure for victims of stalking, sexual assault, and harassment. Massachusetts law permits victims of these crimes to obtain a restraining order under certain circumstances, and requires law enforcement personnel to take specific steps to protect victims, and to enforce harassment prevention orders.¹

All officers are expected to be thoroughly familiar with the contents of the Harassment Prevention Order statute, *See* M.G.L. c. 258E, and to act with appropriate discretion and competence in carrying out its provisions. Therefore, this policy is issued to:

- Ensure the safety of victims;

¹ See M.G.L. c. 258E

- Ensure compliance with all provisions of court orders;
- Provide procedures for the uniformity of the investigation, notification and reporting of harassment incidents

III. GENERAL CONSIDERATIONS & 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, establishes a framework whereby an individual who is being harassed, but who does not fit in one of the enumerated relationships with the defendant required by M.G.L. c. 209A, may obtain a harassment prevention order. However, the original harassment prevention order law did not grant police officers the authority to effectuate 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 and went into effect immediately. The amendments established additional grants of jurisdiction for the Juvenile Courts to hear cases where the defendant is a juvenile, rather than only where both the defendant and plaintiff under the age of 17. In addition, this new law authorizes the arrest of any person a police officer witnesses or has probable cause to believe has violated a temporary or permanent Harassment Prevention Order. In the event that no harassment prevention order is in effect, arrest is the preferred response whenever an officer witnesses or has probable cause to believe a person has committed (i) a felony; (ii) a misdemeanor involving harassment or abuse as defined in section one (see definition); or (iii) an assault and battery in violation of M.G.L. c. 265, § 13A. . The legislation also shields an officer from civil liability 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 in compliance with Chapter 258E of the Massachusetts General Laws.

So in sum, the new law addresses the following:

- The new law is designed to expand the legal protections available to victims of sexual assault, abuse, stalking, and/or harassment, including harassment by individuals that are unknown to them.
- Unlike M.G.L. c. 209A restraining orders, the new law does not require the existence of an intimate partner or familial relationship for the restraining order to issue.
- Harassment Prevention Orders issued pursuant to M.G.L. c. 258E can be issued by superior, district and juvenile courts “having venue over where the plaintiff lives.” Like M.G.L. c. 209A orders, they be issued on an emergency basis and for up to one year (and can be extended permanently).

- The violation of a harassment prevention order is a criminal offense punishable by up to 2 ½ years in the house of corrections. The court can also order that the defendant pay the victim’s out of pocket expenses as well as the cost of any court ordered treatment program.

IV. DEFINITIONS:

- A. Abuse:**² For purpose of the harassment prevention order statute, “abuse” means attempting to cause or causing physical harm; or placing another in fear of imminent physical harm; or
- B. Harassment:**³ The act of harassment as defined under M.G.L. c. 258E may involve one of the following elements:
1. Three (3) or more acts of willful and malicious conduct:
 - a. Aimed at a specific person;⁴
 - 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;⁵ or
 3. Constitutes a violation of one of the followings sections of Chapter 265:⁶
 - M.G.L. c. 265, § 13B (indecent A&B on a person under 14)
 - M.G.L. c. 265, § 13F (indecent A&B on a mentally retarded person)
 - M.G.L. c. 265, § 13H (indecent assault and battery on a person over 14)
 - M.G.L. c. 265, § 22 (rape)
 - M.G.L. c. 265, § 22A (forcible rape of a child)
 - M.G.L. c. 265, § 23 (rape of child)
 - M.G.L. c. 265, § 24 (assault with intent to rape)
 - M.G.L. c. 265, § 24B (assault of child with intent to rape)

² See M.G.L. c. 258E, § 1

³ See M.G.L. c. 258E, § 1

⁴ See M.G.L. c. 258E, § 1 (i)

⁵ See M.G.L. c. 258E, § 1 (ii) (A)

⁶ See M.G.L. c. 258E, § 1 (ii) (B)

- M.G.L. c. 265, § 26C (enticement of a child under age 16)
- M.G.L. c. 265, § 43 (stalking)
- M.G.L. c. 265, § 43A (criminal harassment); or

4. Constitutes a violation of Chapter 272, section 3, drugging a person for sexual intercourse.⁷

C. Harassment Prevention Order: An order issued by a justice pursuant to M.G.L. 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 Enforcement Officer:⁸ Any officer authorized to serve criminal process.

E. Court: The district or Boston Municipal court, the superior court or the juvenile court departments of the trial court.

F. Jurisdiction: Proceedings for the issuance of harassment protection orders shall be filed, heard and determined in the superior court department, the Boston Municipal Court, or the respective divisions of the district court department having venue over the plaintiff's residence. The juvenile court shall have exclusive jurisdiction of proceedings in matters where the *defendant* is under the age of 17.

F. Malicious:⁹ Characterized by cruelty, hostility, or revenge.

⁷ See M.G.L. c. 258E, § 1 (ii) (B)

⁸ See M.G.L. c. 258E, § 1

⁹ See M.G.L. c. 258E, § 1

- G. Protection Order Issued by Another Jurisdiction:**¹⁰ 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.

V. PROCEDURES:

- A. Generally:** The duties of police officers in responding to reports of Harassment or Abuse are established in M.G.L. c. 258E, section 8.
- B. Police Response to Harassment Incidents:** Whenever a law enforcement 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:¹¹
1. *Assess Danger:* Asses the immediate physical danger to the victim and provide assistance reasonably intended to mitigate the safety risk.¹²
 2. *Medical Treatment:* If there is observable injury to the victim, or if the victim complains of injury¹³, the officer should encourage the victim to seek medical attention and arrange for medical assistance and/or request an ambulance for transport to a hospital.
 3. *Sexual Assault:* 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.¹⁴
 4. *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 similar place of safety). The officer

¹⁰ See M.G.L. c. 258E, § 1

¹¹ See M.G.L. c. 258E, § 8

¹² See M.G.L. c. 258E, § 8 (i)

¹³ See M.G.L. c. 258E, § 8 (ii)

¹⁴ See M.G.L. c. 258E, § 8 (iii)

shall consider the victim's preference in this regard and what is reasonable under all the circumstances¹⁵ (in most case, in consultation with a supervisor).

5. *Notice of Rights:*¹⁶ Provide adequate notice to the victim of his or her rights including, but not limited to, obtaining a harassment prevention order. 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 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 telephone number, and reasonable attorney's fees.

For an emergency on weekends or 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.

¹⁵ See M.G.L. c. 258E, § 8 (iv)

¹⁶ See M.G.L. c. 258E, § 8 (v)

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 or a friend's residence or a similar place of safety.

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

6. *Activating the Emergency Judicial Response System (EJR):*¹⁷ Assist the victim by activating the emergency judicial system when the court is closed for business;
7. *Notification to the Victim:* If the abuser was arrested and subsequently released from custody, inform the victim that the abuser will be eligible for bail and may be promptly released.

C. Investigation of Harassment Claims: In all circumstances in which an officer has reason to believe that an individual has been the target of harassment or abuse or an allegation of harassment or abuse, investigating officers will thoroughly investigate all such allegations and fully document all such investigations in a police report. Ordinarily, this will include, at a minimum:

1. Taking a thorough statement from the alleged victim;
2. Interviewing any and all witnesses;
3. Taking custody of any and all physical evidence, by way of a search warrant if necessary;
4. Reviewing any relevant correspondence or materials, including but not limited to, electronic mail, text messages, telephone records, and any other communication created by means of the Internet or wireless network, whether by computer, telephone or any other device.¹⁸
5. Taking photographs of any visible physical injuries to the victim;
6. Taking photographs of and/or documenting any other relevant evidence.

¹⁷ See M.G.L. c. 258E, § 8 (vi)

¹⁸ Note that the definitions of stalking and harassment in the Massachusetts General Laws provide a thorough definition of the types of communications that may provide grounds for a harassment complaint. See M.G.L. c. 265, § 43 (stalking) and c. 265, § 43A (harassment).

- D. Assisting Victims to Obtain Emergency Harassment Prevention Orders:** When the court is closed for business, any judge assigned to the emergency Judicial Response System may grant a harassment prevention order if the plaintiff/victim demonstrates a substantial likelihood of immediate danger of harassment.¹⁹

In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of a law enforcement agency. Police officers, in these circumstances, must record such order on a form provided by the court, and shall deliver the completed form to the Cambridge District Court on the next court day.

- E. Harassment Prevention Application Package & Notice of Rights Forms:** The Harassment Prevention Application Package (very similar to the 209A Domestic Violence Prevention Application Package) will be maintained in each of the police cruisers in the same container as the 209A Domestic Violence Application Package, along with a supply of Harassment Prevention Notice of Rights Forms.

1. When an officer uses the Notice of Rights form or uses the Harassment Prevention Application Package, the officer should replace these forms.
2. Members of the Domestic Violence Unit will routinely check to be sure that the supply of Harassment Prevention Notice of Rights forms and the Harassment Prevention Application Package are kept supplied in the storage containers, along with a supply of related 209A Domestic Violence Prevention forms.
3. Extra Harassment Prevention Application Packages and Harassment Prevention Notice of Rights forms will be maintained in the storage closet at the Front Desk and accessible by the Shift Commander.

- F. Notifications to Victims:** When a judge, clerk magistrate, or bail commissioner takes bail from any individual charged under M.G.L. c. 258E, reasonable efforts are required to inform the victim of the defendant's release prior to or at the time of his or her release.

When any person charged with or arrested for a crime involving harassment under M.G.L. c. 258E is released from custody, the court or the emergency response judge shall issue, upon request of the victim, a written no-contact order or stay-away order prohibiting the person charged or arrested from having any contact with the victim and shall use all reasonable means to notify the victim

¹⁹ See M.G.L. c. 258E, § 6

immediately of release from custody. The victim shall be provided, at no cost, a certified copy of the no-contact or stay-away order.

VI. ARREST GUIDELINES:

- A. Arrest When Appropriate:** The violation of a M.G.L. c. 258E harassment prevention order is an arrestable offense. The safety of the victim shall be paramount in any decision to arrest.²⁰
- B. Mandatory Arrest:** Officers shall arrest any person the 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;²¹ or
 2. A similar order issued by another jurisdiction (see Out of State Orders in this policy).²²
- C. Arrest as a Preferred Response:** When there is not a valid Harassment Prevention Order in place, an arrest shall be the preferred response whenever an officer witnesses or has probable cause to believe that a person:
1. Has committed a felony;
 2. Has committed a misdemeanor involving harassment or abuse as defined within this policy.²³ Officers will consult their supervisor prior to making an arrest in these circumstances.
 3. Has committed an assault and battery in violation of section thirteen A of chapter two hundred and sixty-five.²⁴ Officers will consult their supervisor to making an arrest in these circumstances.
- D. If the Suspect has Fled the Scene:** When probable cause to arrest exists, and the suspect has fled the scene:

²⁰ See M.G.L. c. 258E, § 8

²¹ See M.G.L. c. 258E, § 8

²² M.G.L. c. 258E, § 8

²³ M.G.L. c. 258E, § 8

²⁴ M.G.L. c. 258E, § 8

1. The officer will advise ECC 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 assessment of probable cause shall be honored (provided there has been sufficient information provided to support such belief).
 - a. The Shift Commander will be responsible for ascertaining the basis for the probable cause, and if practical to do so, also will send a written or electronic request that the suspect is to be arrested, if located.
 - b. Once the Shift Commander is satisfied there is sufficient probable cause to make the arrest on behalf of another jurisdiction, he/she will immediately direct officers to attempt to locate the suspect and effect an arrest as requested, based upon the documented probable cause of the investigating department.
 - c. All information provided from the requesting agency will be made part of the investigation report, should the suspect be located and arrested.
 - d. All attempts to locate the suspect will be documented through a CAD entry, documenting the times attempted and the locations checked.
3. Officers will continue to attempt to make a warrantless arrest, up to the point when the Shift Commander deems sufficient time has passed, allowing the requesting agency to obtain a warrant from the appropriate court. If in the estimation of the Shift Commander, sufficient time has passed for the requesting agency obtain a warrant, he/she will ascertain if a valid warrant is in effect, and if not, determine whether is it still reasonable for officers of this department to effect an arrest without a warrant in place.

E. Dual Arrests: Any officer arresting both parties is required by law to submit a detailed report, incorporated into the incident report, setting forth the grounds and justification for dual arrests.²⁵

1. Dual arrests, like the issuance of a mutual Harassment Prevention Orders, are strongly discouraged because they trivialize the seriousness of abuse and increase the danger to victims.
2. 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.

²⁵ See M.G.L. c. 258E, § 8 (8)

F. Release Post-Arrest: When speaking with the victim, officers should inform the victim that once an abuser has been arrested, the abuser is entitled to bail consideration and may be released upon posting said bail.²⁶

1. Should an abuser be released on bail, reasonable efforts should be made to inform the victim of the abuser's release, prior to such release.
2. If the victim is notified, the officer should advise the victim to notify the police if the abuser attempts to make contact with the victim, regardless of whether a Harassment Prevention Order is issued.
3. Attempts to notify the victim and notification of the victim should be documented within the police report.

VII. HARASSMENT PREVENTION ORDERS:

A. General Background: Harassment Prevention Orders are civil in nature and violations of such orders are considered to be criminal in nature.²⁷

1. 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:²⁸
 - a. Refrain from abusing or harassing the plaintiff;
 - b. Refrain from contacting the plaintiff, unless authorized by the court;
 - c. Remain away from the plaintiff's household or workplace;
 - d. Pay the plaintiff monetary compensation for losses suffered as a direct result of the harassment, including:
 - 1) Loss of earnings;
 - 2) Out-of-pocket losses for injuries sustained or property damaged;
 - 3) The cost of replacement of locks;
 - 4) Medical expenses;
 - 5) Cost of obtaining an unlisted phone number; and

²⁶ See M.G.L. c. 258E, § 7

²⁷ See M.G.L. c. 258E, § 4

²⁸ See M.G.L. c. 258E, § 3 (a)

- 6) Reasonable attorney's fees.
 2. 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.²⁹
- B. Venue:** Authority to hear complaints of harassment has been granted to all Superior Courts, the Boston Municipal Court Departments, or Juvenile or District Courts, depending upon which such court has jurisdiction over the plaintiff's residence.³⁰
1. Juvenile courts shall have exclusive jurisdiction over all proceedings in which the defendant is under the age of seventeen (17).³¹
- C. Issuance of Orders:** There are a variety of Harassment Prevention Orders that officers will encounter, and will have a bearing on how officers take enforcement action.
1. *Temporary Order:*³² If the plaintiff demonstrates a substantial likelihood of immediate danger of harassment, the court may issue a temporary order. If the defendant does not appear at the subsequent hearing, the order shall continue in effect without further order of the court.
 2. *Emergency Order:*³³ An emergency order may be issued at the discretion of a justice: When the court is closed for business; or if a plaintiff is unable to appear in court because of a severe physical hardship.
 - a. The issuing justice may communicate the order to an appropriate law enforcement employee (in most cases the Shift Commander).³⁴ Upon such notification, it is the responsibility of the receiving agency to do the following:
 - 1) Record the order on the Harassment Prevention Order form³⁵ (a supply of which will be maintained in the Shift Commander's Office), and
 - 2) Deliver a copy of the order to the court the next court business day.

²⁹ See M.G.L. c. 258E, § 3 (f)

³⁰ See M.G.L. c. 258E, § 2

³¹ See M.G.L. c. 258E, § 2

³² See M.G.L. c. 258E, § 5

³³ See M.G.L. c. 258E, § 6

³⁴ See M.G.L. c. 258E, § 6

³⁵ Form HA-2

- b. The plaintiff must:³⁶
 - 1) Appear in court to file a complaint the next court business day (generally a member of the Police Prosecutors Unit will assist the plaintiff through the process at the courthouse).
 - 2) 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.
3. *Duration of Harassment Prevention Orders:* Once a Harassment Prevention Order has been issued by the court, it shall be valid for not more than one (1) year.³⁷
 - a. An order may be extended for a period of time to protect the plaintiff to include a permanent order.³⁸
 - b. 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.³⁹
 - c. The court may modify the order at any time upon motion of either party.⁴⁰
4. *Out of State 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.⁴¹
 - a. 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 also obtains a statement by the person protected by the order that the order remain in effect.
 - b. A law enforcement officer may rely on such statement by the person protected by the order.
 - c. In these situations, the officer must obtain a copy of the out of state order to be submitted along with his/her police report. Further, the statement made by the person indicating that order is designed to protect remains in force should be incorporated into the officer's narrative of the police

³⁶ See M.G.L. c. 258E, § 6

³⁷ See M.G.L. c. 258E, § 3 (d)

³⁸ See M.G.L. c. 258E, § 3 (d)

³⁹ See M.G.L. c. 258E, § 3 (d)

⁴⁰ See M.G.L. c. 258E, § 3 (e)

⁴¹ See M.G.L. c. 258E, § 7

report. Officers should consult with their supervisor if any difficulties are encountered in gathering the required documentation.

- D. Service of Orders:** Law enforcement officers are required to serve in hand (unless otherwise allowed by the court) one (1) copy of the order to a defendant.
1. Service of this civil order may be made on a Sunday.⁴²
 2. The officer making service shall complete and sign the return of service for return to the court (a copy of which will be maintained as part of the department record).
 3. 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 (a copy of which will be maintained as part of the department record).

VIII. GENERAL REQUIREMENTS:

- A. Supervisor's Role:** It is the responsibility of supervisory personnel to ensure that the provisions of G.L. c. 258E and the following guidelines are met:
1. Ensure that whenever an officer is assigned to investigate a complaint of harassment or abuse, serve an order, or enforce an order, the assigned officer(s) have taken the appropriate action and have adhere to all of the provisions of G.L. c. 258E and the requirements as outlined within these guidelines are met.
 2. As part of the report review process, ensure that officers who have been assigned to investigate a complaint of harassment or abuse, serve an order, or enforce an order have incorporated all of the relevant information within their report that incorporates the provisions of G.L. c. 258E and these guidelines are met, to include any other supporting documentation that is to accompany their reports.
 3. If, upon evaluating the information obtained by investigating officers or review of the incident report, it is believed that probable cause exists, the

⁴² See 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.

evaluating supervisor ensures that criminal charges are initiated according to the statute and these guidelines.

4. Whenever a supervisor identifies a particular case as posing significant danger, this case should be shared with the command staff of the appropriate division, and incorporated into the daily bulletins and discussed at roll call.

B. Reporting Requirements: Whenever an officer is assigned to investigate an incident involving an allegation of harassment or abuse, the officer shall immediately file a written incident report in accordance with the policies and procedures (refer to *Policy #315 – Incident Reporting Guidelines*).⁴³ The officer should also submit any associated documentation, photographs, or other evidential materials at the time of submitting his/her report.

1. As part of the officer's investigation, he/she will provide the reporting party with a copy of the Harassment Prevention Notice of Rights form (see attached form), retaining a signed copy to accompany his/her police report.
2. As part of the officer's investigation, the officer should ascertain as much detail as to what had been taken place, have the reporting party in his/her own words describe what the alleged harassment or abuse is threatening or alarming to him/her, and the number of incidents that have taken place, over what duration, and whether prior incidents have been reported to the police.

C. Victim Copy of Report: A copy of the report shall be made available to the victim upon request at no cost.⁴⁴

D. Confidentiality:⁴⁵ There are certain provisions within Chapter 258E, which provide protections regarding the release of certain records as it relates to the investigation of and reporting relative to allegations of harassment or abuse, to include the following:

1. 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:
 - a. Such records shall be open, at all reasonable times, to the inspection of the minor, said minor's parents, guardian, and attorney, and

⁴³ See M.G.L. c. 258E, § 8

⁴⁴ See M.G.L. c. 258E, § 8

⁴⁵ See M.G.L. c. 258E, § 10

- b. Such records shall be open, at all reasonable times, to the plaintiff and the plaintiff's attorney, or any of them.
2. The plaintiff's residential address, residential telephone number and workplace name, address and telephone number, shall be confidential.
 - a. 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.
 - b. 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.
 3. This confidentiality applies to protective orders of other jurisdictions.
 4. The confidential portions of the court records shall not be deemed public records under M.G.L. c. 4, § 7 (26).
 5. For further information relevant to records requests, refer to the department's policy on *Records Requests*.
- E. Immunity:** No law enforcement officer shall be held liable in a civil action or 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 in compliance with Chapter 258E of the Massachusetts General Laws.⁴⁶
- F. Firearms:** There is no provision or the surrender of firearms with Harassment Prevention Orders under Chapter 258E. With regard to federal firearms provisions, the following sections of the federal criminal code may be applicable:
1. 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 cohabit or did cohabit, the purchase or possession of a firearm or ammunition, while a Harassment Prevention 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 Police Commissioner should be notified whenever an officer identifies a case

⁴⁶ See M.G.L. c. 258E, § 8

involving the following circumstances, because there may be federal action that can be taken.⁴⁷

2. *Persons Named in Harassment Prevention 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.
3. *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.
4. *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 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.

IX. OTHER APPLICABLE CRIMINAL STATUTES:

- A. **Chapter 265, Section 43. Stalking:** Stalking and criminal harassment are identical offenses, except that stalking has the additional element of a threat. It is the threatening aspect of stalking that turns it into a felony, while criminal harassment remains a misdemeanor.
 1. *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:
 - a. Seriously alarms or annoys that person; and
 - b. Would cause a reasonable person to suffer substantial emotional distress; and
 - c. Makes a threat with the intent to place the person in imminent fear of death or bodily harm.

⁴⁷ See 18 U.S.C. §§ 922 (g) (8) and 925

2. *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.
3. Such conduct, acts or threats described in this paragraph shall include, but not 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.
4. *Restraining Orders:* 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:
 - a. Punished by imprisonment in a jail or the state prison for not less than one year and not more than five years.
 - b. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of one year.
5. *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 wherein an act constituting an element of the crime was committed.⁴⁸

B. Chapter 265: Section 43A. Criminal Harassment:

1. *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:
 - a. Seriously alarms that person; and
 - b. Would cause a reasonable person to suffer substantial emotional distress.
2. *Definition of Willful and Malicious:* Malice for these offenses simply means the suspect must act “intentionally and with a wrong motive.”⁴⁹
3. *“Repeatedly” means at least 3 incidents:* Since the statute speaks of a “pattern of conduct” or “series of acts,” the SJC has insisted on evidence of at

⁴⁸ See Chapter 277, § 62B

⁴⁹ *Comm. v. Paton*, 63 Mass. App. Ct. 215 (2005) & *Comm. v. O’Neil*, 67 Mass. App. Ct. 284 (2006)

least three separate incidents of harassment. However, each incident does not have to involve the same type of conduct. Rather there simply must be three separate acts (for example, following, then a letter, then a phone call).⁵⁰

4. Such person found to 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 a by a fine of not more than \$1,000, or by both such fine and imprisonment.
5. 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 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.

⁵⁰ *Comm. v. Martinez*, 43 Mass. App. Ct. 408 (1997)