


<b>NORTHAMPTON POLICE DEPARTMENT</b>		
<b>Administration &amp; Operations Manual</b>		
<b>Policy: Harassment Prevention Orders</b>		<b>AOM: O-212</b>
Massachusetts Police Accreditation Standards Referenced:		Issuing Authority <hr/> Jody Kasper Chief of Police
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## Contents

<b>I.</b>	<b>Introductory Discussion.....</b>	<b>1</b>
<b>II.</b>	<b>Policy.....</b>	<b>2</b>
<b>III.</b>	<b>Definitions .....</b>	<b>2</b>
<b>IV.</b>	<b>Overview of Harassment Prevention Orders (HPO) .....</b>	<b>3</b>
<b>V.</b>	<b>Police Responsibility.....</b>	<b>4</b>
<b>VI.</b>	<b>Incident Reports .....</b>	<b>7</b>

## I. Introductory Discussion

Restraining orders were created to assist victims of domestic violence. These orders were designed to better protect individuals who were in abusive relationships with people who met certain criteria that qualified the two as being in a “domestic relationship.” The lack of a special relationship between a victim and harasser required for protection by a 209A restraining order left some victims with little recourse and police with few options when trying to deal with these types of incidents. In response, Chapter 258E was enacted to provide options for these previously unprotected persons. This legislation was enacted on February 9, 2010. Although harassment prevention orders (HPO) may be sought by people in a variety of situations, the law was created specifically to better assist victims of sexual assaults and bullying.

## II. Policy

It is the policy of the Northampton Police Department to assist victims of harassment pursuant to Chapter 258E, section 8 of the Massachusetts General Laws.

## III. Definitions

### A. Abuse:

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

### B. Harassment:

1. Three (3) or more acts of willful and malicious conduct:
  - a. Aimed at a specific person; and
  - 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; or
3. Constitutes a violation of Chapter 265, section:
  - a. 13B- indecent assault and battery on a person under 14;
  - b. 13F- assault and battery or indecent assault and battery on an intellectually delayed 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
4. Constitutes a violation of Chapter 272 section 3, drugging a person for sexual intercourse.

### C. Malicious:

Characterized by cruelty, hostility, or revenge.

#### D. Protection Order Issued By Another Jurisdiction:

An injunction or other order issued by a court of another state, territory, possession, etc. for the purpose of preventing violent or threatening acts, or harassment against, or communication with, or physical proximity to another person.

## IV. Overview of Harassment Prevention Orders (HPO)

### A. Generally;

1. Harassment and abuse orders are civil in nature and violations of such orders are criminal in nature.
2. A person suffering from harassment may file a complaint in the appropriate court requesting protection from harassment, whether the defendant is an adult or a minor. The order may include ordering the defendant to:
  - 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: loss of earnings, losses for injuries or property damage, the cost of replacement locks, medical expenses, cost of obtaining an unlisted phone number, and reasonable attorney's fees.
  - e. The court shall order the immediate suspension and surrender of any LTC, FID, firearms and ammunition.
3. 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.
4. The court shall order or continue to order the suspension and surrender of any LTC, FID, firearms and ammunition upon the continuation or modification of a temporary HPO if the court determines that the return of the items presents a likelihood of harassment to the plaintiff.

### B. Types of Orders

1. Temporary Order:
  - a. If the plaintiff demonstrates a substantial likelihood of immediate danger of harassment, the court may issue a temporary order.
  - b. If the defendant does not appear at the subsequent hearing, the order shall remain in effect.

## 2. Emergency Order:

- a. An emergency order may be issued at the discretion of a justice:
  - 1) When the court is closed for business; or
  - 2) If a plaintiff is unable to appear in court because of a severe physical hardship.
- b. The issuing justice may communicate the order to an appropriate law enforcement employee:
  - 1) The agency must record the order on the appropriate court form; and
  - 2) Deliver a copy of the order on the next court day.

## C. Duration of Order

1. Orders shall be valid for no more than one year.
2. An order may be extended for a period of time to protect the plaintiff to include a permanent order.
3. If an order expires on a date when the court is closed, it shall remain in effect until the next business day.
4. The court may modify the order at any time upon motion of either party.

## **V. Police Responsibility**

- A. 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:
  1. Assess Danger: Assess the immediate physical danger to the victim and provide assistance reasonably intended to mitigate the safety risk;
  2. Assist with Medical Treatment: If there is observable injury to the victim, or if the victim complains of injury:
    - a. Encourage the victim to seek medical attention and arrange for medical assistance; or
    - b. Request an ambulance for transport to a hospital.
  3. If a Sexual Assault has Occurred:
    - a. Notify the victim that there are time-sensitive medical or forensic options that may be available;

- b. Encourage the victim to seek medical attention and arrange for medical assistance; or
  - c. Request an ambulance for transport to a hospital.
  - d. Victim may be transported to the hospital by the officer with approval of the OIC.
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4. Get Victim to a Place Of Safety: Provide the victim with referrals to local resources that may assist them 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 of the circumstances.
  5. Give Notice of Rights: Give abuse victims immediate and adequate notice of their rights, including information regarding how to obtain a harassment prevention order.
  6. Activate the Emergency Judicial Response System (EJR): Assist the victim by activating the emergency judicial system when the court is closed for business.
  7. Serve a Copy of the HPO to Defendant: Every effort must be made to assure that the service is made promptly. Further, a return of service shall be completed.

#### B. Enforcement of Orders

1. Law enforcement officers shall use every reasonable means to enforce harassment prevention orders.
2. Confirmation of Order: Police officers investigating an allegation of a harassment order violation shall confirm the validity of the order, including its terms and conditions.

#### C. Out of State Orders:

1. 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.
2. Presumption of Validity: 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* as long as the officer is provided with a statement by the person protected by the order that the order remains in effect. A law enforcement officer may rely on such statement by the person protected by the order.

#### D. Arrest

1. **Mandatory Arrest:** All officers *shall* arrest any person a law enforcement officer witnesses or has probable cause to believe has violated a temporary or permanent HPO issued by the Commonwealth or a similar order issued by another jurisdiction.
2. **Arrest as a Preferred Response:** When there is not a valid HPO, arrest shall be the *preferred* response whenever an officer witnesses or has probable cause to believe that a person:
  - a. Has committed a felony; or
  - b. Has committed a misdemeanor involving harassment or abuse; or
  - c. Has committed an assault and battery in violation of Chapter 265, section 13.
3. **If the Suspect has Fled the Scene:** When probable cause to arrest exists, and the suspect has fled the scene:
  - a. The officer shall notify dispatch and any other involved police agencies that the suspect is wanted.
  - b. Officers will attempt to make a warrantless arrest when the suspect is not found immediately. However, as soon as practical, the investigating department shall seek an arrest warrant from the appropriate court.
4. If another police department has determined that probable cause to arrest exists, that probable cause shall be honored. The department shall immediately attempt to locate the suspect and effect an arrest as requested, based upon the probable cause of the investigating department.

#### E. Dual Arrests

1. Any officer who arrests both parties involved in the order is required by law to submit a detailed, written report, in addition to an incident report, setting forth the grounds for the dual arrest. This additional report is to be submitted to the OIC and will be forwarded to the Captain of Operations.
2. Dual arrests, like the issuance of mutual Harassment Prevention Orders, are strongly discouraged because they trivialize the seriousness of harassment and increase the danger to victims.
3. Officers shall attempt to identify the primary aggressor, and take action based on that determination.

#### F. Bail

1. Victims shall be informed that the suspect will be eligible for bail if that person is arrested and may be promptly released.
2. Reasonable efforts shall be made to inform the victim of the abuser's release, prior to such release.

#### G. Service of Harassment 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.
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.
5. Regarding firearms, there is no specific provision for the surrender of firearms under the HPO.

#### H. Maintenance of Orders

1. Copies of all HPOs shall be immediately filed in the HPO/209A binder so that they can be easily accessed by personnel.
2. Electronic entries of all HPO's shall be made in the internal IMC computer system for record keeping purposes.

## **VI. Incident Reports**

- A. A report shall be completed by the investigating officer and any other involved personnel that collected pertinent information related to the case.
- B. A copy of the report shall be made available to the victim upon request at no cost.
- C. 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.
- D. The plaintiff's residential address, phone number, and workplace name, address and phone number, shall be confidential.