

Government Practice | Pro Bono Advisory: Governor Patrick Signs Groundbreaking Legislation Expanding Access to Restraining Orders*

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On February 9, 2010, Governor Deval Patrick signed into law Senate Bill 2212, *An Act Relative to Harassment Prevention Orders* (“Act”), declaring that victims of stalking, harassment, and sexual assault who were not protected under the current restraining order law, M.G.L. 209A, would finally have much-needed protection from their perpetrators. Law enforcement and victim advocates believe that the Act will enhance public safety by creating a legal option to interrupt intimidation and harassment and extending critical protection to victims of harassment outside of the domestic setting.

Lead co-sponsors for the legislation, Senator Harriette L. Chandler and Representative Cory Atkins, marshaled the legislation through their respective chambers, and praised the bipartisan effort, which culminated in passage in both the House and the Senate with no opposition.

The Need for Senate 2212

Prior to the passage of Senate 2212, Massachusetts law afforded victims of abuse the right to petition for a criminally enforceable protection order **only** if the perpetrator of the abuse was a family member, resided in the same household, was a current or former spouse, or was a person with whom the victim has or had a substantial dating relationship. As a result, a majority of the sexual assault victims did not qualify for a protective order under chapter 209A. The Act fills this gap in the law.

Massachusetts becomes the thirty-ninth (39) state to institute protection orders of this kind for stalking and harassment, and the eighteenth (18) to provide protection orders for victims of sexual-assault regardless of relationship to the perpetrator.

Key Provisions of the Senate 2212

The Act is similar to M.G.L. 209A, but differs in several key respects. First, while M.G.L. 209A and the Act both use a comparable process to petition for an order of protection, in order to avoid the unintended consequences of a broad application, the Act's definition of harassment is narrowly defined to ensure that only victims of certain crimes can avail themselves of this remedy. Accordingly, in order to qualify, individuals must have (1) suffered three or more acts of willful and malicious conduct aimed at a specific person, committed with the intent to cause fear, intimidation, or abuse, (2) been the victim of a single act of sexual relations by force, threat, or duress, or (3) been the victim of a single act constituting violation of the enumerated statutes. ¹

Further, though the Act provides for similar remedies as those provided by 209A, including stay away, no-contact, temporary, and emergency orders, it does not provide for family related remedies—such as custody and child support, as these remedies would be covered by a 209A restraining order. It also does not provide for firearm suspension, a provision provided for by 209A.

The Act was also designed so a victim can file a complaint to access a restraining order without needing a lawyer, and no filing fees will be required. If the restraining order is violated, the violation is criminal, allowing victims police protection if a perpetrator continues to stalk or harass the victim. It also provides the courts with flexibility to order appropriate treatment programs for a defendant if needed.

The firm's involvement began as a result of Mintz Levin's *pro bono* representation of a young woman who was repeatedly stalked, harassed, and sexually assaulted by a group of her high school classmates. Soon after taking on the case, the Mintz Levin attorneys determined that the woman was entitled to little, if any, protection under the existing laws, and was not able to access a criminally enforceable restraining order. In order to fill that gap, Mintz Levin's team of *pro bono* attorneys became involved in the coordination and advocacy in changing the law, working closely with advocacy groups and the bill's sponsors to gather necessary support and input. They were aided in the collaborative effort by District Attorneys, the Courts, stakeholder advocacy groups including the Boston Area Rape Crisis Center, the Victims Rights Law Center and Jane Doe Inc., the defense bar, and law enforcement officials.

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Lawyers from the firm's Government Practice Group became involved more recently, contributing significantly to the drafting and redrafting of the legislation for Senate 2212. The Government Practice Group operates at the nexus of law, business and government, and clients benefit from our extensive understanding of how federal, state and local governments work. Mintz Levin attorneys from this Practice Group offer strategic counseling and practical advice to clients in both the public and private sectors, on matters ranging from ethics and regulatory compliance to open meeting laws and lobbying regulations.

Endnotes

* Appreciation to project analyst Valerie Young for her work on this advisory and *pro bono* project.

¹ Chapter 265 of the General Laws Sections 13B (indecent assault and battery on a child under the age of 14); 13F (indecent assault and battery on a mentally retarded person); 13H (indecent assault and battery on persons 14 years or older); 22 (rape); 22A (rape of a child/use of force); 23 (rape and abuse of a child); 24 (assault with intent to commit rape); 24B (assault of a child with the intent to commit rape); 26C (enticement of a child); 43 (criminal stalking) or 43A (criminal

harassment). Chapter 272 of the General Laws Section 2 (drugging persons for sexual intercourse).

For further information on this topic, please contact one of the attorneys listed below who worked on this pro bono effort.

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