



## Legislative Fact Sheet: Senate Bill 1002: An Act to Prevent Harassment

### Summary

The act would establish a criminally enforceable Harassment Protection Order for victims of rape, sexual assault and stalking similar to that currently available to victims of domestic violence.

**Sponsors:** Senator Pamela Resor (D – Middlesex and Worcester)  
Representative Peter J. Koutoujian (D – Tenth Middlesex)

### Current law in Massachusetts

Protective orders are currently only available to survivors if the perpetrator is:

- A spouse or former spouse
- Someone the survivor has lived with
- A family member (by blood or marriage)
- A parent of the survivor's minor child
- A person with whom the survivor had a substantial dating relationship (over 6 months)

### Bill highlights:

- Includes victims of stalking, harassment, sexual assault, and enticement of a child. *This will permit many more survivors to qualify for the protection order they need.*
- Allows for renewal of an order, or the issuance of a permanent order, if warranted. *This provision is much more efficient than requiring a new protection order each year.*
- There is no statute of limitations for petitions based on the last alleged incident of harassment. *Therefore, if a survivor has reason to fear for her safety, she is not limited by the amount of time elapsed since the last incident of harassment.*
- The forms used will be easy for an average person to understand, so survivors will not necessarily need an attorney. *Many survivors do not have the time or resources to hire an attorney, and this provision provides access to all survivors regardless of their means.*
- Violation of the order is a criminal offense and can lead to a fine and/or imprisonment. *Victim advocates in other states have found that protection orders are virtually meaningless without a criminal penalty for violation.*
- Anyone subject to this order must surrender all firearms and permits to possess a firearm. *This safety measure is important to ensure actual protection for survivors.*
- Full faith and credit will be given to protection orders from other states. *This protects survivors from other states, by honoring their protective orders already in effect.*

### Jane Doe Inc. Position: Priority Support

In the United States, nearly 18 million women have been victims of rape or attempted rape.<sup>1</sup> The majority of women assaulted were raped when they were under the age of 18. At the same time rape is the most underreported crime in America.<sup>2</sup> One million women and 371,000 men are stalked annually in the United States.<sup>3</sup> While highly effective legal protections exist for many victims, for too many others there is still a dangerous gap in access to protection created by the relationship

<sup>1</sup> 2004 National Crime Victimization Survey

<sup>2</sup> Ibid.

<sup>3</sup> 2008 Stalking Resource Center

requirement for access to a criminally enforceable restraining order under MGL Chapter 209A. Across the country, most states have now remedied this by enabling any victim of harassment to seek a protection order.

The process of obtaining a criminally protective order gives victims access to safety planning, counseling and other services designed to enhance their ability to stay safe. They are accessible to all victims in that, by law, they can be obtained without an attorney. They are portable, as they are enforceable and valid in other states. They can serve as proof of a victim's needs for protection at school, in the workplace, and even among family members and friends, relieving the victim of the need to prove their story in order to get assistance. With the enactment of this legislation we will join other states in increasing the public and individual safety of citizens of the Commonwealth.

### **Relevant Specifics of the Act**

Specifically, Senate Bill 1002 – An Act to Prevent Harassment would amend chapter M.G.L. c. 265 (Crimes Against the Person) to allow any victim of harassment (including sexual assault and stalking) to petition for a harassment prevention order by:

Proposing that any person who is a victim of harassment, (defined as the occurrence of one or more of the following: (a) willfully and maliciously engaging in conduct or acts directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer emotional distress; or (b) causing another to engage involuntarily in sexual conduct; or (c) causing another to engage involuntarily in sexual conduct by force, threat, or duress, included but not limited to, incapacitation through chemical restraint, drugs or intoxication; or (d) engaging in the enticement of a child under the age of 16 under the provisions of chapter 265 section 26C of the Massachusetts General Laws). Such protection is not conditioned on the victim's reporting of the crime. Additionally, all orders under the proposed statute will also be filed in the statewide domestic violence record keeping system. The legislation identifies the remedies as ordering the respondent to refrain from harassing the petitioner; ordering the respondent to refrain from contacting the petitioner; ordering the respondent to stay away from the petitioner; and ordering the respondent to pay the petitioner monetary compensation for losses suffered as a direct result of the harassment. It establishes that records of cases arising under an action brought under these provisions shall be withheld from public inspection except by order of the court where the petitioner or respondent is a minor. It establishes that the petitioner's residential and workplace information be withheld from public inspection at all times, except by order of the court.

For more information about this legislation or to sign on as co-sponsor, please contact the office of Senator Pamela Resor at (617)722-1120 or Jane Doe Inc.'s Director of Policy and Systems Advocacy Isa Woldegiorgis at (617)557-1821.

Talking Points - Senate No. 1611  
An Act Relative to Abuse Victim Protection Orders

I. Why we need this law – now!

- a. 1 in 12 women and 1 in 45 men will be stalked in their lifetime
- b. 77% of female victims and 64% of male victims know their stalker
- c. The average duration of stalking is 1.8 years
- d. 34% of sexual assaults are perpetrated by friends or acquaintances
- e. **In Massachusetts, an estimated 17% of women and 6% of men will be sexually assaulted in their lifetime**

II. Need for the legislation

- a. This legislation will fill a gap in legislation to protect stalking and sexual assault victims who are not protected by the current 209A statute
- b. Current Massachusetts law only offers victims of abuse the right to petition for a protection order if the perpetrator of the abuse is a family member, roommate, current or former spouse, or a person with whom the victim has or had a substantial dating relationship
- c. This legislation affords victims of abuse the right to petition for a protection order, regardless of the perpetrator's identity or relation to the victim
- d. This legislation will enhance public safety by extending critical protection to victims of abuse outside of the domestic setting

III. Difference between this legislation and past, similar legislation

- a. More precise definitions and a narrower scope has been devised this time around, ensuring that no unintended consequences will result from its passage
- b. With this legislation, the rights of all individuals are protected, including both victims and violators
- c. The legislation is similar to M.G.L. 209A in most respects; most importantly, the legislation uses the similar "abuse" standard as 209A
  - i. attempting to cause or causing physical harm
  - ii. placing another in fear of imminent serious physical harm
  - iii. causing another to engage involuntarily in sexual relations by force, threat or duress

IV. A collaborative approach

- a. With this legislation, many different opinions and comments have been taken into consideration, including the Criminal Defense Bar, the District Attorneys, Boston Area Rape Crisis Center (BARCC), the Victims Rights Law Center, police officers, campus police from our local colleges and universities, and other advocacy groups
- b. Attorneys from Mintz, Levin, Cohn, Ferris, Glovsky and Popeo are spearheading this effort to help craft legislation that is sensible and available for use in egregious situations

**FACT SHEET: AN ACT TO RELATIVE TO SEXUAL ASSAULT  
AND STALKING RESTRAINING ORDERS**  
**SENATE NO. 1611**

**THIS ACT WOULD ALLOW ANY VICTIM OF HARASSMENT, INCLUDING SEXUAL  
ASSAULT AND STALKING, TO PETITION FOR A HARASSMENT PREVENTION ORDER**

**Harassment:** the occurrence of one more of the following:

- Willfully and maliciously engaging in conduct or acts directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer emotional distress
- Causing another to engage involuntarily in sexual conduct
- Causing another to engage involuntarily in sexual conduct by force, treat or duress, including but not limited to, incapacitation through chemical restraint, drugs or intoxication
- Engaging in the enticement of a child under the age of 16 under the provisions of chapter 265 section 26C of the Massachusetts General Laws

**Sexual Assault:** any sexual contact without consent, including rape.

- In Massachusetts, an estimated 17% of women and 6% of men experience sexual assault in their lifetime.
- 34% of sexual assaults are perpetrated by friends or acquaintances; 24% by current or ex-spouses, partners, or dates; 17% by relatives; 16% by strangers; and 9% by others.

**Stalking:** a course of conduct directed at a specific person that would cause a reasonable person to feel fear.

- 1 in 12 women and 1 in 45 men will be stalked in their lifetime.
- The average duration of stalking is 1.8 years.
- 77% of female victims and 64% of male victims know their stalker.
- 

**Current Massachusetts Law:** protective orders are currently only available to victims if the perpetrator is:

- A spouse or former spouse.
- Someone the victim has lived with.
- A family member (by blood or marriage).
- A parent of the victim's minor child.
- A person with whom the victim had a substantial dating relationship (over 6 months).

**Bill Highlights:**

- Includes victims of stalking, harassment, sexual assault, and enticement of a child.
- Allows for renewal of an order, or the issuance of a permanent order, if warranted.
- Forms will be easy for the average person to understand; victims will not necessarily need an attorney.
- Violation of the order is a criminal offense and can lead to a fine and/or imprisonment.
- A person subject to this order must surrender all firearms and permits to possess a firearm.
- Full faith and credit will be given to protection orders from other states.



COMMONWEALTH OF MASSACHUSETTS  
MASSACHUSETTS SENATE

STATE HOUSE, BOSTON 02133-1053

SENATOR SCOTT P. BROWN

ASSISTANT MINORITY WHIP

NORFOLK, BRISTOL AND MIDDLESEX DISTRICT

ATTLEBORO: WARDS 1, 2, 3A,

FRANKLIN: PRECINCTS 2, 3, 4,

MILLIS, NATICK: PRECINCTS 6, 7, 9, 10,

NEEDHAM, NORFOLK, NORTH ATTLEBORO, PLAINVILLE,

SHERBORN, WAYLAND, WELLESLEY: PRECINCTS B, F, G,

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Senator Cynthia Stone Creem, Senate Chairwoman  
Representative Eugene O'Flaherty, House Chairman  
Joint Committee on the Judiciary  
State House, Room 416B  
Boston, MA 02133

September 17, 2009

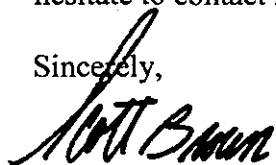
Dear Senator Creem and Representative O'Flaherty:

I write to you today in support of **Senate Bill 1611**, *An Act Relative to Sexual Assault and Stalking Restraining Orders* filed by Senator Harriette Chandler (D-Worcester). I respectfully request that the committee report this legislation out favorably.

S.1611 would extend the reach of restraining orders in order to better protect victims of sexual harassment or stalking. It would allow for any victims, not just those related through dating or family relationships, to obtain a restraining order. The bill would also make violation of a restraining order a criminal offense punishable by a significant fine or incarceration. As a co-sponsor of this bill and advocate for victims of abuse, I feel strongly that all victims of harassment, assault, or stalking should have the tools available to protect themselves from potentially violent offenders.

Thank you for your attention to this matter. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

  
SCOTT BROWN  
State Senator





# *The Commonwealth of Massachusetts*

HOUSE OF REPRESENTATIVES  
STATE HOUSE, BOSTON 02133-1054

**FRANK I. SMIZIK**  
15<sup>TH</sup> NORFOLK DISTRICT  
ROOM 274, STATE HOUSE

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CHAIRMAN  
House Committee on:  
Global Warming and Climate Change

Testimony of Representative Frank I. Smizik  
Before the Joint Committee on the Judiciary  
In support of Senate Bill 1611

An Act Relative to Sexual Assault and Stalking Restraining Orders

September 17, 2009

## **What is the problem?**

Although the majority of sexual assaults in Massachusetts are perpetrated by individuals not related to or in a relationship with the victim, protection orders are only granted if the perpetrator is a family member, roommate, former or current spouse, or a person with whom the victim had a substantial dating relationship. The current legislation leaves a gap in the protections offered to victims of sexual harassment or abuse by excluding a significant number of sexual assault and harassment cases from protection through restraining orders.

## **What this bill does:**

This bill would fill a gap in current legislation to include victims who are not currently protected by allowing them to petition for a protection order regardless of the perpetrator's identity or relation to the victim. This bill would allow any victim of sexual assault or harassment to seek a protection order and would further include protection to minors and those previously excluded because of age, disability, and health. In addition, this bill will protect the rights of both the victim and the perpetrator by restricting a court from denying any filed petition solely because it was not "filed within a particular time period following the last alleged incident of harassment", by setting a timeline for reevaluation of the order, and by allowing judicial discretion in modifying the order at any time at the request of either party.

## **Why this bill is important:**

One in 12 women and one in 45 men will be stalked in their lifetime; likewise, 17% of women and 6% of men will be sexually assaulted. This bill will help to provide protections to not just a select few assault and harassment victims, but to any individual who has suffered sexual harassment or assault. In addition, this bill will allow those victims to potentially put an end to



the harassment and intimidation and strengthen public safety efforts by creating a safe environment for the victim within which he or she will be much more likely to participate in criminal justice proceedings against the perpetrator.

I respectfully urge the Joint Committee on the Judiciary to report favorably on HB 1161, "*An Act Relative to Sexual Assault and Stalking Restraining Orders*".

Thank you for your consideration.



Frank I. Smizik  
STATE REPRESENTATIVE



COMMONWEALTH OF MASSACHUSETTS  
**THE GENERAL COURT**  
STATE HOUSE, BOSTON 02133-1053

June 25, 2009

Representative Eugene O'Flaherty  
Chairman, The Joint Committee on Judiciary  
State House, Room 136

Senator Cynthia Stone Creem  
Chairwoman, The Joint Committee on Judiciary  
State House, Room 416-B

Dear Chairman O'Flaherty and Chairwoman Creem:

As the co-chairs of the Caucus of Women Legislators' Domestic Violence Task Force, we write to respectfully request that S.1611, *An Act Relative to Sexual Assault and Stalking Restraining Orders* be removed from the list of bills to be heard by the Joint Committee on Judiciary on **June 30, 2009** and instead be added to the list of bills being heard **on or after July 14, 2009**.

In the effort to strengthen the bill and better educate co-sponsors and members, we appreciate the Committee granting us the time necessary to do so.

Thank you for your attention to this matter. Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cory Atkins".

Cory Atkins  
14<sup>th</sup> Middlesex District

A handwritten signature in cursive script, appearing to read "Mary Grant".

Mary Grant  
6<sup>th</sup> Essex District