



## Legal Update

August 11, 2014

### An Act relative to domestic violence

On August 8, 2014, Governor Patrick signed into law “An Act relative to domestic violence.” Key portions of the law are listed below:

#### **Creates following new offenses:**

- First offense of assault and battery on a family or household member (GL c. 265, § 13M), punishable by imprisonment in the house of correction for not more than 2 ½ years, a fine of not more than \$5,000, or both. Defines “family or household member” as persons who are were married to one another, have a child in common, or are or have been in a substantive dating or engagement relationship. Mandates completion of certified batterer’s program unless court finds not suitable.
- Strangulation and suffocation with the following penalties: 1. 1<sup>st</sup> offense: Imprisonment in state prison not more than 5 years or in house of correction not more than 2 ½ years, fine of not more than \$5,000, or both; 2. 2<sup>nd</sup> or Aggravated: Imprisonment in state prison not more than 10 years or in house of correction not more than 2 ½ years and a fine of not more than \$10,000. Mandates completion of certified batterer’s program unless court finds not suitable.

#### **Records pertaining to domestic abuse and sexual violence:**

- Not considered public reports and only accessible to certain enumerated individuals. Prosecutors, law enforcement and those authorized to admit person to bail shall have access at all reasonable times, upon written, telephonic, facsimile or electronic mail request. Any violation of this section is punishable by imprisonment for not more than one year, a fine of not more than \$1,000, or both.
- Information pertaining to responses to reports of domestic violence, rape or sexual assault, arrest of person for domestic abuse or violation of a protective order where victim family or household member, or entries pertaining to a handicapped individual who is physically or mentally incapacitated so as to be bedridden or

requiring device to provide mobility, to be kept in separate daily log by police and not subject to disclosure to public or anyone not authorized by § 97D.

#### **Changes bail and dangerousness statutes:**

- Person arrested for one of enumerated domestic violence or restraining order violation offenses shall not be bailed for at least 6 hours after arrest unless a judge, in open court, releases the defendant; Person setting bail to have immediate access to all pending and prior criminal offender record information, Board of Probation records, and police reports; Lists factors to be considered when determining bail.
- Only Commonwealth may move for arraignment, within three hours of the complaint being signed, in D/V, strangulation/suffocation, and abuse prevention order violation cases.
- Requires Court to inquire of Commonwealth, prior to admitting person to bail who has been charged with crime against person or property of another, whether domestic abuse occurred immediately prior to or in conjunction with the charged offense. If so, Commonwealth to file a preliminary written statement. If judge makes determination that abuse has been alleged, judge to make written findings for entry in domestic violence record keeping system, however, judge's findings are not admissible or available to the public.
- Bail may be set under § 42A.
- Prior to release from police station, police to make reasonable attempt to notify victim of release. Same by district attorney if release pursuant to order of court.
- Enlarges period of detention following a finding of dangerousness from 90 days to 120 days.
- Requires person seeking a summons for an alleged victim or victim's family to appear as a witness in a dangerousness hearing to first demonstrate to the court a good faith basis for the reasonable belief that the witness' testimony would be material and relevant to support a conclusion that there are conditions of release which will reasonably assure the safety of any other person or the community.
- Adds that judges shall consider hearsay in a dangerousness hearing.
- Requires judges to make written determination of required considerations following dangerousness hearings, for inclusion in the domestic violence record keeping system, if defendant over 18 and held for an arrest for one of the enumerated domestic violence/restraining order violation offenses.
- Dangerousness hearings may be reopened upon motion of defendant or Commonwealth.

#### **Disposition**

- Precludes use of accord and satisfaction in matters involving domestic violence and restraining order violation offenses.
- Requires completion of certified batterers program as condition of continuance without a finding on a violation of a 209A order unless the court issues written finding as to why it should not be ordered.

- Establishes new court assessment of \$50 to the Domestic Sexual Violence Prevention and Victim Assistance Fund for D/V, strangulation and suffocation cases. Said assessment is a first priority, along with the victim witness fee, for the defendant to pay, although court may order completion of at least 8 hours of community service in lieu of it under certain circumstances.

#### **Training**

- Mandates domestic and sexual violence training for prosecutors, law enforcement, court personnel and certain medical/mental health/human services personnel.

#### **Domestic Violence Fatality Review Teams**

- Establishes a state domestic violence fatality review team within EOPSS. Also creates local review teams in each of the 11 districts to be chaired by the District Attorney of that particular district.

#### **Jurisdiction**

- Establishes concurrent jurisdiction in the District Courts for strangulation/suffocation (GL c. 265, § 15D) and kidnapping (GL c. 265, § 26).
- In abuse prevention orders, District Courts, Boston Municipal Court and Superior Courts allowed to make orders of custody and support for not more than 30 days even if prior order was issued by the Probate and Family Court.

#### **Employment Leave**

- Provides employment leave of up to 15 days per 12 month period if an employee or a family member is a victim of abusive behavior (as defined) and if leave is for medical, psychological or legal assistance, to obtain housing, or for legal matters related to the abuse.

#### **Effective Date**

- This legislation is effective as of August 8, 2014.

A copy of Chapter 260 of the Acts of 2014 and a section-by-section summary are attached.