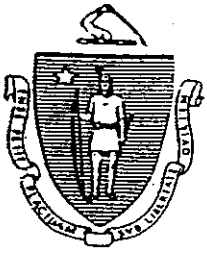


13. Memorandum from Chief Justice for Administration and Management John Irwin, October 30, 1996, “Out-of-State Domestic Violence Restraining Orders”, with a copy of memorandum from Commissioner of Probation Donald Cochran, October 30, 1996, “Chapter 209A, Section 5A: Out-of-State Protective/Restraining Orders”




THE COMMONWEALTH OF MASSACHUSETTS
ADMINISTRATIVE OFFICE OF THE TRIAL COURT
Two Center Plaza
Boston, Massachusetts 02108

JOHN J. IRWIN, JR.
Chief Justice for
Administration and Management

Tel: (617) 742-8575
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MEMORANDUM

TO: Hon. Mary C. Fitzpatrick, Chief Justice, Probate and Family Court Department
Hon. Robert A. Mulligan, Chief Justice, Superior Court Department
Hon. William J. Tierney, Chief Justice, Boston Municipal Court Department
Hon. Samuel E. Zoll, Chief Justice, District Court Department

FROM:  John J. Irwin, Jr.
Chief Justice for Administration and Management

RE: Out-Of-State Domestic Violence Restraining Orders

DATE: October 30, 1996

An Act Relative to The Crime Of Stalking, St. 1996, Chapter 298, section 5, amends G.L. c. 209A to add a new section 5A which provides, in pertinent part:

"Any protection order issued by another jurisdiction, as defined in section one [of G.L. c. 209A], 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.

A person entitled to protection under a protection order issued by another jurisdiction may file such order in the superior court department or the Boston municipal court department or any division of the probate and family or district court departments by filing with the court a certified copy of such order which shall be entered into the statewide domestic violence record keeping system established pursuant to the provisions of section seven of chapter one hundred and eighty-eight of the acts of nineteen hundred and ninety-two and maintained by the office of the commissioner of probation. Such person shall swear under oath in an affidavit, to the best of such person's knowledge, that such order is presently in effect as written. Upon request by a law enforcement agency, the register or clerk of such court shall provide a certified copy of the protection order issued by the other jurisdiction."

Section 1 of the Stalking law provides the following definition of the phrase "protection order issued by another jurisdiction":

"any 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 tribal court that is issued for the purpose of preventing violent or threatening acts 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."

Attached for your information is a copy of the Stalking law. Governor Weld signed the law on August 9, 1996 and it is effective November 7, 1996.

Commissioner Cochran today issued the attached related memorandum to the Chief Probation Officers and Probation Officers-In-Charge in the District, Boston Municipal, Superior and Probate and Family Court Departments. Commissioner Cochran's memorandum instructs Probation Officers how to enter these out-of-state protection orders into the Massachusetts Registry of Domestic Violence Restraining Orders. Proper implementation of this Probation procedure requires that the Clerk-Magistrates and Registers forward any certified copy of an out-of-state protection order they may receive pursuant to the provisions of the Stalking law cited above to the Probation office for data entry on the same day that the order is filed with the court. Once the Probation office enters such an order into the Registry, the Probation office is required to return it to the Clerk-Magistrate or Register.

Please take the time to inform the Clerk-Magistrates or Registers of the courts in your Department of this requirement at your earliest convenience.

Attachments

cc: Jerome S. Berg, Court Administrator
James Klein, Court Administrator
John McNichols, Court Administrator
Helen Quigley, Court Administrator
Donald Cochran, Commissioner of Probation

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety-six

AN ACT RELATIVE TO THE CRIME OF STALKING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 209A of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by inserting after the definition of "Law officer" the following definition:-

"Protection order issued by another jurisdiction", any 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 tribal court that is issued for the purpose of preventing violent or threatening acts 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.

SECTION 2. Section 18 of said chapter 209A, as so appearing, is hereby amended by inserting after the word "then", in line 7, the following words:- controls, owns or.

SECTION 3. Section 5 of said chapter 209A, as so appearing, is hereby amended by inserting after the word "business", in line 1, the following words:- or the plaintiff is unable to appear in court because of severe hardship due to the plaintiff's physical condition.

SECTION 4. The first paragraph of said section 5 of said chapter 209A, as so appearing, is hereby further amended by inserting after the third sentence the following sentence:- If the plaintiff in such a case is unable to appear in court without severe hardship due to the plaintiff's physical condition, then a representative may appear in court on the plaintiff's behalf and file the requisite complaint with an affidavit setting forth the circumstances preventing the plaintiff from appearing personally.

SECTION 5. Said chapter 209A is hereby further amended by inserting after section 5 the following section:-

APPROVED: 8-9-96
TAKES EFFECT: 11-7-96

Section 5A. Any protection order issued by another jurisdiction, as defined in section one, 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.

A person entitled to protection under a protection order issued by another jurisdiction may file such order in the superior court department or the Boston municipal court department or any division of the probate and family or district court departments by filing with the court a certified copy of such order which shall be entered into the statewide domestic violence record keeping system established pursuant to the provisions of section seven of chapter one hundred and eighty-eight of the acts of nineteen hundred and ninety-two and maintained by the office of the commissioner of probation. Such person shall swear under oath in an affidavit, to the best of such person's knowledge, that such order is presently in effect as written. Upon request by a law enforcement agency, the register or clerk of such court shall provide a certified copy of the protection order issued by the other jurisdiction.

A law enforcement officer may presume the validity of, and enforce in accordance with section six, a copy of a protection order issued by another jurisdiction which has been provided to the law enforcement officer by any source: provided, however, that the officer is also provided with a statement by the person protected by the order that such order remains in effect. Law enforcement officers may rely on such statement by the person protected by such order.

SECTION 6. Section 6 of said chapter 209A, as appearing in the 1994 Official Edition, is hereby amended by inserting after the word "three", in line 67, the following words:- , three B, three C.

SECTION 7. Said section 6 of said chapter 209A, as so appearing, is hereby further amended by inserting after the word "nine C", in line 69, the following words:- or similar protection order issued by another jurisdiction.

SECTION 8. Section 7 of said chapter 209A, as so appearing, is hereby amended by inserting after the word "order", in lines 42 and 72, each time it appears, the following words, in each instance:- or a protection order issued by another jurisdiction.

SECTION 9. Section 8 of said chapter 209A, as so appearing, is hereby amended by inserting after the word "inspection", in line 3, the following

B 1803

words:- including any copy of a protection order issued by another jurisdiction.

SECTION 10. Section 20 of chapter 233 of the General Laws, as amended by section 94 of chapter 5 of the acts of 1995, is hereby further amended by striking out the clause First and inserting in place thereof the following clause:-

First, Except in a proceeding arising out of or involving a contract made by a married woman with her husband, a proceeding under chapter two hundred and nine D and in a prosecution begun under sections one to ten, inclusive, of chapter two hundred and seventy-three, any criminal proceeding in which one spouse is a defendant alleged to have committed a crime against the other spouse or to have violated a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to section eighteen, thirty-four B or thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, section three, three B, three C, four, or five of chapter two hundred and nine A, or sections fifteen or twenty of chapter two hundred and nine C, or a similar protection order issued by another jurisdiction, obtained by the other spouse, and except in a proceeding involving abuse of a person under the age of eighteen, including incest, neither husband nor wife shall testify as to private conversations with the other.

SECTION 11. Section 43 of chapter 265 of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph:-

(a) Whoever (1) 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 seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and (2) makes a threat with the intent to place the person in imminent fear of death or bodily injury, 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.

SECTION 12. Said section 43 of said chapter 265, as so appearing, is hereby further amended by inserting after the word "nine C", in line 14, the following words:- or a protection order issued by another jurisdiction.

SECTION 13. Section 28 of chapter 276 of the General Laws, as so appearing, is hereby amended by inserting after the word "restraining", in line 21, the following words:- , suspension and surrender..

SECTION 14. Said section 28 of said chapter 276, as so appearing, is hereby further amended by inserting after the word "three", in line 24, the following words:- , three B. three C.

SECTION 15. Chapter 277 of the General Laws is hereby amended by inserting after section 62A the following section:-

Section 62B. 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.

SECTION 16. Section 7 of chapter 188 of the acts of 1992 is hereby amended by inserting after the word "Laws", in line 10, the following words:- and protection orders issued by another jurisdiction, filed pursuant to section five A of chapter two hundred and nine A of the General Laws.

House of Representatives, July , 1996.

Passed to be enacted, , Speaker.

In Senate, July , 1996.

Passed to be enacted, , President.

, 1996.

Approved.

Governor.



MASSACHUSETTS TRIAL COURT
OFFICE OF COMMISSIONER OF PROBATION
ONE ASHBURTON PLACE
BOSTON, MA 02108-1612

DONALD COCHRAN
COMMISSIONER

(617) 727-5300

Date: October 30, 1996
To: Chief Probation Officers / Probation Officers-in-Charge
From: Donald Cochran, Commissioner *DC*

Subject: Chapter 209A, Section 5A: Out-of-State Protective/Restraining Orders

Chapter 298 of the Acts of 1996 amends G.L. c. 209A by adding section 5A which provides that any protection order issued by another state or jurisdiction "shall be given full faith and credit throughout the Commonwealth and shall be enforced as if it were issued in the Commonwealth, for as long as the order is in effect in the issuing jurisdiction."

Existing Civil Restraining Order data entry procedures are to be used for entry of out-of-state restraining orders. Effective November 7, 1996, to add an out-of-state order to the Massachusetts Registry of Civil Restraining Orders:

Enter the Chapter and Section as 209A, 5A. This will identify the order as a 'Full Faith' restraining order.

To maintain the quality of data in the Massachusetts Registry of Civil Restraining Orders, and to uniformly reference the out-of-state jurisdiction, use the following procedures to assign a 'Full Faith' (FF) tracking number which is to be entered into the Docket Number field:

1. The first two characters consist of the State Postal Code for the state which originally issued the order.
2. The second two characters (or three if appropriate) consist of the Court Number of the Massachusetts court where the out-of-state order is being filed.
3. The next six characters consist of the date the certified order is filed with the Massachusetts clerk/register (YYMMDD).

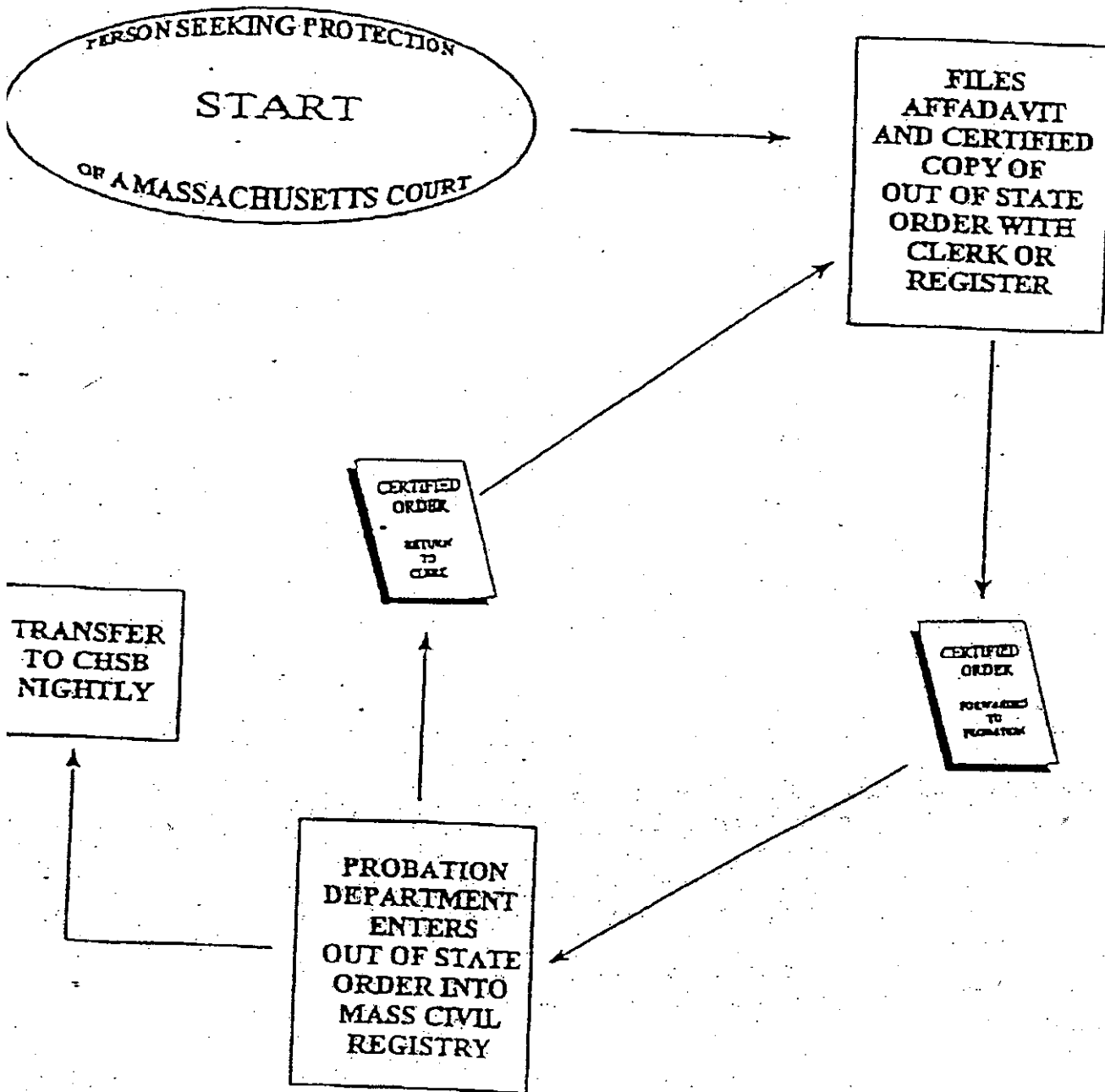
e.g. An order from New Hampshire filed at the Clerk's Office at Court 52 on December 1, 1996 would have the tracking number NH52961201

Hereafter, any defendant named in an out-of-state restraining order will have an 'FF' at the top of the defendant's identification screen. The printout of the restraining order will also have a 'Full Faith' designation.

Once the order is entered in the Massachusetts Civil Registry, return the order to the clerk/register.

If you have any questions concerning these procedures, please contact your area supervisor.

THE FILING OF A PROTECTION/RESTRAINING ORDER
ISSUED BY ANOTHER STATE or JURISDICTION
in the Superior, District, Boston Municipal or Probate and Family Court Department
C. 209A, sec. 5A: Full Faith and Credit Provisions



NOTE: IF OUT OF STATE ORDER HAS CATEGORIES NOT FOUND ON MASSACHUSETTS SCREEN MARK OTHER CATEGORY

AL - Alabama
AK - Alaska
AZ - Arizona
AR - Arkansas
CA - California
CO - Colorado
CT - Connecticut
DE - Delaware
DC - District of Columbia
FL - Florida
GA - Georgia
HI - Hawaii
ID - Idaho
IL - Illinois
IN - Indiana
IA - Iowa
KS - Kansas
KY - Kentucky
LA - Louisiana
ME - Maine
MD - Maryland
MA - Massachusetts
MI - Michigan
MN - Minnesota
MS - Mississippi
MO - Missouri

MT - Montana
NB - Nebraska
NV - Nevada
NH - New Hampshire
NJ - New Jersey
NM - New Mexico
NY - New York
NC - North Carolina
ND - North Dakota
OH - Ohio
OK - Oklahoma
OR - Oregon
PA - Pennsylvania
PR - Puerto Rico
RI - Rhode Island
SC - South Carolina
SD - South Dakota
TN - Tennessee
TX - Texas
UT - Utah
VT - Vermont
VA - Virginia
WA - Washington
WV - West Virginia
WI - Wisconsin
WY - Wyoming