

ACTS, 1983. - Chaps. 677, 678.

Chap. 677. AN ACT PROVIDING FOR DAY CARE FACILITIES.

Be it enacted, etc., as follows:

The fifth paragraph of section 40F of chapter 7 of the General Laws, as amended by section 15 of chapter [636] of the acts of 1983, is hereby further amended by adding the following three sentences:- In assigning the use of such space, the deputy commissioner shall, notwithstanding the provisions of this section and sections forty M and forty-three I, provide suitable space in the John W. McCormack state office building and, where available, in other state facilities throughout the commonwealth to be used as day care centers for children of state employees, provided, that: (1) documentation is furnished that each such center is desired and needed for no less than seven children of said employees; (2) economic feasibility of each such center is substantiated; (3) all such centers shall meet the licensing requirements of the office for children; and (4) an operator for each such center has been identified, who shall pay rent to the commonwealth and shall reimburse the commonwealth for any additional expenses for utilities and custodial services which may be incurred as a result of the operation of such center. Said deputy commissioner shall inform state agencies of the provisions of this section and shall publish a list of day care centers established in state facilities. State agencies shall furnish such information to their employees and employee organizations.

Approved December 21, 1983.

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Chap. 678. AN ACT RELATIVE TO THE PREVENTION OF FAMILY ABUSE.

Be it enacted, etc., as follows:

SECTION 1. Chapter 208 of the General Laws is hereby amended by striking out section 34C, inserted by section 1 of chapter 447 of the acts of 1978, and inserting in place thereof the following section:-

Section 34C. Whenever the superior court department or a division of the probate and family court department issues an order to vacate under the provisions of section thirty-four B, or an order prohibiting a person from imposing any restraint on the personal liberty of another person under section eighteen or under the provisions of section thirty-two of chapter two hundred and nine, the register or clerk-magistrate shall transmit two certified copies of each order forthwith to the appropriate

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law enforcement agency which shall serve one copy of each such order upon the defendant. Unless otherwise ordered by the court, service shall be by delivering a copy in hand to the defendant. Law enforcement officers shall use every reasonable means to enforce such order. Law enforcement agencies shall establish procedures adequate to insure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order.

The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated by the court and shall direct the agency to destroy all records of such vacated order and such agency shall comply with such directive.

Any violation of such order shall be punishable by a fine of not more than five thousand dollars or by imprisonment for not more than two and one-half years in the house of correction, or both such fine and imprisonment. Each such order issued shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Any such violation may be enforced in the superior or district or Boston municipal court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston municipal court departments may each enforce by civil contempt procedure a violation of its own court order.

SECTION 2. Section 1 of chapter 209A of the General Laws, as appearing in section 2 of chapter 447 of the acts of 1978, is hereby amended by striking out the definition of "Court" and inserting in place thereof the following definition:-

"Court", the superior, probate and family, district or Boston municipal court departments of the trial court.

SECTION 3. Said chapter 209A is hereby further amended by striking out section 2, as so appearing, and inserting in place thereof the following section:-

Section 2. Proceedings under this chapter shall be filed, heard and determined in the superior court department or the Boston municipal court department or respective divisions of the probate and family or district court departments having venue over the plaintiff's residence. If the plaintiff has left a residence or household to avoid abuse, such plaintiff shall have the option of commencing an action in the court having venue over such prior residence or household, or in the court having venue over the present residence or household.

SECTION 4. Said chapter 209A is hereby further amended by

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striking out sections 3 to 6, inclusive, as so appearing and inserting in place thereof the following four sections:-

Section 3. A person suffering from abuse from an adult or minor family or household member may file a complaint in the court requesting protection from such abuse, including, but not limited to, the following orders:-

(a) ordering the defendant to refrain from abusing the plaintiff whether the defendant is an adult or minor;

(b) ordering the defendant to vacate forthwith the household. Notwithstanding the provisions of section thirty-four B of chapter two hundred and eight, an order to vacate shall be for a fixed period of time, not to exceed one year, at the expiration of which time the court may extend any such order upon motion of the plaintiff for such additional times as it deems necessary to protect the plaintiff from abuse;

(c) awarding the plaintiff, in the case of husband and wife, temporary custody of a minor child;

(d) ordering the defendant to pay temporary support for the plaintiff or any child in the plaintiff's custody or both, when the defendant has a legal obligation to support such a person;

(e) ordering the defendant to pay to the person abused monetary compensation for losses suffered as a direct result of such abuse. Compensatory losses shall include, but not be limited to, loss of earnings or support, out-of-pocket losses for injuries sustained, medical and moving expenses and reasonable attorneys' fees;

(f) ordering the plaintiff's address to be impounded as provided in section eight.

No filing fee shall be charged for the filing of the complaint. The plaintiff shall not be charged for copies of orders entered by the court.

Any relief granted by the court shall be for a fixed period of time not to exceed one year, at the expiration of which time the court may extend any order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff from abuse. The court may modify its order at any subsequent time upon motion by either party.

No order under this chapter shall in any manner affect title to real property.

Any action commenced under the provisions of this chapter shall not preclude any other civil or criminal remedies. A party filing a complaint under this chapter shall be required to disclose any prior or pending actions for divorce under chapter two hundred and eight, separate support under two hundred and nine, or abuse prevention under this chapter.

If there is a prior or pending order from the probate and family court department of the trial court for divorce under

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chapter two hundred and eight, or separate support under chapter two hundred and nine, an order issued in the district court or Boston municipal court departments pursuant to this chapter shall be restricted to ordering the defendant to refrain from abusing the plaintiff whether the defendant is an adult or minor, or ordering the defendant to vacate forthwith the household.

If the parties to a proceeding under this chapter are parties in a subsequent proceeding for divorce under chapter two hundred and eight or for separate support under chapter two hundred and nine, any custody or support order or judgment issued in the divorce or separate support proceeding shall supersede any prior custody or support order under this chapter.

Section 4. Upon the filing of a complaint under this chapter, the court may enter such temporary orders as it deems necessary to protect a plaintiff from abuse, including relief as provided in section three. Such relief shall not be contingent upon the filing of a complaint for divorce or separate support.

If the plaintiff demonstrates a substantial likelihood of immediate danger of abuse, the court may enter such temporary orders without notice as it deems necessary to protect the plaintiff from abuse and shall immediately thereafter notify the defendant that the temporary orders have issued. Notice shall be made by the appropriate law enforcement agency as provided in section seven. The court shall give the defendant an opportunity to be heard on the question of continuing the temporary order no later than five days after such orders are entered. If the defendant does not appear at such subsequent hearing the temporary orders shall continue in effect without further order of the court.

Section 5. When the court is closed for business, any justice of the superior, probate and family, district or Boston municipal court departments may grant relief to the plaintiff as provided under section four if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse. If relief has been granted without the filing of a complaint pursuant to this section of this chapter, then the plaintiff shall appear in court on the next available business day to file said complaint. Notice to the plaintiff and defendant and an opportunity for the defendant to be heard shall be given as provided in said section four.

Any order issued under this section and any documentation in support thereof shall be certified on the next court day by the clerk-magistrate of the court issuing such order to the court having venue and jurisdiction over the matter. Such certification to the court shall have the effect of commencing proceedings under this chapter and invoking the other provisions of this chapter but shall not be deemed necessary for an emergency

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order issued under this section to take effect.

Section 6. Whenever any law officer has reason to believe that a family or household member has been abused or is in danger of being abused, such officer shall use all reasonable means to prevent further abuse, including: (1) remaining on the scene as long as there is immediate danger to the physical safety of such person without the presence of a law officer, including but not limited to staying in the dwelling unit for a reasonable period of time; (2) assisting such person in obtaining medical treatment necessitated by an assault, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility, any law to the contrary notwithstanding; (3) giving such person immediate and adequate notice of his or her rights; (4) arresting any person whom the officer has probable cause to believe has committed a felony; (5) arresting any person who has committed, in the officer's presence, a misdemeanor which involves abuse; (6) arresting any person whom the officer has probable cause to believe has committed a misdemeanor pursuant to section thirty-four C of chapter two hundred and eight or section seven of chapter two hundred and nine A.

The notice as required in clause (3) of section six shall consist of handing such person a copy of the following statement written in English and Spanish and reading the same to such person in English.

"You have the right to go to the superior, probate, and family, district or Boston municipal court if you reside within the appropriate jurisdiction, and file a complaint requesting any of the following applicable orders; (a) an order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household; (c) an order awarding you custody of a minor child; (d) an order directing your attacker to pay support for you or any minor child in your custody if the attacker has a legal obligation to support them; and (e) an order directing your attacker to pay you for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, attorneys fees and other out-of-pocket losses for injuries sustained."

For an emergency on weekends, holidays or weeknights, you should contact the police, who will refer you to a justice of the superior, probate and family, district or Boston municipal court departments.

"You have the right to go to the appropriate district court or the Boston municipal court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

"If you are in need of medical treatment, you have the right

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to request that the officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

"If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and your children can leave or until your safety is otherwise insured".

SECTION 5. Said chapter 209A is hereby further amended by adding the following three sections:-

Section 7. Whenever the court orders the defendant to refrain from abusing the plaintiff or orders the defendant to vacate the household under section three or four, the register or clerk-magistrate shall transmit two certified copies of each such order and one copy of the complaint and summons forthwith to the appropriate law enforcement agency which shall serve one copy of each order upon the defendant, together with a copy of the complaint and summons. Unless otherwise ordered by the court, service shall be by delivering a copy in hand to the defendant. Law enforcement officers shall use every reasonable means to enforce such orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order. The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated and shall direct the agency to destroy all record of such vacated order and such agency shall comply with such directive.

Any violation of such order shall be punishable by a fine of not more than five thousand dollars or by imprisonment for not more than two and one-half years in a house of correction or both such fine and imprisonment. Each such order issued shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Any such violation may be enforced in the superior, the district or Boston municipal court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston municipal court departments may each enforce by civil contempt procedure a violation of its own court order.

Section 8. Upon the request of the plaintiff, the court shall impound the plaintiff's address by excluding same from the complaint and from all other court documents which are available for public inspection, and shall ensure that the address is kept confidential from the defendant and defendant's attorney.

The records of cases arising out of an action brought under the provisions of this chapter where the plaintiff or defendant is a minor shall be withheld from public inspection except by order

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of the court; provided, that such records shall be open, at all reasonable times, to the inspection of the minor, said minor's parent, guardian, attorney, and to the plaintiff and the plaintiff's attorney, or any of them.

Section 9. The administrative justices of the superior court, probate and family court, district court, and the Boston municipal court departments shall jointly promulgate a form of complaint for use under this chapter which shall be in such form and language to permit a plaintiff to prepare and file such complaint pro se.

SECTION 6. Section 120 of chapter 266 of the General Laws is hereby amended by striking out the first sentence, as most recently amended by section 3 of chapter 447 of the acts of 1978, and inserting in place thereof the following sentence:- Whoever, without right enters or remains in or upon the dwelling house, buildings, boats or improved or enclosed land, wharf, or pier of another, after having been forbidden so to do by the person who has lawful control of said premises, whether directly or by notice posted thereon, or in violation of a court order pursuant to section thirty-four B of chapter two hundred and eight or section three or four of chapter two hundred and nine A, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days or both such fine and imprisonment.

SECTION 7. Section 28 of chapter 276 of the General Laws is hereby amended by striking out the first sentence, as amended by section 4 of said chapter 447, and inserting in place thereof the following sentence:- Any officer authorized to serve criminal process may arrest, without a warrant, and detain a person found in the act of stealing property in the presence of the officer regardless of the value of the property stolen and may arrest, without a warrant, and detain a person whom the officer has probable cause to believe has committed a misdemeanor by violating an order to vacate under section thirty-four B of chapter two hundred and eight or section three or four of chapter two hundred and nine A; or a temporary restraining order under section eighteen of chapter two hundred and eight or section thirty-two of chapter two hundred and nine or section three or four of chapter two hundred and nine A.

Approved December 21, 1983.

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Chap. 679.

AN ACT RELATIVE TO CERTAIN TIDE WATERS IN THE CITY OF NEW BEDFORD AND THE RIGHTS OF THE COMMONWEALTH OF MASSACHUSETTS THEREIN.