

Dennis-Yarmouth Regional High School POLICE SERVICES OFFICE

A Unit of The Yarmouth Police Department
"It's Not Just A Job, It's An Education"



www.yarmouthpolice.com/dypd

NOTICE: This is an archived item from the Dennis-Yarmouth Regional High School Police Services Office website. Keep in mind that the law changes frequently with legislative changes and each new court decision handed down at both the state and federal level. Police procedures are modified to satisfy those changes. This article may be out of date with current practices.

Archive Item Posted October 2006

Bullying, Dating & Restraining Orders In High School.

By Officer Nicholas Pasquarosa

The restraining order was introduced in Massachusetts in the mid 1980s and while the use and enforcement of these orders has become commonplace, there is still significant misunderstanding about who is eligible for an order and the proper use for this tool, particularly where teens are involved. Restraining orders issued under Massachusetts General Laws Chapter 209A can and do apply to teenagers. Teens can be either plaintiffs, a person seeking the protection of the order; or defendants, the person subject to an order's restrictions.

Massachusetts General Laws, Chapter 209A is the Family Abuse Prevention Act. This is the law from which the restraining order draws its power and authority. The guidelines for issuance and enforcement of restraining orders are laid out in the various sections of the statute.

The law was conceived primarily to protect battered spouses from physical violence. Of course the legislature understood that domestic violence was not strictly limited to married couples so it has provided for broad eligibility within a family relationship framework. Those outside the guidelines are not eligible for restraining orders under any circumstance.

A Restraining Order Is:

A restraining order is a legal document issued by a judge restricting a specific persons freedom to interact with another specific person for the purpose of preventing physical violence. In many advocacy circles obtaining a restraining order is accurately regarded as an important first step for a victim to extract herself or himself from an abusive relationship and break the cycle of violence. As a practical matter the restraining order is only a piece of paper and will itself protect no one from a fist, a knife, or a bullet but it is a powerful tool for the police to take action against those who would violate the provisions requested by the plaintiff and granted by the judge when the incidents revolve around pre-assault or intimidating behavior by the defendant. Having a restraining order in place allows police to take enforcement action in these cases.

Here is who is eligible for a restraining order.

People who:

- are or were married to one another;
- are or were residing together in the same household;
- are or were related by blood or marriage;
- having a child in common regardless of whether they have ever married or lived together; or
- are or have been in a substantive dating or engagement relationship as adjudged by a judge using the following factors;
 1. the length of time of the relationship;

2. the type of relationship;
3. the frequency of interaction between the parties; and
4. if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

Here is an idea of who is not eligible without meeting the above criteria:

- Classmates,
- Neighbors,
- Business associates,
- Former friends,
- Acquaintances,
- Someone you dated once or briefly.

Different restraining orders issued under MGL Chapter 209A:

- **Temporary Restraining Order** – Obtained in court. Issued for ten days without prior knowledge of the defendant.
- **Permanent Restraining Order** – Obtained in court. A hearing is held in which the defendant has a right to be heard. The permanent order is generally good for one year.
- **Emergency Restraining Order** – Obtained through the police on week nights, weekends and holidays. Issued without prior knowledge of the defendant. Emergency orders expire at 3 pm on the very next court day.

Only a judge can issue a restraining order. A person wishing to obtain a restraining order is required to go to court and appear before the judge to explain the circumstance of their request. Remember, the purpose of the order is to protect the plaintiff against physical violence. A judge can grant a temporary order without the defendant being present. The temporary order is issued for a period of ten days. At the end of the ten days the plaintiff must appear again and request a permanent order. A hearing is held where the defendant has a right to be present and have his or her side heard by the court. The judge has the authority to issue an order good for one year or more, or vacate (cancel) the order. In an emergency, on weeknights, weekends and holidays the police have the ability to contact a judge by phone. The judge can issue an emergency order, which expires at the end of the next court day. The person obtaining the order must then appear in court before the judge and request the temporary order. This must be done before the end of the very next court day or the emergency restraining order will expire.

Stay Away Orders

Judges frequently issue “stay-away” orders during criminal proceedings to keep the defendant away from the victim or witnesses. The stay-away order is often confused with a restraining order and the differences between the two are significant. A judge can issue a stay-away order to anyone at anytime during the proceeding. The police cannot enforce a stay-away order. Violations of restraining orders issued under Chapter 209A are arrestable based upon probable cause that a violation has been committed. In fact, arrest by a police officer is required in most cases. It is a judge that must take enforcement action for a violation of a stay-away order. No police enforcement action is possible for violation of a stay-away order. Other enforcement actions may be possible depending upon the actions of the defendant. If you are involved in a criminal court action and are confused about whether you have a stay-away order or a restraining order, here is the best way to tell: copies of the restraining order are always provided to the involved parties to keep, whereas the stay-away comes with no paperwork.

Bullying, Harassment & Restraining Orders

Many families are surprised to find out that they cannot obtain a restraining order for their child when trying to address harassment or bullying issues in a school setting. Remember the context in which the law was conceived; to stop and prevent family based physical violence. Any change to include other categories such as classmates requires the legislature to alter the statute. School administrators are the best first step in handling bullying and harassment in the school setting. The options available to a principal or an assistant principal to address these kinds of problems

can be far ranging and do not exclude criminal process should that be the best course of action. Generally, a progressive approach will yield the best conclusion. A measured response for those problems that are based on misunderstanding, lack of maturity, or inexperience in interpersonal relations will solve most low-yield problems quickly and without overreaction. Issues based upon more malicious motivation will be accurately identified and more definitive measures including criminal prosecution can be brought to bear.

High School Dating and Restraining Orders

Restraining orders can be applied to high school dating relationships and are not to be entered into lightly. The relationship must be determined to be “substantive” under the law to meet the criteria for eligibility. Causal dating will not trigger the provisions of Chapter 209A. When the order is issued the defendant can be excluded from the school premises even if he or she is a student. The law does not require the school district to provide alternatives. This can obviously have a profound effect on the defendant’s education. In past cases the court has, at the request of both parties and their parents, issued what amounted to ‘*dueling-restraining*’ orders. The provisions of these particular orders did not exclude either person from attending the same high school. Unfortunately, immaturity and an unwillingness or inability to avoid interaction lead to a violation of the order. While the plaintiffs regarded this as some sort of game the police did not and enforced the order and an arrest was made. It was an arrest that the parents did not want or support but was nonetheless required by statute and the terms of the orders they had sought. There are certainly examples in high school dating relationships where obtaining a restraining order is an appropriate and necessary measure. It is a step to be taken with all due consideration.

Police have virtually no discretion in the case where a restraining order has been violated or where an assault of a person covered under the provisions of Chapter 209A has been committed. Arrest is either the preferred or required response by law. By law, the wishes of the victim have been removed as a consideration in determining whether or not police make an arrest.

If you have any questions about the subject matter in this article please contact one of the following agencies:

- D-Y Police Services Office, (508) 398-7653,
- The Victim Witness Division of the Cape & Islands District Attorney’s Office, (508) 362-8103,
- Independence House 1-800-439-6507,
- or your local police department.