Paul C. Dawley
Chief Justice

Trial Court of the Commonwealth
District Court Department

Administrative Office
Edward W. Brooke Courthouse
24 New Chardon Street – 1st Floor
Boston, MA 02114-4703

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M E M O R A N D U M

TO: District Court Judges, Clerk-Magistrates, and Chief Probation Officers
FROM: Hon. Paul C. Dawley, Chief Justice
DATE: August 9, 2014
SUBJECT: **An Act Relative to Domestic Violence**

On Friday, August 8, 2014 at 10:45 a.m., the Governor signed an Act Relative to Domestic Violence. This memorandum provides an overview of the provisions of the new law that most impact the District Court. Except for the provisions relating to the training requirements and the fatality review teams, the law took effect immediately upon the Governor's signing. The text of the statute is attached. In addition, attached are (1) an interim form to be used to make new required findings concerning whether domestic abuse is alleged; (2) a new form for recording findings when determining that conditions are unnecessary after a dangerousness hearing; and (3) charging language for the newly established crimes of Domestic Assault or Assault and Battery and Strangulation.

I. OUT-OF-COURT BAIL DETERMINATIONS

A. No out-of-court bail on domestic violence cases for six hours. The law prohibits the out-of-court release of a defendant arrested for any criminal act constituting domestic abuse[1] until six hours after the time of arrest.[2] Judges continue to have the authority to set bail in open court during these six hours. G.L. c. 276, § 42A, § 57, § 58 (as amended by Act §§ 28, 31-32).

[1] This memorandum uses the phrase,"criminal act constituting domestic abuse" to characterize what the bill describes as "any act that would constitute abuse, as defined in section 1 of said chapter 209A, or a violation of section 13M [domestic assault or assault and battery] or 15D [strangulation] of chapter 265."

[2] The new legislation does not change existing law that prohibits clerks, assistant clerks, bail commissioners, and masters in chancery from releasing out-of-court any defendant charged with violating a restraining order. *See* G.L. c. 276, § 57.

B. Out-of-court bail may include conditions. In cases alleging a criminal act constituting domestic abuse, the clerk, assistant clerk, or other person authorized to take bail may impose conditions on a person's release in order to ensure the appearance of the person before the court, and the safety of the alleged victim, any other individual, or the community. The clerk, bail commissioner, or other person authorized to take bail shall take into consideration the following factors in setting conditions of release: the nature and circumstances of the offense charged, the potential penalty the person faces, the person's family ties, employment record and history of mental illness, the person's reputation, the risk that the person will obstruct or attempt to obstruct justice or threaten, injure or intimidate or attempt to threaten, injure or intimidate a prospective witness or juror, the person's record of convictions, any illegal drug distribution or present drug dependency, whether the person is on bail pending adjudication of a prior charge, whether the acts alleged involve domestic abuse, violation of a temporary or permanent restraining order, any history of restraining orders, whether the person is on probation, parole or other release pending completion of sentence for any conviction, and whether the person is on release pending sentence or appeal for any conviction. G.L. c. 276, § 42A, § 57, § 58 (as amended by Act §§ 28, 31-32). Clerks, bail commissioners, and other persons authorized to take bail should consider carefully the necessity of conditions to ensure safety in all domestic violence cases.

C. Information available to persons authorized to take bail. The law mandates that, in imposing conditions of release in cases alleging a criminal act constituting domestic abuse, the person authorized to take bail shall have immediate access to all criminal offender record information, board of probation records, and pending and prior police incident reports related to the person detained, upon oral, telephonic, facsimile or electronic mail request "to the extent practicable." G.L. c. 276, § 42A, § 57, § 58 (as amended by Act §§ 28, 31-32). The law contemplates that law enforcement will be available to take requests for such information and will provide it to those making bail determinations promptly. Clerks, bail commissioners, and other persons authorized to take bail are expected to obtain as much information as possible in domestic violence cases prior to making a bail determination out-of-court.

D. Information provided to defendant. The person admitting the defendant charged with a criminal act constituting domestic abuse to bail is required to provide the defendant with informational resources regarding domestic violence, including a list of nearby certified batterer's intervention programs. G.L. c. 276, § 42A, § 57, § 58 (as amended by Act §§ 28, 31-32). The legislation also establishes a committee to develop and implement a program for the dissemination of these informational resources (Act § 41). These informational resources will be provided to the courts and bail magistrates as soon as they become available.

II. ARRAIGNMENT

A. Timing of arraignment. For charges of violating a restraining order,[3] domestic assault or assault and battery (G.L. c. 265, § 13M), or strangulation (G.L. c. 265, § 15D), the Commonwealth is the only party that may move for arraignment in the first three hours after the criminal complaint is signed. G.L. c. 276, § 42A, § 57, § 58 (as amended by Act §§ 28, 31-32). Accordingly, clerks issuing complaints in such cases should note the time that the complaint is signed by the clerk, so that the three-hour window can be calculated. Although the law does not specifically prohibit the court from holding an arraignment on its own order, judges should adhere to the intent of the law and not make bail determinations in this limited class of cases in the first three hours after the complaint issues, absent agreement from the Commonwealth.

B. Written findings of domestic abuse allegation. The law creates a new requirement that, before a judge releases, discharges, or admits to bail any person arrested and charged with a crime against the person or property of another, the judicial officer must inquire of the Commonwealth whether domestic abuse (as defined by G.L. c. 209A, § 1) "is alleged to have occurred immediately prior to or in conjunction with the crime for which the person was arrested and charged." If so, the Commonwealth is required to file a "preliminary written statement" to this effect. The judicial officer then determines whether such domestic abuse is, in fact, alleged. If so, the judicial officer makes a written ruling that abuse is alleged. This finding will be used only for entry into the statewide domestic violence record keeping system. It will not be admissible in that case or available to the public. G.L. c. 276, § 56A (as inserted by Act § 30). This procedure should be used in all arraignments of victim crimes. An interim form for this finding is attached, to be used until a final form can be promulgated. Because both the Commonwealth's preliminary written statement and the judicial officer's finding should be conveyed to the statewide domestic violence record keeping system, it will simplify matters greatly if these two writings are combined on one form. To expedite arraignments, the clerk should provide blanks forms to the prosecutor to be filled out for each victim case prior to the judge's taking the bench. After the prosecutor fills out the top half of this form, the judicial officer should complete the bottom half. The determination should be noted on the docket, and the form should be provided to the probation officer in the courtroom for appropriate filing when the statewide domestic violence record keeping system is prepared to accept the forms.

The law also requires that this finding be removed by the court from the statewide domestic violence record keeping system upon an acquittal, no bill, or finding of no probable cause. A dismissal for any other reason does not result in the removal of the finding. G.L. c. 276, § 56A (as inserted by Act § 30).

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[3] This memorandum uses the phrase, "violation of a restraining order" to characterize what the law describes as a "violation of an order issued pursuant to sections 18 or 34B of chapter 208, section 32 of chapter 209, sections 3, 4 or 5 of chapter 209A, or section 15 or 20 of chapter 209C."

C. Information available for in-court bail determinations. The law mandates that, in imposing conditions of release in cases alleging a violation of a restraining order or criminal act constituting domestic abuse, the court shall have immediate access to all criminal offender record information, board of probation records, and pending and prior police incident reports related to the person detained, upon oral, telephonic, facsimile or electronic mail request "to the extent practicable." G.L. c. 276, § 42A, § 57, § 58 (as amended by Act §§ 28, 31-32). The law contemplates that law enforcement will be available to take requests for such information and will provide it to those making bail determinations promptly.

D. Conditions to ensure the safety of the victim, others, or the community. The person admitting to bail the defendant charged with a violation of a restraining order or criminal act constituting domestic abuse may impose conditions on the defendant's release to ensure, not only the defendant's appearance before the court, but also the safety of the alleged victim, any other individual, or the community. G.L. c. 276, § 42A, § 57, § 58 (as amended by Act §§ 28, 31-32). The person authorized to take bail in court shall take into consideration the same factors as do persons authorized to take bail out-of court. G.L. c. 276, § 42A, § 57, § 58 (as amended by §§ 31, 34-35). The law thereby expands the purpose of conditions of release under G.L. c. 276, § 42A, which previously allowed only for conditions to ensure the safety of the victim, but not other individuals (such as witnesses) or the community. The law also expands the purpose of conditions of release under G.L. c. 276, § 58, but only when the defendant is charged with a violation of a restraining order or criminal act constituting domestic abuse. General Law c. 276, § 58 continues to allow, in all cases, for restrictions on personal associations or conduct including, but not limited to, avoiding all contact with an alleged victim and any potential witnesses who may testify.

E. Information provided to defendant. The person admitting the defendant charged with a violation of a restraining order or criminal act constituting domestic abuse to bail is required to provide the defendant with informational resources regarding domestic violence, including a list of nearby certified batterer's intervention programs. G.L. c. 276, § 42A, § 57, § 58 (as amended by Act §§ 28, 31-32). As discussed above, these informational resources will be distributed to the courts as soon as they become available from the committee formed by this legislation to create them.

F. Cash bail under G.L. c. 276, § 42A. The law allows for not only conditions, but also a cash bail, to be set under G.L. c. 276, § 42A (as amended by Act § 27).

III. DANGEROUSNESS HEARINGS

A. Findings required in all G.L. c. 276, § 58A hearings. After a dangerousness hearing, the judge is required to make written findings on the statutory factors in all cases, not just (as in current practice) where the judge finds that dangerousness requires detention or conditions. These findings are then entered into the statewide domestic violence record keeping system. G.L. c. 276, § 58A(5) (as amended by Act § 37). Judges should make such findings with an understanding that those findings will be examined in future proceedings by other judges involving this defendant. An interim form for that purpose is attached to this transmittal for use until a final form can be promulgated. This form may be

used for all dangerousness hearings and allows the judge to select release on personal recognizance, release on conditions, or detention.

B. Good faith basis for a defendant to summons the victim to a dangerousness hearing. A defendant must demonstrate a good faith basis, prior to summonsing an alleged victim or victim's family member into court for a G.L. c. 276, § 58A hearing, for a "reasonable belief" that the testimony from the witness will support a conclusion for conditions of release. G.L. c. 276, § 58A(4) (as amended by Act § 34). The form and procedure for this showing is left to the court's discretion. Defendants must make a motion orally or in writing to the court prior to summonsing a victim or a victim's family member. It is anticipated that the showing of materality and relevance will be made by attorney proffer, but the court retains the discretion to allow or require that showing be made by other methods in an appropriate case.

C. Consideration of hearsay at dangerousness hearing. A judge is required to consider hearsay contained in a police report or a victim or witness statement at the G.L. c. 276, § 58A hearing. G.L. c. 276, § 58A(4) (as amended by Act § 35). The admission of hearsay was allowed but not required under the previous version of G.L. c. 276, § 58A(4) ("The rules concerning admissibility of evidence in criminal trials shall not apply . . . ."). Now, judges must admit hearsay evidence and may not require live testimony by the victim or any witness as a prerequisite to finding dangerousness.

D. Dangerousness detention for 120 days. The law expands the potential duration of pre-trial detention under G.L. c. 276, § 58A from 90 days to 120 days in any case. G.L. c. 276, § 58A(3) (as amended by Act § 33). The law allows for a 120-day detention based on one dangerousness hearing, but the Commonwealth remains permitted to move for additional detention time based on good cause, and Massachusetts Rule of Criminal Procedure 36(b)(2) excluded time calculations are not counted within the 120 days. As the old Order of Pretrial Detention on Finding of Dangerousness form currently reflects 90-day detentions, judges should remember to correct this to 120 days when issuing a detention order using the old form.

E. 90-day revocation for violation of G.L. c. 276, § 42A or pretrial probation release. The law makes explicit that a bail release under G.L. c. 276, § 42A or § 87 (pretrial probation), in addition to under G.L. c. 276, § 58 and § 58A, is subject to 90-day revocation under G.L. c. 276, § 58B (as amended by Act § 39). This codifies the decision of the Supreme Judicial Court in *Jake J. v. Commonwealth*, 433 Mass. 70, 77-78 (2000), which determined that the court has an inherent authority to revoke bail, and therefore defendants released pursuant to conditions under G.L. c. 276, §§ 42A and 87 were subject to bail revocation under G.L. c. 276, § 58B despite the absence of an explicit statutory enforcement mechanism. The bail warnings administered to defendants should be changed from a 60-day period of possible revocation to a 90-day period.

F. Reopening a dangerousness hearing upon a change of circumstances. A dangerousness hearing may be reopened, on motion of either party or the court, if there has been a change of circumstances that has a material bearing on whether there are conditions of release that will reasonably assure the safety of any person or the community. G.L. c. 276, § 58A(4) (as amended by Act

§ 36). The law retains the old provision for reopening the hearing to consider information not known at the time of the initial hearing. G.L. c. 276, § 58A(4).

G. Additional statewide record keeping requirements. Whenever a judge finds dangerousness to detain or impose conditions, the clerk must notify the probation officer, who places the order of detention or conditions in both the statewide domestic violence record keeping system and in the defendant's CORI record. G.L. c. 276, § 58A(8) (as inserted by Act § 38). Where a judge finds no dangerousness, the judge's findings will be placed in the statewide domestic violence record keeping system, but not in the defendant's CORI record. In either event, the clerk should ensure that a probation officer is provided with a copy of the judge's written findings pursuant to G.L. c. 276, § 58A. As mentioned above, an interim form for making findings when determining that the defendant is not a danger is attached for use until a final form can be promulgated.

IV. DOMESTIC VIOLENCE ACCORD AND SATISFACTION PROHIBITED

The law prohibits accord and satisfaction, under G.L. c. 276, § 55, in all cases alleging violations of a restraining order or a criminal act constituting domestic abuse. G.L. c. 276, § 55 (as amended by § 32).

V. RECORD KEEPING AND INFORMATION SHARING

A. Dangerousness hearings in CORI. The law expands the definition of "criminal offender record information" to include dangerousness hearings, requests for such hearings, and any findings or orders. G.L. c. 6, § 167 (as amended by Act §§ 2-3). This will require Probation and the Department of Criminal Justice Information Services to make this information available to criminal justice agencies, including the courts, G.L. c. 6, § 172(a)(1), and to certain employers, G.L. c. 6, § 172(a)(8), § 172C, § 172E, § 172G, § 172H, § 172I, § 172J; G.L. c. 71, § 38R. Employers, however, will not receive information about dangerousness hearings unless they are permitted to obtain information about the underlying crimes. Act § 48.

B. Rules to standardize information dissemination. The court administrator is directed to adopt rules and regulations designed to standardize the information available to courts, prosecutors, and defense counsel, which must include dangerousness hearings, restraining orders, domestic crimes, bail findings, and incarceration records. Act § 40.

C. Expanded confidentiality in reports of domestic abuse. The law expands the confidentiality of police records of rape and sexual assaults, G.L. c. 41, § 97D, to include all reports of domestic violence. Unlike the old statute, the new statute includes specific authorization for victims, prosecutors, counselors, and law enforcement officers to obtain the records. G.L. c. 41, § 97D (as amended by Act § 7). The law also specifically excludes these reports (as well as rape and sexual assault reports) from the police daily log. G.L. c. 41, § 98F (as amended by Act § 8). Unlike with sexual assault crimes governed by G.L. c. 265, § 24C, the law does not extend the confidentiality of police reports in domestic violence cases once those reports are filed in court. In the event a party seeks

impoundment of the reports, clerks should not disseminate the reports until the issue has been decided by a judge.

D. Domestic violence statistics. The law requires the Executive Office of Public Safety and Security to create a report on domestic violence statistics by June 30, 2015. Act § 49.

VI. NEW CRIMES AND JURISDICTION

A. Domestic Assault or Assault and Battery. The law creates a new crime, G.L. c. 265, § 13M, of domestic assault or assault and battery. The victim must be a family or household member, but the term is defined differently than in G.L. c. 209A, § 1. Aimed at intimate partner violence, this new crime requires current or former marriage, a child in common, or a "substantive dating relationship," to be determined by the trier of fact in accordance with the factors in G.L. c. 209A, § 1. The punishment is up to 2½ years in a house of correction and/or a fine up to $5000. This is the exact same penalty as assault or assault and battery under G.L. c. 265, § 13A(a), except the fine is higher.

The law also creates an aggravated penalty for a second offense, with up to 5 years in state prison or up to 2½ years in a house of correction. No fine is provided.

The court must order the defendant to complete a certified batterer's intervention program for all convictions and CWOFs under the new law, absent specific written findings supporting good cause to omit the requirement. G.L. c. 265, § 13M (as amended by Act § 23). Charging language for this new crime is attached.

B. Strangulation. The law creates a new crime of strangulation, G.L. c. 265, § 15D. The penalty is up to 5 years in state prison or to up to 2½ years in a house of correction and/or a fine up to $5000.

The law creates an aggravated version, adopting verbatim the aggravators from G.L. c. 265, § 13A(b) (aggravated assault and battery) and adds as an aggravator a prior offense of strangulation under any state or federal law. The penalty for the aggravated version is up to 10 years in state prison or up to 2½ years in a house of correction and a fine up to $10,000. Despite the penalty, the aggravated crime will remain within the jurisdiction of the District Court, pursuant to Act § 19.

The court must order the defendant to complete a certified batterer's intervention programs for all convictions and CWOFs under the new law, absent specific written findings supporting good cause to omit the requirement. G.L. c. 265, § 15D (as inserted by Act § 24). Charging language for this new crime is attached.

C. District Court jurisdiction over kidnapping and strangulation. The law grants the District Courts concurrent jurisdiction over the crime of kidnapping (G.L. c. 265, § 26) and the new crime of strangulation (G.L. c. 265, § 15D). G.L. c. 218, § 26 (as amended by Act § 19). Most forms of kidnapping have house of correction penalties, but not kidnapping for ransom, G.L. c. 265, § 26, ¶¶ 1-2, kidnapping combined with sexual assault, G.L. c. 265, § 26, ¶ 3, or kidnapping of a child under sixteen

years old, G.L. c. 265, § 26, ¶ 4. These versions of kidnapping, therefore, remain outside District Court jurisdiction.

VII. FEE INCREASES

A. Domestic violence prevention assessment. The law adds a mandatory domestic violence prevention assessment of $50 for convictions of violating a restraining order, the new crimes of domestic assault or assault and battery, G.L. c. 265, § 13M, and strangulation, G.L. c. 265, § 15D, or any act "which would constitute abuse" under G.L. c. 209A, § 1. G.L. c. 258B, § 8 (as amended by Act § 20). Like a victim witness fee, the new assessment receives priority. G.L. c. 258B, § 8 (as amended by § 22). These fees will be deposited in the Domestic and Sexual Violence Prevention and Victim Assistance Fund. That fund will be controlled by the Department of Public Health and will fund grants for innovative domestic violence prevention programs. G.L. c. 17, § 20 (as inserted by Act § 6).

B. Waiver of victim witness fees and domestic violence prevention assessments. The court still may waive the victim witness fee (and the new domestic violence prevention assessment) upon a written finding of "severe financial hardship." The law now permits the judge, after the required written finding, instead to structure a payment plan. In the case of the domestic violence prevention assessment, the judge may impose community service of at least eight hours, if even a structured payment plan would impose a "severe financial hardship." G.L. c. 258B, § 8 (as amended by Act § 20).

VIII. CERTIFIED BATTERER'S INTERVENTION PROGRAMS

A. CBIP as a mandatory condition of probation in violation of abuse prevention order CWOFs. The law expands the current requirement of making a certified batterer's intervention program a condition of probation for a conviction for violating an abuse prevention order (absent written findings) to CWOFs. G.L. c. 209A, § 7 (as amended by Act § 14).

B. CBIP as a mandatory condition of probation in new domestic violence offenses. The law requires that a certified batterer's intervention program be ordered when a defendant is convicted or receives a continuation without a finding for the crimes of domestic assault or assault and battery, G.L. c. 265, § 13M (as amended by Act § 23), and strangulation, G.L. c. 265, § 15D (as inserted by Act § 24). If the court declines to order a certified batterer's intervention program upon conviction or continuation without a finding for these crimes, it must be upon good cause shown and the court must issue specific written findings describing the reasons that the batterer's intervention program should not be ordered.

IX. CUSTODY AND SUPPORT ORDERS

In instances where there is a pending matter in Probate and Family Court that includes an order for custody or support, District Courts are now allowed to include "orders for custody or support" in an abuse prevention order. G.L. c. 209A, § 3 (as amended by Act § 12). Such custody or support provisions in an abuse prevention order are for a fixed period time, no more than thirty days. The issuing court must notify the relevant Probate and Family Court division, which would then have the

power to modify those orders at will. G.L. c. 209A, § 3 (as amended by Act § 13). If the plaintiff failed to report the Probate and Family Court proceeding on the complaint, but the existence of the proceeding is revealed at the hearing, the judge should advise the clerk to make the proper notification. The standard form, Complaint for Protection from Abuse, currently states in three places (page 1, request 6; page 2, line C; page 2, line F), in bold letters, that the plaintiff may not obtain this form of relief. Accordingly, clerks and judges should take care to correct this outdated information for all abuse prevention plaintiffs.

X. TRAINING REQUIREMENTS

A. Trial Court training. The Chief Justice of the Trial Court is required to provide biannual domestic violence and sexual violence training to (without limitation) judges, clerks, probation officers, court officers, and guardians *ad litem*. The training involves (1) common domestic and sexual violence offenses; (2) rights and remedies available to victims; (3) methods for assessing risk of domestic homicide; (4) law enforcement techniques, including information sharing and keeping victims informed of the whereabouts of suspected abusers; (5) physiological and psychological effects of domestic and sexual abuse on victims and witnesses; (6) increased vulnerability of gay, lesbian, bisexual, transgender, low-income, minority, and immigrant victims; (7) dynamics of coercive controlling behavior; (8) underlying causes of domestic and sexual abuse and availability of batterer's intervention programs; (9) availability of shelters and support services; and (10) techniques for cooperation and data sharing. G.L. c. 211B, § 9A (as inserted by Act § 18). The new training requirements take effect on July 1, 2015 (Act § 50).

B. Police training. The law expands the training of new police officers on domestic and sexual violence. G.L. c. 6, § 116A (as amended by Act § 1). The new training requirements take effect on July 1, 2015 (Act § 50).

C. Prosecutor training. The MDAA is required to provide biannual training to prosecutors similar to the training now required for court personnel. G.L. c. 12, § 33 (as inserted by Act § 5). The new training requirements take effect on July 1, 2015 (Act § 50).

D. Professional licensure training. The law requires the various licensing boards for medicine, nursing, physician assistants, nursing home administrators, social workers, psychologists, and mental health professionals to require domestic violence and sexual violence training for licensure. G.L. c. 112, § 264 (as inserted by Act § 9). The new training requirements take effect on July 1, 2015 (Act § 50).

E. School curriculum. The law directs the Department of Elementary and Secondary Education to develop and produce health curriculum and educational materials on domestic violence, teen dating violence, and healthy relationships to be distributed annually to students in grades nine through twelve. Act § 42.

XI. INFORMATION ON RESOURCES

A. Information to G.L. c. 209A defendants. The law requires police officers serving an abuse prevention order to inform the defendant of the terms of the order, the penalties for violating it, and availability of resources such as certified batterer's invention programs, substance abuse counseling, and financial counseling or informational resources. G.L. c. 209A, § 7 (as amended by Act § 14).

B. Information to criminal defendants. The law requires that defendants charged with violations of restraining orders or a criminal act constituting domestic abuse be provided with "informational resources related to domestic violence," including lists of certified batterer's intervention programs, when released upon bail. G.L. c. 276, § 42A, § 57, § 58 (as amended by Act §§ 28, 31-32). As discussed above, these informational resources will be distributed to the courts as soon as they become available from the committee formed by the legislation to create them.

C. Program for disseminating information on resources. The law directs the Administrative Office of the Trial Court, in conjunction with the Commissioner of Probation, the Office for Victim Assistance, the colonel of the State Police, Jane Doe, Inc., and local community-based domestic violence, rape, and sexual assault service providers selected by Jane Doe, Inc. to work together to develop and implement a program for disseminating information on domestic violence and sexual violence prevention to victims, plaintiffs, and defendants subject to protective orders, and defendants charged with crimes of domestic violence. Act § 41.

XII. CREATION OF DOMESTIC FATALITY REVIEW TEAMS

The law creates domestic violence fatality review teams, similar to the child fatality review teams established in G.L. c. 38, § 2A.

A. Statewide Domestic Fatality Review Team. First, the law establishes a statewide team. Unlike the statewide child fatality review team, which is housed in the Office of the Chief Medical Examiner, G.L. c. 38, § 2A(b), this team is housed in the Executive Office of Public Safety and Security. The Commissioner of Probation is required to designate a member, and the Chief Justice of the Trial Court and the Chief Justice of the Family and Probate Court each is required to designate a member. Its purpose is to formulate policy recommendations to decrease domestic homicides. Unlike the child fatality review team, the Statewide Domestic Fatality Review Team will be required to assign at least three randomly-selected fatalities per year to local review teams for investigation and report. Those fatalities, however, need to be approved by a majority vote and all criminal proceedings (including appeals) must be exhausted.

B. Eleven Local Domestic Fatality Review Teams. Next, the law creates eleven local review teams, each headed by a district attorney. Each includes a probation officer. The purposes are to collect information, promote coordination, and advise the state team. They review individual fatalities. Like the child fatality review teams, G.L. c. 38, § 2A(c)(second ii), they are entitled to probation records upon request. They are entitled to various other forms of information, but must use Superior Court process to enforce their subpoenas.

C. Subpoena Power. Also unlike the child fatality review teams, both the state and local teams have broad power to subpoena witnesses and documents in investigating any domestic homicide. G.L. c. 6A, § 18M (as inserted by Act § 4). These provisions are effective January 1, 2015 (Act § 51).

XIII. RESTRICTED VISITATION FOR PARENTS CONVICTED OF RAPE

The Probate and Family Court is prohibited from ordering visitation of a child with a parent who was convicted of rape resulting in the conception of the child, unless the child assents, is old enough to assent, and visitation is in the child's interests. There is an exception for statutory rape cases in the best interests of the child or with the consent of the now-adult victim. G.L. c. 209C, § 3(a), § 10(e) (as amended by Act §§ 16-17). The District Court has no jurisdiction of custody or visitation matters pursuant to these new provisions of G.L. c. 209C, § 3.

XIV. VICTIM NOTIFICATION AND ASSISTANCE REQUIREMENTS

A. Notification to the victim in criminal cases. The law directs that a "reasonable attempt" be made to notify the victim if a defendant charged with a violation of a restraining order or a criminal act constituting domestic abuse is released on bail. The law specifies that, if the defendant is released on bail from the place of detention, reasonable attempts at notice must be made by the arresting police department. If the defendant is released on bail by order of a court, a reasonable attempt at notice shall be made by the district attorney. G.L. c. 276, § 42A, § 57, § 58 (as amended by Act §§ 28, 31-32).

B. Special commission on housing and shelter. The law creates a special commission, chaired by the Executive Director of the Office of Victim Assistance, to study housing and shelter options available to domestic violence victims to report by June 30, 2015. Act § 47.

XV. NEW REQUIREMENTS ON EMPLOYERS

The law creates G.L. c. 149, § 52E, which requires employers of fifty or more employees (including the Trial Court) to provide up to fifteen days of leave in any twelve-month period if the employee, or a family member of the employee, is a victim of abusive behavior and is using the leave to seek or obtain a variety of medical, community and legal services relating to the abusive behavior, including appearing in court or addressing "other issues" directly related to the abusive behavior. Abusive behavior extends beyond domestic violence to stalking, sexual assault, and kidnapping. Employers may require employees to provide documentation evincing the employee is a victim of abusive behavior, including a document on court letterhead. The employer has the sole discretion to determine whether any leave taken under this section shall be paid or unpaid. The Attorney General will enforce this section and may seek injunctive relief or other equitable relief. Any benefit received from this section "shall not be considered relevant in any criminal or civil proceeding" as it relates to the alleged abuse unless, after a hearing, the judge determines that such benefit is relevant to the allegations. G.L. c. 149, § 52E (as inserted by Act § 10).

If you have any questions regarding the implementation of this legislation, please do not hesitate to contact General Counsel Joseph M. Ditkoff and Deputy General Counsel Sarah W. Ellis at the

Administrative Office of the District Court. Judge Marianne C. Hinkle, Chair of the Trial Court Committee on Domestic Violence, is also available to answer any questions regarding this legislation.