

2018 -- H 7167

=====  
LC003412  
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

—————  
A N A C T

RELATING TO DOMESTIC RELATIONS -- DOMESTIC ABUSE PREVENTION

Introduced By: Representatives O'Brien, Solomon, McEntee, Serpa, and Marshall

Date Introduced: January 12, 2018

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 15-15-3 of the General Laws in Chapter 15-15 entitled "Domestic  
2 Abuse Prevention" is hereby amended to read as follows:

3 **15-15-3. Protective orders -- Penalty -- Jurisdiction.**

4 (a) A person, or a parent, custodian, or legal guardian on behalf of a minor child or the  
5 director of the department of children, youth and families ("DCYF") or its designee for a child in  
6 the custody of DCYF, pursuant to §§ 40-11-7 and 40-11-7.1, suffering from domestic abuse or  
7 sexual exploitation as defined in § 15-15-1, may file a complaint in the family court requesting  
8 any order that will protect and support her or him from abuse or sexual exploitation, including,  
9 but not limited to, the following:

10 (1) Ordering that the defendant be restrained and enjoined from contacting, assaulting,  
11 molesting, sexually exploiting, or interfering with the plaintiff at home, on the street, or  
12 elsewhere, whether the defendant is an adult or a minor;

13 (2) Ordering the defendant to vacate the household immediately, and further providing in  
14 the order for the safety and welfare of all household animals and pets;

15 (3) Awarding the plaintiff custody of the minor children of the parties, if any;

16 (4) Ordering the defendant to surrender physical possession of all firearms in his or her  
17 possession, care, custody, or control and shall further order a person restrained not to purchase or  
18 receive, or attempt to purchase or receive, any firearms while the protective order is in effect. The  
19 defendant shall surrender said firearms within twenty-four (24) hours of notice of the protective

1 order to the Rhode Island state police or local police department or to a federally licensed  
2 firearms dealer.

3 (i) A person ordered to surrender possession of any firearm(s) pursuant to this section  
4 shall, within seventy-two (72) hours after being served with the order, either:

5 (A) File with the court a receipt showing the firearm(s) was physically surrendered to the  
6 Rhode Island state police or local police department, or to a federally licensed firearms dealer; or

7 (B) Attest to the court that, at the time of the order, the person had no firearms in his or  
8 her immediate physical possession or control, or subject to their immediate physical possession or  
9 control, and that the person, at the time of the attestation, has no firearms in their immediate  
10 physical possession or control, or subject to their immediate physical possession or control.

11 (ii) If a person restrained under this section transfers a firearm(s) to a federally licensed  
12 firearms dealer pursuant to this section, the person restrained under this section may instruct the  
13 federally licensed firearms dealer to sell the firearm(s) or to transfer ownership, in accordance  
14 with state and federal law, to a qualified named individual who is not a member of the person's  
15 dwelling house, who is not related to the person by blood, marriage, or relationship as defined by  
16 § 15-15-1(7), and who is not prohibited from possessing firearms under state or federal law. The  
17 owner of any firearm(s) sold shall receive any financial value received from its sale, less the cost  
18 associated with taking possession of, storing, and transferring of the firearm(s).

19 (iii) Every individual to whom ownership of a firearm(s) is transferred pursuant to this  
20 subsection shall be prohibited from transferring or returning any firearm(s) to the person  
21 restrained under this section while the protective order remains in effect and shall be informed of  
22 this prohibition, Any knowing violation of this subsection is a felony that shall be punishable by a  
23 fine of not more than one thousand dollars (\$1,000), or by imprisonment for a term of not less  
24 than one year and not more than five (5) years, or both.

25 (iv) An individual to whom ownership of a firearm(s) is transferred pursuant to this  
26 subsection shall return a firearm(s) to the person formerly restrained under this section only if the  
27 person formerly restrained under this section provides documentation issued by a court indicating  
28 that the restraining order issued pursuant to this section that prohibited the person from  
29 purchasing, carrying, transporting, or possessing firearms has expired and has not been extended;

30 (5) After notice to the respondent and a hearing, ordering either party to make payments  
31 for the support of a minor child or children of the parties as required by law for a period not to  
32 exceed ninety (90) days, unless the child support order is for a child or children receiving public  
33 assistance pursuant to chapter 5.1 of title 40. In these cases, legal counsel for the division of  
34 taxation, child support enforcement, shall be notified as a party in interest to appear for the

1 purpose of establishing a child support order under a new or existing docket number previously  
2 assigned to the parties and not under the protective docket number. The child support order shall  
3 remain in effect until the court modifies or suspends the order.

4 (b) After notice to the respondent and a hearing, which shall be held within fifteen (15)  
5 days of surrendering said firearms, the court, in addition to any other restrictions, may, for any  
6 protective order issued after or renewed on or after July 1, 2017, continue the order of surrender,  
7 and shall further order a person restrained under this section not to purchase or receive, or attempt  
8 to purchase or receive, any firearms while the protective order is in effect.

9 (c) The Family Court shall provide a notice on all forms requesting a protective order that  
10 a person restrained under this section shall be ordered pursuant to § 11-47-5 to surrender  
11 possession of any firearms while the protective order is in effect. The form shall further provide  
12 that any person who has surrendered his or her firearms shall be afforded a hearing within fifteen  
13 (15) days of surrendering his or her firearms.

14 (d) Any firearm surrendered in accordance with this section to the Rhode Island state  
15 police or local police department shall be returned to the person formerly restrained under this  
16 section upon his or her request when:

17 (1) The person formerly restrained under this section produces documentation issued by a  
18 court indicating that the restraining order issued pursuant to this section that prohibited the person  
19 from purchasing, carrying, transporting, or possessing firearms has expired and has not been  
20 extended; and

21 (2) The law enforcement agency in possession of the firearms determined that the person  
22 formerly restrained under this section is not otherwise prohibited from possessing a firearm under  
23 state or federal law.

24 (3) The person required to surrender their firearms pursuant to this section shall not be  
25 responsible for any costs of storage of any firearms surrendered pursuant to this section.

26 (e) The Rhode Island state police are authorized to develop rules and procedures  
27 pertaining to the storage and return of firearms surrendered to the Rhode Island state police or  
28 local police departments pursuant to this section. The Rhode Island state police may consult with  
29 the Rhode Island Police Chiefs' Association in developing rules and procedures.

30 (f) Nothing in this section shall be construed to limit, expand, or in any way modify  
31 orders issued under § 12-29-7 or § 15-5-19.

32 (g) Nothing in this section shall limit a defendant's right under existing law to petition the  
33 court at a later date for modification of the order.

34 (h) The court shall immediately notify the person suffering from domestic abuse whose

1 complaint gave rise to the protective order, and the law enforcement agency where the person  
2 restrained under this section resides, of the hearing.

3 (i) The person suffering from domestic abuse, local law enforcement, and the person  
4 restrained under this section shall all have an opportunity to be present and to testify when the  
5 court considers the petition.

6 (j) At the hearing, the person restrained under this section shall have the burden of  
7 showing, by clear and convincing evidence, that, if his or her firearm rights were restored, he or  
8 she would not pose a danger to the person suffering from domestic abuse or to any other person.

9 (1) In determining whether to restore a person's firearm rights, the court shall examine all  
10 relevant evidence, including, but not limited to: the complaint seeking a protective order; the  
11 criminal record of the person restrained under this section; the mental health history of the person  
12 restrained under this section; any evidence that the person restrained under this section has, since  
13 being served with the order, engaged in violent or threatening behavior against the person  
14 suffering from domestic abuse or any other person.

15 (2) If the court determines, after a review of all relevant evidence and after all parties  
16 have had an opportunity to be heard, that the person restrained under this section would not pose  
17 a danger to the person suffering from domestic abuse or to any other person if his or her firearm  
18 rights were restored, then the court may grant the petition and modify the protective order and lift  
19 the firearm prohibition.

20 (3) If the court lifts a person's firearms prohibition pursuant to this subsection, the court  
21 shall issue the person written notice that he or she is no longer prohibited under this section from  
22 purchasing or possessing firearms while the protective order is in effect.

23 (k) The prohibition against possessing a firearm(s) due solely to the existence of a  
24 domestic violence restraining order issued under this section shall not apply with respect to sworn  
25 peace officers as defined in § 12-7-21 and active members of military service, including members  
26 of the reserve components thereof, who are required by law or departmental policy to carry  
27 departmental firearms while on duty or any person who is required by his or her employment to  
28 carry a firearm in the performance of his or her duties. Any individual exempted pursuant to this  
29 exception may possess a firearm only during the course of his or her employment. Any firearm  
30 required for employment must be stored at the place of employment when not being possessed for  
31 employment use; all other firearm(s) must be surrendered in accordance with this section.

32 (l) Upon motion by the plaintiff, his or her address shall be released only at the discretion  
33 of the family court judge.

34 (m) (1) Any violation of the protective orders in subsection (a) of this section shall

1 subject the defendant to being found in contempt of court.

2 (2) The contempt order shall not be exclusive and shall not preclude any other available  
3 civil or criminal remedies. Any relief granted by the court shall be for a fixed period of time not  
4 to exceed three (3) years, at the expiration of which time the court may extend any order, upon  
5 motion of the plaintiff, for any additional time, that it deems necessary to protect the plaintiff  
6 from abuse. The court may modify its order at any time upon motion of either party.

7 (n) (1) Any violation of a protective order under this chapter of which the defendant has  
8 actual notice shall be a misdemeanor that shall be punished by a fine of no more than one  
9 thousand dollars (\$1,000) or by imprisonment for not more than one year, or both.

10 (2) The penalties for violation of this section shall also include the penalties as provided  
11 by § 12-29-5.

12 (o) Actual notice means that the defendant has received a copy of the order by service or  
13 by being handed a copy of the order by a police officer pursuant to § 15-15-5(d).

14 (p) (1) The district court shall have criminal jurisdiction over all adult violations of this  
15 chapter.

16 (2) The family court shall have jurisdiction over all juvenile violations of this chapter.

17 SECTION 2. This act shall take effect upon passage.

=====  
LC003412  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T  
RELATING TO DOMESTIC RELATIONS -- DOMESTIC ABUSE PREVENTION

\*\*\*

1           This act would expand family court jurisdiction to enter protective orders to provide for  
2 the safety and welfare of household pets in domestic abuse situations.

3           This act would take effect upon passage.

=====  
LC003412  
=====