

2019 -- H 5076

=====
LC000205
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

—————
A N A C T

RELATING TO DOMESTIC RELATIONS - DOMESTIC ABUSE PREVENTION

Introduced By: Representatives Lombardi, Cassar, Hull, Nardone, and Roberts

Date Introduced: January 10, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

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

3 **15-15-1. Definitions.**

4 The following words as used in this chapter have the following meanings:

5 (1) "Course of conduct" means a pattern of conduct composed of a series of acts over a
6 period of time, evidencing a continuity of purpose. Constitutionally protected activity is not
7 included within the meaning of "course of conduct".

8 (2) "Courts" means the family court.

9 (3) "Cyberstalking" means transmitting any communication by computer to any person or
10 causing any person to be contacted for the sole purpose of harassing that person or his or her
11 family.

12 (4) "Domestic abuse" means:

13 the occurrence of one or more of the following acts between present or former family
14 members, parents, stepparents, or persons who are or have been in a substantive dating or
15 engagement relationship within the past one year in which at least one of the persons is a minor:

16 (i) Attempting to cause or causing physical harm;

17 (ii) Placing another in fear of imminent serious physical harm;

18 (iii) Causing another to engage involuntarily in sexual relations by force, threat of force,
19 or duress; or

1 (iv) Stalking or cyberstalking.

2 (5) "Harassing" means following a knowing and willful course of conduct directed at a
3 specific person with the intent to seriously alarm, annoy, or bother the person, and which serves
4 no legitimate purpose. The course of conduct must be such as would cause a reasonable person to
5 suffer substantial emotional distress, or be in fear of bodily injury.

6 (6) "Household pet" means a domesticated or tamed animal kept for companionship or
7 pleasure.

8 ~~(6)~~(7) "Parents" mean persons who together are the legal parents of one or more children,
9 regardless of their marital status or whether they have lived together at any time.

10 ~~(7)~~(8) "Present or former family member" means the spouse, former spouse, minor
11 children, stepchildren, or persons who are related by blood or marriage.

12 ~~(8)~~(9) "Sexual exploitation" means the occurrence of any of the following acts by any
13 person who knowingly or willfully encourages, aids, or coerces any child under the age of
14 eighteen (18) years:

15 (i) Recruiting, employing, enticing, soliciting, isolating, harboring, transporting,
16 providing, persuading, obtaining, or maintaining, or so attempts, any minor for the purposes of
17 commercial sex acts or sexually explicit performances; or selling or purchasing a minor for the
18 purposes of commercial sex acts.

19 (A) "Commercial sex act" means any sex act or sexually explicit performance on account
20 of which anything of value is given, promised to, or received, directly or indirectly, by any
21 person.

22 (B) "Sexually-explicit performance" means an act or show, intended to arouse, satisfy the
23 sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or
24 private, live, photographed, recorded, or videotaped.

25 ~~(9)~~(10) "Stalking" means harassing another person or willfully, maliciously and
26 repeatedly following another person with the intent to place that person in reasonable fear of
27 bodily injury.

28 ~~(10)~~(11) "Substantive dating" or "engagement relationship" means a significant and
29 personal/intimate relationship which shall be adjudged by the court's consideration by the
30 following factors:

- 31 (i) The length of time of the relationship;
32 (ii) The type of relationship; and
33 (iii) The frequency of interaction between the parties.

34 **15-15-3. Protective orders -- Penalty -- Jurisdiction.**

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

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

10 (2) Ordering the defendant to vacate the household immediately;

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

12 (4) Awarding the plaintiff custody of the household pet(s), if any, including the
13 enforcement remedy of a restraining order or other injunctive relief if necessary;

14 ~~(4)~~(5) Ordering the defendant to surrender physical possession of all firearms in his or her
15 possession, care, custody, or control and shall further order a person restrained not to purchase or
16 receive, or attempt to purchase or receive, any firearms while the protective order is in effect. The
17 defendant shall surrender said firearms within twenty-four (24) hours of notice of the protective
18 order to the Rhode Island state police or local police department or to a federally licensed
19 firearms dealer.

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

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

24 (B) Attest to the court that, at the time of the order, the person had no firearms in his or
25 her immediate physical possession or control, or subject to their immediate physical possession or
26 control, and that the person, at the time of the attestation, has no firearms in their immediate
27 physical possession or control, or subject to their immediate physical possession or control.

28 (ii) If a person restrained under this section transfers a firearm(s) to a federally licensed
29 firearms dealer pursuant to this section, the person restrained under this section may instruct the
30 federally licensed firearms dealer to sell the firearm(s) or to transfer ownership, in accordance
31 with state and federal law, to a qualified named individual who is not a member of the person's
32 dwelling house, who is not related to the person by blood, marriage, or relationship as defined by
33 § 15-15-1(7), and who is not prohibited from possessing firearms under state or federal law. The
34 owner of any firearm(s) sold shall receive any financial value received from its sale, less the cost

1 associated with taking possession of, storing, and transferring of the firearm(s).

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

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

13 ~~(5)~~(6) After notice to the respondent and a hearing, ordering either party to make
14 payments for the support of a minor child or children of the parties as required by law for a period
15 not to exceed ninety (90) days, unless the child support order is for a child or children receiving
16 public assistance pursuant to chapter 5.1 of title 40. In these cases, legal counsel for the division
17 of taxation, child support enforcement, shall be notified as a party in interest to appear for the
18 purpose of establishing a child support order under a new or existing docket number previously
19 assigned to the parties and not under the protective docket number. The child support order shall
20 remain in effect until the court modifies or suspends the order.

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

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

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

34 (1) The person formerly restrained under this section produces documentation issued by a

1 court indicating that the restraining order issued pursuant to this section that prohibited the person
2 from purchasing, carrying, transporting, or possessing firearms has expired and has not been
3 extended; and

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

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

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

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

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

17 (h) The court shall immediately notify the person suffering from domestic abuse whose
18 complaint gave rise to the protective order, and the law enforcement agency where the person
19 restrained under this section resides, of the hearing.

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

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

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

32 (2) If the court determines, after a review of all relevant evidence and after all parties
33 have had an opportunity to be heard, that the person restrained under this section would not pose
34 a danger to the person suffering from domestic abuse or to any other person if his or her firearm

1 rights were restored, then the court may grant the petition and modify the protective order and lift
2 the firearm prohibition.

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

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

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

17 (m)(1) Any violation of the protective orders in subsection (a) of this section shall subject
18 the defendant to being found in contempt of court.

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

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

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

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

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

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

34

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

=====
LC000205
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO DOMESTIC RELATIONS - DOMESTIC ABUSE PREVENTION

- 1 This act would permit the family court to award custody of household pets to the plaintiff
- 2 in a domestic abuse complaint.
- 3 This act would take effect upon passage.

=====
LC000205
=====