

2019 -- H 5288

=====
LC001030
=====

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 Blazejewski, Kazarian, Casimiro, Marszalkowski, and
Alzate

Date Introduced: February 06, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 15-15-1, 15-15-3, 15-15-5 and 15-15-6 of the General Laws in
2 Chapter 15-15 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, [a minor child in the care or custody of the plaintiff](#), or persons
15 who are or have been in a substantive dating or engagement relationship within the past one year
16 in which at least one of the persons is a minor:

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

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

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

1 or duress; or

2 (iv) Stalking or cyberstalking.

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

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

9 (7) "Present or former family member" means the spouse, former spouse, minor children,
10 stepchildren, [the plaintiff's minor child or child in plaintiff's care or custody, minor children of](#)
11 [substantive dating partners](#), or persons who are related by blood or marriage.

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

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

30 (i) The length of time of the relationship;

31 (ii) The type of relationship; and

32 (iii) The frequency of interaction between the parties.

33 **15-15-3. Protective orders -- Penalty -- Jurisdiction.**

34 (a) A person, or a parent, custodian, or legal guardian on behalf of a minor child or the

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

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

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

10 (3) Awarding the plaintiff custody of the minor children of the parties, [the minor children](#)
11 [in the care or custody of the plaintiff or the minor children of substantive dating partners](#), if any;

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

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

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

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

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

34 (iii) Every individual to whom ownership of a firearm(s) is transferred pursuant to this

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

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

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

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

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

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

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

1 extended; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 **15-15-5. Duties of police officers.**

33 (a) Whenever any police officer has reason to believe that a family member or parent has
34 been abused, that officer shall use all reasonable means to prevent further abuse, including:

1 (1) Remaining on the scene as long as there is a danger to the physical safety of the
2 person or until the person is able to leave the dwelling unit;

3 (2) Assisting the person in obtaining medical treatment necessitated by an assault,
4 including obtaining transportation to an emergency medical treatment facility;

5 (3) Giving the person immediate and adequate notice of his or her rights under this
6 chapter;

7 (4) Arresting the abusive person pursuant to the arrest provisions in § 12-29-3; and

8 (5) Reporting any physical injury to a minor child or a threat to physically injure a minor
9 child within twenty-four (24) hours of his or her investigation to CANTS (Child abuse and
10 neglect tracking system).

11 (b) Notice by the police officer to the victim shall be by handing the victim a copy of the
12 following statement written in English, Portuguese, Spanish, Cambodian, Hmong, Laotian,
13 Vietnamese, and French, and by reading the statement to the person when possible:

14 SPOUSE, FORMER SPOUSE, BLOOD RELATIVE, CHILDREN IN COMMON,
15 MINORS IN SUBSTANTIVE DATING OR ENGAGEMENT RELATIONSHIP, MINOR
16 CHILDREN IN YOUR CARE OR CUSTODY.

17 "If your attacker is your spouse, former spouse, or person to whom you are related by
18 blood or marriage, or if you are not married to your attacker but have a child in common, or if
19 you and/or your attacker is a minor who have been in a substantive dating or engagement
20 relationship within the past six (6) months, you have the right to go to the family court and
21 request:

22 "(1) An order restraining your attacker from abusing you, ~~or~~ your minor child or minor
23 child in your care or custody;

24 "(2) An order awarding you exclusive use of your marital domicile;

25 "(3) An order awarding you custody of your minor child."

26 UNMARRIED/NOT RELATED COHABITANTS WITHIN THE PAST THREE
27 YEARS, OR HAVE BEEN IN A SUBSTANTIVE DATING OR ENGAGEMENT
28 RELATIONSHIP WITHIN THE PAST SIX (6) MONTHS

29 "If you are not married or related to your attacker, but have resided with him or her
30 within the past three (3) years, or you are in or have been in a substantive dating or engagement
31 relationship with your attacker within the past six (6) months, you have the right to go to the
32 district court and request:

33 "(1) An order restraining your attacker from abusing you;

34 "(2) An order directing your attacker to leave your household, unless he or she has the

1 sole legal interest in the household."

2 ADDITIONAL RIGHTS.

3 "If you are in need of medical treatment, you have the right to have the officer present
4 obtain transportation to an emergency medical treatment facility.

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

8 "You have the right to file a criminal complaint with the responding officer or your local
9 police department if the officer has not arrested the perpetrator."

10 (c) A police officer shall ensure enforcement of the terms of a protective order issued
11 pursuant to this chapter including, but not limited to, accompanying a family member or parent to
12 his or her dwelling or residence in order to secure possession of the dwelling or residence.

13 (d) When service of the temporary order issued pursuant to § 15-15-4 has not been made
14 and/or after a permanent order is entered, a police officer shall give notice of the order to the
15 defendant by handing him or her a certified copy of the order. The officer shall indicate that he or
16 she has given notice by writing on plaintiff 's copy of the order and the police department's copy
17 of the order, the date and time of giving notice and the officer's name and badge number. The
18 officer shall indicate on the offense report that actual notice was given.

19 **15-15-6. Form of complaint.**

20 (a) A form in substantially the following language shall suffice for the purpose of filing a
21 complaint under this chapter:

22	STATE OF RHODE ISLAND		FAMILY COURT
23	COUNTY OF _____		
24	_____ :		
25		Plaintiff :	
26		:	
27		VS. :	F.C. NO. _____
28		:	
29	_____ :		
30		Defendant:	

31 COMPLAINT FOR PROTECTION FROM ABUSE

32 Pursuant to Chapter 15 of this title, I request that the court enter an order protecting me
33 from abuse.

34 (1) My full name, present street address, city, and telephone number are as

1 follows: _____
2 _____

3 (2) My former residence, which I have left to avoid abuse, is as follows (street address
4 and city): _____
5 _____

6 (3) The full name, present street address, city, and telephone number of the person
7 causing me abuse (the defendant) are as follows:
8 _____

9 (4) My relationship to the defendant is as follows:

10 _____ We (are) (were formerly) married to one another.

11 _____ I am the defendant's (child) (parent).

12 _____ I am the blood relative or relative by marriage of the defendant;

13 specifically, the defendant is my _____

14 _____ I and the defendant are together the legal parents of one or more children [in](#)
15 [common](#).

16 _____ [I and the defendant have had a substantive dating or engagement relationship.](#)

17 _____ [I am a parent of a minor child\(ren\) in my care or custody, to which defendant is](#)
18 [not a blood relative or relative by marriage.](#)

19 (5) On or about _____, I suffered abuse when the
20 defendant:

21 _____ Threatened or harmed me with a weapon; (type of weapon used: _____)

22 _____ Attempted to cause me physical harm;

23 _____ Caused me physical harm;

24 _____ Placed me in fear of imminent physical harm;

25 _____ Caused me to engage involuntarily in sexual relations by force, threat of

26 force, or duress. Specifically, the defendant

27 _____
28 _____
29 _____
30 _____

31 (6) I ask that:

32 _____ The court order that the defendant be restrained and enjoined from contacting,
33 assaulting, molesting, or otherwise interfering with the plaintiff at home, on the street or
34 elsewhere.

1 YELLOW COPY -- Plaintiff
2 PINK COPY -- Defendant
3 GOLDENROD COPY -- Police Department

4 (b) A form in substantially the following language shall suffice for the purpose of
5 requesting temporary orders under this chapter:

6 STATE OF RHODE ISLAND FAMILY COURT
7 COUNTY OF _____
8 _____ :
9 Plaintiff :
10 :
11 VS. : F.C. NO. _____
12 :
13 _____ :
14 Defendant:

15 TEMPORARY ORDER PURSUANT TO CHAPTER 15 OF
16 THIS TITLE GENERAL LAWS OF RHODE ISLAND

17 Upon consideration of plaintiff's complaint and having found that immediate and
18 irreparable injury, loss, or damage will result to the plaintiff before a notice can be served and a
19 hearing had thereon it is ORDERED:

20 _____ That the defendant is restrained and enjoined from contacting, assaulting,
21 molesting, or otherwise interfering with plaintiff and any minor children of the plaintiff at home,
22 on the street, or elsewhere, to wit, _____
23 _____

24 _____ That the defendant vacate forthwith the household located at
25 _____
26 _____

27 _____ That the plaintiff, being the [husband] [wife] of the defendant, be and
28 [s]he hereby is awarded temporary custody of the minor child[ren], to wit, _____
29 _____

30 _____ That the defendant pay to the plaintiff the support of the minor child(ren) the sum
31 of \$_____ per _____.

32 _____ That _____
33 _____
34 _____

1 A hearing on the continuation of this ORDER will be held at the family court,
2 _____ County, at _____ [A.M.] [P.M.] on _____.

3 If the defendant wishes to be heard, [s]he will be heard at that time. If [s]he does not appear at
4 that time, this ORDER shall remain in effect.

5 This ORDER is effective forthwith, and will remain in effect until the time and date of
6 the above-mentioned hearing.

7 A copy of this ORDER shall be transmitted to the appropriate local law enforcement
8 agency forthwith, and shall be served in-hand on the defendant herein.

9 ENTERED as an order of court this _____ day of _____, A.D. 20__.

10 SECTION 3. Section 8-8.1-5 of the General Laws in Chapter 8-8.1 entitled "Domestic
11 Assault" is hereby amended to read as follows:

12 **8-8.1-5. Duties of police officers.**

13 (a) Whenever any police officer has reason to believe that a cohabitant or minor has been
14 abused, that officer shall use all reasonable means to prevent further abuse, including:

15 (1) Remaining on the scene as long as there is danger to the physical safety of the person
16 or until the person is able to leave the dwelling unit;

17 (2) Assisting the person in obtaining medical treatment necessitated by an assault,
18 including obtaining transportation to an emergency medical treatment facility;

19 (3) Giving the person immediate and adequate notice of his or her rights under this
20 chapter;

21 (4) Arresting the person pursuant to the arrest provisions as contained in § 12-29-3.

22 (b) Notice by the police officer to the victim shall be by handing the victim a copy of the
23 following statement written in English, Portuguese, Spanish, Cambodian, Hmong, Laotian,
24 Vietnamese, and French, and by reading the statement to the person when possible:

25 Spouse, former spouse/blood relative/children in common; minor(s) in a substantive
26 dating or engagement relationship; [minor children in your care or custody](#):

27 "If your attacker is your spouse, former spouse, person to whom you are related by blood
28 or marriage, or if you are not married to your attacker, but have a child in common, or if you
29 and/or your attacker are a minor who have been in a substantive dating or engagement
30 relationship within the past six (6) months, you have the right to go to the family court and ask
31 the court to issue an order restraining your attacker from abusing you, ~~or~~ your minor child [or](#)
32 [minor child in your care or custody](#); you have the right to go to the family court and request:

33 (1) an order restraining your attacker from abusing you, ~~or~~ your minor child [or minor](#)
34 [child in your care or custody](#);

1 (2) an order awarding you exclusive use of your marital domicile;

2 (3) an order awarding you custody of your minor child."

3 Unmarried/not related cohabitants within the past three (3) years or substantive dating or
4 engagement relationship within past six (6) months:

5 "If you are not married or related to your attacker, but have resided with him or her
6 within the past three (3) years, you have the right to go to the district court and request;

7 (1) an order restraining your attacker from abusing you;

8 (2) an order directing your attacker to leave your household, unless she or he has the sole
9 legal interest in the household."

10 "If you are in need of medical treatment, you have the right to have the officer present
11 obtain transportation to an emergency medical treatment facility."

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

15 "You have the right to file a criminal complaint with the responding officer or your local
16 police department if the officer has not arrested the perpetrator."

17 (c) A police officer shall ensure enforcement of the terms of the protective order issued
18 pursuant to this chapter including but not limited to accompanying a cohabitant to his or her
19 dwelling or residence in order to secure possession of the dwelling or residence when a vacate
20 order against the defendant has been issued.

21 (d) When service of the temporary order issued pursuant to § 8-8.1-4 has not been made
22 and/or after a permanent order is entered, a police officer shall give notice of the order to the
23 defendant by handing him or her a certified copy of the order. The officer shall indicate that he or
24 she has given notice by writing on plaintiff's copy of the order and the police department's copy
25 of the order the date, and time of giving notice and the officer's name and badge number. The
26 officer shall indicate on the offense report that actual notice was given.

27 SECTION 3. This act shall take effect upon passage.

=====
LC001030
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO DOMESTIC RELATIONS - DOMESTIC ABUSE PREVENTION

1 This act would allow plaintiffs seeking a domestic abuse protective order in family court
2 to include any of their minor children who are not related to the defendant by blood or marriage
3 within the same complaint and restraining order, rather than seeking a protective order in district
4 or superior court of children not biologically-related or marriage-related to the defendant.

5 This act would take effect upon passage.

=====
LC001030
=====