



General Assembly

January Session, 2001

Raised Bill No. 1401

LCO No. 4722

Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT CONCERNING RESTRAINING AND PROTECTIVE ORDERS
IN FIREARMS CASES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-15 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) Any family or household member as defined in section 46b-38a
4 who has been subjected to a continuous threat of present physical pain
5 or physical injury by another family or household member or person
6 who is in, or has recently been in, a dating relationship [who] and has
7 been subjected to a continuous threat of present physical pain or
8 physical injury by the other person in such relationship may make an
9 application to the Superior Court for relief under this section.

10 (b) The application shall be accompanied by an affidavit made
11 under oath which includes a brief statement of the conditions from
12 which relief is sought. The applicant shall also indicate in the affidavit:
13 (1) Whether the respondent has a permit to carry a pistol or revolver,
14 (2) whether the respondent possesses any firearm and, if the
15 respondent does possess any firearm, the number of firearms that the

16 respondent possesses and the location of the firearms, (3) whether
17 there is a history of the use, attempted use or threatened use of
18 physical force by the respondent against other persons, (4) whether
19 there has been a recent threat or act of violence by the respondent
20 toward himself or herself or other persons, (5) whether there has been
21 recent acts of cruelty to animals by the respondent, (6) whether the
22 respondent has recently used, displayed or brandished a firearm or
23 other dangerous weapon, (7) whether the respondent uses illegal
24 drugs or abuses alcohol, (8) whether the respondent has been
25 involuntarily confined in a hospital for persons with psychiatric
26 disabilities, and (9) whether the conduct of the respondent has been
27 reported to a law enforcement agency.

28 (c) Upon receipt of the application, the court shall order that a
29 hearing on the application be held not later than fourteen days from
30 the date of the order. The court, in its discretion, may make such
31 orders as it deems appropriate for the protection of the applicant and
32 such dependent children or other persons as the court sees fit. Such
33 order may include temporary child custody or visitation rights and
34 such relief may include but is not limited to an order enjoining the
35 respondent from (1) imposing any restraint upon the person or liberty
36 of the applicant; (2) threatening, harassing, assaulting, molesting,
37 sexually assaulting or attacking the applicant; or (3) entering the family
38 dwelling or the dwelling of the applicant. If an applicant alleges an
39 immediate and present physical danger to the applicant, the court may
40 issue an ex parte order granting such relief as it deems appropriate. If a
41 postponement of a hearing on the application is requested by either
42 party and granted, the order shall not be continued except upon
43 agreement of the parties or by order of the court for good cause shown.

44 (d) If the applicant has indicated in the affidavit that the respondent
45 possesses one or more firearms, the court shall indicate in the order (1)
46 whether the matter should be referred to a law enforcement agency or
47 prosecuting authority for investigation as to whether the respondent
48 should be arrested, and (2) whether the matter should be referred to a

49 law enforcement agency or prosecuting authority for investigation as
50 to whether a warrant should be sought pursuant to section 29-38c for
51 the seizure of such firearm or firearms.

52 [(c)] (e) Every order of the court made in accordance with this
53 section shall contain the following language: "This order may be
54 extended by the court beyond six months. In accordance with section
55 53a-107, entering or remaining in a building or any other premises in
56 violation of this order constitutes criminal trespass in the first degree.
57 This is a criminal offense punishable by a term of imprisonment of not
58 more than one year, a fine of not more than two thousand dollars or
59 both."

60 [(d)] (f) No order of the court shall exceed six months, except that an
61 order may be extended by the court upon motion of the applicant for
62 such additional time as the court deems necessary. If the respondent
63 has not appeared upon the initial application, service of a motion to
64 extend an order may be made by first-class mail directed to the
65 respondent at his or her last known address.

66 [(e)] (g) The applicant shall cause notice of the hearing pursuant to
67 subsection [(b)] (c) of this section and a copy of the application and of
68 any ex parte order issued pursuant to subsection [(b)] (c) of this section
69 to be served on the respondent not less than five days before the
70 hearing. Upon the granting of an ex parte order, the clerk of the court
71 shall provide two certified copies of the order to the applicant and a
72 copy to the Family Division. Upon the granting of an order after notice
73 and hearing, the clerk of the court shall provide two certified copies of
74 the order to the applicant and a copy to the Family Division and a copy
75 to the respondent. Every order of the court made in accordance with
76 this section after notice and hearing shall contain the following
77 language: "This court had jurisdiction over the parties and the subject
78 matter when it issued this protection order. Respondent was afforded
79 both notice and opportunity to be heard in the hearing that gave rise to
80 this order. Pursuant to the Violence Against Women Act of 1994, 18

81 USC 2265, this order is valid and enforceable in all fifty states, any
82 territory or possession of the United States, the District of Columbia,
83 the Commonwealth of Puerto Rico and tribal lands." The clerk of the
84 court shall send a certified copy of any ex parte order and of any order
85 after notice and hearing, together with the affidavit of the applicant, to
86 the [appropriate] law enforcement agency for the town in which the
87 applicant resides and, if the respondent resides in a town different
88 than the town in which the applicant resides, to the law enforcement
89 agency for the town in which the respondent resides, within forty-
90 eight hours of [its] the issuance of such order. If the applicant is
91 employed in a town different than the town in which the applicant
92 resides, the clerk of the court shall, upon the request of the applicant,
93 send a certified copy of any such order, together with the affidavit of
94 the applicant, to the law enforcement agency for the town in which the
95 applicant is employed within forty-eight hours of the issuance of such
96 order.

97 [(f)] (h) A caretaker who is providing shelter in his or her residence
98 to a person sixty years or older shall not be enjoined from the full use
99 and enjoyment of his or her home and property. The Superior Court
100 may make any other appropriate order under the provisions of this
101 section.

102 [(g)] (i) When a motion for contempt is filed for violation of a
103 restraining order, there shall be an expedited hearing. Such hearing
104 shall be held within five court days of service of the motion on the
105 respondent, provided service on the respondent is made not less than
106 twenty-four hours before the hearing. If the court finds the respondent
107 in contempt for violation of an order, the court may impose such
108 sanctions as the court deems appropriate.

109 [(h)] (j) An action under this section shall not preclude the applicant
110 from seeking any other civil or criminal relief.

111 Sec. 2. Section 46b-38c of the general statutes is repealed and the
112 following is substituted in lieu thereof:

113 (a) There shall be family violence response and intervention units in
114 the Connecticut judicial system to respond to cases involving family
115 violence. The units shall be coordinated and governed by formal
116 agreement between the Chief State's Attorney and the Judicial
117 Department.

118 (b) The Family Relations Division of the Superior Court, in
119 accordance with the agreement between the Chief State's Attorney and
120 the Judicial Department, shall establish within each geographical area
121 of the Superior Court a local family violence intervention unit to
122 implement sections 46b-1, 46b-15, as amended by this act, 46b-38a to
123 46b-38f, inclusive, as amended by this act, and 54-1g. The Family
124 Relations Division shall oversee direct operations of the local units.

125 (c) Each such local family violence intervention unit shall: (1) Accept
126 referrals of family violence cases from a judge or prosecutor, (2)
127 prepare written or oral reports on each case for the court by the next
128 court date to be presented at any time during the court session on that
129 date, (3) provide or arrange for services to victims and offenders, (4)
130 administer contracts to carry out said services, and (5) establish
131 centralized reporting procedures.

132 (d) In the preparation of a written or oral report for the court, the
133 family relations officer in a local family violence intervention unit shall
134 inquire of the victim: (1) Whether the defendant has a permit to carry a
135 pistol or revolver, (2) whether the defendant possesses any firearm
136 and, if the defendant does possess any firearm, the number of firearms
137 that the defendant possesses and the location of the firearms, (3)
138 whether there is a history of the use, attempted use or threatened use
139 of physical force by the defendant against other persons, (4) whether
140 there has been a recent threat or act of violence by the defendant
141 toward himself or herself or other persons, (5) whether there has been
142 recent acts of cruelty to animals by the defendant, (6) whether the
143 defendant has recently used, displayed or brandished a firearm or
144 other dangerous weapon, (7) whether the defendant uses illegal drugs

145 or abuses alcohol, (8) whether the defendant has been involuntarily
146 confined in a hospital for persons with psychiatric disabilities, and (9)
147 whether the conduct of the defendant has been reported to a law
148 enforcement agency.

149 (e) All information provided to a family relations officer in a local
150 family violence intervention unit shall be for the sole purpose of
151 preparation of the report for each case and recommendation of services
152 and shall otherwise be confidential and retained in the files of such
153 unit, and not be subject to subpoena or other court process for use in
154 any other proceeding or for any other purpose, except that if the victim
155 has indicated that the defendant holds a permit to carry a pistol or
156 revolver or possesses one or more firearms, the family relations officer
157 shall disclose such information to the court and the prosecuting
158 authority.

159 [(d)] (f) In all cases of family violence, a written or oral report and
160 recommendation of the local intervention unit shall be available to a
161 judge at the first court date appearance to be presented at any time
162 during the court session on that date. A judge of the Superior Court
163 may consider and impose the following conditions to protect the
164 parties, including but not limited to: (1) Issuance of a protective order
165 pursuant to subsection [(e)] (g) of this section; such order shall be an
166 order of the court, and the clerk of the court shall cause (A) a certified
167 copy of such order to be sent to the victim, and (B) a certified copy of
168 such order to be sent within forty-eight hours of its issuance to the
169 appropriate law enforcement agency; (2) prohibition against subjecting
170 the victim to further violence; (3) referral to a family violence
171 education program for batterers; and (4) immediate referral for more
172 extensive case assessment.

173 [(e)] (g) A protective order issued under this section may include
174 provisions necessary to protect the victim from threats, harassment,
175 injury or intimidation by the defendant, including but not limited to,
176 an order enjoining the defendant from (1) imposing any restraint upon

177 the person or liberty of the victim; (2) threatening, harassing,
178 assaulting, molesting or sexually assaulting the victim; or (3) entering
179 the family dwelling or the dwelling of the victim. Such order shall be
180 made a condition of the bail or release of the defendant and shall
181 contain the following language: "In accordance with section 53a-223,
182 any violation of this order constitutes criminal violation of a protective
183 order. Additionally, in accordance with section 53a-107, entering or
184 remaining in a building or any other premises in violation of this order
185 constitutes criminal trespass in the first degree. These are criminal
186 offenses each punishable by a term of imprisonment of not more than
187 one year, a fine of not more than two thousand dollars, or both.
188 Violation of this order also violates a condition of your bail or release,
189 and may result in raising the amount of bail or revoking release."
190 Every order of the court made in accordance with this section after
191 notice and hearing shall also contain the following language: "This
192 court had jurisdiction over the parties and the subject matter when it
193 issued this protection order. Respondent was afforded both notice and
194 opportunity to be heard in the hearing that gave rise to this order.
195 Pursuant to the Violence Against Women Act of 1994, 18 USC 2265,
196 this order is valid and enforceable in all fifty states, any territory or
197 possession of the United States, the District of Columbia, the
198 Commonwealth of Puerto Rico and tribal lands." The Department of
199 Public Safety, in cooperation with the Office of the Chief Court
200 Administrator, shall establish a twenty-four-hour registry of protective
201 orders on the Connecticut on-line law enforcement communications
202 teleprocessing system.

203 [[f]] (h) In cases referred to the local family violence intervention
204 unit, it shall be the function of the unit to (1) identify victim service
205 needs and, by contract with victim service providers, make available
206 appropriate services, and (2) identify appropriate offender services
207 and where possible, by contract, provide treatment programs for
208 offenders.

209 [[g]] (i) There shall be a pretrial family violence education program

210 for persons who are charged with family violence crimes. The court
211 may, in its discretion, invoke such program on motion of the
212 defendant when it finds: (1) That the defendant has not previously
213 been convicted of a family violence crime which occurred on or after
214 October 1, 1986; (2) the defendant has not had a previous case assigned
215 to the family violence education program; (3) the defendant has not
216 previously invoked or accepted accelerated rehabilitation under
217 section 54-56e for a family violence crime which occurred on or after
218 October 1, 1986; and (4) that the defendant is not charged with a class
219 A, class B or class C felony, or an unclassified felony carrying a term of
220 imprisonment of more than ten years, or unless good cause is shown, a
221 class D felony or an unclassified offense carrying a term of
222 imprisonment of more than five years. Participation by any person in
223 the accelerated pretrial rehabilitation program under section 54-56e
224 prior to October 1, 1986, shall not prohibit eligibility of such person for
225 the pretrial family violence education program under this section. The
226 court may require that the defendant answer such questions under
227 oath, in open court or before any person designated by the clerk and
228 duly authorized to administer oaths, under the penalties of perjury as
229 will assist the court in making these findings. The court, on such
230 motion, may refer the defendant to the family violence intervention
231 unit, and may continue [his] the defendant's case pending the
232 submission of the report of the unit to the court. The court shall also
233 give notice to the victim or victims that the defendant has requested
234 assignment to the family violence education program, and, where
235 possible, give the victim or victims opportunity to be heard. Any
236 defendant who accepts placement in the family violence education
237 program shall agree to the tolling of any statute of limitations with
238 respect to the crime or crimes with which [he] the defendant is
239 charged, and to a waiver of [his] the defendant's right to a speedy trial.
240 Any such defendant shall appear in court and shall be released to the
241 custody of the family violence intervention unit for such period, not
242 exceeding two years, and under such conditions as the court shall
243 order. If the defendant refuses to accept, or, having accepted, violates

244 such conditions, [his] the defendant's case shall be brought to trial. If
245 the defendant satisfactorily completes the family violence education
246 program and complies with the conditions imposed for the period set
247 by the court, [he] the defendant may apply for dismissal of the charges
248 against [him] the defendant and the court, on finding satisfactory
249 compliance, shall dismiss such charges. Upon dismissal all records of
250 such charges shall be erased pursuant to section 54-142a.

251 [(h)] (j) A fee of two hundred dollars shall be paid to the court by
252 any person who enters the family violence education program, except
253 that no person shall be excluded from such program for inability to
254 pay the fee, provided (1) the person files with the court an affidavit of
255 indigency or inability to pay, and (2) the court enters a finding thereof.
256 All such fees shall be credited to the General Fund.

257 [(i)] (k) The Judicial Department shall establish an ongoing training
258 program for judges, Family Division personnel, bail commissioners
259 and clerks to inform them about the policies and procedures of
260 sections 46b-1, 46b-15, as amended by this act, 46b-38a to 46b-38f,
261 inclusive, as amended by this act, and 54-1g, including, but not limited
262 to, the function of the family violence intervention units and the use of
263 restraining and protective orders.

264 Sec. 3. Section 53a-217 of the general statutes is repealed and the
265 following is substituted in lieu thereof:

266 (a) A person is guilty of criminal possession of a firearm or
267 electronic defense weapon when such person possesses a firearm or
268 electronic defense weapon and (1) has been convicted of a felony, [or]
269 (2) has been convicted as delinquent for the commission of a serious
270 juvenile offense, as defined in section 46b-120, (3) knows that such
271 person is subject to a restraining or protective order issued by a court,
272 after notice and an opportunity to be heard has been provided to such
273 person, in a case involving the use, attempted use or threatened use of
274 physical force against another person, or (4) knows that such person is
275 subject to a firearms seizure order issued pursuant to subsection (d) of

276 section 29-38c after notice and an opportunity to be heard has been
277 provided to such person. For the purposes of this section, "convicted"
278 means having a judgment of conviction entered by a court of
279 competent jurisdiction.

280 (b) Criminal possession of a firearm or electronic defense weapon is
281 a class D felony, for which two years of the sentence imposed may not
282 be suspended or reduced by the court.

Statement of Purpose:

To provide more information to the court and law enforcement agencies in domestic violence cases concerning the possession of firearms by, and the violent propensities of, the respondent or defendant and to prohibit the possession of firearms by persons subject to restraining or protective orders or firearm seizure orders.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]