



THE COMMONWEALTH OF MASSACHUSETTS

John Adams Courthouse
One Pemberton Square
Boston, Massachusetts

Robert A. Mulligan
Chief Justice of the Trial Court

Harry Spence
Court Administrator

MEMORANDUM

TO: Honorable Paula M. Carey, Chief Justice, Probate and Family Court Department
Honorable Lynda M. Connolly, Chief Justice, District Court Department
Honorable Michael F. Edgerton, Chief Justice, Juvenile Court Department
Honorable Charles R. Johnson, Chief Justice, Boston Municipal Court Department
Honorable Steven D. Pierce, Chief Justice, Housing Court Department
Honorable Barbara J. Rouse, Chief Justice, Superior Court Department
Honorable Karyn F. Scheier, Chief Justice, Land Court Department

FROM: *RAM* Robert A. Mulligan, Chief Justice of the Trial Court
HAS Harry Spence, Court Administrator

DATE: October 31, 2012

RE: **Chapter 193 of the Acts and Resolves of 2012: An Act Further Regulating Animal Control - Orders concerning domesticated animals in conjunction with restraining orders**

On August 2, 2012, Governor Deval Patrick signed Chapter 193 of the Acts and Resolves of 2012, An Act Further Regulating Animal Control. Provisions of this Act become effective on October 31, 2012.

Section 50 of the Act adds a new Section 11 to G. L. c. 209A. Although the Act only amends G. L. c. 209A by adding a new section 11, the provisions of the new section are applicable to several statutes enumerated in Section 11(a) relating to abuse and harassment matters. (See statutes listed below.)

The new Section 11(a) provides that in certain circumstances, a court may order "possession, care, and control of any domesticated animal owned, possessed, leased, kept or held by either party or a minor child residing in the household to the plaintiff or petitioner." The court may also "order the defendant to refrain from abusing, threatening, taking, interfering with, transferring, encumbering, concealing, harming or otherwise disposing of such animal."

Underlying requirements

A court may enter an order under G. L. c. 209A, § 11(a), only if the court issues or has issued any one of the following:

1. a temporary or permanent vacate, stay away, restraining or no contact order or a judgment pursuant to:
 - G. L. c. 208, §§ 18, 34B, 34C
 - G. L. c. 209, § 32
 - G. L. c. 209A, §§ 3, 4, 5
 - G. L. c. 209C, §§ 15, 20
 - G. L. c. 258E, §§ 3-7

2. a temporary restraining order or a preliminary or permanent injunction in a domestic relations, child custody, domestic abuse or abuse prevention proceeding.

Where to file the G. L. c. 209A, § 11 petition

A request relative to domesticated animals may only be considered when filed contemporaneously with a request for an order in an underlying abuse prevention, domestic relations, harassment prevention or child custody matter, or, if filed after such an order has already been issued, the request must be filed in the same court as the underlying action.

Who may file

The new Section 11(b) provides that any party to any of the underlying proceedings enumerated in Section 11(a) may petition the court for such an order relative to domesticated animals. This means that the “plaintiff or petitioner” seeking relief under G. L. c. 209A, § 11 can be either the plaintiff/petitioner or defendant/respondent in the underlying action.

Section 11(a) specifically provides that the court may order possession, care and control of an animal be given to the “plaintiff or petitioner.” We interpret the words “plaintiff or petitioner” in this context to refer to the party requesting relief under G. L. c. 209A, § 11, not to the party who initiated the underlying action.

This interpretation is consistent with the language in the various family law sections concerning restraining orders¹, which use a variety of terms to refer to the parties (husband and wife, moving and opposing party, complainant, party) but make it clear that although the word “defendant” might be used, it is construed to mean the person against whom the restraining order has been sought and who may not be the defendant in the domestic relations.

Who may receive the requested relief

If a court declines to order that possession, care and control of a domesticated animal be given to the person requesting the Section 11 order, then the existing arrangement of possession, care and control of the domesticated animal would remain in place. There cannot be an affirmative award of possession, care and control to the person against whom the order is sought (unless that person files a separate request under G. L. c. 209A, § 11(a)).

¹ In this memo when the phrase “restraining order” is used, it encompasses all of the types of orders enumerated in the first line of the new § 11(a) to G.L. c. 209A (listed above).

Standard/Definition

The statute does not provide or refer to the standard to be used when acting on a request under Section 11. In addition, there is no definition for “domesticated animal” contained in Chapter 193 that is applicable to the new Section 11.

Expiration or termination of orders

An order issued under Section 11 is dependent on the existence of a restraining order. As such, orders entered pursuant to Section 11 expire or terminate when the restraining order in the underlying cases expires or terminates.

For example, if an abuse prevention order entered under G. L. c. 209A expires and is not renewed, the Section 11 order would expire at the same time. In another example, a protection of personal liberty order issued under G. L. c. 208, § 18 expires when a divorce judgment enters. The Section 11 order would also expire at the same time. Any relief concerning the domesticated animals would then have to be included in the divorce judgment, either under a property settlement or under any restraining order provisions that are part of the divorce judgment.

Outstanding warrants

Under G. L. c. 209A, § 11(c), when a judge issues a warrant or is aware of an outstanding warrant for a violation of the statutes enumerated in § 11(a)², “the judge *may make a finding*, based upon the totality of the circumstances, as to whether there exists an imminent threat of bodily injury to any party to such judgment or the petitioner of any such protective order, *a member of the petitioner’s family or household or to a domesticated animal belonging to the petitioner or to a member of the petitioner’s family or household.*” (Emphasis added).

This language is similar to, but not consistent with, language currently found in G. L. c. 209A, § 7, G. L. c. 258E, § 9 and in some (but not all) of the enumerated sections (see G. L. c. 209, § 32 and G. L. c. 209C, § 15). These sections provide that the judge “*shall make a finding*” concerning the existence of an imminent threat of bodily harm to the *plaintiff or petitioner*, clearly referring to the person seeking the restraining order. (Emphasis added). These sections do not include any language concerning a member of the petitioner’s family or household or a domesticated animal.

To meet the safety intent of G. L. c. 209A, § 7, G. L. c. 258E, § 9, and the other referenced domestic relations statutes cited here, when a restraining order is being sought or has been granted under these particular statutes, and there is an outstanding warrant, the recommended practice is to follow the requirement found in G. L. c. 209A, § 7 and these other referenced domestic relations statutes, namely that the judge *shall* make a finding concerning whether there is an imminent threat of bodily harm to the plaintiff in the underlying action. However, pursuant to the new Section 11(c), the judge *may* make a finding as to whether there exists an imminent threat of bodily harm to any other party to such judgment, a member of the petitioner’s family or household or to a domesticated animal belonging to the petitioner or to a member of the petitioner’s family or household.

² “. . . a violation of a temporary or permanent vacate, stay away, restraining or no contact order or a judgment issued under c. 208, §§ 18, 34B or 34C, c. 209, § 32, c. 209A, §§ 3, 4 or 5, c. 209C, §§ 15 or 20, or c. 258E, §§ 3 to 7, inclusive”

If such a finding of imminent threat of bodily harm to a person or domesticated animal exists, the court shall notify the appropriate law enforcement officers of such finding.

Forms

Section 52 of Chapter 193 of the Acts and Resolves of 2012 provides that the court administrator “shall amend all the relevant complaint forms for chapters 208, 209A, 209C and 258E of the General Laws or prescribe a new form to incorporate a petition for an order under section 11 of said Chapter 209A, which shall be in such a form and language to permit a plaintiff to prepare and file such complaint pro se.”

A petition form applicable to any or all of the actions enumerated in Section 11(a) has been developed by a working group including staff from the administrative offices of the affected Trial Court Departments and the Executive Office of the Trial Court. The petition form is attached hereto. Please note: this form has a second page for cases in which a judge wishes the party bringing the petition to mark the matter up for a two-party hearing. This can be used where applicable and at the judge’s discretion. If a judge wishes to use the portion of the second page for noting the order is allowed or denied but not the section on notice of hearing, the section on notice can be struck.

In addition, an order form for use in all actions enumerated in Section 11(a) has been developed by the working group. The order form is attached hereto.

Please note, if the requested Section 11 relief has been filed in a case that was brought under G. L. c. 209A or G. L. c. 258E, and the Section 11 order is being issued at the same time as a restraining order, the substance of the order may be noted on the c. 209A order form on line 14 or the c. 258E order form on line 6. If the Section 11 order is being issued subsequent to the issuance of a restraining order, the substance of the order may be noted in the Modification/Extension section of the order (FA-2A or HA-2A.) Please note that in cases where the person who has requested and been granted relief under Section 11, is not the petitioner in the underlying case, what relief is being granted to whom must be very clearly stated when using these sections on the FA-2A or HA-2A.

As you know, forms often can be improved after there has been experience with their actual use. We would appreciate any comments or suggestions concerning the petition and order forms. You may direct such comments or suggestions to Jamie Sabino by telephone at 617-878-0463, by facsimile at 617-742-0968, or by e-mail at jamie.sabino@jud.state.ma.us.

cc: Dana Leavitt, Deputy Court Administrator, Superior Court
Ellen Shapiro, Deputy Court Administrator, District Court
Cheryl Sibley, Deputy Court Administrator, Boston Municipal Court
Jane Strickland, Deputy Court Administrator, Juvenile Court
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Jill Ziter, Deputy Court Administrator, Land Court
Daniel P. Sullivan, General Counsel, Legal Department
Ann Archer, Administrative Attorney, Legal Department
Jamie Sabino, VAWA STOP Grant Coordinator

Applicable Sections of Chapter 193 of the Acts and Resolves of
2012: An Act Further Regulating Animal Control

SECTION 50. Chapter 209A of the General Laws is hereby amended by adding the following section:-

Section 11. (a) Whenever the court issues a temporary or permanent vacate, stay away, restraining or no contact order or a judgment under section 18, 34B or 34C of chapter 208, or under section 32 of chapter 209, or under section 3, 4 or 5 of this chapter, or under section 15 or 20 of chapter 209C, or under section 3 to 7, inclusive, of chapter 258E or a temporary restraining order or preliminary or permanent injunction relative to a domestic relations, child custody, domestic abuse or abuse prevention proceeding, the court may order the possession, care and control of any domesticated animal owned, possessed, leased, kept or held by either party or a minor child residing in the household to the plaintiff or petitioner. The court may order the defendant to refrain from abusing, threatening, taking, interfering with, transferring, encumbering, concealing, harming or otherwise disposing of such animal.

(b) A party to any proceeding listed in subsection (a) may petition the court for an order authorized by said subsection (a).

(c) Whenever the court issues a warrant for a violation of a temporary or permanent vacate, stay away, restraining or no contact order or a judgment issued under section 18, 34B or 34C of chapter 208, or under section 32 of chapter 209, or under section 3, 4 or 5 of this chapter, or under section 15 or 20 of chapter 209C, or section 3 to 7, inclusive, of chapter 258E or otherwise becomes aware that an outstanding warrant for such a violation has been issued against a person before the court, the judge may make a finding, based upon the totality of the circumstances, as to whether there exists an imminent threat of bodily injury to any party to such judgment or the petitioner of any such protective order, a member of the petitioner's family or household or to a domesticated animal belonging to the petitioner or to a member of the petitioner's family or household. If the court makes a finding that such an imminent threat of bodily injury to a person or domesticated animal exists, the court shall notify the appropriate law enforcement officials of such finding and the law enforcement officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

SECTION 52. The court administrator in the office of court management within the trial court department shall amend the relevant complaint forms for chapters 208, 209A, 209C and 258E of the General Laws or prescribe a new form to incorporate a petition for an order under section 11 of said chapter 209A, which shall be in such form and language to permit a plaintiff to prepare and file such complaint pro se.

Commonwealth of Massachusetts

BOSTON MUNICIPAL COURT DISTRICT COURT JUVENILE COURT PROBATE & FAMILY COURT SUPERIOR COURT

DIVISION _____

DOCKET NO. _____

Plaintiff

v.

**PETITION FILED PURSUANT TO G. L. c. 209A, § 11
RELATIVE TO DOMESTICATED ANIMAL(S)**

Defendant

I _____, a party in the above captioned matter petition this court for an order pursuant to G.L. c. 209A, § 11 and state that:

in the above-captioned matter there has been requested or issued a temporary or permanent vacate, stay away, restraining or no contact order or a judgment under G. L. c. 208, §§ 18, 34B or 34C, G. L. c. 209, § 32, G. L. c. 209A, §§ 3, 4 or 5, G. L. c. 209C, §§ 15 or 20, or G. L. c. 258E, §§ 3 to 7 inclusive, or a temporary restraining order or preliminary or permanent injunction relative to a domestic relations, child custody, domestic abuse or abuse prevention proceeding.

I petition this court issue an order relative to the following domesticated animals: (list the name and description of each domesticated animal and who owns, possesses, leases, keeps, or holds the domesticated animal, i.e., petitioner, respondent, or minor child):

SPECIFICALLY, I ASK THE COURT TO ORDER:

that the respondent _____ (name) refrain from abusing, threatening, taking, interfering with, transferring, encumbering, concealing, harming or otherwise disposing of the following animal(s):

that I _____ (name) be given possession, care, and control of the following animal(s):

In support of this request, the **petitioner** states:

Signed under the penalties of perjury:

DATE

PETITIONER'S SIGNATURE

Optional:

The petitioner must obtain a date for a hearing on this petition, fill in the information below and mail a copy to the respondent at least ten days before the hearing date **OR** request in the clerk's office that the court schedule a hearing and notify both parties by mail.

- CHECK ONE:** The petitioner has obtained a date for hearing and is mailing notice to the respondent.
 The court has scheduled a hearing and has notified both parties by mail.

NOTICE OF HEARING: This motion will be heard at the _____ Court,
located at _____ on _____ at _____
(city/town) (month/day/year) (time of hearing)

The motion is **ALLOWED** **DENIED** _____

SIGNATURE/NAME OF JUDGE _____ **Date** _____

PRINT/TYPE NAME OF JUDGE _____

Commonwealth of Massachusetts

BOSTON MUNICIPAL COURT DISTRICT COURT JUVENILE COURT PROBATE & FAMILY COURT SUPERIOR COURT

DIVISION _____

DOCKET NO. _____

Plaintiff

v.

**ORDER ISSUED PURSUANT TO G. L. c. 209A, § 11
RELATIVE TO DOMESTICATED ANIMAL(S)**

Defendant

The Court issues the following orders:

The above named _____ is ordered to refrain from abusing, threatening, taking, interfering with, transferring, encumbering, concealing, harming or otherwise disposing the following animal(s):

The above named _____ is to be given possession, care, and control of the following animal(s):

The following is also ordered:

SIGNATURE/NAME OF JUDGE _____ Date _____

PRINT/TYPE NAME OF JUDGE _____