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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE--COURTS -- DOMESTIC ASSAULT

Introduced By: Senators Goodwin, Goldin, Gallo, Coyne, and Paiva Weed

Date Introduced: February 25, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 8-8.1-3 of the General Laws in Chapter 8-8.1 entitled "Domestic
2 Assault" is hereby amended to read as follows:

3 **8-8.1-3. Protective orders -- Penalty -- Jurisdiction.** -- (a) A person suffering from
4 domestic abuse may file a complaint in the district court requesting any order which will protect
5 her or him from the abuse, including but not limited to the following:

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

9 (2) Ordering the defendant to vacate the household forthwith, unless the defendant holds
10 sole legal interest in the household;

11 (3) Upon motion by the plaintiff, his or her address shall be released only at the
12 discretion of the district court judge;

13 (4) After notice to the respondent and after a hearing, the court may order the defendant
14 to surrender physical possession of all firearms in his or her possession, care, custody or control,
15 and may order the defendant not to purchase or receive or attempt to purchase or receive any
16 firearms for a period not to exceed the duration of the restraining order.

17 (b) Any individual who accepts physical possession of a firearm pursuant to this section
18 is prohibited from returning any firearm to any defendant under a restraining order during the
19 existence of the restraining order. Violation of this provision shall subject both the defendant and

1 the individual responsible for the return of the firearm to the defendant, to being found in
2 contempt of court.

3 (c) The district court shall provide a notice on all forms requesting a protective order
4 that, at the hearing for a protective order, the defendant may be ordered to surrender possession or
5 control of any firearms and not to purchase or receive or attempt to purchase or receive any
6 firearms for a period not to exceed the duration of the restraining order.

7 (d) When an allegation has been made that the defendant owns, possesses or controls any
8 firearms the court shall make a finding as to whether the defendant has ownership, possession, or
9 control of any firearm(s). If the defendant is present in court at a duly noticed hearing, the court
10 may, in addition to any other restrictions, order the defendant to physically surrender any
11 firearm(s) in that person's ~~immediate-physical~~ ownership, possession or control, or subject to that
12 person's ~~immediate-physical~~ ownership, possession or control, within twenty-four (24) hours of
13 the order, by surrendering the possession of the firearm(s) ~~to the control of any individual not~~
14 ~~legally prohibited from possessing a firearm who is not related to the defendant by blood,~~
15 ~~marriage, or relationship as defined by § 15-15-1(3), (4), or (5) of the Rhode Island general laws,~~
16 ~~or by surrendering any firearm(s)~~ to the Rhode Island state police or local police department, or
17 by surrendering the firearm(s) to a licensed gun dealer. If the defendant is not present at the
18 hearing, and the court orders the surrender of the firearm(s) then the defendant shall surrender the
19 firearm(s) within forty-eight (48) hours after being served with the order. A person ordered to
20 surrender possession of any firearm(s) pursuant to this subsection shall file with the court a
21 receipt showing the firearm(s) was either physically surrendered to ~~an individual not legally~~
22 ~~prohibited from possessing a firearm who is not related to the defendant by blood, marriage, or~~
23 ~~relationship as defined by § 15-15-1(3), (4), or (5)~~ the Rhode Island state police or local police
24 department or ~~surrender~~ surrendered to a licensed gun dealer or attest that at the time of the order,
25 the defendant did not own, possess or control any firearm(s) and that the defendant currently does
26 not own, possess or control any firearm(s), within seventy-two (72) hours after receiving the
27 order. Any defendant transporting a firearm to surrender in accordance with the above shall not
28 be liable to prosecution under § 11-47-8.

29 (e) A law enforcement agency or licensed gun dealer taking possession of a firearm shall
30 issue written proof of surrender to the person surrendering the firearm. The proof of surrender
31 must include the name of the person, the date of surrender, the serial number, manufacturer, and
32 model of all surrendered firearms.

33 (f) Any firearm surrendered pursuant to this section to the Rhode Island state police or
34 local police department, or surrendered to a licensed gun dealer shall be returned to the defendant

1 upon their request if:

2 (1) The defendant produces written documentation issued by the court indicating that the
3 order issued pursuant to this section prohibiting the defendant from purchasing, carrying,
4 transporting, or possessing a firearm has expired and has not been extended; and

5 (2) The defendant is not otherwise prohibited from possessing a firearm under state or
6 federal law.

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

9 ~~(f)~~(h) The prohibition against possessing a firearm(s) due solely to the existence of a
10 domestic violence restraining order issued under this section shall not apply with respect to sworn
11 peace officers as defined in § 12-7-21 and active members of military service including members
12 of the reserve components thereof, who are required by law or departmental policy to carry
13 departmental firearms while on duty or any person who is required by their employment to carry
14 a firearm in the performance of their duties. Any individual exempted pursuant to this exception
15 may possess a firearm only during the course of their employment. Any firearm required for
16 employment must be stored at the place of employment when not being possessed for
17 employment use; all other firearm(s) must be surrendered in accordance with § 8-8.1-3.

18 ~~(g)~~(i) Any violation of the aforementioned protective order shall subject the defendant to
19 being found in contempt of court.

20 ~~(h)~~(j) No order shall issue under this section which would have the effect of compelling a
21 defendant who has the sole legal interest in a residence to vacate that residence.

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

27 ~~(j)~~(l) Any violation of a protective order under this chapter of which the defendant has
28 actual notice shall be a misdemeanor which shall be punished by a fine of no more than one
29 thousand dollars (\$1,000) or by imprisonment for not more than one year, or both.

30 ~~(k)~~(m) The penalties for violation of this section shall also include the penalties provided
31 under § 12-29-5.

32 ~~(l)~~(n) "Actual notice" means that the defendant has received a copy of the order by
33 service thereof or by being handed a copy of the order by a police officer pursuant to § 8-8.1-5(d).

34 ~~(m)~~(o) The district court shall have criminal jurisdiction over all violations of this

1 chapter.

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

4 **15-15-3. Protective orders -- Penalty -- Jurisdiction. --** (a) A person suffering from
5 domestic abuse may file a complaint in the family court requesting any order which will protect
6 and support her or him from abuse including, but not limited, to the following:

7 (1) Ordering that the defendant be restrained and enjoined from contacting, assaulting,
8 molesting, or interfering with the plaintiff at home, on the street, or elsewhere, whether the
9 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) After notice to the respondent and a hearing, ordering either party to make payments
13 for the support of a minor child or children of the parties as required by law for a period not to
14 exceed ninety (90) days, unless the child support order is for a child or children receiving public
15 assistance pursuant to chapter 5.1 of title 40. In these cases, legal counsel for the division of
16 taxation, child support enforcement, shall be notified as a party in interest to appear for the
17 purpose of establishing a child support order under a new or existing docket number previously
18 assigned to the parties and not under the protective docket number. The child support order shall
19 remain in effect until the court modifies or suspends the order.

20 (5) After notice to the respondent and a hearing, the court in addition to any other
21 restrictions, may order the defendant to surrender physical possession of all firearms in his or her
22 possession, care, custody or control and may order the defendant not to purchase or receive or
23 attempt to receive any firearms for a period not to exceed the duration of the restraining order.

24 (b) Any individual who accepts physical possession of a firearm pursuant to this section
25 is prohibited from returning any firearm to any defendant under a restraining order during the
26 existence of the restraining order. Violation of this provision shall subject both the defendant and
27 the individual responsible for the return of the firearm to the defendant, to being found in
28 contempt of court.

29 (c) The Family Court shall provide a notice on all forms requesting a protective order
30 that, at the hearing for a protective order, the defendant may be ordered to surrender ~~physical~~
31 ownership, possession or control of any firearms and not to purchase or receive or attempt to
32 purchase or receive any firearms for a period not to exceed the duration of the restraining order.

33 (d) When an allegation has been made that the defendant owns, possesses or controls any
34 firearms the court shall make a finding as to whether the defendant has ownership, possession, or

1 control of any firearm(s). If the defendant is present in court at a duly noticed hearing, the court
2 may in addition to any other restrictions order the defendant to physically surrender any ~~firearm~~
3 firearm(s) in that person's ~~immediate ownership~~, possession or control, or subject to that person's
4 ~~immediate physical ownership~~, possession or control, within twenty-four (24) hours of the order,
5 by surrendering the possession of the firearm(s) ~~to the control of any individual not legally~~
6 ~~prohibited from possessing a firearm(s) who is not related to the defendant by blood, marriage, or~~
7 ~~relationship as defined by § 15-15-1(3), (4), or (5), of the Rhode Island general laws, or by~~
8 ~~surrendering any firearm(s)~~ to the Rhode Island State Police or local police department, or by
9 surrendering the firearm(s) to a licensed gun dealer. If the defendant is not present at the hearing,
10 and the court orders the surrender of firearm(s) then the defendant shall surrender possession of
11 the firearm(s) within forty-eight (48) hours after being served with the order. A person ordered to
12 surrender possession of any firearm(s) pursuant to this subsection shall file with the court a
13 receipt showing the firearm(s) was either ~~legally transferred to an individual not legally~~
14 ~~prohibited from possessing a firearm who is not related to the defendant by blood, marriage, or~~
15 ~~relationship as defined by § 15-15-1(3), (4), or (5) of the Rhode Island general laws or surrender~~
16 physically surrendered to the Rhode Island state police or local police department or to a licensed
17 gun dealer or attest that at the time of the order, the defendant did not own, possess or control any
18 firearm(s) and that the defendant currently does not own, possess or control any firearm(s), within
19 seventy-two (72) hours after receiving the order. Any defendant transporting a firearm to
20 surrender in accordance with the above shall not be liable to prosecution under § 11-47-8.

21 (e) A law enforcement agency or licensed gun dealer taking possession of a firearm shall
22 issue written proof of surrender to the person surrendering the firearm. The proof of surrender
23 must include the name of the person, the date of surrender, the serial number, manufacturer, and
24 model of all surrendered firearms.

25 (f) Any firearm surrendered pursuant to this section to the Rhode Island state police or
26 local police department, or to a licensed gun dealer shall be returned to the defendant upon their
27 request if:

28 (1) The defendant produces written documentation issued by the court indicating that the
29 order issued pursuant to this section prohibiting the defendant from purchasing, carrying,
30 transporting, or possessing a firearm has expired and has not been extended; and

31 (2) The defendant is not otherwise prohibited from possessing a firearm under state or
32 federal law.

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

1 ~~(h)~~(h) The prohibition against possessing a firearm(s) due solely to the existence of a
2 domestic violence restraining order issued under this section shall not apply with respect to sworn
3 peace officers as defined in § 12-7-21 and active members of military service including members
4 of the reserve components thereof, who are required by law or departmental policy to carry
5 departmental firearms while on duty or any person who is required by their employment to carry
6 a firearm in the performance of their duties. Any individual exempted pursuant to this exception
7 may possess a firearm only during the course of their employment. Any firearm required for
8 employment must be stored at the place of employment when not being possessed for
9 employment use; all other firearm(s) must be surrendered in accordance with § 15-15-3.

10 ~~(g)~~(i) Upon motion by the plaintiff, his or her address shall be released only at the
11 discretion of the family court judge.

12 ~~(h)~~(j) (1) Any violation of the protective orders in subsection (a) of this section shall
13 subject the defendant to being found in contempt of court.

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

19 ~~(i)~~(k) (1) Any violation of a protective order under this chapter of which the defendant
20 has actual notice shall be a misdemeanor which shall be punished by a fine of no more than one
21 thousand dollars (\$1,000) or by imprisonment for not more than one year, or both.

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

24 ~~(j)~~(l) Actual notice means that the defendant has received a copy of the order by service
25 or by being handed a copy of the order by a police officer pursuant to § 15-15-5(d).

26 ~~(k)~~(m) (1) The district court shall have criminal jurisdiction over all adult violations of
27 this chapter.

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

29 SECTION 3. This act shall take effect on January 1, 2017.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE--COURTS -- DOMESTIC ASSAULT

1 This act would provide that a respondent in domestic abuse cases wherein a protective
2 order is issued may not possess, purchase or receive any firearms for a period not to exceed the
3 duration of the restraining order.

4 This act would take effect on January 1, 2017.

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