

2016 -- S 2767

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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 CRIMINAL OFFENSES - WEAPONS

Introduced By: Senator Harold M. Metts

Date Introduced: March 10, 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)~~(b) After notice to the respondent and after a hearing, the court ~~may~~ shall order ~~the~~
14 ~~defendant~~ a person restrained under this section to surrender physical possession of all firearms in
15 his or her possession, care, custody or control, and not to purchase, or receive or attempt to
16 purchase or receive any firearms while the restraining order is in effect.

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~~ a person restrained under this section
5 shall be ordered to surrender possession or control of any firearms and not to purchase or receive
6 or attempt to purchase or receive any firearms ~~for a period not to exceed the duration of the~~ while
7 the restraining order is in effect.

8 (d) If the defendant is present in court at a duly noticed hearing, the court ~~may~~ shall, in
9 addition to any other restrictions, order ~~the defendant~~ a person restrained under this section to
10 physically surrender any firearm(s) in that person's ~~immediate physical~~ ownership possession or
11 control, or subject to that person's ~~immediate physical~~ ownership, possession or control, within
12 twenty-four (24) hours of the order, ~~by surrendering the possession of the firearm(s) to the control~~
13 ~~of any individual not legally prohibited from possessing a firearm who is not related to the~~
14 ~~defendant by blood, marriage, or relationship as defined by § 15-15-1(3), (4), or (5) of the Rhode~~
15 ~~Island general laws, or~~ by surrendering any firearm(s) to the Rhode Island state police or local
16 police department, or by surrendering the firearm(s) to a licensed gun dealer. If the defendant is
17 not present at the hearing, the defendant shall surrender the firearm(s) within forty-eight (48)
18 hours after being served with the order. A person ordered to surrender possession of any
19 firearm(s) pursuant to this subsection shall either:

20 (1) ~~file~~ File with the court a receipt showing the firearm(s) was ~~either~~ physically
21 surrendered to ~~an individual not legally prohibited from possessing a firearm who is not related to~~
22 ~~the defendant by blood, marriage, or relationship as defined by § 15-15-1(3), (4), or (5) or~~
23 ~~surrender to~~ the Rhode Island state police or local police department, or to a licensed gun dealer;
24 or

25 (2) Attest that, at the time of the order, the person owned no firearms and had no firearms
26 in their possession, and that the person currently owns no firearms and has no firearms in their
27 possession within seventy-two (72) hours after receiving the order. Any defendant transporting a
28 firearm to surrender in accordance with the above shall not be liable to prosecution under § 11-
29 47-8.

30 (e) Any firearm surrendered pursuant to this section to a police agency or police
31 department shall be returned to the person formerly restrained under this section upon their
32 request if:

33 (1) The person produces written documentation issued by a court indicating that the order
34 issued pursuant to this section prohibiting the person from purchasing, carrying, transporting, or

1 possessing a firearm has expired and has not been extended; and

2 (2) The person is not otherwise prohibited from possessing a firearm under state or
3 federal law.

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

6 ~~(f)~~(g) 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 their employment to carry
11 a firearm in the performance of their duties. Any individual exempted pursuant to this exception
12 may possess a firearm only during the course of their employment. Any firearm required for
13 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 § 8-8.1-3.

15 ~~(g)~~(h) Any violation of the aforementioned protective order shall subject the defendant to
16 being found in contempt of court.

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

19 ~~(i)~~(j) The contempt order shall not be exclusive and shall not preclude any other
20 available civil or criminal remedies. Any relief granted by the court shall be for a fixed period of
21 time not to exceed three (3) years, at the expiration of which time the court may extend any order
22 upon motion of the plaintiff for such additional time as 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 ~~(j)~~(k) Any violation of a protective order under this chapter of which the defendant has
25 actual notice shall be a misdemeanor which 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 ~~(k)~~(l) The penalties for violation of this section shall also include the penalties provided
28 under § 12-29-5.

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

31 ~~(m)~~(n) The district court shall have criminal jurisdiction over all violations of this
32 chapter.

33 SECTION 2. Section 11-5-3 of the General Laws in Chapter 11-5 entitled "Assaults" is
34 hereby amended to read as follows:

1 **11-5-3. Simple assault or battery.** -- (a) Except as otherwise provided in § 11-5-2, every
2 person who shall make an assault or battery or both shall be imprisoned not exceeding one year or
3 fined not exceeding one thousand dollars (\$1,000), or both.

4 (b) Where the provisions of "The Domestic Violence Prevention Act", chapter 29 of title
5 12, are applicable, the penalties for violation of this section shall also include the penalties as
6 provided in § 12-29-5.

7 (c) Upon conviction for a violation under this section, the court shall determine whether,
8 as a result of the violation, the offender is prohibited from purchasing, owning, carrying,
9 transporting, or having in their possession a firearm under 18 U.S.C. § 922(g)(9) or § 11-47-5.

10 (d) If the offender is prohibited as described in subsection (c) of this section, the court
11 shall order the offender to surrender any and all firearms in their possession or control, and shall
12 ensure surrender is made as provided under § 11-47-5.3.

13 SECTION 3. Section 11-47-5 of the General Laws in Chapter 11-47 entitled "Weapons"
14 is hereby amended to read as follows:

15 **11-47-5. ~~Possession of arms by person convicted of crime of violence or who is a~~**
16 **~~fugitive from justice.~~ Possession of arms by person convicted of crime of violence or**
17 **misdemeanor crime of domestic violence, person subject to certain restraining orders, or**
18 **who is a fugitive from justice.** -- (a) No person who:

19 (1) ~~has~~ Has been convicted in this state or elsewhere of a crime of violence;

20 (2) Has been convicted in this state or elsewhere of a misdemeanor that involves the use,
21 or attempted use of force, or the threatened use of a firearm, against a family or household
22 member as defined in §12-29-2; or

23 (3) ~~or who is~~ Is a fugitive from justice, shall purchase, own, carry, transport, or have in
24 his or her possession any firearm.

25 (b) No person who is subject to an order issued pursuant to chapter 8.1 of title 8 or
26 chapter 15 of title 15, or an equivalent order in this state or elsewhere, that was issued after the
27 restrained person received notice of the proceedings and had an opportunity to be heard shall
28 purchase, carry, transport, or have in their possession any firearm.

29 ~~(b)(c)~~ (c) Notwithstanding the provisions of subsection (a) of this section, no person
30 convicted of an offense punishable as a felony offense under § 12-29-5 shall purchase, own,
31 carry, transport, or have in his or her possession any firearm; ~~for a period of two (2) years~~
32 ~~following the date of that conviction.~~

33 ~~(e)(d)~~ (d) No person who is in community confinement pursuant to the provisions of § 42-56-
34 20.2 or who is otherwise subject to electronic surveillance or monitoring devices as a condition of

1 parole shall purchase, carry, transport, or have in his or her possession any firearm. This
2 subsection shall not apply to any person who has not been convicted of (or pleaded guilty or nolo
3 contendere to) a crime of violence in a court of competent jurisdiction.

4 ~~(d)~~(e) Every person violating the provisions of this section shall, upon conviction, be
5 punished by imprisonment for not less than two (2) nor more than ten (10) years; and for
6 penalties provided in this section he or she shall not be afforded the benefit of suspension or
7 deferment of sentence nor of probation.

8 SECTION 4. Chapter 11-47 of the General Laws entitled "Weapons" is hereby amended
9 by adding thereto the following section:

10 **11-47-5.3. Surrender of firearms after domestic violence offenses. -- (a) Pleading nolo**
11 contendere to, or conviction of, an offense under § 12-29-2 and punishable as a misdemeanor
12 offense under § 12-29-5, that involves the use or attempted use of force, or the threatened use of a
13 firearm, shall prohibit the offender from purchasing, owning, carrying, transporting, or having in
14 their possession any firearm. Upon such a plea or conviction, the court shall order the offender to
15 surrender all firearms owned by the person or in the person's possession as described in this
16 section.

17 (1) Surrender shall be made within twenty-four (24) hours of prohibition to state or local
18 law enforcement or to a federally licensed firearms dealer. A law enforcement agency or federally
19 licensed firearms dealer taking possession of a firearm shall issue a proof of surrender to the
20 person surrendering the firearm. The proof of surrender must include the name of the person, the
21 date of surrender, the serial number, manufacturer, and model of all surrendered firearms.

22 (2) The offender shall, within forty-eight (48) hours after being served with the order,
23 either:

24 (i) File a copy of proof of surrender with the court of jurisdiction, and attest that all
25 firearms owned by the person or in the person's possession at the time of plea or conviction, have
26 been surrendered in accordance with this section and that the person currently owns no firearms
27 and has no firearms in their possession; or

28 (ii) Attest that, at the time of the plea or conviction, the person owned no firearms and
29 had no firearms in their possession, and that the person currently owns no firearms and has no
30 firearms in their possession.

31 (3) If the person surrenders a firearm to a law enforcement agency, the law enforcement
32 agency may establish policies for disposal of the firearm, provided that such policies require that
33 the offender be notified of the disposal, and the offender receive any financial value received
34 from the disposal, less the cost associated with taking possession of, storing, and disposing of the

1 [firearm.](#)

2 SECTION 5. Section 12-29-5 of the General Laws in Chapter 12-29 entitled "Domestic
3 Violence Prevention Act" is hereby amended to read as follows:

4 **12-29-5. Disposition of domestic violence cases.** -- (a) Every person convicted of or
5 placed on probation for a crime involving domestic violence or whose case is filed pursuant to §
6 12-10-12 where the defendant pleads nolo contendere, in addition to any other sentence imposed
7 or counseling ordered, shall be ordered by the judge to attend, at his or her own expense, a
8 batterer's intervention program appropriate to address his or her violent behavior; provided,
9 however, that the court may permit a servicemember or veteran to complete any court-approved
10 counseling program administered or approved by the Veterans' Administration. This order shall
11 be included in the conditions of probation. Failure of the defendant to comply with the order shall
12 be a basis for violating probation and/or the provisions of § 12-10-12. This provision shall not be
13 suspended or waived by the court.

14 (b) Every person convicted of or placed on probation for a crime involving domestic
15 violence, as enumerated in § 12-29-2 or whose case if filed pursuant to § 12-10-12 where the
16 defendant pleads guilty or nolo contendere, in addition to other court costs or assessments
17 imposed, shall be ordered to pay a one hundred twenty-five dollar (\$125) assessment. Eighty
18 percent (80%) of the assessment collected pursuant to this section shall be provided to the Rhode
19 Island Coalition Against Domestic Violence for programs to assist victims of domestic violence
20 and twenty percent (20%) of the assessment shall be deposited as general revenue.

21 (c) (1) Every person convicted of an offense punishable as a misdemeanor involving
22 domestic violence as defined in § 12-29-2 shall:

23 (i) For a second violation be imprisoned for a term of not less than ten (10) days and not
24 more than one year.

25 (ii) For a third and subsequent violation be deemed guilty of a felony and be imprisoned
26 for a term of not less than one year and not more than ten (10) years.

27 (2) No jail sentence provided for under this section can be suspended.

28 (3) Nothing in this subsection shall be construed as limiting the discretion of the judges
29 to impose additional sanctions authorized in sentencing.

30 (d) For the purposes of this section, "batterers intervention program" means a program
31 which is certified by the batterers intervention program standards oversight committee according
32 to minimum standards, pursuant to §§ 12-29-5.1, 12-29-5.2, and 12-29-5.3.

33 (e) For purposes of this section, "servicemember" means a person who is presently
34 serving in the armed forces of the United States including the Coast Guard, a reserve component

1 thereof, or the National Guard. "Veteran" means a person who has served in the armed forces,
2 including the Coast Guard of the United States, a reserve component thereof, or the National
3 Guard, and has been discharged under other than dishonorable conditions.

4 (f) The court shall indicate on every record of conviction or plea of nolo contendere for
5 an offense punishable as a misdemeanor involving domestic violence, as defined in §12-29-2, that
6 the offender is prohibited under §11-47-5 from purchasing, owning, carrying, transporting, or
7 having in their possession any firearm. The court shall inform the offender of their prohibited
8 status and shall order the offender to surrender any firearms in their possession in accordance
9 with §11-47-5.3.

10 SECTION 6. Section 15-15-3 of the General Laws in Chapter 15-15 entitled "Domestic
11 Abuse Prevention" is hereby amended to read as follows:

12 **15-15-3. Protective orders -- Penalty -- Jurisdiction.** -- (a) A person suffering from
13 domestic abuse may file a complaint in the family court requesting any order which will protect
14 and support her or him from abuse including, but not limited, to the following:

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

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

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

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

28 ~~(5)~~ (b) After notice to the respondent and a hearing, the court in addition to any other
29 restrictions, ~~may~~ shall order ~~the defendant~~ a person restrained under this section to surrender
30 physical possession of all firearms in his or her possession, care, custody or control, and not to
31 purchase or receive or attempt to purchase or receive any firearms while the restraining order is in
32 effect.

33 ~~(b) Any individual who accepts physical possession of a firearm pursuant to this section~~
34 ~~is prohibited from returning any firearm to any defendant under a restraining order during the~~

1 ~~existence of the restraining order. Violation of this provision shall subject both the defendant and~~
2 ~~the individual responsible for the return of the firearm to the defendant, to being found in~~
3 ~~contempt of court.~~

4 (c) The Family Court shall provide a notice on all forms requesting a protective order
5 that, at the hearing for a protective order, ~~the defendant may~~ a person restrained under this section
6 shall be ordered pursuant to § 11-47-5 to surrender physical possession or control of any firearms
7 and not to purchase or receive or attempt to purchase or receive any firearms ~~for a period not to~~
8 ~~exceed the duration of~~ while the restraining order is in effect.

9 (d) If the defendant is present in court at a duly noticed hearing, the court ~~may~~ shall
10 order ~~the defendant~~ a person restrained under this section to physically surrender any ~~firearm~~
11 ~~firearms~~ in that person's ~~immediate~~ ownership, possession or control, or subject to that person's
12 ~~immediate physical~~ ownership, possession or control, within twenty-four (24) hours of the order,
13 ~~by surrendering the possession of the firearm(s) to the control of any individual not legally~~
14 ~~prohibited from possessing a firearm(s) 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 by~~
16 surrendering any firearm(s) to the Rhode Island State Police or local police department, or by
17 surrendering the firearm(s) to a licensed gun dealer. If the defendant is not present at the hearing,
18 the defendant shall surrender possession of the firearm(s) within forty-eight (48) hours after being
19 served with the order. A person ordered to surrender possession of any firearm(s) pursuant to this
20 subsection shall either:

21 (1) ~~file~~ File with the court a receipt showing the firearm(s) was ~~either legally transferred~~
22 ~~to an individual not legally prohibited from possessing a firearm who is not related to the~~
23 ~~defendant by blood, marriage, or relationship as defined by § 15-15-1(3), (4), or (5) of the Rhode~~
24 ~~Island general laws or surrender~~ physically surrendered to the Rhode Island state police or local
25 police department, or to a licensed gun dealer; or

26 (2) Attest that, at the time of the order, the person owned no firearms and had no firearms
27 in their possession, and that the person currently owns no firearms and has no firearms in their
28 possession within seventy-two (72) hours after receiving the order. Any defendant transporting a
29 firearm to surrender in accordance with the above shall not be liable to prosecution under § 11-
30 47-8.

31 (e) Any firearm surrendered pursuant to this section to a police agency or police
32 department shall be returned to the person formerly restrained under this section upon their
33 request if:

34 (1) The person produces written documentation issued by a court indicating that the order

1 issued pursuant to this section prohibiting the person from purchasing, carrying, transporting, or
2 possessing a firearm has expired and has not been extended; and

3 (2) The person is not otherwise prohibited from possessing a firearm under state or
4 federal law.

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

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

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

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

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

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

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

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

32 ~~(k)~~(l) (1) The district court shall have criminal jurisdiction over all adult violations of
33 this chapter.

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

1 SECTION 7. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL OFFENSES - WEAPONS

1 This act would prohibit any person convicted of a crime of domestic violence or one
2 subject to a restraining order, from possessing, transporting, carrying or owning a firearm and
3 would provide that such person surrender any firearms so possessed or owned to the RI state
4 police, the local police or a federally licensed firearms dealer while the restraining order is in
5 effect. It would also require that the courts with jurisdiction over the criminal case or restraining
6 order inform the person so restrained about their prohibited status and would allow for the return
7 of any firearms to the person so restrained upon termination of the restraining order.

8 This act would take effect upon passage.

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