

2015 -- S 0503

LC001726

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

A N A C T

RELATING TO CRIMINAL OFFENSES - WEAPONS

Introduced By: Senators Coyne, Goodwin, Paiva Weed, Conley, and Lynch

Date Introduced: February 26, 2015

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 pursuant to § 11-47-5 to surrender possession or control of any firearms and not
6 to purchase or receive or attempt to purchase or receive any firearms ~~for a period not to exceed~~
7 ~~the duration of the~~ while 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 file with the court a receipt showing the firearm(s) was
20 ~~either~~ physically surrendered to ~~an individual not legally prohibited from possessing a firearm~~
21 ~~who is not related to the defendant by blood, marriage, or relationship as defined by § 15-15-1(3),~~
22 ~~(4), or (5) or surrender~~ the Rhode Island state police or local police department, or to a licensed
23 gun dealer within seventy-two (72) hours after receiving the order. Any defendant transporting a
24 firearm to surrender in accordance with the above shall not be liable to prosecution under § 11-
25 47-8.

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

28 (f) The prohibition against possessing a firearm(s) due solely to the existence of a
29 domestic violence restraining order issued under this section shall not apply with respect to sworn
30 peace officers as defined in § 12-7-21 and active members of military service including members
31 of the reserve components thereof, who are required by law or departmental policy to carry
32 departmental firearms while on duty or any person who is required by their employment to carry
33 a firearm in the performance of their duties. Any individual exempted pursuant to this exception
34 may possess a firearm only during the course of their employment. Any firearm required for

1 employment must be stored at the place of employment when not being possessed for
2 employment use; all other firearm(s) must be surrendered in accordance with § 8-8.1-3.

3 (g) Any violation of the aforementioned protective order shall subject the defendant to
4 being found in contempt of court.

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

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

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

15 (k) The penalties for violation of this section shall also include the penalties provided
16 under § 12-29-5.

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

19 (m) The district court shall have criminal jurisdiction over all violations of this chapter.

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

22 **11-5-3. Simple assault or battery.** -- (a) Except as otherwise provided in § 11-5-2, every
23 person who shall make an assault or battery or both shall be imprisoned not exceeding one year or
24 fined not exceeding one thousand dollars (\$1,000), or both.

25 (b) Where the provisions of "The Domestic Violence Prevention Act", chapter 29 of title
26 12, are applicable, the penalties for violation of this section shall also include the penalties as
27 provided in § 12-29-5.

28 (c) Upon conviction for a violation under this section, the court shall determine whether,
29 as a result of the violation, the offender is prohibited from purchasing, owning, carrying,
30 transporting, or having in his or her possession a firearm under 18 U.S.C. § 922(g)(9) or § 11-47-
31 5.

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

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

3 ~~11-47-5. Possession of arms by person convicted of crime of violence or who is a~~
4 ~~fugitive from justice.~~ Possession of arms by person convicted of crime of violence or
5 misdemeanor crime of domestic violence, person subject to certain restraining orders, or
6 who is a fugitive from justice. -- (a) No person who:

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

8 (2) Has been convicted in this state or elsewhere of a misdemeanor that involves the use
9 or attempted use of force, or the threatened use of a firearm, against a family or household
10 member as defined in § 12-29-2, including without limitation an offense under § 12-29-2
11 punishable as a misdemeanor offense under § 12-29-5; ~~or~~

12 (3) ~~who is~~ Is a fugitive from justice; or

13 (4) Is subject to an order issued pursuant to chapter 8.1 of title 8 or chapter 15 of title 15,
14 or an equivalent order in this state or elsewhere, that was issued after the restrained person
15 received notice of the proceedings and had an opportunity to be heard shall purchase, own, carry,
16 transport, or have in his or her possession any firearm.

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

21 (c) No person who is in community confinement pursuant to the provisions of § 42-56-
22 20.2 or who is otherwise subject to electronic surveillance or monitoring devices as a condition of
23 parole shall purchase, carry, transport, or have in his or her possession any firearm. This
24 subsection shall not apply to any person who has not been convicted of (or pleaded guilty or nolo
25 contendere to) a crime of violence in a court of competent jurisdiction.

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

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

32 11-47-5.3. Surrender of firearms by persons convicted of domestic violence offenses.
33 -- A conviction for an offense under § 12-29-2, punishable as a misdemeanor offense under § 12-
34 29-5 shall prohibit the convicted person from purchasing, owning, carrying, transporting, or

1 having in his or her possession any firearm. Upon such a conviction, the court shall order the
2 convicted person to surrender all firearms owned by the person, or in the person's possession as
3 described in this section.

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

9 (2) The convicted person shall, within forty-eight (48) hours after being served with the
10 order, either:

11 (i) File a copy of proof of surrender with the court of conviction, and attest that all
12 firearms owned by the person or in the person's possession at the time of conviction have been
13 surrendered in accordance with this section and that the person currently owns no firearms and
14 has no firearms in his or her possession; or

15 (ii) Attest that, at the time of conviction, the person owned no firearms and had no
16 firearms in his or her possession, and that the person currently owns no firearms and has no
17 firearms in his or her possession.

18 (3) If the person surrenders a firearm to a law enforcement agency, the firearm shall be
19 considered to be abandoned. The law enforcement agency may establish policies for disposal of
20 the abandoned firearm, provided that such policies require that the offender be notified of the
21 disposal, and that the offender receive any financial value received from the disposal, less the cost
22 associated with taking possession of, storing, and disposing of the firearm.

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

25 **12-29-5. Disposition of domestic violence cases.** -- (a) Every person convicted of or
26 placed on probation for a crime involving domestic violence or whose case is filed pursuant to §
27 12-10-12 where the defendant pleads nolo contendere, in addition to any other sentence imposed
28 or counseling ordered, shall be ordered by the judge to attend, at his or her own expense, a
29 batterer's intervention program appropriate to address his or her violent behavior; provided,
30 however, that the court may permit a servicemember or veteran to complete any court-approved
31 counseling program administered or approved by the Veterans' Administration. This order shall
32 be included in the conditions of probation. Failure of the defendant to comply with the order shall
33 be a basis for violating probation and/or the provisions of § 12-10-12. This provision shall not be
34 suspended or waived by the court.

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

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

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

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

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

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

17 (d) The court shall indicate on every record of conviction for an offense punishable as a
18 misdemeanor involving domestic violence, as defined in § 12-29-2, that the offender is prohibited
19 under § 11-47-5 from purchasing, owning, carrying, transporting, or having in his or her
20 possession any firearm. The court shall inform the offender of his or her prohibited status and
21 shall order the offender to surrender any firearms in his or her possession in accordance with §
22 11-47-5.3.

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

26 ~~(e)~~(f) For purposes of this section, "servicemember" means a person who is presently
27 serving in the armed forces of the United States including the Coast Guard, a reserve component
28 thereof, or the National Guard. "Veteran" means a person who has served in the armed forces,
29 including the Coast Guard of the United States, a reserve component thereof, or the National
30 Guard, and has been discharged under other than dishonorable conditions.

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

33 **15-15-3. Protective orders -- Penalty -- Jurisdiction.** -- (a) A person suffering from
34 domestic abuse may file a complaint in the family court requesting any order which will protect

1 and support her or him from abuse including, but not limited, to the following:

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

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

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

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

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

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

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

30 (d) If the defendant is present in court at a duly noticed hearing, the court ~~may shall~~
31 order ~~the defendant~~ a person restrained under this section to physically surrender any ~~firearm~~
32 firearm(s) in that person's ~~immediate ownership,~~ possession or control, or subject to that person's
33 ~~immediate physical ownership,~~ possession or control, within twenty-four (24) hours of the order,
34 by surrendering ~~the possession of the firearm(s) to the control of any individual not legally~~

1 ~~prohibited from possessing a firearm(s) who is not related to the defendant by blood, marriage, or~~
2 ~~relationship as defined by § 15-15-1(3), (4), or (5), of the Rhode Island general laws, or by~~
3 ~~surrendering~~ any firearm(s) to the Rhode Island State Police or local police department, or by
4 surrendering the firearm(s) to a licensed gun dealer. If the defendant is not present at the hearing,
5 the defendant shall surrender possession of the firearm(s) within forty-eight (48) hours after being
6 served with the order. A person ordered to surrender possession of any firearm(s) pursuant to this
7 subsection shall file with the court a receipt showing the firearm(s) was ~~either legally transferred~~
8 ~~to an individual not legally prohibited from possessing a firearm who is not related to the~~
9 ~~defendant by blood, marriage, or relationship as defined by § 15-15-1(3), (4), or (5) of the Rhode~~
10 ~~Island general laws or surrender~~ physically surrendered to the Rhode Island state police or local
11 police department, or to a licensed gun dealer within seventy-two (72) hours after receiving the
12 order. Any defendant transporting a firearm to surrender in accordance with the above shall not
13 be liable to prosecution under § 11-47-8.

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

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

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

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

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

34 (i) (1) Any violation of a protective order under this chapter of which the defendant has

1 actual notice shall be a misdemeanor which shall be punished by a fine of no more than one
2 thousand dollars (\$1,000) or by imprisonment for not more than one year, or both.

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

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

7 (k) (1) The district court shall have criminal jurisdiction over all adult violations of this
8 chapter.

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

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

=====
LC001726
=====

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

- 1 This act would prohibit any individual convicted of domestic violence or subject to a
- 2 restraining order, from possessing a firearm.
- 3 This act would take effect upon passage.

=====
LC001726
=====