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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- COURTS

Introduced By: Representatives Craven, McEntee, McKiernan, and Millea

Date Introduced: February 12, 2020

Referred To: House Judiciary

(Judiciary/Courts)

It is enacted by the General Assembly as follows:

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

3 **8-8.1-1. Definitions.**

4 The following words as used in this chapter shall have the following meanings:

5 (1) "Cohabitants" means emancipated minors or persons eighteen (18) years of age or  
6 older, not related by blood or marriage, who together are not the legal parents of one or more  
7 children, and who have resided together within the preceding three (3) years or who are residing  
8 in the same living quarters.

9 (2) "Course of conduct" means a pattern of conduct composed of a series of acts over a  
10 period of time, evidencing a continuity of purpose. Constitutionally protected activity is not  
11 included within the meaning of "course of conduct."

12 (3) "Courts" means the district court.

13 (4) "Cyberstalking" means transmitting any communication by computer to any person or  
14 causing any person to be contacted for the sole purpose of harassing that person or his or her  
15 family.

16 (5) "Domestic abuse" means the occurrence of one or more of the following acts between  
17 cohabitants ~~or against the minor child of a cohabitant,~~ or the occurrence of one or more of the  
18 following acts between persons who are or have been in a substantive dating or engagement  
19 relationship within the past one year ~~or against a minor child in the custody of the plaintiff;~~

1 "domestic abuse" shall be determined by the court's consideration of the following factors:

- 2 (i) The length of time of the relationship;
- 3 (ii) The type of the relationship;
- 4 (iii) The frequency of the interaction between the parties;
- 5 (iv) Attempting to cause or causing physical harm;
- 6 (v) Placing another in fear of imminent serious physical harm;
- 7 (vi) Causing another to engage involuntarily in sexual relations by force, threat of force,
- 8 or duress; or
- 9 (vii) Stalking or cyberstalking.

10 (6) "Harassing" means following a knowing and willful course of conduct directed at a  
11 specific person with the intent to seriously alarm, annoy, or bother the person, and which serves  
12 no legitimate purpose. The course of conduct must be such as would cause a reasonable person to  
13 suffer substantial emotional distress, or be in fear of bodily injury.

14 (7) "Sole legal interest" means defendant has an ownership interest in the residence and  
15 plaintiff does not; or defendant's name is on the lease and plaintiff's is not.

16 (8) "Stalking" means harassing another person or willfully, maliciously and repeatedly  
17 following another person with the intent to place that person in reasonable fear of bodily injury.

18 **8-8.1-3. Protective orders -- Penalty -- Jurisdiction.**

19 (a) A person suffering from domestic abuse may file a complaint in the district court  
20 requesting any order which will protect her or him from the abuse, including but not limited to the  
21 following:

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

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

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

29 (4) Ordering the defendant to surrender physical possession of all firearms in his or her  
30 possession, care, custody, or control and shall further order a person restrained not to purchase or  
31 receive, or attempt to purchase or receive, any firearms while the protective order is in effect. The  
32 defendant shall surrender said firearms within twenty-four (24) hours of notice of the protective  
33 order to the Rhode Island state police or local police department or to a federally licensed  
34 firearms dealer.

1 (i) A person ordered to surrender possession of any firearm(s) pursuant to this section  
2 shall, within seventy-two (72) hours after being served with the order, either:

3 (A) File with the court a receipt showing the firearm(s) was physically surrendered to the  
4 Rhode Island state police or local police department, or to a federally licensed firearm dealer; or

5 (B) Attest to the court that, at the time of the order, the person had no firearms in his or  
6 her immediate physical possession or control, or subject to his or her immediate physical  
7 possession or control, and that the person, at the time of the attestation, has no firearms in his or  
8 her immediate physical possession or control or subject to his or her immediate physical  
9 possession or control.

10 (ii) If a person restrained under this section transfers a firearm(s) to a federally licensed  
11 firearms dealer pursuant to this section, the person restrained under this section may instruct the  
12 federally licensed firearms dealer to sell the firearm(s) or to transfer ownership in accordance  
13 with state and federal law, to a qualified named individual who is not a member of the person's  
14 dwelling house, who is not related to the person by blood, marriage, or relationship as defined by  
15 § 15-15-1(7), and who is not prohibited from possessing firearms under state or federal law. The  
16 owner of any firearm(s) sold shall receive any financial value received from its sale, less the cost  
17 associated with taking possession of, storing, and transferring of the firearm(s).

18 (iii) Every individual to whom possession of a firearm(s) is transferred pursuant to this  
19 subsection shall be prohibited from transferring or returning any firearm(s) to the person  
20 restrained under this section while the protective order remains in effect and shall be informed of  
21 this prohibition. Any knowing violation of this subsection is a felony that shall be punishable by a  
22 fine of not more than one thousand dollars (\$1,000), or by imprisonment for a term of not less  
23 than one year and not more than five (5) years, or both.

24 (iv) An individual to whom possession of a firearm(s) is transferred pursuant to this  
25 subsection shall return a firearm(s) to the person formerly restrained under this section only if the  
26 person formerly restrained under this section provides documentation issued by a court indicating  
27 that the restraining order issued pursuant to this section that prohibited the person from  
28 purchasing, carrying, transporting, or possessing firearms has expired and has not been extended.

29 (b) After notice to the respondent and after a hearing, which shall be held within fifteen  
30 (15) days of surrendering said firearms, the court, in addition to any other restrictions, may, for  
31 any protective order issued or renewed on or after July 1, 2017, continue the order of surrender,  
32 and shall further order a person restrained under this section not to purchase or receive, or attempt  
33 to purchase or receive, any firearms while the protective order is in effect.

34 (c) The district court shall provide a notice on all forms requesting a protective order that

1 a person restrained under this section shall be ordered pursuant to § 11-47-5, to surrender  
2 possession or control of any firearms and not to purchase or receive, or attempt to purchase or  
3 receive, any firearms while the restraining order is in effect. The form shall further provide that  
4 any person who has surrendered their firearms shall be afforded a hearing within fifteen (15) days  
5 of surrendering their firearms.

6 (d) Any firearm surrendered in accordance with this section to the Rhode Island state  
7 police or local police department shall be returned to the person formerly restrained under this  
8 section upon their request when:

9 (1) The person formerly restrained under this section produces documentation issued by a  
10 court indicating that the restraining order issued pursuant to this section that prohibited the person  
11 from purchasing, carrying, transporting, or possessing firearms has expired and has not been  
12 extended; and

13 (2) The law enforcement agency in possession of the firearms determines that the person  
14 formerly restrained under this section is not otherwise prohibited from possessing a firearm under  
15 state or federal law.

16 (3) The person required to surrender his or her firearms pursuant to this section shall not  
17 be responsible for any costs of storage of any firearms surrendered pursuant to this section.

18 (e) The Rhode Island state police are authorized to develop rules and procedures  
19 pertaining to the storage and return of firearms surrendered to the Rhode Island state police or  
20 local police departments pursuant to this section. The Rhode Island state police may consult with  
21 the Rhode Island Police Chiefs' Association in developing rules and procedures.

22 (f) Nothing in this section shall be construed to limit, expand, or in any way modify  
23 orders issued under §§ 12-29-4 or 15-5-19.

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

26 (h) The court shall immediately notify the person suffering from domestic abuse whose  
27 complaint gave rise to the protective order and the law enforcement agency where the person  
28 restrained under this section resides of the hearing.

29 (i) The person suffering from domestic abuse, local law enforcement, and the person  
30 restrained under this section shall all have an opportunity to be present and to testify when the  
31 court considers the petition.

32 (j) At the hearing, the person restrained under this section shall have the burden of  
33 showing, by clear and convincing evidence, that, if his or her firearm rights were restored, he or  
34 she would not pose a danger to the person suffering from domestic abuse or to any other person.

1 (1) In determining whether to restore a person's firearm rights, the court shall examine all  
2 relevant evidence, including, but not limited to: the complaint seeking a protective order; the  
3 criminal record of the person restrained under this section; the mental health history of the person  
4 restrained under this section; any evidence that the person restrained under this section has, since  
5 being served with the order, engaged in violent or threatening behavior against the person  
6 suffering from domestic abuse or any other person.

7 (2) If the court determines, after a review of all relevant evidence and after all parties  
8 have had an opportunity to be heard, that the person restrained under this section would not pose  
9 a danger to the person suffering from domestic abuse or to any other person if his or her firearm  
10 rights were restored, then the court may grant the petition and modify the protective order and lift  
11 the firearm prohibition.

12 (3) If the court lifts a person's firearms prohibition pursuant to this subsection, the court  
13 shall issue the person written notice that he or she is no longer prohibited under this section from  
14 purchasing or possessing firearms while the protective order is in effect.

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

24 (l) Any violation of the aforementioned protective order shall subject the defendant to  
25 being found in contempt of court.

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

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

33 (o) Any violation of a protective order under this chapter of which the defendant has  
34 actual notice shall be a misdemeanor that shall be punished by a fine of no more than one

1 thousand dollars (\$1,000) or by imprisonment for not more than one year, or both.

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

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

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

7 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO COURTS AND CIVIL PROCEDURE -- COURTS

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1           This act would remove references to minors in certain sections relative to domestic  
2 assault protective orders as the family court currently has jurisdiction over protective orders  
3 involving minors.

4           This act would take effect upon passage.

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