

2014 -- S 2542

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO CRIMINAL PROCEDURE -- DOMESTIC VIOLENCE PREVENTION ACT

Introduced By: Senators Lynch, Lombardi, McCaffrey, Raptakis, and Walaska

Date Introduced: February 27, 2014

Referred To: Senate Judiciary

(by request)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 12-29-3 of the General Laws in Chapter 12-29 entitled "Domestic
2 Violence Prevention Act" is hereby amended to read as follows:

3 **12-29-3. Law enforcement officers -- Duties and immunity.** -- (a) The primary duty of
4 law enforcement officers when responding to a domestic violence situation is to enforce the laws
5 allegedly violated and to protect the victim.

6 (b) (1) When a law enforcement officer responds to a domestic violence situation and
7 has probable cause to believe that a crime has been committed, the officer shall exercise arrest
8 powers pursuant to sections 12-7-3 and 12-7-4; provided, that the officer shall arrest and take into
9 custody the alleged perpetrator of the crime when the officer has probable cause to believe that
10 any of the following acts has occurred:

11 (i) A felonious assault;

12 (ii) An assault which has resulted in bodily injury to the victim, whether or not the injury
13 is observable by the responding officer;

14 (iii) Physical action which was intended to cause another person reasonably to fear
15 imminent serious bodily injury or death. "Bodily injury" means physical pain, illness, or an
16 impairment of physical condition; or

17 (iv) Violation of a protective order and the violator has previous knowledge of the order
18 and the terms of it;

19 (v) Violation of a no-contact order issued pursuant to section 12-29-4.

1 (2) The decision to arrest and charge shall not:

2 (i) Be dependent on the specific consent of the victim;

3 (ii) Consider the relationship of the parties; or

4 (iii) Be based solely on a request by the victim.

5 (3) An arrest without warrant made under this section shall be made within twenty-four
6 (24) hours of the alleged crime.

7 (4) If an arrest without warrant cannot be made pursuant to this section, the officer shall
8 advise the victim of the right to file a criminal complaint and shall seek a warrant for arrest if
9 there is probable cause to do so.

10 (c) (1) When more than one family or household member involved in a domestic
11 violence incident states a complaint, the officer shall investigate each complaint to determine
12 whether there is probable cause to believe a crime has been committed. The officer shall not
13 dismiss the incident by presuming two (2) party guilt.

14 (2) When the officer has probable cause to believe that family or household members
15 have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest
16 the person whom the officer believes to be the primary physical aggressor.

17 (d) A law enforcement officer shall not be held liable for false arrest in any civil action,
18 for an arrest based on probable cause or for enforcement in good faith of a court order issued
19 pursuant to this chapter or pursuant to section 15-5-19, chapter 15 of title 15, or chapter 8.1 of
20 title 8.

21 (e) It shall be the responsibility of the law enforcement officer at the scene of a domestic
22 violence incident to provide immediate assistance to the victim. This assistance shall include, but
23 not be limited to:

24 (1) Assisting the victim to obtain medical treatment if treatment is required, including
25 transportation to an emergency medical treatment facility;

26 (2) Giving the victim notice of her or his right to obtain a protective order in family court
27 pursuant to chapter 15 of title 15 or district court pursuant to chapter 8.1 of title 8 as appropriate
28 according to the relationship of the parties. This notice shall be provided by handing the victim a
29 copy of the following statement written in English, Portuguese, Spanish, Cambodian, Hmong,
30 Laotian, Vietnamese, and French and by reading the notice to that person when possible:

31 "If you are in need of medical treatment, you have the right to have the officer present
32 drive you to the nearest hospital or otherwise assist you.

33 "If you believe that police protection is needed for your physical safety, you have the
34 right to have the officer present remain at the scene until you and your children can leave or until

1 your safety is otherwise obtained.

2 "You have the right to file a criminal complaint with the responding officer or your local
3 police department if the officer has not arrested the perpetrator.

4 "Married/blood relatives/children in common. If your attacker is your spouse, former
5 spouse, person to whom you are related by blood or marriage, or if you are not married to your
6 attacker, but have a child in common, you have the right to go to family court and ask the court to
7 issue:

8 (i) An order restraining your attacker from abusing you or your minor child;

9 (ii) An order awarding you exclusive use of your domicile; and

10 (iii) An order awarding you custody of your minor child(ren).

11 "Unmarried. If you are not married or related to your attacker, but have resided with him
12 or her within the past three (3) years, or you or your attacker are in or have been in a substantive
13 dating or engagement relationship within the past ~~six (6) months~~ one year, you have the right to
14 go to district court and request:

15 (i) An order restraining your attacker from abusing you; and

16 (ii) An order directing your attacker to leave your household, unless he or she has the
17 sole legal interest in the household;"

18 (3) Informing the victim of available services; and

19 (4) In cases where the officer has determined that no cause exists for an arrest, assistance
20 shall also include:

21 (i) Remaining at the scene as long as there is danger to the safety of the person or until
22 the person is able to leave the dwelling. The officer shall transport the person if no reasonable
23 transportation is available; and

24 (ii) Informing the person that she or he has the right to file a criminal complaint with the
25 responding officer or the local police department.

26 (f) An officer responding to a domestic violence call shall complete a domestic violence
27 report pursuant to section 12-29-8.

28 (g) (1) It shall be the responsibility of the attorney general to develop a model Uniform
29 Policy for Police Response to Domestic Violence which is consistent with the provisions of this
30 section. This written policy shall be developed after conferring with the staff of the department of
31 human services' domestic violence unit and with the council on domestic violence and shall be
32 made available to any law enforcement agency.

33 (2) Each law enforcement agency shall develop a Policy for Police Response to
34 Domestic Violence which is consistent with the Uniform Policy for Police Response to Domestic

1 Violence developed by the attorney general and shall file a copy of the policy with the attorney
2 general within sixty (60) days of receiving the model policy.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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1 This act would amend the notice provided by a law enforcement officer to a victim of
2 domestic violence. The amendment to the notice is a change in the length of time from six (6)
3 months to one year that one could be in a dating or engagement relationship to qualify under the
4 domestic violence statute as a victim of domestic violence.

5 This act would take effect upon passage.

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