

2023 -- H 5702

LC001487

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

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

Introduced By: Representatives Baginski, Alzate, Kazarian, Casimiro, McEntee, and  
Batista

Date Introduced: February 17, 2023

Referred To: House 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.**

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

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

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 discretion  
12 of the district court judge;

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

19 (i) A person ordered to surrender possession of any firearm(s) pursuant to this section shall,

1 within seventy-two (72) hours after being served with the order, either:

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

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

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

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

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

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

32 (c) The district court shall provide a notice on all forms requesting a protective order that  
33 a person restrained under this section shall be ordered pursuant to § 11-47-5, to surrender  
34 possession or control of any firearms and not to purchase or receive, or attempt to purchase or

1 receive, any firearms while the restraining order is in effect. The form shall further provide that any  
2 person who has surrendered their firearms shall be afforded a hearing within fifteen (15) days of  
3 surrendering their firearms.

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

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

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

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

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

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

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

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

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

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

33 (1) In determining whether to restore a person's firearm rights, the court shall examine all  
34 relevant evidence, including, but not limited to: the complaint seeking a protective order; the

1 criminal record of the person restrained under this section; the mental health history of the person  
2 restrained under this section; any evidence that the person restrained under this section has, since  
3 being served with the order, engaged in violent or threatening behavior against the person suffering  
4 from domestic abuse or any other person.

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

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

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

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

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

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

31 (o) Any violation of a protective order under this chapter of which the defendant has actual  
32 notice shall be a misdemeanor that shall be punished by a fine of no more than one thousand dollars  
33 (\$1,000) or by imprisonment for not more than one year, or both. [The attorney general shall](#)  
34 [prosecute any violations of a protective order under this chapter.](#)

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

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

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

6 SECTION 2. Section 12-29-4 of the General Laws in Chapter 12-29 entitled "Domestic  
7 Violence Prevention Act" is hereby amended to read as follows:

8 **12-29-4. Restrictions upon and duties of court.**

9 (a)(1) Because of the likelihood of repeated violence directed at those who have been  
10 victims of domestic violence in the past, when a person is charged with or arrested for a crime  
11 involving domestic violence, that person may not be released from custody on bail or personal  
12 recognizance before arraignment without first appearing before the court or bail commissioner. The  
13 court or bail commissioner authorizing release shall issue a no-contact order prohibiting the person  
14 charged or arrested from having contact with the victim.

15 (2) At the time of arraignment or bail hearing the court or bail commissioner shall  
16 determine whether a no-contact order shall be issued or extended.

17 (3) Willful violation of a court order issued under subdivision (1), (2), or as part of  
18 disposition of this subdivision of this subsection is a misdemeanor and shall be prosecuted by the  
19 attorney general. The written order releasing the person charged or the written order issued at the  
20 time of disposition shall contain the court's directive and shall bear the legend: "Violation of this  
21 order is a criminal offense under this section and will subject a violator to arrest". A copy of the  
22 order shall be provided to the victim.

23 (4) Whenever an order prohibiting contact is issued, modified, or terminated under  
24 subdivision (1), (2) or (3) of this subsection, the clerk of the court shall forward a copy of the order  
25 on or before the next judicial day to the appropriate law enforcement agency specified in the order.

26 (b) Because of the serious nature of domestic violence, the court in domestic violence  
27 actions:

28 (1) Shall not dismiss any charge or delay disposition because of concurrent dissolution of  
29 marriage or other civil proceedings;

30 (2) Shall not require proof that either party is seeking a dissolution of marriage prior to  
31 instigation of criminal proceedings;

32 (3) Shall identify by reasonable means on docket sheets those criminal actions arising from  
33 acts of domestic violence; and

34 (4) Shall make clear to the defendant and victim that the prosecution of the domestic

1 violence action is determined by the ~~prosecutor~~ [attorney general](#) and not the victim.

2 (c) To facilitate compliance with the provisions of this section, the district court shall assure  
3 that the misdemeanor and felony complaint forms indicate whether the crime charged involves  
4 domestic violence and, if so, the relationship of the victim and defendant.

5 (d) Notwithstanding the provisions of section 12-10-12, the filing of any complaint for a  
6 crime involving domestic violence shall be conditioned upon the defendant keeping the peace and  
7 being of good behavior for a period of three (3) years. In the event a particular case involving  
8 domestic violence is filed on a plea of not guilty, guilty or nolo contendere pursuant to section 12-  
9 10-12, the court having jurisdiction shall retain the records of the case for a period of three (3) years  
10 from the date of the filing. These records shall not be expunged, sealed, or otherwise destroyed for  
11 a period of three (3) years from the date of filing. Furthermore, the destruction or sealing of records  
12 in the possession of the department of attorney general bureau of criminal identification, the  
13 superintendent of the state police, or the police departments of any city or town after a filing related  
14 to a crime involving domestic violence shall be governed by section 12-1-12.

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

17 **15-15-3. Protective orders — Penalty — Jurisdiction.**

18 (a) A person, or a parent, custodian, or legal guardian on behalf of a minor child or the  
19 director of the department of children, youth and families ("DCYF") or its designee for a child in  
20 the custody of DCYF, pursuant to §§ 40-11-7 and 40-11-7.1, suffering from domestic abuse or  
21 sexual exploitation as defined in § 15-15-1, may file a complaint in the family court requesting any  
22 order that will protect and support her or him from abuse or sexual exploitation, including, but not  
23 limited to, the following:

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

27 (2) Ordering the defendant to vacate the household immediately, and further providing in  
28 the order for the safety and welfare of all household animals and pets;

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

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

1 dealer.

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

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

6 (B) Attest to the court that, at the time of the order, the person had no firearms in his or her  
7 immediate physical possession or control, or subject to their immediate physical possession or  
8 control, and that the person, at the time of the attestation, has no firearms in their immediate  
9 physical possession or control, or subject to their immediate physical 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 with  
13 state and federal law, to a qualified named individual who is not a member of the person's dwelling  
14 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 owner of  
16 any firearm(s) sold shall receive any financial value received from its sale, less the cost associated  
17 with taking possession of, storing, and transferring of the firearm(s).

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

24 (iv) An individual to whom ownership 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 purchasing,  
28 carrying, transporting, or possessing firearms has expired and has not been extended;

29 (5) After notice to the respondent and a hearing, ordering either party to make payments  
30 for the support of a minor child or children of the parties as required by law for a period not to  
31 exceed ninety (90) days, unless the child support order is for a child or children receiving public  
32 assistance pursuant to chapter 5.1 of title 40. In these cases, legal counsel for the division of  
33 taxation, child support enforcement, shall be notified as a party in interest to appear for the purpose  
34 of establishing a child support order under a new or existing docket number previously assigned to

1 the parties and not under the protective docket number. The child support order shall remain in  
2 effect until the court modifies or suspends the order.

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

8 (c) The family court shall provide a notice on all forms requesting a protective order that a  
9 person restrained under this section shall be ordered pursuant to § 11-47-5 to surrender possession  
10 of any firearms while the protective order is in effect. The form shall further provide that any person  
11 who has surrendered his or her firearms shall be afforded a hearing within fifteen (15) days of  
12 surrendering his or her firearms.

13 (d) Any firearm surrendered in accordance with this section to the Rhode Island state police  
14 or local police department shall be returned to the person formerly restrained under this section  
15 upon his or her request when:

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

20 (2) The law enforcement agency in possession of the firearms determined that the person  
21 formerly restrained under this section is not otherwise prohibited from possessing a firearm under  
22 state or federal law.

23 (3) The person required to surrender their firearms pursuant to this section shall not be  
24 responsible for any costs of storage of any firearms surrendered pursuant to this section.

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

29 (f) Nothing in this section shall be construed to limit, expand, or in any way modify orders  
30 issued under § 12-29-7 or § 15-5-19.

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

33 (h) The court shall immediately notify the person suffering from domestic abuse whose  
34 complaint gave rise to the protective order, and the law enforcement agency where the person



1 restrained under this section resides, of the hearing.

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

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

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

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

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

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

31 (l) Upon motion by the plaintiff, his or her address shall be released only at the discretion  
32 of the family court judge.

33 (m)(1) Any violation of the protective orders in subsection (a) of this section shall subject  
34 the defendant to being found in contempt of court.

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

6 (n)(1) Any violation of a protective order under this chapter of which the defendant has  
7 actual notice shall be a misdemeanor that shall be punished by a fine of no more than one thousand  
8 dollars (\$1,000) or by imprisonment for not more than one year, or both. [The attorney general shall](#)  
9 [prosecute any violations of a protective order under this chapter.](#)

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

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

14 (p)(1) The district court shall have criminal jurisdiction over all adult violations of this  
15 chapter.

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

17 SECTION 4. Section 42-9-4 of the General Laws in Chapter 42-9 entitled "Department of  
18 Attorney General" is hereby amended to read as follows:

19 **42-9-4. Prosecution of offenses.**

20 (a) The attorney general shall draw and present all informations and indictments, or other  
21 legal or equitable process, against any offenders, as by law required, and diligently, by a due course  
22 of law or equity, prosecute them to final judgment and execution.

23 (b) The duty of the attorney general under this section shall include the duty to prosecute  
24 all charges of violations of §§ 31-27-2.1, 31-27-2.3, and/or 31-27-2.5, jurisdiction over the  
25 adjudication of which is conferred upon the traffic tribunal under chapter 41.1 of title 31.

26 [\(c\) The duty of the attorney general under this section shall include the duty to prosecute](#)  
27 [all charges of violations of §§ 8-8.1-3, 12-29-4 and/or 15-15-13.](#)

28 SECTION 5. 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 -- DOMESTIC ASSAULT

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1           This act would provide the office of attorney general with the authority to prosecute any  
2 violation of a protective order.

3           This act would take effect upon passage.

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