

2023 -- S 0604

LC002121

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - COURTS -- ABUSIVE LITIGATION

Introduced By: Senators Euer, LaMountain, Tikoian, DiMario, Quezada, Cano, Gallo,
Pearson, Sosnowski, and Mack

Date Introduced: March 07, 2023

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. The general assembly makes the following findings of fact:

2 (1) The legislature recognizes that individuals who abuse their intimate partners often
3 misuse court proceedings in order to control, harass, intimidate, coerce, and/or impoverish the
4 abused partner. Court proceedings can provide a means for an abuser to exert and reestablish power
5 and control over a domestic violence survivor long after a relationship has ended. The legal system
6 unwittingly becomes another avenue that abusers exploit to cause psychological, emotional, and
7 financial devastation. This misuse of the court system by abusers has been referred to as legal
8 bullying, stalking through the courts, paper abuse, and similar terms.

9 (2) The legislature finds that the term "abusive litigation" is the most common term and
10 that it accurately describes this problem. Abusive litigation against domestic violence survivors
11 arises in a variety of contexts. Family law cases such as dissolutions, legal separations, parenting
12 plan actions or modifications, and protection order proceedings are particularly common forums
13 for abusive litigation.

14 (3) It is also not uncommon for abusers to file civil lawsuits against survivors, such as
15 defamation, tort, or breach of contract claims. Even if a lawsuit is meritless, forcing a survivor to
16 spend time, money, and emotional resources responding to the action provides a means for the
17 abuser to assert power and control over the survivor.

18 (4) The legislature finds that courts have considerable authority to respond to abusive
19 litigation tactics, while upholding litigants' constitutional rights to access to the courts. Recognizing

1 that courts have inherent authority to control the conduct of litigants, they have considerable
2 discretion to fashion creative remedies in order to curb abusive litigation. The legislature intends
3 to provide the courts with an additional tool to curb abusive litigation and to mitigate the harms
4 abusive litigation perpetuates.

5 SECTION 2. Title 8 of the General Laws entitled "COURTS AND CIVIL PROCEDURE
6 — COURTS" is hereby amended by adding thereto the following chapter:

7 CHAPTER 8.4

8 ABUSIVE LITIGATION

9 **8-8.4-1. Definitions.**

10 As used in this chapter, the following words shall have the following meanings:

11 (1) "Abusive litigation" means litigation where the following apply:

12 (i) The opposing parties have a current or former family or household member relationship
13 or there has been a civil order or criminal conviction determining that one of the parties stalked or
14 sexually assaulted the other party;

15 (ii) The party who is filing, initiating, advancing, or continuing the litigation has been found
16 by a court to have abused, stalked, or sexually assaulted the other party, pursuant to:

17 (A) A final protective order entered pursuant to § 8-8.1-3 or § 15-5-19;

18 (B) A no contact order entered pursuant to § 12-29-4;

19 (C) A final sexual assault protective order entered pursuant to § 11-37.2-2;

20 (D) A final foreign abuse prevention order entered pursuant to § 12-29-1.1;

21 (E) A final order for alimony or custody of children, entered pursuant to § 15-5-16;

22 (F) A criminal conviction or a plea of nolo contendere, in this state or any other jurisdiction
23 for any of the crimes enumerated in § 12-29-2 or a filing for any domestic violence offense
24 enumerated in this chapter;

25 (G) A court determination, in this state or any other jurisdiction of probable cause for a
26 charge of a crime of domestic violence enumerated in this chapter, wherein the court imposed
27 criminal conditions of release pertaining to the safety of the victim, which include, but are not
28 limited to, distance restrictions or restrictions on contact with the victim; or

29 (H) A signed affidavit from a licensed medical professional or mental healthcare provider,
30 social worker, employee of a state agency acting within the scope of their employment to assist
31 victims of domestic violence or sexual assault, a domestic violence or sexual assault advocate or
32 counselor working on behalf of an agency that assists victims of domestic violence and sexual
33 assault.

34 (iii) The litigation is being initiated, advanced, or continued primarily for the purpose of

1 abusing, harassing, intimidating, threatening, or maintaining contact with the other party, and at
2 least one of the following factors apply:

3 (A) Claims, allegations, or other legal contentions made in the litigation are not warranted
4 by existing law or by a reasonable argument for the extension, modification, or reversal of existing
5 law, or the establishment of new law;

6 (B) Allegations and other factual contentions made in the litigation are without adequate
7 evidentiary support or are unlikely to have evidentiary support after a reasonable opportunity for
8 further investigation; or

9 (C) An issue or issues that are the basis of the litigation have previously been filed in one
10 or more other courts or jurisdictions and the actions have been litigated and disposed of unfavorably
11 to the party filing, initiating, advancing, or continuing the litigation.

12 (2) “Family or household member” means current or former intimate partners, spouses,
13 former spouses, persons related by blood or marriage, persons who are presently residing together
14 or who have resided together in the past three (3) years, and persons who have a child in common,
15 regardless of whether they have been married or have lived together, or persons who are, or have
16 been, in a dating or engagement relationship within the past year.

17 (3) “Foreign abuse prevention order” means any protection order issued by the court of any
18 other state that contains provisions similar to relief provisions authorized under this chapter, or the
19 Rhode Island rules of domestic relations procedure. “Other state” and “issuing state” mean any
20 state other than Rhode Island and any federally recognized Indian tribe, territory or possession of
21 the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

22 (4) “Litigation” means any kind of legal action or proceeding, including:

23 (i) A filing of a summons, complaint, or petition;

24 (ii) Serving a summons, complaint, or petition, regardless of whether it has been filed;

25 (iii) Filing a motion, notice of court date, or order to appear;

26 (iv) Serving a motion, notice of court date, or order to appear, regardless of whether it has
27 been filed or scheduled;

28 (v) Filing a subpoena, subpoena duces tecum, interrogatories, request for production of
29 documents, notice of deposition, or other discovery request; or

30 (vi) Serving a subpoena, subpoena duces tecum, interrogatories, request for production of
31 documents, notice of deposition, or other discovery request.

32 (5) “Perpetrator of abusive litigation” means a person who files, initiates, advances, or
33 continues litigation in violation of an order restricting abusive litigation.

34 **8-8.4-2. Order restricting abusive litigation.**

1 (a) A party may request from the court an order restricting abusive litigation if:
2 (1) The opposing parties have a current or former family or household member relationship
3 or there has been a civil order or criminal conviction determining that one of the parties stalked or
4 sexually assaulted the other party; and
5 (2) The party who is filing, initiating, advancing, or continuing the litigation has been found
6 by a court to have abused, stalked, or sexually assaulted the other party pursuant to:
7 (i) A final protective order entered pursuant to § 8-8.1-3 or § 15-5-19;
8 (ii) A no contact order entered pursuant to § 12-29-4;
9 (iii) A final sexual assault protective order entered pursuant to § 11-37.2-2;
10 (iv) A final foreign abuse prevention order entered pursuant to § 12-29-1.1;
11 (v) A final order for alimony or custody of children, entered pursuant to § 15-5-16;
12 (vi) A criminal conviction for any of the enumerated crimes defined in § 12-29-2 or a filing
13 for any domestic violence offense enumerated in this chapter;
14 (vii) A court determination of probable cause for a charge of a crime of domestic violence,
15 wherein the court imposed criminal conditions of release pertaining to the safety of the victim,
16 which include, but are not limited to, distance restrictions or restrictions on contact with the victim.
17 (b) A party who meets the requirements of subsection (a) of this section may request an
18 order restricting abusive litigation:
19 (1) In any answer or response to the litigation being filed, initiated, advanced, or continued;
20 (2) By motion made at any time during any open or ongoing case;
21 (3) In an answer or response to any motion or request for an order; or
22 (4) Orally in any hearing.
23 (c) Any court of competent jurisdiction may, on its own motion or motion of a party,
24 determine that a hearing is necessary to determine if a party is engaging in abusive litigation.
25 (d) Proceedings pursuant to this section may be initiated by petition or by motion in a
26 pending case.
27 (e) The court administrator shall create forms for a petition or motion for an order
28 restricting abusive litigation and the form for an order restricting abusive litigation, and the forms
29 shall be maintained by the clerks of the courts.
30 (f) No filing fee shall be charged to the responding party for proceedings pursuant to this
31 section.
32 (g) The provisions of this section are nonexclusive and shall not affect any other available
33 remedy.

34 **8-8.4-3. Hearing – Procedure.**

1 (a) At a hearing, evidence of any of the following shall create a rebuttable presumption that
2 litigation is being initiated, advanced, or continued primarily for the purpose of harassing,
3 intimidating, or maintaining contact with the other party:

4 (1) The same or substantially similar issues between the same or substantially similar
5 parties have been litigated within the past five (5) years in the same court or any other court of
6 competent jurisdiction;

7 (2) The same or substantially similar issues between the same or substantially similar
8 parties have been raised, pled, or alleged in the past five (5) years and were decided on the merits
9 or dismissed;

10 (3) Within the last ten (10) years, the party allegedly engaging in abusive litigation has
11 been sanctioned by any court for filing one or more cases, petitions, motions, or other filings that
12 were found to have been frivolous, vexatious, intransigent, or brought in bad faith involving the
13 same opposing party; or

14 (4) Any court has determined that the party allegedly engaging in abusive litigation has
15 previously engaged in abusive litigation or similar conduct, including, but not limited to, the filing
16 of a private misdemeanor prosecution complaint pursuant to §§ 12-4-1 or 12-10-12, and has been
17 subject to a court order imposing prefiling restrictions.

18 **8-8.4-4. Burden of proof.**

19 (a) If the court finds by a preponderance of the evidence that a party is engaging in abusive
20 litigation and that any or all of the motions or actions pending before the court are abusive litigation,
21 the litigation shall be dismissed, denied, stricken, or resolved by other disposition with prejudice.

22 (b) After providing the parties an opportunity to be heard on any order or sanctions to be
23 issued, the court may enter an order restricting abusive litigation that shall include conditions
24 deemed necessary and appropriate, including:

25 (1) Awarding the other party reasonable attorneys' fees and costs of responding to the
26 abusive litigation, including the cost seeking the order restricting abusive litigation;

27 (2) Awarding the other party all costs of the abusive litigation, including, but not limited
28 to, court costs, lost wages and transportation costs, including trips to the courthouse to review files
29 or pleadings, and costs of childcare expended as a result of defending said litigation; and

30 (3) Identifying the party protected by the order and imposing prefiling restrictions upon the
31 party found to have engaged in abusive litigation that pertains to any future litigation against the
32 protected party or the protected party's dependents.

33 (c) If the court finds that the litigation does not constitute abusive litigation, the court shall
34 enter written or oral findings and the litigation shall proceed.

1 (d) Nothing in this section shall be construed as limiting the court's inherent authority to
2 control the proceedings and litigants before it.

3 **8-8.4-5. Filing of a new case by a person subject to an order restricting abusive**
4 **litigation.**

5 (a) Except as otherwise provided in this section, a person who is subject to an order
6 restricting abusive litigation is prohibited from filing, initiating, advancing, or continuing the
7 litigation against the protected party for the period of time that the filing restrictions are in effect.

8 (b) A person who is subject to an order restricting litigation against whom prefiling
9 restrictions have been imposed pursuant to § 12-29-13.4 who wishes to initiate a new case or file a
10 motion in an existing case during the time the person is under filing restrictions shall make an
11 application to a judicial officer. A judicial officer shall review such application and determine
12 whether the proposed litigation is abusive litigation or if there are reasonable and legitimate
13 grounds upon which the litigation is based. The judicial officer shall determine whether a hearing
14 is necessary.

15 (c) If the judicial officer determines the proposed litigation is abusive litigation based on
16 reviewing the files, records, and pleadings, it is not necessary for the person protected by the order
17 to appear or participate in any way. If the judicial officer is unable to determine whether the
18 proposed litigation is abusive without hearing from the person protected by the order, then the court
19 shall issue an order scheduling a hearing and notifying the protected party of the party's right to
20 appear or participate in the hearing. The order shall specify whether the protected party is expected
21 to submit a written response. When possible, the protected party shall be permitted to appear
22 remotely.

23 (1) If the judicial officer determines that the litigation that the party who is subject to the
24 prefiling order is making application to file will constitute abusive litigation, the application shall
25 be denied, dismissed, or otherwise disposed of with prejudice.

26 (2) If the judicial officer determines that the litigation the party who is subject to the
27 prefiling order is making application to file will not be abusive litigation, the judicial officer may
28 grant the application and issue an order permitting the filing of the case, motion, or pleading. The
29 order shall be attached to the front of the pleading to be filed with the clerk. The party who is
30 protected by the order shall be served with a copy of the order at the same time as the underlying
31 pleading.

32 (d) The judicial officer shall make findings and issue a written order supporting the ruling.
33 If the party who is subject to the order disputes the findings of the judge, the party may seek review
34 of the decision as provided by the applicable court rules.

1 (e) If the application for the filing of a pleading is granted pursuant to this section, the
2 period of time commencing with the filing of the application requesting permission to file the action
3 and ending with the issuance of an order permitting filing of the action shall not be computed as a
4 part of any applicable period of limitations within which the matter must be instituted.

5 (f) If, after a party who is subject to prefiling restrictions has made application and been
6 granted permission to file or advance a case pursuant to this section, any judicial officer hearing or
7 presiding over the case, or any part thereof, determines that the person is attempting to add parties,
8 amend the complaint, or is otherwise attempting to alter the parties and issues involved in the
9 litigation in a manner that the judicial officer determines would constitute abusive litigation, the
10 judicial officer shall stay the proceedings and refer the case back to the judicial officer who granted
11 the application to file, for further disposition.

12 (g) If a party who is protected by an order restricting abusive litigation is served with a
13 pleading filed by the person who is subject to the order, and the pleading does not have an attached
14 order allowing the pleading, the protected party may respond to the case by filing a copy of the
15 order restricting abusive litigation.

16 (1) If it is brought to the attention of the court that a person against whom prefiling
17 restrictions have been imposed has filed a new case or is continuing an existing case without having
18 been granted permission pursuant to this section, the court shall dismiss, deny, or otherwise dispose
19 of the matter. This action may be taken by the court on the court's own motion or initiative. The
20 court may take whatever action against the perpetrator of abusive litigation deemed necessary and
21 appropriate for a violation of the order restricting abusive litigation.

22 (h) If a party who is protected by an order restricting abusive litigation is served with a
23 pleading filed by the person who is subject to the order, and the pleading does not have an attached
24 order allowing the pleading, the protected party is under no obligating or duty to respond to the
25 summons, complaint, petition, motion, or to answer interrogatories or any other discovery request,
26 or to appear for depositions or any other responsive action required by rule or statute in a civil
27 action.

28 (i) If the judicial officer who imposed the prefiling restrictions is no longer serving in the
29 same capacity, in the same judicial district where the restrictions were placed, or is otherwise
30 unavailable for any reason, any other judicial officer in that judicial district may perform the review
31 required and permitted by this section.

32 **8-8.4-6. Construction.**

33 This chapter shall be construed liberally in order to effectuate the goal of protecting
34 survivors of domestic violence and other abuse from abusive litigation.

1 SECTION 4. This act shall take effect upon passage.

=====
LC002121
=====

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

1 This act would prohibit abusive litigation in the context of domestic violence, sexual
2 assault or stalking and allow the court to dismiss a case or complaint upon a finding, based on a
3 preponderance of the evidence, that the person who filed the case or complaint is doing so as a
4 means to have further contact or abuse the person against whom the complaint was filed. The act
5 would also allow the court to impose sanctions against the party found to be using abusive litigation,
6 including monetary amounts incurred in the defense of such litigation.

7 This act would take effect upon passage.

=====
LC002121
=====