

LC00129

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- DOMESTIC ASSAULT

Introduced By: Representatives Giannini, Williams, Rice, Diaz, and E Coderre

Date Introduced: January 12, 2005

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.** -- (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; and

13 (4) Ordering the defendant to surrender all firearms in their possession to their local
14 police department.

15 (b) The district court shall provide a notice on all forms requesting a protective order that,
16 at the hearing for a protective order, the defendant shall be ordered to relinquish possession or
17 control of any firearms and not to purchase or receive or attempt to purchase or receive any
18 firearms for a period not to exceed the duration of the restraining order.

19 (c) If the defendant is present in court at a duly noticed hearing, the court shall order the

1 defendant to relinquish any firearm in that person's immediate possession or control, or subject to
2 that person's immediate possession or control, within twenty-four (24) hours of the order, by
3 surrendering the firearm(s) to the control of local law enforcement officials or by selling the
4 firearm(s) to a federally licensed gun dealer. If the defendant is not present at the hearing, the
5 defendant shall relinquish the firearm(s) within forty-eight (48) hours after being served with the
6 order. A person ordered to relinquish any firearm pursuant to this subsection shall file with the
7 court a receipt showing the firearm(s) was either surrendered to the local law enforcement agency
8 or federally licensed firearm storage facility or sold to a licensed gun dealer within seventy-two
9 (72) hours after receiving the order.

10 (d) A local or state law enforcement agency may charge the defendant a fee for the
11 storage of any firearm pursuant to this section. This fee shall not exceed the actual cost incurred
12 by the local or state law enforcement agency for the storage of the firearm(s). For purposes of
13 this subsection, "actual cost" means expenses directly related to taking possession of a firearm(s),
14 storing the firearm(s), and surrendering possession of the firearm(s) to a federally licensed
15 firearms storage facility or to the defendant.

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

18 (f) Unless otherwise prohibited by law, the offender shall have twenty (20) days from the
19 expiration or termination date of the order to retrieve the firearm(s). If the legal owner of any
20 firearm(s) deposited with the local or state law enforcement agency is otherwise prohibited by
21 law from possessing or owning any firearm, said owner shall be entitled to sell or transfer the
22 firearm to a federally licensed firearms dealer and, if so, shall file a notarized receipt of said
23 transfer/sale with the court. If the firearm(s) is not retrieved within the grace period, the law
24 enforcement agency shall be entitled to destroy the firearm(s) at the defendant's expense.

25 (g) The prohibition against possessing a firearm due solely to the existence of a domestic
26 violence restraining order issued under this section shall not apply with respect to sworn law
27 enforcement officers who are required by law or departmental policy to carry departmental
28 firearms in connection with and in performance of their duties.

29 ~~(h)~~ (h) Any violation of the aforementioned protective order shall subject the defendant to
30 being found in contempt of court.

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

33 ~~(j)~~ (j) The contempt order shall not be exclusive and shall not preclude any other
34 available civil or criminal remedies. Any relief granted by the court shall be for a fixed period of

1 time not to exceed three (3) years, at the expiration of which time the court may extend any order
2 upon motion of the plaintiff for such additional time as it deems necessary to protect the plaintiff
3 from abuse. The court may modify its order at any time upon motion of either party.

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

7 ~~(f)~~ (l) The penalties for violation of this section shall also include the penalties provided
8 under section 12-29-5.

9 ~~(g)~~ (m) "Actual notice" means that the defendant has received a copy of the order by
10 service thereof or by being handed a copy of the order by a police officer pursuant to section 8-
11 8.1-5(d).

12 ~~(h)~~ (n) The district court shall have criminal jurisdiction over all violations of this
13 chapter.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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- 1 This act would add the surrender of all firearms in a person's possession, care, custody, or
2 control to the local police department to the list of protective orders pursuant to a complaint filed
3 due to domestic abuse.
4 This act would take effect upon passage.

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