

2021 -- H 6081

LC002192

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- COURTS

Introduced By: Representatives Casimiro, Shanley, Hawkins, and Noret

Date Introduced: March 03, 2021

Referred To: House Judiciary

(Judiciary)

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 older,
6 not related by blood or marriage, who together are not the legal parents of one or more children,
7 and who have resided together within the preceding three (3) years or who are residing in the same
8 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 family.

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

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

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

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

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

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

17 **8-8.1-3. Protective orders -- Penalty -- Jurisdiction.**

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

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

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

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

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

34 (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.

34 (p) The penalties for violation of this section shall also include the penalties provided under

1 § 12-29-5.

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

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

5 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

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

4 This act would take effect upon passage.

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