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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO CRIMINAL OFFENSES -- WEAPONS--THE PROTECT RHODE ISLAND
FAMILIES ACT

Introduced By: Representatives Tanzi, Fogarty, Carson, Ruggiero, and Maldonado

Date Introduced: February 11, 2016

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. This act shall be known as and may be cited as "The Protect Rhode Island
2 Families Act."

3 SECTION 2. Section 8-8.1-3 of the General Laws in Chapter 8-8.1 entitled "Domestic
4 Assault" is hereby amended to read as follows:

5 **8-8.1-3. Protective orders -- Penalty -- Jurisdiction.** -- (a) A person suffering from
6 domestic abuse may file a complaint in the district court requesting any order which will protect
7 her or him from the abuse, including but not limited to the following:

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

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

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

15 ~~(4)~~(b) After notice to the respondent and after a hearing, the court ~~may~~ shall, for any
16 protective order issued or renewed on or after January 1, 2017, order ~~the defendant a person~~
17 restrained under this section to surrender physical possession of all firearms in his or her
18 possession, care, custody or control, and not to purchase or receive or attempt to purchase or

1 receive any firearms while the restraining order is in effect.

2 ~~(b) Any individual who accepts physical possession of a firearm pursuant to this section~~
3 ~~is prohibited from returning any firearm to any defendant under a restraining order during the~~
4 ~~existence of the restraining order. Violation of this provision shall subject both the defendant and~~
5 ~~the individual responsible for the return of the firearm to the defendant, to being found in~~
6 ~~contempt of court.~~

7 (c) The district court shall provide a notice on all forms requesting a protective order
8 that, at the hearing for a protective order, ~~the defendant may~~ a person restrained under this section
9 shall be ordered pursuant to §11-47-5 to surrender possession or control of any firearms and not
10 to purchase or receive or attempt to purchase or receive any firearms ~~for a period not to exceed~~
11 ~~the duration of the~~ while the restraining order is in effect.

12 (d) If the defendant is present in court at a duly noticed hearing, the court ~~may~~ shall, for
13 any protective order issued or renewed on or after January 1, 2017, in addition to any other
14 restrictions, order ~~the defendant~~ a person restrained under this section to physically surrender any
15 firearm(s) in that person's ~~immediate physical~~ ownership, possession or control, or subject to that
16 person's ~~immediate physical~~ ownership, possession or control, within twenty-four (24) hours of
17 the order, ~~by surrendering the possession of the firearm(s) to the control of any individual not~~
18 ~~legally prohibited from possessing a firearm who is not related to the defendant by blood,~~
19 ~~marriage, or relationship as defined by § 15-15-1(3), (4), or (5) of the Rhode Island general laws,~~
20 ~~or~~ by surrendering any firearm(s) to the Rhode Island state police or local police department, or
21 by surrendering the firearm(s) to a licensed gun dealer. If the defendant is not present at the
22 hearing, the defendant shall surrender the firearm(s) within forty-eight (48) hours after being
23 served with the order. A person ordered to surrender possession of any firearm(s) pursuant to this
24 subsection shall either:

25 (1) File ~~file~~ with the court a receipt showing the firearm(s) was ~~either~~ physically
26 surrendered to ~~an individual not legally prohibited from possessing a firearm who is not related to~~
27 ~~the defendant by blood, marriage, or relationship as defined by § 15-15-1(3), (4), or (5) or~~
28 ~~surrender~~ the Rhode Island state police or local police department, or to a licensed gun dealer; or

29 (2) Attest that, at the time of the order, the person owned no firearms and had no firearms
30 in their possession, and that the person currently owns no firearms and has no firearms in their
31 possession; within seventy-two (72) hours after receiving the order. Any defendant transporting a
32 firearm to surrender in accordance with the above shall not be liable to prosecution under § 11-
33 47-8.

34 (e) Any firearm surrendered pursuant to this section to a police agency or police

1 department shall be returned to the person formerly restrained under this section upon their
2 request, if:

3 (1) The person produces written documentation issued by a court indicating that the order
4 issued pursuant to this section prohibiting the person from purchasing, carrying, transporting, or
5 possessing a firearm has expired and has not been extended; and

6 (2) The person is not otherwise prohibited from possessing a firearm under state or
7 federal law.

8 (f) The Rhode Island state police are authorized to develop rules and procedures
9 pertaining to the storage and return of firearms surrendered to the Rhode Island state police or
10 local police departments pursuant to this section. The Rhode Island state police may consult with
11 the Rhode Island Police Chiefs' Association in developing rules and procedures under this
12 subsection.

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

15 ~~(f)~~(h) The prohibition against possessing a firearm(s) due solely to the existence of a
16 domestic violence restraining order issued under this section shall not apply with respect to sworn
17 peace officers as defined in § 12-7-21 and active members of military service including members
18 of the reserve components thereof, who are required by law or departmental policy to carry
19 departmental firearms while on duty or any person who is required by their employment to carry
20 a firearm in the performance of their duties. Any individual exempted pursuant to this exception
21 may possess a firearm only during the course of their employment. Any firearm required for
22 employment must be stored at the place of employment when not being possessed for
23 employment use; all other firearm(s) must be surrendered in accordance with § 8-8.1-3.

24 ~~(g)~~(i) Any violation of the aforementioned protective order shall subject the defendant to
25 being found in contempt of court.

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

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

33 ~~(j)~~(l) Any violation of a protective order under this chapter of which the defendant has
34 actual notice shall be a misdemeanor which shall be punished by a fine of no more than one

1 thousand dollars (\$1,000) or by imprisonment for not more than one year, or both.

2 ~~(k)~~(m) The penalties for violation of this section shall also include the penalties provided
3 under § 12-29-5.

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

6 ~~(m)~~(o) The district court shall have criminal jurisdiction over all violations of this
7 chapter.

8 SECTION 3. Section 11-47-5 of the General Laws in Chapter 11-47 entitled "Weapons"
9 is hereby amended to read as follows:

10 **11-47-5. Possession of arms by person convicted of crime of violence or who is a**
11 **fugitive from justice.** -- (a) No person who:

12 (1) Has ~~has~~ been convicted in this state or elsewhere of a crime of violence; or

13 (2) Has entered a plea of nolo contendere to, or has been convicted in this state or
14 elsewhere of, a misdemeanor that involves the use or attempted use of force, or the threatened use
15 of a firearm, against a family or household member as defined in §12-29-2; or (3) Is ~~or who is~~ a
16 fugitive from justice shall purchase, own, carry, transport, or have in his or her possession any
17 firearm.

18 (b) No person who is subject to an order issued pursuant to chapter 8.1 of title 8 or
19 chapter 15 of title 15, or an equivalent order in this state or elsewhere, which order was issued
20 after the restrained person received notice of the proceedings and had an opportunity to be heard
21 shall purchase, carry, transport, or have in their possession any firearm.

22 (c) Notwithstanding the provisions of subsection (a) of this section, no person convicted
23 of an offense punishable as a felony offense under § 12-29-5 shall purchase, own, carry,
24 transport, or have in his or her possession any firearm, ~~for a period of two (2) years following the~~
25 ~~date of that conviction.~~

26 ~~(e)~~(d) No person who is in community confinement pursuant to the provisions of § 42-
27 56-20.2 or who is otherwise subject to electronic surveillance or monitoring devices as a
28 condition of parole shall purchase, carry, transport, or have in his or her possession any firearm.
29 This subsection shall not apply to any person who has not been convicted of (or pleaded guilty or
30 nolo contendere to) a crime of violence in a court of competent jurisdiction.

31 ~~(d)~~(e) Every person violating the provisions of this section shall, upon conviction, be
32 punished by imprisonment for not less than two (2) nor more than ten (10) years; and for
33 penalties provided in this section he or she shall not be afforded the benefit of suspension or
34 deferment of sentence nor of probation.

1 SECTION 4. Chapter 11-47 of the General Laws entitled "Weapons" is hereby amended
2 by adding thereto the following section:

3 **11-47-5.3. Surrender of firearms after domestic violence offenses.** -- (a) A plea of
4 nolo contendere to, or a conviction for a felony committed against a family or household member
5 as defined in §12-29-2; or a misdemeanor that involves the use or attempted use of force, or the
6 threatened use of a firearm, committed against a family or household member as defined in §12-
7 29-2 shall prohibit the offender from purchasing, owning, carrying, transporting, or having in
8 their possession any firearm. Upon such a plea or conviction occurring on or after January 1,
9 2017, the court shall order the offender to surrender all firearms owned by the person or in the
10 person's possession as described in this section.

11 (b) Surrender shall be made within twenty-four (24) hours of prohibition to state or local
12 law enforcement or to a federally licensed firearms dealer. A law enforcement agency or federally
13 licensed firearms dealer taking possession of a firearm shall issue a proof of surrender to the
14 person surrendering the firearm. The proof of surrender must include the name of the person, the
15 date of surrender, and the serial number, manufacturer, and model of all surrendered firearms.

16 (c) The offender shall, within forty-eight (48) hours after being served with the order,
17 either:

18 (1) File a copy of proof of surrender with the court of jurisdiction, and attest that all
19 firearms owned by the person or in the person's possession at the time of plea or conviction have
20 been surrendered in accordance with this section, and that the person currently owns no firearms
21 and has no firearms in their possession; or

22 (2) Attest that, at the time of plea or conviction, the person owned no firearms and had no
23 firearms in their possession, and that the person currently owns no firearms and has no firearms in
24 their possession.

25 (d) If the person surrenders a firearm to a law enforcement agency, the law enforcement
26 agency may establish policies for disposal of the firearm, provided that such policies require that
27 the offender be notified of the disposal, and that the offender receive any financial value received
28 from the disposal, less the cost associated with taking possession of, storing, and disposing of the
29 firearm.

30 SECTION 5. Section 12-29-5 of the General Laws in Chapter 12-29 entitled "Domestic
31 Violence Prevention Act" is hereby amended to read as follows:

32 **12-29-5. Disposition of domestic violence cases.** -- (a) Every person convicted of or
33 placed on probation for a crime involving domestic violence or whose case is filed pursuant to §
34 12-10-12 where the defendant pleads nolo contendere, in addition to any other sentence imposed

1 or counseling ordered, shall be ordered by the judge to attend, at his or her own expense, a
2 batterer's intervention program appropriate to address his or her violent behavior; provided,
3 however, that the court may permit a servicemember or veteran to complete any court-approved
4 counseling program administered or approved by the Veterans' Administration. This order shall
5 be included in the conditions of probation. Failure of the defendant to comply with the order shall
6 be a basis for violating probation and/or the provisions of § 12-10-12. This provision shall not be
7 suspended or waived by the court.

8 (b) Every person convicted of or placed on probation for a crime involving domestic
9 violence, as enumerated in § 12-29-2 or whose case is filed pursuant to § 12-10-12 where the
10 defendant pleads guilty or nolo contendere, in addition to other court costs or assessments
11 imposed, shall be ordered to pay a one hundred twenty-five dollar (\$125) assessment. Eighty
12 percent (80%) of the assessment collected pursuant to this section shall be provided to the Rhode
13 Island Coalition Against Domestic Violence for programs to assist victims of domestic violence
14 and twenty percent (20%) of the assessment shall be deposited as general revenue.

15 (c) (1) Every person convicted of an offense punishable as a misdemeanor involving
16 domestic violence as defined in § 12-29-2 shall:

17 (i) For a second violation be imprisoned for a term of not less than ten (10) days and not
18 more than one year.

19 (ii) For a third and subsequent violation be deemed guilty of a felony and be imprisoned
20 for a term of not less than one year and not more than ten (10) years.

21 (2) No jail sentence provided for under this section can be suspended.

22 (3) Nothing in this subsection shall be construed as limiting the discretion of the judges
23 to impose additional sanctions authorized in sentencing.

24 (d) The court shall determine, for every conviction or plea of nolo contendere occurring
25 on or after January 1, 2017, for:

26 (1) A felony committed against a family or household member as defined in §12-29-2; or

27 (2) A misdemeanor that involves the use or attempted use of force, or the threatened use
28 of a firearm, committed against a family or household member as defined in §12-29-2 whether, as
29 a result of the violation, the offender is prohibited under §11-47-5 from purchasing, owning,
30 carrying, transporting, or having in their possession any firearm.

31 (e) If the offender is prohibited as described in subsection (d) of this section, the court
32 shall inform the offender of their prohibited status and order the offender to surrender any
33 firearms in their possession or control, and shall ensure surrender is made in accordance with
34 §11-47-5.3.

1 ~~(d)~~(f) For the purposes of this section, "batterers intervention program" means a program
2 which is certified by the batterers intervention program standards oversight committee according
3 to minimum standards, pursuant to §§ 12-29-5.1, 12-29-5.2, and 12-29-5.3.

4 ~~(e)~~(g) For purposes of this section, "servicemember" means a person who is presently
5 serving in the armed forces of the United States including the Coast Guard, a reserve component
6 thereof, or the National Guard. "Veteran" means a person who has served in the armed forces,
7 including the Coast Guard of the United States, a reserve component thereof, or the National
8 Guard, and has been discharged under other than dishonorable conditions.

9 SECTION 6. Section 15-15-3 of the General Laws in Chapter 15-15 entitled "Domestic
10 Abuse Prevention" is hereby amended to read as follows:

11 **15-15-3. Protective orders -- Penalty -- Jurisdiction.** -- (a) A person suffering from
12 domestic abuse may file a complaint in the family court requesting any order which will protect
13 and support her or him from abuse including, but not limited, to the following:

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

17 (2) Ordering the defendant to vacate the household immediately;

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

19 (4) After notice to the respondent and a hearing, ordering either party to make payments
20 for the support of a minor child or children of the parties as required by law for a period not to
21 exceed ninety (90) days, unless the child support order is for a child or children receiving public
22 assistance pursuant to chapter 5.1 of title 40. In these cases, legal counsel for the division of
23 taxation, child support enforcement, shall be notified as a party in interest to appear for the
24 purpose of establishing a child support order under a new or existing docket number previously
25 assigned to the parties and not under the protective docket number. The child support order shall
26 remain in effect until the court modifies or suspends the order.

27 ~~(5)~~(b) After notice to the respondent and a hearing, the court in addition to any other
28 restrictions, may shall, for any protective order issued or renewed on or after January 1, 2017,
29 order ~~the defendant~~ a person restrained under this section to surrender physical possession of all
30 firearms in his or her possession, care, custody or control, and not to purchase or receive or
31 attempt to purchase or receive any firearms while the restraining order is in effect.

32 ~~(b) Any individual who accepts physical possession of a firearm pursuant to this section~~
33 ~~is prohibited from returning any firearm to any defendant under a restraining order during the~~
34 ~~existence of the restraining order. Violation of this provision shall subject both the defendant and~~

1 ~~the individual responsible for the return of the firearm to the defendant, to being found in~~
2 ~~contempt of court.~~

3 (c) The Family Court shall provide a notice on all forms requesting a protective order
4 that, at the hearing for a protective order, ~~the defendant~~ a person restrained under this section
5 shall ~~may~~ be ordered pursuant to §11-47-5 to surrender physical possession or control of any
6 firearms and not to purchase or receive or attempt to purchase or receive any firearms ~~for a period~~
7 ~~not to exceed the duration of~~ while the restraining order is in effect.

8 (d) If the defendant is present in court at a duly noticed hearing, the court ~~may~~ shall, for
9 any protective order issued or renewed on or after January 1, 2017, order ~~the defendant~~ a person
10 restrained under this section to physically surrender any ~~firearm~~ firearms in that person's
11 ~~immediate ownership,~~ possession or control, or subject to that person's ~~immediate physical~~
12 ownership, possession or control, within twenty-four (24) hours of the order, ~~by surrendering the~~
13 ~~possession of the firearm(s) to the control of any individual not legally prohibited from~~
14 ~~possessing a firearm(s) who is not related to the defendant by blood, marriage, or relationship as~~
15 ~~defined by § 15-15-1(3), (4), or (5), of the Rhode Island general laws, or~~ by surrendering any
16 firearm(s) to the Rhode Island State Police or local police department, or by surrendering the
17 firearm(s) to a licensed gun dealer. If the defendant is not present at the hearing, the defendant
18 shall surrender possession of the firearm(s) within forty-eight (48) hours after being served with
19 the order. A person ordered to surrender possession of any firearm(s) pursuant to this subsection
20 shall either:

21 (1) File ~~file~~ with the court a receipt showing the firearm(s) was ~~either~~ physically
22 surrendered to ~~an individual not legally prohibited from possessing a firearm who is not related to~~
23 ~~the defendant by blood, marriage, or relationship as defined by § 15-15-1(3), (4), or (5) or~~
24 ~~surrender~~ the Rhode Island state police or local police department, or to a licensed gun dealer; or

25 (2) Attest that, at the time of the order, the person owned no firearms and had to firearms
26 in their possession, and that the person currently owns no firearms and has no firearms in their
27 possession; within seventy-two (72) hours after receiving the order. Any defendant transporting a
28 firearm to surrender in accordance with the above shall not be liable to prosecution under § 11-
29 47-8.

30 (e) Any firearm surrendered pursuant to this section to a police agency or police
31 department shall be returned to the person formerly restrained under this section upon their
32 request, if:

33 (1) The person produces written documentation issued by a court indicating that the order
34 issued pursuant to this section prohibiting the person from purchasing, carrying, transporting, or

1 possessing a firearm has expired and has not been extended; and

2 (2) The person is not otherwise prohibited from possessing a firearm under state or
3 federal law.

4 (f) The Rhode Island state police are authorized to develop rules and procedures
5 pertaining to the storage and return of firearms surrendered to the Rhode Island state police or
6 local police departments pursuant to this section. The Rhode Island state police may consult with
7 the Rhode Island Police Chiefs' Association in developing rules and procedures under this
8 subsection.

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

11 ~~(f)~~(h) The prohibition against possessing a firearm(s) due solely to the existence of a
12 domestic violence restraining order issued under this section shall not apply with respect to sworn
13 peace officers as defined in § 12-7-21 and active members of military service including members
14 of the reserve components thereof, who are required by law or departmental policy to carry
15 departmental firearms while on duty or any person who is required by their employment to carry
16 a firearm in the performance of their duties. Any individual exempted pursuant to this exception
17 may possess a firearm only during the course of their employment. Any firearm required for
18 employment must be stored at the place of employment when not being possessed for
19 employment use; all other firearm(s) must be surrendered in accordance with § 15-15-3.

20 ~~(g)~~(i) Upon motion by the plaintiff, his or her address shall be released only at the
21 discretion of the family court judge.

22 ~~(h)~~(j) (1) Any violation of the protective orders in subsection (a) of this section shall
23 subject the defendant to being found in contempt of court.

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

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

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

34 ~~(j)~~(l) Actual notice means that the defendant has received a copy of the order by service

1 or by being handed a copy of the order by a police officer pursuant to § 15-15-5(d).

2 ~~(k)~~(m)(1) The district court shall have criminal jurisdiction over all adult violations of
3 this chapter.

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

5 SECTION 7. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO CRIMINAL OFFENSES -- WEAPONS--THE PROTECT RHODE ISLAND
FAMILIES ACT

1 This act would require the surrender of firearms to law enforcement agencies after
2 conviction of certain domestic violence offenses. This act would be known as "The Protect Rhode
3 Island Families Act".

4 This act would take effect upon passage.

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