

2017 -- H 5510 SUBSTITUTE B

LC001499/SUB B

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

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

Date Introduced: February 15, 2017

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 which 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, whether
9 the defendant is an adult or minor;

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

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

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

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

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

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

9 (ii) If a person restrained under this section transfers a firearm(s) to a federally licensed
10 firearms dealer pursuant to this section, the person restrained under this section may instruct the
11 federally licensed firearms dealer to sell the firearm(s) or to transfer ownership in accordance
12 with state and federal law, to a qualified named individual who is not a member of the person's
13 dwelling house, who is not related to the person by blood, marriage, or relationship as defined by
14 §15-15-1(3), and who is not prohibited from possessing firearms under state or federal law. The
15 owner of any firearm(s) sold shall receive any financial value received from their sale, less the
16 cost associated with taking possession of, storing, and transferring of the firearm(s).

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

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

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

34 (b) ~~Any individual who accepts physical possession of a firearm pursuant to this section~~

1 ~~is prohibited from returning any firearm to any defendant under a restraining order during the~~
2 ~~existence of the restraining order. Violation of this provision shall subject both the defendant and~~
3 ~~the individual responsible for the return of the firearm to the defendant, to being found in~~
4 ~~contempt of court.~~

5 (c) The district court shall provide a notice on all forms requesting a protective order that,
6 ~~at the hearing for a protective order, the defendant may~~ a person restrained under this section
7 shall be ordered pursuant to §11-47-5, to surrender possession or control of any firearms and not
8 to purchase or receive or attempt to purchase or receive any firearms ~~for a period not to exceed~~
9 ~~the duration of the~~ while the restraining order is in effect. The form shall further provide that any
10 person who has surrendered their firearms shall be afforded a hearing within fifteen (15) days of
11 surrendering their firearms.

12 (d) ~~If the defendant is present in court at a duly noticed hearing, the court may, in~~
13 ~~addition to any other restrictions, order the defendant to physically surrender any firearm(s) in~~
14 ~~that person's immediate physical possession or control, or subject to that person's immediate~~
15 ~~physical possession or control, within twenty four (24) hours of the order, by surrendering the~~
16 ~~possession of the firearm(s) to the control of any individual not legally prohibited from~~
17 ~~possessing a firearm who is not related to the defendant by blood, marriage, or relationship as~~
18 ~~defined by § 15-15-1(3), (4), or (5) of the Rhode Island general laws, or by surrendering any~~
19 ~~firearm(s) to the Rhode Island state police or local police department, or by surrendering the~~
20 ~~firearm(s) to a licensed gun dealer. If the defendant is not present at the hearing, the defendant~~
21 ~~shall surrender the firearm(s) within forty eight (48) hours after being served with the order. A~~
22 ~~person ordered to surrender possession of any firearm(s) pursuant to this subsection shall file with~~
23 ~~the court a receipt showing the firearm(s) was either physically surrendered to an individual not~~
24 ~~legally prohibited from possessing a firearm who is not related to the defendant by blood,~~
25 ~~marriage, or relationship as defined by § 15-15-1(3), (4), or (5) or surrender to a licensed gun~~
26 ~~dealer within seventy two (72) hours after receiving the order. Any defendant transporting a~~
27 ~~firearm to surrender in accordance with the above shall not be liable to prosecution under § 11-~~
28 ~~47-8.~~

29 Any firearm surrendered in accordance with this section to the Rhode Island state police
30 or local police department shall be returned to the person formerly restrained under this section
31 upon their request when:

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

1 extended; and

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

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

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

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

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

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

21 (j) At the hearing, the person restrained under this section shall have the burden of
22 showing, by clear and convincing evidence, that, if their firearm rights were restored, they would
23 not pose a danger to the person suffering from domestic abuse or to any other person.

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

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

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

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

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

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

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

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

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

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

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

30 SECTION 2. Section 11-47-5 of the General Laws in Chapter 11-47 entitled "Weapons"
31 is hereby amended to read as follows:

32 **11-47-5. Possession of arms by person convicted of crime of violence or who is a**
33 **fugitive from justice.**

34 (a) No person ~~who has been convicted in this state or elsewhere of a crime of violence or~~

1 ~~who is a fugitive from justice~~ shall purchase, own, carry, transport, or have in his or her
2 possession any firearm. If that person:

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

4 (2) Is a fugitive from justice;

5 (3) Has, in this state or elsewhere, entered a plea of nolo contendere to or been convicted
6 of an offense punishable as a felony under §12-29-5; or

7 (4) Has, in this state or elsewhere, entered a plea of nolo contendere to or been convicted
8 of any of the following offenses punishable as a misdemeanor under §12-29-5:

9 (i) Simple assault (§11-5-3);

10 (ii) Cyberstalking and cyberharassment (§11-52-4.2);

11 (iii) Violation of a protective order (as set forth in §12-29-2(a)(10)); or

12 (iv) Disorderly conduct (§11-45-1).

13 (A) A disorderly conduct conviction shall result in prohibition under this section if and
14 only if the offense involves the use or attempted use of force or the threatened use of a dangerous
15 weapon.

16 (5) The provisions of this subsection shall apply to all persons who enter a plea of nolo
17 contendere to or have been convicted of any of the offenses specified in subsections (a)(3) and
18 (a)(4) of this section, unless and until that person's matter has been expunged, or upon the
19 completion of the sentence of a one-year filing, or the end of a one-year probationary period that
20 no longer constitutes a conviction pursuant to §12-18-3.

21 ~~(b) Notwithstanding the provisions of subsection (a) of this section, no~~ No person
22 ~~convicted of an offense punishable as a felony offense under § 12-29-5~~ shall purchase, own,
23 carry, transport, or have in his or her possession any firearm, ~~for a period of two (2) years~~
24 ~~following the date of that conviction.~~ if that person is subject to an order issued pursuant to
25 chapter 15 of title 15, chapter 8.1 of title 8, or an equivalent order in this state or elsewhere,
26 which order was issued after the person restrained has received notice of the proceedings and had
27 an opportunity to be heard.

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

33 (d) Every person violating the provisions of this section shall, upon conviction, be
34 punished by imprisonment for not less than two (2) nor more than ten (10) years; and for

1 penalties provided in this section he or she shall not be afforded the benefit of suspension or
2 deferment of sentence nor of probation.

3 SECTION 3. Chapter 11-47 of the General Laws entitled "Weapons" is hereby amended
4 by adding thereto the following section:

5 **11-47-5.4. Surrender of firearms after domestic violence offenses.**

6 (a) A plea of nolo contendere, resulting in a felony or probation or conviction shall
7 prohibit the defendant from purchasing, carrying, transporting, or having in their possession any
8 firearm. Upon such a plea or conviction, the court shall order the defendant to surrender all
9 firearms owned by the person or in the person's possession as described in this section.

10 (1) Surrender shall be made within twenty-four (24) hours of prohibition to the Rhode
11 Island state police or local law enforcement or to a licensed gun dealer. The arresting law
12 enforcement agency shall be immediately notified by the court of the order to surrender firearms.
13 A law enforcement agency or licensed gun dealer taking possession of a firearm shall issue a
14 proof of surrender to the person surrendering the firearm. The proof of surrender must include the
15 name of the person, the date of surrender, and the serial number, manufacturer, and model of all
16 surrendered firearms.

17 (2) A defendant transporting a firearm to surrender in accordance with this section shall
18 not be liable to prosecution under §§11-47-5(d) or 11-47-8.

19 (3) The defendant shall, within forty-eight (48) hours after being served with the order,
20 either:

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

25 (ii) Attest that, at the time of plea or conviction, the person owned no firearms and had no
26 firearms in their possession, and that the person currently owns no firearms and has no firearms in
27 their possession.

28 (4) The court of jurisdiction's copy of proof of surrender shall be kept under seal and
29 shall not be part of the public record.

30 (5) The Rhode Island state police are authorized to develop rules, regulations and
31 procedures pertaining to the storage of firearms that are surrendered pursuant to this section. The
32 Rhode Island state police may consult with the Rhode Island Police Chiefs' Association in
33 developing rules and procedures. Law enforcement agencies and departments shall observe due
34 care in the receipt and storage of any firearm surrendered pursuant to this section. No law

1 enforcement agency shall dispose of any firearm surrendered pursuant to this section unless that
2 firearm is abandoned as provided in this section. The Rhode Island state police may consult with
3 the Rhode Island Police Chiefs' Association in developing rules and procedures.

4 (6) A firearm surrendered to the Rhode Island state police or a local police department
5 under this section shall be deemed abandoned if:

6 (i) Six (6) years have passed from the date of the completion of the defendant's sentence
7 for an offense enumerated in §11-47-5(a)(4); and

8 (ii) During the two (2) years following the six (6)-year period described in subsection
9 (a)(6)(i) of this section, the Rhode Island state police or local police department has provided
10 notice to the defendant, on at least two (2) separate occasions, that if the firearm is not reclaimed
11 it shall be disposed of; and

12 (iii) After the two (2)-year period described in subsection (a)(6)(ii) of this section and
13 after notice to the defendant, the defendant fails to reclaim the firearm.

14 (7) The Rhode Island state police may dispose of an abandoned firearm at any time,
15 provided that no disposal shall occur while any appeal of the conviction for a crime enumerated
16 in §11-47-5(a)(4) is pending and provided that the owner of the firearm receives any financial
17 value generated from its disposal less the cost associated with disposing of the firearm.

18 SECTION 4. Section 12-29-5 of the General Laws in Chapter 12-29 entitled "Domestic
19 Violence Prevention Act" is hereby amended to read as follows:

20 **12-29-5. Disposition of domestic violence cases. [Effective January 1, 2017.]**

21 (a) Every person convicted of, or placed on probation for, a crime involving domestic
22 violence or whose case is filed pursuant to § 12-10-12 where the defendant pleads nolo
23 contendere, in addition to any other sentence imposed or counseling ordered, shall be ordered by
24 the judge to attend, at his or her own expense, a batterer's intervention program appropriate to
25 address his or her violent behavior; provided, however, that the court may permit a
26 servicemember or veteran to complete any court-approved counseling program administered or
27 approved by the Veterans' Administration. This order shall be included in the conditions of
28 probation. Failure of the defendant to comply with the order shall be a basis for violating
29 probation and/or the provisions of § 12-10-12. This provision shall not be suspended or waived
30 by the court.

31 (b) Every person convicted of, or placed on probation for, a crime involving domestic
32 violence, as enumerated in § 12-29-2 or whose case if filed pursuant to § 12-10-12 where the
33 defendant pleads guilty or nolo contendere, in addition to other court costs or assessments
34 imposed, shall be ordered to pay a one hundred twenty-five dollar (\$125) assessment. Eighty

1 percent (80%) of the assessment collected pursuant to this section shall be provided to the Rhode
2 Island Coalition Against Domestic Violence for programs to assist victims of domestic violence
3 and twenty percent (20%) of the assessment shall be deposited as general revenue.

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

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

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

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

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

13 (d) The court shall determine, for every person who pleads nolo contendere to or is
14 convicted of an offense involving domestic violence, as enumerated in §12-29-2, whether, as a
15 result of the plea or conviction, the defendant is prohibited under §11-47-5(a)(3) or §11-47-
16 5(a)(4) from purchasing, owning, carrying, transporting, or having in their possession any
17 firearm.

18 (1) Prior to the entry of plea of nolo contendere to an offense involving domestic
19 violence, as enumerated in §12-29-2, the court shall advise the defendant that a plea of nolo
20 contendere has the same legal effect and collateral consequences as a plea of guilty.

21 (2) Prior to the entry of a plea of nolo contendere to an offense punishable as a felony
22 involving domestic violence, as enumerated in §12-29-2, or an offense enumerated in §11-47-
23 5(a)(4), the court shall advise the defendant that, in addition to any other sentence or penalty, the
24 defendant shall, as result of the plea, be prohibited from purchasing, owning, carrying,
25 transporting, or having in their possession any firearm under §11-47-5.

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

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

31 ~~(e)~~(f) For purposes of this section, "servicemember" means a person who is presently
32 serving in the armed forces of the United States, including the Coast Guard, a reserve component
33 thereof, or the National Guard. "Veteran" means a person who has served in the armed forces,
34 including the Coast Guard of the United States, a reserve component thereof, or the National

1 Guard, and has been discharged under other than dishonorable conditions.

2 ~~(g)~~ The court shall indicate on every record of conviction or a plea of nolo contendere
3 for an offense punishable as a felony involving domestic violence, as defined in § 12-29-2, that
4 the defendant is prohibited under §§ 11-47-5 and 11-47-5.3 from purchasing, owning, carrying,
5 transporting, or having in their possession, any firearm(s). The court shall inform the defendant of
6 their prohibited status and shall order the defendant to surrender any firearm(s) in their
7 ownership, possession, care, custody or control in accordance with § 11-47-5.3.

8 (h) The court shall indicate on every record of conviction or a plea of nolo contendere for
9 an offense enumerated in §11-47-5(a)(4) that the defendant is prohibited under §§11-47-5 and 11-
10 47-5.4 from purchasing, owning, carrying, transporting, or having in their possession, any
11 firearm(s). The court shall inform the defendant of their prohibited status, shall order the
12 defendant to surrender any firearm(s) in their ownership, possession, care, custody or control, and
13 shall ensure that surrender is made in accordance with §11-47-5.4.

14 ~~(i)~~ No proceeds shall be provided to any person if the firearm(s) is destroyed pursuant
15 to this section.

16 ~~(j)~~ Any firearm(s) used in the commission of the offense leading to the conviction
17 pursuant to this section shall be forfeited to the state upon conviction.

18 SECTION 5. Section 15-15-3 of the General Laws in Chapter 15-15 entitled "Domestic
19 Abuse Prevention" is hereby amended to read as follows:

20 **15-15-3. Protective orders -- Penalty -- Jurisdiction.**

21 (a) A person suffering from domestic abuse may file a complaint in the family court
22 requesting any order which will protect and support her or him from abuse including, but not
23 limited, to the following:

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

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

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

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

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

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

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

9 (ii) If a person restrained under this section transfers a firearm(s) to a federally licensed
10 firearms dealer pursuant to this section, the person restrained under this section may instruct the
11 federally licensed firearms dealer to sell the firearm(s) or to transfer ownership, in accordance
12 with state and federal law, to a qualified named individual who is not a member of the person's
13 dwelling house, who is not related to the person by blood, marriage, or relationship as defined by
14 §15-15-1(3), and who is not prohibited from possessing firearms under state or federal law. The
15 owner of any firearm(s) sold shall receive any financial value received from their sale, less the
16 cost associated with taking possession of, storing, and transferring of the firearm(s).

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

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

28 ~~(4)~~(5) After notice to the respondent and a hearing, ordering either party to make
29 payments for the support of a minor child or children of the parties as required by law for a period
30 not to exceed ninety (90) days, unless the child support order is for a child or children receiving
31 public assistance pursuant to chapter 5.1 of title 40. In these cases, legal counsel for the division
32 of taxation, child support enforcement, shall be notified as a party in interest to appear for the
33 purpose of establishing a child support order under a new or existing docket number previously
34 assigned to the parties and not under the protective docket number. The child support order shall

1 remain in effect until the court modifies or suspends the order.

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

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

13 (c) The Family Court shall provide a notice on all forms requesting a protective order
14 ~~that, at the hearing for a protective order, the defendant may be ordered to surrender physical~~
15 ~~possession or control of any firearms and not to purchase or receive or attempt to purchase or~~
16 ~~receive any firearms for a period not to exceed the duration of the restraining order.~~ that a person
17 restrained under this section shall be ordered pursuant to §11-47-5 to surrender possession of any
18 firearms while the protective order is in effect. The form shall further provide that any person
19 who has surrender their firearms shall be afforded a hearing within fifteen (15) days of
20 surrendering their firearms.

21 ~~(d) If the defendant is present in court at a duly noticed hearing, the court may order the~~
22 ~~defendant to physically surrender any firearm in that person's immediate possession or control, or~~
23 ~~subject to that person's immediate physical possession or control, within twenty four (24) hours~~
24 ~~of the order, by surrendering the possession of the firearm(s) to the control of any individual not~~
25 ~~legally prohibited from possessing a firearm(s) who is not related to the defendant by blood,~~
26 ~~marriage, or relationship as defined by § 15-15-1(3), (4), or (5), of the Rhode Island general laws,~~
27 ~~or by surrendering any firearm(s) to the Rhode Island State Police or local police department, or~~
28 ~~by surrendering the firearm(s) to a licensed gun dealer. If the defendant is not present at the~~
29 ~~hearing, the defendant shall surrender possession of the firearm(s) within forty eight (48) hours~~
30 ~~after being served with the order. A person ordered to surrender possession of any firearm(s)~~
31 ~~pursuant to this subsection shall file with the court a receipt showing the firearm(s) was either~~
32 ~~legally transferred to an individual not legally prohibited from possessing a firearm who is not~~
33 ~~related to the defendant by blood, marriage, or relationship as defined by § 15-15-1(3), (4), or (5)~~
34 ~~of the Rhode Island general laws or surrender to a licensed gun dealer within seventy two (72)~~

~~hours after receiving the order. Any defendant transporting a firearm to surrender in accordance with the above shall not be liable to prosecution under § 11-47-8.~~

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

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

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

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

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

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

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

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

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

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

(1) In determining whether to restore a person's firearm rights, the court shall examine all relevant evidence, including, but not limited to: the complaint seeking a protective order; the criminal record of the person restrained under this section; the mental health history of the person

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

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

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

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

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

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

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

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

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

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

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

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

6 SECTION 6. Chapter 11-47 of the General Laws entitled "Weapons" is hereby amended
7 by adding thereto the following section:

8 **11-47-5.5. Motion to lift firearms prohibition for persons convicted of specified**
9 **misdemeanor domestic violence offenses -- Consecutive prohibitions -- Return of**
10 **surrendered firearms.**

11 (a) A person prohibited from purchasing, owning, carrying, transporting, or having in
12 their possession any firearm solely because of a plea of nolo contendere to or a conviction of an
13 offense enumerated in §11-47-5(a)(4) may file a motion in the district court to have that firearm
14 prohibition lifted in accordance with this section. A person who is otherwise prohibited under
15 state law from purchasing, owning, carrying, transporting, or having in their possession any
16 firearm shall not be eligible for relief under this section.

17 (b) Except for those cases where the defendant is eligible to reclaim firearms after the one
18 year completion of a filing or probation under §12-18-3, a person shall become eligible to file a
19 motion seeking relief under this section after five (5) years from the date of the completion of his
20 or her sentence, unless, during that five (5)-year period, the person enters a plea of nolo
21 contendere to or is convicted of any new offense enumerated in §11-47-5(a)(4).

22 (1) A person already prohibited from purchasing, owning, carrying, transporting, or
23 having in their possession any firearm under §11-47-5(a)(4) who pleads nolo contendere to or is
24 convicted of any new offense enumerated in §11-47-5(a)(4) shall be subject to an additional six
25 (6)-year firearm prohibition under §11-47-5(a)(4). That additional prohibition shall run
26 consecutively to the prohibition already in effect at the time the person pleaded nolo contendere
27 to or was convicted of the new offense.

28 (2) A person made subject to consecutive firearms prohibitions in accordance with this
29 subsection shall not become eligible to file a motion seeking relief under this section until their
30 consecutive prohibition periods have fully elapsed.

31 (c) No filing fee shall be charged for the filing of a motion seeking relief under this
32 section.

33 (d) The district court shall schedule a hearing on a motion seeking relief under this
34 section no later than thirty (30) days from the date the motion is filed.

1 (e) The district court shall only consider whether the required amount of time to retrieve
2 the firearms has expired, and that no other legal prohibition exists to prevent the respondent from
3 recovering his or her firearms. If the court lifts a person's firearm prohibition pursuant to this
4 section, the court shall issue the person written notice that the person is no longer prohibited from
5 purchasing, owning, carrying, transporting, or having in their possession any firearm under §11-
6 47-5(a)(4).

7 (f) A firearm surrendered to the Rhode Island state police or a local police department by
8 a person formerly prohibited under §11-47-5(a)(4) who is granted relief under this section shall
9 be returned to the person upon their request when:

10 (1) The person formerly prohibited under §11-47-5(a)(4) provides written proof issued by
11 the court indicating that the firearm prohibition has been lifted pursuant to this section; and

12 (2) The Rhode Island state police or a local police department determines that the person
13 formerly prohibited under §11-47-5(a)(4) is not otherwise prohibited from possessing a firearm
14 under state or federal law.

15 (g) A court's grant of relief pursuant to this section shall not constitute an expungement,
16 nor shall it in any way impact, negate, or otherwise modify the person's prior conviction of an
17 offense enumerated in §11-47-5(a)(4).

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

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LC001499/SUB B
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T

- 1 This act would limit access to firearms when an individual is under certain types of
- 2 domestic restraining orders or protective orders issued or renewed on or after July 1, 2017.
- 3 This act would take effect upon passage.

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LC001499/SUB B
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