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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO CRIMINAL PROCEDURE - DOMESTIC VIOLENCE PREVENTION ACT

Introduced By: Representatives Marcello, Tanzi, and Hearn

Date Introduced: April 04, 2013

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Chapter 12-29 of the General Laws entitled "Domestic Violence Prevention  
2 Act" is hereby amended by adding thereto the following section:

3           **12-29-12. Electronic monitoring.** – (a) Any person to whom a protective order is issued  
4 pursuant to section 15-5-19, chapter 15-15, or chapter 8-8.1 where the respondent has knowledge  
5 of the order and the penalty for its violation, or a no contact order is issued pursuant to section 12-  
6 29-4, may be required to wear an electronic monitoring device upon the court's determination that  
7 under the facts and circumstances of the case, requiring the person to wear such a device is  
8 warranted. In making such a determination, the court shall consider, but not be limited to,  
9 whether the protective order or no contact order is likely to achieve its purpose in the absence of  
10 such a condition, the person's conduct subject to prior protective orders or no contact orders, prior  
11 convictions of crimes of violence, prior incidents of domestic violence against the party for  
12 whose benefit the order is issued or any other party, past or present, injury, threats, drug or  
13 alcohol abuse, and access to weapons.

14           (b) For the purposes of this section, an electronic monitoring device means a device,  
15 worn by an individual that transmits a signal and enables another person or entity to monitor,  
16 track, or pinpoint the location of the individual wearing the device through the reception of that  
17 signal. Electronic monitoring shall be used in accordance with the rules and regulations  
18 established by the department of corrections.

19           (c) It shall be unlawful for any person to intentionally tamper with, damage, or destroy

1 any electronic monitoring device required by this section pursuant to a court order unless such  
2 person is the owner of the equipment or an agent of the owner performing ordinary maintenance  
3 and repairs. Any violation of this section shall be considered a felony, and upon conviction, shall  
4 be subject to imprisonment for not more than five (5) years.

5 (d) Any costs associated with the requirements of this section shall be borne by the  
6 offender and the court is hereby authorized and empowered to utilize all resources available to  
7 collect the funds for these costs unless the court finds that the defendant is indigent.

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

10 **8-8.1-3. Protective orders -- Penalty -- Jurisdiction.** -- (a) A person suffering from  
11 domestic abuse may file a complaint in the district court requesting any order which will protect  
12 her or him from the abuse, including but not limited to the following:

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

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

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

20 (4) After notice to the respondent and after a hearing, the court may order the defendant  
21 to surrender physical possession of all firearms in his or her possession, care, custody or control.

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

27 (c) The district court shall provide a notice on all forms requesting a protective order  
28 that, at the hearing for a protective order, the defendant may be ordered to surrender possession or  
29 control of any firearms and not to purchase or receive or attempt to purchase or receive any  
30 firearms for a period not to exceed the duration of the restraining order.

31 (d) If the defendant is present in court at a duly noticed hearing, the court may, in  
32 addition to any other restrictions, order the defendant to physically surrender any firearm(s) in  
33 that person's immediate physical possession or control, or subject to that person's immediate  
34 physical possession or control, within twenty-four (24) hours of the order, by surrendering the

1 possession of the firearm(s) to the control of any individual not legally prohibited from  
2 possessing a firearm who is not related to the defendant by blood, marriage, or relationship as  
3 defined by section 15-15-1(3), (4), or (5) of the Rhode Island general laws, or by surrendering  
4 any firearm(s) to the Rhode Island state police or local police department, or by surrendering the  
5 firearm(s) to a licensed gun dealer. If the defendant is not present at the hearing, the defendant  
6 shall surrender the firearm(s) within forty-eight (48) hours after being served with the order. A  
7 person ordered to surrender possession of any firearm(s) pursuant to this subsection shall file with  
8 the court a receipt showing the firearm(s) was either physically surrendered to an individual not  
9 legally prohibited from possessing a firearm who is not related to the defendant by blood,  
10 marriage, or relationship as defined by section 15-15-1(3), (4), or (5) or surrender to a licensed  
11 gun dealer within seventy-two (72) hours after receiving the order. Any defendant transporting a  
12 firearm to surrender in accordance with the above shall not be liable to prosecution under section  
13 11-47-8.

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

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

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

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

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

34 (j) Any violation of a protective order under this chapter of which the defendant has

1 actual notice shall be a misdemeanor which shall be punished by a fine of no more than one  
2 thousand dollars (\$1,000) or by imprisonment for not more than one year, or both.

3 [In the event that the court does not detain or sentence the defendant to imprisonment](#)  
4 [pursuant to this chapter, the court shall require the defendant to submit to the use of an electronic](#)  
5 [monitoring device or to wear a global positioning satellite tracking device as provided by section](#)  
6 [12-29-12.](#)

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

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

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

12 SECTION 3. Section 12-29-4 of the General Laws in Chapter 12-29 entitled "Domestic  
13 Violence Prevention Act" is hereby amended to read as follows:

14 **12-29-4. Restrictions upon and duties of court.** -- (a) (1) Because of the likelihood of  
15 repeated violence directed at those who have been victims of domestic violence in the past, when  
16 a person is charged with or arrested for a crime involving domestic violence, that person may not  
17 be released from custody on bail or personal recognizance before arraignment without first  
18 appearing before the court or bail commissioner. The court or bail commissioner authorizing  
19 release shall issue a no-contact order prohibiting the person charged or arrested from having  
20 contact with the victim.

21 (2) At the time of arraignment or bail hearing the court or bail commissioner shall  
22 determine whether a no-contact order shall be issued or extended.

23 (3) Willful violation of a court order issued under subdivision (1), (2), or as part of  
24 disposition of this subdivision of this subsection is a misdemeanor. The written order releasing  
25 the person charged or the written order issued at the time of disposition shall contain the court's  
26 directive and shall bear the legend: "Violation of this order is a criminal offense under this section  
27 and will subject a violator to arrest". A copy of the order shall be provided to the victim.

28 [In the event that the court does not detain or sentence the defendant to imprisonment](#)  
29 [pursuant to this chapter, the court shall require the defendant to submit to the use of an electronic](#)  
30 [monitoring device or to wear a global positioning satellite tracking device as provided by section](#)  
31 [12-29-12.](#)

32 (4) Whenever an order prohibiting contact is issued, modified, or terminated under  
33 subdivision (1), (2) or (3) of this subsection, the clerk of the court shall forward a copy of the  
34 order on or before the next judicial day to the appropriate law enforcement agency specified in

1 the order.

2 (b) Because of the serious nature of domestic violence, the court in domestic violence  
3 actions:

4 (1) Shall not dismiss any charge or delay disposition because of concurrent dissolution of  
5 marriage or other civil proceedings;

6 (2) Shall not require proof that either party is seeking a dissolution of marriage prior to  
7 instigation of criminal proceedings;

8 (3) Shall identify by reasonable means on docket sheets those criminal actions arising  
9 from acts of domestic violence; and

10 (4) Shall make clear to the defendant and victim that the prosecution of the domestic  
11 violence action is determined by the prosecutor and not the victim.

12 (c) To facilitate compliance with the provisions of this section, the district court shall  
13 assure that the misdemeanor and felony complaint forms indicate whether the crime charged  
14 involves domestic violence and, if so, the relationship of the victim and defendant.

15 (d) Notwithstanding the provisions of section 12-10-12, the filing of any complaint for a  
16 crime involving domestic violence shall be conditioned upon the defendant keeping the peace and  
17 being of good behavior for a period of three (3) years. In the event a particular case involving  
18 domestic violence is filed on a plea of not guilty, guilty or nolo contendere pursuant to section 12-  
19 10-12, the court having jurisdiction shall retain the records of the case for a period of three (3)  
20 years from the date of the filing. These records shall not be expunged, sealed, or otherwise  
21 destroyed for a period of three (3) years from the date of filing. Furthermore, the destruction or  
22 sealing of records in the possession of the department of attorney general bureau of criminal  
23 identification, the superintendent of the state police, or the police departments of any city or town  
24 after a filing related to a crime involving domestic violence shall be governed by section 12-1-12.

25 SECTION 4. Section 15-5-19 of the General Laws in Chapter 15-5 entitled "Divorce and  
26 Separation" is hereby amended to read as follows:

27 **15-5-19. Restraining orders -- Treatment for harmed or menaced spouse -- Custody**  
28 **of children -- Allowances -- Alimony and counsel fees.** -- (a) Whenever either party to a  
29 marriage is insane, or whenever a cause is in existence which is, or if continued, will be a cause  
30 for divorce, the family court, upon the original petition of one of the parties, or upon the filing of  
31 a complaint for divorce, may restrain either party from interfering with the personal liberty of the  
32 other, and may restrain either party from maliciously causing or attempting to cause bodily harm  
33 to the other, with or without a dangerous weapon, and may restrain either party from placing, by  
34 physical menace or threat of physical menace, the other in fear of imminent bodily injury; and

1 upon a finding by the court that any party has been so harmed, menaced, or threatened the court  
2 may prescribe treatment including, but not limited to, out-patient counseling, and may regulate  
3 the custody and provide for the education, maintenance, and support of the children, if any, and  
4 may, in its discretion, order one of the parties to pay alimony and/or counsel fees to the other  
5 pursuant to section 15-5-16, which allowance shall not be regarded as a judgment for debt until  
6 the court, which made the order for maintenance and support of the children, alimony for one or  
7 the other of the parties, and counsel fees, has adjudicated in appropriate proceedings what, if  
8 anything, is due under the order. Suits may be brought or executions may issue for amounts due  
9 and unpaid, the executions to run against the goods and chattels of the husband or wife, as the  
10 case may be; the court may make all necessary orders and decrees concerning the suits or  
11 executions and at any time may alter, amend, or annul for sufficient cause, after notice to the  
12 interested parties.

13 (b) (1) Any violation of the protective orders mentioned in subsection (a) of this section  
14 shall subject the defendant to being found in contempt of court.

15 (2) The contempt order shall not be exclusive and shall not preclude any other available  
16 civil or criminal remedies.

17 (c) Any violation of a restraining order under this chapter protecting a person against  
18 bodily harm and/or against threat of imminent bodily injury shall be a misdemeanor which shall  
19 be punished by a fine of no more than one thousand dollars (\$1,000) or by imprisonment for not  
20 more than one year, or both. The penalties for violation of this section shall also include the  
21 penalties provided in section 12-29-5. The district court has criminal jurisdiction over violations  
22 of restraining orders protecting the person of the complainant against bodily harm and/or against  
23 the threat of imminent bodily injury.

24 In the event that the court does not detain or sentence the defendant to imprisonment  
25 pursuant to this chapter, the court shall require the defendant to submit to the use of an electronic  
26 monitoring device or to wear a global positioning satellite tracking device as provided by section  
27 12-29-12.

28 (d) In regulating the custody of the children, the court shall provide for the reasonable  
29 right of visitation by the natural parent not having custody of the children except upon the  
30 showing of cause as to why the right should not be granted. The court shall mandate compliance  
31 with its orders by both the custodial parent and the children. In the event of noncompliance, the  
32 non-custodial parent may file a motion for contempt in family court. Upon a finding by the court  
33 that its order for visitation has not been complied with, the court shall exercise its discretion in  
34 providing a remedy, and define the non-custodial parent's visitation in detail. However, if a

1 second finding of noncompliance by the court is made, the court shall consider this to be grounds  
2 for a change of custody to the non-custodial parent.

3 (e) In all hearings regarding denial of visitation, the court shall make findings of fact.

4 (f) This chapter does not affect the right of the family court to award alimony or support  
5 pendente lite.

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

8 **15-15-3. Protective orders -- Penalty -- Jurisdiction.** -- (a) A person suffering from  
9 domestic abuse may file a complaint in the family court requesting any order which will protect  
10 and support her or him from abuse including, but not limited, to the following:

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

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

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

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

24 (5) After notice to the respondent and a hearing, the court in addition to any other  
25 restrictions, may order the defendant to surrender physical possession of all firearms in his or her  
26 possession, care, custody or control.

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

32 (c) The Family Court shall provide a notice on all forms requesting a protective order  
33 that, at the hearing for a protective order, the defendant may be ordered to surrender physical  
34 possession or control of any firearms and not to purchase or receive or attempt to purchase or

1 receive any firearms for a period not to exceed the duration of the restraining order.

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

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

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

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

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

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



1 to exceed three (3) years, at the expiration of which time the court may extend any order, upon  
2 motion of the plaintiff, for any additional time, that 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 (i) (1) 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 In the event that the court does not detain or sentence the defendant to imprisonment  
8 pursuant to this chapter, the court shall require the defendant to submit to the use of an electronic  
9 monitoring device or to wear a global positioning satellite tracking device as provided by section  
10 12-29-12.

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

13 (j) Actual notice means that the defendant has received a copy of the order by service or  
14 by being handed a copy of the order by a police officer pursuant to section 15-15-5(d).

15 (k) (1) The district court shall have criminal jurisdiction over all adult violations of this  
16 chapter.

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

18 SECTION 6. 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 PROCEDURE - DOMESTIC VIOLENCE PREVENTION ACT

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1           This act would provide that an electronic monitoring device may be required to be worn  
2 in certain circumstances where a protective order or no contact order was issued. It would also  
3 provide that anyone who tampers with the device commits a felony and that the associated costs  
4 are borne by the offender; and if there is a violation of a protective order and if he or she is not  
5 imprisoned, then a device must be used.

6           This act would take effect upon passage.

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