

RESOLUTION OF THE CITY COUNCIL

No. 235

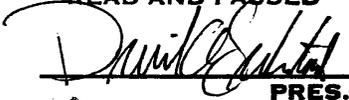
Approved March 26, 2018

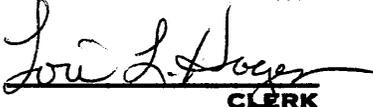
RESOLVED, That the Members of the Providence City Council hereby Endorse and Urge Passage by the General Assembly of House Bill 2018 H-7688 and Senate Bill 2018 S-2492, An Act Relating to Courts and Civil Procedure - Courts - Extreme Risk Protection Orders - Criminal Offenses - Weapons.

IN CITY COUNCIL

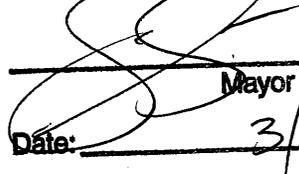
MAR 15 2018

READ AND PASSED


PRES.


CLERK

I HEREBY APPROVE



Mayor
Date: 3/26/18

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE--COURTS -- EXTREME RISK
PROTECTION ORDERS -- CRIMINAL OFFENSES -- WEAPONS

Introduced By: Representatives Canario, Mattiello, Costantino, Marshall, and Fellela

Date Introduced: February 23, 2018

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 8 of the General Laws entitled "COURTS AND CIVIL PROCEDURE

2 - COURTS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 8.3

4 EXTREME RISK PROTECTION ORDERS

5 8-8.3-1. Definitions.

6 When used in this chapter, the following words and phrases shall have the following
7 meanings:

8 (1) "Court" means the superior court in the county in which the petitioner resides.

9 (2) "Extreme risk protection order" means an ex parte temporary or final order granted
10 under this chapter.

11 (3) "Family or household member" means present and former family members (as
12 defined in § 15-15-1), parents (as defined in § 15-15-1), stepparents, legal guardians, persons who
13 are or have been in a substantive dating or engagement relationship within the past one year (as
14 defined in § 15-15-1), and cohabitants (as defined in § 8-8.1-1).

15 (4) "Firearm" includes any machine gun, pistol, rifle, air rifle, air pistol, "blank gun," "BB
16 gun," or other instrument from which steel or metal projectiles are propelled, or which may
17 readily be converted to expel a projectile, except crossbows, recurve, compound, or longbows,
18 and except instruments propelling projectiles which are designed or normally used for a primary

1 purpose other than as a weapon. The frame or receiver of the weapon shall be construed as a
2 firearm under the provisions of this section.

3 (5) "Petitioner" means the person who petitions for an order under this chapter.

4 (6) "Respondent" means the person who is identified as the respondent in a petition filed
5 under this chapter.

6 **8-8.3-2. Filing of petition.**

7 Proceedings under this chapter shall be filed, heard and determined in the superior court
8 of the county in which the petitioner resides. Any proceedings under this chapter shall not
9 preclude any other available civil or criminal remedies. A party filing a petition under this chapter
10 may do so without payment of any filing fee. There shall be no minimum residence requirements
11 for the filing of a petition under this chapter.

12 **8-8.3-3. Petition for order.**

13 (a) A petitioner may file a petition in the superior court requesting an extreme risk
14 protection order, which shall enjoin the respondent from having in their possession, custody or
15 control any firearms and shall further enjoin the respondent from purchasing, receiving or
16 attempting to purchase or receive any firearms while the order is in effect.

17 (b) A petition for an extreme risk protection order may be filed by:

18 (1) A law enforcement officer or agency;

19 (2) The office of the attorney general; or

20 (2) A family or household member of the respondent.

21 (c) A petition for an extreme risk protection order must be supported by a written
22 affidavit signed by the petitioner under oath or by an oral statement by the petitioner taken under
23 oath and any other witness the petitioner may produce.

24 (d) A petition must allege that the respondent poses a significant danger of causing
25 personal injury to self or others by having in their custody or control, purchasing, possessing, or
26 receiving a firearm, and must state the specific statements, actions, or facts that give rise to a
27 reasonable fear of future dangerous acts by the respondent.

28 (e) If the petitioner believes there are firearms in the respondent's current ownership,
29 possession, custody, or control, the petition shall identify the number, types, and locations of all
30 such firearms, if known.

31 (f) A petitioner for an extreme risk protection order, at the time of the filing, shall identify
32 all known restraining orders, orders of protection and pending lawsuits, complaints, petitions or
33 actions pending, active or filed within one year prior to the petition involving either the petitioner
34 or respondent, including, but not limited to, any orders entered pursuant to chapter 8.1 of title 8 or

1 chapter 15 of title 15. The court administrator shall verify the terms of any existing order
2 governing the parties. The court may not delay granting relief under this chapter because of the
3 existence of a pending action between the parties or the necessity of verifying the terms of an
4 existing order. A petition for an extreme risk protection order may be granted whether or not
5 there is a pending action between the parties.

6 (g) If the petitioner is a law enforcement officer or agency, the petitioner shall make a
7 good faith effort to provide notice to a family or household member of the respondent and to any
8 known third party who may be at risk of violence. The notice must state that the petitioner intends
9 to petition the court for an extreme risk protection order or has already done so, and include
10 referrals to appropriate resources, including mental health, domestic violence, and counseling
11 resources. The petitioner must attest in the petition to having provided such notice, or attest to the
12 steps that shall be taken to provide such notice.

13 (h) If the petition states that disclosure of the petitioner's address would risk harm to the
14 petitioner or any member of the petitioner's family or household, the petitioner's address may be
15 omitted from all documents filed with the court. If the petitioner has not disclosed an address
16 under this subsection, the petitioner must designate an alternative address at which the respondent
17 may serve notice of any motions. If the petitioner is a law enforcement officer or agency, the
18 address of record shall be that of the law enforcement agency.

19 (i) After August 1, 2018, all court clerk's offices shall make available the standardized
20 forms, instructions, and informational brochures required by § 8-8.3-14. Any assistance or
21 information provided by clerks under this section does not constitute the practice of law and
22 clerks are not responsible for incorrect information contained in a petition.

23 **8-8.3-4. Hearings on petition – Grounds for issuance – Contents of order.**

24 (a) Upon receipt of a petition, the court shall order a hearing to be held not later than
25 twenty-one (21) days from the date of the order and issue a notice of hearing to the respondent for
26 the same.

27 (b) The court clerk shall cause a copy of the notice of hearing and petition to be
28 forwarded on or before the next judicial day to the appropriate law enforcement agency for
29 service upon the respondent.

30 (c) Personal service of the notice of hearing and petition shall be made upon the
31 respondent by a member of the division of sheriffs or a certified constable not less than five (5)
32 court days prior to the hearing. Service issued under this section takes precedence over the service
33 of other documents, unless the other documents are of a similar emergency nature. If timely
34 personal service cannot be made, the court shall set a new hearing date and shall require

1 additional attempts at obtaining personal service or permit alternate service as provided in § 8-
2 8.3-7.

3 (d) If the court issues a temporary extreme risk protection order, as provided in § 8-8.3-5,
4 pending the hearing ordered under this subsection, such temporary order shall be served
5 concurrently with the notice of hearing and petition.

6 (e) Upon hearing the matter, if the court finds by clear and convincing evidence that the
7 respondent poses a significant danger of causing personal injury to self or others by having in
8 their possession custody or control, purchasing, possessing, or receiving a firearm, the court shall
9 issue an extreme risk protection order. An extreme risk protection order issued by the court shall
10 be for a fixed period of one year, at the expiration of which time the court may extend the
11 extreme risk protection order as set forth in § 8-8.3-8.

12 (f) In determining whether grounds for an extreme risk protection order exist, the court
13 shall consider the following:

14 (1) A recent act or threat of violence by the respondent against self or others, regardless
15 of whether such act or threat of violence involves a firearm;

16 (2) A pattern of acts or threats or violence by the respondent within the past twelve (12)
17 months, including, but not limited to, acts or threats of violence against self or others;

18 (3) The respondent's mental health history;

19 (4) Evidence of respondent's abuse of controlled substances or alcohol;

20 (5) Previous violations by the respondent of any court order including, but not limited to,
21 restraining orders, no contact orders issued pursuant to § 12-29-4, and protective orders issued
22 pursuant to chapter 8.1 of title 8 or chapter 15 of title 15;

23 (6) Previous extreme risk protection orders issued against the respondent;

24 (7) The unlawful, threatening, or reckless use or brandishing of a firearm by respondent;

25 (8) Respondent's criminal history, including, but not limited to, arrests and convictions
26 for felony offenses, crimes of violence as defined in § 11-47-2, violent misdemeanor offenses,
27 crimes involving domestic violence as defined in § 12-29-2, and stalking; and

28 (9) Evidence of recent acquisition of firearms by the respondent.

29 (g) In determining whether grounds for an extreme risk protection order exist, the court
30 may also consider any other relevant and credible evidence presented by the petitioner,
31 respondent and any witnesses they may produce.

32 (h) In a hearing under this chapter, the court may examine under oath the petitioner,
33 respondent and any witnesses they may produce. In lieu of examination, the court may consider
34 sworn affidavits of the respondent, and any witnesses they or the petitioner may produce;

1 however, sworn affidavits cannot serve as the sole basis for the court's determination.
2 (i) The court may continue a hearing under this section upon a showing of good cause. If
3 the court continues a hearing under this subsection in a matter in which a temporary extreme risk
4 protection order has been issued under § 8-8.3-5, the temporary extreme risk protection order
5 shall remain in effect until the next hearing date.
6 (j) During the hearing the court shall consider whether a mental health evaluation or
7 substance abuse evaluation is appropriate, and may order such evaluation if appropriate.
8 (k) An extreme risk protection order must include:
9 (1) A statement of the grounds supporting the issuance of the order;
10 (2) The date and time the order was issued;
11 (3) The date and time the order expires;
12 (4) Whether a mental health or substance abuse evaluation of the respondent has been
13 ordered;
14 (5) The address of the court that issued the order and in which any responsive pleading
15 should be filed;
16 (6) A description of the requirement for surrender of firearms under § 8-8.3-9; and
17 (7) The following statement: "To the subject of this protection order: This order will last
18 until the date and time noted above. If you have not done so already, you must immediately
19 surrender to the local law enforcement agency or to the state police all firearms in your custody,
20 control, or possession and also immediately surrender to the local law enforcement agency or to
21 the state police any concealed pistol license issued to you under § 11-47-8. While this order is in
22 effect, it is illegal for you to have any firearm in your possession, custody or control or for you to
23 purchase, receive, or attempt to purchase or receive any firearm. You have the right to request
24 one hearing to terminate this order every twelve (12) month period that this order, or any renewal
25 order, is in effect. You may seek the advice of an attorney as to any matter connected with this
26 order."
27 (l) When a court issues an extreme risk protection order, the court shall inform the
28 respondent that they are entitled to request termination of the order in the manner prescribed by §
29 8-8.3-8. The court shall provide the respondent with a form to request a termination hearing.
30 (m) If the court declines to issue an extreme risk protection order, the court shall state the
31 particular reasons for the court's denial.
32 **8-8.3-5. Temporary orders – Ex parte proceedings.**
33 (a) Upon the filing of a petition under this chapter, the petitioner may request a temporary
34 extreme risk protection order be issued before a hearing for an extreme risk protection order.

1 without notice to the respondent, by including in the petition detailed sworn allegations based on
2 personal knowledge that the respondent poses an imminent danger of causing personal injury to
3 self or others by having in their custody or control, purchasing, possessing, or receiving a firearm.

4 (b) In determining whether to issue a temporary extreme risk protection order, the court
5 shall consider all relevant evidence, including, but not limited to, the evidence described in § 8-
6 8.3-4(f).

7 (c) If a court finds there is probable cause to believe that the respondent poses an
8 imminent danger of causing personal injury to self or others by having in their custody or control,
9 purchasing, possessing, or receiving a firearm, the court shall issue an ex parte extreme risk
10 protection order.

11 (d) The court shall hold an ex parte extreme risk protection order hearing on the day the
12 petition is filed or on the judicial day immediately following the day the petition is filed.

13 (e) In accordance with § 8-8.3-4, the court shall schedule a hearing within seven (7) days
14 of the issuance of a temporary extreme risk protection order to determine if a one-year extreme
15 risk protection order should be issued under this chapter.

16 (f) A temporary extreme risk protection order must include:

17 (1) A statement of the grounds supporting the issuance of the order;

18 (2) The date and time the order was issued;

19 (3) The date and time the order expires, which shall be for a period of up to one year
20 unless the court determines that the order should be issued for a longer duration;

21 (4) The address of the court that issued the order and in which any responsive pleading
22 should be filed;

23 (5) The date and time of the scheduled hearing;

24 (6) A description of the requirement for surrender of firearms under § 8-8.3-9;

25 (7) The following statement: "To the subject of this protection order: This order will last
26 until the date and time noted above. If you have not done so already, you must surrender to the
27 local law enforcement agency or to the state police all firearms in your custody, control, or
28 possession and also immediately surrender to local law enforcement agency or to the state police
29 any concealed pistol license issued to you under § 11-47-8. While this order is in effect, it is
30 illegal for you to have any firearm in your possession, custody or control or for you to purchase,
31 receive, or attempt to purchase or receive any firearm. You may seek the advice of an attorney as
32 to any matter connected with this order."

33 (8) Any temporary extreme risk protection order issued pursuant to this section shall
34 expire at the time of the hearing under § 8-8.3-4. If the court continues a hearing under § 8-8.3-

1 4(i). the temporary extreme risk protection order shall remain in effect until the next hearing date.
2 (9) A temporary extreme risk protection order shall be served in the same manner as
3 provided for in § 8-8.3-4(c) for service of the notice of hearing and petition, and shall be served
4 concurrently with the notice of hearing and petition.
5 (10) If the court declines to issue a temporary extreme risk protection order, the court
6 shall state the particular reasons for the denial.
7 **8-8.3-6. Service of orders.**
8 (a) An extreme risk protection order issued under this chapter shall be personally served
9 upon the respondent, except as otherwise provided in § 8-8.3-7.
10 (b) The division of sheriffs or a certified constable with jurisdiction in the area in which
11 the respondent resides shall serve the respondent personally.
12 (c) The clerk of the court shall cause a copy of the order issued under this chapter to be
13 forwarded on or before the next judicial day to the division of sheriffs or the certified constable
14 specified in the order for service upon the respondent. Service of an order issued under this
15 chapter takes precedence over the service of other documents, unless the other documents are of a
16 similar emergency nature.
17 (d) If the division of sheriffs or the certified constable cannot complete service upon the
18 respondent within seven (7) days, the deputy sheriff or constable shall notify the petitioner.
19 (e) If the respondent appeared in person before the court, the order entered by the court
20 shall recite that and the necessity for further service is waived and proof of service of that order is
21 not necessary.
22 (f) The court may permit alternate means of service in accordance with § 8-8.3-7.
23 **8-8.3-7. Return of service – Alternate service.**
24 (a) The petition and any order issued under this chapter shall be personally served upon
25 the respondent by a deputy sheriff or certified constable except as provided in subsections (c), (d),
26 and (e) of this section. Service shall be made without payment of any fee when service is made by
27 a deputy sheriff. At the election of the petitioner, service pursuant to this subsection may also be
28 made by a certified constable authorized to serve process of the superior court. The certified
29 constable shall be entitled to receive the fee allowed by law for the service of a superior court
30 summons.
31 (b) Return of service shall be forwarded by the deputy sheriff or certified constable to the
32 clerk of court prior to the date set down for hearing on the petition. If service has not been made,
33 the deputy sheriff or certified constable shall indicate on the summons the reason therefor and the
34 attempts made to serve the respondent.

1 (c) At the time the return of service is sent to the clerk of the court, the deputy sheriff or
2 certified constable shall cause a copy of the return of service to be sent to the petitioner and to the
3 appropriate law enforcement agency.

4 (d) If, at the time of hearing on the petition, the court determines that after diligent effort
5 the deputy sheriff or certified constable has been unable to serve the respondent personally, the
6 judge may order an alternate method of service designed to give reasonable notice of the action to
7 the respondent and taking into consideration the petitioner's ability to afford the means of service
8 ordered. Alternative service shall include, but not be limited to: service by certified and regular
9 mail at respondent's last-known address or place of employment; leaving copies at the
10 respondent's dwelling or usual place of abode with a person of suitable age and discretion
11 residing therein; or by publication in a newspaper once a week for two (2) consecutive weeks.
12 The court shall set a new date for hearing on the petition, no sooner than twenty-one (21) days
13 later, and shall extend any temporary extreme risk protection order until that date.

14 (e) If the respondent appears in person before the court, the necessity for further service is
15 waived and proof of service of that order is not necessary. If the respondent is served notice
16 regarding the complaint and hearing, but does not appear at the hearing, the hearing shall be held
17 without the respondent present and the clerk of the superior court shall mail the respondent a copy
18 of the resulting order.

19 **8-8.3-8. Termination -- Expiration -- Renewal of orders.**

20 (a) The respondent may submit one written request for a hearing to terminate an extreme
21 risk protection order issued under this chapter every twelve (12) month period that the order, or
22 any renewal order, is in effect.

23 (1) Upon receipt of the request for a hearing to terminate an extreme risk protection
24 order, the court shall set a date for a hearing. Notice of the request shall be served on the original
25 petitioner for order in accordance with the requirements of § 8-8.3-6. The hearing shall occur no
26 sooner than fourteen (14) days and no later than thirty (30) days from the date of service of the
27 request upon the petitioner.

28 (2) The respondent shall have the burden of proving by clear and convincing evidence
29 that the respondent does not pose a significant danger of causing personal injury to self or others
30 by having in their custody or control, purchasing, possessing, or receiving a firearm. The court
31 may consider any relevant evidence, including evidence of the considerations listed in § 8-8.3-
32 4(f).

33 (3) If the court finds after the hearing that the respondent has met their burden, the court
34 shall terminate the order.

1 **(b) The court shall notify the petitioner of the impending expiration of an extreme risk**
2 **protection order. Notice must be received by the petitioner ninety (90) calendar days before the**
3 **date the order expires.**

4 **(c) A family or household member of the respondent or a law enforcement officer or**
5 **agency may by motion request a renewal of an extreme risk protection order at any time within**
6 **ninety (90) calendar days before the expiration of the order.**

7 **(1) Upon receipt of the motion to renew, the court shall order that a hearing be held not**
8 **later than seven (7) days from the date the order issues. The respondent shall be personally served**
9 **in the same manner prescribed in § 8-8.3-4(c), or as otherwise ordered by the court.**

10 **(2) In determining whether to renew an extreme risk protection order issued under this**
11 **section, the court shall consider all relevant evidence presented by the petitioner and follow the**
12 **same procedure as provided in § 8-8.3-4.**

13 **(3) If the court finds by clear and convincing evidence that the requirements for issuance**
14 **of an extreme risk protection order as provided in § 8-8.3-4 continue to be met, the court shall**
15 **renew the order. However, if, after notice, the motion for renewal is uncontested and the**
16 **petitioner seeks no modification of the order, the order may be renewed on the basis of the**
17 **petitioner's motion and affidavit stating that there has been no material change in relevant**
18 **circumstances since entry of the order which is subject to renewal.**

19 **(4) The renewal of an extreme risk protection order shall be for a fixed period of one**
20 **year, subject to termination as provided in subsection (a) of this section or further renewal by**
21 **order of the court.**

22 **8-8.3-9. Surrender of firearms.**

23 **(a) Upon issuance of any extreme risk protection order under this chapter, including a**
24 **temporary extreme risk protection order, the court shall order the respondent to immediately**
25 **surrender to the local law enforcement agency or to the state police under terms and conditions as**
26 **provided in § 11-47-5.4, all firearms in the respondent's custody, control, or possession and any**
27 **concealed pistol license issued under §§ 11-47-8 or 11-47-11 to the local law enforcement agency**
28 **or the state police.**

29 **(b) A deputy sheriff serving any extreme risk protection order, including a temporary**
30 **extreme risk protection order, shall be accompanied by either a member of the Rhode Island state**
31 **police or of the local police department (hereinafter referred to in this section collectively as**
32 **"police" or "police officer"), and request that the respondent immediately surrender to the police**
33 **all firearms in the respondent's possession, care, custody or control. The police shall conduct any**
34 **search permitted by law for such firearms. The police shall take possession of all firearms that are**

1 surrendered, that are in plain sight, or that are discovered pursuant to a lawful search. As part of
2 the order, the court may also direct a police officer to search for firearms in a respondent's
3 possession consistent with chapter 5 of title 12. Alternatively, if personal service by a deputy
4 sheriff is not possible, or not required because the respondent was present at the extreme risk
5 protection order hearing, the respondent shall surrender the firearms in a safe manner to the
6 control of the Rhode Island state police, or a local police department, immediately upon being
7 served with the order by alternate service. If the respondent was present at the hearing, the
8 respondent shall be accompanied by a police officer from the hearing while the respondent
9 retrieves the respondent's firearm.

10 (c) At the time of surrender, a police officer taking possession of a firearm and/or
11 concealed pistol license shall issue a receipt identifying all firearms that have been surrendered
12 and provide a copy of the receipt to the respondent. Within seventy-two (72) hours after service
13 of the order, the police officer shall file the original receipt with the court and shall ensure that
14 their law enforcement agency retains a copy of the receipt. The police officer shall also notify the
15 office of the attorney general as to any concealed weapons permits which have been surrendered,
16 and the office of the attorney general shall update the applicable computer databases that these
17 concealed weapons permits have been surrendered pursuant to this chapter and shall indicate that
18 the concealed weapons permit are no longer valid.

19 (d) Upon the sworn statement or testimony of any person or law enforcement officer
20 alleging that the respondent has failed to comply with the surrender of firearms as required by an
21 order issued under this chapter, the court shall determine whether probable cause exists to believe
22 that the respondent has failed to surrender all firearms in their possession, custody, or control. If
23 probable cause exists, the court shall issue a warrant describing the firearms and authorizing a
24 search of the locations where the firearms are reasonably believed to be and the seizure of any
25 firearms discovered pursuant to such search.

26 (e) If a person other than the respondent claims title to any firearms surrendered pursuant
27 to this section, and they are determined by the court to be the lawful owner of the firearm then the
28 firearm shall be ordered returned to them, provided that:

29 (1) The lawful owner attests to the court that the firearms will be removed from the
30 respondent's custody, control, or possession and that the lawful owner will store the firearm in a
31 manner such that the respondent does not have access to or control of the firearm; and

32 (2) The Rhode Island state police or local law enforcement agency conducts a
33 background check and determines that the owner is not prohibited from possessing the firearm
34 under state or federal law.

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

3 (1) File with the court a receipt showing the firearms were physically surrendered to the
4 state police or local police department; or

5 (2) File with the court, an attestation that, at the time of the order, the respondent had no
6 firearms in their possession or control, or subject to their possession or control, and that the
7 person, at the time of the attestation, has no firearms in their possession or control or subject to
8 their possession or control.

9 (g) If a respondent fails to timely comply with the requirements of subsection (f) of this
10 section, the court shall hold a hearing to determine if the respondent is in contempt of court.

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

15 **§ 8-3-10. Firearms return -- Disposal.**

16 (a) Any firearm surrendered in accordance with this chapter shall be returned to the
17 respondent upon their request when:

18 (1) The respondent produces documentation issued by the court indicating that the
19 extreme risk protective order issued pursuant to this chapter has expired and has not been
20 renewed or extended; and

21 (2) The law enforcement agency in possession of the firearms conducts a background
22 check and determines that the respondent is not otherwise prohibited from possessing a firearm
23 under state or federal law.

24 (b) A law enforcement agency shall, if requested, provide prior notice of the return of a
25 firearm to a respondent and/or to family or household members of the respondent in the manner
26 provided in § 8-8.3-6.

27 **§ 8-3-11. Reporting of orders.**

28 (a) The clerk of the court shall enter any extreme risk protection order or temporary
29 extreme risk protection order issued under this chapter into a statewide judicial information
30 system on the same day such order is issued.

31 (b) The clerk of the court shall forward a copy of an order issued under this chapter the
32 same day such order is issued to the appropriate law enforcement agency specified in the order.

33 (1) Upon receipt of the copy of the order, the law enforcement agency shall enter the
34 order into:

1 (i) The national instant criminal background check system, also known as the NICS
2 database, pursuant to the mental health component under NICS reporting standards;

3 (ii) Any other federal or state computer-based systems used by law enforcement, the
4 bureau of criminal investigation at the office of the attorney general, or others to identify
5 prohibited purchasers of firearms; and

6 (iii) Any computer-based criminal intelligence information system available in this state
7 used by law enforcement agencies to list outstanding warrants.

8 (2) The order must remain in each system for the period stated in the order, and the law
9 enforcement agency shall only expunge orders from the systems that have expired or terminated.
10 Entry into the computer-based criminal intelligence information system constitutes notice to all
11 law enforcement agencies of the existence of the order. The order is fully enforceable in any city
12 or town in the state.

13 (c) The issuing court shall, within three (3) judicial days after issuance of an extreme risk
14 protection order or temporary extreme risk protection order, forward a copy of the respondent's
15 driver's license, or comparable information, along with the date of order issuance, to the office of
16 attorney general. Upon receipt of the information, the office of attorney general shall determine if
17 the respondent has a concealed pistol license. If the respondent does have a concealed pistol
18 license, the office of attorney general shall immediately revoke the license.

19 (d) If an extreme risk protection order is terminated before its expiration date, the clerk of
20 the court shall forward the same day a copy of the termination order to the office of attorney
21 general and the appropriate law enforcement agency specified in the termination order. Upon
22 receipt of the order, the law enforcement agency shall promptly remove the order from any
23 computer-based system in which it was entered pursuant to subsection (b) of this section.

24 **8-8.3-12. Penalties.**

25 (a) Any violation of any extreme risk protection order shall subject the violator to being
26 found in contempt of court. The contempt order shall not be exclusive and shall not preclude any
27 other available civil or criminal remedies.

28 (b) Any violation of an extreme risk protection order issued under this chapter of which
29 the respondent has actual notice shall be a felony and, upon conviction, shall be punished by
30 imprisonment for not less than two (2) years nor more than ten (10) years, or a fine of not more
31 than ten thousand dollars (\$10,000), or both.

32 (c) "Actual notice" means that the respondent has received a copy of the order by service
33 thereof or by being personally served with a copy of the order by a deputy sheriff or certified
34 constable or by receipt of alternate service ordered by the court pursuant to § 8-8.3-6. Actual

1 notice shall also include in-person notification by the court.

2 (d) Filing a petition under this chapter knowing the information in such petition to be
3 materially false, or with intent to harass the respondent, shall be a misdemeanor that shall be
4 punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not
5 more than one year, or both.

6 **8-8.3-13. Liability.**

7 Except as provided in § 8-8.3-12, this chapter does not impose criminal or civil liability
8 on any person or entity for acts or omissions related to obtaining an extreme risk protection order
9 or temporary extreme risk protection order including, but not limited to, reporting, declining to
10 report, investigating, declining to investigate, filing, or declining to file a petition under this
11 chapter.

12 **8-8.3-14. Court forms and informational material.**

13 (a) The administrative office of the courts shall develop and prepare instructions and
14 informational brochures, standard petitions and extreme risk protection order forms, and a court
15 staff handbook on the extreme risk protection order process. The standard petition and order
16 forms shall be used after August 1, 2018, for all petitions filed and orders issued under this
17 chapter. The instructions, brochures, forms, and handbook shall be prepared in consultation with
18 interested persons, including representatives of gun violence prevention groups, judges, and law
19 enforcement personnel. Materials shall be based on best practices and available electronically
20 online to the public.

21 (b) The instructions shall be designed to assist petitioners in completing the petition, and
22 must include a sample of a standard petition and order for protection forms.

23 (c) The instructions and standard petition shall include a means for the petitioner to
24 identify, with only lay knowledge, the firearms the respondent may own, possesses, receive, or
25 have in their custody or control. The instructions shall provide pictures of types of firearms that
26 the petitioner may choose from to identify the relevant firearms, or an equivalent means to allow
27 petitioners to identify firearms without requiring specific or technical knowledge regarding the
28 firearms.

29 (d) The informational brochure shall describe the use of and the process for obtaining,
30 modifying, and terminating an extreme risk protection order under this chapter, and provide
31 relevant forms.

32 (e) The extreme risk protection order form shall include, in a conspicuous location, notice
33 of penalties resulting from violation of the order, and the following statement: "You have the sole
34 responsibility to avoid or refrain from violating this order's provisions. Only the court can change

1 the order and only upon written application."

2 (f) The court staff handbook shall allow for the addition of a community resource list by
3 the court clerk.

4 (g) All court clerks may create a community resource list of crisis intervention, mental
5 health, substance abuse, interpreter, counseling, and other relevant resources serving the county in
6 which the court is located. The court may make the community resource list available as part of
7 or in addition to the informational brochures described in subsection (a) of this section.

8 (h) The administrative office of the courts shall distribute a master copy of the petition
9 and order forms, instructions, and informational brochures to all court clerks and shall distribute a
10 master copy of the petition and order forms to all state courts. Distribution of all documents shall
11 at a minimum, be in an electronic format or formats accessible to all courts and court clerks in the
12 state.

13 (i) The administrative office of the courts shall determine the significant non-English
14 speaking or limited English speaking populations in the state. The administrator shall then
15 arrange for translation of the instructions and informational brochures required by this section,
16 which shall contain a sample of the standard petition and order for protection forms, into the
17 languages spoken by those significant non-English speaking populations and shall distribute a
18 master copy of the translated instructions and informational brochures to all court clerks by
19 August 1, 2018.

20 (j) The administrative office of the courts shall update the instructions, brochures,
21 standard petition and extreme risk protection order forms, and court staff handbook as necessary,
22 including when changes in the law make an update necessary.

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

25 **11-47-5. Possession of firearms by certain persons prohibited.**

26 (a) No person shall purchase, own, carry, transport, or have in his or her possession any
27 firearm if that person:

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

29 (2) Is a fugitive from justice;

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

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

34 (i) Simple assault (§ 11-5-3);

- 1 (ii) Cyberstalking and cyberharassment (§ 11-52-4.2);
2 (iii) Violation of a protective order (as set forth in § 12-29-2(a)(10); or
3 (iv) Disorderly conduct (§ 11-45-1).

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

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

12 (b) No person shall purchase, carry, transport, or have in his or her possession any
13 firearm if that person is subject to an order issued pursuant to chapter 15 of title 15, chapter 8.1 of
14 title 8, or an equivalent order in this state or elsewhere, which order was issued after the person
15 restrained has received notice of the proceedings and had an opportunity to be heard.

16 (c) No person shall purchase, carry, transport, or have in their possession any firearm if
17 that person is subject to any extreme risk protection order, including a temporary extreme risk
18 protection order issued pursuant to chapter 8.3 of title 8. Also, no person shall knowingly provide
19 a firearm to a person subject to an extreme risk protection order, including a temporary extreme
20 risk protection order, issued pursuant to chapter 8.3 of title 8.

21 ~~(e)~~(d) No person who is in community confinement pursuant to the provisions of § 42-56-
22 20.2, or who is otherwise subject to electronic surveillance or monitoring devices as a condition
23 of parole, shall purchase, carry, transport, or have in his or her possession any firearm. This
24 subsection shall not apply to any person who has not been convicted of (or pleaded guilty or nolo
25 contendere to) a crime of violence in a court of competent jurisdiction.

26 ~~(d)~~(e) Every person violating the provisions of this section shall, upon conviction, be
27 punished by imprisonment for not less than two (2) nor more than ten (10) years; and for
28 penalties provided in this section he or she shall not be afforded the benefit of suspension or
29 deferment of sentence nor of probation. In addition, a person in violation of the provisions of
30 subsection (c) of this section may also be punished by a fine of up to ten thousand dollars
31 (\$10,000).

32 SECTION 3. This act shall take effect upon passage.

=====
LC003029
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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE--COURTS -- EXTREME RISK
PROTECTION ORDERS -- CRIMINAL OFFENSES -- WEAPONS

1 This act would provide the superior courts with authority to issue "extreme risk
2 protection orders" when the court finds the subject of the order is an imminent danger to cause
3 personal injury to self or others by having access to a firearm. The act would also provide that a
4 person subject to an extreme risk protection order surrender all firearms and carry permits while
5 subject to such an order.

6 This act would take effect upon passage.

LC003029

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

AN ACT

RELATING TO COURTS AND CIVIL PROCEDURE—COURTS -- EXTREME RISK
PROTECTION ORDERS -- CRIMINAL OFFENSES -- WEAPONS

Introduced By: Senators Goodwin, Ruggerio, McCaffrey, Euer, and DiPalma

Date Introduced: February 27, 2018

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 8 of the General Laws entitled "COURTS AND CIVIL PROCEDURE
2 - COURTS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 8.3

4 EXTREME RISK PROTECTION ORDERS

5 8-8.3-1. Definitions.

6 When used in this chapter, the following words and phrases shall have the following
7 meanings:

8 (1) "Court" means the superior court in the county in which the petitioner resides.

9 (2) "Extreme risk protection order" means an ex parte temporary or final order granted
10 under this chapter.

11 (3) "Family or household member" means present and former family members (as
12 defined in § 15-15-1), parents (as defined in § 15-15-1), stepparents, legal guardians, persons who
13 are or have been in a substantive dating or engagement relationship within the past one year (as
14 defined in § 15-15-1), and cohabitants (as defined in § 8-8.1-1).

15 (4) "Firearm" includes any machine gun, pistol, rifle, air rifle, air pistol, "blank gun," "BB
16 gun," or other instrument from which steel or metal projectiles are propelled, or which may
17 readily be converted to expel a projectile, except crossbows, recurve, compound, or longbows,
18 and except instruments propelling projectiles which are designed or normally used for a primary

1 purpose other than as a weapon. The frame or receiver of the weapon shall be construed as a
2 firearm under the provisions of this section.

3 (5) "Petitioner" means the person who petitions for an order under this chapter.

4 (6) "Respondent" means the person who is identified as the respondent in a petition filed
5 under this chapter.

6 **8-8.3-2. Filing of petition.**

7 Proceedings under this chapter shall be filed, heard and determined in the superior court
8 of the county in which the petitioner resides. Any proceedings under this chapter shall not
9 preclude any other available civil or criminal remedies. A party filing a petition under this chapter
10 may do so without payment of any filing fee. There shall be no minimum residence requirements
11 for the filing of a petition under this chapter.

12 **8-8.3-3. Petition for order.**

13 (a) A petitioner may file a petition in the superior court requesting an extreme risk
14 protection order, which shall enjoin the respondent from having in their possession, custody or
15 control any firearms and shall further enjoin the respondent from purchasing, receiving or
16 attempting to purchase or receive any firearms while the order is in effect.

17 (b) A petition for an extreme risk protection order may be filed by:

18 (1) A law enforcement officer or agency;

19 (2) The office of the attorney general; or

20 (2) A family or household member of the respondent.

21 (c) A petition for an extreme risk protection order must be supported by a written
22 affidavit signed by the petitioner under oath or by an oral statement by the petitioner taken under
23 oath and any other witness the petitioner may produce.

24 (d) A petition must allege that the respondent poses a significant danger of causing
25 personal injury to self or others by having in their custody or control, purchasing, possessing, or
26 receiving a firearm, and must state the specific statements, actions, or facts that give rise to a
27 reasonable fear of future dangerous acts by the respondent.

28 (e) If the petitioner believes there are firearms in the respondent's current ownership,
29 possession, custody, or control, the petition shall identify the number, types, and locations of all
30 such firearms, if known.

31 (f) A petitioner for an extreme risk protection order, at the time of the filing, shall identify
32 all known restraining orders, orders of protection and pending lawsuits, complaints, petitions or
33 actions pending, active or filed within one year prior to the petition involving either the petitioner
34 or respondent, including, but not limited to, any orders entered pursuant to chapter 8.1 of title 8 or

1 chapter 15 of title 15. The court administrator shall verify the terms of any existing order
2 governing the parties. The court may not delay granting relief under this chapter because of the
3 existence of a pending action between the parties or the necessity of verifying the terms of an
4 existing order. A petition for an extreme risk protection order may be granted whether or not
5 there is a pending action between the parties.

6 (g) If the petitioner is a law enforcement officer or agency, the petitioner shall make a
7 good faith effort to provide notice to a family or household member of the respondent and to any
8 known third party who may be at risk of violence. The notice must state that the petitioner intends
9 to petition the court for an extreme risk protection order or has already done so, and include
10 referrals to appropriate resources, including mental health, domestic violence, and counseling
11 resources. The petitioner must attest in the petition to having provided such notice, or attest to the
12 steps that shall be taken to provide such notice.

13 (h) If the petition states that disclosure of the petitioner's address would risk harm to the
14 petitioner or any member of the petitioner's family or household, the petitioner's address may be
15 omitted from all documents filed with the court. If the petitioner has not disclosed an address
16 under this subsection, the petitioner must designate an alternative address at which the respondent
17 may serve notice of any motions. If the petitioner is a law enforcement officer or agency, the
18 address of record shall be that of the law enforcement agency.

19 (i) After August 1, 2018, all court clerk's offices shall make available the standardized
20 forms, instructions, and informational brochures required by § 8-8.3-14. Any assistance or
21 information provided by clerks under this section does not constitute the practice of law and
22 clerks are not responsible for incorrect information contained in a petition.

23 **8-8.3-4. Hearings on petition – Grounds for issuance – Contents of order.**

24 (a) Upon receipt of a petition, the court shall order a hearing to be held not later than
25 twenty-one (21) days from the date of the order and issue a notice of hearing to the respondent for
26 the same.

27 (b) The court clerk shall cause a copy of the notice of hearing and petition to be
28 forwarded on or before the next judicial day to the appropriate law enforcement agency for
29 service upon the respondent.

30 (c) Personal service of the notice of hearing and petition shall be made upon the
31 respondent by a member of the division of sheriffs or a certified constable not less than five (5)
32 court days prior to the hearing. Service issued under this section takes precedence over the service
33 of other documents, unless the other documents are of a similar emergency nature. If timely
34 personal service cannot be made, the court shall set a new hearing date and shall require

1 additional attempts at obtaining personal service or permit alternate service as provided in § 8-
2 8.3-7.

3 (d) If the court issues a temporary extreme risk protection order, as provided in § 8-8.3-5,
4 pending the hearing ordered under this subsection, such temporary order shall be served
5 concurrently with the notice of hearing and petition.

6 (e) Upon hearing the matter, if the court finds by clear and convincing evidence that the
7 respondent poses a significant danger of causing personal injury to self or others by having in
8 their possession custody or control, purchasing, possessing, or receiving a firearm, the court shall
9 issue an extreme risk protection order. An extreme risk protection order issued by the court shall
10 be for a fixed period of one year, at the expiration of which time the court may extend the
11 extreme risk protection order as set forth in § 8-8.3-8.

12 (f) In determining whether grounds for an extreme risk protection order exist, the court
13 shall consider the following:

14 (1) A recent act or threat of violence by the respondent against self or others, regardless
15 of whether such act or threat of violence involves a firearm;

16 (2) A pattern of acts or threats or violence by the respondent within the past twelve (12)
17 months, including, but not limited to, acts or threats of violence against self or others;

18 (3) The respondent's mental health history;

19 (4) Evidence of respondent's abuse of controlled substances or alcohol;

20 (5) Previous violations by the respondent of any court order including, but not limited to,
21 restraining orders, no contact orders issued pursuant to § 12-29-4, and protective orders issued
22 pursuant to chapter 8.1 of title 8 or chapter 15 of title 15;

23 (6) Previous extreme risk protection orders issued against the respondent;

24 (7) The unlawful, threatening, or reckless use or brandishing of a firearm by respondent;

25 (8) Respondent's criminal history, including, but not limited to, arrests and convictions
26 for felony offenses, crimes of violence as defined in § 11-47-2, violent misdemeanor offenses,
27 crimes involving domestic violence as defined in § 12-29-2, and stalking; and

28 (9) Evidence of recent acquisition of firearms by the respondent.

29 (g) In determining whether grounds for an extreme risk protection order exist, the court
30 may also consider any other relevant and credible evidence presented by the petitioner,
31 respondent and any witnesses they may produce.

32 (h) In a hearing under this chapter, the court may examine under oath the petitioner,
33 respondent and any witnesses they may produce. In lieu of examination, the court may consider
34 sworn affidavits of the respondent, and any witnesses they or the petitioner may produce;

1 however, sworn affidavits cannot serve as the sole basis for the court's determination.

2 (i) The court may continue a hearing under this section upon a showing of good cause. If
3 the court continues a hearing under this subsection in a matter in which a temporary extreme risk
4 protection order has been issued under § 8-8.3-5, the temporary extreme risk protection order
5 shall remain in effect until the next hearing date.

6 (j) During the hearing the court shall consider whether a mental health evaluation or
7 substance abuse evaluation is appropriate, and may order such evaluation if appropriate.

8 (k) An extreme risk protection order must include:

9 (1) A statement of the grounds supporting the issuance of the order;

10 (2) The date and time the order was issued;

11 (3) The date and time the order expires;

12 (4) Whether a mental health or substance abuse evaluation of the respondent has been
13 ordered;

14 (5) The address of the court that issued the order and in which any responsive pleading
15 should be filed;

16 (6) A description of the requirement for surrender of firearms under § 8-8.3-9; and

17 (7) The following statement: "To the subject of this protection order: This order will last
18 until the date and time noted above. If you have not done so already, you must immediately
19 surrender to the local law enforcement agency or to the state police all firearms in your custody,
20 control, or possession and also immediately surrender to the local law enforcement agency or to
21 the state police any concealed pistol license issued to you under § 11-47-8. While this order is in
22 effect, it is illegal for you to have any firearm in your possession, custody or control or for you to
23 purchase, receive, or attempt to purchase or receive any firearm. You have the right to request
24 one hearing to terminate this order every twelve (12) month period that this order, or any renewal
25 order, is in effect. You may seek the advice of an attorney as to any matter connected with this
26 order."

27 (l) When a court issues an extreme risk protection order, the court shall inform the
28 respondent that they are entitled to request termination of the order in the manner prescribed by §
29 8-8.3-8. The court shall provide the respondent with a form to request a termination hearing.

30 (m) If the court declines to issue an extreme risk protection order, the court shall state the
31 particular reasons for the court's denial.

32 **8-8.3-5. Temporary orders – Ex parte proceedings.**

33 (a) Upon the filing of a petition under this chapter, the petitioner may request a temporary
34 extreme risk protection order be issued before a hearing for an extreme risk protection order.

1 without notice to the respondent, by including in the petition detailed sworn allegations based on
2 personal knowledge that the respondent poses an imminent danger of causing personal injury to
3 self or others by having in their custody or control, purchasing, possessing, or receiving a firearm.

4 (b) In determining whether to issue a temporary extreme risk protection order, the court
5 shall consider all relevant evidence, including, but not limited to, the evidence described in § 8-
6 8.3-4(f).

7 (c) If a court finds there is probable cause to believe that the respondent poses an
8 imminent danger of causing personal injury to self or others by having in their custody or control,
9 purchasing, possessing, or receiving a firearm, the court shall issue an ex parte extreme risk
10 protection order.

11 (d) The court shall hold an ex parte extreme risk protection order hearing on the day the
12 petition is filed or on the judicial day immediately following the day the petition is filed.

13 (e) In accordance with § 8-8.3-4, the court shall schedule a hearing within seven (7) days
14 of the issuance of a temporary extreme risk protection order to determine if a one-year extreme
15 risk protection order should be issued under this chapter.

16 (f) A temporary extreme risk protection order must include:

17 (1) A statement of the grounds supporting the issuance of the order;

18 (2) The date and time the order was issued;

19 (3) The date and time the order expires, which shall be for a period of up to one year
20 unless the court determines that the order should be issued for a longer duration;

21 (4) The address of the court that issued the order and in which any responsive pleading
22 should be filed;

23 (5) The date and time of the scheduled hearing;

24 (6) A description of the requirement for surrender of firearms under § 8-8.3-9;

25 (7) The following statement: "To the subject of this protection order: This order will last
26 until the date and time noted above. If you have not done so already, you must surrender to the
27 local law enforcement agency or to the state police all firearms in your custody, control, or
28 possession and also immediately surrender to local law enforcement agency or to the state police
29 any concealed pistol license issued to you under § 11-47-8. While this order is in effect, it is
30 illegal for you to have any firearm in your possession, custody or control or for you to purchase,
31 receive, or attempt to purchase or receive any firearm. You may seek the advice of an attorney as
32 to any matter connected with this order."

33 (8) Any temporary extreme risk protection order issued pursuant to this section shall
34 expire at the time of the hearing under § 8-8.3-4. If the court continues a hearing under § 8-8.3-

1 4(i), the temporary extreme risk protection order shall remain in effect until the next hearing date.

2 (9) A temporary extreme risk protection order shall be served in the same manner as
3 provided for in § 8-8.3-4(c) for service of the notice of hearing and petition, and shall be served
4 concurrently with the notice of hearing and petition.

5 (10) If the court declines to issue a temporary extreme risk protection order, the court
6 shall state the particular reasons for the denial.

7 **8-8.3-6. Service of orders.**

8 (a) An extreme risk protection order issued under this chapter shall be personally served
9 upon the respondent, except as otherwise provided in § 8-8.3-7.

10 (b) The division of sheriffs or a certified constable with jurisdiction in the area in which
11 the respondent resides shall serve the respondent personally.

12 (c) The clerk of the court shall cause a copy of the order issued under this chapter to be
13 forwarded on or before the next judicial day to the division of sheriffs or the certified constable
14 specified in the order for service upon the respondent. Service of an order issued under this
15 chapter takes precedence over the service of other documents, unless the other documents are of a
16 similar emergency nature.

17 (d) If the division of sheriffs or the certified constable cannot complete service upon the
18 respondent within seven (7) days, the deputy sheriff or constable shall notify the petitioner.

19 (e) If the respondent appeared in person before the court, the order entered by the court
20 shall recite that and the necessity for further service is waived and proof of service of that order is
21 not necessary.

22 (f) The court may permit alternate means of service in accordance with § 8-8.3-7.

23 **8-8.3-7. Return of service – Alternate service.**

24 (a) The petition and any order issued under this chapter shall be personally served upon
25 the respondent by a deputy sheriff or certified constable except as provided in subsections (c), (d),
26 and (e) of this section. Service shall be made without payment of any fee when service is made by
27 a deputy sheriff. At the election of the petitioner, service pursuant to this subsection may also be
28 made by a certified constable authorized to serve process of the superior court. The certified
29 constable shall be entitled to receive the fee allowed by law for the service of a superior court
30 summons.

31 (b) Return of service shall be forwarded by the deputy sheriff or certified constable to the
32 clerk of court prior to the date set down for hearing on the petition. If service has not been made,
33 the deputy sheriff or certified constable shall indicate on the summons the reason therefor and the
34 attempts made to serve the respondent.

1 (c) At the time the return of service is sent to the clerk of the court, the deputy sheriff or
2 certified constable shall cause a copy of the return of service to be sent to the petitioner and to the
3 appropriate law enforcement agency.

4 (d) If, at the time of hearing on the petition, the court determines that after diligent effort
5 the deputy sheriff or certified constable has been unable to serve the respondent personally, the
6 judge may order an alternate method of service designed to give reasonable notice of the action to
7 the respondent and taking into consideration the petitioner's ability to afford the means of service
8 ordered. Alternative service shall include, but not be limited to: service by certified and regular
9 mail at respondent's last-known address or place of employment; leaving copies at the
10 respondent's dwelling or usual place of abode with a person of suitable age and discretion
11 residing therein; or by publication in a newspaper once a week for two (2) consecutive weeks.
12 The court shall set a new date for hearing on the petition, no sooner than twenty-one (21) days
13 later, and shall extend any temporary extreme risk protection order until that date.

14 (e) If the respondent appears in person before the court, the necessity for further service is
15 waived and proof of service of that order is not necessary. If the respondent is served notice
16 regarding the complaint and hearing, but does not appear at the hearing, the hearing shall be held
17 without the respondent present and the clerk of the superior court shall mail the respondent a copy
18 of the resulting order.

19 **8-8.3-8. Termination -- Expiration -- Renewal of orders.**

20 (a) The respondent may submit one written request for a hearing to terminate an extreme
21 risk protection order issued under this chapter every twelve (12) month period that the order, or
22 any renewal order, is in effect.

23 (1) Upon receipt of the request for a hearing to terminate an extreme risk protection
24 order, the court shall set a date for a hearing. Notice of the request shall be served on the original
25 petitioner for order in accordance with the requirements of § 8-8.3-6. The hearing shall occur no
26 sooner than fourteen (14) days and no later than thirty (30) days from the date of service of the
27 request upon the petitioner.

28 (2) The respondent shall have the burden of proving by clear and convincing evidence
29 that the respondent does not pose a significant danger of causing personal injury to self or others
30 by having in their custody or control, purchasing, possessing, or receiving a firearm. The court
31 may consider any relevant evidence, including evidence of the considerations listed in § 8-8.3-
32 4(f).

33 (3) If the court finds after the hearing that the respondent has met their burden, the court
34 shall terminate the order.

1 **(b) The court shall notify the petitioner of the impending expiration of an extreme risk**
2 **protection order. Notice must be received by the petitioner ninety (90) calendar days before the**
3 **date the order expires.**

4 **(c) A family or household member of the respondent or a law enforcement officer or**
5 **agency may by motion request a renewal of an extreme risk protection order at any time within**
6 **ninety (90) calendar days before the expiration of the order.**

7 **(1) Upon receipt of the motion to renew, the court shall order that a hearing be held not**
8 **later than seven (7) days from the date the order issues. The respondent shall be personally served**
9 **in the same manner prescribed in § 8-8.3-4(c), or as otherwise ordered by the court.**

10 **(2) In determining whether to renew an extreme risk protection order issued under this**
11 **section, the court shall consider all relevant evidence presented by the petitioner and follow the**
12 **same procedure as provided in § 8-8.3-4.**

13 **(3) If the court finds by clear and convincing evidence that the requirements for issuance**
14 **of an extreme risk protection order as provided in § 8-8.3-4 continue to be met, the court shall**
15 **renew the order. However, if, after notice, the motion for renewal is uncontested and the**
16 **petitioner seeks no modification of the order, the order may be renewed on the basis of the**
17 **petitioner's motion and affidavit stating that there has been no material change in relevant**
18 **circumstances since entry of the order which is subject to renewal.**

19 **(4) The renewal of an extreme risk protection order shall be for a fixed period of one**
20 **year, subject to termination as provided in subsection (a) of this section or further renewal by**
21 **order of the court.**

22 **8-8.3-9. Surrender of firearms.**

23 **(a) Upon issuance of any extreme risk protection order under this chapter, including a**
24 **temporary extreme risk protection order, the court shall order the respondent to immediately**
25 **surrender to the local law enforcement agency or to the state police under terms and conditions as**
26 **provided in § 11-47-5.4, all firearms in the respondent's custody, control, or possession and any**
27 **concealed pistol license issued under §§ 11-47-8 or 11-47-11 to the local law enforcement agency**
28 **or the state police.**

29 **(b) A deputy sheriff serving any extreme risk protection order, including a temporary**
30 **extreme risk protection order, shall be accompanied by either a member of the Rhode Island state**
31 **police or of the local police department (hereinafter referred to in this section collectively as**
32 **"police" or "police officer"), and request that the respondent immediately surrender to the police**
33 **all firearms in the respondent's possession, care, custody or control. The police shall conduct any**
34 **search permitted by law for such firearms. The police shall take possession of all firearms that are**

1 surrendered, that are in plain sight, or that are discovered pursuant to a lawful search. As part of
2 the order, the court may also direct a police officer to search for firearms in a respondent's
3 possession consistent with chapter 5 of title 12. Alternatively, if personal service by a deputy
4 sheriff is not possible, or not required because the respondent was present at the extreme risk
5 protection order hearing, the respondent shall surrender the firearms in a safe manner to the
6 control of the Rhode Island state police, or a local police department, immediately upon being
7 served with the order by alternate service. If the respondent was present at the hearing, the
8 respondent shall be accompanied by a police officer from the hearing while the respondent
9 retrieves the respondent's firearm.

10 (c) At the time of surrender, a police officer taking possession of a firearm and/or
11 concealed pistol license shall issue a receipt identifying all firearms that have been surrendered
12 and provide a copy of the receipt to the respondent. Within seventy-two (72) hours after service
13 of the order, the police officer shall file the original receipt with the court and shall ensure that
14 their law enforcement agency retains a copy of the receipt. The police officer shall also notify the
15 office of the attorney general as to any concealed weapons permits which have been surrendered,
16 and the office of the attorney general shall update the applicable computer databases that these
17 concealed weapons permits have been surrendered pursuant to this chapter and shall indicate that
18 the concealed weapons permit are no longer valid.

19 (d) Upon the sworn statement or testimony of any person or law enforcement officer
20 alleging that the respondent has failed to comply with the surrender of firearms as required by an
21 order issued under this chapter, the court shall determine whether probable cause exists to believe
22 that the respondent has failed to surrender all firearms in their possession, custody, or control. If
23 probable cause exists, the court shall issue a warrant describing the firearms and authorizing a
24 search of the locations where the firearms are reasonably believed to be and the seizure of any
25 firearms discovered pursuant to such search.

26 (e) If a person other than the respondent claims title to any firearms surrendered pursuant
27 to this section, and they are determined by the court to be the lawful owner of the firearm then the
28 firearm shall be ordered returned to them, provided that:

29 (1) The lawful owner attests to the court that the firearms will be removed from the
30 respondent's custody, control, or possession and that the lawful owner will store the firearm in a
31 manner such that the respondent does not have access to or control of the firearm; and

32 (2) The Rhode Island state police or local law enforcement agency conducts a
33 background check and determines that the owner is not prohibited from possessing the firearm
34 under state or federal law.

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

3 (1) File with the court a receipt showing the firearms were physically surrendered to the
4 state police or local police department; or

5 (2) File with the court, an attestation that, at the time of the order, the respondent had no
6 firearms in their possession or control, or subject to their possession or control, and that the
7 person, at the time of the attestation, has no firearms in their possession or control or subject to
8 their possession or control.

9 (g) If a respondent fails to timely comply with the requirements of subsection (f) of this
10 section, the court shall hold a hearing to determine if the respondent is in contempt of court.

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

15 **8-8.3-10. Firearms return -- Disposal.**

16 (a) Any firearm surrendered in accordance with this chapter shall be returned to the
17 respondent upon their request when:

18 (1) The respondent produces documentation issued by the court indicating that the
19 extreme risk protective order issued pursuant to this chapter has expired and has not been
20 renewed or extended; and

21 (2) The law enforcement agency in possession of the firearms conducts a background
22 check and determines that the respondent is not otherwise prohibited from possessing a firearm
23 under state or federal law.

24 (b) A law enforcement agency shall, if requested, provide prior notice of the return of a
25 firearm to a respondent and/or to family or household members of the respondent in the manner
26 provided in § 8-8.3-6.

27 **8-8.3-11. Reporting of orders.**

28 (a) The clerk of the court shall enter any extreme risk protection order or temporary
29 extreme risk protection order issued under this chapter into a statewide judicial information
30 system on the same day such order is issued.

31 (b) The clerk of the court shall forward a copy of an order issued under this chapter the
32 same day such order is issued to the appropriate law enforcement agency specified in the order.

33 (1) Upon receipt of the copy of the order, the law enforcement agency shall enter the
34 order into:

1 (i) The national instant criminal background check system, also known as the NICS
2 database, pursuant to the mental health component under NICS reporting standards;

3 (ii) Any other federal or state computer-based systems used by law enforcement, the
4 bureau of criminal investigation at the office of the attorney general, or others to identify
5 prohibited purchasers of firearms; and

6 (iii) Any computer-based criminal intelligence information system available in this state
7 used by law enforcement agencies to list outstanding warrants.

8 (2) The order must remain in each system for the period stated in the order, and the law
9 enforcement agency shall only expunge orders from the systems that have expired or terminated.
10 Entry into the computer-based criminal intelligence information system constitutes notice to all
11 law enforcement agencies of the existence of the order. The order is fully enforceable in any city
12 or town in the state.

13 (c) The issuing court shall, within three (3) judicial days after issuance of an extreme risk
14 protection order or temporary extreme risk protection order, forward a copy of the respondent's
15 driver's license, or comparable information, along with the date of order issuance, to the office of
16 attorney general. Upon receipt of the information, the office of attorney general shall determine if
17 the respondent has a concealed pistol license. If the respondent does have a concealed pistol
18 license, the office of attorney general shall immediately revoke the license.

19 (d) If an extreme risk protection order is terminated before its expiration date, the clerk of
20 the court shall forward the same day a copy of the termination order to the office of attorney
21 general and the appropriate law enforcement agency specified in the termination order. Upon
22 receipt of the order, the law enforcement agency shall promptly remove the order from any
23 computer-based system in which it was entered pursuant to subsection (b) of this section.

24 **8-8.3-12. Penalties.**

25 (a) Any violation of any extreme risk protection order shall subject the violator to being
26 found in contempt of court. The contempt order shall not be exclusive and shall not preclude any
27 other available civil or criminal remedies.

28 (b) Any violation of an extreme risk protection order issued under this chapter of which
29 the respondent has actual notice shall be a felony and, upon conviction, shall be punished by
30 imprisonment for not less than two (2) years nor more than ten (10) years, or a fine of not more
31 than ten thousand dollars (\$10,000), or both.

32 (c) "Actual notice" means that the respondent has received a copy of the order by service
33 thereof or by being personally served with a copy of the order by a deputy sheriff or certified
34 constable or by receipt of alternate service ordered by the court pursuant to § 8-8.3-6. Actual

1 notice shall also include in-person notification by the court.

2 (d) Filing a petition under this chapter knowing the information in such petition to be
3 materially false, or with intent to harass the respondent, shall be a misdemeanor that shall be
4 punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not
5 more than one year, or both.

6 **8-8.3-13. Liability.**

7 Except as provided in § 8-8.3-12, this chapter does not impose criminal or civil liability
8 on any person or entity for acts or omissions related to obtaining an extreme risk protection order
9 or temporary extreme risk protection order including, but not limited to, reporting, declining to
10 report, investigating, declining to investigate, filing, or declining to file a petition under this
11 chapter.

12 **8-8.3-14. Court forms and informational material.**

13 (a) The administrative office of the courts shall develop and prepare instructions and
14 informational brochures, standard petitions and extreme risk protection order forms, and a court
15 staff handbook on the extreme risk protection order process. The standard petition and order
16 forms shall be used after August 1, 2018, for all petitions filed and orders issued under this
17 chapter. The instructions, brochures, forms, and handbook shall be prepared in consultation with
18 interested persons, including representatives of gun violence prevention groups, judges, and law
19 enforcement personnel. Materials shall be based on best practices and available electronically
20 online to the public.

21 (b) The instructions shall be designed to assist petitioners in completing the petition, and
22 must include a sample of a standard petition and order for protection forms.

23 (c) The instructions and standard petition shall include a means for the petitioner to
24 identify, with only lay knowledge, the firearms the respondent may own, possesses, receive, or
25 have in their custody or control. The instructions shall provide pictures of types of firearms that
26 the petitioner may choose from to identify the relevant firearms, or an equivalent means to allow
27 petitioners to identify firearms without requiring specific or technical knowledge regarding the
28 firearms.

29 (d) The informational brochure shall describe the use of and the process for obtaining,
30 modifying, and terminating an extreme risk protection order under this chapter, and provide
31 relevant forms.

32 (e) The extreme risk protection order form shall include, in a conspicuous location, notice
33 of penalties resulting from violation of the order, and the following statement: "You have the sole
34 responsibility to avoid or refrain from violating this order's provisions. Only the court can change

1 the order and only upon written application."

2 (f) The court staff handbook shall allow for the addition of a community resource list by
3 the court clerk.

4 (g) All court clerks may create a community resource list of crisis intervention, mental
5 health, substance abuse, interpreter, counseling, and other relevant resources serving the county in
6 which the court is located. The court may make the community resource list available as part of
7 or in addition to the informational brochures described in subsection (a) of this section.

8 (h) The administrative office of the courts shall distribute a master copy of the petition
9 and order forms, instructions, and informational brochures to all court clerks and shall distribute a
10 master copy of the petition and order forms to all state courts. Distribution of all documents shall,
11 at a minimum, be in an electronic format or formats accessible to all courts and court clerks in the
12 state.

13 (i) The administrative office of the courts shall determine the significant non-English
14 speaking or limited English speaking populations in the state. The administrator shall then
15 arrange for translation of the instructions and informational brochures required by this section,
16 which shall contain a sample of the standard petition and order for protection forms, into the
17 languages spoken by those significant non-English speaking populations and shall distribute a
18 master copy of the translated instructions and informational brochures to all court clerks by
19 August 1, 2018.

20 (j) The administrative office of the courts shall update the instructions, brochures,
21 standard petition and extreme risk protection order forms, and court staff handbook as necessary,
22 including when changes in the law make an update necessary.

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

25 **11-47-5. Possession of firearms by certain persons prohibited.**

26 (a) No person shall purchase, own, carry, transport, or have in his or her possession any
27 firearm if that person:

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

29 (2) Is a fugitive from justice;

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

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

34 (i) Simple assault (§ 11-5-3);

- 1 (ii) Cyberstalking and cyberharassment (§ 11-52-4.2);
2 (iii) Violation of a protective order (as set forth in § 12-29-2(a)(10); or
3 (iv) Disorderly conduct (§ 11-45-1).

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

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

12 (b) No person shall purchase, carry, transport, or have in his or her possession any
13 firearm if that person is subject to an order issued pursuant to chapter 15 of title 15, chapter 8.1 of
14 title 8, or an equivalent order in this state or elsewhere, which order was issued after the person
15 restrained has received notice of the proceedings and had an opportunity to be heard.

16 (c) No person shall purchase, carry, transport, or have in their possession any firearm if
17 that person is subject to any extreme risk protection order, including a temporary extreme risk
18 protection order issued pursuant to chapter 8.3 of title 8. Also, no person shall knowingly provide
19 a firearm to a person subject to an extreme risk protection order, including a temporary extreme
20 risk protection order, issued pursuant to chapter 8.3 of title 8.

21 ~~(e)(d)~~ No person who is in community confinement pursuant to the provisions of § 42-56-
22 20.2, or who is otherwise subject to electronic surveillance or monitoring devices as a condition
23 of parole, shall purchase, carry, transport, or have in his or her possession any firearm. This
24 subsection shall not apply to any person who has not been convicted of (or pleaded guilty or nolo
25 contendere to) a crime of violence in a court of competent jurisdiction.

26 ~~(d)(e)~~ Every person violating the provisions of this section shall, upon conviction, be
27 punished by imprisonment for not less than two (2) nor more than ten (10) years; and for
28 penalties provided in this section he or she shall not be afforded the benefit of suspension or
29 deferment of sentence nor of probation. In addition, a person in violation of the provisions of
30 subsection (c) of this section may also be punished by a fine of up to ten thousand dollars
31 (\$10,000).

32 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE--COURTS -- EXTREME RISK
PROTECTION ORDERS -- CRIMINAL OFFENSES -- WEAPONS

1 This act would provide the superior courts with authority to issue "extreme risk
2 protection orders" when the court finds the subject of the order is an imminent danger to cause
3 personal injury to self or others by having access to a firearm. The act would also provide that a
4 person subject to an extreme risk protection order surrender all firearms and carry permits while
5 subject to such an order.

6 This act would take effect upon passage.

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