

SECOND REGULAR SESSION

# SENATE BILL NO. 1246

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JUSTUS.

Read 1st time February 28, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

5399S.011

## AN ACT

To repeal sections 43.545, 455.200, 455.545, and 565.063, RSMo, and to enact in lieu thereof four new sections relating to domestic violence, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 43.545, 455.200, 455.545, and 565.063, RSMo, are  
2 repealed and four new sections enacted in lieu thereof, to be known as sections  
3 43.545, 455.200, 455.545, and 565.063, to read as follows:

43.545. The state highway patrol shall include in its voluntary system of  
2 reporting for compilation in the "Missouri Crime Index" all reported incidents of  
3 domestic violence, whether or not an arrest is made. All incidents shall be  
4 reported on forms provided by the highway patrol and in a manner prescribed by  
5 the patrol. For purposes of this section only, "domestic violence" shall be defined  
6 as any dispute arising between spouses, former spouses, persons related by blood  
7 or marriage, individuals who are presently residing together or have resided  
8 together in the past, **a person who is or has been in a continuing social**  
9 **relationship of a romantic or intimate nature with the victim**, and  
10 persons who have a child in common regardless of whether they have been  
11 married or have resided together at any time.

455.200. As used in sections 455.200 to 455.230, unless the context clearly  
2 requires otherwise, the following words and phrases mean:

3 (1) "Designated authority", the board, commission, agency, or other body  
4 designated under the provisions of section 455.210 as the authority to administer  
5 the allocation and distribution of funds to shelters;

6 (2) "Domestic violence", [attempting to cause or causing bodily injury to

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

7 a family or household member, or placing a family or household member by threat  
8 of force in fear of imminent physical harm] **includes but is not limited to the**  
9 **occurrence of any acts, attempts, or threats against a person who may**  
10 **be protected under sections 455.010 to 455.085;**

11 (3) "Family or household member", a spouse, a former spouse, [person  
12 living with another person whether or not as spouses, parent, or other adult  
13 person related by consanguinity or affinity, who is residing or has resided with  
14 the person committing the domestic violence and dependents of such persons]  
15 **adults who are presently residing together or have resided together in**  
16 **the past, an adult who is or has been in a continuing social relationship**  
17 **of a romantic or intimate nature with the victim, and adults who have**  
18 **a child in common regardless of whether they have been married or**  
19 **have resided together at any time;**

20 (4) "Shelter for victims of domestic violence" or "shelter", a facility  
21 established for the purpose of providing temporary residential service or facilities  
22 to family or household members who are victims of domestic violence.

455.545. The highway patrol shall compile an annual report of homicides  
2 and suicides related to domestic violence, **as defined in section 455.200**. Such  
3 report shall be presented by February first of the subsequent year to the  
4 governor, speaker of the house of representatives, and president pro tempore of  
5 the senate.

565.063. 1. As used in this section, the following terms mean:

2 (1) "Domestic assault offense":

3 (a) The commission of the crime of domestic assault in the first degree  
4 pursuant to section 565.072 or domestic assault in the second degree pursuant to  
5 section 565.073; or

6 (b) The commission of the crime of assault in the first degree pursuant to  
7 the provisions of section 565.050 or assault in the second degree pursuant to the  
8 provisions of section 565.060, if the victim of the assault was a family or  
9 household member;

10 (2) "Family" or "household member", spouses, former spouses, adults  
11 related by blood or marriage, adults who are presently residing together or have  
12 resided together in the past, **an adult who is or has been in a continuing**  
13 **social relationship of a romantic or intimate nature with the victim, and**  
14 adults who have a child in common regardless of whether they have been married  
15 or have resided together at any time;

16 (3) "Persistent domestic violence offender", a person who has pleaded  
17 guilty to or has been found guilty of two or more domestic assault offenses, where  
18 such two or more offenses occurred within ten years of the occurrence of the  
19 domestic assault offense for which the person is charged; and

20 (4) "Prior domestic violence offender", a person who has pleaded guilty to  
21 or has been found guilty of one domestic assault offense, where such prior offense  
22 occurred within five years of the occurrence of the domestic assault offense for  
23 which the person is charged.

24 2. No court shall suspend the imposition of sentence as to a prior or  
25 persistent domestic violence offender pursuant to this section nor sentence such  
26 person to pay a fine in lieu of a term of imprisonment, section 557.011, RSMo, to  
27 the contrary notwithstanding, nor shall such person be eligible for parole or  
28 probation until such person has served a minimum of six months' imprisonment.

29 3. The court shall find the defendant to be a prior domestic violence  
30 offender or persistent domestic violence offender, if:

31 (1) The indictment or information, original or amended, or the information  
32 in lieu of an indictment pleads all essential facts warranting a finding that the  
33 defendant is a prior domestic violence offender or persistent domestic violence  
34 offender; and

35 (2) Evidence is introduced that establishes sufficient facts pleaded to  
36 warrant a finding beyond a reasonable doubt the defendant is a prior domestic  
37 violence offender or persistent domestic violence offender; and

38 (3) The court makes findings of fact that warrant a finding beyond a  
39 reasonable doubt by the court that the defendant is a prior domestic violence  
40 offender or persistent domestic violence offender.

41 4. In a jury trial, such facts shall be pleaded, established and found prior  
42 to submission to the jury outside of its hearing.

43 5. In a trial without a jury or upon a plea of guilty, the court may defer  
44 the proof in findings of such facts to a later time, but prior to sentencing.

45 6. The defendant shall be accorded full rights of confrontation and  
46 cross-examination, with the opportunity to present evidence, at such hearings.

47 7. The defendant may waive proof of the facts alleged.

48 8. Nothing in this section shall prevent the use of presentence  
49 investigations or commitments.

50 9. At the sentencing hearing both the state and the defendant shall be  
51 permitted to present additional information bearing on the issue of sentence.

52           10. The pleas or findings of guilty shall be prior to the date of commission  
53 of the present offense.

54           11. The court shall not instruct the jury as to the range of punishment or  
55 allow the jury, upon a finding of guilty, to assess and declare the punishment as  
56 part of its verdict in cases of prior domestic violence offenders or persistent  
57 domestic violence offenders.

58           12. Evidence of prior convictions shall be heard and determined by the  
59 trial court out of the hearing of the jury prior to the submission of the case to the  
60 jury, and shall include but not be limited to evidence of convictions received by  
61 a search of the records of the Missouri uniform law enforcement system  
62 maintained by the Missouri state highway patrol. After hearing the evidence, the  
63 court shall enter its findings thereon.

64           13. Evidence of similar criminal convictions of domestic violence pursuant  
65 to this chapter, chapter 566, RSMo, or chapter 568, RSMo, within five years of the  
66 offense at issue, shall be admissible for the purposes of showing a past history of  
67 domestic violence.

68           14. Any person who has pleaded guilty to or been found guilty of a  
69 violation of section 565.072 shall be sentenced to the authorized term of  
70 imprisonment for a class A felony if the court finds the offender is a prior  
71 domestic violence offender. The offender shall be sentenced to the authorized  
72 term of imprisonment for a class A felony which term shall be served without  
73 probation or parole if the court finds the offender is a persistent domestic violence  
74 offender or the prior domestic violence offender inflicts serious physical injury on  
75 the victim.

76           15. Any person who has pleaded guilty to or been found guilty of a  
77 violation of section 565.073 shall be sentenced:

78           (a) To the authorized term of imprisonment for a class B felony if the  
79 court finds the offender is a prior domestic violence offender; or

80           (b) To the authorized term of imprisonment for a class A felony if the  
81 court finds the offender is a persistent domestic violence offender.

✓