

FIRST REGULAR SESSION

SENATE BILL NO. 52

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Pre-filed December 1, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

0256S.011

AN ACT

To repeal sections 43.545, 455.200, 455.545, and 565.063, RSMo, and to enact in lieu thereof six 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2 repealed and six new sections enacted in lieu thereof, to be known as sections
3 43.545, 455.200, 455.545, 565.063, 565.142, and 565.144, 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
7 a family or household member, or placing a family or household member by threat

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

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.

**565.142. 1. When responding to the scene of an alleged act of
2 domestic assault, a law enforcement officer may remove a firearm from
3 the scene if:**

4 **(1) The law enforcement officer has probable cause to believe
5 that an act of domestic assault has occurred; and**

6 **(2) The law enforcement officer has observed the firearm on the
7 scene during the response.**

8 2. If a firearm is removed from the scene under subsection 1 of
9 this section, the law enforcement officer shall:

10 (1) Provide to the owner of the firearm information on the
11 process for retaking possession of the firearm; and

12 (2) Provide for the safe storage of the firearm during the
13 pendency of any proceeding related to the alleged act of domestic
14 assault.

15 3. Within fourteen days of the conclusion of a proceeding on the
16 alleged act of domestic assault, the owner of the firearm may retake
17 possession of the firearm unless ordered to surrender the firearm
18 under section 571.095, RSMo.

565.144. 1. It shall be unlawful to possess a firearm for a person
2 who:

3 (1) Is subject to a court order that:

4 (a) Was issued after a hearing of which such person received
5 actual notice, and at which such person had an opportunity to
6 participate;

7 (b) Restrains such person from harassing, stalking, or
8 threatening a family or household member of such person or a child of
9 such family or household member or person, or engaging in other
10 conduct that would place a family or household member in reasonable
11 fear of bodily injury to the family or household member or child; and

12 (c) Includes a finding that such person represents a credible
13 threat to the physical safety of such family or household member or a
14 child; or by its terms explicitly prohibits the use, attempted use, or
15 threatened use of physical force against such family or household
16 member or child that would reasonably be expected to cause bodily
17 injury; or

18 (2) Has been found guilty of or pleaded guilty to a misdemeanor
19 crime of domestic assault in a court of competent jurisdiction.

20 2. For the purposes of this section, the term "family" or
21 "household member" shall be defined as such term is defined in section
22 455.010, RSMo.

23 3. It shall be a class D felony to violate the provisions of this
24 section.