

FIRST REGULAR SESSION

SENATE BILL NO. 23

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0655S.011

AN ACT

To repeal section 455.010, RSMo, and to enact in lieu thereof sixteen new sections relating to firearms restraining orders, with penalty provisions.

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

Section A. Section 455.010, RSMo, is repealed and sixteen new sections
2 enacted in lieu thereof, to be known as sections 455.010, 455.100, 455.103,
3 455.106, 455.109, 455.112, 455.115, 455.118, 455.121, 455.124, 455.127, 455.130,
4 455.133, 455.136, 455.139, and 455.142, to read as follows:

455.010. As used in this chapter, unless the context clearly indicates
2 otherwise, the following terms shall mean:

3 (1) "Abuse" includes but is not limited to the occurrence of any of the
4 following acts, attempts or threats against a person who may be protected
5 pursuant to this chapter, except abuse shall not include abuse inflicted on a child
6 by accidental means by an adult household member or discipline of a child,
7 including spanking, in a reasonable manner:

8 (a) "Assault", purposely or knowingly placing or attempting to place
9 another in fear of physical harm;

10 (b) "Battery", purposely or knowingly causing physical harm to another
11 with or without a deadly weapon;

12 (c) "Coercion", compelling another by force or threat of force to engage in
13 conduct from which the latter has a right to abstain or to abstain from conduct
14 in which the person has a right to engage;

15 (d) "Harassment", engaging in a purposeful or knowing course of conduct
16 involving more than one incident that alarms or causes distress to an adult or
17 child and serves no legitimate purpose. The course of conduct must be such as

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

18 would cause a reasonable adult or child to suffer substantial emotional distress
19 and must actually cause substantial emotional distress to the petitioner or
20 child. Such conduct might include, but is not limited to:

21 a. Following another about in a public place or places;

22 b. Peering in the window or lingering outside the residence of another; but
23 does not include constitutionally protected activity;

24 (e) "Sexual assault", causing or attempting to cause another to engage
25 involuntarily in any sexual act by force, threat of force, duress, or without that
26 person's consent;

27 (f) "Unlawful imprisonment", holding, confining, detaining or abducting
28 another person against that person's will;

29 (2) "Adult", any person seventeen years of age or older or otherwise
30 emancipated;

31 (3) "Child", any person under seventeen years of age unless otherwise
32 emancipated;

33 (4) "Court", the circuit or associate circuit judge or a family court
34 commissioner;

35 (5) "Domestic violence", abuse or stalking committed by a family or
36 household member, as such terms are defined in this section;

37 (6) "Ex parte order of protection", an order of protection issued by the
38 court before the respondent has received notice of the petition or an opportunity
39 to be heard on it;

40 (7) "Family" or "household member", spouses, former spouses, any person
41 related by blood or marriage, persons who are presently residing together or have
42 resided together in the past, any person who is or has been in a continuing social
43 relationship of a romantic or intimate nature with the victim, and anyone who
44 has a child in common regardless of whether they have been married or have
45 resided together at any time;

46 (8) **"Firearms restraining order", an order issued by the court**
47 **prohibiting and enjoining a respondent from having in his or her**
48 **custody or control, purchasing, possessing, or receiving any firearms;**

49 (9) "Full order of protection", an order of protection issued after a hearing
50 on the record where the respondent has received notice of the proceedings and
51 has had an opportunity to be heard;

52 [(9)] (10) "Order of protection", either an ex parte order of protection or
53 a full order of protection;

54 [(10)] (11) "Pending", exists or for which a hearing date has been set;
55 [(11)] (12) "Petitioner", a family or household member who has been a
56 victim of domestic violence, or any person who has been the victim of stalking or
57 sexual assault, or a person filing on behalf of a child pursuant to section 455.503
58 who has filed a verified petition pursuant to the provisions of section 455.020 or
59 section 455.505, **or for the purposes of obtaining a firearms restraining**
60 **order such term shall mean a family or household member of the**
61 **respondent or a law enforcement officer;**

62 [(12)] (13) "Respondent", the family or household member alleged to have
63 committed an act of domestic violence, or person alleged to have committed an act
64 of stalking or sexual assault, against whom a verified petition has been filed or
65 a person served on behalf of a child pursuant to section 455.503;

66 [(13)] (14) "Sexual assault", as defined under subdivision (1) of this
67 section;

68 [(14)] (15) "Stalking" is when any person purposely engages in an
69 unwanted course of conduct that causes alarm to another person, or a person who
70 resides together in the same household with the person seeking the order of
71 protection when it is reasonable in that person's situation to have been alarmed
72 by the conduct. As used in this subdivision:

73 (a) "Alarm" means to cause fear of danger of physical harm; and

74 (b) "Course of conduct" means a pattern of conduct composed of two or
75 more acts over a period of time, however short, that serves no legitimate
76 purpose. Such conduct may include, but is not limited to, following the other
77 person or unwanted communication or unwanted contact.

455.100. 1. An action for a firearms restraining order is
2 **commenced by filing a verified petition for a firearms restraining order**
3 **in any circuit court.**

4 **2. The petition for a firearms restraining order may be filed in**
5 **the county where either the petitioner or the respondent resides.**

455.103. 1. Any petitioner may request a firearms restraining
2 **order by filing a verified petition alleging that the respondent poses a**
3 **significant danger of causing personal injury to himself, herself, or**
4 **another in the near future by custody or control, purchasing,**
5 **possessing, or receiving a firearm. The petition shall also describe the**
6 **number, types, and locations of any firearms presently believed by the**
7 **petitioner to be possessed or controlled by the respondent. A firearms**

8 restraining order issued shall be effective throughout the state.

9 2. Every person who files a petition for a firearms restraining
10 order who knowingly provides false information to the court at any
11 hearing or in an affidavit or verified petition shall be guilty of perjury
12 under section 575.040.

13 3. Upon receipt of a verified petition for a firearms restraining
14 order, the court shall order a hearing within thirty days.

15 4. In determining whether to issue a firearms restraining order,
16 the court shall consider evidence including, but not limited to, the
17 following:

18 (1) The unlawful and reckless use, display, or brandishing of a
19 firearm by the respondent;

20 (2) The history of use, attempted use, or threatened use of
21 physical force by the respondent against another person;

22 (3) Any prior arrest of the respondent for a felony offense;

23 (4) Evidence of abuse of controlled substances or alcohol by the
24 respondent;

25 (5) A recent threat of violence or act of violence by the
26 respondent directed toward himself, herself, or another;

27 (6) A violation of an ex parte order of protection or a full order
28 of protection; and

29 (7) A pattern of violent acts or violent threats, including, but not
30 limited to, threats of violence or acts of violence by the respondent
31 directed toward himself, herself, or another.

32 5. At the hearing, the petitioner shall have the burden of
33 proving, by clear and convincing evidence, that the respondent poses
34 a significant danger of personal injury to himself, herself, or another
35 by having in his or her custody or control, purchasing, possessing, or
36 receiving a firearm.

37 6. If the court finds that there is clear and convincing evidence
38 to issue a firearms restraining order, the court shall issue a firearms
39 restraining order that shall be in effect for six months, subject to
40 renewal under section 455.124 or termination under section 455.121.

41 7. After the issuance of a firearms restraining order and upon a
42 finding of probable cause that the respondent possesses a firearm or
43 firearms, the court shall issue a search warrant directing a law
44 enforcement agency to seize the respondent's firearm or firearms. The

45 court may, as part of such warrant, direct the law enforcement agency
46 to search the respondent's residence and other places where the court
47 finds that there is probable cause to believe he or she is likely to
48 possess a firearm.

49 8. If the court does not issue a firearms restraining order at the
50 hearing, the court shall dissolve any emergency firearms restraining
51 order then in effect.

52 9. When the court issues a firearms restraining order, the court
53 shall inform the respondent that he or she is entitled to one hearing
54 during the six month period of the order to request a termination of the
55 order under section 455.121 and shall provide the respondent with a
56 form to request such hearing.

455.106. No filing fees, court costs, or bond shall be assessed to
2 the petitioner in an action commenced for a firearms restraining
3 order. Neither shall any fee be charged by a sheriff or other law
4 enforcement agency for service by the sheriff or other law enforcement
5 agency of a petition, summons, motion, subpoena, or court order in an
6 action for a firearms restraining order.

455.109. 1. By July 1, 2020, the supreme court of the state of
2 Missouri shall:

3 (1) Develop and adopt uniform forms for petitions and firearms
4 restraining orders; and

5 (2) Provide the forms to each circuit clerk.

6 2. All firearms restraining orders shall be issued on the form
7 adopted pursuant to this section.

455.112. Upon filing of the petition for a firearms restraining
2 order, a summons shall be issued requiring the respondent to answer
3 or appear within seven days. Attachments to the summons shall
4 include the petition for the firearms restraining order and supporting
5 affidavits, if any, and any emergency firearms restraining order that
6 has been issued.

455.115. 1. A petitioner may request an emergency firearms
2 restraining order by filing a verified petition alleging that the
3 respondent poses an immediate and present danger of causing personal
4 injury to himself, herself, or another by having in his or her custody or
5 control, purchasing, possessing, or receiving a firearm. The petition
6 shall also describe the type and location of any firearm or firearms

7 presently believed by the petitioner to be possessed or controlled by
8 the respondent.

9 2. Every person who files a petition for an emergency firearms
10 restraining order who knowingly provides false information to the
11 court at any hearing or in an affidavit or verified petition shall be
12 guilty of perjury under section 575.040.

13 3. An emergency firearms restraining order shall be issued on an
14 ex parte basis.

15 4. An emergency hearing held on an ex parte basis shall be held
16 the same day that the petition is filed or the next day that the court is
17 in session.

18 5. If the court finds probable cause to believe that the
19 respondent poses an immediate and present danger of causing personal
20 injury to himself, herself, or another by having in his or her custody or
21 control, purchasing, possessing, or receiving a firearm the court shall
22 issue an emergency firearms restraining order.

23 6. Upon the issuance of an emergency firearms restraining order
24 and a finding of probable cause that the respondent possesses a firearm
25 or firearms, the court shall issue a search warrant directing a law
26 enforcement agency to seize the respondent's firearm or firearms. The
27 court may, as part of such warrant, direct the law enforcement agency
28 to search the respondent's residence and other places where the court
29 finds there is probable cause to believe he or she is likely to possess a
30 firearm.

31 7. The court shall schedule a full hearing as soon as possible, but
32 no longer than fourteen days from the issuance of an emergency
33 firearms restraining order, to determine if a six month firearms
34 restraining order shall be issued. The court may extend an emergency
35 firearms restraining order as needed, but not to exceed fourteen days,
36 to effectuate service of the order or if necessary to continue
37 protection. The court may extend the order for a greater length of time
38 by mutual agreement of the parties.

455.118. 1. A firearms restraining order or an emergency
2 firearms restraining order shall require:

3 (1) The respondent to refrain from having in his or her custody
4 or control, purchasing, possessing, or receiving firearms for the
5 duration of the order; and

6 **(2) The respondent to turn over to the local law enforcement**
7 **agency any firearm in his or her possession and to turn over to the**
8 **issuing sheriff's office his or her concealed carry permit, if**
9 **applicable. The firearm or firearms and concealed carry permit shall**
10 **be returned to the respondent after the firearms restraining order is**
11 **terminated or expired.**

12 **2. Upon expiration of a firearms restraining order or an**
13 **emergency firearms restraining order, if the respondent's firearms**
14 **cannot be returned because the respondent cannot be located, fails to**
15 **respond to requests to retrieve the firearms, or is not lawfully eligible**
16 **to possess a firearm, upon petition from the local law enforcement**
17 **agency, the court may order the local law enforcement agency to**
18 **destroy the firearms or use the firearms for training purposes or for**
19 **any other application deemed appropriate by the local law enforcement**
20 **agency.**

21 **3. If a respondent's firearms are surrendered or seized under**
22 **section 455.103 or 455.115, the respondent may petition the court to**
23 **transfer the respondent's firearm or firearms to a person who is**
24 **lawfully able to possess the firearm, if the person does not reside at the**
25 **same address as the respondent. Notice of the petition shall be served**
26 **upon the petitioner of the firearms restraining order or emergency**
27 **firearms restraining order. While the order is in effect, the transferee**
28 **who receives the respondent's firearm or firearms shall affirm by**
29 **affidavit that he or she shall not transfer the firearm or firearms to the**
30 **respondent or to anyone residing in the same residence as the**
31 **respondent.**

32 **4. If a person other than the respondent claims title to any**
33 **firearms surrendered or seized under section 455.103 or 455.115, he or**
34 **she may petition the court to have the firearm returned to him or**
35 **her. Notice of such petition shall be served upon the person protected**
36 **by the firearms restraining order or emergency firearms restraining**
37 **order. If the court determines the person to be the lawful owner of the**
38 **firearm, the firearm shall be returned to him or her, provided that:**

39 **(a) The lawful owner agrees to store the firearm in a manner**
40 **such that the respondent does not have access to or control of the**
41 **firearm;**

42 **(b) The firearm is not otherwise unlawfully possessed by the**

43 owner;

44 (c) The person petitioning for the return of his or her firearm
45 affirms by affidavit that he or she:

46 a. Is the lawful owner of the firearm;

47 b. Shall not transfer the firearm to the respondent; and

48 c. Shall store the firearm in a manner that the respondent does
49 not have access to or control of the firearm.

455.121. 1. A person subject to a firearms restraining order may
2 petition the court one time at any time during the effective period of
3 the order for a hearing to terminate the order.

4 2. The respondent shall have the burden of proving by a
5 preponderance of the evidence that the respondent does not pose a
6 danger of causing personal injury to himself, herself, or another in the
7 near future by having in his or her custody or control, purchasing,
8 possessing, or receiving a firearm. If the court finds after the hearing
9 that the respondent has met his or her burden, the court shall
10 terminate the order.

455.124. 1. A petitioner may request a renewal of a firearms
2 restraining order at any time within three months before the expiration
3 of a firearms restraining order.

4 2. A court shall, after notice and a hearing, renew a firearms
5 restraining order if the petitioner proves, by clear and convincing
6 evidence, that the respondent continues to pose a danger of causing
7 personal injury to himself, herself, or another in the near future by
8 having in his or her custody or control, purchasing, possessing, or
9 receiving a firearm.

10 3. In determining whether to renew a firearms restraining order,
11 the court shall consider evidence of the facts as provided under
12 subsection 4 of section 455.103 and any other evidence of an increased
13 risk for violence.

14 4. The renewal of a firearms restraining order shall be in effect
15 for six months, subject to termination by further order of the court at
16 a hearing held under section 455.121 or further renewal under this
17 section.

455.127. 1. Upon issuance of any firearms restraining order, the
2 clerk shall immediately, or on the next court day if an emergency
3 firearms restraining order is issued:

4 (a) Enter the order on the record and file such order in
5 accordance with the circuit court procedures; and

6 (b) Provide a file stamped copy of the order to the respondent,
7 if present, and to the petitioner.

8 2. The clerk shall on the same day that a firearms restraining
9 order is issued, file a certified copy of the order with the sheriff or
10 other law enforcement agency charged with serving the order upon the
11 respondent. If the order issued was an emergency firearms restraining
12 order, the clerk shall on the next court day file a certified copy of the
13 order with the sheriff or other law enforcement officials.

14 3. Unless the respondent was present in court when the order
15 was issued, the sheriff or other law enforcement official shall promptly
16 serve the firearms restraining order upon the respondent and file proof
17 of the service.

18 4. Any order renewing or terminating any firearms restraining
19 order shall be promptly recorded, issued, and served as provided in
20 this section.

455.130. A copy of any firearms restraining order shall be issued
2 to the petitioner and to the local law enforcement agency in the
3 jurisdiction where the petitioner and the respondent resides. The clerk
4 shall also issue a copy of any firearms restraining order to the local law
5 enforcement agency responsible for maintaining the Missouri uniform
6 law enforcement system (MULES) or any other comparable law
7 enforcement system the same day the order is granted. The law
8 enforcement agency responsible for maintaining MULES shall, for
9 purposes of verification, within twenty-four hours from the time the
10 order is granted, enter information contained in the order. A notice of
11 expiration or of termination of any order shall be issued to the local
12 law enforcement agency and to the law enforcement agency responsible
13 for maintaining MULES or any other comparable law enforcement
14 system. The law enforcement agency responsible for maintaining the
15 applicable law enforcement system shall enter such information in the
16 system within twenty-four hours of receipt of information evidencing
17 such expiration or termination.

455.133. 1. Any firearms restraining order issued by any other
2 state, tribe, territory or possession of the United States, the
3 Commonwealth of Puerto Rico, or the District of Columbia shall be

4 given full faith and credit throughout the state in all courts, and by all
5 law enforcement officials and agencies, and all public officials and shall
6 be enforceable in the same manner as any firearms restraining order
7 issued by a court in this state.

8 2. A person entitled to protection under a foreign firearms
9 restraining order as described in subsection 1 of this section may file
10 a certified copy of the foreign firearms restraining order and an
11 affidavit or sworn statement from the petitioner that the copy of the
12 foreign order is a true and accurate copy and has not been altered in
13 the circuit court having jurisdiction. If the foreign firearms
14 restraining order terminates prior to the expiration date on the order,
15 the petitioner shall notify the circuit court. A foreign firearms
16 restraining order as described in subsection 1 of this section shall be
17 enforceable in this state so long as it is in effect in the issuing state.

18 3. Filing of the foreign firearms restraining order shall be
19 without fee or cost.

20 4. Registration and a Missouri court order recognizing a foreign
21 firearms restraining order shall not be required for the enforcement of
22 a certified foreign firearms restraining order in this state.

455.136. A respondent who violates an emergency firearms
2 restraining order or a firearms restraining order is guilty of a class A
3 misdemeanor, unless the respondent has previously pled or been found
4 guilty of violating an emergency firearms restraining order or a
5 firearms restraining order within five years of the date of the
6 subsequent violation, in which case the subsequent violation shall be
7 a class E felony. Prosecution for a violation of an emergency firearms
8 restraining order or a firearms restraining order shall not bar
9 concurrent prosecution for any other crime, including any crime that
10 may have been committed at the time of the violation of the firearms
11 restraining order.

455.139. Nothing in sections 455.100 to 455.142 shall preclude a
2 petitioner or law-enforcement officer from removing weapons under
3 other authority, or filing criminal charges when probable cause exists.

455.142. If the court denies issuance of an emergency firearms
2 restraining order or a firearms restraining order against the
3 respondent, all records of the proceeding shall be immediately
4 expunged from the court records. If the firearms restraining order is

5 granted, all records of the proceeding shall be sealed three years after
6 the expiration of the order.

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