

FIRST REGULAR SESSION

# SENATE BILL NO. 41

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

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

ADRIANE D. CROUSE, Secretary.

0527S.01I

## AN ACT

To repeal sections 455.050 and 571.070, RSMo, and to enact in lieu thereof two new sections relating to domestic violence offenders, with penalty provisions.

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

Section A. Sections 455.050 and 571.070, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 455.050 and 571.070, to read as follows:

455.050. 1. Any full or ex parte order of protection granted pursuant to sections 455.010 to 455.085 shall be to protect the petitioner from domestic violence, stalking, or sexual assault and may include such terms as the court reasonably deems necessary to ensure the petitioner's safety, including but not limited to:

(1) Temporarily enjoining the respondent from committing or threatening to commit domestic violence, molesting, stalking, sexual assault, or disturbing the peace of the petitioner;

(2) Temporarily enjoining the respondent from entering the premises of the dwelling unit of the petitioner when the dwelling unit is:

(a) Jointly owned, leased or rented or jointly occupied by both parties; or

(b) Owned, leased, rented or occupied by petitioner individually; or

(c) Jointly owned, leased, rented or occupied by petitioner and a person other than respondent; provided, however, no spouse shall be denied relief pursuant to this section by reason of the absence of a property interest in the dwelling unit; or

(d) Jointly occupied by the petitioner and a person other than respondent; provided that the respondent has no property interest in the dwelling unit; or

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

19           (3) Temporarily enjoining the respondent from communicating with the  
20 petitioner in any manner or through any medium.

21           2. Mutual orders of protection are prohibited unless both parties have  
22 properly filed written petitions and proper service has been made in accordance  
23 with sections 455.010 to 455.085.

24           3. When the court has, after a hearing for any full order of protection,  
25 issued an order of protection, it may, in addition:

26           (1) Award custody of any minor child born to or adopted by the parties  
27 when the court has jurisdiction over such child and no prior order regarding  
28 custody is pending or has been made, and the best interests of the child require  
29 such order be issued;

30           (2) Establish a visitation schedule that is in the best interests of the child;

31           (3) Award child support in accordance with supreme court rule 88.01 and  
32 chapter 452;

33           (4) Award maintenance to petitioner when petitioner and respondent are  
34 lawfully married in accordance with chapter 452;

35           (5) Order respondent to make or to continue to make rent or mortgage  
36 payments on a residence occupied by the petitioner if the respondent is found to  
37 have a duty to support the petitioner or other dependent household members;

38           (6) Order the respondent to pay the petitioner's rent at a residence other  
39 than the one previously shared by the parties if the respondent is found to have  
40 a duty to support the petitioner and the petitioner requests alternative housing;

41           (7) Order that the petitioner be given temporary possession of specified  
42 personal property, such as automobiles, checkbooks, keys, and other personal  
43 effects;

44           (8) Prohibit the respondent from transferring, encumbering, or otherwise  
45 disposing of specified property mutually owned or leased by the parties;

46           (9) Order the respondent to participate in a court-approved counseling  
47 program designed to help batterers stop violent behavior or to participate in a  
48 substance abuse treatment program;

49           (10) Order the respondent to pay a reasonable fee for housing and other  
50 services that have been provided or that are being provided to the petitioner by  
51 a shelter for victims of domestic violence;

52           (11) Order the respondent to pay court costs;

53           (12) Order the respondent to pay the cost of medical treatment and  
54 services that have been provided or that are being provided to the petitioner as

55 a result of injuries sustained to the petitioner by an act of domestic violence  
56 committed by the respondent.

57 4. A verified petition seeking orders for maintenance, support, custody,  
58 visitation, payment of rent, payment of monetary compensation, possession of  
59 personal property, prohibiting the transfer, encumbrance, or disposal of property,  
60 or payment for services of a shelter for victims of domestic violence, shall contain  
61 allegations relating to those orders and shall pray for the orders desired.

62 5. In making an award of custody, the court shall consider all relevant  
63 factors including the presumption that the best interests of the child will be  
64 served by placing the child in the custody and care of the nonabusive parent,  
65 unless there is evidence that both parents have engaged in abusive behavior, in  
66 which case the court shall not consider this presumption but may appoint a  
67 guardian ad litem or a court-appointed special advocate to represent the children  
68 in accordance with chapter 452 and shall consider all other factors in accordance  
69 with chapter 452.

70 6. The court shall grant to the noncustodial parent rights to visitation  
71 with any minor child born to or adopted by the parties, unless the court finds,  
72 after hearing, that visitation would endanger the child's physical health, impair  
73 the child's emotional development or would otherwise conflict with the best  
74 interests of the child, or that no visitation can be arranged which would  
75 sufficiently protect the custodial parent from further domestic violence. The court  
76 may appoint a guardian ad litem or court-appointed special advocate to represent  
77 the minor child in accordance with chapter 452 whenever the custodial parent  
78 alleges that visitation with the noncustodial parent will damage the minor child.

79 7. The court shall make an order requiring the noncustodial party to pay  
80 an amount reasonable and necessary for the support of any child to whom the  
81 party owes a duty of support when no prior order of support is outstanding and  
82 after all relevant factors have been considered, in accordance with Missouri  
83 supreme court rule 88.01 and chapter 452.

84 8. The court may grant a maintenance order to a party for a period of  
85 time, not to exceed one hundred eighty days. Any maintenance ordered by the  
86 court shall be in accordance with chapter 452.

87 9. (1) The court may, in order to ensure that a petitioner can maintain  
88 an existing wireless telephone number or numbers, issue an order, after notice  
89 and an opportunity to be heard, directing a wireless service provider to transfer  
90 the billing responsibility for and rights to the wireless telephone number or

91 numbers to the petitioner, if the petitioner is not the wireless service  
92 accountholder.

93 (2) (a) The order transferring billing responsibility for and rights to the  
94 wireless telephone number or numbers to the petitioner shall list the name and  
95 billing telephone number of the accountholder, the name and contact information  
96 of the person to whom the telephone number or numbers will be transferred, and  
97 each telephone number to be transferred to that person. The court shall ensure  
98 that the contact information of the petitioner is not provided to the accountholder  
99 in proceedings held under this chapter.

100 (b) Upon issuance, a copy of the full order of protection shall be  
101 transmitted, either electronically or by certified mail, to the wireless service  
102 provider's registered agent listed with the secretary of state, or electronically to  
103 the email address provided by the wireless service provider. Such transmittal  
104 shall constitute adequate notice for the wireless service provider acting under this  
105 section and section 455.523.

106 (c) If the wireless service provider cannot operationally or technically  
107 effectuate the order due to certain circumstances, the wireless service provider  
108 shall notify the petitioner within three business days. Such circumstances shall  
109 include, but not be limited to, the following:

110 a. The accountholder has already terminated the account;

111 b. The differences in network technology prevent the functionality of a  
112 device on the network; or

113 c. There are geographic or other limitations on network or service  
114 availability.

115 (3) (a) Upon transfer of billing responsibility for and rights to a wireless  
116 telephone number or numbers to the petitioner under this subsection by a  
117 wireless service provider, the petitioner shall assume all financial responsibility  
118 for the transferred wireless telephone number or numbers, monthly service costs,  
119 and costs for any mobile device associated with the wireless telephone number or  
120 numbers.

121 (b) This section shall not preclude a wireless service provider from  
122 applying any routine and customary requirements for account establishment to  
123 the petitioner as part of this transfer of billing responsibility for a wireless  
124 telephone number or numbers and any devices attached to that number or  
125 numbers including, but not limited to, identification, financial information, and  
126 customer preferences.

127 (4) This section shall not affect the ability of the court to apportion the  
128 assets and debts of the parties as provided for in law, or the ability to determine  
129 the temporary use, possession, and control of personal property.

130 (5) No cause of action shall lie against any wireless service provider, its  
131 officers, employees, or agents, for actions taken in accordance with the terms of  
132 a court order issued under this section.

133 (6) As used in this section and section 455.523, a "wireless service  
134 provider" means a provider of commercial mobile service under Section [332(d)  
135 of the Federal Telecommunications Act of 1996 (47 U.S.C. Section 151, et seq.)]  
136 **332 of the federal Communications Act of 1934 (47 U.S.C. Section**  
137 **332(d)).**

138 **10. Upon any conviction of a domestic violence offense, the court**  
139 **shall order the respondent to surrender to the local law enforcement**  
140 **agency where the respondent resides all firearms in the respondent's**  
141 **custody, control, or possession.**

142 (1) **The law enforcement officer serving any order under this**  
143 **subsection shall request that the respondent immediately surrender all**  
144 **firearms in his or her custody, control, or possession, and conduct any**  
145 **search permitted by law for such firearms. The law enforcement officer**  
146 **shall take possession of all firearms belonging to the respondent that**  
147 **are surrendered, in plain sight, or discovered pursuant to a lawful**  
148 **search. Alternatively, if personal service by a law enforcement officer**  
149 **is not possible, the respondent shall surrender the firearms in a safe**  
150 **manner to the control of the local law enforcement agency within**  
151 **forty-eight hours of being served with the order by alternate service or**  
152 **within forty-eight hours of the hearing or final decision at which the**  
153 **respondent was present.**

154 (2) **At the time of surrender, a law enforcement officer taking**  
155 **possession of a firearm shall issue a receipt identifying all firearms**  
156 **that have been surrendered and provide a copy of the receipt to the**  
157 **respondent. Within seventy-two hours after service of the order, the**  
158 **officer serving the order shall file the original receipt with the court**  
159 **and shall ensure that his or her law enforcement agency retains a copy**  
160 **of the receipt.**

161 (3) **Upon the sworn statement or testimony of the petitioner or**  
162 **of any law enforcement officer alleging that the respondent has failed**  
163 **to comply with the surrender of firearms as required by an order**

164 issued under this subsection, the court shall determine whether  
165 probable cause exists to believe that the respondent has failed to  
166 surrender all firearms in his or her possession, custody, or control. If  
167 probable cause exists, the court shall issue a warrant describing the  
168 firearms and authorizing a search of the locations where the firearms  
169 are reasonably believed to be and the seizure of any firearms  
170 discovered pursuant to such search.

171 (4) If a person other than the respondent claims title to any  
172 firearms surrendered pursuant to this subsection, and he or she is  
173 determined by the law enforcement agency to be the lawful owner of  
174 the firearm, the firearm shall be returned to him or her, provided that:

175 (a) The firearm is removed from the respondent's custody,  
176 control, or possession and the lawful owner agrees to store the firearm  
177 in a manner such that the respondent does not have access to or  
178 control of the firearm; and

179 (b) The firearm is not otherwise unlawfully possessed by the  
180 owner.

181 (5) Any firearm surrendered by a respondent pursuant to this  
182 subsection that remains unclaimed by the lawful owner shall be  
183 disposed of in accordance with the law enforcement agency's policies  
184 and procedures for the disposal of firearms in police custody.

571.070. 1. A person commits the offense of unlawful possession of a  
2 firearm if such person knowingly has any firearm in his or her possession and:

3 (1) Such person has been convicted of a felony under the laws of this  
4 state, or of a crime under the laws of any state or of the United States which, if  
5 committed within this state, would be a felony; [or]

6 (2) Such person is a fugitive from justice, is habitually in an intoxicated  
7 or drugged condition, or is currently adjudged mentally incompetent;

8 (3) Such person is subject to a full order of protection as such  
9 term is defined in section 455.010; or

10 (4) Such person has been convicted of a misdemeanor domestic  
11 violence offense within the preceding five years, or a misdemeanor  
12 under a law of another jurisdiction which is substantially similar to  
13 such misdemeanor offense. As used in this subdivision, the term  
14 "domestic violence" shall have the same meaning as in section 455.010.

15 2. Unlawful possession of a firearm is a class D felony, unless such  
16 offense occurred in violation of subdivisions (3) or (4) of subsection 1

17 **of this section in which case it is a class C felony.**

18           3. The provisions of subdivision (1) of subsection 1 of this section shall not  
19 apply to the possession of an antique firearm.

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Unofficial

Bill

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