

FIRST REGULAR SESSION

SENATE BILL NO. 42

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

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

ADRIANE D. CROUSE, Secretary.

0130S.02I

AN ACT

To repeal sections 455.010, 455.050, and 571.070, RSMo, and to enact in lieu thereof three new sections relating to an extreme risk order of protection, with penalty provisions.

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

Section A. Sections 455.010, 455.050, and 571.070, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 455.010,
3 455.050, and 571.070, 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) "Full order of protection", an order of protection issued after a hearing
47 on the record where the respondent has received notice of the proceedings and
48 has had an opportunity to be heard;

49 (9) "Order of protection", either an ex parte order of protection or a full
50 order of protection;

51 (10) **"Extreme risk order of protection", either an ex parte order**
52 **or full order of protection filed by a family or household member of the**
53 **respondent or a law enforcement officer or agency pursuant to**

54 subsection 10 of section 455.050;

55 (11) "Pending", exists or for which a hearing date has been set;

56 [(11)] (12) "Petitioner", a family or household member who has been a
57 victim of domestic violence, or any person who has been the victim of stalking or
58 sexual assault, or a person filing on behalf of a child pursuant to section 455.503
59 who has filed a verified petition pursuant to the provisions of section 455.020 or
60 section 455.505;

61 [(12)] (13) "Respondent", the family or household member alleged to have
62 committed an act of domestic violence, or person alleged to have committed an act
63 of stalking or sexual assault, against whom a verified petition has been filed or
64 a person served on behalf of a child pursuant to section 455.503;

65 [(13)] (14) "Sexual assault", as defined under subdivision (1) of this
66 section;

67 [(14)] (15) "Stalking" is when any person purposely engages in an
68 unwanted course of conduct that causes alarm to another person, or a person who
69 resides together in the same household with the person seeking the order of
70 protection when it is reasonable in that person's situation to have been alarmed
71 by the conduct. As used in this subdivision:

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

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

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

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

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

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

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

13 (c) Jointly owned, leased, rented or occupied by petitioner and a person

14 other than respondent; provided, however, no spouse shall be denied relief
15 pursuant to this section by reason of the absence of a property interest in the
16 dwelling unit; or

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

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)]
135 332 of the [Federal Telecommunications Act of 1996 (47 U.S.C. Section 151, et
136 seq.)] **federal Communications Act of 1934 (47. U.S.C. Section 332(d))**.

137 **10. The court may grant an extreme risk order of protection**
138 **provided that:**

139 **(1) A petition for an extreme risk order of protection shall:**

140 **(a) Allege that the respondent poses a significant danger of**
141 **causing personal injury to self or others by having in his or her custody**
142 **or control, purchasing, possessing, or receiving a firearm, and be**
143 **accompanied by an affidavit made under oath stating the specific**
144 **statements, actions, or facts that give rise to a reasonable fear of future**
145 **dangerous acts by the respondent;**

146 **(b) Identify the number, types, and locations of any firearms the**
147 **petitioner believes to be in the respondent's current ownership,**
148 **possession, custody, or control;**

149 **(c) Identify whether there is a pending lawsuit, complaint,**
150 **petition, or other action between the parties to the petition under the**
151 **laws of Missouri;**

152 **(d) Identify if petitioner has actual knowledge that respondent**
153 **is licensed to carry a concealed weapon, and if carrying a concealed**
154 **weapon is a condition of respondent's employment;**

155 **(2) Upon receiving a petition seeking an extreme risk order of**
156 **protection, the court shall conduct a hearing on whether or not to issue**
157 **the order within:**

158 (a) Fourteen days after the petition is filed; or

159 (b) Five days after the petition is filed, if the respondent is a
160 family or household member of the petitioner;

161 (3) The court clerk or administrator shall verify the terms of any
162 existing order governing the parties. The court shall not delay
163 granting relief because of the existence of a pending action between the
164 parties or the necessity of verifying the terms of an existing order. A
165 petition for an extreme risk protection order shall be granted whether
166 or not there is a pending action between the parties;

167 (4) If the petitioner is a law enforcement officer or agency, the
168 petitioner shall make a good faith effort to provide notice to a family
169 or household member of the respondent and to any known third party
170 who may be at risk of violence. The notice shall state that the
171 petitioner intends to petition the court for an extreme risk order of
172 protection or has already done so, and include referrals to appropriate
173 resources, including mental health, domestic violence, and counseling
174 resources. The petitioner shall attest in the petition to having provided
175 such notice, or attest to the steps that shall be taken to provide such
176 notice;

177 (5) If the petition states that disclosure of the petitioner's
178 address would risk harm to the petitioner or any member of the
179 petitioner's family or household, the petitioner's address may be
180 omitted from all documents filed with the court. If the petitioner has
181 not disclosed an address under this subsection, the petitioner shall
182 designate an alternative address at which the respondent may serve
183 notice of any motions. If the petitioner is a law enforcement officer or
184 agency, the address of record shall be that of the law enforcement
185 agency;

186 (6) No fees for filing or service of process may be charged by a
187 court or any public agency to petitioners seeking relief under this
188 subsection. Petitioners shall be provided the necessary number of
189 certified copies, forms, and instructional brochures free of charge;

190 (7) A person is not required to post a bond to obtain relief in any
191 proceeding under this subsection.

192 11. Upon issuance of any extreme risk order of protection under
193 this section, the court shall order the respondent to surrender to the
194 local law enforcement agency where the respondent resides, all

195 firearms in the respondent's custody, control, or possession. If the
196 respondent has been identified in the petition as being licensed to
197 carry a concealed weapon and carrying a concealed weapon is a
198 condition of the respondent's employment, the court shall notify the
199 respondent's employer of the existence of the order.

200 (1) The law enforcement officer serving any extreme risk order
201 of protection shall provide the respondent to the order an opportunity
202 to comply with the order by surrendering all firearms in his or her
203 custody, control, or possession. If the respondent does not comply, the
204 law enforcement officer serving the order shall:

205 (a) Place him or her into the custody of the law enforcement
206 agency serving the order, yet only for the duration of the lawful search
207 conduct pursuant to paragraph (b) of this subsection; and

208 (b) Conduct a lawful search of the respondent and any area
209 where probable cause exists that a firearm to be surrendered pursuant
210 to the order is located; and

211 (c) Take possession of all firearms belonging to the respondent
212 that are surrendered, in plain sight, or discovered pursuant to a lawful
213 search conducted pursuant to paragraph (b) of this subdivision.

214 (2) If personal service by a law enforcement officer is not
215 possible, or not required because the respondent was present at the
216 extreme risk order of protection hearing, the respondent shall
217 surrender the firearms in a safe manner to the control of the local law
218 enforcement agency within forty-eight hours of being served with the
219 order by alternate service or within forty-eight hours of the hearing or
220 final decision at which the respondent was present.

221 (3) At the time of surrender, a law enforcement officer taking
222 possession of a firearm shall issue a receipt identifying all firearms
223 that have been surrendered and provide a copy of the receipt to the
224 respondent. Within seventy-two hours after service of the order, the
225 officer serving the order shall file the original receipt with the court
226 and shall ensure that his or her law enforcement agency retains a copy
227 of the receipt.

228 (4) Upon the sworn statement or testimony of the petitioner or
229 of any law enforcement officer alleging that the respondent has failed
230 to comply with the surrender of firearms as required by an order
231 issued under subsections 10 to 12 of this section, the court shall

232 determine whether probable cause exists to believe that the respondent
233 has failed to surrender all firearms in his or her possession, custody,
234 or control. If probable cause exists, the court shall issue a warrant
235 describing the firearms and authorizing a search of the locations where
236 the firearms are reasonably believed to be and the seizure of any
237 firearms discovered pursuant to such search.

238 (5) If a person other than the respondent claims title to any
239 firearms surrendered pursuant to subsections 10 to 12 of this section,
240 and he or she is determined by the law enforcement agency to be the
241 lawful owner of the firearm, the firearm shall be returned to him or
242 her, provided that:

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

247 (b) The firearm is not otherwise unlawfully possessed by the
248 owner.

249 (6) A respondent to an extreme risk order of protection may file
250 a motion to modify or rescind that order of protection. The respondent
251 may request a hearing on such a motion with the court that issued the
252 original extreme risk order of protection. Any motion to modify or
253 rescind an extreme risk order of protection shall be filed by the
254 respondent within fourteen days after the respondent is served with
255 the order or fourteen days after the respondent receives actual notice
256 of the order, unless good cause is shown for filing the motion after
257 fourteen days. The court shall conduct a hearing on the motion to
258 modify or rescind an extreme risk order of protection within:

259 (a) Fourteen days after the motion is filed; or

260 (b) Five days after the motion is filed, if the respondent is a
261 family or household member of the petitioner.

262 12. If an extreme risk order of protection is terminated or
263 expires without renewal, a law enforcement agency holding any firearm
264 that has been surrendered pursuant to subsections 10 to 12 of this
265 section shall return any surrendered firearm requested by a respondent
266 only after confirming, through a background check administered by the
267 state highway patrol under section 43.543, that the respondent is
268 currently eligible to own or possess firearms under federal and state

269 law and after confirming with the court that the extreme risk order of
270 protection has terminated or has expired without renewal.

271 13. (1) The petitioner or the court that issued the original
272 extreme risk order of protection, on its own motion, may move to renew
273 the extreme risk order of protection if probable cause is shown that the
274 respondent continues to pose a significant risk of personal injury to
275 themselves or others by possessing a firearm. The extreme risk order
276 of protection may be renewed for up to one year from the expiration of
277 the preceding extreme risk order of protection. Written notice of a
278 hearing on the motion to renew an extreme risk order of protection
279 shall be given to the respondent by the party who made the motion.

280 (2) A law enforcement agency shall, if requested, provide prior
281 notice of the return of a firearm to a respondent to family or household
282 members of the respondent.

283 (3) Any firearm surrendered by a respondent pursuant to
284 subsection 11 of this section that remains unclaimed by the lawful
285 owner shall be disposed of in accordance with the law enforcement
286 agency's policies and procedures for the disposal of firearms in police
287 custody.

288 14. The clerk of any court that issues an extreme risk order of
289 protection shall send the Missouri state highway patrol a copy of the
290 order issued by that court within forty-eight hours of the court issuing
291 the order. Upon receiving an extreme risk order of protection, the
292 Missouri state highway patrol shall enter the extreme risk order of
293 protection into the Missouri uniform law enforcement system (MULES)
294 within forty-eight hours of receiving notice of the order.

295 15. (1) A person who refuses or fails to comply with an extreme
296 risk order of protection shall be subject to the criminal contempt
297 powers of the court and, if found guilty, may be imprisoned for not
298 more than one hundred eighty days or may be fined not more than one
299 thousand dollars, or both. The criminal penalty provided for under this
300 subsection may be imposed in addition to a penalty imposed for
301 another criminal offense arising from the same conduct.

302 (2) A plaintiff who knowingly and intentionally makes a false
303 statement to the court in the petition or in support of the petition is
304 subject to the contempt powers of the court.

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; **or**

8 **(3) Such person is subject to an extreme risk order of protection**
9 **as such term is defined in section 455.010.**

10 2. Unlawful possession of a firearm is a class D felony.

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

✓

Bill

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