

SECOND REGULAR SESSION

# SENATE BILL NO. 940

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

Read 1st time January 28, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3781S.05I

## AN ACT

To repeal section 571.070, RSMo, and to enact in lieu thereof two 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Section A. Section 571.070, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 571.070 and 571.074, to read as follows:

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

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

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

**(3) Such person is subject to an extreme risk order of protection as such term is defined in section 571.074.**

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

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

**571.074. 1. This section creates an extreme risk order of protection to provide due process procedures for keeping guns out of the hands of those who may harm themselves or others. The court may grant an extreme risk order of protection provided that:**

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

**(a) Allege that the respondent poses a significant danger of**

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

7 causing personal injury to self or others by: having in his or her  
8 custody or control, purchasing, possessing, or receiving a firearm, and  
9 be accompanied by an affidavit made under oath stating the specific  
10 statements, actions, or facts that give rise to a reasonable fear of future  
11 dangerous acts by the respondent;

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

15 (c) Identify whether there is a pending lawsuit, complaint,  
16 petition, or other action between the parties to the petition under the  
17 laws of Missouri;

18 (d) Identify if petitioner has actual knowledge that respondent  
19 carries a firearm as a condition of respondent's employment;

20 (2) Upon the filing of a petition seeking an extreme risk order of  
21 protection and if petitioner proves by a preponderance of the evidence  
22 that an immediate and significant danger exists of the respondent  
23 causing personal injury to self or others by: having in his or her  
24 custody or control, purchasing, possessing, or receiving a firearm, the  
25 court shall immediately issue an ex parte order of protection. An ex  
26 parte order shall be entered by the court on the same day as the filing  
27 or the next day the court is in session. The ex parte order takes effect  
28 when entered and shall remain in effect until there is valid service of  
29 process and a hearing is held on the petition;

30 (3) Upon issuance of any ex parte order of protection under  
31 subdivision (2) of this subsection, the court shall order the respondent  
32 to surrender to the local law enforcement agency where the respondent  
33 resides, all firearms in the respondent's custody, control, or  
34 possession. The law enforcement officer serving any ex parte order of  
35 protection shall provide the respondent to the order an opportunity to  
36 comply with the order by surrendering all firearms in his or her  
37 custody, control, or possession. If the respondent does not comply, the  
38 law enforcement officer serving the order shall conduct a lawful search  
39 and seizure of any firearms of the respondent and in any area where  
40 probable cause exists that a firearm to be surrendered pursuant to the  
41 order is located. The law enforcement agency shall hold all  
42 surrendered firearms until a hearing is held on the petition for the  
43 extreme risk order of protection.

44           **(4) Upon receiving a petition seeking an extreme risk order of**  
45 **protection, the court shall conduct a hearing on whether to issue the**  
46 **order within fourteen days after the petition is filed.**

47 **The court shall make as many as three good faith attempts to notify the**  
48 **respondent of the hearing once the petition is filed for the purpose of**  
49 **providing the respondent the opportunity to be present and represent**  
50 **him or herself at the hearing. Notice may be made by phone, email,**  
51 **certified mail, or court summons. The court shall maintain a record of**  
52 **each attempt;**

53           **(5) At the hearing, if the petitioner has proved the allegation**  
54 **that the respondent poses a significant danger to him or herself or**  
55 **others by clear and convincing evidence, the court shall issue a full**  
56 **extreme risk order of protection for a period of time of one year;**

57           **(6) The court clerk or administrator shall verify the terms of any**  
58 **existing order governing the parties. The court shall not delay**  
59 **granting relief because of the existence of a pending action between the**  
60 **parties or the necessity of verifying the terms of an existing order. A**  
61 **petition for an extreme risk protection order shall be granted whether**  
62 **or not there is a pending action between the parties;**

63           **(7) If the petitioner is a law enforcement officer or agency, the**  
64 **petitioner shall make a good faith effort to provide notice to a family**  
65 **or household member of the respondent and to any known third party**  
66 **who may be at risk of violence. The notice shall state that the**  
67 **petitioner intends to petition the court for an extreme risk order of**  
68 **protection or has already done so, and include referrals to appropriate**  
69 **resources, including mental health, domestic violence, and counseling**  
70 **resources. The petitioner shall attest in the petition to having provided**  
71 **such notice, or attest to the steps that shall be taken to provide such**  
72 **notice;**

73           **(8) If the petition states that disclosure of the petitioner's**  
74 **address would risk harm to the petitioner or any member of the**  
75 **petitioner's family or household, the petitioner's address shall be**  
76 **omitted from all documents filed with the court. If the petitioner has**  
77 **not disclosed an address under this subsection, the petitioner shall**  
78 **designate an alternative address at which the respondent may serve**  
79 **notice of any motions. If the petitioner is a law enforcement officer or**  
80 **agency, the address of record shall be that of the law enforcement**

81 agency;

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

86 (10) A person is not required to post a bond to obtain relief in  
87 any proceeding under this subsection.

88 2. Upon issuance of any extreme risk order of protection under  
89 this section, the court shall order the respondent to surrender to the  
90 local law enforcement agency where the respondent resides, all  
91 firearms in the respondent's custody, control, or possession. If the  
92 respondent has been identified in the petition as being required to  
93 carry a firearm as a condition of the respondent's employment, the  
94 court shall notify the respondent's employer of the existence of the  
95 order. If the respondent holds a concealed carry permit pursuant to  
96 section 571.101, the court shall order a revocation of the concealed  
97 carry permit.

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

103 (a) Conduct a lawful search of the respondent and any area  
104 where probable cause exists that a firearm to be surrendered pursuant  
105 to the order is located; and

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

109 (2) If personal service by a law enforcement officer is not  
110 possible, or not required because the respondent was present at the  
111 extreme risk order of protection hearing, the respondent shall  
112 surrender the firearms in a safe manner to the control of the local law  
113 enforcement agency within forty-eight hours of being served with the  
114 order by alternate service or within forty-eight hours of the hearing or  
115 final decision at which the respondent was present.

116 (3) At the time of surrender, a law enforcement officer taking  
117 possession of a firearm shall issue a receipt identifying all firearms

118 that have been surrendered and provide a copy of the receipt to the  
119 respondent. Within seventy-two hours after service of the order, the  
120 officer serving the order shall file the original receipt with the court  
121 and shall ensure that his or her law enforcement agency retains a copy  
122 of the receipt.

123 (4) Upon the sworn statement or testimony of the petitioner or  
124 of any law enforcement officer alleging that the respondent has failed  
125 to comply with the surrender of firearms as required by an order  
126 issued under subsections 1 and 2 of this section, the court shall  
127 determine whether probable cause exists to believe that the respondent  
128 has failed to surrender all firearms in his or her possession, custody,  
129 or control. If probable cause exists, the court shall issue a warrant  
130 describing the firearms and authorizing a search of the locations where  
131 the firearms are reasonably believed to be and the seizure of any  
132 firearms discovered pursuant to such search.

133 (5) If a person other than the respondent claims title to any  
134 firearms surrendered pursuant to subsections 1 and 2 of this section,  
135 and he or she is determined by the law enforcement agency to be the  
136 lawful owner of the firearm, the firearm shall be returned to him or  
137 her, provided that:

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

142 (b) The firearm is not otherwise unlawfully possessed by the  
143 owner.

144 (6) A respondent to an extreme risk order of protection may file  
145 a motion to modify or rescind that order of protection. The respondent  
146 may request a hearing on such a motion with the court that issued the  
147 original extreme risk order of protection. The court shall conduct a  
148 hearing on the motion to modify or rescind an extreme risk order of  
149 protection within fourteen days after the motion is filed. At the  
150 hearing, if the respondent has proved by clear and convincing evidence  
151 that the extreme risk order of protection must be modified or  
152 rescinded, the court shall modify or rescind the extreme risk order of  
153 protection.

154 3. If an extreme risk order of protection is terminated or expires

155 without renewal, a law enforcement agency holding any firearm that  
156 has been surrendered pursuant to subsections 1 and 2 of this section  
157 shall return any surrendered firearm requested by a respondent only  
158 after confirming, through a background check administered by the  
159 state highway patrol under section 43.543, that the respondent is  
160 currently eligible to own or possess firearms under federal and state  
161 law and after confirming with the court that the extreme risk order of  
162 protection has terminated or has expired without renewal.

163       4. (1) The petitioner may move to renew the extreme risk order  
164 of protection if probable cause is shown that the respondent continues  
165 to pose a significant risk of personal injury to him or herself or others  
166 by possessing a firearm. The extreme risk order of protection may be  
167 renewed for up to one year from the expiration of the preceding  
168 extreme risk order of protection. Written notice of a hearing on the  
169 motion to renew an extreme risk order of protection shall be given to  
170 the respondent by the court.

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

174       (3) Any firearm surrendered by a respondent pursuant to  
175 subsection 2 of this section that remains unclaimed by the lawful owner  
176 shall be disposed of in accordance with the law enforcement agency's  
177 policies and procedures for the disposal of firearms in police custody.

178       5. The clerk of any court that issues an extreme risk order of  
179 protection shall send the Missouri state highway patrol a copy of the  
180 order issued by that court within forty-eight hours of the court issuing  
181 the order. Upon receiving an extreme risk order of protection, the  
182 Missouri state highway patrol shall enter the extreme risk order of  
183 protection into the Missouri uniform law enforcement system (MULES)  
184 within forty-eight hours of receiving notice of the order.

185       6. (1) A person who refuses or fails to comply with an extreme  
186 risk order of protection shall be subject to the criminal contempt  
187 powers of the court. The criminal penalty provided for under this  
188 subsection may be imposed in addition to a penalty imposed for  
189 another criminal offense arising from the same conduct.

190       (2) A person who knowingly and intentionally makes a false  
191 statement to the court in the petition or in support of the petition is

192 subject to the contempt powers of the court.

193 7. For the purposes of this section, the following terms mean:

194 (1) "Child", any person under eighteen years of age unless  
195 otherwise emancipated;

196 (2) "Extreme risk order of protection", either an ex parte order  
197 of protection or full order of protection filed by a family or household  
198 member of the respondent or a law enforcement officer or agency;

199 (3) "Ex parte order of protection", an order of protection issued  
200 by the court before the respondent has received notice of the petition  
201 or an opportunity to be heard on it;

202 (4) "Family" or "household member", spouses, former spouses, any  
203 person related by blood or marriage, persons who are presently  
204 residing together or have resided together in the past, any person who  
205 is or has been in a continuing social relationship of a romantic or  
206 intimate nature with the victim, and anyone who has a child in common  
207 regardless of whether they have been married or have resided together  
208 at any time;

209 (5) "Full order of protection", an order of protection issued after  
210 a hearing on the record where the respondent has received notice of  
211 the proceedings and has had an opportunity to be heard;

212 (6) "Order of protection", either an ex parte order of protection  
213 of a full order of protection;

214 (7) "Petitioner", a family or household member, a law  
215 enforcement officer, or a person filing on behalf of a child who has filed  
216 a verified petition pursuant to this section;

217 (8) "Respondent", the family or household member against whom  
218 a verified petition has been filed or a person served on behalf of a child  
219 pursuant to this section.

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