

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 744

AN ACT

To repeal sections 455.010, 455.032, 455.040, 455.045, 455.050, 455.513, 455.520, and 455.523, RSMo, and to enact in lieu thereof eight new sections relating to orders of protection.

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

Section A. Sections 455.010, 455.032, 455.040, 455.045, 455.050, 455.513, 455.520, and 455.523, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 455.010, 455.032, 455.040, 455.045, 455.050, 455.513, 455.520, and 455.523, to read as follows:

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

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

(a) "Abusing a pet", purposely or knowingly causing, attempting to cause, or threatening to cause physical injury to a pet with the intent to control, punish, intimidate, or distress the petitioner;

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

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

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

[(d)] (e) "Harassment", engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to an adult or child and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable adult or child to suffer substantial emotional distress and must actually cause substantial emotional distress to the petitioner or child. Such conduct might include, but is not limited to:

- a. Following another about in a public place or places;
- b. Peering in the window or lingering outside the residence of another; but does not include constitutionally protected activity;

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

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

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

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

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

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

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

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

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

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

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

(11) "Pet", a living creature maintained by a household member for companionship and not for commercial purposes;

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

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

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

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

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

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

455.032. In addition to any other jurisdictional grounds provided by law, a court shall have jurisdiction to enter an order of protection restraining or enjoining the respondent from committing or threatening to commit domestic violence, stalking, sexual assault, molesting or disturbing the peace of petitioner, or abusing a pet, pursuant to sections 455.010 to 455.085, if the petitioner is present, whether permanently or on a temporary basis within the state of Missouri and if the respondent's actions constituting domestic violence have occurred, have been attempted or have been or are threatened within the state of Missouri. For

purposes of this section, if the petitioner has been the subject of domestic violence within or outside of the state of Missouri, such evidence shall be admissible to demonstrate the need for protection in Missouri.

455.040. 1. (1) Not later than fifteen days after the filing of a petition that meets the requirements of section 455.020, a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted. At the hearing, if the petitioner has proved the allegation of domestic violence, stalking, or sexual assault by a preponderance of the evidence, and the respondent cannot show that his or her actions alleged to constitute abuse were otherwise justified under the law, the court shall issue a full order of protection for a period of time the court deems appropriate, and unless after an evidentiary hearing the court makes specific written findings that the respondent poses a serious danger to the physical or mental health of the petitioner or of a minor household member of the petitioner, [except that] the protective order shall be valid for at least one hundred eighty days and not more than one year. If, after an evidentiary hearing, the court makes specific written findings that the respondent poses a serious danger to the physical or mental health of the petitioner or of a minor household member of the petitioner, the protective order shall be valid for at least two years and not more than ten years.

(2) Upon motion by the petitioner, and after a hearing by the court, the full order of protection may be renewed annually and for a period of time the court deems appropriate, and unless the court at an evidentiary hearing made specific written findings that the respondent poses a serious danger to the physical or mental health of the petitioner or of a minor household member of the petitioner,

[except that] the renewed protective order may be renewed periodically and shall be valid for at least one hundred eighty days and not more than one year from the expiration date of the [originally] previously issued full order of protection. If the court has made specific written findings that the respondent poses a serious danger to the physical or mental health of the petitioner or of a minor household member of the petitioner, the renewed protective order may be renewed periodically and shall be valid for at least two years and up to the life of the respondent.

(3) The court may, upon finding that it is in the best interest of the parties, include a provision that any full order of protection [for one year] shall be automatically [renew] renewed for any term of renewal of a full order of protection as set forth in this section unless the respondent requests a hearing by thirty days prior to the expiration of the order. If for good cause a hearing cannot be held on the motion to renew or the objection to an automatic renewal of the full order of protection prior to the expiration date of the originally issued full order of protection, an ex parte order of protection may be issued until a hearing is held on the motion. When an automatic renewal is not authorized, upon motion by the petitioner, and after a hearing by the court, the second full order of protection may be renewed for an additional period of time the court deems appropriate, except that the protective order shall be valid for [at least one hundred eighty days and not more than one year] any term of renewal of a full order as set forth in this section. For purposes of this subsection, a finding by the court of a subsequent act of domestic violence, stalking, or sexual assault is not required for a renewal order of protection.

(4) In determining under this section whether a respondent poses a serious danger to the physical or mental health of a petitioner or of a minor household member of the petitioner, the court shall consider all relevant evidence including, but not limited to:

(a) The weight of the evidence;

(b) The respondent's history of inflicting or causing physical harm, bodily injury, or assault;

(c) The respondent's history of stalking or causing fear of physical harm, bodily injury, or assault on the petitioner or a minor household member of the petitioner;

(d) The respondent's criminal record;

(e) Whether any prior full orders of adult or child protection have been issued against the respondent;

(f) Whether the respondent has been found guilty of any dangerous felony under Missouri law; and

(g) Whether the respondent violated any term or terms of probation or parole or violated any term of a prior full or temporary order of protection and which violated terms were intended to protect the petitioner or a minor household member of the petitioner.

(5) If a court finds that a respondent poses a serious risk to the physical or mental health of the petitioner or of a minor household member of the petitioner, the court shall not modify such order until a period of at least two years from the date the original full order was issued and only after the court makes specific written findings after a hearing held that the respondent has shown proof of treatment and rehabilitation and that the respondent no longer poses a serious danger to the petitioner or to a minor household member of the petitioner.

2. The court shall cause a copy of the petition and notice of the date set for the hearing on such petition and

any ex parte order of protection to be served upon the respondent as provided by law or by any sheriff or police officer at least three days prior to such hearing. The court shall cause a copy of any full order of protection to be served upon or mailed by certified mail to the respondent at the respondent's last known address. Notice of an ex parte or full order of protection shall be served at the earliest time, and service of such notice shall take priority over service in other actions, except those of a similar emergency nature. Failure to serve or mail a copy of the full order of protection to the respondent shall not affect the validity or enforceability of a full order of protection.

3. A copy of any order of protection granted pursuant to sections 455.010 to 455.085 shall be issued to the petitioner and to the local law enforcement agency in the jurisdiction where the petitioner resides. [The clerk shall also issue a copy of any order of protection to the local law enforcement agency responsible for maintaining the Missouri uniform law enforcement system or any other comparable law enforcement system the same day the order is granted. The law enforcement agency responsible for maintaining MULES shall, for purposes of verification, within twenty-four hours from the time the order is granted,] The court shall provide all necessary information, including the respondent's relationship to the petitioner, for entry of the order of protection into the Missouri Uniform Law Enforcement System (MULES) and the National Crime Information Center (NCIC). Upon receiving the order under this subsection, the sheriff shall make the entry into MULES within twenty-four hours. MULES shall forward the order information to NCIC, which will in turn make the order viewable within the National Instant Criminal Background

Check System (NICS). The sheriff shall enter information contained in the order, including, but not limited to, any orders regarding child custody or visitation and all specifics as to times and dates of custody or visitation that are provided in the order. A notice of expiration or of termination of any order of protection or any change in child custody or visitation within that order shall be issued to the local law enforcement agency [and to the law enforcement agency responsible for maintaining] for entry into MULES or any other comparable law enforcement system. [The law enforcement agency responsible for maintaining the applicable law enforcement system shall enter such information in the system within twenty-four hours of receipt of information evidencing such expiration or termination.] The information contained in an order of protection may be entered [in the Missouri uniform law enforcement system] into MULES or any other comparable law enforcement system using a direct automated data transfer from the court automated system to the law enforcement system.

4. The court shall cause a copy of any objection filed by the respondent and notice of the date set for the hearing on such objection to an automatic renewal of a full order of protection for a period of one year to be personally served upon the petitioner by personal process server as provided by law or by a sheriff or police officer at least three days prior to such hearing. Such service of process shall be served at the earliest time and shall take priority over service in other actions except those of a similar emergency nature.

455.045. Any 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:

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

(2) Restraining the respondent from entering the premises of the dwelling unit of 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 or rented 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 the respondent; provided that the respondent has no property interest in the dwelling unit;

(3) Restraining the respondent from communicating with the petitioner in any manner or through any medium;

(4) A temporary order of custody of minor children where appropriate;

(5) A temporary order of possession of pets where appropriate.

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, including violence against a pet;

(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

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

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

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

(1) Award custody of any minor child born to or adopted by the parties when the court has jurisdiction over such child and no prior order regarding custody is pending

or has been made, and the best interests of the child require such order be issued;

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

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

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

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

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

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

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

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

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

(11) Order the respondent to pay court costs;

(12) Order the respondent to pay the cost of medical treatment and services that have been provided or that are being provided to the petitioner as a result of injuries sustained to the petitioner by an act of domestic violence committed by the respondent;

(13) Award possession and care of any pet, along with any moneys necessary to cover medical costs that may have resulted from abuse of the pet.

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

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

6. The court shall grant to the noncustodial parent rights to visitation with any minor child born to or adopted by the parties, unless the court finds, after hearing, that visitation would endanger the child's physical health, impair the child's emotional development or would otherwise conflict with the best interests of the child, or that no visitation can be arranged which would sufficiently protect the custodial parent from further domestic violence. The

court may appoint a guardian ad litem or court-appointed special advocate to represent the minor child in accordance with chapter 452 whenever the custodial parent alleges that visitation with the noncustodial parent will damage the minor child.

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

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

9. (1) The court may, in order to ensure that a petitioner can maintain an existing wireless telephone number or numbers, issue an order, after notice and an opportunity to be heard, directing a wireless service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to the petitioner, if the petitioner is not the wireless service accountholder.

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

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

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

a. The accountholder has already terminated the account;

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

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

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

(b) This section shall not preclude a wireless service provider from applying any routine and customary requirements for account establishment to the petitioner as part of this transfer of billing responsibility for a wireless telephone number or numbers and any devices

attached to that number or numbers including, but not limited to, identification, financial information, and customer preferences.

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

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

(6) As used in this section and section 455.523, a "wireless service provider" means a provider of commercial mobile service under Section 332(d) of the Federal Telecommunications Act of 1996 (47 U.S.C. Section 151, et seq.).

455.513. 1. The court may immediately issue an ex parte order of protection upon the filing of a verified petition under sections 455.500 to 455.538, for good cause shown in the petition, and upon finding that:

(1) No prior order regarding custody involving the respondent and the child is pending or has been made; or

(2) The respondent is less than seventeen years of age.

An immediate and present danger of domestic violence, including danger to the child's pet, stalking, or sexual assault to a child shall constitute good cause for purposes of this section. An ex parte order of protection entered by the court shall be in effect until the time of the hearing. The court shall deny the ex parte order and dismiss the petition if the petitioner is not authorized to seek relief pursuant to section 455.505.

2. Upon the entry of the ex parte order of protection, the court shall enter its order appointing a guardian ad

litem or court-appointed special advocate to represent the child victim.

3. If the allegations in the petition would give rise to jurisdiction under section 211.031, the court may direct the children's division to conduct an investigation and to provide appropriate services. The division shall submit a written investigative report to the court and to the juvenile officer within thirty days of being ordered to do so. The report shall be made available to the parties and the guardian ad litem or court-appointed special advocate.

4. If the allegations in the petition would give rise to jurisdiction under section 211.031 because the respondent is less than seventeen years of age, the court may issue an ex parte order and shall transfer the case to juvenile court for a hearing on a full order of protection. Service of process shall be made pursuant to section 455.035.

455.520. 1. Any ex parte order of protection granted under sections 455.500 to 455.538 shall be to protect the victim from domestic violence, including danger to the child's pet, stalking, or sexual assault and may include such terms as the court reasonably deems necessary to ensure the victim's safety, including but not limited to:

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

(2) Restraining the respondent from entering the family home of the victim except as specifically authorized by the court;

(3) Restraining the respondent from communicating with the victim in any manner or through any medium, except as specifically authorized by the court;

(4) A temporary order of custody of minor children;

(5) A temporary order of possession of pets where appropriate.

2. No ex parte order of protection excluding the respondent from the family home shall be issued unless the court finds that:

(1) The order is in the best interests of the child or children remaining in the home;

(2) The verified allegations of domestic violence present a substantial risk to the child or children unless the respondent is excluded; and

(3) A remaining adult family or household member is able to care adequately for the child or children in the absence of the excluded party.

455.523. 1. Any full order of protection granted under sections 455.500 to 455.538 shall be to protect the victim from domestic violence, including danger to the child's pet, stalking, and sexual assault 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 domestic violence or sexual assault, threatening to commit domestic violence or sexual assault, stalking, molesting, or disturbing the peace of the victim;

(2) Temporarily enjoining the respondent from entering the family home of the victim, except as specifically authorized by the court;

(3) Temporarily enjoining the respondent from communicating with the victim in any manner or through any medium, except as specifically authorized by the court.

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

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

(2) Award visitation;

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

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

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

(6) Order the respondent to participate in a court-approved counseling program designed to help stop violent behavior or to treat substance abuse;

(7) Order the respondent to pay, to the extent that he or she is able, the costs of his or her treatment, together with the treatment costs incurred by the victim;

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

(9) Order a wireless service provider, in accordance with the process, provisions, and requirements set out in subdivisions (1) to (6) of subsection 9 of section 455.050, to transfer the billing responsibility for and rights to the wireless telephone number or numbers of any minor children in the petitioner's care to the petitioner, if the petitioner is not the wireless service accountholder;

(10) Award possession and care of any pet, along with any moneys necessary to cover medical costs that may have resulted from abuse of the pet.