

FIRST REGULAR SESSION

HOUSE BILL NO. 646

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE NEWMAN.

1167L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 571, RSMo, by adding thereto seven new sections relating to gun violence restraining orders, with penalty provisions.

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

Section A. Chapter 571, RSMo, is amended by adding thereto seven new sections, to be known as sections 571.600, 571.605, 571.610, 571.615, 571.620, 571.635, and 571.640, to read as follows:

571.600. 1. As used in sections 571.600 to 571.620, the following terms shall mean:

(1) "Gun seizure warrant", a court order regarding a person who is subject to a gun violence restraining order and who is known to own or possess one or more firearms, rifles, or shotguns that directs a law enforcement officer to seize any firearms, rifles, or shotguns in the possession of the person and to bring the unloaded firearms, rifles, or shotguns before the judge issuing the order;

(2) "Gun violence restraining order", a court order prohibiting a person from purchasing, owning, possessing, or controlling a firearm, rifle, or shotgun for a period of up to one year.

571.605. 1. Any person may file a petition with the court setting forth the facts and circumstances necessitating the issuance of a gun violence restraining order. The court may prescribe the manner and form of the petition.

2. A gun violence restraining order shall be issued to prohibit a person from possessing a firearm, rifle, or shotgun if an affidavit, signed by the petitioner under oath, and any additional information provided to the court demonstrates to the satisfaction of

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

7 the court that the person poses a significant risk of personal injury to himself or herself,
8 or others, by possessing a firearm, rifle, or shotgun.

9 3. (1) In determining whether to issue a gun violence restraining order, the court
10 may examine under oath the petitioner and any witnesses the petitioner produces.

11 (2) In determining whether grounds for a gun violence restraining order exists, the
12 court shall consider all of the following:

13 (a) Any recent threat or act of violence by the person directed toward others;

14 (b) Any recent threat or act of violence by the person directed toward himself or
15 herself;

16 (c) Any recent violation of a restraining order; and

17 (d) Any conviction for a weapons offense.

18 (3) In determining whether grounds for a gun violence restraining order exist, the
19 court may consider any of the following:

20 (a) The reckless use, display, or brandishing of a firearm, rifle, or shotgun by the
21 person;

22 (b) The history of use, attempted use, or threatened use of physical force by the
23 person against another person;

24 (c) Any prior arrest of the person for a felony offense;

25 (d) Any history of a violation by the person of a protective order under chapter
26 455;

27 (e) Evidence of recent or ongoing abuse of controlled substances or alcohol by the
28 person; or

29 (f) Evidence of recent acquisition of firearms, rifles, shotguns, or other deadly
30 weapons.

31 (4) The affidavit shall set forth the facts establishing the grounds of the petition or
32 probable cause for believing that they exist. In lieu of a written affidavit, the court may
33 take an oral statement under oath.

34 4. If the court finds that the grounds of the petition exist or that there is probable
35 cause to believe in their existence, the court shall issue a gun violence restraining order.

36 5. A gun violence restraining order shall include:

37 (1) A statement of the grounds asserted for the order;

38 (2) The date and time the order expires;

39 (3) The address of the court for the county in which the restrained party resides;

40 and

41 (4) A statement to the restrained person stating:

42 (a) The time and date that the order expires;

43 (b) That the person shall not own, possess, purchase, or receive, or attempt to
44 purchase or receive a firearm, rifle, or shotgun while such order is in effect;

45 (c) That the person is entitled to submit one written request for a hearing at any
46 time during the effective period of the order for an order permitting the person to own,
47 possess, purchase, or receive a firearm, rifle, or shotgun;

48 (d) That the person may seek legal advice from an attorney as to any matter
49 connected with the order; and

50 (e) That if legal advice is sought, the attorney should be consulted promptly so that
51 the attorney may assist the person in any matter connected with the order.

52 6. When serving a gun violence restraining order, the law enforcement officer shall
53 inform the person that he or she may submit one written request for a hearing under
54 subsection 8 of section 571.615 at any time during the effective period of the order and
55 provide the person with a form to request the hearing.

 571.610. 1. If there is probable cause to believe that a person who has been issued
2 a gun violence restraining order possesses or owns a firearm, rifle, or shotgun, the court
3 shall issue a gun seizure warrant to the appropriate law enforcement officer directing the
4 officer to seize any specified firearm, rifle, or shotgun and to retain the firearm, rifle, or
5 shotgun subject to the order of the court.

6 2. A gun seizure warrant shall be issued upon probable cause, supported by an
7 affidavit, naming or describing with reasonable specificity the facts and circumstances
8 justifying the court order and listing any firearm, rifle, or shotgun to be seized under the
9 court order.

10 3. A firearm, rifle, or shotgun described in the gun seizure warrant may be taken
11 from any place or from any person in whose possession the firearm, rifle, or shotgun may
12 be.

13 4. When a law enforcement officer takes property under a gun seizure warrant, the
14 officer shall give a receipt for the property taken, specifying it in detail, to the person from
15 whom it was taken. In the absence of a person, the officer shall leave the receipt in the
16 place where the property was found.

17 5. If the location to be searched during the execution of a gun seizure warrant is
18 jointly occupied by multiple parties and a firearm, rifle, or shotgun located during the
19 execution of a gun seizure warrant is owned by a person other than the persons in the gun
20 seizure warrant, the firearm, rifle, or shotgun shall not be seized if the firearm, rifle, or
21 shotgun is stored in a manner that the person named in the gun seizure warrant does not
22 have access to or control of the firearm, rifle, or shotgun and there is no evidence of
23 unlawful possession of the firearm, rifle, or shotgun by the owner.

24 **6. If the location to be searched during the execution of a gun seizure warrant is**
25 **jointly occupied by multiple parties and a gun safe that is owned by a person other than**
26 **the person named in the gun seizure warrant is located therein, the contents of the gun safe**
27 **shall not be searched except in the owner's presence or with the owner's consent, or unless**
28 **a valid search warrant has been obtained.**

571.615. 1. Except as provided in subsection 7 of this section, no later than fourteen
2 **days after the execution of a gun violence restraining order and a gun seizure warrant, if**
3 **applicable, the court that issued the order and seizure warrant shall hold a hearing to**
4 **determine whether the person who is the subject of the order may possess, own, purchase,**
5 **or receive a firearm, rifle, or shotgun and, when applicable, whether a seized firearm, rifle,**
6 **or shotgun shall be returned to the person named in the warrant.**

7 **2. At the hearing, the state shall have the burden of proving by clear and**
8 **convincing evidence that the person poses a significant risk of personal injury to himself**
9 **or herself, or others, by owning or possessing the firearm, rifle, or shotgun.**

10 **3. If, at the hearing, the person is found to pose a significant risk of personal injury**
11 **to himself or herself, or others, by purchasing, owning, possessing or controlling a firearm,**
12 **rifle, or shotgun, the firearm, rifle, or shotgun seized under the warrant shall be retained**
13 **by the law enforcement agency for a period not to exceed one year. The person shall be**
14 **prohibited from purchasing, owning, possessing, or controlling a firearm, rifle, or shotgun**
15 **for a period not to exceed one year.**

16 **4. The court shall notify the Missouri uniform law enforcement system (MULES)**
17 **of the gun violence restraining order not later than the next business day after issuing the**
18 **order. The court also shall notify MULES of any order restoring the person's ability to**
19 **own or possess firearms no later than the next business day after issuing the order to**
20 **restore the person's right to own or possess any type of firearm that may be lawfully owned**
21 **and possessed. Any notice or report submitted under this subsection shall be in an**
22 **electronic format, in a manner prescribed by the Missouri state highway patrol.**

23 **5. If the court finds that the state has not met the required standard of proof, the**
24 **firearm, rifle, or shotgun seized under the warrant shall be returned to the person.**

25 **6. If the person is prohibited by law from purchasing, owning, possessing, or**
26 **controlling a firearm, rifle, or shotgun for a period of one year or more by any other**
27 **provision of state or federal law, a hearing under this section shall not be required and the**
28 **court shall issue an order to hold the firearm, rifle, or shotgun until either the person is no**
29 **longer prohibited from owning a firearm, rifle, or shotgun or the law enforcement agency**
30 **disposes of the firearm, rifle, or shotgun to a licensed firearms dealer in accordance with**
31 **section 571.095.**

32 7. If any other person claims title to a firearm, rifle, or shotgun sized under the
33 warrant, the firearm, rifle, or shotgun shall be returned to the lawful owner.

34 8. A person who is the subject of a court order under subsection 3 of this section
35 may submit one written request at any time during the effective period of the order for a
36 hearing for an order permitting the person to possess, own, purchase, or receive a firearm,
37 rifle, or shotgun. The request shall be submitted in a form and manner as prescribed by
38 the chief administrator of the courts.

 571.620. 1. (1) If a law enforcement agency has probable cause to believe that a
2 person subject to a gun violence restraining order continues to pose a significant risk of
3 personal injury to himself or herself, or others, by purchasing, owning, possessing, or
4 controlling a firearm, rifle, or shotgun, the agency may initiate a request for a renewal of
5 the order, setting forth the facts and circumstances necessitating the request. The request
6 shall be submitted in a form and manner as prescribed by the court.

7 (2) A hearing held under this section shall be held in the same court that issued the
8 initial order to determine if a request for renewal of the order shall be issued.

9 (3) The person named in the restraining order shall be given written notice and an
10 opportunity to be heard.

11 2. The court may, upon its own motion or upon request of another person, issue a
12 renewal of a gun violence restraining order when there is probable cause to believe that a
13 person subject to the order continues to pose a significant risk of personal injury to himself
14 or herself, or others, by purchasing, owning, possessing, or controlling a firearm, rifle, or
15 shotgun after written notice to the person named in the restraining order and after the
16 person has been given an opportunity for a hearing.

 571.635. 1. When a law enforcement officer is at the scene of a domestic violence
2 incident involving a threat to human life or a physical assault, is serving a protective order
3 under chapter 455, or is serving a gun violence restraining order issued under sections
4 571.600 to 571.620, such officer shall take temporary custody of any firearm or other
5 deadly weapon in plain sight or discovered under a consensual or other lawful search as
6 necessary for the protection of the law enforcement officer or other persons present if the
7 law enforcement officer has probable cause to believe that an act of domestic violence has
8 occurred.

9 2. If a firearm is removed from the scene under subsection 1 of this section, the law
10 enforcement officer shall:

11 (1) Provide to the owner of the firearm information on the process for retaking
12 possession of the firearm; and

13 **(2) Provide for the safe storage of the firearm during the pendency of any**
14 **proceeding related to the alleged act of domestic violence.**

15 **3. Within fourteen days of the conclusion of a proceeding on the alleged act of**
16 **domestic violence, the owner of the firearm may retake possession of the firearm unless**
17 **ordered to surrender the firearm under section 571.095.**

571.640. 1. It shall be unlawful to possess a firearm for a person who:

2 **(1) Is subject to a court order that:**

3 **(a) Was issued after a hearing of which such person received actual notice, and at**
4 **which such person had an opportunity to participate;**

5 **(b) Restrains such person from harassing, stalking, or threatening a family or**
6 **household member of such person or a child of such family or household member or**
7 **person, or engaging in other conduct that would place a family or household member in**
8 **reasonable fear of bodily injury to the family or household member or child; and**

9 **(c) Includes a finding that such person represents a credible threat to the physical**
10 **safety of such family or household member or a child; or by its terms explicitly prohibits**
11 **the use, attempted use, or threatened use of physical force against such family or household**
12 **member or child that would reasonably be expected to cause bodily injury; or**

13 **(2) Is subject to an order of protection under chapter 455;**

14 **(3) Has been found guilty of or pled guilty to a misdemeanor offense involving**
15 **domestic violence in a court of competent jurisdiction; or**

16 **(4) Has been found guilty of or pled guilty to a misdemeanor sexual offense in a**
17 **court of competent jurisdiction.**

18 **2. For the purposes of this section, the term "family" or "household member" shall**
19 **be defined as such term is defined in section 455.010.**

20 **3. Any person who violates the provisions of this section is guilty of a class D felony**
21 **until December 31, 2016, and a class E felony beginning January 1, 2017.**

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