

FIRST REGULAR SESSION

HOUSE BILL NO. 40

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LAVENDER.

0559H.011

DANA RADEMAN MILLER, Chief Clerk

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Section A. Sections 455.010, 455.050, and 571.070, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 455.010, 455.050, and 571.070, to read as follows: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) "Assault", purposely or knowingly placing or attempting to place another in fear of physical harm;

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

(c) "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) "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

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.

17 substantial emotional distress and must actually cause substantial emotional distress to the
18 petitioner or child. Such conduct might include, but is not limited to:

19 a. Following another about in a public place or places;

20 b. Peering in the window or lingering outside the residence of another; but does not
21 include constitutionally protected activity;

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

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

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

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

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

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

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

33 (7) **"Extreme risk order of protection", either an ex parte order or full order of**
34 **protection filed by a family or household member of the respondent or by a law**
35 **enforcement officer or agency under subsection 10 of section 455.050;**

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

41 ~~[(8)]~~ (9) "Full order of protection", an order of protection issued after a hearing on the
42 record where the respondent has received notice of the proceedings and has had an opportunity
43 to be heard;

44 ~~[(9)]~~ (10) "Order of protection", either an ex parte order of protection or a full order of
45 protection;

46 ~~[(10)]~~ (11) "Pending", exists or for which a hearing date has been set;

47 ~~[(11)]~~ (12) "Petitioner", a family or household member who has been a victim of
48 domestic violence, or any person who has been the victim of stalking or sexual assault, or a
49 person filing on behalf of a child pursuant to section 455.503 who has filed a verified petition
50 pursuant to the provisions of section 455.020 or section 455.505;

51 ~~[(12)]~~ (13) "Respondent", the family or household member alleged to have committed
52 an act of domestic violence, or person alleged to have committed an act of stalking or sexual

53 assault, against whom a verified petition has been filed or a person served on behalf of a child
54 pursuant to section 455.503;

55 ~~[(13)]~~ (14) "Sexual assault", as defined under subdivision (1) of this section;

56 ~~[(14)]~~ (15) "Stalking" is when any person purposely engages in an unwanted course of
57 conduct that causes alarm to another person, or a person who resides together in the same
58 household with the person seeking the order of protection when it is reasonable in that person's
59 situation to have been alarmed by the conduct. As used in this subdivision:

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

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

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

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

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

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

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

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

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

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

18 2. Mutual orders of protection are prohibited unless both parties have properly filed
19 written petitions and proper service has been made in accordance with sections 455.010 to
20 455.085.

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

- 23 (1) Award custody of any minor child born to or adopted by the parties when the court
24 has jurisdiction over such child and no prior order regarding custody is pending or has been
25 made, and the best interests of the child require such order be issued;
- 26 (2) Establish a visitation schedule that is in the best interests of the child;
- 27 (3) Award child support in accordance with supreme court rule 88.01 and chapter 452;
- 28 (4) Award maintenance to petitioner when petitioner and respondent are lawfully married
29 in accordance with chapter 452;
- 30 (5) Order respondent to make or to continue to make rent or mortgage payments on a
31 residence occupied by the petitioner if the respondent is found to have a duty to support the
32 petitioner or other dependent household members;
- 33 (6) Order the respondent to pay the petitioner's rent at a residence other than the one
34 previously shared by the parties if the respondent is found to have a duty to support the petitioner
35 and the petitioner requests alternative housing;
- 36 (7) Order that the petitioner be given temporary possession of specified personal
37 property, such as automobiles, checkbooks, keys, and other personal effects;
- 38 (8) Prohibit the respondent from transferring, encumbering, or otherwise disposing of
39 specified property mutually owned or leased by the parties;
- 40 (9) Order the respondent to participate in a court-approved counseling program designed
41 to help batterers stop violent behavior or to participate in a substance abuse treatment program;
- 42 (10) Order the respondent to pay a reasonable fee for housing and other services that
43 have been provided or that are being provided to the petitioner by a shelter for victims of
44 domestic violence;
- 45 (11) Order the respondent to pay court costs;
- 46 (12) Order the respondent to pay the cost of medical treatment and services that have
47 been provided or that are being provided to the petitioner as a result of injuries sustained to the
48 petitioner by an act of domestic violence committed by the respondent.
- 49 4. A verified petition seeking orders for maintenance, support, custody, visitation,
50 payment of rent, payment of monetary compensation, possession of personal property,
51 prohibiting the transfer, encumbrance, or disposal of property, or payment for services of a
52 shelter for victims of domestic violence, shall contain allegations relating to those orders and
53 shall pray for the orders desired.
- 54 5. In making an award of custody, the court shall consider all relevant factors including
55 the presumption that the best interests of the child will be served by placing the child in the
56 custody and care of the nonabusive parent, unless there is evidence that both parents have
57 engaged in abusive behavior, in which case the court shall not consider this presumption but may

58 appoint a guardian ad litem or a court-appointed special advocate to represent the children in
59 accordance with chapter 452 and shall consider all other factors in accordance with chapter 452.

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

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

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

75 9. (1) The court may, in order to ensure that a petitioner can maintain an existing
76 wireless telephone number or numbers, issue an order, after notice and an opportunity to be
77 heard, directing a wireless service provider to transfer the billing responsibility for and rights to
78 the wireless telephone number or numbers to the petitioner, if the petitioner is not the wireless
79 service accountholder.

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

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

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

- 94 a. The accountholder has already terminated the account;
95 b. The differences in network technology prevent the functionality of a device on the
96 network; or
97 c. There are geographic or other limitations on network or service availability.

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

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

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

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

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

118 **10. (1) A petition for an extreme risk order of protection shall:**

119 (a) **Allege that the respondent poses a significant danger of personal injury to**
120 **himself, herself, or others by having in his or her custody or control, purchasing,**
121 **possessing, or receiving a firearm and shall be accompanied by an affidavit made under**
122 **oath stating the specific statements, actions, or facts that support a reasonable fear of**
123 **future dangerous acts by the respondent;**

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

126 (c) **Identify whether a lawsuit, complaint, petition, or other action is pending**
127 **between the parties to the petition in a Missouri court; and**

128 (d) Identify if the petitioner has actual knowledge that the respondent is licensed
129 to carry a concealed weapon and if carrying a concealed weapon is a condition of the
130 respondent's employment.

131 (2) The court may grant an extreme risk order of protection. Upon receiving a
132 petition seeking an extreme risk order of protection, the court shall conduct a hearing to
133 determine whether to issue the order. The hearing shall be conducted no later than:

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

135 (b) If the respondent is a family or household member of the petitioner, five days
136 after the petition is filed.

137 (3) The court clerk or administrator shall verify the terms of any existing order
138 governing the parties. The court shall not delay granting relief because of the existence of
139 a pending action between the parties or the necessity of verifying the terms of an existing
140 order. A petition for an extreme risk protection order shall be considered regardless of an
141 action pending between the parties.

142 (4) If the petitioner is a law enforcement officer or agency, the petitioner shall make
143 a good faith effort to provide notice to a family or household member of the respondent
144 and to known third parties who may be at risk of violence. The notice shall state that the
145 petitioner intends to petition or has petitioned the court for an extreme risk order of
146 protection and shall include referrals to appropriate resources, including mental health,
147 domestic violence, and counseling resources. In the petition, the petitioner shall attest to
148 whether such notice was provided or the steps the petitioner shall take to provide such
149 notice.

150 (5) If the petition states that disclosure of the petitioner's address would risk harm
151 to the petitioner or any member of the petitioner's family or household, the petitioner's
152 address may be omitted from all documents filed with the court. If the petitioner has not
153 disclosed an address under this subsection, the petitioner shall designate an alternative
154 address at which the respondent may serve notices. If the petitioner is a law enforcement
155 officer or agency, the address of record shall be that of the law enforcement agency.

156 (6) No court or other public agency shall charge a fee for filing or service of process
157 to petitioners seeking relief under this subsection. Petitioners shall be provided the
158 necessary number of certified copies, forms, and instructional brochures free of charge.

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

161 11. (1) Upon the issuance of any extreme risk order of protection, the court shall
162 order the respondent to surrender to the respondent's local law enforcement agency all
163 firearms in the respondent's custody, control, or possession. If the respondent is identified

164 in the petition as licensed to carry a concealed weapon and carrying a concealed weapon
165 is a condition of the respondent's employment, the court shall notify the respondent's
166 employer of the existence of the order.

167 (2) The law enforcement officer serving an extreme risk order of protection shall
168 provide the respondent an opportunity to comply with the order by surrendering all
169 firearms in his or her custody, control, or possession. If the respondent does not comply,
170 the law enforcement officer serving the order shall:

171 (a) Place him or her into the custody of the law enforcement agency serving the
172 order, yet only for the duration of the lawful search conducted pursuant to paragraph (b)
173 of this subdivision;

174 (b) Conduct a lawful search of the respondent and any area where probable cause
175 exists that a firearm to be surrendered pursuant to the order may be located; and

176 (c) Take possession of all firearms belonging to the respondent that are
177 surrendered, in plain sight, or discovered pursuant to a lawful search.

178 (3) If in-person service of the order by a law enforcement officer is not possible or
179 not required because the respondent was present at the extreme risk order of protection
180 hearing, the respondent shall surrender the firearms in a safe manner to the control of the
181 local law enforcement agency within forty-eight hours of receiving service of the order or
182 within forty-eight hours of the hearing or final decision at which the respondent was
183 present.

184 (4) At the time of surrender, a law enforcement officer taking possession of a
185 firearm shall issue a receipt identifying all firearms surrendered and provide a copy of the
186 receipt to the respondent. Within seventy-two hours after service of the order, the officer
187 shall file the original receipt with the court and shall ensure that his or her law
188 enforcement agency retains a copy of the receipt.

189 (5) Upon the sworn statement or testimony of the petitioner or of any law
190 enforcement officer that alleges that the respondent has failed to comply with the
191 surrender of firearms as required by an order issued under subsections 10 to 12 of this
192 section, the court shall determine whether probable cause exists to believe that the
193 respondent has failed to surrender all firearms in his or her possession, custody, or control.
194 If probable cause exists, the court shall issue a warrant describing the firearms,
195 authorizing a search of the locations where the firearms are reasonably believed to be
196 located, and authorizing the seizure of any firearms discovered pursuant to such search.

197 (6) If a person other than the respondent claims title to any firearms surrendered
198 under subsections 10 to 12 of this section and the law enforcement agency determines he

199 or she is the lawful owner of the firearm, the firearm shall be returned to him or her,
200 provided:

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

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

205 (7) A respondent to an extreme risk order of protection may file a motion to modify
206 or rescind the order of protection. The respondent may request a hearing on such a motion
207 with the court that issued the original extreme risk order of protection. Any motion to
208 modify or rescind an extreme risk order of protection shall be filed by the respondent no
209 later than fourteen days after the respondent is served with the order or fourteen days
210 after the respondent receives actual notice of the order unless good cause is shown for filing
211 the motion after fourteen days. The court shall conduct a hearing on the motion to modify
212 or rescind an extreme risk order of protection no later than:

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

214 (b) If the respondent is a family or household member of the petitioner, five days
215 after the motion is filed.

216 12. If an extreme risk protection order is terminated or expires without renewal,
217 a law enforcement agency that holds any firearm surrendered pursuant to subsections 10
218 to 12 of this section shall return any surrendered firearm a respondent requests only after
219 confirming, through a background check administered by the state highway patrol under
220 section 43.540, that the respondent is currently eligible to own or possess firearms under
221 federal and state law and after confirming with the court that the extreme risk protection
222 order terminated or expired without renewal.

223 13. (1) The court that issued the original extreme risk order of protection may, on
224 either its own or the petitioner's motion, renew the extreme risk order of protection if
225 probable cause is shown that the respondent continues to pose a significant risk of personal
226 injury to himself, herself, or others by possessing a firearm. The extreme risk order of
227 protection may be renewed for up to one year from the expiration of the preceding extreme
228 risk order of protection. Written notice of a hearing on the motion to renew an extreme
229 risk order of protection shall be given to the respondent by the party who makes the
230 motion.

231 (2) A law enforcement agency shall, if requested, provide prior notice of the return
232 of a firearm to a respondent, to a respondent's family, or to a household member of the
233 respondent.

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

238 **14. The clerk of any court that issues an extreme risk order of protection shall send**
239 **the Missouri state highway patrol a copy of the order issued by that court within forty-**
240 **eight hours of the court issuing the order. Upon receiving an extreme risk order of**
241 **protection, the Missouri state highway patrol shall enter the extreme risk order of**
242 **protection into the Missouri uniform law enforcement system (MULES) within forty-eight**
243 **hours of receiving notice of the order.**

244 **15. (1) A person who refuses or fails to comply with an extreme risk order of**
245 **protection shall be subject to the criminal contempt powers of the court and, if found**
246 **guilty, may be imprisoned for no more than one hundred eighty days or may be fined no**
247 **more than one thousand dollars, or both. The criminal penalty provided under this**
248 **subsection may be imposed in addition to a penalty imposed for another criminal offense**
249 **arising from the same conduct.**

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

571.070. 1. A person commits the offense of unlawful possession of a firearm if such
2 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 state, or of a crime
4 under the laws of any state or of the United States which, if committed within this state, would
5 be a felony; ~~or~~

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

8 **(3) Such person is subject to an extreme risk order of protection, as defined under**
9 **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 apply to the
12 possession of an antique firearm.

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