

SECOND REGULAR SESSION

HOUSE BILL NO. 2131

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BECK.

4263H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 455.050, 455.523, 565.076, 565.227, and 571.070, RSMo, and to enact in lieu thereof five new sections relating to unlawful possession of firearms, with penalty provisions and an emergency clause.

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

Section A. Sections 455.050, 455.523, 565.076, 565.227, and 571.070, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 455.050, 455.523, 565.076, 565.227, and 571.070, to read as follows:

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;

(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

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.

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. **If the court issues, after a hearing for any full order of protection, an order of**
50 **protection, the court shall also:**

51 **(1) Prohibit the respondent from knowingly possessing or purchasing any firearm**
52 **while the order is in effect;**

53 **(2) Inform the respondent of such prohibition in writing and, if the respondent is**
54 **present, orally; and**

55 **(3) Forward the order to the state highway patrol so that the state highway patrol**
56 **can update the respondent's record in the National Instant Criminal Background Check**
57 **System (NICS). Upon receiving an order under this subsection, the state highway patrol**
58 **shall notify the Federal Bureau of Investigation within twenty-four hours.**

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

64 ~~[5-]~~ **6.** In making an award of custody, the court shall consider all relevant factors
65 including the presumption that the best interests of the child will be served by placing the child
66 in the custody and care of the nonabusive parent, unless there is evidence that both parents have
67 engaged in abusive behavior, in which case the court shall not consider this presumption but may
68 appoint a guardian ad litem or a court-appointed special advocate to represent the children in
69 accordance with chapter 452 and shall consider all other factors in accordance with chapter 452.

70 ~~[6-]~~ **7.** The court shall grant to the noncustodial parent rights to visitation with any minor
71 child born to or adopted by the parties, unless the court finds, after hearing, that visitation would
72 endanger the child's physical health, impair the child's emotional development or would
73 otherwise conflict with the best interests of the child, or that no visitation can be arranged which
74 would sufficiently protect the custodial parent from further domestic violence. The court may
75 appoint a guardian ad litem or court-appointed special advocate to represent the minor child in
76 accordance with chapter 452 whenever the custodial parent alleges that visitation with the
77 noncustodial parent will damage the minor child.

78 ~~[7-]~~ **8.** The court shall make an order requiring the noncustodial party to pay an amount
79 reasonable and necessary for the support of any child to whom the party owes a duty of support
80 when no prior order of support is outstanding and after all relevant factors have been considered,
81 in accordance with Missouri supreme court rule 88.01 and chapter 452.

82 ~~[8-]~~ **9.** The court may grant a maintenance order to a party for a period of time, not to
83 exceed one hundred eighty days. Any maintenance ordered by the court shall be in accordance
84 with chapter 452.

85 ~~[9-]~~ **10.** (1) The court may, in order to ensure that a petitioner can maintain an existing
86 wireless telephone number or numbers, issue an order, after notice and an opportunity to be

87 heard, directing a wireless service provider to transfer the billing responsibility for and rights to
88 the wireless telephone number or numbers to the petitioner, if the petitioner is not the wireless
89 service accountholder.

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

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

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

104 a. The accountholder has already terminated the account;

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

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

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

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

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

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

124 (6) As used in this section and section 455.523, a "wireless service provider" means a
125 provider of commercial mobile service under Section 332(d) of the federal
126 ~~[Telecommunications]~~ **Communications** Act of ~~[1996]~~ **1934** (47 U.S.C. Section ~~[151, et seq.]~~
127 **332**).

455.523. 1. Any full order of protection granted under sections 455.500 to 455.538 shall
2 be to protect the victim from domestic violence, stalking, and sexual assault may include such
3 terms as the court reasonably deems necessary to ensure the petitioner's safety, including but not
4 limited to:

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

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

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

12 **2. If the court issues, after a hearing for any full order of protection, an order of**
13 **protection, the court shall also:**

14 **(1) Prohibit the respondent from knowingly possessing or purchasing any firearm**
15 **while the order is in effect;**

16 **(2) Inform the respondent of such prohibition in writing and, if the respondent is**
17 **present, orally; and**

18 **(3) Forward the order to the state highway patrol so that the state highway patrol**
19 **can update the respondent's record in the National Instant Criminal Background Check**
20 **System (NICS). Upon receiving an order under this subsection, the state highway patrol**
21 **shall notify the Federal Bureau of Investigation within twenty-four hours.**

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

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

27 (2) Award visitation;

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

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

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

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

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

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

41 (9) Order a wireless service provider, in accordance with the process, provisions, and
42 requirements set out in subdivisions (1) to (6) of subsection ~~[9]~~ **10** of section 455.050, to transfer
43 the billing responsibility for and rights to the wireless telephone number or numbers of any
44 minor children in the petitioner's care to the petitioner, if the petitioner is not the wireless service
45 accountholder.

565.076. 1. A person commits the offense of domestic assault in the fourth degree if the
2 act involves a domestic victim, as the term "domestic victim" is defined under section 565.002,
3 and:

4 (1) The person attempts to cause or recklessly causes physical injury, physical pain, or
5 illness to such domestic victim;

6 (2) With criminal negligence the person causes physical injury to such domestic victim
7 by means of a deadly weapon or dangerous instrument;

8 (3) The person purposely places such domestic victim in apprehension of immediate
9 physical injury by any means;

10 (4) The person recklessly engages in conduct which creates a substantial risk of death
11 or serious physical injury to such domestic victim;

12 (5) The person knowingly causes physical contact with such domestic victim knowing
13 he or she will regard the contact as offensive; or

14 (6) The person knowingly attempts to cause or causes the isolation of such domestic
15 victim by unreasonably and substantially restricting or limiting his or her access to other persons,
16 telecommunication devices or transportation for the purpose of isolation.

17 2. The offense of domestic assault in the fourth degree is a class A misdemeanor, unless
18 the person has previously been found guilty of the offense of domestic assault, of any assault
19 offense under this chapter, or of any offense against a domestic victim committed in violation

20 of any county or municipal ordinance in any state, any state law, any federal law, or any military
21 law which if committed in this state two or more times would be a violation of this section, in
22 which case it is a class E felony. The offenses described in this subsection may be against the
23 same domestic victim or against different domestic victims.

24 **3. Upon a conviction for the offense of domestic assault in the fourth degree, the**
25 **court shall forward the record of conviction to the state highway patrol so that the state**
26 **highway patrol can update the respondent's record in the National Instant Criminal**
27 **Background Check System (NICS). Upon receiving a record under this subsection, the**
28 **state highway patrol shall notify the Federal Bureau of Investigation within twenty-four**
29 **hours.**

565.227. 1. A person commits the offense of stalking in the second degree if he or she
2 purposely, through his or her course of conduct, disturbs, or follows with the intent to disturb
3 another person.

4 2. This section shall not apply to activities of federal, state, county, or municipal law
5 enforcement officers conducting investigations of any violation of federal, state, county, or
6 municipal law.

7 3. Any law enforcement officer may arrest, without a warrant, any person he or she has
8 probable cause to believe has violated the provisions of this section.

9 4. The offense of stalking in the second degree is a class A misdemeanor, unless the
10 defendant has previously been found guilty of a violation of this section or section 565.225, or
11 of any offense committed in another jurisdiction which, if committed in this state, would be
12 chargeable or indictable as a violation of any offense listed in this section or section 565.225, or
13 unless the victim is intentionally targeted as a law enforcement officer, as defined in section
14 556.061, or the victim is targeted because he or she is a relative within the second degree of
15 consanguinity or affinity to a law enforcement officer, in which case stalking in the second
16 degree is a class E felony.

17 **5. Upon a conviction for the offense of stalking in the second degree, the court shall**
18 **forward the record of conviction to the state highway patrol so that the state highway**
19 **patrol can update the respondent's record in the National Instant Criminal Background**
20 **Check System (NICS). Upon receiving a record under this subsection, the state highway**
21 **patrol shall notify the Federal Bureau of Investigation within twenty-four hours.**

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; [øf]

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

8 (3) **Such person has been convicted of a misdemeanor offense of domestic violence**
9 **under the laws of this state, or of a crime under the laws of any state or of the United States**
10 **that, if committed in this state, would be a misdemeanor offense of domestic violence; or**

11 (4) **Such person is subject to an order of protection granted under sections 455.010**
12 **to 455.095 or sections 455.500 to 455.538 that was issued after a hearing of which the**
13 **person had actual notice and at which the person had an opportunity to participate or**
14 **subject to an equivalent order issued under the laws of another state or the United States.**

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

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

18 4. **As used in this section, the following terms mean:**

19 (1) **"Family or household member", the same meaning as such term is defined**
20 **under section 455.010;**

21 (2) **"Misdemeanor offense of domestic violence":**

22 (a) **Domestic assault in the fourth degree under section 565.076;**

23 (b) **Stalking in the second degree under section 565.227; or**

24 (c) **Any misdemeanor offense committed by a family or household member of the**
25 **victim that involves the use or attempted use of physical force or the threatened use of a**
26 **deadly weapon.**

Section B. Because immediate action is necessary to protect victims of domestic violence
2 from future acts of domestic violence, the repeal and reenactment of sections 455.050, 455.523,
3 565.076, 565.227, and 571.070 of this act is deemed necessary for the immediate preservation
4 of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act
5 within the meaning of the constitution, and the repeal and reenactment of sections 455.050,
6 455.523, 565.076, 565.227, and 571.070 of this act shall be in full force and effect upon their
7 passage and approval.

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