

SENATE BILL NO. 328

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR MCCREERY.

0271S.01H

KRISTINA MARTIN, Secretary

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Section A. Sections 455.050, 455.523, 565.076, 565.227, and 571.070, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 455.050, 455.523, 565.076, 565.227, and 571.070, to read as follows: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

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

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

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

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

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

29 2. Mutual orders of protection are prohibited unless
30 both parties have properly filed written petitions and
31 proper service has been made in accordance with sections
32 455.010 to 455.085.

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

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

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

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

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

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

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

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

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

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

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

71 (11) Order the respondent to pay court costs;

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

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

80 4. If the court issues, after a hearing for any full
81 order of protection, an order of protection, the court shall
82 also:

83 (1) Prohibit the respondent from knowingly possessing
84 or purchasing any firearm while the order is in effect;

85 (2) Inform the respondent of such prohibition in
86 writing and, if the respondent is present, orally; and

87 (3) Forward the order to the Missouri state highway
88 patrol so that the Missouri state highway patrol can update
89 the respondent's record in the National Instant Criminal
90 Background Check System (NICS). Upon receiving an order
91 under this subsection, the Missouri state highway patrol
92 shall notify the Federal Bureau of Investigation within
93 twenty-four hours.

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

101 [5.] 6. In making an award of custody, the court shall
102 consider all relevant factors including the presumption that
103 the best interests of the child will be served by placing
104 the child in the custody and care of the nonabusive parent,
105 unless there is evidence that both parents have engaged in
106 abusive behavior, in which case the court shall not consider
107 this presumption but may appoint a guardian ad litem or a
108 court-appointed special advocate to represent the children
109 in accordance with chapter 452 and shall consider all other
110 factors in accordance with chapter 452.

111 [6.] 7. The court shall grant to the noncustodial
112 parent rights to visitation with any minor child born to or
113 adopted by the parties, unless the court finds, after
114 hearing, that visitation would endanger the child's physical
115 health, impair the child's emotional development or would
116 otherwise conflict with the best interests of the child, or
117 that no visitation can be arranged which would sufficiently
118 protect the custodial parent from further domestic
119 violence. The court may appoint a guardian ad litem or
120 court-appointed special advocate to represent the minor
121 child in accordance with chapter 452 whenever the custodial
122 parent alleges that visitation with the noncustodial parent
123 will damage the minor child.

124 [7.] 8. The court shall make an order requiring the
125 noncustodial party to pay an amount reasonable and necessary
126 for the support of any child to whom the party owes a duty
127 of support when no prior order of support is outstanding and
128 after all relevant factors have been considered, in
129 accordance with Missouri supreme court rule 88.01 and
130 chapter 452.

131 [8.] 9. The court may grant a maintenance order to a
132 party for a period of time, not to exceed one hundred eighty
133 days. Any maintenance ordered by the court shall be in
134 accordance with chapter 452.

135 [9.] 10. (1) The court may, in order to ensure that a
136 petitioner can maintain an existing wireless telephone
137 number or numbers, issue an order, after notice and an
138 opportunity to be heard, directing a wireless service
139 provider to transfer the billing responsibility for and
140 rights to the wireless telephone number or numbers to the
141 petitioner, if the petitioner is not the wireless service
142 accountholder.

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

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

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

166 a. The accountholder has already terminated the
167 account;

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

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

172 (3) (a) Upon transfer of billing responsibility for
173 and rights to a wireless telephone number or numbers to the
174 petitioner under this subsection by a wireless service

175 provider, the petitioner shall assume all financial
176 responsibility for the transferred wireless telephone number
177 or numbers, monthly service costs, and costs for any mobile
178 device associated with the wireless telephone number or
179 numbers.

180 (b) This section shall not preclude a wireless service
181 provider from applying any routine and customary
182 requirements for account establishment to the petitioner as
183 part of this transfer of billing responsibility for a
184 wireless telephone number or numbers and any devices
185 attached to that number or numbers including, but not
186 limited to, identification, financial information, and
187 customer preferences.

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

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

196 (6) As used in this section and section 455.523, a
197 "wireless service provider" means a provider of commercial
198 mobile service under Section 332(d) of the Federal
199 **[Telecommunications] Communications** Act of **[1996] 1934** (47
200 U.S.C. Section **[151, et seq.] 332**).

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

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

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

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

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

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

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

24 (3) **Forward the order to the Missouri state highway**
25 **patrol so that the Missouri state highway patrol can update**
26 **the respondent's record in the National Instant Criminal**
27 **Background Check System (NICS). Upon receiving an order**
28 **under this subsection, the Missouri state highway patrol**
29 **shall notify the Federal Bureau of Investigation within**
30 **twenty-four hours.**

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

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

- 39 (2) Award visitation;
- 40 (3) Award child support in accordance with supreme
41 court rule 88.01 and chapter 452;
- 42 (4) Award maintenance to petitioner when petitioner
43 and respondent are lawfully married in accordance with
44 chapter 452;
- 45 (5) Order respondent to make or to continue to make
46 rent or mortgage payments on a residence occupied by the
47 victim if the respondent is found to have a duty to support
48 the victim or other dependent household members;
- 49 (6) Order the respondent to participate in a court-
50 approved counseling program designed to help stop violent
51 behavior or to treat substance abuse;
- 52 (7) Order the respondent to pay, to the extent that he
53 or she is able, the costs of his or her treatment, together
54 with the treatment costs incurred by the victim;
- 55 (8) Order the respondent to pay a reasonable fee for
56 housing and other services that have been provided or that
57 are being provided to the victim by a shelter for victims of
58 domestic violence;
- 59 (9) Order a wireless service provider, in accordance
60 with the process, provisions, and requirements set out in
61 subdivisions (1) to (6) of subsection **[9] 10** of section
62 455.050, to transfer the billing responsibility for and
63 rights to the wireless telephone number or numbers of any
64 minor children in the petitioner's care to the petitioner,
65 if the petitioner is not the wireless service accountholder;
- 66 (10) Award possession and care of any pet, along with
67 any moneys necessary to cover medical costs that may have
68 resulted from abuse of the pet.

565.076. 1. A person commits the offense of domestic
2 assault in the fourth degree if the act involves a domestic

3 victim, as the term "domestic victim" is defined under
4 section 565.002, and:

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

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

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

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

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

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

24 2. The offense of domestic assault in the fourth
25 degree is a class A misdemeanor, unless the person has
26 previously been found guilty of the offense of domestic
27 assault, of any assault offense under this chapter, or of
28 any offense against a domestic victim committed in violation
29 of any county or municipal ordinance in any state, any state
30 law, any federal law, or any military law which if committed
31 in this state two or more times would be a violation of this
32 section, in which case it is a class E felony. The offenses
33 described in this subsection may be against the same
34 domestic victim or against different domestic victims.

35 3. Upon a conviction for the offense of domestic
36 assault in the fourth degree, the court shall forward the
37 record of conviction to the Missouri state highway patrol so
38 that the Missouri state highway patrol can update the
39 respondent's record in the National Instant Criminal
40 Background Check System (NICS). Upon receiving a record
41 under this subsection, the Missouri state highway patrol
42 shall notify the Federal Bureau of Investigation within
43 twenty-four hours.

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

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

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

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

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

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

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

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

11 (3) Such person has been convicted of a misdemeanor
12 offense of domestic violence under the laws of this state,
13 or of a crime under the laws of any state or of the United
14 States that, if committed in this state, would be a
15 misdemeanor offense of domestic violence; or

16 (4) Such person is subject to an order of protection
17 granted under sections 455.010 to 455.095 or sections
18 455.500 to 455.538 that was issued after a hearing of which
19 the person had actual notice and at which the person had an
20 opportunity to participate or subject to an equivalent order
21 issued under the laws of another state or the United States.

22 2. Unlawful possession of a firearm is a class C
23 felony, unless a person has been convicted of a dangerous
24 felony as defined in section 556.061, or the person has a

25 prior conviction for unlawful possession of a firearm in
26 which case it is a class B felony.

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

30 4. As used in this section, "misdemeanor offense of
31 domestic violence" means:

32 (1) Domestic assault in the fourth degree under
33 section 565.076;

34 (2) Stalking in the second degree under section
35 565.227; or

36 (3) Any misdemeanor offense committed by a family or
37 household member of the victim as defined in section 455.010
38 that involves the use or attempted use of a physical force
39 or the threatened use of a deadly weapon.

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

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