

SECOND REGULAR SESSION

SENATE BILL NO. 563

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHUPP.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3832S.011

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Section A. Sections 455.050, 455.523, 565.076, 565.227, and 571.070, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 455.050, 455.523, 565.076, 565.227, and 571.070, to read as follows: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

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

18 provided that the respondent has no property interest in the dwelling unit; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (12) Order the respondent to pay the cost of medical treatment and

54 services that have been provided or that are being provided to the petitioner as
55 a result of injuries sustained to the petitioner by an act of domestic violence
56 committed by the respondent.

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

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

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

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

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

73 **[5.] 6.** In making an award of custody, the court shall consider all
74 relevant factors including the presumption that the best interests of the child will
75 be served by placing the child in the custody and care of the nonabusive parent,
76 unless there is evidence that both parents have engaged in abusive behavior, in
77 which case the court shall not consider this presumption but may appoint a
78 guardian ad litem or a court-appointed special advocate to represent the children
79 in accordance with chapter 452 and shall consider all other factors in accordance
80 with chapter 452.

81 **[6.] 7.** The court shall grant to the noncustodial parent rights to
82 visitation with any minor child born to or adopted by the parties, unless the court
83 finds, after hearing, that visitation would endanger the child's physical health,
84 impair the child's emotional development or would otherwise conflict with the
85 best interests of the child, or that no visitation can be arranged which would
86 sufficiently protect the custodial parent from further domestic violence. The court
87 may appoint a guardian ad litem or court-appointed special advocate to represent
88 the minor child in accordance with chapter 452 whenever the custodial parent
89 alleges that visitation with the noncustodial parent will damage the minor child.

90 [7.] 8. The court shall make an order requiring the noncustodial party
91 to pay an amount reasonable and necessary for the support of any child to whom
92 the party owes a duty of support when no prior order of support is outstanding
93 and after all relevant factors have been considered, in accordance with Missouri
94 supreme court rule 88.01 and chapter 452.

95 [8.] 9. The court may grant a maintenance order to a party for a period
96 of time, not to exceed one hundred eighty days. Any maintenance ordered by the
97 court shall be in accordance with chapter 452.

98 [9.] 10. (1) The court may, in order to ensure that a petitioner can
99 maintain an existing wireless telephone number or numbers, issue an order, after
100 notice and an opportunity to be heard, directing a wireless service provider to
101 transfer the billing responsibility for and rights to the wireless telephone number
102 or numbers to the petitioner, if the petitioner is not the wireless service
103 accountholder.

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

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

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

121 a. The accountholder has already terminated the account;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (2) Award visitation;

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

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

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

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

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

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

46 (9) Order a wireless service provider, in accordance with the process,
47 provisions, and requirements set out in subdivisions (1) to (6) of subsection [9]
48 **10** of section 455.050, to transfer the billing responsibility for and rights to the
49 wireless telephone number or numbers of any minor children in the petitioner's
50 care to the petitioner, if the petitioner is not the wireless service accountholder.

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

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

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

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

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

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

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

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

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

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

2. This section shall not apply to activities of federal, state, county, or

5 municipal law enforcement officers conducting investigations of any violation of
6 federal, state, county, or municipal law.

7 3. Any law enforcement officer may arrest, without a warrant, any person
8 he or she has 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,
10 unless the defendant has previously been found guilty of a violation of this
11 section or section 565.225, or of any offense committed in another jurisdiction
12 which, if committed in this state, would be chargeable or indictable as a violation
13 of any offense listed in this section or section 565.225, or unless the victim is
14 intentionally targeted as a law enforcement officer, as defined in section 556.061,
15 or the victim is targeted because he or she is a relative within the second degree
16 of consanguinity or affinity to a law enforcement officer, in which case stalking
17 in the second degree is a class E felony.

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

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

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

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

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

17 **States.**

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

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

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

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

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

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

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

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

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

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