

HOUSE BILL NO. 2134

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LAVENDER.

4887H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 571.070, RSMo, and to enact in lieu thereof two 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Section A. Section 571.070, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 571.070 and 571.074, to read as follows:

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

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

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

(3) Such person is subject to an extreme risk order of protection as such term is defined in section 571.074.

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

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

571.074. 1. This section creates an extreme risk order of protection to provide due process procedures for keeping guns out of the hands of those who may harm themselves or others. The court may grant an extreme risk order of protection provided that:

(1) A petition for an extreme risk order of protection shall:

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.

5 **(a) Allege that the respondent poses a significant danger of causing personal injury**
6 **to self or others by having in his or her custody or control, purchasing, possessing, or**
7 **receiving a firearm, and be accompanied by an affidavit made under oath stating the**
8 **specific statements, actions, or facts that give rise to a reasonable fear of future dangerous**
9 **acts by the respondent;**

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

12 **(c) Identify whether there is a pending lawsuit, complaint,**
13 **petition, or other action between the parties to the petition under the laws of Missouri;**

14 **(d) Identify if petitioner has actual knowledge that respondent carries a firearm as**
15 **a condition of respondent's employment;**

16 **(2) Upon the filing of a petition seeking an extreme risk order of protection and if**
17 **petitioner proves by a preponderance of the evidence that an immediate and significant**
18 **danger exists of the respondent causing personal injury to self or others by having in his**
19 **or her custody or control, purchasing, possessing, or receiving a firearm, the court shall**
20 **immediately issue an ex parte order of protection. An ex parte order shall be entered by**
21 **the court on the same day as the filing or the next day the court is in session. The ex parte**
22 **order take effect when entered and shall remain in effect until there is valid service of**
23 **process and a hearing is held on the petition;**

24 **(3) Upon issuance of any ex parte order of protection under subdivision (2) of this**
25 **subsection, the court shall order the respondent to surrender to the local law enforcement**
26 **agency where the respondent resides, all firearms in the respondent's custody, control, or**
27 **possession. The law enforcement officer serving any ex parte order of protection shall**
28 **provide the respondent to the order an opportunity to comply with the order by**
29 **surrendering all firearms in his or her custody, control, or possession. If the respondent**
30 **does not comply, the law enforcement officer serving the order shall conduct a lawful**
31 **search and seizure of any firearms of the respondent and any area where probable cause**
32 **exists that a firearm to be surrendered pursuant to the order is located. The law**
33 **enforcement agency shall hold all surrendered firearms until a hearing is held on the**
34 **petition for the extreme risk order of protection.**

35 **(4) Upon receiving a petition seeking an extreme risk order of protection, the court**
36 **shall conduct a hearing on whether or not to issue the order within fourteen days after the**
37 **petition is filed.**

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39 **The court shall make as many as three good faith attempts to notify the respondent of the**
40 **hearing once the petition is filed for the purpose of providing the respondent the**

41 opportunity to be present and represent him or herself at the hearing. Notice may be made
42 by phone, email and certified mail or court summons. The court shall maintain a record
43 of each attempt;

44 (4) At the hearing, if the petitioner has proved the allegation that the respondent
45 poses a significant danger to him or herself or others by clear and convincing evidence, the
46 court shall issue a full extreme risk order of protection for a period of time of one year;

47 (5) The court clerk or administrator shall verify the terms of any existing order
48 governing the parties. The court shall not delay granting relief because of the existence of
49 a pending action between the parties or the necessity of verifying the terms of an existing
50 order. A petition for an extreme risk protection order shall be granted whether or not
51 there is a pending action between the parties;

52 (6) If the petitioner is a law enforcement officer or agency, the petitioner shall make
53 a good faith effort to provide notice to a family or household member of the respondent
54 and to any known third party who may be at risk of violence. The notice shall state that
55 the petitioner intends to petition the court for an extreme risk order of protection or has
56 already done so, and include referrals to appropriate resources, including mental health,
57 domestic violence, and counseling resources. The petitioner shall attest in the petition to
58 having provided such notice, or attest to the steps that shall be taken to provide such
59 notice;

60 (7) If the petition states that disclosure of the petitioner's address would risk harm
61 to the petitioner or any member of the petitioner's family or household, the petitioner's
62 address shall be omitted from all documents filed with the court. If the petitioner has not
63 disclosed an address under this subsection, the petitioner shall designate an alternative
64 address at which the respondent may serve notice of any motions. If the petitioner is a law
65 enforcement officer or agency, the address of record shall be that of the law enforcement
66 agency;

67 (8) No fees for filing or service of process may be charged by a court or any public
68 agency to petitioners seeking relief under this subsection. Petitioners shall be provided the
69 necessary number of certified copies, forms, and instructional brochures free of charge;

70 (9) A person is not required to post a bond to obtain relief in any proceeding under
71 this subsection.

72 2. Upon issuance of any extreme risk order of protection under this section, the
73 court shall order the respondent to surrender to the local law enforcement agency where
74 the respondent resides, all firearms in the respondent's custody, control, or possession. If
75 the respondent has been identified in the petition as being required to carry a firearm as
76 a condition of the respondent's employment, the court shall notify the respondent's

77 employer of the existence of the order. If the respondent holds a concealed carry permit
78 pursuant to section 571.101, the court shall order a revocation of the concealed carry
79 permit.

80 (1) The law enforcement officer serving any extreme risk order of protection shall
81 provide the respondent to the order an opportunity to comply with the order by
82 surrendering all firearms in his or her custody, control, or possession. If the respondent
83 does not comply, the law enforcement officer serving the order shall:

84 (a) Conduct a lawful search of the respondent and any area where probable cause
85 exists that a firearm to be surrendered pursuant to the order is located; and

86 (b) Take possession of all firearms belonging to the respondent that are
87 surrendered, in plain sight, or discovered pursuant to a lawful search conducted pursuant
88 to paragraph (a) of this subdivision.

89 (2) If personal service by a law enforcement officer is not possible, or not required
90 because the respondent was present at the extreme risk order of protection hearing, the
91 respondent shall surrender the firearms in a safe manner to the control of the local law
92 enforcement agency within forty-eight hours of being served with the order by alternate
93 service or within forty-eight hours of the hearing or final decision at which the respondent
94 was present.

95 (3) At the time of surrender, a law enforcement officer taking possession of a
96 firearm shall issue a receipt identifying all firearms that have been surrendered and
97 provide a copy of the receipt to the respondent. Within seventy-two hours after service of
98 the order, the officer serving the order shall file the original receipt with the court and
99 shall ensure that his or her law enforcement agency retains a copy of the receipt.

100 (4) Upon the sworn statement or testimony of the petitioner or of any law
101 enforcement officer alleging that the respondent has failed to comply with the surrender
102 of firearms as required by an order issued under subsections 1 and 2 of this section, the
103 court shall determine whether probable cause exists to believe that the respondent has
104 failed to surrender all firearms in his or her possession, custody, or control. If probable
105 cause exists, the court shall issue a warrant describing the firearms and authorizing a
106 search of the locations where the firearms are reasonably believed to be and the seizure of
107 any firearms discovered pursuant to such search.

108 (5) If a person other than the respondent claims title to any firearms surrendered
109 pursuant to subsections 1 and 2 of this section, and he or she is determined by the law
110 enforcement agency to be the lawful owner of the firearm, the firearm shall be returned
111 to him or her, provided that:

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

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

116 (6) A respondent to an extreme risk order of protection may file a motion to modify
117 or rescind that order of protection. The respondent may request a hearing on such a
118 motion with the court that issued the original extreme risk order of protection. The court
119 shall conduct a hearing on the motion to modify or rescind an extreme risk order of
120 protection within fourteen days after the motion is filed. At the hearing, if the respondent
121 has proved by clear and convincing evidence that the extreme risk order of protection must
122 be modified or rescinded, the court shall modify or rescind the extreme risk order of
123 protection.

124 3. If an extreme risk order of protection is terminated or expires without renewal,
125 a law enforcement agency holding any firearm that has been surrendered pursuant to
126 subsections 1 and 2 of this section shall return any surrendered firearm requested by a
127 respondent only after confirming, through a background check administered by the state
128 highway patrol under section 43.543, that the respondent is currently eligible to own or
129 possess firearms under federal and state law and after confirming with the court that the
130 extreme risk order of protection has terminated or has expired without renewal.

131 4. (1) The petitioner may move to renew the extreme risk order of protection if
132 probable cause is shown that the respondent continues to pose a significant risk of personal
133 injury to him or herself or others by possessing a firearm. The extreme risk order of
134 protection may be renewed for up to one year from the expiration of the preceding extreme
135 risk order of protection. Written notice of a hearing on the motion to renew an extreme
136 risk order of protection shall be given to the respondent by the court.

137 (2) A law enforcement agency shall, if requested, provide prior notice of the return
138 of a firearm to a respondent to family or household members of the respondent.

139 (3) Any firearm surrendered by a respondent pursuant to subsection 2 of this
140 section that remains unclaimed by the lawful owner shall be disposed of in accordance with
141 the law enforcement agency's policies and procedures for the disposal of firearms in police
142 custody.

143 5. The clerk of any court that issues an extreme risk order of protection shall send
144 the Missouri state highway patrol a copy of the order issued by that court within forty-
145 eight hours of the court issuing the order. Upon receiving an extreme risk order of
146 protection, the Missouri state highway patrol shall enter the extreme risk order of

147 protection into the Missouri uniform law enforcement system (MULES) within forty-eight
148 hours of receiving notice of the order.

149 6. (1) A person who refuses or fails to comply with an extreme risk order of
150 protection shall be subject to the criminal contempt powers of the court. The criminal
151 penalty provided for under this subsection may be imposed in addition to a penalty
152 imposed for another criminal offense arising from the same conduct.

153 (2) A person who knowingly and intentionally makes a false statement to the court
154 in the petition or in support of the petition is subject to the contempt powers of the court.

155 7. For the purposes of this section, the following terms mean:

156 (1) "Child", any person under seventeen years of age unless otherwise
157 emancipated;

158 (2) "Extreme risk order of protection", either an ex parte order of protection or full
159 order of protection filed by a family or household member of the respondent or a law
160 enforcement officer or agency;

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

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

169 (5) "Full order of protection", an order of protection issued after a hearing on the
170 record where the respondent has received notice of the proceedings and has had an
171 opportunity to be heard;

172 (6) "Order of protection", either an ex parte order of protection of a full order of
173 protection;

174 (7) "Petitioner", a family or household member, a law enforcement officer, or a
175 person filing on behalf of a child who has filed a verified petition pursuant to this section;

176 (8) "Respondent", the family or household member against whom a verified
177 petition has been filed or a person served on behalf of a child pursuant to this section.

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