

SENATE BILL NO. 1127

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR THOMPSON REHDER.

5440S.01I

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal sections 455.040, 455.075, and 455.085, RSMo, and to enact in lieu thereof six new sections relating to domestic violence, with penalty provisions.

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

Section A. Sections 455.040, 455.075, and 455.085, RSMo,
2 are repealed and six new sections enacted in lieu thereof, to
3 be known as sections 455.040, 455.075, 455.085, 546.262,
4 546.263, and 595.320, to read as follows:

455.040. 1. (1) Not later than fifteen days after
2 the filing of a petition that meets the requirements of
3 section 455.020, a hearing shall be held unless the court
4 deems, for good cause shown, that a continuance should be
5 granted. At the hearing, if the petitioner has proved the
6 allegation of domestic violence, stalking, or sexual assault
7 by a preponderance of the evidence, and the respondent
8 cannot show that his or her actions alleged to constitute
9 abuse were otherwise justified under the law, the court
10 shall issue a full order of protection for a period of time
11 the court deems appropriate, and unless after an evidentiary
12 hearing the court makes specific written findings that the
13 respondent poses a serious danger to the physical or mental
14 health of the petitioner or of a minor household member of
15 the petitioner, the protective order shall be valid for at
16 least one hundred eighty days and not more than one year.
17 If, after an evidentiary hearing, the court makes specific

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

18 written findings that the respondent poses a serious danger
19 to the physical or mental health of the petitioner or of a
20 minor household member of the petitioner, the protective
21 order shall be valid for at least two years and not more
22 than ten years.

23 (2) Upon motion by the petitioner, and after a hearing
24 by the court, the full order of protection may be renewed
25 annually and for a period of time the court deems
26 appropriate, and unless the court at an evidentiary hearing
27 made specific written findings that the respondent poses a
28 serious danger to the physical or mental health of the
29 petitioner or of a minor household member of the petitioner,
30 the renewed protective order may be renewed periodically and
31 shall be valid for at least one hundred eighty days and not
32 more than one year from the expiration date of the
33 previously issued full order of protection. If the court
34 has made specific written findings that the respondent poses
35 a serious danger to the physical or mental health of the
36 petitioner or of a minor household member of the petitioner,
37 the renewed protective order may be renewed periodically and
38 shall be valid for at least two years and up to the life of
39 the respondent.

40 (3) The court may, upon finding that it is in the best
41 interest of the parties, include a provision that any full
42 order of protection shall be automatically renewed for any
43 term of renewal of a full order of protection as set forth
44 in this section unless the respondent requests a hearing by
45 thirty days prior to the expiration of the order. If for
46 good cause a hearing cannot be held on the motion to renew
47 or the objection to an automatic renewal of the full order
48 of protection prior to the expiration date of the originally
49 issued full order of protection, an ex parte order of

50 protection may be issued until a hearing is held on the
51 motion. When an automatic renewal is not authorized, upon
52 motion by the petitioner, and after a hearing by the court,
53 the second full order of protection may be renewed for an
54 additional period of time the court deems appropriate,
55 except that the protective order shall be valid for any term
56 of renewal of a full order as set forth in this section.
57 For purposes of this subsection, a finding by the court of a
58 subsequent act of domestic violence, stalking, or sexual
59 assault is not required for a renewal order of protection.

60 (4) In determining under this section whether a
61 respondent poses a serious danger to the physical or mental
62 health of a petitioner or of a minor household member of the
63 petitioner, the court shall consider all relevant evidence
64 including, but not limited to:

65 (a) The weight of the evidence;

66 (b) The respondent's history of inflicting or causing
67 physical harm, bodily injury, or assault;

68 (c) The respondent's history of stalking or causing
69 fear of physical harm, bodily injury, or assault on the
70 petitioner or a minor household member of the petitioner;

71 (d) The respondent's criminal record;

72 (e) Whether any prior full orders of adult or child
73 protection have been issued against the respondent;

74 (f) Whether the respondent has been found guilty of
75 any dangerous felony under Missouri law; and

76 (g) Whether the respondent violated any term or terms
77 of probation or parole or violated any term of a prior full
78 or temporary order of protection and which violated terms
79 were intended to protect the petitioner or a minor household
80 member of the petitioner.

81 (5) If a court finds that a respondent poses a serious
82 risk to the physical or mental health of the petitioner or
83 of a minor household member of the petitioner, the court
84 shall not modify such order until a period of at least two
85 years from the date the original full order was issued and
86 only after the court makes specific written findings after a
87 hearing held that the respondent has shown proof of
88 treatment and rehabilitation and that the respondent no
89 longer poses a serious danger to the petitioner or to a
90 minor household member of the petitioner.

91 2. The court shall cause a copy of the petition and
92 notice of the date set for the hearing on such petition and
93 any ex parte order of protection to be served upon the
94 respondent as provided by law or by any sheriff or police
95 officer at least three days prior to such hearing. **Service**
96 **of the petition and notice of the date set for the hearing**
97 **on such petition and any ex parte order of protection shall**
98 **constitute legal notice of any orders issued by the court on**
99 **the date of the hearing and any subsequent orders issued by**
100 **the court in the matter.** The court shall cause a copy of
101 any full order of protection to be served upon or mailed by
102 certified mail to the respondent at the respondent's last
103 known address. Notice of an ex parte or full order of
104 protection shall be served at the earliest time, and service
105 of such notice shall take priority over service in other
106 actions, except those of a similar emergency nature.
107 Failure to serve or mail a copy of the full order of
108 protection to the respondent shall not affect the validity
109 or enforceability of a full order of protection.

110 3. A copy of any order of protection granted pursuant
111 to sections 455.010 to 455.085 shall be issued to the
112 petitioner and to the local law enforcement agency in the

113 jurisdiction where the petitioner resides. The court shall
114 provide all necessary information, including the
115 respondent's relationship to the petitioner, for entry of
116 the order of protection into the Missouri Uniform Law
117 Enforcement System (MULES) and the National Crime
118 Information Center (NCIC). Upon receiving the order under
119 this subsection, the sheriff shall make the entry into MULES
120 within twenty-four hours. MULES shall forward the order
121 information to NCIC, which will in turn make the order
122 viewable within the National Instant Criminal Background
123 Check System (NICS). The sheriff shall enter information
124 contained in the order, including, but not limited to, any
125 orders regarding child custody or visitation and all
126 specifics as to times and dates of custody or visitation
127 that are provided in the order. A notice of expiration or
128 of termination of any order of protection or any change in
129 child custody or visitation within that order shall be
130 issued to the local law enforcement agency for entry into
131 MULES or any other comparable law enforcement system. The
132 information contained in an order of protection may be
133 entered into MULES or any other comparable law enforcement
134 system using a direct automated data transfer from the court
135 automated system to the law enforcement system.

136 4. The court shall cause a copy of any objection filed
137 by the respondent and notice of the date set for the hearing
138 on such objection to an automatic renewal of a full order of
139 protection for a period of one year to be personally served
140 upon the petitioner by personal process server as provided
141 by law or by a sheriff or police officer at least three days
142 prior to such hearing. Such service of process shall be
143 served at the earliest time and shall take priority over

144 service in other actions except those of a similar emergency
145 nature.

455.075. The court may order a party to pay a
2 reasonable amount to the other party for attorney's fees
3 incurred prior to the commencement of the proceeding [or],
4 **throughout the proceeding, and** after entry of judgment. The
5 court shall consider all relevant factors, including the
6 financial resources of both parties, and may order that the
7 amount be paid directly to the attorney, who may enforce the
8 order in his name.

455.085. 1. When a law enforcement officer has
2 probable cause to believe a party has committed a violation
3 of law amounting to domestic violence, as defined in section
4 455.010, against a family or household member, the officer
5 may arrest the offending party whether or not the violation
6 occurred in the presence of the arresting officer. When the
7 officer declines to make arrest pursuant to this subsection,
8 the officer shall make a written report of the incident
9 completely describing the offending party, giving the
10 victim's name, time, address, reason why no arrest was made
11 and any other pertinent information. Any law enforcement
12 officer subsequently called to the same address within a
13 twelve-hour period, who shall find probable cause to believe
14 the same offender has again committed a violation as stated
15 in this subsection against the same or any other family or
16 household member, shall arrest the offending party for this
17 subsequent offense. The primary report of nonarrest in the
18 preceding twelve-hour period may be considered as evidence
19 of the defendant's intent in the violation for which arrest
20 occurred. The refusal of the victim to sign an official
21 complaint against the violator shall not prevent an arrest
22 under this subsection.

23 2. When a law enforcement officer has probable cause
24 to believe that a party, against whom a protective order has
25 been entered and who has notice of such order entered, has
26 committed an act of abuse in violation of such order, the
27 officer shall arrest the offending party-respondent whether
28 or not the violation occurred in the presence of the
29 arresting officer. Refusal of the victim to sign an
30 official complaint against the violator shall not prevent an
31 arrest under this subsection.

32 3. When an officer makes an arrest, the officer is not
33 required to arrest two parties involved in an assault when
34 both parties claim to have been assaulted. The arresting
35 officer shall attempt to identify and shall arrest the party
36 the officer believes is the primary physical aggressor. The
37 term "primary physical aggressor" is defined as the most
38 significant, rather than the first, aggressor. The law
39 enforcement officer shall consider any or all of the
40 following in determining the primary physical aggressor:

41 (1) The intent of the law to protect victims from
42 continuing domestic violence;

43 (2) The comparative extent of injuries inflicted or
44 serious threats creating fear of physical injury;

45 (3) The history of domestic violence between the
46 persons involved.

47 No law enforcement officer investigating an incident of
48 domestic violence shall threaten the arrest of all parties
49 for the purpose of discouraging requests or law enforcement
50 intervention by any party. Where complaints are received
51 from two or more opposing parties, the officer shall
52 evaluate each complaint separately to determine whether the
53 officer should seek a warrant for an arrest.

54 4. In an arrest in which a law enforcement officer
55 acted in good faith reliance on this section, the arresting
56 and assisting law enforcement officers and their employing
57 entities and superiors shall be immune from liability in any
58 civil action alleging false arrest, false imprisonment or
59 malicious prosecution.

60 5. When a person against whom an order of protection
61 has been entered fails to surrender custody of minor
62 children to the person to whom custody was awarded in an
63 order of protection, the law enforcement officer shall
64 arrest the respondent, and shall turn the minor children
65 over to the care and custody of the party to whom such care
66 and custody was awarded.

67 6. The same procedures, including those designed to
68 protect constitutional rights, shall be applied to the
69 respondent as those applied to any individual detained in
70 police custody.

71 7. A violation of the terms and conditions, with
72 regard to domestic violence, stalking, sexual assault, child
73 custody, communication initiated by the respondent or
74 entrance upon the premises of the petitioner's dwelling unit
75 or place of employment or school, or being within a certain
76 distance of the petitioner or a child of the petitioner, of
77 an ex parte order of protection of which the respondent has
78 notice, shall be a class A misdemeanor unless the respondent
79 has previously pleaded guilty to or has been found guilty in
80 any division of the circuit court of violating an ex parte
81 order of protection or a full order of protection within
82 five years of the date of the subsequent violation, in which
83 case the subsequent violation shall be a class E felony.
84 Evidence of prior pleas of guilty or findings of guilt shall
85 be heard by the court out of the presence of the jury prior

86 to submission of the case to the jury. If the court finds
87 the existence of such prior pleas of guilty or finding of
88 guilt beyond a reasonable doubt, the court shall decide the
89 extent or duration of sentence or other disposition and
90 shall not instruct the jury as to the range of punishment or
91 allow the jury to assess and declare the punishment as a
92 part of its verdict.

93 8. A violation of the terms and conditions, with
94 regard to domestic violence, stalking, sexual assault, child
95 custody, communication initiated by the respondent or
96 entrance upon the premises of the petitioner's dwelling unit
97 or place of employment or school, or being within a certain
98 distance of the petitioner or a child of the petitioner, of
99 a full order of protection shall be a class A misdemeanor,
100 unless the respondent has previously pleaded guilty to or
101 has been found guilty in any division of the circuit court
102 of violating an ex parte order of protection or a full order
103 of protection within five years of the date of the
104 subsequent violation, in which case the subsequent violation
105 shall be a class E felony. Evidence of prior pleas of
106 guilty or findings of guilt shall be heard by the court out
107 of the presence of the jury prior to submission of the case
108 to the jury. If the court finds the existence of such prior
109 plea of guilty or finding of guilt beyond a reasonable
110 doubt, the court shall decide the extent or duration of the
111 sentence or other disposition and shall not instruct the
112 jury as to the range of punishment or allow the jury to
113 assess and declare the punishment as a part of its verdict.
114 For the purposes of this subsection, in addition to the
115 notice provided by actual service of the order, a party is
116 deemed to have notice of an order of protection if the law
117 enforcement officer responding to a call of a reported

118 incident of domestic violence, stalking, sexual assault, or
119 violation of an order of protection presented a copy of the
120 order of protection to the respondent.

121 9. In cases in which the respondent has been properly
122 served with an ex parte order of protection but fails to
123 appear in court on the date and time set forth in the ex
124 parte order for the full order of protection hearing, the
125 respondent shall be considered to have knowledge of any
126 conditions set forth in the subsequent full order of
127 protection issued by the judge at that hearing. The
128 respondent shall be subject to civil or criminal enforcement
129 of the conditions contained in the default full order of
130 protection judgment.

131 10. Good faith attempts to effect a reconciliation of
132 a marriage shall not be deemed tampering with a witness or
133 victim tampering under section 575.270.

134 [10.] 11. Nothing in this section shall be interpreted
135 as creating a private cause of action for damages to enforce
136 the provisions set forth herein.

546.262. A court shall not compel a victim or member
2 of the victim's family testifying in a criminal proceeding
3 for a violation of sections 565.072 to 565.076 to disclose a
4 residential address or place of employment on the record in
5 open court unless the court finds that disclosure of the
6 address or place of employment is necessary.

546.263. 1. A person may testify by video conference
2 at a criminal trial involving an offense under sections
3 565.072 to 565.076 if the person testifying is the victim of
4 the offense. The circuit and associate circuit court judges
5 for each circuit shall develop local rules and instructions
6 for appearances by video conference permitted under this

7 subsection, which shall be posted on the circuit court's
8 internet website.

9 2. The circuit and associate circuit court judges for
10 each circuit shall provide, and post on the circuit court's
11 internet website, a telephone number for the public to call
12 for assistance regarding appearances by video conference.

595.320. If a judge orders a person who has been
2 convicted of an offense under sections 565.072 to 565.076 to
3 attend any domestic violence-related class, the person shall
4 be financially responsible for any costs associated with
5 attending such class.

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