

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 321
98TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 2, 2015, with recommendation that the Senate Committee Substitute do pass.

1290S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 455.010, 455.020, 455.032, 455.040, 455.045, 455.050, 455.080, 455.503, 455.505, 455.513, 455.520, and 455.523, RSMo, section 455.085 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, section 455.085 as enacted by house bill no. 215, ninety-seventh general assembly, first regular session, section 455.538 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session, and section 455.538 as enacted by house bill no. 215, ninety-seventh general assembly, first regular session, and to enact in lieu thereof fourteen new sections relating to court orders of protection that prohibit contact with victims of sexual offenses, with penalty provisions.

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

Section A. Sections 455.010, 455.020, 455.032, 455.040, 455.045, 455.050, 2 455.080, 455.503, 455.505, 455.513, 455.520, and 455.523, RSMo, section 455.085 3 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular 4 session, section 455.085 as enacted by house bill no. 215, ninety-seventh general 5 assembly, first regular session, section 455.538 as enacted by senate bill no. 491, 6 ninety-seventh general assembly, second regular session, and section 455.538 as 7 enacted by house bill no. 215, ninety-seventh general assembly, first regular 8 session, are repealed and fourteen new sections enacted in lieu thereof, to be 9 known as sections 455.010, 455.020, 455.032, 455.040, 455.045, 455.050, 455.080, 10 455.085, 455.503, 455.505, 455.513, 455.520, 455.523, and 455.538, to read as 11 follows:

455.010. As used in this chapter, unless the context clearly indicates

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

2 otherwise, the following terms shall mean:

3 (1) "Abuse" includes but is not limited to the occurrence of any of the
4 following acts, attempts or threats against a person who may be protected
5 pursuant to this chapter, except abuse shall not include abuse inflicted on a child
6 by accidental means by an adult household member or discipline of a child,
7 including spanking, in a reasonable manner:

8 (a) "Assault", purposely or knowingly placing or attempting to place
9 another in fear of physical harm;

10 (b) "Battery", purposely or knowingly causing physical harm to another
11 with or without a deadly weapon;

12 (c) "Coercion", compelling another by force or threat of force to engage in
13 conduct from which the latter has a right to abstain or to abstain from conduct
14 in which the person has a right to engage;

15 (d) "Harassment", engaging in a purposeful or knowing course of conduct
16 involving more than one incident that alarms or causes distress to an adult or
17 child and serves no legitimate purpose. The course of conduct must be such as
18 would cause a reasonable adult or child to suffer substantial emotional distress
19 and must actually cause substantial emotional distress to the petitioner or
20 child. Such conduct might include, but is not limited to:

21 a. Following another about in a public place or places;

22 b. Peering in the window or lingering outside the residence of another; but
23 does not include constitutionally protected activity;

24 (e) "Sexual assault", causing or attempting to cause another to engage
25 involuntarily in any sexual act by force, threat of force, [or] duress, **or without**
26 **that person's consent**;

27 (f) "Unlawful imprisonment", holding, confining, detaining or abducting
28 another person against that person's will;

29 (2) "Adult", any person seventeen years of age or older or otherwise
30 emancipated;

31 (3) "Child", any person under seventeen years of age unless otherwise
32 emancipated;

33 (4) "Court", the circuit or associate circuit judge or a family court
34 commissioner;

35 (5) "Domestic violence", abuse or stalking committed by a family or
36 household member, as such terms are defined in this section;

37 (6) "Ex parte order of protection", an order of protection issued by the

38 court before the respondent has received notice of the petition or an opportunity
39 to be heard on it;

40 (7) "Family" or "household member", spouses, former spouses, any person
41 related by blood or marriage, persons who are presently residing together or have
42 resided together in the past, any person who is or has been in a continuing social
43 relationship of a romantic or intimate nature with the victim, and anyone who
44 has a child in common regardless of whether they have been married or have
45 resided together at any time;

46 (8) "Full order of protection", an order of protection issued after a hearing
47 on the record where the respondent has received notice of the proceedings and
48 has had an opportunity to be heard;

49 (9) "Order of protection", either an ex parte order of protection or a full
50 order of protection;

51 (10) "Pending", exists or for which a hearing date has been set;

52 (11) "Petitioner", a family or household member who has been a victim of
53 domestic violence, or any person who has been the victim of stalking **or sexual**
54 **assault**, or a person filing on behalf of a child pursuant to section 455.503 who
55 has filed a verified petition pursuant to the provisions of section 455.020 or
56 section 455.505;

57 (12) "Respondent", the family or household member alleged to have
58 committed an act of domestic violence, or person alleged to have committed an act
59 of stalking **or sexual assault**, against whom a verified petition has been filed
60 or a person served on behalf of a child pursuant to section 455.503;

61 (13) **"Sexual assault", as defined under subdivision (1) of this**
62 **section;**

63 (14) "Stalking" is when any person purposely and repeatedly engages in
64 an unwanted course of conduct that causes alarm to another person when it is
65 reasonable in that person's situation to have been alarmed by the conduct. As
66 used in this subdivision:

67 (a) "Alarm" means to cause fear of danger of physical harm;

68 (b) "Course of conduct" means a pattern of conduct composed of repeated
69 acts over a period of time, however short, that serves no legitimate purpose. Such
70 conduct may include, but is not limited to, following the other person or unwanted
71 communication or unwanted contact; and

72 (c) "Repeated" means two or more incidents evidencing a continuity of
73 purpose.

455.020. 1. Any person who has been subject to domestic violence by a
2 present or former family or household member, or who has been the victim of
3 stalking **or sexual assault**, may seek relief under sections 455.010 to 455.085
4 by filing a verified petition alleging such domestic violence [or], stalking, **or**
5 **sexual assault** by the respondent.

6 2. A person's right to relief under sections 455.010 to 455.085 shall not be
7 affected by the person leaving the residence or household to avoid domestic
8 violence.

9 3. Any protection order issued pursuant to sections 455.010 to 455.085
10 shall be effective throughout the state in all cities and counties.

455.032. In addition to any other jurisdictional grounds provided by law,
2 a court shall have jurisdiction to enter an order of protection restraining or
3 enjoining the respondent from committing or threatening to commit domestic
4 violence, stalking, **sexual assault**, molesting or disturbing the peace of
5 petitioner, pursuant to sections 455.010 to 455.085, if the petitioner is present,
6 whether permanently or on a temporary basis within the state of Missouri and
7 if the respondent's actions constituting domestic violence have occurred, have
8 been attempted or have been or are threatened within the state of Missouri. For
9 purposes of this section, if the petitioner has been the subject of domestic violence
10 within or outside of the state of Missouri, such evidence shall be admissible to
11 demonstrate the need for protection in Missouri.

455.040. 1. Not later than fifteen days after the filing of a petition that
2 meets the requirements of section 455.020, a hearing shall be held unless the
3 court deems, for good cause shown, that a continuance should be granted. At the
4 hearing, if the petitioner has proved the allegation of domestic violence [or],
5 stalking, **or sexual assault** by a preponderance of the evidence, and the
6 respondent cannot show that his or her actions alleged to constitute abuse were
7 otherwise justified under the law, the court shall issue a full order of protection
8 for a period of time the court deems appropriate, except that the protective order
9 shall be valid for at least one hundred eighty days and not more than one
10 year. Upon motion by the petitioner, and after a hearing by the court, the full
11 order of protection may be renewed for a period of time the court deems
12 appropriate, except that the protective order shall be valid for at least one
13 hundred eighty days and not more than one year from the expiration date of the
14 originally issued full order of protection. The court may, upon finding that it is
15 in the best interest of the parties, include a provision that any full order of

16 protection for one year shall automatically renew unless the respondent requests
17 a hearing by thirty days prior to the expiration of the order. If for good cause a
18 hearing cannot be held on the motion to renew or the objection to an automatic
19 renewal of the full order of protection prior to the expiration date of the originally
20 issued full order of protection, an ex parte order of protection may be issued until
21 a hearing is held on the motion. When an automatic renewal is not authorized,
22 upon motion by the petitioner, and after a hearing by the court, the second full
23 order of protection may be renewed for an additional period of time the court
24 deems appropriate, except that the protective order shall be valid for at least one
25 hundred eighty days and not more than one year. For purposes of this
26 subsection, a finding by the court of a subsequent act of domestic violence [or],
27 stalking, **or sexual assault** is not required for a renewal order of protection.

28 2. The court shall cause a copy of the petition and notice of the date set
29 for the hearing on such petition and any ex parte order of protection to be served
30 upon the respondent as provided by law or by any sheriff or police officer at least
31 three days prior to such hearing. The court shall cause a copy of any full order
32 of protection to be served upon or mailed by certified mail to the respondent at
33 the respondent's last known address. Notice of an ex parte or full order of
34 protection shall be served at the earliest time, and service of such notice shall
35 take priority over service in other actions, except those of a similar emergency
36 nature. Failure to serve or mail a copy of the full order of protection to the
37 respondent shall not affect the validity or enforceability of a full order of
38 protection.

39 3. A copy of any order of protection granted pursuant to sections 455.010
40 to 455.085 shall be issued to the petitioner and to the local law enforcement
41 agency in the jurisdiction where the petitioner resides. The clerk shall also issue
42 a copy of any order of protection to the local law enforcement agency responsible
43 for maintaining the Missouri uniform law enforcement system or any other
44 comparable law enforcement system the same day the order is granted. The law
45 enforcement agency responsible for maintaining MULES shall, for purposes of
46 verification, within twenty-four hours from the time the order is granted, enter
47 information contained in the order including but not limited to any orders
48 regarding child custody or visitation and all specifics as to times and dates of
49 custody or visitation that are provided in the order. A notice of expiration or of
50 termination of any order of protection or any change in child custody or visitation
51 within that order shall be issued to the local law enforcement agency and to the

52 law enforcement agency responsible for maintaining MULES or any other
53 comparable law enforcement system. The law enforcement agency responsible for
54 maintaining the applicable law enforcement system shall enter such information
55 in the system within twenty-four hours of receipt of information evidencing such
56 expiration or termination. The information contained in an order of protection
57 may be entered in the Missouri uniform law enforcement system or comparable
58 law enforcement system using a direct automated data transfer from the court
59 automated system to the law enforcement system.

60 4. The court shall cause a copy of any objection filed by the respondent
61 and notice of the date set for the hearing on such objection to an automatic
62 renewal of a full order of protection for a period of one year to be personally
63 served upon the petitioner by personal process server as provided by law or by a
64 sheriff or police officer at least three days prior to such hearing. Such service of
65 process shall be served at the earliest time and shall take priority over service in
66 other actions except those of a similar emergency nature.

455.045. Any ex parte order of protection granted pursuant to sections
2 455.010 to 455.085 shall be to protect the petitioner from domestic violence [or],
3 stalking, **or sexual assault** and may include:

4 (1) Restraining the respondent from committing or threatening to commit
5 domestic violence, molesting, stalking, **sexual assault**, or disturbing the peace
6 of the petitioner;

7 (2) Restraining the respondent from entering the premises of the dwelling
8 unit of petitioner when the dwelling unit is:

9 (a) Jointly owned, leased or rented or jointly occupied by both parties; or

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

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

14 (d) Jointly occupied by the petitioner and a person other than the
15 respondent; provided that the respondent has no property interest in the dwelling
16 unit;

17 (3) Restraining the respondent from communicating with the petitioner
18 in any manner or through any medium;

19 (4) A temporary order of custody of minor children where appropriate.

455.050. 1. Any full or ex parte order of protection granted pursuant to
2 sections 455.010 to 455.085 shall be to protect the petitioner from domestic

3 violence, **stalking, or sexual assault** and may include such terms as the court
4 reasonably deems necessary to ensure the petitioner's safety, including but not
5 limited to:

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

9 (2) Temporarily enjoining the respondent from entering the premises of
10 the dwelling unit of the petitioner when the dwelling unit is:

11 (a) Jointly owned, leased or rented or jointly occupied by both parties; or

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

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

17 (d) Jointly occupied by the petitioner and a person other than respondent;
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. A verified petition seeking orders for maintenance, support, custody,
58 visitation, payment of rent, payment of monetary compensation, possession of
59 personal property, prohibiting the transfer, encumbrance, or disposal of property,
60 or payment for services of a shelter for victims of domestic violence, shall contain
61 allegations relating to those orders and shall pray for the orders desired.

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

70 6. The court shall grant to the noncustodial parent rights to visitation
71 with any minor child born to or adopted by the parties, unless the court finds,
72 after hearing, that visitation would endanger the child's physical health, impair
73 the child's emotional development or would otherwise conflict with the best
74 interests of the child, or that no visitation can be arranged which would

75 sufficiently protect the custodial parent from further domestic violence. The court
76 may appoint a guardian ad litem or court-appointed special advocate to represent
77 the minor child in accordance with chapter 452 whenever the custodial parent
78 alleges that visitation with the noncustodial parent will damage the minor child.

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

84 8. The court may grant a maintenance order to a party for a period of
85 time, not to exceed one hundred eighty days. Any maintenance ordered by the
86 court shall be in accordance with chapter 452.

455.080. 1. Law enforcement agencies may establish procedures to ensure
2 that dispatchers and officers at the scene of an alleged incident of domestic
3 violence [or], stalking, **sexual assault**, or violation of an order of protection can
4 be informed of any recorded prior incident of domestic violence [or], stalking, **or**
5 **sexual assault** involving the abused party and can verify the effective dates and
6 terms of any recorded order of protection.

7 2. The law enforcement agency shall apply the same standard for response
8 to an alleged incident of domestic violence [or], stalking, **sexual assault**, or a
9 violation of any order of protection as applied to any like offense involving
10 strangers, except as otherwise provided by law. Law enforcement agencies shall
11 not assign lower priority to calls involving alleged incidents of domestic violence
12 [or], stalking, **sexual assault**, or violation of protection orders than is assigned
13 in responding to offenses involving strangers. Existence of any of the following
14 factors shall be interpreted as indicating a need for immediate response:

- 15 (1) The caller indicates that violence is imminent or in progress; or
16 (2) A protection order is in effect; or
17 (3) The caller indicates that incidents of domestic violence have occurred
18 previously between the parties.

19 3. Law enforcement agencies may establish domestic crisis teams or, if the
20 agency has fewer than five officers whose responsibility it is to respond to calls
21 of this nature, individual officers trained in methods of dealing with domestic
22 violence. Such teams or individuals may be supplemented by social workers,
23 ministers or other persons trained in counseling or crisis intervention. When an
24 alleged incident of domestic violence is reported, the agency may dispatch a crisis

25 team or specially trained officer, if available, to the scene of the incident.

26 4. The officer at the scene of an alleged incident of domestic violence [or],
27 stalking, **or sexual assault** shall inform the abused party of available judicial
28 remedies for relief from domestic violence and of available shelters for victims of
29 domestic violence.

30 5. Law enforcement officials at the scene shall provide or arrange
31 transportation for the abused party to a medical facility for treatment of injuries
32 or to a place of shelter or safety.

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

17 2. When a law enforcement officer has probable cause to believe that a
18 party, against whom a protective order has been entered and who has notice of
19 such order entered, has committed an act of abuse in violation of such order, the
20 officer shall arrest the offending party-respondent whether or not the violation
21 occurred in the presence of the arresting officer. Refusal of the victim to sign an
22 official complaint against the violator shall not prevent an arrest under this
23 subsection.

24 3. When an officer makes an arrest, the officer is not required to arrest
25 two parties involved in an assault when both parties claim to have been
26 assaulted. The arresting officer shall attempt to identify and shall arrest the
27 party the officer believes is the primary physical aggressor. The term "primary
28 physical aggressor" is defined as the most significant, rather than the first,

29 aggressor. The law enforcement officer shall consider any or all of the following
30 in determining the primary physical aggressor:

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

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

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

36 No law enforcement officer investigating an incident of domestic violence shall
37 threaten the arrest of all parties for the purpose of discouraging requests or law
38 enforcement intervention by any party. Where complaints are received from two
39 or more opposing parties, the officer shall evaluate each complaint separately to
40 determine whether the officer should seek a warrant for an arrest.

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

45 5. When a person against whom an order of protection has been entered
46 fails to surrender custody of minor children to the person to whom custody was
47 awarded in an order of protection, the law enforcement officer shall arrest the
48 respondent, and shall turn the minor children over to the care and custody of the
49 party to whom such care and custody was awarded.

50 6. The same procedures, including those designed to protect constitutional
51 rights, shall be applied to the respondent as those applied to any individual
52 detained in police custody.

53 7. A violation of the terms and conditions, with regard to domestic
54 violence, stalking, **sexual assault**, child custody, communication initiated by the
55 respondent or entrance upon the premises of the petitioner's dwelling unit or
56 place of employment or school, or being within a certain distance of the petitioner
57 or a child of the petitioner, of an ex parte order of protection of which the
58 respondent has notice, shall be a class A misdemeanor unless the respondent has
59 previously pleaded guilty to or has been found guilty in any division of the circuit
60 court of violating an ex parte order of protection or a full order of protection
61 within five years of the date of the subsequent violation, in which case the
62 subsequent violation shall be a class E felony. Evidence of prior pleas of guilty
63 or findings of guilt shall be heard by the court out of the presence of the jury
64 prior to submission of the case to the jury. If the court finds the existence of such

65 prior pleas of guilty or finding of guilt beyond a reasonable doubt, the court shall
66 decide the extent or duration of sentence or other disposition and shall not
67 instruct the jury as to the range of punishment or allow the jury to assess and
68 declare the punishment as a part of its verdict.

69 8. A violation of the terms and conditions, with regard to domestic
70 violence, stalking, **sexual assault**, child custody, communication initiated by the
71 respondent or entrance upon the premises of the petitioner's dwelling unit or
72 place of employment or school, or being within a certain distance of the petitioner
73 or a child of the petitioner, of a full order of protection shall be a class A
74 misdemeanor, unless the respondent has previously pleaded guilty to or has been
75 found guilty in any division of the circuit court of violating an ex parte order of
76 protection or a full order of protection within five years of the date of the
77 subsequent violation, in which case the subsequent violation shall be a class E
78 felony. Evidence of prior pleas of guilty or findings of guilt shall be heard by the
79 court out of the presence of the jury prior to submission of the case to the jury. If
80 the court finds the existence of such prior plea of guilty or finding of guilt beyond
81 a reasonable doubt, the court shall decide the extent or duration of the sentence
82 or other disposition and shall not instruct the jury as to the range of punishment
83 or allow the jury to assess and declare the punishment as a part of its
84 verdict. For the purposes of this subsection, in addition to the notice provided by
85 actual service of the order, a party is deemed to have notice of an order of
86 protection if the law enforcement officer responding to a call of a reported
87 incident of domestic violence, stalking, **sexual assault**, or violation of an order
88 of protection presented a copy of the order of protection to the respondent.

89 9. Good faith attempts to effect a reconciliation of a marriage shall not be
90 deemed tampering with a witness or victim tampering under section 575.270.

91 10. Nothing in this section shall be interpreted as creating a private cause
92 of action for damages to enforce the provisions set forth herein.

455.085. 1. When a law enforcement officer has probable cause to believe
2 a party has committed a violation of law amounting to domestic violence, as
3 defined in section 455.010, against a family or household member, the officer may
4 arrest the offending party whether or not the violation occurred in the presence
5 of the arresting officer. When the officer declines to make arrest pursuant to this
6 subsection, the officer shall make a written report of the incident completely
7 describing the offending party, giving the victim's name, time, address, reason
8 why no arrest was made and any other pertinent information. Any law

9 enforcement officer subsequently called to the same address within a twelve-hour
10 period, who shall find probable cause to believe the same offender has again
11 committed a violation as stated in this subsection against the same or any other
12 family or household member, shall arrest the offending party for this subsequent
13 offense. The primary report of nonarrest in the preceding twelve-hour period may
14 be considered as evidence of the defendant's intent in the violation for which
15 arrest occurred. The refusal of the victim to sign an official complaint against the
16 violator shall not prevent an arrest under this subsection.

17 2. When a law enforcement officer has probable cause to believe that a
18 party, against whom a protective order has been entered and who has notice of
19 such order entered, has committed an act of abuse in violation of such order, the
20 officer shall arrest the offending party-respondent whether or not the violation
21 occurred in the presence of the arresting officer. Refusal of the victim to sign an
22 official complaint against the violator shall not prevent an arrest under this
23 subsection.

24 3. When an officer makes an arrest, the officer is not required to arrest
25 two parties involved in an assault when both parties claim to have been
26 assaulted. The arresting officer shall attempt to identify and shall arrest the
27 party the officer believes is the primary physical aggressor. The term "primary
28 physical aggressor" is defined as the most significant, rather than the first,
29 aggressor. The law enforcement officer shall consider any or all of the following
30 in determining the primary physical aggressor:

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

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

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

36 No law enforcement officer investigating an incident of domestic violence shall
37 threaten the arrest of all parties for the purpose of discouraging requests or law
38 enforcement intervention by any party. Where complaints are received from two
39 or more opposing parties, the officer shall evaluate each complaint separately to
40 determine whether the officer should seek a warrant for an arrest.

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

45 5. When a person against whom an order of protection has been entered
46 fails to surrender custody of minor children to the person to whom custody was
47 awarded in an order of protection, the law enforcement officer shall arrest the
48 respondent, and shall turn the minor children over to the care and custody of the
49 party to whom such care and custody was awarded.

50 6. The same procedures, including those designed to protect constitutional
51 rights, shall be applied to the respondent as those applied to any individual
52 detained in police custody.

53 7. A violation of the terms and conditions, with regard to domestic
54 violence, stalking, **sexual assault**, child custody, communication initiated by the
55 respondent or entrance upon the premises of the petitioner's dwelling unit or
56 place of employment or school, or being within a certain distance of the petitioner
57 or a child of the petitioner, of an ex parte order of protection of which the
58 respondent has notice, shall be a class A misdemeanor unless the respondent has
59 previously pleaded guilty to or has been found guilty in any division of the circuit
60 court of violating an ex parte order of protection or a full order of protection
61 within five years of the date of the subsequent violation, in which case the
62 subsequent violation shall be a class D felony. Evidence of prior pleas of guilty
63 or findings of guilt shall be heard by the court out of the presence of the jury
64 prior to submission of the case to the jury. If the court finds the existence of such
65 prior pleas of guilty or finding of guilt beyond a reasonable doubt, the court shall
66 decide the extent or duration of sentence or other disposition and shall not
67 instruct the jury as to the range of punishment or allow the jury to assess and
68 declare the punishment as a part of its verdict.

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

81 a reasonable doubt, the court shall decide the extent or duration of the sentence
82 or other disposition and shall not instruct the jury as to the range of punishment
83 or allow the jury to assess and declare the punishment as a part of its
84 verdict. For the purposes of this subsection, in addition to the notice provided by
85 actual service of the order, a party is deemed to have notice of an order of
86 protection if the law enforcement officer responding to a call of a reported
87 incident of domestic violence, stalking, **sexual assault**, or violation of an order
88 of protection presented a copy of the order of protection to the respondent.

89 9. Good faith attempts to effect a reconciliation of a marriage shall not be
90 deemed tampering with a witness or victim tampering under section 575.270.

91 10. Nothing in this section shall be interpreted as creating a private cause
92 of action for damages to enforce the provisions set forth herein.

455.503. 1. A petition for an order of protection for a child shall be filed
2 in the county where the child resides, where the alleged incident of domestic
3 violence [or], stalking, **or sexual assault** occurred, or where the respondent may
4 be served.

5 2. Such petition may be filed by any of the following:

6 (1) A parent or guardian of the victim;

7 (2) A guardian ad litem or court-appointed special advocate appointed for
8 the victim; or

9 (3) The juvenile officer.

455.505. 1. An order of protection for a child who has been subject to
2 domestic violence by a present or former household member or [person] **sexual**
3 **assault or** stalking [the child] **by any person** may be sought under sections
4 455.500 to 455.538 by the filing of a verified petition alleging such domestic
5 violence [or], stalking, **or sexual assault** by the respondent.

6 2. A child's right to relief under sections 455.500 to 455.538 shall not be
7 affected by the child's leaving the residence or household to avoid domestic
8 violence.

9 3. Any protection order issued pursuant to sections 455.500 to 455.538
10 shall be effective throughout the state in all cities and counties.

455.513. 1. Upon the filing of a verified petition under sections 455.500
2 to 455.538, for good cause shown in the petition, and upon finding that no prior
3 order regarding custody is pending or has been made or that the respondent is
4 less than seventeen years of age, the court may immediately issue an ex parte
5 order of protection. An immediate and present danger of domestic violence [or],

6 stalking, **or sexual assault** to a child shall constitute good cause for purposes
7 of this section. An ex parte order of protection entered by the court shall be in
8 effect until the time of the hearing. The court shall deny the ex parte order and
9 dismiss the petition if the petitioner is not authorized to seek relief pursuant to
10 section 455.505.

11 2. Upon the entry of the ex parte order of protection, the court shall enter
12 its order appointing a guardian ad litem or court-appointed special advocate to
13 represent the child victim.

14 3. If the allegations in the petition would give rise to jurisdiction under
15 section 211.031, the court may direct the children's division to conduct an
16 investigation and to provide appropriate services. The division shall submit a
17 written investigative report to the court and to the juvenile officer within thirty
18 days of being ordered to do so. The report shall be made available to the parties
19 and the guardian ad litem or court-appointed special advocate.

20 4. If the allegations in the petition would give rise to jurisdiction under
21 section 211.031 because the respondent is less than seventeen years of age, the
22 court may issue an ex parte order and shall transfer the case to juvenile court for
23 a hearing on a full order of protection. Service of process shall be made pursuant
24 to section 455.035.

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

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

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

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

12 (4) A temporary order of custody of minor children.

13 2. No ex parte order of protection excluding the respondent from the
14 family home shall be issued unless the court finds that:

15 (1) The order is in the best interests of the child or children remaining in
16 the home;

17 (2) The verified allegations of domestic violence present a substantial risk

18 to the child or children unless the respondent is excluded; and

19 (3) A remaining adult family or household member is able to care
20 adequately for the child or children in the absence of the excluded party.

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 [and], stalking,
3 **and sexual assault** may include such terms as the court reasonably deems
4 necessary 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. When the court has, after hearing for any full order of protection,
14 issued an order of protection, it may, in addition:

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

19 (2) Award visitation;

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

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

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

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

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

32 (8) Order the respondent to pay a reasonable fee for housing and other
33 services that have been provided or that are being provided to the victim by a

34 shelter for victims of domestic violence.

455.538. 1. When a law enforcement officer has probable cause to believe
2 that a party, against whom a protective order for a child has been entered, has
3 committed an act in violation of that order, the officer shall have the authority
4 to arrest the respondent whether or not the violation occurred in the presence of
5 the arresting officer.

6 2. When a person, against whom an order of protection for a child has
7 been entered, fails to surrender custody of minor children to the person to whom
8 custody was awarded in an order of protection, the law enforcement officer shall
9 arrest the respondent, and shall turn the minor children over to the care and
10 custody of the party to whom such care and custody was awarded.

11 3. The same procedures, including those designed to protect constitutional
12 rights, shall be applied to the respondent as those applied to any individual
13 detained in police custody.

14 4. (1) Violation of the terms and conditions of an ex parte or full order of
15 protection with regard to domestic violence, stalking, **sexual assault**, child
16 custody, communication initiated by the respondent, or entrance upon the
17 premises of the victim's dwelling unit or place of employment or school, or being
18 within a certain distance of the petitioner or a child of the petitioner, of which the
19 respondent has notice, shall be a class A misdemeanor, unless the respondent has
20 previously pleaded guilty to or has been found guilty in any division of the circuit
21 court of violating an ex parte order of protection or a full order of protection
22 within five years of the date of the subsequent violation, in which case the
23 subsequent violation shall be a class E felony. Evidence of a prior plea of guilty
24 or finding of guilt shall be heard by the court out of the presence of the jury prior
25 to submission of the case to the jury. If the court finds the existence of a prior
26 plea of guilty or finding of guilt beyond a reasonable doubt, the court shall decide
27 the extent or duration of sentence or other disposition and shall not instruct the
28 jury as to the range of punishment or allow the jury to assess and declare the
29 punishment as a part of its verdict.

30 (2) For purposes of this subsection, in addition to the notice provided by
31 actual service of the order, a party is deemed to have notice of an order of
32 protection for a child if the law enforcement officer responding to a call of a
33 reported incident of domestic violence [or], stalking, **sexual assault**, or violation
34 of an order of protection for a child presents a copy of the order of protection to
35 the respondent.

36 5. The fact that an act by a respondent is a violation of a valid order of
37 protection for a child shall not preclude prosecution of the respondent for other
38 crimes arising out of the incident in which the protection order is alleged to have
39 been violated.

455.538. 1. When a law enforcement officer has probable cause to believe
2 that a party, against whom a protective order for a child has been entered, has
3 committed an act in violation of that order, the officer shall have the authority
4 to arrest the respondent whether or not the violation occurred in the presence of
5 the arresting officer.

6 2. When a person, against whom an order of protection for a child has
7 been entered, fails to surrender custody of minor children to the person to whom
8 custody was awarded in an order of protection, the law enforcement officer shall
9 arrest the respondent, and shall turn the minor children over to the care and
10 custody of the party to whom such care and custody was awarded.

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12 rights, shall be applied to the respondent as those applied to any individual
13 detained in police custody.

14 4. (1) Violation of the terms and conditions of an ex parte or full order of
15 protection with regard to domestic violence, stalking, **sexual assault**, child
16 custody, communication initiated by the respondent, or entrance upon the
17 premises of the victim's dwelling unit or place of employment or school, or being
18 within a certain distance of the petitioner or a child of the petitioner, of which the
19 respondent has notice, shall be a class A misdemeanor, unless the respondent has
20 previously pleaded guilty to or has been found guilty in any division of the circuit
21 court of violating an ex parte order of protection or a full order of protection
22 within five years of the date of the subsequent violation, in which case the
23 subsequent violation shall be a class D felony. Evidence of a prior plea of guilty
24 or finding of guilt shall be heard by the court out of the presence of the jury prior
25 to submission of the case to the jury. If the court finds the existence of a prior
26 plea of guilty or finding of guilt beyond a reasonable doubt, the court shall decide
27 the extent or duration of sentence or other disposition and shall not instruct the
28 jury as to the range of punishment or allow the jury to assess and declare the
29 punishment as a part of its verdict.

30 (2) For purposes of this subsection, in addition to the notice provided by
31 actual service of the order, a party is deemed to have notice of an order of
32 protection for a child if the law enforcement officer responding to a call of a

33 reported incident of domestic violence [or], stalking, **sexual assault**, or violation
34 of an order of protection for a child presents a copy of the order of protection to
35 the respondent.

36 5. The fact that an act by a respondent is a violation of a valid order of
37 protection for a child shall not preclude prosecution of the respondent for other
38 crimes arising out of the incident in which the protection order is alleged to have
39 been violated.

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