

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1699
101ST GENERAL ASSEMBLY

3371H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 455.073, 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Section A. Sections 455.073, 455.075, and 455.085, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 455.073, 455.075, 455.085, 546.262, 546.263, and 595.320, to read as follows:

455.073. 1. By July 1, 1996, the supreme court of the state of Missouri shall:

(1) Develop and adopt uniform forms for petitions and orders of protection; and

(2) Provide the forms to each circuit clerk.

2. The following statements shall be printed in bold faced type or in capital letters on the order of protection:

(1) "Violation of this order may be punished by confinement in jail for as long as five years and by a fine of as much as five thousand dollars"; and

(2) "If so ordered by the court, the respondent is forbidden to enter or stay at the petitioner's residence".

3. The form prescribed by the supreme court for the notice of hearing required by subsection 2 of section 455.040 shall list all potential relief that can be granted by the court in any proceeding pursuant to sections 455.010 to 455.085 as described in section 455.050, and shall advise the respondent that such relief may be granted if the court finds for the petitioner, or if the respondent defaults to the petition.

4. **If a full order of protection is granted, all temporary orders shall continue in the full order of protection and shall remain in full force and effect unless otherwise ordered by the court.**

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.

18 **5.** All orders of protection shall be issued on the form adopted pursuant to subsection
19 1 of this section.

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

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

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

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

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

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

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

31

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

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

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

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

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

63 8. A violation of the terms and conditions, with regard to domestic violence, stalking,
64 sexual assault, child custody, communication initiated by the respondent or entrance upon the
65 premises of the petitioner's dwelling unit or place of employment or school, or being within a
66 certain distance of the petitioner or a child of the petitioner, of a full order of protection shall
67 be a class A misdemeanor, unless the respondent has previously pleaded guilty to or has been

68 found guilty in any division of the circuit court of violating an ex parte order of protection or
69 a full order of protection within five years of the date of the subsequent violation, in which
70 case the subsequent violation shall be a class E felony. Evidence of prior pleas of guilty or
71 findings of guilt shall be heard by the court out of the presence of the jury prior to submission
72 of the case to the jury. If the court finds the existence of such prior plea of guilty or finding of
73 guilt beyond a reasonable doubt, the court shall decide the extent or duration of the sentence
74 or other disposition and shall not instruct the jury as to the range of punishment or allow the
75 jury to assess and declare the punishment as a part of its verdict. For the purposes of this
76 subsection, in addition to the notice provided by actual service of the order, a party is deemed
77 to have notice of an order of protection if:

78 **(1) The law enforcement officer responding to a call of a reported incident of**
79 **domestic violence, stalking, sexual assault, or violation of an order of protection presented a**
80 **copy of the order of protection to the respondent; or**

81 **(2) Notice is given by actual communication to the respondent in a manner**
82 **reasonably likely to advise the respondent.**

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

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

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

546.263. 1. A person may testify by video conference at a civil trial involving an
2 **offense under sections 565.072 to 565.076 if the person testifying is the victim of the**
3 **offense. The circuit and associate circuit court judges for each circuit shall develop local**
4 **rules and instructions for appearances by video conference permitted under this**
5 **subsection, which shall be posted on the circuit court's internet website.**

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

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