

SECOND REGULAR SESSION

HOUSE BILL NO. 1822

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LAMPE (Sponsor), SILVEY, MONTECILLO, KIRKTON, McCANN BEATTY, TAYLOR, McNEIL, PIERSON, NEWMAN, SPRENG, GRISAMORE, LAIR, ENTLICHER, CRAWFORD, HOSKINS, BLACK, NICHOLS, ELLINGER, LEACH, MORGAN, WALTON GRAY, SMITH (71), HARRIS, MAY, ANDERS, PACE, ATKINS, OXFORD, NASHEED, JONES (63), KELLY (24), TALBOY, WEBBER, HUMMEL, RIZZO, WEBB, CARTER AND SCHOELLER (Co-sponsors).

5972L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 455.020, 455.035, 455.040, 455.060, 455.085, 455.505, 455.513, 455.523, 455.538, 527.290, and 565.074, RSMo, and to enact in lieu thereof eleven new sections relating to domestic violence orders of protection, with a penalty provision.

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

Section A. Sections 455.020, 455.035, 455.040, 455.060, 455.085, 455.505, 455.513, 2 455.523, 455.538, 527.290, and 565.074, RSMo, are repealed and eleven new sections enacted 3 in lieu thereof, to be known as sections 455.020, 455.035, 455.040, 455.060, 455.085, 455.505, 4 455.513, 455.523, 455.538, 527.290, and 565.074, to read as follows:

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

5 2. [An adult's] **A person's** right to relief under sections 455.010 to 455.085 shall not be 6 affected by his leaving the residence or household to avoid domestic violence.

7 3. Any protection order issued pursuant to sections 455.010 to 455.085 shall be effective 8 throughout the state in all cities and counties.

455.035. 1. Upon the filing of a verified petition pursuant to sections 455.010 to 2 455.085 and for good cause shown in the petition, the court may immediately issue an ex parte

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.

3 order of protection. An immediate and present danger of [abuse] **domestic violence** to the
4 petitioner **or the child on whose behalf the petition is filed** shall constitute good cause for
5 purposes of this section. An ex parte order of protection entered by the court shall take effect
6 when entered and shall remain in effect until there is valid service of process and a hearing is
7 held on the motion. **The court shall deny the ex parte and dismiss the petition if the**
8 **petitioner is not authorized to seek relief under section 455.020.**

9 2. Failure to serve an ex parte order of protection on the respondent shall not affect the
10 validity or enforceability of such order. If the respondent is less than seventeen years of age,
11 unless otherwise emancipated, service of process shall be made upon a **custodial** parent or
12 guardian of the respondent, or upon a guardian ad litem appointed by the court, **requiring that**
13 **the person appear and bring the respondent before the court at the time and place stated.**

14 3. If an ex parte order is entered and [the allegations in the petition would give rise to
15 jurisdiction under section 211.031 because] the respondent is less than seventeen years of age,
16 the court shall transfer the case to juvenile court for a hearing on a full order of protection. The
17 court shall appoint a guardian ad litem for any such respondent not represented by a parent or
18 guardian.

455.040. 1. Not later than fifteen days after the filing of a petition [pursuant to sections
2 455.010 to 455.085] **that meets the requirements of section 455.020**, a hearing shall be held
3 unless the court deems, for good cause shown, that a continuance should be granted. At the
4 hearing, if the petitioner has proved the allegation of abuse or stalking by a preponderance of the
5 evidence, the court shall issue a full order of protection for a period of time the court deems
6 appropriate, except that the protective order shall be valid for at least one hundred eighty days
7 and not more than one year. Upon motion by the petitioner, and after a hearing by the court, the
8 full order of protection may be renewed for a period of time the court deems appropriate, except
9 that the protective order shall be valid for at least one hundred eighty days and not more than one
10 year from the expiration date of the originally issued full order of protection. The court may,
11 upon finding that it is in the best interest of the parties, include a provision that any full order of
12 protection for one year shall automatically renew unless the respondent requests a hearing by
13 thirty days prior to the expiration of the order. If for good cause a hearing cannot be held on the
14 motion to renew or the objection to an automatic renewal of the full order of protection prior to
15 the expiration date of the originally issued full order of protection, an ex parte order of protection
16 may be issued until a hearing is held on the motion. When an automatic renewal is not
17 authorized, upon motion by the petitioner, and after a hearing by the court, the second full order
18 of protection may be renewed for an additional period of time the court deems appropriate,
19 except that the protective order shall be valid for at least one hundred eighty days and not more

20 than one year. For purposes of this subsection, a finding by the court of a subsequent act of
21 abuse is not required for a renewal order of protection.

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

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

51 4. The court shall cause a copy of any objection filed by the respondent and notice of the
52 date set for the hearing on such objection to an automatic renewal of a full order of protection
53 for a period of one year to be personally served upon the petitioner by personal process server
54 as provided by law or by a sheriff or police officer at least three days prior to such hearing. Such

55 service of process shall be served at the earliest time and shall take priority over service in other
56 actions except those of a similar emergency nature.

455.060. 1. After notice and hearing, the court may modify an order of protection at any
2 time, upon subsequent motion filed by the guardian ad litem, the court-appointed special
3 advocate or by either party together with an affidavit showing a change in circumstances
4 sufficient to warrant the modification. All full orders of protection shall be final orders and
5 appealable and shall be for a fixed period of time as provided in section 455.040.

6 2. Any order for child support, custody, temporary custody, visitation or maintenance
7 entered under sections 455.010 to 455.085 shall terminate prior to the time fixed in the order
8 upon the issuance of a subsequent order pursuant to chapter 452 or any other Missouri statute.

9 3. No order entered pursuant to sections 455.010 to 455.085 shall be res judicata to any
10 subsequent proceeding, including, but not limited to, any action brought under chapter 452[,
11 RSMo 1978, as amended].

12 4. All provisions of an order of protection shall terminate upon entry of a decree of
13 dissolution of marriage or legal separation except as to those provisions which require the
14 respondent to participate in a court-approved counseling program or enjoin the respondent from
15 abusing, molesting, stalking or disturbing the peace of the petitioner and which enjoin the
16 respondent from entering the premises of the dwelling unit of the petitioner as described in the
17 order of protection when the petitioner continues to reside in that dwelling unit unless the
18 respondent is awarded possession of the dwelling unit pursuant to a decree of dissolution of
19 marriage or legal separation.

20 5. Any order of protection or order for child support, custody, temporary custody,
21 visitation or maintenance entered under sections 455.010 to 455.085 shall terminate upon the
22 order of the court granting a motion to terminate the order of protection by the petitioner. [The
23 court shall set the motion to dismiss for hearing and both parties shall have an opportunity to be
24 heard.] Prior to terminating any order of protection, the court may [examine the circumstances
25 of the motion to dismiss and may] inquire of the petitioner or others **in camera** in order to [assist
26 the court in determining if] **determine whether the** dismissal is voluntary.

27 6. The order of protection may not change the custody of children when an action for
28 dissolution of marriage has been filed or the custody has previously been awarded by a court of
29 competent jurisdiction.

455.085. 1. When a law enforcement officer has probable cause to believe a party has
2 committed a violation of law amounting to abuse or assault, as defined in section 455.010,
3 against a family or household member, the officer may arrest the offending party whether or not
4 the violation occurred in the presence of the arresting officer. When the officer declines to make
5 arrest pursuant to this subsection, the officer shall make a written report of the incident

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

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

27 (1) The intent of the law to protect victims [of domestic violence] from continuing
28 [abuse] **domestic violence**;

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

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

32

33 No law enforcement officer investigating an incident of [family] **domestic** violence shall threaten
34 the arrest of all parties for the purpose of discouraging requests or law enforcement intervention
35 by any party. Where complaints are received from two or more opposing parties, the officer shall
36 evaluate each complaint separately to determine whether he should seek a 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 surrender
42 custody of minor children to the person to whom custody was awarded in an order of protection,
43 the law enforcement officer shall arrest the respondent, and shall turn the minor children over
44 to the care and custody of the party to whom such care and custody was awarded.

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

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

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

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

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

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

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

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

455.513. 1. Upon the filing of a verified petition under sections 455.500 to 455.538, for
2 good cause shown in the petition, and upon finding that no prior order regarding custody is
3 pending or has been made or that the respondent is less than seventeen years of age, the court
4 may immediately issue an ex parte order of protection. An immediate and present danger of
5 [abuse] **domestic violence** to a child shall constitute good cause for purposes of this section. An
6 ex parte order of protection entered by the court shall be in effect until the time of the hearing.
7 **The court shall deny the ex parte and dismiss the petition if the petitioner is not authorized**
8 **to seek relief under section 455.505.**

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

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

16 4. If [an ex parte order is entered and] the allegations in the petition would give rise to
17 jurisdiction under section 211.031 because the respondent is less than seventeen years of age, the
18 court **may issue an ex parte order and** shall transfer the case to juvenile court for a hearing on
19 a full order of protection. Service of process shall be made pursuant to section 455.035.

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

4 (1) Temporarily enjoining the respondent from abusing, threatening to abuse, molesting
5 or disturbing the peace of the victim;

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

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

10 2. When the court has, after hearing for any full order of protection, issued an order of
11 protection, it may, in addition:

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

15 (2) Award visitation;

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

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

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

22 (6) Order the respondent to participate in a court-approved counseling program designed
23 to help [child abusers] stop violent behavior or to treat substance abuse;

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

26 (8) Order the respondent to pay a reasonable fee for housing and other services that have
27 been provided or that are being provided to the victim by a shelter for victims of domestic
28 violence.

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

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

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

11 4. (1) Violation of the terms and conditions of an ex parte or full order of protection
12 with regard to abuse, child custody, communication initiated by the respondent, or entrance upon
13 the premises of the victim's dwelling unit or place of employment or school, or being within a

14 certain distance of the petitioner or a child of the petitioner, of which the respondent has notice,
15 shall be a class A misdemeanor, unless the respondent has previously pleaded guilty to or has
16 been found guilty in any division of the circuit court of violating an ex parte order of protection
17 or a full order of protection within five years of the date of the subsequent violation, in which
18 case the subsequent violation shall be a class D felony. Evidence of a prior plea of guilty or
19 finding of guilt shall be heard by the court out of the presence of the jury prior to submission of
20 the case to the jury. If the court finds the existence of a prior plea of guilty or finding of guilt
21 beyond a reasonable doubt, the court shall decide the extent or duration of sentence or other
22 disposition and shall not instruct the jury as to the range of punishment or allow the jury to assess
23 and declare the punishment as a part of its verdict.

24 (2) For purposes of this subsection, in addition to the notice provided by actual service
25 of the order, a party is deemed to have notice of an order of protection for a child if the law
26 enforcement officer responding to a call of a reported incident of abuse or violation of an order
27 of protection for a child presents a copy of the order of protection to the respondent.

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

527.290. 1. Public notice of such a change of name shall be given at least three times
2 in a newspaper published in the county where such person is residing, within twenty days after
3 the order of court is made, and if no newspaper is published in his or any adjacent county, then
4 such notice shall be given in a newspaper published in the City of St. Louis, or at the seat of
5 government.

6 2. Public notice of such name change through publication as required in subsection 1 of
7 this section shall not be required **and any system operated by the judiciary that is designed**
8 **to provide public case information electronically shall not post the name change** if the
9 petitioner is:

10 (1) The victim of a crime, the underlying factual basis of which is found by the court on
11 the record to include an act of domestic violence, as defined in section 455.010;

12 (2) The victim of child abuse, as defined in section 210.110; or

13 (3) The victim of [abuse] **domestic violence** by a family or household member, as
14 defined in section 455.010.

565.074. 1. A person commits the crime of domestic assault in the third degree if the
2 act involves a family or household member [or an adult who is or has been in a continuing social
3 relationship of a romantic or intimate nature with the actor], as defined in section 455.010 and:

4 (1) The person attempts to cause or recklessly causes physical injury to such family or
5 household member; or

6 (2) With criminal negligence the person causes physical injury to such family or
7 household member by means of a deadly weapon or dangerous instrument; or

8 (3) The person purposely places such family or household member in apprehension of
9 immediate physical injury by any means; or

10 (4) The person recklessly engages in conduct which creates a grave risk of death or
11 serious physical injury to such family or household member; or

12 (5) The person knowingly causes physical contact with such family or household
13 member knowing the other person will regard the contact as offensive; or

14 (6) The person knowingly attempts to cause or causes the isolation of such family or
15 household member by unreasonably and substantially restricting or limiting such family or
16 household member's access to other persons, telecommunication devices or transportation for
17 the purpose of isolation.

18 2. Except as provided in subsection 3 of this section, domestic assault in the third degree
19 is a class A misdemeanor.

20 3. A person who has pleaded guilty to or been found guilty of the crime of domestic
21 assault in the third degree more than two times against any family or household member as
22 defined in section 455.010, or of any offense committed in violation of any county or municipal
23 ordinance in any state, any state law, any federal law, or any military law which, if committed
24 in this state, would be a violation of this section, is guilty of a class D felony for the third or any
25 subsequent commission of the crime of domestic assault. The offenses described in this
26 subsection may be against the same family or household member or against different family or
27 household members.

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