

SENATE BILL NO. 1497

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOSLEY.

3375S.011

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 455, RSMo, by adding thereto one new section relating to extreme risk orders of protection, with penalty provisions.

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

Section A. Chapter 455, RSMo, is amended by adding thereto
2 one new section, to be known as section 455.096, to read as
3 follows:

455.096. 1. In addition to any other jurisdictional
2 grounds provided by law, a court shall have jurisdiction to
3 enter an extreme risk order of protection restraining or
4 enjoining the respondent from possessing any firearms.

5 2. (1) Upon the filing of a verified petition by a
6 parent, teacher, or school administrator of the respondent
7 or a law enforcement officer or agency pursuant to this
8 section, and for good cause shown in the petition, the court
9 may immediately issue an ex parte order of protection. An
10 immediate and present danger of the respondent causing
11 personal injury to himself or herself or others shall
12 constitute good cause shown for purposes of this section.
13 An ex parte order of protection entered by the court shall
14 take effect when entered and shall remain in effect until
15 there is valid service of process and a hearing is held on
16 the motion within fifteen days of the filing of the petition.

17 (2) Failure to serve an ex parte order of protection
18 on the respondent shall not affect the validity or
19 enforceability of such order. If the respondent is less
20 than eighteen years of age, unless otherwise emancipated,
21 service of process shall be made upon a custodial parent or
22 guardian of the respondent, or upon a guardian ad litem
23 appointed by the court, requiring that the person appear and
24 bring the respondent before the court at the time and place
25 stated.

26 (3) If an ex parte order is entered and the respondent
27 is less than eighteen years of age, the court shall transfer
28 the case to juvenile court for a hearing on a full order of
29 protection. The court shall appoint a guardian ad litem for
30 any such respondent not represented by a parent or guardian.

31 3. Upon issuance of any ex parte order of protection
32 under subsection 2 of this section, the court shall order
33 the respondent to surrender to the local law enforcement
34 agency where the respondent resides, all firearms in the
35 respondent's custody, control, or possession. The law
36 enforcement officer serving any ex parte order of protection
37 shall provide the respondent to the order an opportunity to
38 comply with the order by surrendering all firearms in his or
39 her custody, control, or possession. If the respondent does
40 not comply, the law enforcement officer serving the order
41 shall conduct a lawful search and seizure of any firearms of
42 the respondent and in any area where probable cause exists
43 that a firearm to be surrendered pursuant to the order is
44 located. The law enforcement agency shall hold all
45 surrendered firearms until a hearing is held on the petition
46 for the extreme risk order of protection.

47 4. Not later than fifteen days after the filing of a
48 verified petition that meets the requirements of this

49 section, a hearing shall be held unless the court deems, for
50 good cause shown, that a continuance should be granted. At
51 the hearing, if the petitioner has proved the allegation
52 that the respondent poses a significant danger to himself or
53 herself or others by a preponderance of the evidence, the
54 court shall issue a full extreme risk order of protection
55 for a period of time of one year.

56 5. Upon issuance of any full extreme risk order of
57 protection under subsection 4 of this section, the court
58 shall order the respondent to surrender to the local law
59 enforcement agency where the respondent resides, all
60 firearms in the respondent's custody, control, or
61 possession. If the respondent has been identified in the
62 petition as being required to carry a firearm as a condition
63 of the respondent's employment, the court shall notify the
64 respondent's employer of the existence of the order. If the
65 respondent holds a concealed carry permit pursuant to
66 section 571.101, the court shall order a revocation of the
67 concealed carry permit.

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

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

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

81 (2) If personal service by a law enforcement officer
82 is not possible, or not required because the respondent was
83 present at the extreme risk order of protection hearing, the
84 respondent shall surrender the firearms in a safe manner to
85 the control of the local law enforcement agency within forty-
86 eight hours of being served with the order by alternate
87 service or within forty-eight hours of the hearing or final
88 decision at which the respondent was present.

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

97 (4) Upon the sworn statement or testimony of any law
98 enforcement officer alleging that the respondent has failed
99 to comply with the surrender of firearms as required by an
100 order issued under this subsection and subsection 3 of this
101 section, the court shall determine whether probable cause
102 exists to believe that the respondent has failed to
103 surrender all firearms in his or her possession, custody, or
104 control. If probable cause exists, the court shall issue a
105 warrant describing the firearms and authorizing a search of
106 the locations where the firearms are reasonably believed to
107 be and the seizure of any firearms discovered pursuant to
108 such search.

109 (5) If a person other than the respondent claims title
110 to any firearms surrendered pursuant to this subsection and
111 subsection 3 of this section, and he or she is determined by
112 the law enforcement agency to be the lawful owner of the

firearm, the firearm shall be returned to him or her,
provided that:

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

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

(6) A respondent to an extreme risk order of
protection may file a motion to modify or rescind that order
of protection. The respondent may request a hearing on such
a motion with the court that issued the original extreme
risk order of protection. The court shall conduct a hearing
on the motion to modify or rescind an extreme risk order of
protection within fifteen days after the motion is filed.
At the hearing, if the respondent has proved by a
preponderance of the evidence that the extreme risk order of
protection should be modified or rescinded, the court shall
modify or rescind the extreme risk order of protection.

6. If an extreme risk order of protection is
terminated or expires without renewal, a law enforcement
agency holding any firearm that has been surrendered
pursuant to subsections 3 and 5 of this section shall return
any surrendered firearm requested by a respondent only after
confirming, through a background check administered by the
state highway patrol under section 43.543, that the
respondent is currently eligible to own or possess firearms
under federal and state law and after confirming with the
court that the extreme risk order of protection has
terminated or has expired without renewal.

7. (1) The petitioner may renew the extreme risk
order of protection if probable cause is shown that the

145 respondent continues to pose a significant risk of personal
146 injury to himself or herself or others by possessing a
147 firearm. The extreme risk order of protection may be
148 renewed for up to one year from the expiration of the
149 preceding extreme risk order of protection. Written notice
150 of a hearing on the motion to renew an extreme risk order of
151 protection shall be given to the respondent by the court.

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

155 (3) Any firearm surrendered by a respondent pursuant
156 to subsections 3 and 5 of this section that remains
157 unclaimed by the lawful owner shall be disposed of in
158 accordance with the law enforcement agency's policies and
159 procedures for the disposal of firearms in police custody.

160 8. The clerk of any court that issues an extreme risk
161 order of protection shall send the local law enforcement
162 agency a copy of the order issued by that court within forty-
163 eight hours of the court issuing the order. Upon receiving
164 an extreme risk order of protection, the local law
165 enforcement agency shall enter the extreme risk order of
166 protection into the Missouri uniform law enforcement system
167 (MULES) within forty-eight hours of receiving notice of the
168 order.

169 9. A violation of the terms and conditions of an ex
170 parte order of protection pursuant to this section of which
171 the respondent has notice, shall be a class A misdemeanor
172 unless the respondent has previously pleaded guilty to or
173 has been found guilty in any division of the circuit court
174 of violating an ex parte order of protection or a full order
175 of protection within five years of the date of the
176 subsequent violation, in which case the subsequent violation

shall be a class E felony. Evidence of prior pleas of guilty or findings of guilt shall be heard by the court out of the presence of the jury prior to submission of the case to the jury. If the court finds the existence of such prior pleas of guilty or findings of guilt beyond a reasonable doubt, the court shall decide the extent or duration of sentence or other disposition and shall not instruct the jury as to the range of punishment or allow the jury to assess and declare the punishment as a part of its verdict.

10. A violation of the terms and conditions of a full order of protection pursuant to this section shall be a class A misdemeanor, unless the respondent has previously pleaded guilty to or has been found guilty in any division of the circuit court of violating an ex parte order of protection or a full order of protection within five years of the date of the subsequent violation, in which case the subsequent violation shall be a class E felony. Evidence of prior pleas of guilty or findings of guilt shall be heard by the court out of the presence of the jury prior to submission of the case to the jury. If the court finds the existence of such prior plea of guilty or finding of guilt beyond a reasonable doubt, the court shall decide the extent or duration of the sentence or other disposition and shall not instruct the jury as to the range of punishment or allow the jury to assess and declare the punishment as a part of its verdict. For the purposes of this subsection, in addition to the notice provided by actual service of the order, a party is deemed to have notice of an order of protection if:

(1) The law enforcement officer responding to a call of a reported violation of an order of protection presented a copy of the order of protection to the respondent; or

209 (2) Notice is given by actual communication to the
210 respondent in a manner reasonably likely to advise the
211 respondent.

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