

FIRST REGULAR SESSION

HOUSE BILL NO. 418

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE NEWMAN.

0853L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 455.545 and 565.063, RSMo, and to enact in lieu thereof four 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Section A. Sections 455.545 and 565.063, RSMo, are repealed and four new sections
2 enacted in lieu thereof, to be known as sections 455.545, 565.063, 571.515, and 571.520, to read
3 as follows:

455.545. The highway patrol shall compile an annual report of homicides and suicides
2 related to domestic violence. Such report shall be presented by February first of the subsequent
3 year to the governor, speaker of the house of representatives, and president pro tempore of the
4 senate. **For purposes of this section, domestic violence includes, but is not limited to, the**
5 **occurrence of any acts, attempts, or threats against a person who may be protected under**
6 **sections 455.010 to 455.085.**

565.063. 1. As used in this section, the following terms mean:

2 (1) "Domestic assault offense":

3 (a) The commission of the crime of domestic assault in the first degree or domestic
4 assault in the second degree; or

5 (b) The commission of the crime of assault in the first degree or assault in the second
6 degree if the victim of the assault was a family or household member;

7 (c) The commission of a crime in another state, or any federal, tribal, or military offense
8 which, if committed in this state, would be a violation of any offense listed in paragraph (a) or
9 (b) of this subdivision;

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.

10 (2) "Family" or "household member", spouses, former spouses, adults related by blood
11 or marriage, adults who are presently residing together or have resided together in the past, **an**
12 **adult who is or has been in a continuing social relationship of a romantic or intimate**
13 **nature with the victim**, and adults who have a child in common regardless of whether they have
14 been married or have resided together at any time;

15 (3) "Persistent domestic violence offender", a person who has pleaded guilty to or has
16 been found guilty of two or more domestic assault offenses, where such two or more offenses
17 occurred within ten years of the occurrence of the domestic assault offense for which the person
18 is charged; and

19 (4) "Prior domestic violence offender", a person who has pleaded guilty to or has been
20 found guilty of one domestic assault offense, where such prior offense occurred within five years
21 of the occurrence of the domestic assault offense for which the person is charged.

22 2. No court shall suspend the imposition of sentence as to a prior or persistent domestic
23 violence offender pursuant to this section nor sentence such person to pay a fine in lieu of a term
24 of imprisonment, section 557.011 to the contrary notwithstanding, nor shall such person be
25 eligible for parole or probation until such person has served a minimum of six months'
26 imprisonment.

27 3. The court shall find the defendant to be a prior domestic violence offender or
28 persistent domestic violence offender, if:

29 (1) The indictment or information, original or amended, or the information in lieu of an
30 indictment pleads all essential facts warranting a finding that the defendant is a prior domestic
31 violence offender or persistent domestic violence offender; and

32 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding
33 beyond a reasonable doubt the defendant is a prior domestic violence offender or persistent
34 domestic violence offender; and

35 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt
36 by the court that the defendant is a prior domestic violence offender or persistent domestic
37 violence offender.

38 4. In a jury trial, such facts shall be pleaded, established and found prior to submission
39 to the jury outside of its hearing.

40 5. In a trial without a jury or upon a plea of guilty, the court may defer the proof in
41 findings of such facts to a later time, but prior to sentencing.

42 6. The defendant shall be accorded full rights of confrontation and cross-examination,
43 with the opportunity to present evidence, at such hearings.

44 7. The defendant may waive proof of the facts alleged.

45 8. Nothing in this section shall prevent the use of presentence investigations or
46 commitments.

47 9. At the sentencing hearing both the state and the defendant shall be permitted to present
48 additional information bearing on the issue of sentence.

49 10. The pleas or findings of guilty shall be prior to the date of commission of the present
50 offense.

51 11. The court shall not instruct the jury as to the range of punishment or allow the jury,
52 upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of
53 prior domestic violence offenders or persistent domestic violence offenders.

54 12. Evidence of prior convictions shall be heard and determined by the trial court out of
55 the hearing of the jury prior to the submission of the case to the jury, and shall include but not
56 be limited to evidence of convictions received by a search of the records of the Missouri uniform
57 law enforcement system maintained by the Missouri state highway patrol. After hearing the
58 evidence, the court shall enter its findings thereon.

59 13. Evidence of similar criminal convictions of domestic violence pursuant to this
60 chapter, chapter 566, or chapter 568 within five years of the offense at issue, shall be admissible
61 for the purposes of showing a past history of domestic violence.

62 14. Any person who has pleaded guilty to or been found guilty of a violation of section
63 565.072 shall be sentenced to the authorized term of imprisonment for a class A felony if the
64 court finds the offender is a prior domestic violence offender. The offender shall be sentenced
65 to the authorized term of imprisonment for a class A felony which term shall be served without
66 probation or parole if the court finds the offender is a persistent domestic violence offender or
67 the prior domestic violence offender inflicts serious physical injury on the victim.

68 15. Any person who has pleaded guilty to or been found guilty of a violation of section
69 565.073 shall be sentenced:

70 (1) To the authorized term of imprisonment for a class B felony if the court finds the
71 offender is a prior domestic violence offender; or

72 (2) To the authorized term of imprisonment for a class A felony if the court finds the
73 offender is a persistent domestic violence offender.

**571.515. 1. When responding to the scene of an alleged act of domestic assault, a
2 law enforcement officer may remove a firearm from the scene if:**

3 **(1) The law enforcement officer has probable cause to believe that an act of
4 domestic assault has occurred; and**

5 **(2) The law enforcement officer has observed the firearm on the scene during the
6 response.**

7 **2. If a firearm is removed from the scene under subsection 1 of this section, the law**
8 **enforcement officer shall:**

9 **(1) Provide to the owner of the firearm information on the process for retaking**
10 **possession of the firearm; and**

11 **(2) Provide for the safe storage of the firearm during the pendency of any**
12 **proceeding related to the alleged act of domestic assault.**

13 **3. Within fourteen days of the conclusion of a proceeding on the alleged act of**
14 **domestic assault, the owner of the firearm may retake possession of the firearm unless**
15 **ordered to surrender the firearm under section 571.095.**

571.520. 1. It shall be unlawful to possess a firearm for a person who:

2 **(1) Is subject to a court order that:**

3 **(a) Was issued after a hearing of which such person received actual notice, and at**
4 **which such person had an opportunity to participate;**

5 **(b) Restrains such person from harassing, stalking, or threatening a family or**
6 **household member of such person or a child of such family or household member or**
7 **person, or engaging in other conduct that would place a family or household member in**
8 **reasonable fear of bodily injury to the family or household member or child; and**

9 **(c) Includes a finding that such person represents a credible threat to the physical**
10 **safety of such family or household member or a child; or by its terms explicitly prohibits**
11 **the use, attempted use, or threatened use of physical force against such family or household**
12 **member or child that would reasonably be expected to cause bodily injury; or**

13 **(2) Has been found guilty of or pleaded guilty to a misdemeanor crime of domestic**
14 **assault in a court of competent jurisdiction.**

15 **2. For the purposes of this section, the term "family" or "household member" shall**
16 **be defined as such term is defined in section 455.010.**

17 **3. Any person who violates the provisions of this section is guilty of a class D felony**
18 **until December 31, 2016, and a class E felony beginning January 1, 2017.**

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