

SECOND REGULAR SESSION

# SENATE BILL NO. 1560

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY SENATOR MCCREERY.

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KRISTINA MARTIN, Secretary

### AN ACT

To repeal sections 455.050, 455.523, 565.076, 565.227, and 571.070, RSMo, and to enact in lieu thereof five new sections relating to unlawful possession of firearms, with penalty provisions and an emergency clause.

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

Section A. Sections 455.050, 455.523, 565.076, 565.227, and 571.070, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 455.050, 455.523, 565.076, 565.227, and 571.070, to read as follows:

455.050. 1. Any full or ex parte order of protection granted pursuant to sections 455.010 to 455.085 shall be to protect the petitioner from domestic violence, stalking, or sexual assault and may include such terms as the court reasonably deems necessary to ensure the petitioner's safety, including but not limited to:

(1) Temporarily enjoining the respondent from committing or threatening to commit domestic violence, molesting, stalking, sexual assault, or disturbing the peace of the petitioner, including violence against a pet;

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

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

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

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

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

23 (d) Jointly occupied by the petitioner and a person  
24 other than respondent; provided that the respondent has no  
25 property interest in the dwelling unit; or

26 (3) Temporarily enjoining the respondent from  
27 communicating with the petitioner in any manner or through  
28 any medium.

29           2. Mutual orders of protection are prohibited unless  
30 both parties have properly filed written petitions and  
31 proper service has been made in accordance with sections  
32 455.010 to 455.085.

33           3. When the court has, after a hearing for any full  
34 order of protection, issued an order of protection, it may,  
35 in addition:

41 (2) Establish a visitation schedule that is in the  
42 best interests of the child;

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

45 (4) Award maintenance to petitioner when petitioner  
46 and respondent are lawfully married in accordance with  
47 chapter 452;

48 (5) Order respondent to make or to continue to make  
49 rent or mortgage payments on a residence occupied by the  
50 petitioner if the respondent is found to have a duty to  
51 support the petitioner or other dependent household members;

52 (6) Order the respondent to pay the petitioner's rent  
53 at a residence other than the one previously shared by the  
54 parties if the respondent is found to have a duty to support  
55 the petitioner and the petitioner requests alternative  
56 housing;

60 (8) Prohibit the respondent from transferring,  
61 encumbering, or otherwise disposing of specified property  
62 mutually owned or leased by the parties;

63 (9) Order the respondent to participate in a court-  
64 approved counseling program designed to help batterers stop  
65 violent behavior or to participate in a substance abuse  
66 treatment program;

71 (11) Order the respondent to pay court costs;

77 (13) Award possession and care of any pet, along with  
78 any moneys necessary to cover medical costs that may have  
79 resulted from abuse of the pet.

80       4. If the court issues, after a hearing for any full  
81 order of protection, an order of protection, the court shall  
82 also:

83           (1) Prohibit the respondent from knowingly possessing  
84 or purchasing any firearm while the order is in effect;

85           (2) Inform the respondent of such prohibition in  
86 writing and, if the respondent is present, orally; and

87           (3) Forward the order to the Missouri state highway  
88 patrol so that the Missouri state highway patrol can update  
89 the respondent's record in the National Instant Criminal  
90 Background Check System (NICS). Upon receiving an order  
91 under this subsection, the Missouri state highway patrol  
92 shall notify the Federal Bureau of Investigation within  
93 twenty-four hours.

94       5. A verified petition seeking orders for maintenance,  
95 support, custody, visitation, payment of rent, payment of  
96 monetary compensation, possession of personal property,  
97 prohibiting the transfer, encumbrance, or disposal of  
98 property, or payment for services of a shelter for victims  
99 of domestic violence, shall contain allegations relating to  
100 those orders and shall pray for the orders desired.

101       [5.] 6. In making an award of custody, the court shall  
102 consider all relevant factors including the presumption that  
103 the best interests of the child will be served by placing  
104 the child in the custody and care of the nonabusive parent,  
105 unless there is evidence that both parents have engaged in  
106 abusive behavior, in which case the court shall not consider  
107 this presumption but may appoint a guardian ad litem or a  
108 court-appointed special advocate to represent the children  
109 in accordance with chapter 452 and shall consider all other  
110 factors in accordance with chapter 452.

111        [6.] 7. The court shall grant to the noncustodial  
112 parent rights to visitation with any minor child born to or  
113 adopted by the parties, unless the court finds, after  
114 hearing, that visitation would endanger the child's physical  
115 health, impair the child's emotional development or would  
116 otherwise conflict with the best interests of the child, or  
117 that no visitation can be arranged which would sufficiently  
118 protect the custodial parent from further domestic  
119 violence. The court may appoint a guardian ad litem or  
120 court-appointed special advocate to represent the minor  
121 child in accordance with chapter 452 whenever the custodial  
122 parent alleges that visitation with the noncustodial parent  
123 will damage the minor child.

124        [7.] 8. The court shall make an order requiring the  
125 noncustodial party to pay an amount reasonable and necessary  
126 for the support of any child to whom the party owes a duty  
127 of support when no prior order of support is outstanding and  
128 after all relevant factors have been considered, in  
129 accordance with Missouri supreme court rule 88.01 and  
130 chapter 452.

131        [8.] 9. The court may grant a maintenance order to a  
132 party for a period of time, not to exceed one hundred eighty  
133 days. Any maintenance ordered by the court shall be in  
134 accordance with chapter 452.

135        [9.] 10. (1) The court may, in order to ensure that a  
136 petitioner can maintain an existing wireless telephone  
137 number or numbers, issue an order, after notice and an  
138 opportunity to be heard, directing a wireless service  
139 provider to transfer the billing responsibility for and  
140 rights to the wireless telephone number or numbers to the  
141 petitioner, if the petitioner is not the wireless service  
142 accountholder.

143 (2) (a) The order transferring billing responsibility  
144 for and rights to the wireless telephone number or numbers  
145 to the petitioner shall list the name and billing telephone  
146 number of the accountholder, the name and contact  
147 information of the person to whom the telephone number or  
148 numbers will be transferred, and each telephone number to be  
149 transferred to that person. The court shall ensure that the  
150 contact information of the petitioner is not provided to the  
151 accountholder in proceedings held under this chapter.

152 (b) Upon issuance, a copy of the full order of  
153 protection shall be transmitted, either electronically or by  
154 certified mail, to the wireless service provider's  
155 registered agent listed with the secretary of state, or  
156 electronically to the email address provided by the wireless  
157 service provider. Such transmittal shall constitute  
158 adequate notice for the wireless service provider acting  
159 under this section and section 455.523.

160 (c) If the wireless service provider cannot  
161 operationally or technically effectuate the order due to  
162 certain circumstances, the wireless service provider shall  
163 notify the petitioner within three business days. Such  
164 circumstances shall include, but not be limited to, the  
165 following:

166 a. The accountholder has already terminated the  
167 account;

168 b. The differences in network technology prevent the  
169 functionality of a device on the network; or

170 c. There are geographic or other limitations on  
171 network or service availability.

172 (3) (a) Upon transfer of billing responsibility for  
173 and rights to a wireless telephone number or numbers to the  
174 petitioner under this subsection by a wireless service

175 provider, the petitioner shall assume all financial  
176 responsibility for the transferred wireless telephone number  
177 or numbers, monthly service costs, and costs for any mobile  
178 device associated with the wireless telephone number or  
179 numbers.

180 (b) This section shall not preclude a wireless service  
181 provider from applying any routine and customary  
182 requirements for account establishment to the petitioner as  
183 part of this transfer of billing responsibility for a  
184 wireless telephone number or numbers and any devices  
185 attached to that number or numbers including, but not  
186 limited to, identification, financial information, and  
187 customer preferences.

188 (4) This section shall not affect the ability of the  
189 court to apportion the assets and debts of the parties as  
190 provided for in law, or the ability to determine the  
191 temporary use, possession, and control of personal property.

192 (5) No cause of action shall lie against any wireless  
193 service provider, its officers, employees, or agents, for  
194 actions taken in accordance with the terms of a court order  
195 issued under this section.

196 (6) As used in this section and section 455.523, a  
197 "wireless service provider" means a provider of commercial  
198 mobile service under Section 332(d) of the Federal  
199 **[Telecommunications] Communications** Act of **[1996] 1934** (47  
200 U.S.C. Section **[151, et seq.] 332**).

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

17           2. If the court issues, after a hearing for any full  
18 order of protection, an order of protection, the court shall  
19 also:

20 (1) Prohibit the respondent from knowingly possessing  
21 or purchasing any firearm while the order is in effect;

22 (2) Inform the respondent of such prohibition in  
23 writing and, if the respondent is present, orally; and

31           **3.** When the court has, after hearing for any full  
32 order of protection, issued an order of protection, it may,  
33 in addition:

565.076. 1. A person commits the offense of domestic  
2 assault in the fourth degree if the act involves a domestic

3 victim, as the term "domestic victim" is defined under  
4 section 565.002, and:

5 (1) The person attempts to cause or recklessly causes  
6 physical injury, physical pain, or illness to such domestic  
7 victim;

8 (2) With criminal negligence the person causes  
9 physical injury to such domestic victim by means of a deadly  
10 weapon or dangerous instrument;

11 (3) The person purposely places such domestic victim  
12 in apprehension of immediate physical injury by any means;

13 (4) The person recklessly engages in conduct which  
14 creates a substantial risk of death or serious physical  
15 injury to such domestic victim;

16 (5) The person knowingly causes physical contact with  
17 such domestic victim knowing he or she will regard the  
18 contact as offensive; or

19 (6) The person knowingly attempts to cause or causes  
20 the isolation of such domestic victim by unreasonably and  
21 substantially restricting or limiting his or her access to  
22 other persons, telecommunication devices or transportation  
23 for the purpose of isolation.

24 2. The offense of domestic assault in the fourth  
25 degree is a class A misdemeanor, unless the person has  
26 previously been found guilty of the offense of domestic  
27 assault, of any assault offense under this chapter, or of  
28 any offense against a domestic victim committed in violation  
29 of any county or municipal ordinance in any state, any state  
30 law, any federal law, or any military law which if committed  
31 in this state two or more times would be a violation of this  
32 section, in which case it is a class E felony. The offenses  
33 described in this subsection may be against the same  
34 domestic victim or against different domestic victims.

35       3. Upon a conviction for the offense of domestic  
36 assault in the fourth degree, the court shall forward the  
37 record of conviction to the Missouri state highway patrol so  
38 that the Missouri state highway patrol can update the  
39 respondent's record in the National Instant Criminal  
40 Background Check System (NICS). Upon receiving a record  
41 under this subsection, the Missouri state highway patrol  
42 shall notify the Federal Bureau of Investigation within  
43 twenty-four hours.

565.227. 1. A person commits the offense of stalking  
2 in the second degree if he or she purposely, through his or  
3 her course of conduct, disturbs, or follows with the intent  
4 to disturb another person.

5       2. This section shall not apply to activities of  
6 federal, state, county, or municipal law enforcement  
7 officers conducting investigations of any violation of  
8 federal, state, county, or municipal law.

9       3. Any law enforcement officer may arrest, without a  
10 warrant, any person he or she has probable cause to believe  
11 has violated the provisions of this section.

12       4. The offense of stalking in the second degree is a  
13 class A misdemeanor, unless the defendant has previously  
14 been found guilty of a violation of this section or section  
15 565.225, or of any offense committed in another jurisdiction  
16 which, if committed in this state, would be chargeable or  
17 indictable as a violation of any offense listed in this  
18 section or section 565.225, or unless the victim is  
19 intentionally targeted as a law enforcement officer, as  
20 defined in section 556.061, or the victim is targeted  
21 because he or she is a relative within the second degree of  
22 consanguinity or affinity to a law enforcement officer, in  
23 which case stalking in the second degree is a class E felony.

24       5. Upon a conviction for the offense of stalking in  
25 the second degree, the court shall forward the record of  
26 conviction to the Missouri state highway patrol so that the  
27 Missouri state highway patrol can update the respondent's  
28 record in the National Instant Criminal Background Check  
29 System (NICS). Upon receiving a record under this  
30 subsection, the Missouri state highway patrol shall notify  
31 the Federal Bureau of Investigation within twenty-four hours.

571.070. 1. A person commits the offense of unlawful possession of a firearm if such person knowingly has any firearm in his or her possession and:

4           (1) Such person has been convicted of a felony under  
5 the laws of this state, or of a crime under the laws of any  
6 state or of the United States which, if committed within  
7 this state, would be a felony; [or]

8           (2) Such person is a fugitive from justice, is  
9 habitually in an intoxicated or drugged condition, or is  
10 currently adjudged mentally incompetent;

11           (3) Such person has been convicted of a misdemeanor  
12 offense of domestic violence under the laws of this state,  
13 or of a crime under the laws of any state or of the United  
14 States that, if committed in this state, would be a  
15 misdemeanor offense of domestic violence; or

16           (4) Such person is subject to an order of protection  
17 granted under sections 455.010 to 455.095 or sections  
18 455.500 to 455.538 that was issued after a hearing of which  
19 the person had actual notice and at which the person had an  
20 opportunity to participate or subject to an equivalent order  
21 issued under the laws of another state or the United States.

22       2. Unlawful possession of a firearm is a class C  
23 felony, unless a person has been convicted of a dangerous  
24 felony as defined in section 556.061, or the person has a

25 prior conviction for unlawful possession of a firearm in  
26 which case it is a class B felony.

27       3. The provisions of subdivision (1) of subsection 1  
28 of this section shall not apply to the possession of an  
29 antique firearm.

30       **4. As used in this section, "misdemeanor offense of  
31 domestic violence" means:**

32       **(1) Domestic assault in the fourth degree under  
33 section 565.076;**

34       **(2) Stalking in the second degree under section  
35 565.227; or**

36       **(3) Any misdemeanor offense committed by a family or  
37 household member of the victim as defined in section 455.010  
38 that involves the use or attempted use of physical force or  
39 the threatened use of a deadly weapon.**

2       Section B. Because immediate action is necessary to  
3 protect victims of domestic violence from future acts of  
4 domestic violence, section A of this act is deemed necessary  
5 for the immediate preservation of the public health,  
6 welfare, peace, and safety, and is hereby declared to be an  
7 emergency act within the meaning of the constitution, and  
8 section A of this act shall be in full force and effect upon  
its passage and approval.

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