

FIRST REGULAR SESSION

HOUSE BILL NO. 1125

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES KANDER (Sponsor), JONES (117), ROORDA,
RUZICKA AND WEBBER (Co-sponsors).

1037L.03I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 455.085, 455.090, 455.524, and 455.538, RSMo, and to enact in lieu thereof four new sections relating to orders of protection, with penalty provisions.

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

Section A. Sections 455.085, 455.090, 455.524, and 455.538, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 455.085, 455.090, 455.524,
3 and 455.538, to read as follows:

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.

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.

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

30 (3) The history of domestic violence between the persons involved. No law enforcement
31 officer investigating an incident of family violence shall threaten the arrest of all parties for the
32 purpose of discouraging requests or law enforcement intervention by any party. Where
33 complaints are received from two or more opposing parties, the officer shall evaluate each
34 complaint separately to determine whether he should seek a warrant for an arrest.

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

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

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

45 7. A violation of the terms and conditions, with regard to abuse, stalking, child custody,
46 communication initiated by the respondent or entrance upon the premises of the petitioner's
47 dwelling unit, of an ex parte order of protection of which the respondent has notice, shall be a
48 class A misdemeanor unless the respondent has previously pleaded guilty to or has been found
49 guilty of violating an ex parte order of protection or a full order of protection within five years
50 of the date of the subsequent violation, in which case the subsequent violation shall be a class

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

57 8. A violation of the terms and conditions, with regard to abuse, stalking, child custody,
58 communication initiated by the respondent or entrance upon the premises of the petitioner's
59 dwelling unit, of a full order of protection shall be a class A misdemeanor, unless:

60 (1) The respondent has previously pleaded guilty to or has been found guilty of violating
61 an ex parte order of protection or a full order of protection within five years of the date of the
62 subsequent violation, in which case the subsequent violation shall be a class D felony; **or**

63 (2) **The respondent has previously been found in criminal contempt of an ex parte**
64 **order of protection or full order of protection within five years of the date of the violation,**
65 **in which case the violation shall be a class D felony.**

66

67 Evidence of prior pleas of guilty or findings of guilt **or criminal contempt** shall be heard by the
68 court out of the presence of the jury prior to submission of the case to the jury. If the court finds
69 the existence of such prior **finding of criminal contempt**, plea of guilty or finding of guilt
70 beyond a reasonable doubt, the court shall decide the extent or duration of the sentence or other
71 disposition and shall not instruct the jury as to the range of punishment or allow the jury to assess
72 and declare the punishment as a part of its verdict. For the purposes of this subsection, in
73 addition to the notice provided by actual service of the order, a party is deemed to have notice
74 of an order of protection if the law enforcement officer responding to a call of a reported incident
75 of abuse or violation of an order of protection presented a copy of the order of protection to the
76 respondent.

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

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

455.090. 1. The court shall retain jurisdiction over [the full order] **all orders** of
2 protection issued under this chapter for [its] **their** entire duration. The court may schedule
3 compliance review hearings to monitor the respondent's compliance with the order.

4 2. The terms of [the] **any** order of protection issued under this chapter are enforceable
5 by all remedies available at law for the enforcement of a judgment, and the court may punish a

6 respondent who willfully violates [the] **an** order of protection to the same extent as provided by
7 law for **criminal** contempt of the court in any other suit or proceeding cognizable by the court.

455.524. 1. The court shall retain jurisdiction over [the full order] **all orders** of
2 protection issued under sections 455.500 to 455.538 for [its] **their** entire duration. The court
3 may schedule compliance review hearings to monitor the respondent's compliance with the order.

4 2. The terms of [the] **any** child order of protection issued under this chapter are
5 enforceable by all remedies available at law for the enforcement of a judgment, and the court
6 may punish a respondent who willfully violates [the] **a** child order of protection to the same
7 extent as provided by law for **criminal** contempt of the court in any suit or proceeding
8 cognizable by the court.

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 in
3 violation of that order, he shall have the authority to arrest the respondent whether or not the
4 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 order of protection **or full**
12 **order of protection** with regard to abuse, child custody, or entrance upon the premises of the
13 victim's dwelling unit, of which the respondent has notice, shall be a class A misdemeanor,
14 **unless:**

15 (a) **The respondent has previously pleaded guilty to or has been found guilty of**
16 **violating an ex parte order of protection or full order of protection within five years of the**
17 **date of any subsequent violation, in which case the subsequent violation shall be a class D**
18 **felony; or**

19 (b) **The respondent has previously been found in criminal contempt of an ex parte**
20 **order of protection or full order of protection within five years of the date of the violation,**
21 **in which case the violation shall be a class D felony.**

22 (2) Violation of the terms and conditions of a full order of protection for a child
23 regarding abuse, child custody, or entrance upon the premises of the petitioner's dwelling unit,
24 shall be a class A misdemeanor, **unless:**

25 (a) **The respondent has previously pleaded guilty to or has been found guilty of**
26 **violating an ex parte order of protection or full order of protection within five years of the**

27 **date of any subsequent violation, in which case the subsequent violation shall be a class D**
28 **felony; or**

29 **(b) The respondent has previously been found in criminal contempt of an ex parte**
30 **order of protection or full order of protection within five years of the date of the violation,**
31 **in which case the violation shall be a class D felony.**

32 ~~[(2)]~~ (3) For purposes of this subsection, in addition to the notice provided by actual
33 service of the order, a party is deemed to have notice of an order of protection for a child if the
34 law enforcement officer responding to a call of a reported incident of abuse or violation of an
35 order of protection for a child presents a copy of the order of protection to the respondent.

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

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