

FIRST REGULAR SESSION

HOUSE BILL NO. 839

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BAILEY.

1826H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 455.020, 455.060, and 455.085, RSMo, and to enact in lieu thereof three new sections relating to orders of protection.

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

Section A. Sections 455.020, 455.060, and 455.085, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 455.020, 455.060, and 455.085, to read as follows:

455.020. 1. Any person who has been subject to domestic violence by a present or former family or household member, or who has been the victim of stalking or sexual assault, may seek relief under sections 455.010 to 455.085 by filing a verified petition alleging such domestic violence, stalking, or sexual assault by the respondent. **Such petition shall be accompanied by a police report that details the incident that prompted the order of protection petition.**

2. A person's right to relief under sections 455.010 to 455.085 shall not be affected by the person leaving the residence or household to avoid domestic violence.

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

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

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.

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

19 5. Any order of protection or order for child support, custody, temporary custody,
20 visitation or maintenance entered under sections 455.010 to 455.085 shall terminate upon the
21 order of the court granting a motion to terminate the order of protection by the petitioner. Prior
22 to terminating any order of protection, the court may inquire of the petitioner or others in **camera**
23 **in** order to determine whether the dismissal is voluntary.

24 6. The order of protection may not change the custody of children when an action for
25 dissolution of marriage has been filed or the custody has previously been awarded by a court of
26 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 domestic violence, 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, the officer is not required to arrest two parties
22 involved in an assault when both parties claim to have been assaulted. The arresting officer shall
23 attempt to identify and shall arrest the party the officer believes is the primary physical aggressor.
24 The term "primary physical aggressor" is defined as the most significant, rather than the first,
25 aggressor. The law enforcement officer shall consider any or all of the following in determining
26 the primary physical aggressor:

- 27 (1) The intent of the law to protect victims from continuing domestic violence;
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.

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32 No law enforcement officer investigating an incident of domestic violence shall threaten the
33 arrest of all parties for the purpose of discouraging requests or law enforcement intervention by
34 any party. Where complaints are received from two or more opposing parties, the officer shall
35 evaluate each complaint separately to determine whether the officer should seek a warrant for
36 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 domestic violence, stalking,
48 sexual assault, child custody, communication initiated by the respondent or entrance upon the
49 premises of the petitioner's dwelling unit or place of employment or school, or being within a
50 certain distance of the petitioner or a child of the petitioner, of an ex parte order of protection of

51 which the respondent has notice, shall be a class A misdemeanor unless the respondent has
52 previously pleaded guilty to or has been found guilty in any division of the circuit court of
53 violating an ex parte order of protection or a full order of protection within five years of the date
54 of the subsequent violation, in which case the subsequent violation shall be a class E felony.
55 Evidence of prior pleas of guilty or findings of guilt shall be heard by the court out of the
56 presence of the jury prior to submission of the case to the jury. If the court finds the existence
57 of such prior pleas of guilty or finding of guilt beyond a reasonable doubt, the court shall decide
58 the extent or duration of sentence or other disposition and shall not instruct the jury as to the
59 range of punishment or allow the jury to assess and declare the punishment as a part of its
60 verdict.

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

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

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

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