

FIRST REGULAR SESSION

HOUSE BILL NO. 126

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MACKEY.

0108H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 571, RSMo, by adding thereto seven new sections relating to extreme risk protection orders, with penalty provisions.

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

Section A. Chapter 571, RSMo, is amended by adding thereto seven new sections, to be known as sections 571.600, 571.605, 571.610, 571.615, 571.620, 571.635, and 571.640, to read as follows:

571.600. As used in sections 571.600 to 571.640, the following terms mean:

(1) "Extreme risk protection order" or "ERPO", a court order prohibiting a person from purchasing, owning, possessing, or controlling a firearm for a period up to one year;

(2) "Firearm seizure warrant", a court order directing law enforcement to seize any firearm in the possession of a respondent;

(3) "Respondent", the person against whom an extreme risk protection order is requested in a petition or, if the order is issued, the person subject to and named in an extreme risk protection order.

571.605. 1. Any person may petition a court for an extreme risk protection order (ERPO). The petition shall set forth facts and circumstances that necessitate the issuance of an ERPO against a respondent. The court may prescribe the format of the petition.

2. A court shall issue an ERPO if, based on an affidavit of the petitioner and any other provided information, the court finds probable cause that the respondent poses a significant risk of personal injury to himself, herself, or others by owning or possessing a firearm.

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.

8 **3. In determining whether grounds for an extreme risk protection order exist, the**
9 **court may question the petitioner and any witnesses produced by the petitioner under oath.**

10 **The court:**

11 **(1) Shall consider:**

12 **(a) Any recent violation of a restraining order by the respondent; and**

13 **(b) Any conviction of the respondent for a weapons offense; and**

14 **(2) May consider:**

15 **(a) The reckless use, display, or brandishing of a firearm by the respondent;**

16 **(b) Any actual, attempted, or threatened use of violence by the respondent directed**
17 **toward another person;**

18 **(c) Any recent actual, attempted, or threatened violence by the respondent directed**
19 **toward himself or herself;**

20 **(d) Any arrest of the respondent for a felony offense;**

21 **(e) Whether the respondent ever violated a protective order under chapter 455;**

22 **(f) Whether the respondent is or has ever abused a controlled substance or alcohol;**

23 **and**

24 **(g) Whether the respondent owns, possesses, recently acquired, or can access any**
25 **firearms or other deadly weapons.**

26 **4. The petitioner's affidavit shall attest facts that establish the grounds of the**
27 **petition. In lieu of a written affidavit, the court may take an oral statement under oath.**

28 **5. An ERPO shall include:**

29 **(1) A statement of the grounds for the order;**

30 **(2) The date and time the order expires;**

31 **(3) The address of the circuit court with jurisdiction over the respondent's primary**
32 **residence;**

33 **(4) An order that the respondent shall not own, possess, purchase, receive, or**
34 **attempt to purchase or receive a firearm while the order is in effect;**

35 **(5) An order that any firearms owned or possessed by the respondent shall be**
36 **surrendered to law enforcement;**

37 **(6) A statement that the respondent is entitled to request, in writing, one hearing**
38 **to modify or rescind the order at any time the ERPO is in effect; and**

39 **(7) A statement that the respondent may seek legal advice from an attorney**
40 **regarding the order.**

571.610. 1. If there is probable cause to believe that a respondent subject to an
2 **extreme risk protection order (ERPO) possesses or owns a firearm, the court shall issue a**

3 firearm seizure warrant to the appropriate law enforcement agency that directs the agency
4 to seize and retain any specified firearms.

5 2. A firearm seizure warrant shall be issued for any firearm specifically listed in
6 the ERPO.

7 3. A firearm specifically described in the firearm seizure warrant may be taken
8 from any place or from any person in possession of the firearm.

9 4. If a law enforcement officer takes a firearm under a firearm seizure warrant, the
10 officer shall give a receipt that describes the seized property to the person from whom it
11 was taken. In the absence of a person, the officer shall leave the receipt in the place where
12 the property was found.

13 5. If the firearm seizure warrant is executed in a location occupied by multiple
14 parties and a firearm owned by a person other than the respondent is located, the firearm
15 shall not be seized if the firearm is stored in a manner inaccessible to the respondent and
16 there is no evidence of possession of the firearm by the respondent.

17 6. If the firearm seizure warrant is executed in a location occupied by multiple
18 parties and a gun safe that is owned by a person other than the respondent is located
19 therein, the contents of the gun safe shall not be searched except:

20 (1) With the owner's consent; or

21 (2) With a valid search warrant for the gun safe.

571.615. 1. Except as provided under subsection 7 of this section, the court that
2 issued the extreme risk protection order (ERPO) and firearm seizure warrant shall hold
3 a hearing within fourteen days of the execution of the order and warrant to determine
4 whether the order or warrant shall remain in effect.

5 2. At the hearing, the state shall have the burden of proving by clear and
6 convincing evidence that the respondent poses a significant risk of personal injury to
7 himself, herself, or others by owning or possessing a firearm.

8 3. If at the hearing the respondent is found to pose a significant risk of personal
9 injury to himself, herself, or others by owning or possessing a firearm, any firearm seized
10 from the respondent shall be retained by law enforcement for a period not to exceed one
11 year. The respondent shall be prohibited from purchasing, owning, possessing, or
12 controlling a firearm for a period not to exceed one year.

13 4. The court shall notify the Missouri uniform law enforcement system (MULES)
14 of the ERPO no later than the business day immediately after it issues the order. The court
15 shall also notify MULES of any order rescinding or modifying the ERPO no later than the
16 business day immediately after it issues such order. The notice or report shall be in an
17 electronic format and in a manner prescribed by the Missouri state highway patrol.

18 **5. If the court finds that the state fails to satisfy the required standard of proof, all**
19 **firearms seized under the firearm seizure warrant shall be returned to the respondent.**

20 **6. If the respondent is prohibited from purchasing, owning, possessing, or**
21 **controlling a firearm for a period of one year or longer by any other state or federal law,**
22 **a hearing under this section shall not be required, and the court shall order law**
23 **enforcement to either hold seized firearms until the respondent is no longer prohibited**
24 **from owning a firearm or transfer the firearms to a licensed firearms dealer under section**
25 **571.095.**

26 **7. If a seized firearm belongs to a person other than the respondent, the firearm**
27 **shall be returned to the lawful owner.**

28 **8. A respondent may request one hearing at any time during the effective period**
29 **of the order to rescind or modify the ERPO. The request shall be in writing and submitted**
30 **in a form and manner prescribed by the court.**

571.620. 1. (1) If a law enforcement agency has probable cause to believe that a
2 **respondent continues to pose a significant risk of personal injury to himself, herself, or**
3 **others by owning or possessing a firearm, the agency may request a renewal of the extreme**
4 **risk protection order (ERPO). The request shall specify facts and circumstances**
5 **supporting the renewal of the ERPO. The request shall be submitted in a form and**
6 **manner as prescribed by the court.**

7 **(2) The same court that issued the initial order shall hold a hearing to determine**
8 **whether to grant the request to renew the order.**

9 **(3) The respondent shall be given written notice and an opportunity to be heard.**

10 **2. If there is probable cause to believe that the respondent continues to pose a**
11 **significant risk of personal injury to himself, herself, or others by owning or possessing a**
12 **firearm, the court may, upon its own motion or upon request of a person, issue a renewal**
13 **of an ERPO after written notice to the respondent and after the respondent has been given**
14 **an opportunity for a hearing.**

571.635. 1. If a law enforcement officer is at the scene of a domestic violence
2 **incident involving a threat to human life or a physical assault, is serving a protective order**
3 **under chapter 455, or is serving an extreme risk protection order (ERPO), the officer shall**
4 **temporarily seize any firearm or other deadly weapon in plain sight or discovered under**
5 **a consensual or other lawful search to ensure the safety of the officer or other persons**
6 **present if the law enforcement officer has probable cause to believe that an act of domestic**
7 **violence has occurred.**

8 **2. If a firearm is seized, the law enforcement officer shall:**

9 **(1) Provide the owner of the firearm with information on the process for reclaiming**
10 **the firearm; and**

11 **(2) Provide for the safe storage of the firearm while the firearm is in the possession**
12 **of law enforcement.**

13 **3. No later than fourteen days after the conclusion of a proceeding on the alleged**
14 **act of domestic violence, the owner of the firearm shall reclaim the firearm unless the court**
15 **orders the firearm surrendered under section 571.095.**

571.640. 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 the person received actual notice and at**
4 **which the person had an opportunity to participate;**

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

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

13 **(2) Is subject to an order of protection under chapter 455;**

14 **(3) Has been found guilty of or pleaded guilty to a misdemeanor offense involving**
15 **domestic violence; or**

16 **(4) Has been found guilty of or pleaded guilty to a misdemeanor sexual offense.**

17 **2. For the purposes of this section, "family" and "household member" shall have**
18 **the same meanings as those terms are defined under section 455.010.**

19 **3. Any person who violates the provisions of this section is guilty of a class E felony.**

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