

# SENATE BILL NO. 891

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOSLEY.

2839S.01I

KRISTINA MARTIN, Secretary

## AN ACT

To amend chapter 455, RSMo, by adding thereto one new section relating to extreme risk orders of protection, with penalty provisions.

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

Section A. Chapter 455, RSMo, is amended by adding thereto  
2 one new section, to be known as section 455.096, to read as  
3 follows:

455.096. 1. In addition to any other jurisdictional  
2 grounds provided by law, a court shall have jurisdiction to  
3 enter an extreme risk order of protection restraining or  
4 enjoining the respondent from possessing any firearms.

5 2. (1) Upon the filing of a verified petition by a  
6 parent, teacher, or school administrator of the respondent  
7 or a law enforcement officer or agency pursuant to this  
8 section, and for good cause shown in the petition, the court  
9 may immediately issue an ex parte order of protection. An  
10 immediate and present danger of the respondent causing  
11 personal injury to him or herself or others shall constitute  
12 good cause shown for purposes of this section. An ex parte  
13 order of protection entered by the court shall take effect  
14 when entered and shall remain in effect until there is valid  
15 service of process and a hearing is held on the motion  
16 within fifteen days of the filing of the petition.

17 (2) Failure to serve an ex parte order of protection  
18 on the respondent shall not affect the validity or

19 enforceability of such order. If the respondent is less  
20 than eighteen years of age, unless otherwise emancipated,  
21 service of process shall be made upon a custodial parent or  
22 guardian of the respondent, or upon a guardian ad litem  
23 appointed by the court, requiring that the person appear and  
24 bring the respondent before the court at the time and place  
25 stated.

26 (3) If an ex parte order is entered and the respondent  
27 is less than eighteen years of age, the court shall transfer  
28 the case to juvenile court for a hearing on a full order of  
29 protection. The court shall appoint a guardian ad litem for  
30 any such respondent not represented by a parent or guardian.

31 3. Upon issuance of any ex parte order of protection  
32 under subsection 2 of this section, the court shall order  
33 the respondent to surrender to the local law enforcement  
34 agency where the respondent resides, all firearms in the  
35 respondent's custody, control, or possession. The law  
36 enforcement officer serving any ex parte order of protection  
37 shall provide the respondent to the order an opportunity to  
38 comply with the order by surrendering all firearms in his or  
39 her custody, control, or possession. If the respondent does  
40 not comply, the law enforcement officer serving the order  
41 shall conduct a lawful search and seizure of any firearms of  
42 the respondent and in any area where probable cause exists  
43 that a firearm to be surrendered pursuant to the order is  
44 located. The law enforcement agency shall hold all  
45 surrendered firearms until a hearing is held on the petition  
46 for the extreme risk order of protection.

47 4. Not later than fifteen days after the filing of a  
48 verified petition that meets the requirements of this  
49 section, a hearing shall be held unless the court deems, for  
50 good cause shown, that a continuance should be granted. At

51 the hearing, if the petitioner has proved the allegation  
52 that the respondent poses a significant danger to him or  
53 herself or others by a preponderance of the evidence, the  
54 court shall issue a full extreme risk order of protection  
55 for a period of time of one year.

56 5. Upon issuance of any full extreme risk order of  
57 protection under subsection 4 of this section, the court  
58 shall order the respondent to surrender to the local law  
59 enforcement agency where the respondent resides, all  
60 firearms in the respondent's custody, control, or  
61 possession. If the respondent has been identified in the  
62 petition as being required to carry a firearm as a condition  
63 of the respondent's employment, the court shall notify the  
64 respondent's employer of the existence of the order. If the  
65 respondent holds a concealed carry permit pursuant to  
66 section 571.101, the court shall order a revocation of the  
67 concealed carry permit.

68 (1) The law enforcement officer serving any extreme  
69 risk order of protection shall provide the respondent to the  
70 order an opportunity to comply with the order by  
71 surrendering all firearms in his or her custody, control, or  
72 possession. If the respondent does not comply, the law  
73 enforcement officer serving the order shall:

74 (a) Conduct a lawful search of the respondent and any  
75 area where probable cause exists that a firearm to be  
76 surrendered pursuant to the order is located; and

77 (b) Take possession of all firearms belonging to the  
78 respondent that are surrendered, in plain sight, or  
79 discovered pursuant to a lawful search conducted pursuant to  
80 paragraph (a) of this subdivision.

81 (2) If personal service by a law enforcement officer  
82 is not possible, or not required because the respondent was

83 present at the extreme risk order of protection hearing, the  
84 respondent shall surrender the firearms in a safe manner to  
85 the control of the local law enforcement agency within forty-  
86 eight hours of being served with the order by alternate  
87 service or within forty-eight hours of the hearing or final  
88 decision at which the respondent was present.

89 (3) At the time of surrender, a law enforcement  
90 officer taking possession of a firearm shall issue a receipt  
91 identifying all firearms that have been surrendered and  
92 provide a copy of the receipt to the respondent. Within  
93 seventy-two hours after service of the order, the officer  
94 serving the order shall file the original receipt with the  
95 court and shall ensure that his or her law enforcement  
96 agency retains a copy of the receipt.

97 (4) Upon the sworn statement or testimony of any law  
98 enforcement officer alleging that the respondent has failed  
99 to comply with the surrender of firearms as required by an  
100 order issued under this subsection and subsection 3 of this  
101 section, the court shall determine whether probable cause  
102 exists to believe that the respondent has failed to  
103 surrender all firearms in his or her possession, custody, or  
104 control. If probable cause exists, the court shall issue a  
105 warrant describing the firearms and authorizing a search of  
106 the locations where the firearms are reasonably believed to  
107 be and the seizure of any firearms discovered pursuant to  
108 such search.

109 (5) If a person other than the respondent claims title  
110 to any firearms surrendered pursuant to this subsection and  
111 subsection 3 of this section, and he or she is determined by  
112 the law enforcement agency to be the lawful owner of the  
113 firearm, the firearm shall be returned to him or her,  
114 provided that:

115           (a) The firearm is removed from the respondent's  
116 custody, control, or possession and the lawful owner agrees  
117 to store the firearm in a manner such that the respondent  
118 does not have access to or control of the firearm; and

119           (b) The firearm is not otherwise unlawfully possessed  
120 by the owner.

121           (6) A respondent to an extreme risk order of  
122 protection may file a motion to modify or rescind that order  
123 of protection. The respondent may request a hearing on such  
124 a motion with the court that issued the original extreme  
125 risk order of protection. The court shall conduct a hearing  
126 on the motion to modify or rescind an extreme risk order of  
127 protection within fifteen days after the motion is filed.

128 At the hearing, if the respondent has proved by a  
129 preponderance of the evidence that the extreme risk order of  
130 protection must be modified or rescinded, the court shall  
131 modify or rescind the extreme risk order of protection.

132           6. If an extreme risk order of protection is  
133 terminated or expires without renewal, a law enforcement  
134 agency holding any firearm that has been surrendered  
135 pursuant to subsections 3 and 5 of this section shall return  
136 any surrendered firearm requested by a respondent only after  
137 confirming, through a background check administered by the  
138 state highway patrol under section 43.543, that the  
139 respondent is currently eligible to own or possess firearms  
140 under federal and state law and after confirming with the  
141 court that the extreme risk order of protection has  
142 terminated or has expired without renewal.

143           7. (1) The petitioner may renew the extreme risk  
144 order of protection if probable cause is shown that the  
145 respondent continues to pose a significant risk of personal  
146 injury to him or herself or others by possessing a firearm.

147 The extreme risk order of protection may be renewed for up  
148 to one year from the expiration of the preceding extreme  
149 risk order of protection. Written notice of a hearing on  
150 the motion to renew an extreme risk order of protection  
151 shall be given to the respondent by the court.

152 (2) A law enforcement agency shall, if requested,  
153 provide prior notice of the return of a firearm to a  
154 respondent to family or household members of the respondent.

155 (3) Any firearm surrendered by a respondent pursuant  
156 to subsections 3 and 5 of this section that remains  
157 unclaimed by the lawful owner shall be disposed of in  
158 accordance with the law enforcement agency's policies and  
159 procedures for the disposal of firearms in police custody.

160 8. The clerk of any court that issues an extreme risk  
161 order of protection shall send the Missouri state highway  
162 patrol a copy of the order issued by that court within forty-  
163 eight hours of the court issuing the order. Upon receiving  
164 an extreme risk order of protection, the Missouri state  
165 highway patrol shall enter the extreme risk order of  
166 protection into the Missouri uniform law enforcement system  
167 (MULES) within forty-eight hours of receiving notice of the  
168 order.

169 9. A violation of the terms and conditions of an ex  
170 parte order of protection pursuant to this section of which  
171 the respondent has notice, shall be a class A misdemeanor  
172 unless the respondent has previously pleaded guilty to or  
173 has been found guilty in any division of the circuit court  
174 of violating an ex parte order of protection or a full order  
175 of protection within five years of the date of the  
176 subsequent violation, in which case the subsequent violation  
177 shall be a class E felony. Evidence of prior pleas of  
178 guilty or findings of guilt shall be heard by the court out

179 of the presence of the jury prior to submission of the case  
180 to the jury. If the court finds the existence of such prior  
181 pleas of guilty or finding of guilt beyond a reasonable  
182 doubt, the court shall decide the extent or duration of  
183 sentence or other disposition and shall not instruct the  
184 jury as to the range of punishment or allow the jury to  
185 assess and declare the punishment as a part of its verdict.

186 10. A violation of the terms and conditions of a full  
187 order of protection pursuant to this section shall be a  
188 class A misdemeanor, unless the respondent has previously  
189 pleaded guilty to or has been found guilty in any division  
190 of the circuit court of violating an ex parte order of  
191 protection or a full order of protection within five years  
192 of the date of the subsequent violation, in which case the  
193 subsequent violation shall be a class E felony. Evidence of  
194 prior pleas of guilty or findings of guilt shall be heard by  
195 the court out of the presence of the jury prior to  
196 submission of the case to the jury. If the court finds the  
197 existence of such prior plea of guilty or finding of guilt  
198 beyond a reasonable doubt, the court shall decide the extent  
199 or duration of the sentence or other disposition and shall  
200 not instruct the jury as to the range of punishment or allow  
201 the jury to assess and declare the punishment as a part of  
202 its verdict. For the purposes of this subsection, in  
203 addition to the notice provided by actual service of the  
204 order, a party is deemed to have notice of an order of  
205 protection if:

206 (1) The law enforcement officer responding to a call  
207 of a reported violation of an order of protection presented  
208 a copy of the order of protection to the respondent; or

209           (2) Notice is given by actual communication to the  
210 respondent in a manner reasonably likely to advise the  
211 respondent.

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