

SENATE BILL NO. 33

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAY.

0605S.02I

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

16 (2) Failure to serve an ex parte order of protection
17 on the respondent shall not affect the validity or
18 enforceability of such order. If the respondent is less

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

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

30 (4) The law enforcement officer or agency shall be
31 responsible for providing notice to a family or household
32 member of the respondent and to any known third party who
33 may be at risk of violence. The notice shall state that the
34 law enforcement officer or agency intends to petition the
35 court for an extreme risk order of protection or has already
36 done so, and include referrals to appropriate resources,
37 including mental health, domestic violence, and counseling
38 resources. The law enforcement officer or agency shall
39 attest in the petition to having provided such notice, or
40 attest to the steps that shall be taken to provide such
41 notice.

42 3. Upon issuance of any ex parte order of protection
43 under subsection 2 of this section, the court shall order
44 the respondent to surrender to the local law enforcement
45 agency where the respondent resides, all firearms in the
46 respondent's custody, control, or possession. The law
47 enforcement officer serving any ex parte order of protection
48 shall provide the respondent to the order an opportunity to
49 comply with the order by surrendering all firearms in his or
50 her custody, control, or possession. If the respondent does

51 not comply, the law enforcement officer serving the order
52 shall conduct a lawful search and seizure of any firearms of
53 the respondent and in any area where probable cause exists
54 that a firearm to be surrendered pursuant to the order is
55 located. The law enforcement agency shall hold all
56 surrendered firearms until a hearing is held on the petition
57 for the extreme risk order of protection.

58 4. Not later than fifteen days after the filing of a
59 verified petition that meets the requirements of this
60 section, a hearing shall be held unless the court deems, for
61 good cause shown, that a continuance should be granted. At
62 the hearing, if the law enforcement officer or agency has
63 proved the allegation that the respondent poses a
64 significant danger to him or herself or others by a
65 preponderance of the evidence, the court shall issue a full
66 extreme risk order of protection for a period of time of one
67 year.

68 5. Upon issuance of any full extreme risk order of
69 protection under subsection 4 of this section, the court
70 shall order the respondent to surrender to the local law
71 enforcement agency where the respondent resides, all
72 firearms in the respondent's custody, control, or
73 possession. If the respondent has been identified in the
74 petition as being required to carry a firearm as a condition
75 of the respondent's employment, the court shall notify the
76 respondent's employer of the existence of the order. If the
77 respondent holds a concealed carry permit pursuant to
78 section 571.101, the court shall order a revocation of the
79 concealed carry permit.

80 (1) The law enforcement officer serving any extreme
81 risk order of protection shall provide the respondent to the
82 order an opportunity to comply with the order by

83 surrendering all firearms in his or her custody, control, or
84 possession. If the respondent does not comply, the law
85 enforcement officer serving the order shall:

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

89 (b) Take possession of all firearms belonging to the
90 respondent that are surrendered, in plain sight, or
91 discovered pursuant to a lawful search conducted pursuant to
92 paragraph (a) of this subdivision.

93 (2) If personal service by a law enforcement officer
94 is not possible, or not required because the respondent was
95 present at the extreme risk order of protection hearing, the
96 respondent shall surrender the firearms in a safe manner to
97 the control of the local law enforcement agency within forty-
98 eight hours of being served with the order by alternate
99 service or within forty-eight hours of the hearing or final
100 decision at which the respondent was present.

101 (3) At the time of surrender, a law enforcement
102 officer taking possession of a firearm shall issue a receipt
103 identifying all firearms that have been surrendered and
104 provide a copy of the receipt to the respondent. Within
105 seventy-two hours after service of the order, the officer
106 serving the order shall file the original receipt with the
107 court and shall ensure that his or her law enforcement
108 agency retains a copy of the receipt.

109 (4) Upon the sworn statement or testimony of any law
110 enforcement officer alleging that the respondent has failed
111 to comply with the surrender of firearms as required by an
112 order issued under this subsection and subsection 3 of this
113 section, the court shall determine whether probable cause
114 exists to believe that the respondent has failed to

115 surrender all firearms in his or her possession, custody, or
116 control. If probable cause exists, the court shall issue a
117 warrant describing the firearms and authorizing a search of
118 the locations where the firearms are reasonably believed to
119 be and the seizure of any firearms discovered pursuant to
120 such search.

121 (5) If a person other than the respondent claims title
122 to any firearms surrendered pursuant to this subsection and
123 subsection 3 of this section, and he or she is determined by
124 the law enforcement agency to be the lawful owner of the
125 firearm, the firearm shall be returned to him or her,
126 provided that:

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

131 (b) The firearm is not otherwise unlawfully possessed
132 by the owner.

133 (6) A respondent to an extreme risk order of
134 protection may file a motion to modify or rescind that order
135 of protection. The respondent may request a hearing on such
136 a motion with the court that issued the original extreme
137 risk order of protection. The court shall conduct a hearing
138 on the motion to modify or rescind an extreme risk order of
139 protection within fifteen days after the motion is filed.
140 At the hearing, if the respondent has proved by a
141 preponderance of the evidence that the extreme risk order of
142 protection must be modified or rescinded, the court shall
143 modify or rescind the extreme risk order of protection.

144 6. If an extreme risk order of protection is
145 terminated or expires without renewal, a law enforcement
146 agency holding any firearm that has been surrendered

147 pursuant to subsections 3 and 5 of this section shall return
148 any surrendered firearm requested by a respondent only after
149 confirming, through a background check administered by the
150 state highway patrol under section 43.543, that the
151 respondent is currently eligible to own or possess firearms
152 under federal and state law and after confirming with the
153 court that the extreme risk order of protection has
154 terminated or has expired without renewal.

155 7. (1) The law enforcement officer or agency may
156 renew the extreme risk order of protection if probable cause
157 is shown that the respondent continues to pose a significant
158 risk of personal injury to him or herself or others by
159 possessing a firearm. The extreme risk order of protection
160 may be renewed for up to one year from the expiration of the
161 preceding extreme risk order of protection. Written notice
162 of a hearing on the motion to renew an extreme risk order of
163 protection shall be given to the respondent by the court.

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

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

172 8. The clerk of any court that issues an extreme risk
173 order of protection shall send the Missouri state highway
174 patrol a copy of the order issued by that court within forty-
175 eight hours of the court issuing the order. Upon receiving
176 an extreme risk order of protection, the Missouri state
177 highway patrol shall enter the extreme risk order of
178 protection into the Missouri uniform law enforcement system

179 (MULES) within forty-eight hours of receiving notice of the
180 order.

181 9. A violation of the terms and conditions of an ex
182 parte order of protection pursuant to this section of which
183 the respondent has notice, shall be a class A misdemeanor
184 unless the respondent has previously pleaded guilty to or
185 has been found guilty in any division of the circuit court
186 of violating an ex parte order of protection or a full order
187 of protection within five years of the date of the
188 subsequent violation, in which case the subsequent violation
189 shall be a class E felony. Evidence of prior pleas of
190 guilty or findings of guilt shall be heard by the court out
191 of the presence of the jury prior to submission of the case
192 to the jury. If the court finds the existence of such prior
193 pleas of guilty or finding of guilt beyond a reasonable
194 doubt, the court shall decide the extent or duration of
195 sentence or other disposition and shall not instruct the
196 jury as to the range of punishment or allow the jury to
197 assess and declare the punishment as a part of its verdict.

198 10. A violation of the terms and conditions of a full
199 order of protection pursuant to this section shall be a
200 class A misdemeanor, unless the respondent has previously
201 pleaded guilty to or has been found guilty in any division
202 of the circuit court of violating an ex parte order of
203 protection or a full order of protection within five years
204 of the date of the subsequent violation, in which case the
205 subsequent violation shall be a class E felony. Evidence of
206 prior pleas of guilty or findings of guilt shall be heard by
207 the court out of the presence of the jury prior to
208 submission of the case to the jury. If the court finds the
209 existence of such prior plea of guilty or finding of guilt
210 beyond a reasonable doubt, the court shall decide the extent

211 or duration of the sentence or other disposition and shall
212 not instruct the jury as to the range of punishment or allow
213 the jury to assess and declare the punishment as a part of
214 its verdict. For the purposes of this subsection, in
215 addition to the notice provided by actual service of the
216 order, a party is deemed to have notice of an order of
217 protection if:

218 (1) The law enforcement officer responding to a call
219 of a reported violation of an order of protection presented
220 a copy of the order of protection to the respondent; or

221 (2) Notice is given by actual communication to the
222 respondent in a manner reasonably likely to advise the
223 respondent.

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