

SECOND REGULAR SESSION

HOUSE BILL NO. 2664

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GREEN.

6712H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 571.070, RSMo, and to enact in lieu thereof ten new sections relating to the extreme risk protection order act, with penalty provisions.

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

Section A. Section 571.070, RSMo, is repealed and ten new sections enacted in lieu thereof, to be known as sections 571.070, 571.750, 571.752, 571.754, 571.756, 571.758, 571.760, 571.762, 571.764, and 571.766, to read as follows:

571.070. 1. A person commits the offense of unlawful possession of a firearm if such person knowingly has any firearm in his or her possession and:

(1) Such person has been convicted of a felony under the laws of this state, or of a crime under the laws of any state or of the United States which, if committed within this state, would be a felony; or

(2) Such person is a fugitive from justice, is habitually in an intoxicated or drugged condition, **is subject to an extreme risk protection order issued under the provisions of sections 571.750 to 571.766**, or is currently adjudged mentally incompetent.

2. Unlawful possession of a firearm is a class D felony.

3. The provisions of subdivision (1) of subsection 1 of this section shall not apply to the possession of an antique firearm.

571.750. 1. The provisions of sections 571.750 to 571.766 shall be known and may be cited as the "Extreme Risk Protection Order Act".

2. For purposes of sections 571.750 to 571.766, the following terms mean:

(1) "Dating relationship", a relationship that consists of frequent, intimate associations primarily characterized by the expectation of affectional involvement.

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 **"Dating relationship" does not include a casual relationship or an ordinary fraternization**
7 **between two persons in a business or social context;**

8 (2) **"Defendant", the person against whom an extreme risk protection order is**
9 **requested in a petition under section 571.752;**

10 (3) **"Extreme risk protection order", an order issued by a court under section**
11 **571.756;**

12 (4) **"Family member", a person who is related to the defendant as any of the**
13 **following:**

14 (a) **A parent;**

15 (b) **A son or daughter;**

16 (c) **A sibling;**

17 (d) **A grandparent;**

18 (e) **A grandchild;**

19 (f) **An uncle or aunt; or**

20 (g) **A first cousin;**

21 (5) **"Federal law enforcement officer", an officer or agent employed by a law**
22 **enforcement agency of the United States government whose primary responsibility is the**
23 **enforcement of laws of the United States;**

24 (6) **"Law enforcement officer", a person who is any of the following:**

25 (a) **A peace officer certified by the Missouri peace officer standards and training**
26 **commission;**

27 (b) **A sheriff;**

28 (c) **A deputy sheriff;**

29 (d) **A member of the Missouri state highway patrol; or**

30 (e) **A federal law enforcement officer;**

31 (7) **"Plaintiff", the person who requests an extreme risk protection order in an**
32 **action under section 571.752;**

33 (8) **"Restrained person", the person against whom an extreme risk protection order**
34 **has been issued and is in effect.**

571.752. 1. A person described in subsection 2 of this section may file a petition
2 **with the circuit court requesting the court to enter an extreme risk protection order. The**
3 **court may prescribe the manner and form of the petition.**

4 **2. Any of the following persons may file a petition under this section:**

5 (1) **The spouse of the defendant;**

6 (2) **A former spouse of the defendant;**

7 (3) **A person who has a child in common with the defendant;**

- 8 **(4) A person who has or has had a dating relationship with the defendant;**
9 **(5) A person who resides or has resided in the same household with the defendant;**
10 **(6) A family member of the defendant; or**
11 **(7) Another person who has a close relationship with the defendant. If the plaintiff**
12 **files a petition under this subdivision, the plaintiff shall state in the petition sufficient facts**
13 **to allow the court to determine whether the person has a close relationship with the**
14 **defendant.**

15 **3. A person who files a petition under this section shall do so by filing an affidavit**
16 **signed by the petitioner under oath. The petition shall state facts showing that issuance of**
17 **an extreme risk protection order is necessary because the defendant poses a significant risk**
18 **of personal injury to himself or herself or others by possessing a firearm.**

19 **4. If the plaintiff knows that the defendant is licensed to carry a concealed weapon**
20 **and is required to carry a weapon as a condition of his or her employment, a law**
21 **enforcement officer, a local corrections officer, or an employee of the department of**
22 **corrections, who carries a firearm during the normal course of his or her employment, the**
23 **plaintiff shall state that in the petition.**

24 **5. If the plaintiff requests the court to issue an order seizing firearms owned by the**
25 **defendant, the plaintiff shall identify in the petition the firearms that the plaintiff knows**
26 **are in the possession of the defendant.**

571.754. 1. In an action brought under section 571.752, the court may issue an
2 **extreme risk protection order if it determines that there is reasonable cause to believe that**
3 **the defendant poses a significant risk of personal injury to himself or herself or others by**
4 **possessing a firearm. In determining whether reasonable cause exists, the court shall**
5 **consider all of the following:**

- 6 **(1) Testimony, documents, or other evidence offered in support of the request for**
7 **the extreme risk protection order;**
8 **(2) Whether the defendant has previously inflicted or threatened to inflict personal**
9 **injury on himself or herself or others; and**
10 **(3) Any other facts that the court believes are relevant.**

11 **2. If the plaintiff filing the petition under section 571.752 is a person described in**
12 **subdivision (7) of subsection 2 of section 571.752, the court shall not issue the extreme risk**
13 **protection order unless it determines that the plaintiff has a close enough relationship with**
14 **the defendant to justify the issuance of the order.**

15 **3. The court in an action under section 571.752 may issue an extreme risk**
16 **protection order without written or oral notice to the defendant if it determines that clear**
17 **and convincing evidence has been submitted, under oath or affirmation, that irreparable**

18 **injury will result from the delay required to effectuate notice or that the notice will itself**
19 **precipitate adverse action before an extreme risk protection order can be issued.**

20 **4. A restrained person under an order issued under subsection 3 of this section may**
21 **file a motion to modify or rescind the order and request a hearing under the rules of the**
22 **Missouri supreme court. The motion to modify or rescind the order shall be filed within**
23 **fourteen days after the order is served on the restrained person or after the restrained**
24 **person receives actual notice of the order, unless good cause is shown for filing the motion**
25 **after the fourteen days have elapsed.**

26 **5. The court shall conduct a hearing on a motion under subsection 4 of this section**
27 **within fourteen days after the motion is filed. If the plaintiff is a person described in**
28 **subdivision (7) of subsection 2 of section 571.752, the court shall conduct a hearing on a**
29 **motion under subsection 4 of this section within five days after the motion is filed.**

571.756. 1. If the court determines under section 571.754 that an extreme risk
2 **protection order should be issued, the court shall include all of the following provisions in**
3 **the order:**

4 **(1) That the restrained person shall not purchase or possess a firearm;**

5 **(2) If the order is issued under subsection 3 of section 571.754, a statement that the**
6 **restrained person may file a motion to modify or rescind the order and request a hearing**
7 **within fourteen days after the restrained person is served with or receives actual notice of**
8 **the order and that motion forms and filing instructions are available from the clerk of the**
9 **court;**

10 **(3) A designation of the law enforcement agency that is responsible for entering the**
11 **order into the Missouri uniform law enforcement system;**

12 **(4) A statement that violation of the order will subject the restrained person to**
13 **immediate arrest and the civil and criminal contempt powers of the court, and that if the**
14 **restrained person is found guilty of criminal contempt, he or she will be imprisoned for not**
15 **more than one hundred eighty days and may be fined not more than one thousand dollars;**
16 **and**

17 **(5) An expiration date that is not more than one year from the date of issuance.**

18 **2. An extreme risk protection order is effective and enforceable immediately after**
19 **it is served on the restrained person or after the restrained person receives actual notice**
20 **of the order. The order may be enforced anywhere in this state by a law enforcement**
21 **agency that receives a true copy of the order, is shown a copy of it, or has verified its**
22 **existence on the Missouri uniform law enforcement system.**

571.758. The clerk of a court that issues an extreme risk protection order shall do all of the following immediately after issuance and without requiring a proof of service on the restrained person:

(1) Provide a true copy of the order to the law enforcement agency designated under subdivision (3) of subsection 1 of section 571.756;

(2) Provide the plaintiff with at least two true copies of the order;

(3) If the restrained person is identified in the petition as a person described in subsection 4 of section 571.752, notify the person's employer, if known, of the existence of the order; and

(4) Inform the plaintiff that the plaintiff may take a true copy of the order to the law enforcement agency designated under subdivision (3) of subsection 1 of section 571.756 to be immediately entered into the Missouri uniform law enforcement system.

571.760. 1. An extreme risk protection order shall be served on the restrained person by any method allowed under Missouri court rules. If the restrained person has not been served, a law enforcement officer or clerk of the court who knows that the order exists may, at any time, serve the restrained person with a true copy of the order or advise the restrained person of the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where the restrained person may obtain a copy of the order.

2. The person who serves an extreme risk protection order or gives oral notice of the order shall file proof of service or proof of oral notice with the clerk of the court that issued the order. The clerk of the court shall immediately notify the law enforcement agency designated under subdivision (3) of subsection 1 of section 571.756 if either of the following occurs:

(1) The clerk of the court receives proof that the restrained person has been served;

or

(2) The order is rescinded, modified, or extended.

571.762. 1. A law enforcement agency designated in an extreme risk protection order under subdivision (3) of subsection 1 of section 571.756 that receives a true copy of the order shall immediately and without requiring proof of service enter the order into the Missouri uniform law enforcement system.

2. A law enforcement agency that receives information under subsection 2 of section 571.760 shall enter the information into the Missouri uniform law enforcement system.

3. If an extreme risk protection order has not been served on the restrained person, a law enforcement agency or officer responding to a call alleging a violation of the order

10 shall serve the restrained person with a true copy of the order or advise the restrained
11 person of the existence of the order, the specific conduct enjoined, the penalties for
12 violating the order, and where the restrained person may obtain a copy of the order.

13 4. Subject to subsection 5 of this section, the law enforcement officer shall enforce
14 the order and immediately enter or cause to be entered into the Missouri uniform law
15 enforcement system that the restrained person has actual notice of the order. The law
16 enforcement officer also shall comply with subsection 2 of section 571.760.

17 5. In the circumstances described in subsections 3 and 4 of this section, the law
18 enforcement officer shall give the restrained person an opportunity to comply with the
19 extreme risk protection order before the law enforcement officer makes a custodial arrest
20 for violation of the order. The failure by the restrained person to immediately comply with
21 the order is grounds for an immediate custodial arrest.

22 6. The law enforcement agency ordered to seize a firearm
23 under subsection 2 of section 571.756 may seize a firearm identified in the order from any
24 place or from any person who has possession of the firearm. The law enforcement agency
25 may also seize any other firearms discovered that are owned by or in the possession of the
26 restrained person if so provided in the extreme risk protection order, or if allowed under
27 other applicable law.

28 7. A law enforcement officer who seizes a firearm under subsection 6 of this section
29 shall give a receipt for the firearm to the person from whom it was taken, specifying the
30 firearm in detail. If no person is present at the time of seizure, the officer shall leave the
31 receipt in the place where he or she found the firearm.

32 8. The law enforcement agency that seizes a firearm under subsection 6 of this
33 section shall retain the firearm subject to order of the court that issued the extreme risk
34 protection order under which the firearm was seized. In addition to any other order that
35 the court determines is appropriate, the court shall order that the firearm be returned to
36 the restrained person when the restrained person is no longer prohibited from owning a
37 firearm or that the firearm be transferred to a licensed firearm dealer if the restrained
38 person sells or transfers ownership of the firearm to the dealer.

39 9. If the location to be searched during the seizure of a firearm under subsection
40 6 of this section is jointly occupied by multiple persons, a firearm is located during the
41 search, and it is determined that the firearm is owned by a person other than the restrained
42 person, the law enforcement agency shall not seize the firearm if all of the following
43 conditions are satisfied:

44 (1) The firearm is stored so that the restrained person does not have access to or
45 control of the firearm;

46 **(2) There is no evidence of unlawful possession of the firearm by the owner.**

47 **10. If the location to be searched during the seizure of a firearm under subsection**
48 **6 of this section is jointly occupied by multiple persons, a gun safe is located at the location,**
49 **it is determined that the gun safe is owned by a person other than the restrained person,**
50 **and a valid search warrant has not been obtained, the law enforcement agency shall not**
51 **search the gun safe except in the owner's presence or with the owner's consent.**

52 **11. If any person other than the restrained person claims title to a firearm seized**
53 **under subsection 6 of this section, the firearm shall be returned to the claimant if the court**
54 **determines that the claimant is the lawful owner.**

571.764. The plaintiff may move the court to issue, or the court on its own motion
2 **may issue, one or more extended extreme risk protection orders, each effective for up to**
3 **one year after the expiration of the preceding order. The court shall only issue an extended**
4 **order if there is probable cause to believe that the restrained person continues to pose a**
5 **significant risk of personal injury to himself or herself or others by possessing a firearm.**
6 **The plaintiff or the court, as applicable, shall give the restrained person written notice of**
7 **a hearing on a motion to extend the order.**

571.766. 1. A person who refuses or fails to comply with an extreme risk protection
2 **order is subject to the criminal contempt powers of the court and, if found guilty, may be**
3 **imprisoned for not more than one hundred eighty days or may be fined not more than one**
4 **thousand dollars, or both. The criminal penalty provided for under this section may be**
5 **imposed in addition to a penalty imposed for another criminal offense arising from the**
6 **same conduct.**

7 **2. An extreme risk protection order may also be enforced under chapter 455.**

8 **3. A plaintiff who knowingly and intentionally makes a false statement to the court**
9 **in the petition or in support of the petition is subject to the contempt powers of the court.**

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