

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill Nos. 775, 751 & 640, Page 1, Section A, Line 4, by inserting after said section and line the following:

"455.073. 1. By July 1, 1996, the supreme court of the state of Missouri shall:

(1) Develop and adopt uniform forms for petitions and orders of protection; and

(2) Provide the forms to each circuit clerk.

2. The following statements shall be printed in bold faced type or in capital letters on the order of protection:

(1) "Violation of this order may be punished by confinement in jail for as long as five years and by a fine of as much as five thousand dollars"; and

(2) "If so ordered by the court, the respondent is forbidden to enter or stay at the petitioner's residence".

3. The form prescribed by the supreme court for the notice of hearing required by subsection 2 of section 455.040 shall list all potential relief that can be granted by the court in any proceeding pursuant to sections 455.010 to 455.085 as described in section 455.050, and shall advise the respondent that such relief may be granted if the court finds for the petitioner, or if the respondent defaults to the petition.

4. If a full order of protection is granted, all temporary orders shall continue in the full order of protection and shall remain in full force and effect unless otherwise ordered by the court.

5. All orders of protection shall be issued on the form adopted pursuant to subsection 1 of this section.

455.075. The court may order a party to pay a reasonable amount to the other party for attorney's fees incurred prior to the commencement of the proceeding ~~[or]~~, throughout the proceeding, and after entry of judgment. The court shall consider all relevant factors, including the financial resources of both parties, and may order that the amount be paid directly to the attorney, who may enforce the order in his name.

455.085. 1. When a law enforcement officer has probable cause to believe a party has committed a violation of law amounting to domestic violence, as defined in section 455.010, against a family or household member, the officer may arrest the offending party whether or not the

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1 violation occurred in the presence of the arresting officer. When the officer declines to make arrest  
2 pursuant to this subsection, the officer shall make a written report of the incident completely  
3 describing the offending party, giving the victim's name, time, address, reason why no arrest was  
4 made and any other pertinent information. Any law enforcement officer subsequently called to the  
5 same address within a twelve-hour period, who shall find probable cause to believe the same  
6 offender has again committed a violation as stated in this subsection against the same or any other  
7 family or household member, shall arrest the offending party for this subsequent offense. The  
8 primary report of nonarrest in the preceding twelve-hour period may be considered as evidence of  
9 the defendant's intent in the violation for which arrest occurred. The refusal of the victim to sign an  
10 official complaint against the violator shall not prevent an arrest under this subsection.

11 2. When a law enforcement officer has probable cause to believe that a party, against whom  
12 a protective order has been entered and who has notice of such order entered, has committed an act  
13 of abuse in violation of such order, the officer shall arrest the offending party-respondent whether or  
14 not the violation occurred in the presence of the arresting officer. Refusal of the victim to sign an  
15 official complaint against the violator shall not prevent an arrest under this subsection.

16 3. When an officer makes an arrest, the officer is not required to arrest two parties involved  
17 in an assault when both parties claim to have been assaulted. The arresting officer shall attempt to  
18 identify and shall arrest the party the officer believes is the primary physical aggressor. The term  
19 "primary physical aggressor" is defined as the most significant, rather than the first, aggressor. The  
20 law enforcement officer shall consider any or all of the following in determining the primary  
21 physical aggressor:

- 22 (1) The intent of the law to protect victims from continuing domestic violence;  
23 (2) The comparative extent of injuries inflicted or serious threats creating fear of physical  
24 injury;  
25 (3) The history of domestic violence between the persons involved.  
26

27 No law enforcement officer investigating an incident of domestic violence shall threaten the arrest  
28 of all parties for the purpose of discouraging requests or law enforcement intervention by any party.  
29 Where complaints are received from two or more opposing parties, the officer shall evaluate each  
30 complaint separately to determine whether the officer should seek a warrant for an arrest.

31 4. In an arrest in which a law enforcement officer acted in good faith reliance on this  
32 section, the arresting and assisting law enforcement officers and their employing entities and  
33 superiors shall be immune from liability in any civil action alleging false arrest, false imprisonment  
34 or malicious prosecution.

35 5. When a person against whom an order of protection has been entered fails to surrender  
36 custody of minor children to the person to whom custody was awarded in an order of protection, the  
37 law enforcement officer shall arrest the respondent, and shall turn the minor children over to the  
38 care and custody of the party to whom such care and custody was awarded.

39 6. The same procedures, including those designed to protect constitutional rights, shall be

1 applied to the respondent as those applied to any individual detained in police custody.

2 7. A violation of the terms and conditions, with regard to domestic violence, stalking, sexual  
3 assault, child custody, communication initiated by the respondent or entrance upon the premises of  
4 the petitioner's dwelling unit or place of employment or school, or being within a certain distance of  
5 the petitioner or a child of the petitioner, of an ex parte order of protection of which the respondent  
6 has notice, shall be a class A misdemeanor unless the respondent has previously pleaded guilty to or  
7 has been found guilty in any division of the circuit court of violating an ex parte order of protection  
8 or a full order of protection within five years of the date of the subsequent violation, in which case  
9 the subsequent violation shall be a class E felony. Evidence of prior pleas of guilty or findings of  
10 guilt shall be heard by the court out of the presence of the jury prior to submission of the case to the  
11 jury. If the court finds the existence of such prior pleas of guilty or finding of guilt beyond a  
12 reasonable doubt, the court shall decide the extent or duration of sentence or other disposition and  
13 shall not instruct the jury as to the range of punishment or allow the jury to assess and declare the  
14 punishment as a part of its verdict.

15 8. A violation of the terms and conditions, with regard to domestic violence, stalking, sexual  
16 assault, child custody, communication initiated by the respondent or entrance upon the premises of  
17 the petitioner's dwelling unit or place of employment or school, or being within a certain distance of  
18 the petitioner or a child of the petitioner, of a full order of protection shall be a class A  
19 misdemeanor, unless the respondent has previously pleaded guilty to or has been found guilty in any  
20 division of the circuit court of violating an ex parte order of protection or a full order of protection  
21 within five years of the date of the subsequent violation, in which case the subsequent violation shall  
22 be a class E felony. Evidence of prior pleas of guilty or findings of guilt shall be heard by the court  
23 out of the presence of the jury prior to submission of the case to the jury. If the court finds the  
24 existence of such prior plea of guilty or finding of guilt beyond a reasonable doubt, the court shall  
25 decide the extent or duration of the sentence or other disposition and shall not instruct the jury as to  
26 the range of punishment or allow the jury to assess and declare the punishment as a part of its  
27 verdict. For the purposes of this subsection, in addition to the notice provided by actual service of  
28 the order, a party is deemed to have notice of an order of protection if:

29 (1) The law enforcement officer responding to a call of a reported incident of domestic  
30 violence, stalking, sexual assault, or violation of an order of protection presented a copy of the order  
31 of protection to the respondent; or

32 (2) Notice is given by actual communication to the respondent in a manner reasonably likely  
33 to advise the respondent.

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

36 10. Nothing in this section shall be interpreted as creating a private cause of action for  
37 damages to enforce the provisions set forth herein."; and

38  
39 Further amend said bill, Page 2, Section 491.015, Line 31, by inserting after said section and line the

1 following:

2  
3 "546.262. A court shall not compel a victim or member of the victim's family testifying in a  
4 criminal proceeding for a violation of sections 565.072 to 565.076 to disclose a residential address  
5 or place of employment on the record in open court unless the court finds that disclosure of the  
6 address or place of employment is necessary.

7 546.263. 1. A person may testify by video conference at a civil trial involving an offense  
8 under sections 565.072 to 565.076 if the person testifying is the victim of the offense. The circuit  
9 and associate circuit court judges for each circuit shall develop local rules and instructions for  
10 appearances by video conference permitted under this subsection, which shall be posted on the  
11 circuit court's internet website.

12 2. The circuit and associate circuit court judges for each circuit shall provide, and post on  
13 the circuit court's internet website, a telephone number for the public to call for assistance regarding  
14 appearances by video conference.

15 556.046. 1. A person may be convicted of an offense included in an offense charged in the  
16 indictment or information. An offense is so included when:

17 (1) It is established by proof of the same or less than all the facts required to establish the  
18 commission of the offense charged; or

19 (2) It is specifically denominated by statute as a lesser degree of the offense charged; or

20 (3) It consists of an attempt to commit the offense charged or to commit an offense  
21 otherwise included therein.

22 2. The court shall not be obligated to charge the jury with respect to an included offense  
23 unless there is a rational basis for a verdict acquitting the person of the offense charged and  
24 convicting him or her of the included offense. An offense is charged for purposes of this section if:

25 (1) It is in an indictment or information; or

26 (2) It is an offense submitted to the jury because there is a rational basis for a verdict  
27 acquitting the person of the offense charged and convicting the person of the included offense.

28 3. The court shall be obligated to instruct the jury with respect to a particular included  
29 offense only if the instruction is requested and there is a rational basis in the evidence for acquitting  
30 the person of the immediately higher included offense and ~~[there is a basis in the evidence for]~~  
31 convicting the person of that particular included offense.

32 566.010. As used in this chapter and chapter 568, the following terms mean:

33 (1) "Aggravated sexual offense", any sexual offense, in the course of which, the actor:

34 (a) Inflicts serious physical injury on the victim;

35 (b) Displays a deadly weapon or dangerous instrument in a threatening manner;

36 (c) Subjects the victim to sexual intercourse or deviate sexual intercourse with more than  
37 one person;

38 (d) Had previously been found guilty of an offense under this chapter or under section  
39 573.200, child used in sexual performance; section 573.205, promoting sexual performance by a

child; section 573.023, sexual exploitation of a minor; section 573.025, promoting child pornography in the first degree; section 573.035, promoting child pornography in the second degree; section 573.037, possession of child pornography; or section 573.040, furnishing pornographic materials to minors; or has previously been found guilty of an offense in another jurisdiction which would constitute an offense under this chapter or said sections;

(e) Commits the offense as part of an act or series of acts performed by two or more persons as part of an established or prescribed pattern of activity; or

(f) Engages in the act that constitutes the offense with a person the actor knows to be, without regard to legitimacy, the actor's:

- a. Ancestor or descendant by blood or adoption;
- b. Stepchild while the marriage creating that relationship exists;
- c. Brother or sister of the whole or half blood; or
- d. Uncle, aunt, nephew, or niece of the whole blood;

(2) "Commercial sex act", any sex act on account of which anything of value is given to or received by any person;

(3) "Deviate sexual intercourse", any act involving the genitals of one person and the hand, mouth, tongue, or anus of another person or a sexual act involving the penetration, however slight, of the penis, female genitalia, or the anus by a finger, instrument or object done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim;

(4) "Forced labor", a condition of servitude induced by means of:

(a) Any scheme, plan, or pattern of behavior intended to cause a person to believe that, if the person does not enter into or continue the servitude, such person or another person will suffer substantial bodily harm or physical restraint; or

(b) The abuse or threatened abuse of the legal process;

(5) "Sexual conduct", sexual intercourse, deviate sexual intercourse or sexual contact;

(6) "Sexual contact", any touching of another person with the genitals or any touching of the genitals or anus of another person, or the breast of a female person, or such touching through the clothing, or causing semen, seminal fluid, or other ejaculate to come into contact with another person, for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim;

(7) "Sexual intercourse", any penetration, however slight, of the female genitalia by the penis.

566.086. 1. A person commits the offense of sexual contact with a student if he or she has sexual contact with a student of the school and is:

(1) A teacher, as that term is defined in subdivisions (4), (5), and (7) of section 168.104;

(2) A student teacher; [Ø]

(3) An employee of the school; [Ø]

(4) A volunteer of the school or of an organization working with the school on a project or program who is not a student at the school; [Ø]

1 (5) An elected or appointed official of the school district; ~~[or]~~

2 (6) A person employed by an entity that contracts with the school or school district to  
3 provide services; or

4 (7) A coach, assistant coach, director, or other adult with a school-aged team, club, or  
5 ensemble, regardless of whether such team, club, or ensemble is connected to a school or scholastic  
6 association. For purposes of this subdivision, "school-aged team, club, or ensemble" means any  
7 group organized for individual or group competition for the performance of sports activities or any  
8 group organized for individual or group presentation for fine or performing arts, by any child under  
9 eighteen years of age.

10 2. For the purposes of this section, "school" shall mean any public or private school in this  
11 state serving kindergarten through grade twelve or any school bus used by the school district.

12 3. The offense of sexual contact with a student is a class E felony.

13 4. It is not a defense to prosecution for a violation of this section that the student consented  
14 to the sexual contact."; and

15  
16 Further amend said bill, Page 12, Section 595.226, Line 28, by inserting after said section and line  
17 the following:

18  
19 "595.320. If a judge orders a person who has been convicted of an offense under sections  
20 565.072 to 565.076 to attend any batterer intervention program, as defined in section 455.549, the  
21 person shall be financially responsible for any costs associated with attending such class."; and

22  
23 Further amend said bill by amending the title, enacting clause, and intersectional references  
24 accordingly.