

SECOND REGULAR SESSION

HOUSE BILL NO. 2193

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BUTZ.

5811H.01I

JOSEPH ENGLER, Chief Clerk

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 one new section, to be known as section 455.096, to read as follows:

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

2. (1) Upon the filing of a verified petition by a law enforcement officer or agency under this section, and for good cause shown in the petition, the court may immediately issue an ex parte order of protection. An immediate and present danger of the respondent causing personal injury to himself or herself or others shall constitute good cause shown for purposes of this section. An ex parte order of protection entered by the court shall take effect when entered and shall remain in effect until there is valid service of process and a hearing is held on the motion within fifteen days of the filing of the petition.

(2) Failure to serve an ex parte order of protection on the respondent shall not affect the validity or enforceability of such order. If the respondent is under eighteen years of age, unless otherwise emancipated, service of process shall be made upon a custodial parent or guardian of the respondent, or upon a guardian ad litem appointed by the court, requiring that the person appear and bring the respondent before the court at the time and place stated.

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.

18 (3) If an ex parte order is entered and the respondent is under eighteen years of
19 age, the court shall transfer the case to juvenile court for a hearing on a full order of
20 protection. The court shall appoint a guardian ad litem for any such respondent not
21 represented by a parent or guardian.

22 (4) The law enforcement officer or agency shall be responsible for providing
23 notice to a family or household member of the respondent and to any known third party
24 who may be at risk of violence. The notice shall state that the law enforcement officer or
25 agency intends to petition the court for an extreme risk order of protection or has
26 already done so, and include referrals to appropriate resources, including mental health,
27 domestic violence, and counseling resources. The law enforcement officer or agency
28 shall attest in the petition to having provided such notice, or attest to the steps that shall
29 be taken to provide such notice.

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

43 4. Not later than fifteen days after the filing of a verified petition that meets the
44 requirements of this section, a hearing shall be held unless the court deems, for good
45 cause shown, that a continuance should be granted. At the hearing, if the law
46 enforcement officer or agency has proved the allegation that the respondent poses a
47 significant danger to himself or herself or others by a preponderance of the evidence, the
48 court shall issue a full extreme risk order of protection for a period of one year.

49 5. (1) Upon issuance of any full extreme risk order of protection under
50 subsection 4 of this section, the court shall order the respondent to surrender to the local
51 law enforcement agency where the respondent resides all firearms in the respondent's
52 custody, control, or possession. If the respondent has been identified in the petition as
53 being required to carry a firearm as a condition of the respondent's employment, the
54 court shall notify the respondent's employer of the existence of the order. If the

55 respondent holds a concealed carry permit under section 571.101, the court shall order a
56 revocation of the concealed carry permit.

57 (2) The law enforcement officer serving any extreme risk order of protection
58 shall provide the respondent to the order an opportunity to comply with the order by
59 surrendering all firearms in his or her custody, control, or possession. If the respondent
60 does not comply, the law enforcement officer serving the order shall:

61 (a) Conduct a lawful search of the respondent and any area where probable
62 cause exists that a firearm to be surrendered under the order is located; and

63 (b) Take possession of all firearms belonging to the respondent that are
64 surrendered in plain sight or discovered under a lawful search conducted under
65 paragraph (a) of this subdivision.

66 (3) If personal service by a law enforcement officer is not possible or not
67 required because the respondent was present at the extreme risk order of protection
68 hearing, the respondent shall surrender the firearms in a safe manner to the control of
69 the local law enforcement agency within forty-eight hours of being served with the order
70 by alternate service or within forty-eight hours of the hearing or final decision at which
71 the respondent was present.

72 (4) At the time of surrender, a law enforcement officer taking possession of a
73 firearm shall issue a receipt identifying all firearms that have been surrendered and
74 provide a copy of the receipt to the respondent. Within seventy-two hours after service
75 of the order, the officer serving the order shall file the original receipt with the court and
76 shall ensure that his or her law enforcement agency retains a copy of the receipt.

77 (5) Upon the sworn statement or testimony of any law enforcement officer
78 alleging that the respondent has failed to comply with the surrender of firearms as
79 required by an order issued under this subsection and subsection 3 of this section, the
80 court shall determine whether probable cause exists to believe that the respondent has
81 failed to surrender all firearms in his or her possession, custody, or control. If probable
82 cause exists, the court shall issue a warrant describing the firearms and authorizing a
83 search of the locations where the firearms are reasonably believed to be and the seizure
84 of any firearms discovered pursuant to such search.

85 (6) If a person other than the respondent claims title to any firearms
86 surrendered under this subsection and subsection 3 of this section and he or she is
87 determined by the law enforcement agency to be the lawful owner of the firearm, the
88 firearm shall be returned to him or her, provided that:

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

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

93 (7) A respondent to an extreme risk order of protection may file a motion to
94 modify or rescind that order of protection. The respondent may request a hearing on
95 such a motion with the court that issued the original extreme risk order of protection.
96 The court shall conduct a hearing on the motion to modify or rescind an extreme risk
97 order of protection within fifteen days after the motion is filed. At the hearing, if the
98 respondent has proved by a preponderance of the evidence that the extreme risk order
99 of protection should be modified or rescinded, the court shall modify or rescind the
100 extreme risk order of protection.

101 6. If an extreme risk order of protection is terminated or expires without
102 renewal, a law enforcement agency holding any firearm that has been surrendered
103 under subsections 3 and 5 of this section shall return any surrendered firearm requested
104 by a respondent only after confirming through a background check administered by the
105 state highway patrol under section 43.543 that the respondent is currently eligible to
106 own or possess firearms under federal and state law and after confirming with the court
107 that the extreme risk order of protection has terminated or has expired without renewal.

108 7. (1) The law enforcement officer or agency may renew the extreme risk order
109 of protection if probable cause is shown that the respondent continues to pose a
110 significant risk of personal injury to himself or herself or others by possessing a firearm.
111 The extreme risk order of protection may be renewed for up to one year from the
112 expiration of the preceding extreme risk order of protection. Written notice of a
113 hearing on the motion to renew an extreme risk order of protection shall be given to the
114 respondent by the court.

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

118 (3) Any firearm surrendered by a respondent under subsections 3 and 5 of this
119 section that remains unclaimed by the lawful owner shall be disposed of in accordance
120 with the law enforcement agency's policies and procedures for the disposal of firearms
121 in police custody.

122 8. The clerk of any court that issues an extreme risk order of protection shall
123 send the Missouri state highway patrol a copy of the order issued by that court within
124 forty-eight hours of the court issuing the order. Upon receiving an extreme risk order of
125 protection, the Missouri state highway patrol shall enter the extreme risk order of
126 protection into the Missouri uniform law enforcement system (MULES) within forty-
127 eight hours of receiving notice of the order.

128 **9. A violation of the terms and conditions of an ex parte order of protection**
129 **under this section of which the respondent has notice shall be a class A misdemeanor**
130 **unless the respondent has previously pled guilty to or has been found guilty in any**
131 **division of the circuit court of violating an ex parte order of protection or a full order of**
132 **protection within five years of the date of the subsequent violation, in which case the**
133 **subsequent violation shall be a class E felony. Evidence of prior pleas of guilty or**
134 **findings of guilt shall be heard by the court out of the presence of the jury prior to**
135 **submission of the case to the jury. If the court finds the existence of such prior pleas of**
136 **guilty or findings of guilt beyond a reasonable doubt, the court shall decide the extent or**
137 **duration of sentence or other disposition and shall not instruct the jury as to the range**
138 **of punishment or allow the jury to assess and declare the punishment as a part of its**
139 **verdict.**

140 **10. A violation of the terms and conditions of a full order of protection under this**
141 **section shall be a class A misdemeanor unless the respondent has previously pled guilty**
142 **to or has been found guilty in any division of the circuit court of violating an ex parte**
143 **order of protection or a full order of protection within five years of the date of the**
144 **subsequent violation, in which case the subsequent violation shall be a class E felony.**
145 **Evidence of prior pleas of guilty or findings of guilt shall be heard by the court out of the**
146 **presence of the jury prior to submission of the case to the jury. If the court finds the**
147 **existence of such prior plea of guilty or finding of guilt beyond a reasonable doubt, the**
148 **court shall decide the extent or duration of the sentence or other disposition and shall**
149 **not instruct the jury as to the range of punishment or allow the jury to assess and**
150 **declare the punishment as a part of its verdict. For the purposes of this subsection, in**
151 **addition to the notice provided by actual service of the order, a party is deemed to have**
152 **notice of an order of protection if:**

153 **(1) The law enforcement officer responding to a call of a reported violation of an**
154 **order of protection presented a copy of the order of protection to the respondent; or**

155 **(2) Notice is given by actual communication to the respondent in a manner**
156 **reasonably likely to advise the respondent.**

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