

SECOND REGULAR SESSION

# HOUSE BILL NO. 3048

## 103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE TAYLOR (84).

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JOSEPH ENGLER, Chief Clerk

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### AN ACT

To repeal sections 455.050, 455.523, 565.076, 565.227, and 571.070, RSMo, and to enact in lieu thereof five new sections relating to unlawful possession of firearms, with penalty provisions and an emergency clause.

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

Section A. Sections 455.050, 455.523, 565.076, 565.227, and 571.070, RSMo, are 2 repealed and five new sections enacted in lieu thereof, to be known as sections 455.050, 3 455.523, 565.076, 565.227, and 571.070, to read as follows:

455.050. 1. Any full or ex parte order of protection granted pursuant to sections 2 455.010 to 455.085 shall be to protect the petitioner from domestic violence, stalking, or 3 sexual assault and may include such terms as the court reasonably deems necessary to ensure 4 the petitioner's safety, including but not limited to:

5 (1) Temporarily enjoining the respondent from committing or threatening to commit 6 domestic violence, molesting, stalking, sexual assault, or disturbing the peace of the 7 petitioner, including violence against a pet;

8 (2) Temporarily enjoining the respondent from entering the premises of the dwelling 9 unit of the petitioner when the dwelling unit is:

10 (a) Jointly owned, leased or rented or jointly occupied by both parties; or  
11 (b) Owned, leased, rented or occupied by petitioner individually; or  
12 (c) Jointly owned, leased, rented or occupied by petitioner and a person other than  
13 respondent; provided, however, no spouse shall be denied relief pursuant to this section by  
14 reason of the absence of a property interest in the dwelling unit; or

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.

15 (d) Jointly occupied by the petitioner and a person other than respondent; provided  
16 that the respondent has no property interest in the dwelling unit; or

17 (3) Temporarily enjoining the respondent from communicating with the petitioner in  
18 any manner or through any medium.

19           2. Mutual orders of protection are prohibited unless both parties have properly filed  
20 written petitions and proper service has been made in accordance with sections 455.010 to  
21 455.085.

22       3. When the court has, after a hearing for any full order of protection, issued an order  
23 of protection, it may, in addition:

24 (1) Award custody of any minor child born to or adopted by the parties when the court  
25 has jurisdiction over such child and no prior order regarding custody is pending or has been  
26 made, and the best interests of the child require such order be issued;

27 (2) Establish a visitation schedule that is in the best interests of the child;

28 (3) Award child support in accordance with supreme court rule 88.01 and chapter  
29 452;

30 (4) Award maintenance to petitioner when petitioner and respondent are lawfully

31 married in accordance with chapter 452;

32 (5) Order respondent to make or to continue to make rent or mortgage payments on a  
33 residence occupied by the petitioner if the respondent is found to have a duty to support the  
34 petitioner or other dependent household members:

35 (6) Order the respondent to pay the petitioner's rent at a residence other than the one  
36 previously shared by the parties if the respondent is found to have a duty to support the  
37 petitioner and the petitioner requests alternative housing:

38 (7) Order that the petitioner be given temporary possession of specified personal  
39 property, such as automobiles, checkbooks, keys, and other personal effects;

40 (8) Prohibit the respondent from transferring, encumbering, or otherwise disposing of  
41 specified property mutually owned or leased by the parties;

42 (9) Order the respondent to participate in a court-approved counseling program  
43 designed to help batterers stop violent behavior or to participate in a substance abuse  
44 treatment program;

45 (10) Order the respondent to pay a reasonable fee for housing and other services that  
46 have been provided or that are being provided to the petitioner by a shelter for victims of  
47 domestic violence;

48 (11) Order the respondent to pay court costs:

49 (12) Order the respondent to pay the cost of medical treatment and services that have  
50 been provided or that are being provided to the petitioner as a result of injuries sustained to  
51 the petitioner by an act of domestic violence committed by the respondent:

52 (13) Award possession and care of any pet, along with any moneys necessary to cover  
53 medical costs that may have resulted from abuse of the pet.

54        4. If, after a hearing for any full order of protection, the court issues an order of  
55 protection, the court may also:

56 (1) Prohibit the respondent from knowingly possessing or purchasing any  
57 firearm while the order is in effect;

58 (2) Inform the respondent of such prohibition in writing and, if the respondent is  
59 present, orally; and

60       (3) Forward the order to the Missouri state highway patrol so that the Missouri  
61 state highway patrol can update the respondent's record in the National Instant  
62 Criminal Background Check System (NICS). Upon receiving an order under this  
63 subsection, the Missouri state highway patrol shall notify the Federal Bureau of  
64 Investigation within twenty-four hours.

65        5. A verified petition seeking orders for maintenance, support, custody, visitation,  
66 payment of rent, payment of monetary compensation, possession of personal property,  
67 prohibiting the transfer, encumbrance, or disposal of property, or payment for services of a  
68 shelter for victims of domestic violence, shall contain allegations relating to those orders and  
69 shall pray for the orders desired.

[§.] 6. In making an award of custody, the court shall consider all relevant factors including the presumption that the best interests of the child will be served by placing the child in the custody and care of the nonabusive parent, unless there is evidence that both parents have engaged in abusive behavior, in which case the court shall not consider this presumption but may appoint a guardian ad litem or a court-appointed special advocate to represent the children in accordance with chapter 452 and shall consider all other factors in accordance with chapter 452.

77 [6.] 7. The court shall grant to the noncustodial parent rights to visitation with any  
78 minor child born to or adopted by the parties, unless the court finds, after hearing, that  
79 visitation would endanger the child's physical health, impair the child's emotional  
80 development or would otherwise conflict with the best interests of the child, or that no  
81 visitation can be arranged which would sufficiently protect the custodial parent from further  
82 domestic violence. The court may appoint a guardian ad litem or court-appointed special  
83 advocate to represent the minor child in accordance with chapter 452 whenever the custodial  
84 parent alleges that visitation with the noncustodial parent will damage the minor child.

[7-] 8. The court shall make an order requiring the noncustodial party to pay an amount reasonable and necessary for the support of any child to whom the party owes a duty of support when no prior order of support is outstanding and after all relevant factors have been considered, in accordance with Missouri supreme court rule 88.01 and chapter 452.

89       **[8.] 9.** The court may grant a maintenance order to a party for a period of time, not to  
90 exceed one hundred eighty days. Any maintenance ordered by the court shall be in  
91 accordance with chapter 452.

92       **[9.] 10.** (1) The court may, in order to ensure that a petitioner can maintain an  
93 existing wireless telephone number or numbers, issue an order, after notice and an  
94 opportunity to be heard, directing a wireless service provider to transfer the billing  
95 responsibility for and rights to the wireless telephone number or numbers to the petitioner, if  
96 the petitioner is not the wireless service accountholder.

97       (2) (a) The order transferring billing responsibility for and rights to the wireless  
98 telephone number or numbers to the petitioner shall list the name and billing telephone  
99 number of the accountholder, the name and contact information of the person to whom the  
100 telephone number or numbers will be transferred, and each telephone number to be  
101 transferred to that person. The court shall ensure that the contact information of the petitioner  
102 is not provided to the accountholder in proceedings held under this chapter.

103       (b) Upon issuance, a copy of the full order of protection shall be transmitted, either  
104 electronically or by certified mail, to the wireless service provider's registered agent listed  
105 with the secretary of state, or electronically to the email address provided by the wireless  
106 service provider. Such transmittal shall constitute adequate notice for the wireless service  
107 provider acting under this section and section 455.523.

108       (c) If the wireless service provider cannot operationally or technically effectuate the  
109 order due to certain circumstances, the wireless service provider shall notify the petitioner  
110 within three business days. Such circumstances shall include, but not be limited to, the  
111 following:

- 112       a. The accountholder has already terminated the account;
- 113       b. The differences in network technology prevent the functionality of a device on the  
114 network; or
- 115       c. There are geographic or other limitations on network or service availability.

116       (3) (a) Upon transfer of billing responsibility for and rights to a wireless telephone  
117 number or numbers to the petitioner under this subsection by a wireless service provider, the  
118 petitioner shall assume all financial responsibility for the transferred wireless telephone  
119 number or numbers, monthly service costs, and costs for any mobile device associated with  
120 the wireless telephone number or numbers.

121       (b) This section shall not preclude a wireless service provider from applying any  
122 routine and customary requirements for account establishment to the petitioner as part of this  
123 transfer of billing responsibility for a wireless telephone number or numbers and any devices  
124 attached to that number or numbers including, but not limited to, identification, financial  
125 information, and customer preferences.

126 (4) This section shall not affect the ability of the court to apportion the assets and  
127 debts of the parties as provided for in law, or the ability to determine the temporary use,  
128 possession, and control of personal property.

129 (5) No cause of action shall lie against any wireless service provider, its officers,  
130 employees, or agents, for actions taken in accordance with the terms of a court order issued  
131 under this section.

132 (6) As used in this section and section 455.523, a "wireless service provider" means a  
133 provider of commercial mobile service under Section 332(d) of the federal  
134 ~~Telecommunications~~ Communications Act of ~~1996~~ 1934 (47 U.S.C. Section ~~151~~, et  
135 seq.) 332).

455.523. 1. Any full order of protection granted under sections 455.500 to 455.538  
2 shall be to protect the victim from domestic violence, including danger to the child's pet,  
3 stalking, and sexual assault may include such terms as the court reasonably deems necessary  
4 to ensure the petitioner's safety, including but not limited to:

5 (1) Temporarily enjoining the respondent from committing domestic violence or  
6 sexual assault, threatening to commit domestic violence or sexual assault, stalking, molesting,  
7 or disturbing the peace of the victim;

8 (2) Temporarily enjoining the respondent from entering the family home of the  
9 victim, except as specifically authorized by the court;

10 (3) Temporarily enjoining the respondent from communicating with the victim in any  
11 manner or through any medium, except as specifically authorized by the court.

12 2. **If, after a hearing for any full order of protection, the court issues an order of  
13 protection, the court may also:**

14 (1) **Prohibit the respondent from knowingly possessing or purchasing any  
15 firearm while the order is in effect;**

16 (2) **Inform the respondent of such prohibition in writing and, if the respondent is  
17 present, orally; and**

18 (3) **Forward the order to the Missouri state highway patrol so that the Missouri  
19 state highway patrol can update the respondent's record in the National Instant  
20 Criminal Background Check System (NICS). Upon receiving an order under this  
21 subsection, the Missouri state highway patrol shall notify the Federal Bureau of  
22 Investigation within twenty-four hours.**

23 3. When the court has, after hearing for any full order of protection, issued an order of  
24 protection, it may, in addition:

25 (1) Award custody of any minor child born to or adopted by the parties when the court  
26 has jurisdiction over such child and no prior order regarding custody is pending or has been  
27 made, and the best interests of the child require such order be issued;

(2) Award visitation;

(3) Award child support in accordance with supreme court rule 88.01 and chapter 452;

(4) Award maintenance to petitioner when petitioner and respondent are lawfully married in accordance with chapter 452;

(5) Order respondent to make or to continue to make rent or mortgage payments on a residence occupied by the victim if the respondent is found to have a duty to support the victim or other dependent household members;

(6) Order the respondent to participate in a court-approved counseling program designed to help stop violent behavior or to treat substance abuse;

(7) Order the respondent to pay, to the extent that he or she is able, the costs of his or her treatment, together with the treatment costs incurred by the victim;

(8) Order the respondent to pay a reasonable fee for housing and other services that have been provided or that are being provided to the victim by a shelter for victims of domestic violence;

(9) Order a wireless service provider, in accordance with the process, provisions, and requirements set out in subdivisions (1) to (6) of subsection **[9] 10** of section 455.050, to transfer the billing responsibility for and rights to the wireless telephone number or numbers of any minor children in the petitioner's care to the petitioner, if the petitioner is not the wireless service accountholder;

(10) Award possession and care of any pet, along with any moneys necessary to cover medical costs that may have resulted from abuse of the pet.

565.076. 1. A person commits the offense of domestic assault in the fourth degree if  
2 the act involves a domestic victim, as the term "domestic victim" is defined under section  
3 565.002, and:

- 4                   (1) The person attempts to cause or recklessly causes physical injury, physical pain,  
5 or illness to such domestic victim;
- 6                   (2) With criminal negligence the person causes physical injury to such domestic  
7 victim by means of a deadly weapon or dangerous instrument;
- 8                   (3) The person purposely places such domestic victim in apprehension of immediate  
9 physical injury by any means;
- 10                  (4) The person recklessly engages in conduct which creates a substantial risk of death  
11 or serious physical injury to such domestic victim;
- 12                  (5) The person knowingly causes physical contact with such domestic victim  
13 knowing he or she will regard the contact as offensive; or

14 (6) The person knowingly attempts to cause or causes the isolation of such domestic  
15 victim by unreasonably and substantially restricting or limiting his or her access to other  
16 persons, telecommunication devices or transportation for the purpose of isolation.

17       2. The offense of domestic assault in the fourth degree is a class A misdemeanor,  
18 unless the person has previously been found guilty of the offense of domestic assault, of any  
19 assault offense under this chapter, or of any offense against a domestic victim committed in  
20 violation of any county or municipal ordinance in any state, any state law, any federal law, or  
21 any military law which if committed in this state two or more times would be a violation of  
22 this section, in which case it is a class E felony. The offenses described in this subsection  
23 may be against the same domestic victim or against different domestic victims.

24       3. Upon a person's conviction for the offense of domestic assault in the fourth  
25 degree, the court shall forward the record of conviction to the Missouri state highway  
26 patrol so that the Missouri state highway patrol can update the respondent's record in  
27 the National Instant Criminal Background Check System (NICS). Upon receiving a  
28 record under this subsection, the Missouri state highway patrol shall notify the Federal  
29 Bureau of Investigation within twenty-four hours.

565.227. 1. A person commits the offense of stalking in the second degree if he or  
2 she purposely, through his or her course of conduct, disturbs, or follows with the intent to  
3 disturb another person.

4           2. This section shall not apply to activities of federal, state, county, or municipal law  
5 enforcement officers conducting investigations of any violation of federal, state, county, or  
6 municipal law.

7           3. Any law enforcement officer may arrest, without a warrant, any person he or she  
8 has probable cause to believe has violated the provisions of this section.

9       4. The offense of stalking in the second degree is a class A misdemeanor, unless the  
10 defendant has previously been found guilty of a violation of this section or section 565.225, or  
11 of any offense committed in another jurisdiction which, if committed in this state, would be  
12 chargeable or indictable as a violation of any offense listed in this section or section 565.225,  
13 or unless the victim is intentionally targeted as a law enforcement officer, as defined in  
14 section 556.061, or the victim is targeted because he or she is a relative within the second  
15 degree of consanguinity or affinity to a law enforcement officer, in which case stalking in the  
16 second degree is a class E felony.

17       5. Upon a person's conviction for the offense of stalking in the second degree, the  
18 court shall forward the record of conviction to the Missouri state highway patrol so that  
19 the Missouri state highway patrol can update the respondent's record in the National  
20 Instant Criminal Background Check System (NICS). Upon receiving a record under

21 **this subsection, the Missouri state highway patrol shall notify the Federal Bureau of**  
22 **Investigation within twenty-four hours.**

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

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

6 (2) Such person is a fugitive from justice, is habitually in an intoxicated or drugged  
7 condition, or is currently adjudged mentally incompetent;

8 **(3) Such person has been convicted of a misdemeanor offense of domestic**  
9 **violence under the laws of this state, or of a crime under the laws of any state or of the**  
10 **United States that if committed in this state would be a misdemeanor offense of domestic**  
11 **violence; or**

12 **(4) Such person is subject to an order of protection granted under sections**  
13 **455.010 to 455.095 or sections 455.500 to 455.538 that was issued after a hearing of**  
14 **which the person had actual notice and at which the person had an opportunity to**  
15 **participate or such person is subject to an equivalent order issued under the laws of**  
16 **another state or the United States.**

17 2. Unlawful possession of a firearm is a class C felony, unless a person has been  
18 convicted of a dangerous felony as defined in section 556.061, or the person has a prior  
19 conviction for unlawful possession of a firearm in which case it is a class B felony.

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

22 **4. As used in this section, the following terms mean:**

23 (1) **"Family" or "household member", the same meaning given to the terms in**  
24 **section 455.010;**

25 (2) **"Misdemeanor offense of domestic violence":**

26 (a) **Domestic assault in the fourth degree under section 565.076;**

27 (b) **Stalking in the second degree under section 565.227; or**

28 (c) **Any misdemeanor offense committed by a family or household member of**  
29 **the victim that involves the use or attempted use of physical force or the threatened use**  
30 **of a deadly weapon.**

Section B. Because immediate action is necessary to protect victims of domestic  
2 violence from future acts of domestic violence, the repeal and reenactment of sections  
3 455.050, 455.523, 565.076, 565.227, and 571.070 of this act are deemed necessary for the  
4 immediate preservation of the public health, welfare, peace, and safety, and are hereby  
5 declared to be an emergency act within the meaning of the constitution, and the repeal and

6 reenactment of sections 455.050, 455.523, 565.076, 565.227, and 571.070 of this act shall be  
7 in full force and effect upon their passage and approval.

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