

SENATE BILL NO. 329

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR MOSLEY.

0847S.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 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 the respondent from possessing any firearms.

2. (1) Upon the filing of a verified petition by a parent, teacher, or school administrator of the respondent or a law enforcement officer or agency pursuant to 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 him 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

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

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

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

47 4. Not later than fifteen days after the filing of a
48 verified petition that meets the requirements of this
49 section, a hearing shall be held unless the court deems, for
50 good cause shown, that a continuance should be granted. At

51 the hearing, if the petitioner has proved the allegation
52 that the respondent poses a significant danger to him or
53 herself or others by a preponderance of the evidence, the
54 court shall issue a full extreme risk order of protection
55 for a period of time of one year.

56 5. Upon issuance of any full extreme risk order of
57 protection under subsection 4 of this section, the court
58 shall order the respondent to surrender to the local law
59 enforcement agency where the respondent resides, all
60 firearms in the respondent's custody, control, or
61 possession. If the respondent has been identified in the
62 petition as being required to carry a firearm as a condition
63 of the respondent's employment, the court shall notify the
64 respondent's employer of the existence of the order. If the
65 respondent holds a concealed carry permit pursuant to
66 section 571.101, the court shall order a revocation of the
67 concealed carry permit.

68 (1) The law enforcement officer serving any extreme
69 risk order of protection shall provide the respondent to the
70 order an opportunity to comply with the order by
71 surrendering all firearms in his or her custody, control, or
72 possession. If the respondent does not comply, the law
73 enforcement officer serving the order shall:

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

77 (b) Take possession of all firearms belonging to the
78 respondent that are surrendered, in plain sight, or
79 discovered pursuant to a lawful search conducted pursuant to
80 paragraph (a) of this subdivision.

81 (2) If personal service by a law enforcement officer
82 is not possible, or not required because the respondent was

83 present at the extreme risk order of protection hearing, the
84 respondent shall surrender the firearms in a safe manner to
85 the control of the local law enforcement agency within forty-
86 eight hours of being served with the order by alternate
87 service or within forty-eight hours of the hearing or final
88 decision at which the respondent was present.

89 (3) At the time of surrender, a law enforcement
90 officer taking possession of a firearm shall issue a receipt
91 identifying all firearms that have been surrendered and
92 provide a copy of the receipt to the respondent. Within
93 seventy-two hours after service of the order, the officer
94 serving the order shall file the original receipt with the
95 court and shall ensure that his or her law enforcement
96 agency retains a copy of the receipt.

97 (4) Upon the sworn statement or testimony of any law
98 enforcement officer alleging that the respondent has failed
99 to comply with the surrender of firearms as required by an
100 order issued under this subsection and subsection 3 of this
101 section, the court shall determine whether probable cause
102 exists to believe that the respondent has failed to
103 surrender all firearms in his or her possession, custody, or
104 control. If probable cause exists, the court shall issue a
105 warrant describing the firearms and authorizing a search of
106 the locations where the firearms are reasonably believed to
107 be and the seizure of any firearms discovered pursuant to
108 such search.

109 (5) If a person other than the respondent claims title
110 to any firearms surrendered pursuant to this subsection and
111 subsection 3 of this section, and he or she is determined by
112 the law enforcement agency to be the lawful owner of the
113 firearm, the firearm shall be returned to him or her,
114 provided that:

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

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

121 (6) A respondent to an extreme risk order of
122 protection may file a motion to modify or rescind that order
123 of protection. The respondent may request a hearing on such
124 a motion with the court that issued the original extreme
125 risk order of protection. The court shall conduct a hearing
126 on the motion to modify or rescind an extreme risk order of
127 protection within fifteen days after the motion is filed.

128 At the hearing, if the respondent has proved by a
129 preponderance of the evidence that the extreme risk order of
130 protection must be modified or rescinded, the court shall
131 modify or rescind the extreme risk order of protection.

132 6. If an extreme risk order of protection is
133 terminated or expires without renewal, a law enforcement
134 agency holding any firearm that has been surrendered
135 pursuant to subsections 3 and 5 of this section shall return
136 any surrendered firearm requested by a respondent only after
137 confirming, through a background check administered by the
138 state highway patrol under section 43.543, that the
139 respondent is currently eligible to own or possess firearms
140 under federal and state law and after confirming with the
141 court that the extreme risk order of protection has
142 terminated or has expired without renewal.

143 7. (1) The petitioner may renew the extreme risk
144 order of protection if probable cause is shown that the
145 respondent continues to pose a significant risk of personal
146 injury to him or herself or others by possessing a firearm.

147 The extreme risk order of protection may be renewed for up
148 to one year from the expiration of the preceding extreme
149 risk order of protection. Written notice of a hearing on
150 the motion to renew an extreme risk order of protection
151 shall be given to the respondent by the court.

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

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

160 8. The clerk of any court that issues an extreme risk
161 order of protection shall send the Missouri state highway
162 patrol a copy of the order issued by that court within forty-
163 eight hours of the court issuing the order. Upon receiving
164 an extreme risk order of protection, the Missouri state
165 highway patrol shall enter the extreme risk order of
166 protection into the Missouri uniform law enforcement system
167 (MULES) within forty-eight hours of receiving notice of the
168 order.

169 9. A violation of the terms and conditions of an ex
170 parte order of protection pursuant to this section of which
171 the respondent has notice, shall be a class A misdemeanor
172 unless the respondent has previously pleaded guilty to or
173 has been found guilty in any division of the circuit court
174 of violating an ex parte order of protection or a full order
175 of protection within five years of the date of the
176 subsequent violation, in which case the subsequent violation
177 shall be a class E felony. Evidence of prior pleas of
178 guilty or findings of guilt shall be heard by the court out

179 of the presence of the jury prior to submission of the case
180 to the jury. If the court finds the existence of such prior
181 pleas of guilty or finding of guilt beyond a reasonable
182 doubt, the court shall decide the extent or duration of
183 sentence or other disposition and shall not instruct the
184 jury as to the range of punishment or allow the jury to
185 assess and declare the punishment as a part of its verdict.

186 10. A violation of the terms and conditions of a full
187 order of protection pursuant to this section shall be a
188 class A misdemeanor, unless the respondent has previously
189 pleaded guilty to or has been found guilty in any division
190 of the circuit court of violating an ex parte order of
191 protection or a full order of protection within five years
192 of the date of the subsequent violation, in which case the
193 subsequent violation shall be a class E felony. Evidence of
194 prior pleas of guilty or findings of guilt shall be heard by
195 the court out of the presence of the jury prior to
196 submission of the case to the jury. If the court finds the
197 existence of such prior plea of guilty or finding of guilt
198 beyond a reasonable doubt, the court shall decide the extent
199 or duration of the sentence or other disposition and shall
200 not instruct the jury as to the range of punishment or allow
201 the jury to assess and declare the punishment as a part of
202 its verdict. For the purposes of this subsection, in
203 addition to the notice provided by actual service of the
204 order, a party is deemed to have notice of an order of
205 protection if:

206 (1) The law enforcement officer responding to a call
207 of a reported violation of an order of protection presented
208 a copy of the order of protection to the respondent; or

209 (2) Notice is given by actual communication to the
210 respondent in a manner reasonably likely to advise the
211 respondent.

✓