

FIRST REGULAR SESSION

# HOUSE BILL NO. 545

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GREEN.

0203H.011

DANA RADEMAN MILLER, 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Section A. Section 571.070, RSMo, is repealed and ten new sections enacted in lieu thereof, to be known as sections 571.070, 571.750, 571.752, 571.754, 571.756, 571.758, 571.760, 571.762, 571.764, and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" shall not include a casual relationship or an ordinary fraternization**  
7 **between two persons in a business or social context;**
- 8 (2) **"Eligible petitioner", any of the following:**
- 9 (a) **The spouse of the respondent;**
- 10 (b) **A former spouse of the respondent;**
- 11 (c) **A person who has a child in common with the respondent;**
- 12 (d) **A person who has or has had a dating relationship with the respondent;**
- 13 (e) **A person who resides or has resided in the same household as the respondent;**
- 14 (f) **A family member of the respondent; or**
- 15 (g) **Any other person who has a close relationship with the respondent;**
- 16 (3) **"Extreme risk protection order", an order issued by a court under section**  
17 **571.756;**
- 18 (4) **"Family member", a person who is related to the respondent as:**
- 19 (a) **A parent;**
- 20 (b) **A son or daughter;**
- 21 (c) **A sibling;**
- 22 (d) **A grandparent;**
- 23 (e) **A grandchild;**
- 24 (f) **An aunt or uncle; or**
- 25 (g) **A first cousin;**
- 26 (5) **"Federal law enforcement officer", an officer or agent employed by a law**  
27 **enforcement agency of the United States government whose primary responsibility is the**  
28 **enforcement of laws of the United States;**
- 29 (6) **"Law enforcement officer", a person who is either:**
- 30 (a) **A peace officer certified by the Missouri peace officer standards and training**  
31 **commission;**
- 32 (b) **A sheriff;**
- 33 (c) **A deputy sheriff;**
- 34 (d) **A member of the Missouri state highway patrol; or**
- 35 (e) **A federal law enforcement officer;**
- 36 (7) **"Petitioner", an eligible petitioner whose requested extreme risk protection**  
37 **order was issued by a court;**
- 38 (8) **"MULES", the Missouri uniform law enforcement system;**
- 39 (9) **"Respondent", the person against whom an extreme risk protection order is**  
40 **requested in a petition or, if the order is issued, the person against whom an extreme risk**  
41 **protection order has been issued and is in effect.**

2           **571.752. 1. An eligible petitioner may file a petition with the circuit court**  
3 **requesting the court to enter an extreme risk protection order. The court may prescribe**  
4 **the manner and form of the petition.**

5           **2. The petition shall state sufficient facts to determine whether the eligible**  
6 **petitioner has a close relationship with the respondent and shall state sufficient facts to**  
7 **indicate that the respondent poses a significant risk of personal injury to himself, herself,**  
8 **or others by possessing a firearm.**

9           **3. The eligible petitioner shall sign and file an affidavit with the petition attesting**  
10 **that the facts alleged in the petition are true.**

11           **4. The petition shall state whether the respondent is licensed to carry a concealed**  
12 **weapon and whether the respondent is a law enforcement officer, local corrections officer,**  
13 **or employee of the department of corrections or is otherwise required to carry a weapon**  
14 **as a condition of his or her employment.**

15           **5. The petition shall identify the firearms the eligible petitioner knows the**  
16 **respondent possesses.**

17           **571.754. 1. In an action brought under section 571.752, the court may issue an**  
18 **extreme risk protection order if it determines there is reasonable cause to believe the**  
19 **respondent poses a significant risk of personal injury to himself, herself, or others by**  
20 **possessing a firearm. In determining whether reasonable cause exists, the court shall**  
21 **consider:**

1           **(1) Testimony, documents, or other evidence offered in support of the request for**  
2 **the extreme risk protection order;**

3           **(2) Whether the respondent has previously inflicted or threatened to inflict**  
4 **personal injury on himself, herself, or others; and**

5           **(3) Any other relevant facts.**

6           **2. If the eligible petitioner's relationship only qualifies under paragraph (g) of**  
7 **subdivision (2) of subsection 2 of section 571.750, the court shall issue an extreme risk**  
8 **protection order only if it determines the eligible petitioner and respondent have a**  
9 **sufficiently close relationship to justify the issuance of an order.**

10           **3. The court may issue an extreme risk protection order without written or oral**  
11 **notice to the respondent if the court determines irreparable injury may occur before notice**  
12 **can be given or determines such notice may precipitate adverse action before an extreme**  
13 **risk protection order can be issued.**

14           **4. If an extreme risk protection order is issued, the respondent may file a motion**  
15 **to modify or rescind the order and request a hearing under the rules of the Missouri**  
16 **supreme court. The motion to modify or rescind the order shall be filed no later than**  
17 **the date of the hearing.**

22 fourteen days after the order is served on the respondent or after the respondent receives  
23 actual notice of the order. However, a motion to modify or rescind may be filed after  
24 fourteen days if good cause is shown.

25 5. The court shall conduct a hearing on a motion described under subsection 4 of  
26 this section no later than fourteen days after the date the motion is filed. If the petitioner's  
27 relationship only qualifies under paragraph (g) of subdivision (2) of subsection 2 of section  
28 571.750, the court shall conduct a hearing on a motion under subsection 4 of this section  
29 no later than five days after the date 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 order shall include the following provisions:

- 3 (1) That the respondent shall not purchase or possess a firearm;
- 4 (2) If the order is issued under subsection 3 of section 571.754, a statement that the  
5 respondent may file a motion to modify or rescind the order and request a hearing no later  
6 than fourteen days after the date the respondent is served with or receives actual notice of  
7 the order and that forms and filing instructions are available from the clerk of the court;
- 8 (3) A designation of the law enforcement agency responsible for entering the order  
9 into MULES;
- 10 (4) A statement that violation of the order shall subject the respondent to  
11 immediate arrest and to the civil and criminal contempt powers of the court and that, if  
12 found guilty of criminal contempt, the respondent may be imprisoned for no more than one  
13 hundred eighty days and may be fined no more than one thousand dollars; and
- 14 (5) The date the order shall expire, which shall be no later than one year from the  
15 date of issuance.

16 2. An extreme risk protection order is effective and enforceable immediately after  
17 it is served on the respondent or after the respondent receives actual notice of the order.  
18 The order may be enforced anywhere in this state by a law enforcement agency that  
19 receives a true copy of the order, is shown a copy of the order, or has verified the order's  
20 existence on MULES.

571.758. The clerk of a court that issues an extreme risk protection order shall  
2 perform the following acts immediately after the order is issued and without requiring a  
3 proof of service on the respondent:

- 4 (1) Provide a true copy of the order to the law enforcement agency designated  
5 under subdivision (3) of subsection 1 of section 571.756;
- 6 (2) Provide the petitioner with a minimum of two true copies of the order;

7           **(3) If the respondent is identified in the petition as a member of the Missouri state**  
8 **highway patrol, notify the respondent's employer, if known, of the existence of the order;**  
9 **and**

10           **(4) Inform the petitioner that the petitioner may take a true copy of the order to the**  
11 **law enforcement agency designated under subdivision (3) of subsection 1 of section 571.756**  
12 **to be immediately entered into MULES.**

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

7           **2. The person who serves an extreme risk protection order or gives oral notice of**  
8 **the order shall file proof of service or proof of oral notice with the clerk of the court that**  
9 **issued the order. The clerk of the court shall immediately notify the law enforcement**  
10 **agency designated in the order if either:**

11           **(1) The clerk of the court receives proof that the respondent was served; or**

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

**571.762. 1. A law enforcement agency designated in an extreme risk protection**  
2 **order that receives a true copy of the order shall immediately and without requiring proof**  
3 **of service enter the order into MULES.**

4           **2. A law enforcement agency that receives information under subsection 2 of**  
5 **section 571.760 shall enter the information into MULES.**

6           **3. If an extreme risk protection order has not been served on the respondent, a law**  
7 **enforcement agency or officer responding to a call alleging a violation of the order shall**  
8 **serve the respondent with a true copy of the order or advise the respondent of the existence**  
9 **of the order, the specific conduct enjoined, the penalties for violating the order, and the**  
10 **places where the respondent may obtain a copy of the order. Subject to subsection 4 of this**  
11 **section, the law enforcement officer shall enforce the order and immediately enter or cause**  
12 **to be entered into MULES that the respondent has actual notice of the order. The law**  
13 **enforcement officer also shall comply with subsection 2 of section 571.760.**

14           **4. If the respondent is first notified under subsection 3 of this section, the law**  
15 **enforcement officer shall give the respondent an opportunity to comply with the extreme**  
16 **risk protection order before the law enforcement officer makes a custodial arrest for**  
17 **violation of the order. The respondent's failure to immediately comply with the order shall**  
18 **be grounds for an immediate custodial arrest.**

19           **5. The law enforcement agency ordered to seize a firearm pursuant to an extreme**  
20 **risk protection order may seize a firearm identified in the order from any place or from**  
21 **any person who has possession of the firearm. The law enforcement agency may also seize**  
22 **any other firearms discovered that are owned by or in the possession of the respondent if**  
23 **so provided in the extreme risk protection order or if allowed under other applicable law.**

24           **6. A law enforcement officer who seizes a firearm under subsection 5 of this section**  
25 **shall give a receipt for the firearm to the person from whom it was taken, which shall**  
26 **identify the firearm in detail. If no person is present at the time of seizure, the officer shall**  
27 **leave the receipt in the place where the officer found the firearm.**

28           **7. The law enforcement agency that seizes a firearm pursuant to an extreme risk**  
29 **protection order shall retain the firearm subject to such order.**

30           **8. In addition to any other order that the court determines is appropriate, the court**  
31 **shall order that the firearm be returned to the respondent when the respondent is no**  
32 **longer prohibited from owning a firearm or that the firearm be transferred to a licensed**  
33 **firearm dealer if the respondent sells or transfers ownership of the firearm to the dealer.**

34           **9. If a firearm is found in a location jointly occupied by multiple persons and such**  
35 **firearm is owned by a person other than the respondent, the law enforcement agency shall**  
36 **not seize the firearm if:**

37           **(1) The firearm is stored so that the respondent does not have access to or control**  
38 **of the firearm; and**

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

40           **10. If a gun safe is located in a location jointly-occupied by multiple persons and**  
41 **the gun safe is owned by a person other than the respondent, a law enforcement agency**  
42 **shall not search the gun safe except with a valid search warrant, in the owner's presence,**  
43 **or with the absent owner's consent.**

44           **11. If any person other than the respondent claims title to a firearm seized under**  
45 **subsection 5 of this section, the firearm shall be returned to the claimant if the court**  
46 **determines that the claimant is the lawful owner.**

**571.764. In response to a petitioner's motion or sua sponte, the court may extend**  
2 **an extreme risk protection order. Such extension may remain in effect for up to one year**  
3 **after the order's preceding expiration date. The court shall only issue an extension if**  
4 **probable cause that the respondent continues to pose a significant risk of personal injury**  
5 **to himself, herself, or others by possessing a firearm exists. The petitioner or the court, as**  
6 **applicable, shall give the respondent written notice of a hearing on a motion to extend the**  
7 **order.**

2           **571.766. 1. A person who refuses or fails to comply with an extreme risk protection**  
3 **order is subject to the criminal contempt powers of the court and, if found guilty, may be**  
4 **imprisoned for no more than one hundred eighty days or may be fined no more than one**  
5 **thousand dollars, or both. The criminal penalty provided under this section may be**  
6 **imposed in addition to a penalty imposed for another criminal offense arising from the**  
7 **same conduct.**

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

9           **3. An eligible petitioner or petitioner who knowingly and intentionally makes a**  
10 **false statement to the court in a petition, in support of a petition, or in support of an**  
11 **extension is subject to the contempt powers of the court.**

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