

1st Reading:  
2nd Reading:

**SPONSOR: CRUTS**

**ORDINANCE NO. \_\_\_\_**

**BILL NO. 22-27**

**AN ORDINANCE AMENDING ARTICLE II, OFFENSES AGAINST THE PERSON, OF CHAPTER 205, OFFENSES, BY ENACTING TWO NEW SECTIONS RELATING TO EX PARTE AND FULL ORDERS OF PROTECTION.**

**WHEREAS**, at the April 7, 2022 Committee Meeting, the Board of Aldermen discussed the Prosecuting Attorney's recommendation to enact two new ordinances related to the enforcement of Ex Parte and Full Orders of Protection; and

**WHEREAS**, the Board of Aldermen now desires to amend Chapter 205 to enact two new sections related to the same.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FENTON, MISSOURI, AS FOLLOWS:**

**Section 1.** Article II, Offenses Against the Person, of Chapter 205, Offenses, is hereby amended by enacting two new Sections to read as follows:

**Section 205.200. Violations of Ex Parte or Full Orders of Protection.**

- A. A person commits the offense of violation of an Ex Parte Order of Protection if he or she knowingly violates the terms and/or conditions of an Ex Parte Order of Protection granted under Sections 455.010 — 455.090 RSMo.
- B. A person commits the offense of violation of a Full Order of Protection if he or she knowingly violates the terms and/or conditions of a Full Order of Protection granted under Sections 455.010 — 455.090 RSMo.
- C. A violation of the terms and/or conditions of an Ex Parte Order of Protection or a Full Order of Protection regarding abuse, stalking, disturbing the peace, child custody, or entrance upon the premises of the petitioner's dwelling unit shall be a misdemeanor and punishable by a fine of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) or by imprisonment for a period not to exceed three (3) months or by both such fine and imprisonment.
- D. For purposes of this Section, in addition to the notice provided by actual service of the Order, a party is deemed to have notice of an Order once the Law Enforcement Officer responding to a call of a reported incident of abuse or of violation of an Order of Protection presents a copy of the Order of Protection to the respondent/party.

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- E. Nothing in this Section shall be interpreted as creating a private cause of action for damages to enforce the provisions set forth therein.

**Section 205.205 Arrest for Violation of Order – Penalties – Good Faith Immunity for Law Enforcement Officials.**

- A. 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 RSMo., against a family or household member, the officer may arrest the offending party whether or not the violation occurred in the presence of the arresting Officer. When the Law Enforcement Officer declines to make arrest pursuant to this Subsection, the Law Enforcement Officer shall make a written report of the incident completely describing the offending party, giving the victim's name, time, address, reason why no arrest was made, and any other pertinent information. Any Law Enforcement Officer subsequently called to the same address within a twelve- hour period, who shall find probable cause to believe the same offender has again committed a violation as stated in this Subsection against the same or any other family or household member, shall arrest the offending party for this subsequent offense. The primary report of non-arrest in the preceding twelve- hour period may be considered as evidence of the defendant's intent in the violation for which arrest occurred. The refusal of the victim to sign an official complaint against the violator shall not prevent an arrest under this Subsection.
- B. When a Law Enforcement Officer has probable cause to believe that a party, against whom an Order or Protection has been entered and who has notice of such Order entered, has committed an act in violation of such Order, the Law Enforcement Officer shall arrest the offending party-respondent whether or not the violation occurred in the presence of the arresting Law Enforcement Officer. Refusal of the victim to sign an official complaint against the violator shall not prevent an arrest under this Subsection.
- C. When a Law Enforcement Officer makes an arrest, the Law Enforcement Officer is not required to arrest two (2) parties involved in an assault when both parties claim to have been assaulted. The arresting Law Enforcement Officer shall attempt to identify and shall arrest the party the Law Enforcement Officer believes is the primary physical aggressor. The term "primary physical aggressor" is defined as the most significant, rather than the first, aggressor.
  - 1. The Law Enforcement Officer shall consider any or all of the following in determining the primary physical aggressor:
    - a. The intent of the law to protect victims from continuing domestic violence;
    - b. The comparative extent of injuries inflicted or serious threats creating fear of physical injury;
    - c. The history of domestic violence between the persons involved.

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2. No Law Enforcement Officer investigating an incident of domestic violence shall threaten the arrest of all parties for the purpose of discouraging requests or law enforcement intervention by any party. Where complaints are received from two (2) or more opposing parties, the Law Enforcement Officer shall evaluate each complaint separately to determine whether the Law Enforcement Officer should seek a warrant for an arrest.
- D. In an arrest in which a Law Enforcement Officer acted in good faith reliance on this Section, the arresting and assisting Law Enforcement Officers and their employing entities and superiors shall be immune from liability in any civil action alleging false arrest, false imprisonment, or malicious prosecution.
  - E. When a person against whom an Order of Protection has been entered fails to surrender custody of minor children to the person to whom custody was awarded in an Order of Protection, the Law Enforcement Officer shall arrest the respondent, and shall turn the minor children over to the care and custody of the party to whom such care and custody was awarded.
  - F. The same procedures, including those designed to protect constitutional rights, shall be applied to the respondent as those applied to any individual detained in police custody.
  - G. A violation of the terms and conditions, with regard to domestic violence, stalking, sexual assault, child custody, communication initiated by the respondent or entrance upon the premises of the petitioner's dwelling unit or place of employment or school, or being within a certain distance of the petitioner or a child of the petitioner, of a Full Order of Protection or of an Ex Parte Order of Protection of which the respondent has notice shall be an ordinance violation, unless the respondent has previously pleaded guilty to or has been found guilty in any Division of the Circuit Court of violating an Ex Parte Order of Protection or a Full Order of Protection within five (5) years of the date of the subsequent violation, in which case the subsequent violation shall be a Class E felony. Evidence of prior pleas of guilty or findings of guilt shall be heard by the Court out of the presence of the jury prior to submission of the case to the jury. If the Court finds the existence of such prior plea of guilty or finding of guilt beyond a reasonable doubt, the Court shall decide the extent or duration of the sentence or other disposition and shall not instruct the jury as to the range of punishment or allow the jury to assess and declare the punishment as a part of its verdict. For the purposes of this Subsection, in addition to the notice provided by actual service of the order, a party is deemed to have notice of an order of protection if the Law Enforcement Officer responding to a call of a reported incident of domestic violence, stalking, sexual assault, or violation of an order of protection presented a copy of the order of protection to the respondent.
  - H. Good faith attempts to effect a reconciliation of a marriage when both parties consent to the same, such as a cooling off period or when both parties go to counseling, shall not be deemed tampering with a witness or victim tampering under Section 575.270, RSMo. or violation of the terms of the Full Order of Protection or Ex Parte Order of Protection under this Section 205.200.

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- I. Nothing in this Section shall be interpreted as creating a private cause of action for damages to enforce the provisions set forth herein.

**Section 2.** The portions of this ordinance shall be severable. In the event that any portion of this ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this ordinance are valid, unless the court finds that the valid portions of this ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Board of Aldermen would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

**Section 3.** This ordinance shall be in full force and effect ninety (90) days after the date of its passage and approval.

PASSED this 28<sup>th</sup> day of April 2022.

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JOE MAURATH, ACTING PRESIDENT  
OF THE BOARD OF ALDERMEN

APPROVED 28<sup>th</sup> day of April 2022.

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JOE MAURATH, ACTING PRESIDENT  
OF THE BOARD OF ALDERMEN

ATTEST:

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Jane Hungler, City Clerk

Motion to approve. Roll Call vote:

Ayes:

Abstains:

Nays:

Absent:

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