

SENATE BILL No. 183

By Committee on Judiciary

2-14

1 AN ACT concerning firearms; relating to protection orders; enacting the
2 extreme risk protective order act.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Sections 1 through 13, and amendments thereto, shall
6 be known and may be cited as the extreme risk protective order act.

7 (b) As used in the extreme risk protective order act:

8 (1) "Defendant" means the person identified in the petition filed
9 pursuant to section 2, and amendments thereto.

10 (2) "Ex parte extreme risk protective order" means an order issued by
11 a court pursuant to section 3, and amendments thereto, prohibiting the
12 defendant from having in such person's custody or control, owning,
13 purchasing, possessing or receiving any firearms or ammunition until the
14 court-scheduled hearing for an extreme risk protective order.

15 (3) "Extreme risk protective order" means an order issued by a court
16 pursuant to section 3 or 4, and amendments thereto, prohibiting the
17 defendant from having in such person's custody or control, owning,
18 purchasing, possessing or receiving any firearms or ammunition for a
19 period of up to one year.

20 (4) "Family member" means: Any person related to the defendant by
21 blood, marriage or adoption; any of the defendant's current or former
22 dating partners; any person who resides or has resided with the defendant;
23 or any person who is acting or has acted as the defendant's legal guardian.

24 (5) "Plaintiff" means a law enforcement officer or a family member
25 of the defendant who files a petition pursuant to section 2, and
26 amendments thereto.

27 Sec. 2. (a) A plaintiff may seek an extreme risk protective order by
28 filing a petition in the district court of the county where the defendant
29 resides.

30 (b) The petition shall set forth the grounds for issuance of the order
31 and shall describe the number, types and locations of any firearms or
32 ammunition presently believed by the plaintiff to be in the possession of or
33 controlled by the defendant. The petition shall also state whether there is
34 any current or prior protective order issued against the defendant and
35 whether there is any pending lawsuit, complaint, petition or other action
36 between the parties under the laws of this state. The clerk of the court shall

1 verify the terms of any current court order affecting the parties. The court
2 shall not delay granting relief because of the existence of a pending action
3 between the parties or the necessity of verifying the terms of a current
4 order. A petition for an extreme risk protective order may be granted
5 regardless of whether there is a pending action between the parties.

6 (c) All health records and other health information provided in a
7 petition or considered as evidence in a proceeding under this act shall be
8 protected from public disclosure to the extent such records identify the
9 defendant or plaintiff, except that such information may be provided to law
10 enforcement agencies as set forth in section 9, and amendments thereto.
11 Aggregate statistical data about the numbers of extreme risk protective
12 orders issued, renewed, denied, dissolved or terminated shall be available
13 to the public upon request.

14 (d) Upon the filing of the petition, the court shall set a date for a
15 hearing within 14 days, regardless of whether the court issues an ex parte
16 extreme risk protective order pursuant to section 3, and amendments
17 thereto. If the court does issue an ex parte extreme risk protective order
18 pursuant to section 3, and amendments thereto, notice of the hearing shall
19 be served on the defendant with the ex parte order. Notice of the hearing
20 shall be personally served on the defendant by a law enforcement officer,
21 or if personal service by a law enforcement officer is not possible, in
22 accordance with K.S.A. 60-301 et seq., and amendments thereto.

23 Sec. 3. (a) A plaintiff may request that an ex parte extreme risk
24 protective order be issued before a hearing for an extreme risk protective
25 order, without notice to the defendant, by including in the petition filed
26 pursuant to section 2, and amendments thereto, detailed allegations based
27 on personal knowledge that the defendant poses an immediate and present
28 danger of causing personal injury to self or others by having in such
29 person's custody or control, owning, purchasing, possessing or receiving a
30 firearm or ammunition.

31 (b) The court shall issue or deny an ex parte extreme risk protective
32 order on the same day that the petition is submitted to the court, unless the
33 petition is filed too late in the day to permit effective review, in which case
34 the order shall be issued or denied on the next day of judicial business.

35 (c) Before issuing an ex parte extreme risk protective order, the court
36 shall examine under oath the plaintiff and any witnesses the plaintiff may
37 produce. The court may also:

38 (1) Ensure that a reasonable search has been conducted of all
39 available records to determine whether the defendant owns any firearms or
40 ammunition; and

41 (2) ensure that a reasonable search has been conducted for criminal
42 history records related to the defendant.

43 (d) In determining whether grounds for an ex parte extreme risk

1 protective order exist, the court shall consider all relevant evidence
2 presented by the plaintiff, and may also consider other relevant evidence,
3 including, but not limited to, evidence of facts relating to the defendant's:

4 (1) Unlawful, reckless or negligent use, display, storage, possession
5 or brandishing of a firearm;

6 (2) act or threat of violence against self or another, whether or not
7 such act or threat involves a firearm;

8 (3) violation of any protective order included in K.S.A. 2018 Supp.
9 21-5924, and amendments thereto;

10 (4) abuse of controlled substances or alcohol or any criminal offense
11 that involves controlled substances or alcohol; and

12 (5) recent acquisition of firearms, ammunition or other deadly
13 weapons.

14 (e) The court shall also consider the time that has elapsed since the
15 events described in subsection (d).

16 (f) If a court finds reasonable cause to believe that the defendant
17 poses an immediate and present danger of causing personal injury to self
18 or others by having in such person's custody or control, owning,
19 purchasing, possessing or receiving a firearm or ammunition, the court
20 shall issue an ex parte extreme risk protective order.

21 (g) An ex parte extreme risk protective order shall include:

22 (1) A statement that the defendant may not have in such person's
23 custody or control, own, purchase, possess or receive, or attempt to
24 purchase or receive a firearm or ammunition while the order is in effect;

25 (2) a description of the requirements for relinquishment of firearms
26 and ammunition under section 6, and amendments thereto;

27 (3) a statement of the grounds asserted for the order;

28 (4) a notice of the hearing required under section 2(e), and
29 amendments thereto, to determine whether to issue an extreme risk
30 protective order, including the address of the court and the date and time
31 when the hearing is scheduled;

32 (5) a statement that, at the hearing, the court may issue an extreme
33 risk protective order under section 4, and amendments thereto, for up to
34 one year; and

35 (6) a statement that the defendant may seek the advice of an attorney
36 as to any matter connected with the order, and that the attorney should be
37 consulted promptly so that the attorney may assist the person in any matter
38 connected with the order.

39 (h) An ex parte extreme risk protective order shall be personally
40 served on the defendant by a law enforcement officer, or if personal
41 service by a law enforcement officer is not possible, in accordance with
42 K.S.A. 60-301 et seq., and amendments thereto.

43 (i) In accordance with section 2(e), and amendments thereto, the court

1 shall schedule a hearing within 14 days of the issuance of an ex parte
2 extreme risk protective order to determine if an extreme risk protective
3 order shall be issued. A defendant may seek an extension of time before
4 the hearing. The court shall dissolve any ex parte extreme risk protective
5 order in effect against the defendant when the court holds the hearing.

6 Sec. 4. (a) A plaintiff requesting an extreme risk protective order shall
7 include in the petition detailed allegations based on personal knowledge
8 that the defendant poses a significant danger of causing personal injury to
9 self or others by having in such person's custody or control, owning,
10 purchasing, possessing or receiving a firearm or ammunition.

11 (b) Before a hearing for an extreme risk protective order, the court
12 shall:

13 (1) Ensure that a reasonable search has been conducted of all
14 available records to determine whether the defendant owns any firearms or
15 ammunition; and

16 (2) ensure that a reasonable search has been conducted for criminal
17 history records related to the defendant.

18 (c) In determining whether to issue an extreme risk protective order
19 under this section, the court shall consider all relevant evidence presented
20 by the plaintiff, and may also consider other relevant evidence, including,
21 but not limited to, evidence of the facts identified in section 3(d), and
22 amendments thereto.

23 (d) If the court finds by a preponderance of the evidence at the
24 hearing that the defendant poses a significant danger of personal injury to
25 self or others by having in such person's custody or control, owning,
26 purchasing, possessing or receiving a firearm or ammunition, the court
27 shall issue an extreme risk protective order.

28 (e) An extreme risk protective order issued pursuant to this section
29 shall include all of the following:

30 (1) A statement that the defendant may not have in such person's
31 custody or control, own, possess, purchase or receive, or attempt to
32 purchase or receive a firearm or ammunition while the order is in effect;

33 (2) a description of the requirements for relinquishment of firearms
34 and ammunition under section 7, and amendments thereto;

35 (3) a statement of the grounds supporting the issuance of the order;

36 (4) the date and time the order expires, which shall not be later than
37 one year from the date of issuance;

38 (5) the address of the court that issued the order;

39 (6) a statement that the defendant shall have the right to request one
40 hearing to terminate the order at any time during its effective period; and

41 (7) a statement that the person may seek the advice of an attorney as
42 to any matter connected with the order.

43 (f) If the defendant fails to appear at the hearing, an extreme risk

1 protective order issued pursuant to this section shall be personally served
2 on the defendant by a law enforcement officer, or if personal service by a
3 law enforcement officer is not possible, in accordance with K.S.A. 60-301
4 et seq., and amendments thereto.

5 Sec. 5. (a) When the court is unavailable, a verified petition,
6 accompanied by a proposed order, may be presented to any district judge.
7 The judge may grant relief in accordance with section 3, and amendments
8 thereto, if the judge deems it necessary because the defendant poses an
9 immediate and present danger of causing personal injury to self or others
10 by having in such person's custody or control, owning, purchasing,
11 possessing or receiving a firearm or ammunition. An emergency order
12 issued pursuant to this section may be granted ex parte.

13 (b) An emergency order issued under this section shall expire on 5:00
14 p.m. on the first day when the court resumes court business. At that time,
15 the plaintiff may file a petition for an extreme risk protective order under
16 section 3 or 4, and amendments thereto.

17 (c) The judge shall note on the petition and any order granted,
18 including any documentation in support thereof, the filing date, together
19 with the judge's signature, and shall deliver them to the clerk of the court
20 on the next day of the resumption of business of the court.

21 Sec. 6. (a) A defendant subject to an extreme risk protective order
22 issued under section 4, and amendments thereto, may submit one written
23 request at any time during the effective period of the order for a hearing to
24 terminate the order.

25 (1) Upon receipt of the request for termination, the court shall set a
26 date for a hearing. Notice of the request shall be served on the plaintiff in
27 accordance with K.S.A. 60-301 et seq., and amendments thereto. The
28 hearing shall occur no sooner than 14 days from the date of service of the
29 request upon the plaintiff.

30 (2) The defendant seeking termination of the order shall have the
31 burden of proving by a preponderance of the evidence that the defendant
32 does not pose a significant danger of causing personal injury to self or
33 others by having in such person's custody or control, owning, purchasing,
34 possessing or receiving a firearm or ammunition.

35 (3) If the court finds after the hearing that the defendant has met the
36 defendant's burden, the court shall terminate the order.

37 (b) A plaintiff may request a renewal of an extreme risk protective
38 order at any time within the three months immediately preceding the date
39 of expiration of the order.

40 (1) A court may, after notice and a hearing, renew an extreme risk
41 protective order issued under section 4, and amendments thereto, if the
42 court finds by a preponderance of the evidence that the defendant
43 continues to pose a significant danger of causing personal injury to self or

1 others by having in such person's custody or control, owning, purchasing,
2 possessing or receiving a firearm or ammunition.

3 (2) In determining whether to renew an extreme risk protective order
4 issued under section 4, and amendments thereto, the court shall consider
5 all relevant evidence presented by the plaintiff, and may also consider
6 other relevant evidence, including, but not limited to, evidence of the facts
7 identified in section 3(d), and amendments thereto.

8 (3) An extreme risk protective order renewed pursuant to this section
9 shall include the information required under section 4(e), and amendments
10 thereto. Any renewed order shall be effective for the period set by the
11 court, but not to exceed one year from the date of renewal, subject to
12 termination by further order of the court at a hearing held pursuant to
13 subsection (a) and subject to further renewal by order of the court pursuant
14 to this subsection.

15 Sec. 7. (a) Upon issuance of an extreme risk protective order, the
16 court shall order the defendant to surrender to the local law enforcement
17 agency all firearms and ammunition in the defendant's custody or control,
18 or that the defendant possesses or owns.

19 (b) A law enforcement officer serving an extreme risk protective
20 order shall request that all firearms and ammunition belonging to the
21 defendant be immediately surrendered, and shall take possession of all
22 firearms and ammunition belonging to the defendant that are surrendered,
23 in plain sight, or discovered pursuant to a lawful search. Alternatively, if
24 personal service by a law enforcement officer is not possible, and service
25 is made in accordance with K.S.A. 60-301 et seq., and amendments
26 thereto, the defendant shall surrender the firearms and ammunition in a
27 safe manner to the control of local law enforcement officials within 48
28 hours of being served with the order.

29 (c) At the time of surrender or removal, a law enforcement officer
30 taking possession of a firearm or ammunition pursuant to an extreme risk
31 protective order shall issue a receipt identifying all firearms and
32 ammunition that have been surrendered or removed and provide a copy of
33 the receipt to the defendant. Within 72 hours after serving the order, the
34 officer serving the order shall file the original receipt with the court that
35 issued the extreme risk protective order, and shall ensure that the law
36 enforcement agency order retains a copy of the receipt.

37 (d) A court that has probable cause to believe a defendant subject to
38 an extreme risk protective order has in such person's custody or control,
39 owns or possesses firearms or ammunition that the defendant has failed to
40 surrender pursuant to this section, or has received or purchased any
41 firearms or ammunition while subject to the order, shall issue a warrant
42 describing the firearm or ammunition and authorizing a search of any
43 locations where the firearms or ammunition are reasonably believed to be

1 and the seizure of any firearms or ammunition discovered pursuant to such
2 search.

3 (e) A law enforcement agency may charge the defendant a fee not to
4 exceed the reasonable and actual costs incurred by the law enforcement
5 agency for storing a firearm or ammunition surrendered pursuant to this
6 section for the duration of the extreme risk protective order and any
7 additional periods necessary under section 8, and amendments thereto.

8 Sec. 8. (a) Thirty days before an extreme risk protective order is set to
9 expire, a law enforcement agency holding any firearm or ammunition that
10 has been surrendered pursuant to the order shall notify the plaintiff that the
11 order is set to expire. The notice shall advise the plaintiff of the procedures
12 for seeking a renewal of the order pursuant to section 6, and amendments
13 thereto.

14 (b) If an extreme risk protective order is terminated or expires and is
15 not renewed, a law enforcement agency holding any firearm or
16 ammunition that has been surrendered pursuant to section 7, and
17 amendments thereto, shall notify the defendant that the defendant may
18 request the return of the firearm or ammunition. A law enforcement agency
19 shall return any surrendered firearm or ammunition requested by a
20 defendant only after confirming, through a background check, that the
21 defendant is currently eligible to own or possess firearms and ammunition.

22 (c) A defendant who has surrendered any firearm or ammunition to a
23 law enforcement agency pursuant to section 7, and amendments thereto,
24 and who does not wish to have the firearm or ammunition returned, or who
25 is no longer eligible to own or possess firearms or ammunition, may sell or
26 transfer title of the firearm or ammunition to a licensed firearms dealer.
27 The law enforcement agency shall transfer possession of the firearm or
28 ammunition to a licensed firearms dealer only after the dealer has
29 displayed written proof of transfer of the firearm or ammunition from the
30 defendant to the dealer and the law enforcement agency has verified the
31 transfer with the defendant.

32 (d) If a person other than the defendant claims ownership of any
33 firearm or ammunition surrendered pursuant to section 7, and amendments
34 thereto, and such person is determined by the law enforcement agency to
35 be the lawful owner of the firearm or ammunition, the firearm or
36 ammunition shall be returned to such person.

37 (e) Any firearm or ammunition that was surrendered by a defendant
38 pursuant to section 7, and amendments thereto, and that remains
39 unclaimed by the lawful owner for 60 days after termination of an extreme
40 risk protective order shall be disposed of in accordance with K.S.A. 22-
41 2512, and amendments thereto.

42 Sec. 9. (a) The court shall notify the Kansas bureau of investigation
43 no later than one day after issuing, renewing, dissolving or terminating an

1 extreme risk protective order.

2 (b) The information required to be submitted to the Kansas bureau of
3 investigation pursuant to this section shall include identifying information
4 about the defendant and the date the order was issued, renewed, dissolved
5 or terminated. The court shall include the date the order is set to expire.
6 The court shall also indicate whether the defendant was present in court to
7 be advised of the contents of the order or if the defendant failed to appear.
8 The defendant's presence in court shall constitute proof of service of notice
9 of the terms of the order.

10 (c) Within one business day of service, a law enforcement officer who
11 serves an extreme risk protective order or the clerk of the court shall
12 submit the proof of service to the Kansas bureau of investigation,
13 including the name of the person submitting the proof of service and the
14 law enforcement agency employing such person, if any.

15 (d) The information to be submitted to the Kansas bureau of
16 investigation under this section shall be submitted in an electronic format,
17 in a manner prescribed by the director of the Kansas bureau of
18 investigation. The Kansas bureau of investigation shall maintain a
19 searchable database of this information, which shall be made available to
20 law enforcement agencies upon request.

21 (e) The Kansas bureau of investigation shall immediately make
22 information about an extreme risk protective order issued, renewed or
23 terminated pursuant to the provisions of this act available to the national
24 instant criminal background check system for the purposes of firearm
25 purchaser background checks.

26 Sec. 10. (a) Every person who files a petition for an extreme risk
27 protective order, knowing the information in the petition to be materially
28 false or with an intent to harass the defendant, shall be guilty of a class C
29 misdemeanor.

30 (b) Every person who has in such person's custody or control, owns,
31 purchases, possesses or receives a firearm or ammunition with knowledge
32 that such person is prohibited from doing so by an extreme risk protective
33 order shall be guilty of a class C misdemeanor and shall be prohibited
34 from having in such person's custody or control, owning, purchasing,
35 possessing or receiving, or attempting to purchase or receive, a firearm or
36 ammunition for a period of five years from the date of conviction.

37 Sec. 11. The provisions of this act shall not affect the ability of a law
38 enforcement officer to remove firearms or ammunition from any person
39 pursuant to other lawful authority.

40 Sec. 12. The provisions of this act shall not be construed to impose
41 criminal or civil liability on any person who chooses not to seek an
42 extreme risk protective order pursuant to the provisions of this act.

43 Sec. 13. Except as otherwise provided in this act, any proceedings

1 under this act shall be in accordance with chapter 60 of the Kansas Statutes
2 Annotated, and amendments thereto, and shall be in addition to any other
3 available civil or criminal remedies.

4 Sec. 14. This act shall take effect and be in force from and after its
5 publication in the statute book.