

1 HB265
2 192223-2
3 By Representative Coleman
4 RFD: Judiciary
5 First Read: 21-MAR-19

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8 SYNOPSIS: This bill would establish the Gun Violence
9 Protective Order Act.

10 This bill would authorize courts to issue ex
11 parte gun violence protective orders and one-year
12 gun violence protective orders, which may be
13 authorized if the court finds that the respondent,
14 as defined, poses an immediate and present danger
15 of causing personal injury to self or others.

16 This bill would provide that upon the
17 issuance of an ex parte or one-year gun violence
18 protective order, the court shall order the
19 respondent to surrender to the local law
20 enforcement agency all firearms and ammunition of
21 which the respondent has custody, control,
22 ownership, or possession.

23 This bill would provide for the renewal or
24 early termination of a one-year gun violence
25 protective order under certain conditions.

26 This bill would provide criminal penalties
27 for a violation.

1 Amendment 621 of the Constitution of Alabama
2 of 1901, now appearing as Section 111.05 of the
3 Official Recompilation of the Constitution of
4 Alabama of 1901, as amended, prohibits a general
5 law whose purpose or effect would be to require a
6 new or increased expenditure of local funds from
7 becoming effective with regard to a local
8 governmental entity without enactment by a 2/3 vote
9 unless: it comes within one of a number of
10 specified exceptions; it is approved by the
11 affected entity; or the Legislature appropriates
12 funds, or provides a local source of revenue, to
13 the entity for the purpose.

14 The purpose or effect of this bill would be
15 to require a new or increased expenditure of local
16 funds within the meaning of the amendment. However,
17 the bill does not require approval of a local
18 governmental entity or enactment by a 2/3 vote to
19 become effective because it comes within one of the
20 specified exceptions contained in the amendment.

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 Relating to firearms; to establish the Gun Violence
27 Protective Order Act; to provide for the issuance of ex parte

1 gun violence protective orders and one-year gun violence
2 protective orders; to require the surrender of all firearms
3 and ammunition of a person subject to an ex parte gun violence
4 protective order or one-year gun violence protective order; to
5 provide for the renewal or early termination of an order; to
6 provide criminal penalties for a violation; and in connection
7 therewith would have as its purpose or effect the requirement
8 of a new or increased expenditure of local funds within the
9 meaning of Amendment 621 of the Constitution of Alabama of
10 1901, now appearing as Section 111.05 of the Official
11 Recompilation of the Constitution of Alabama of 1901, as
12 amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. This act shall be known and may be cited
15 as the Gun Violence Protective Order Act.

16 Section 2. Legislative purpose and intent.

17 The Legislature finds and declares the following:

18 (1) Over 100,000 people become victims of a gunshot
19 wound each year and more than 30,000 of those victims lose
20 their lives. In 2017, firearms killed 39,773 Americans.

21 (2) Federal law prohibits any individual subject to
22 certain domestic violence restraining orders from purchasing
23 or possessing firearms. Many states have similar laws. About
24 half of the states also authorize or require a court that is
25 issuing a domestic violence protective order to require the
26 abuser to surrender firearms that he or she may already have
27 in his or her possession. This act is modeled on existing

1 domestic violence laws that have firearms surrender
2 provisions.

3 (3) Studies have shown that an individual who
4 engages in certain dangerous behaviors is significantly more
5 likely to commit an act of violence towards himself or herself
6 or others in the near future. These behaviors, which might
7 include other acts or threats of violence, self-harm, or the
8 abuse of drugs or alcohol, serve as warning signs that the
9 individual might soon commit an act of violence.

10 (4) Under federal law, an individual suffering from
11 mental illness is not prohibited from purchasing or possessing
12 a firearm unless he or she has been involuntarily committed to
13 a mental institution, found not guilty of a crime by reason of
14 insanity, or undergone some other formalized court proceeding
15 regarding his or her mental illness. Similarly, an individual
16 who has committed a violent act towards another is not
17 prohibited from possessing a firearm under federal law until
18 after he or she has been convicted of a felony or domestic
19 violence misdemeanor.

20 (5) It is the purpose and intent of the Legislature
21 to reduce firearm deaths and injuries by providing a formal
22 court procedure that law enforcement officers, teachers, and
23 family members may use to obtain a court order that prevents
24 an individual who poses a significant danger of causing
25 personal injury to self or others from gaining access to
26 firearms and ammunition. The Legislature intends for these
27 court orders to be limited to situations in which the

1 individual poses a significant danger of causing personal
2 injury to self or others by owning, purchasing, controlling,
3 possessing, or receiving a firearm or ammunition.

4 Section 3. Definitions.

5 The following terms shall have the following
6 meanings:

7 (1) EX PARTE GUN VIOLENCE PROTECTIVE ORDER. An order
8 issued by a court, pursuant to Section 5, that prohibits the
9 respondent from owning, purchasing, controlling, possessing,
10 or receiving firearms or ammunition until a court-scheduled
11 hearing for a one-year gun violence protective order.

12 (2) FAMILY MEMBER. An individual related by blood,
13 marriage, or adoption to the respondent, current or former
14 dating partner of the respondent, and any individual who
15 resides or has resided with the respondent, or who is acting
16 or has acted as the respondent's legal guardian.

17 (3) FIREARM. A weapon from which a shot is
18 discharged by gun powder.

19 (4) ONE-YEAR GUN VIOLENCE PROTECTIVE ORDER. An order
20 issued by a court, pursuant to Section 6, prohibiting the
21 respondent from owning, purchasing, controlling, possessing,
22 or receiving guns or ammunition for a period of one year.

23 (5) PETITIONER. A law enforcement officer, teacher,
24 or family member of the respondent who files a petition
25 pursuant to Section 4.

26 (6) RESPONDENT. The individual identified in the
27 petition filed under Section 5 or Section 6.

1 (7) TEACHER. A teacher, school administrator, school
2 counselor, college professor, student teacher, safety or
3 resource officer, or coach of the respondent.

4 Section 4. Commencement of Action; Forms.

5 (a) A petitioner may seek a gun violence protective
6 order by filing a verified petition on a form approved by the
7 Administrative Office of Courts in the court of the county
8 where the respondent resides.

9 (b) The petition shall set forth the grounds for the
10 issuance of the order and shall describe the number, types,
11 and locations of any firearms or ammunition presently believed
12 by the petitioner to be possessed or controlled by the
13 respondent. The petition shall also state whether there is an
14 existing domestic violence protective order in effect
15 governing the respondent and whether there is any pending
16 lawsuit, complaint, petition, or other action between the
17 parties under the laws of this state. The court administrator
18 shall verify the terms of any existing order governing the
19 parties. The court may not delay granting relief because of
20 the existence of a pending action between the parties or the
21 necessity of verifying the terms of an existing order. A
22 petition for a gun violence protective order may be granted
23 whether or not there is a pending action between the parties.

24 (c) If the respondent is alleged to pose an
25 immediate and present danger of causing personal injury to a
26 family member, or a family member is alleged to have been the
27 target of a threat or act of violence by the respondent, the

1 petitioner shall make a good faith effort to provide notice to
2 any and all adult family members of the respondent. The notice
3 must state that the petitioner intends to petition the court
4 for a gun violence protective order, and, if the petitioner is
5 a law enforcement officer, must also include a referral to
6 relevant domestic violence or stalking advocacy or counseling
7 resources, if appropriate. The petitioner shall attest to
8 having provided the notice in the verified petition. If the
9 petitioner is unable to provide notice to any or all adult
10 family members of the respondent, the verified petition shall
11 describe what good faith efforts were made.

12 (d) All health records and other health information
13 provided in a petition or considered as evidence in a
14 proceeding under this act shall be protected from public
15 disclosure to the extent the information identifies a
16 respondent or petitioner, except that the information may be
17 provided to law enforcement agencies as set forth in Section
18 10. Aggregate statistical data about the numbers of gun
19 violence protective orders issued, renewed, denied, dissolved,
20 or terminated shall be available to the public upon request.

21 (e) Upon receipt of the petition, the court shall
22 set a date for a hearing within 14 calendar days, regardless
23 of whether the court issues an ex parte gun violence
24 protective order. If the court issues an ex parte gun violence
25 protective order, notice of the hearing shall be served on the
26 respondent with the ex parte order. Notice of the hearing

1 shall be personally served on the respondent by a law
2 enforcement officer.

3 (f) The Administrative Office of Courts shall
4 prescribe the form of the petitions, orders, and any other
5 documents and shall adopt any rules of court necessary for the
6 implementation of this act.

7 Section 5. Ex Parte Gun Violence Protective Order.

8 (a) A petitioner may request that an ex parte order
9 be issued prior to a hearing for a one-year gun violence
10 protective order, without notice to the respondent, by
11 including in the petition detailed allegations based on
12 personal knowledge that the respondent poses an immediate and
13 present danger of causing personal injury to self or others
14 through his or her ownership, purchase, control, possession,
15 or receipt of a firearm or ammunition.

16 (b) The court shall issue or deny an ex parte gun
17 violence protective order on the same day that the petition is
18 submitted to the court, unless the petition is filed too late
19 in the day to allow for its effective review, in which case
20 the order shall be issued or denied on the next business day.

21 (c) Before issuing an ex parte gun violence
22 protective order, the court shall examine under oath the
23 petitioner and any witnesses the petitioner may produce. The
24 court may also do the following:

25 (1) Ensure that a reasonable search has been
26 conducted of all available records to determine whether the
27 respondent owns any firearms or ammunition.

1 (2) Ensure that a reasonable search has been
2 conducted for criminal history records related to the
3 respondent.

4 (d) In determining whether grounds for an ex parte
5 gun violence protective order exists, the court shall consider
6 all relevant evidence presented by the petitioner, and may
7 also consider other relevant evidence, including, but not
8 limited to, evidence of the occurrence of any of the following
9 events by the respondent:

10 (1) Unlawful, reckless, or negligent use, display,
11 storage, possession, or brandishing of a firearm.

12 (2) Act or threat of violence against self or
13 another, whether or not the violence involved a firearm.

14 (3) Violation of a protective order issued under
15 Chapter 5 or Chapter 5B of Title 30 of the Code of Alabama
16 1975, or a similar law in another state.

17 (4) Abuse of controlled substances or alcohol or any
18 criminal offense that involves controlled substances or
19 alcohol.

20 (5) The recent acquisition of firearms, ammunition,
21 or other deadly weapons.

22 (e) The court shall also consider the time that has
23 elapsed since the occurrence of any event described in
24 subsection (d).

25 (f) If a court finds reasonable cause to believe
26 that the respondent poses an immediate and present danger of
27 causing personal injury to self or others by owning,

1 purchasing, controlling, possessing, or receiving a firearm or
2 ammunition, the court shall issue an ex parte gun violence
3 protective order.

4 (g) An ex parte gun violence protective order shall
5 include all of the following:

6 (1) A statement that the respondent may not own,
7 purchase, control, possess, or receive, or attempt to purchase
8 or receive, a firearm or ammunition while the order is in
9 effect.

10 (2) A description of the requirements for
11 relinquishment of firearms and ammunition under Section 8.

12 (3) A statement of the grounds asserted for the
13 order.

14 (4) A notice of the hearing under subsection (e) of
15 Section 4 to determine whether to issue a one-year gun
16 violence protective order, including the address of the court
17 and the date and time for when the hearing is scheduled.

18 (5) A statement that the court may extend the order
19 by one year at the hearing.

20 (6) A statement that the respondent may seek the
21 advice of an attorney as to any matter connected with the
22 order, and that the attorney should be consulted promptly so
23 that the attorney may assist the individual in any matter
24 connected with the order.

25 (h) An ex parte gun violence protective order shall
26 be personally served on the respondent by a law enforcement
27 officer.

1 (i) In accordance with subsection (e) of Section 4,
2 the court shall schedule a hearing within 14 calendar days of
3 the issuance of an ex parte gun violence protective order to
4 determine if a one-year gun violence protective order shall be
5 issued; provided, however, that a respondent may seek an
6 extension of time before the hearing. The court shall dissolve
7 any ex parte gun violence protective order in effect against
8 the respondent when the court holds the hearing.

9 Section 6. One-Year Gun Violence Protective Order
10 Issued After Notice and Hearing.

11 (a) A petitioner requesting a one-year gun violence
12 protective order shall include in the petition detailed
13 allegations based on personal knowledge that the respondent
14 poses a substantial danger of causing personal injury to self
15 or others through his or her ownership, purchase, control,
16 possession, or receipt of a firearm or ammunition.

17 (b) Prior to a hearing for a one-year gun violence
18 protective order, the court shall do both of the following:

19 (1) Ensure that a reasonable search has been
20 conducted of all available records to determine whether the
21 respondent owns any firearms or ammunition.

22 (2) Ensure that a reasonable search has been
23 conducted for criminal history records related to the
24 respondent.

25 (c) In determining whether to issue a one-year gun
26 violence protective order under this section, the court shall
27 consider all relevant evidence presented by the petitioner and

1 may also consider other relevant evidence, including, but not
2 limited to, evidence of events identified in subsection (d) of
3 Section 5.

4 (d) If the court finds by a preponderance of the
5 evidence at the hearing that the respondent poses a
6 substantial danger of personal injury to self or others
7 through his or her ownership, purchase, control, possession,
8 or receipt of a firearm or ammunition, the court shall issue a
9 one-year gun violence protective order.

10 (e) A one-year gun violence protective order issued
11 under this section shall include all of the following:

12 (1) A statement that the respondent may not own,
13 possess, control, purchase, or receive, or attempt to purchase
14 or receive, a firearm or ammunition while the order is in
15 effect.

16 (2) A description of the requirements for
17 relinquishment of firearms and ammunition under Section 8.

18 (3) A statement of the grounds supporting the
19 issuance of the order.

20 (4) The date and time the order expires.

21 (5) The address of the court that issued the order.

22 (6) A statement that the respondent shall have the
23 right to request one hearing to terminate the order at any
24 time during its effective period.

25 (7) A statement that the respondent may seek the
26 advice of an attorney as to any matter connected with the
27 order.

1 (f) If the respondent fails to appear at the hearing
2 and the court determines that a one-year gun violence
3 protective order shall be issued, the order shall be
4 personally served on the respondent by a law enforcement
5 officer.

6 Section 7. Termination and Renewal.

7 (a) A respondent subject to a one-year gun violence
8 protective order may submit one written request at any time
9 during the effective period of the order for a hearing to
10 terminate the order.

11 (1) Upon receipt of the request for termination, the
12 court shall set a date for a hearing. Notice of the request
13 shall be served on the petitioner in accordance with the
14 Alabama Rules of Civil Procedure. The hearing shall occur no
15 sooner than 14 calendar days from the date of service of the
16 request upon the petitioner.

17 (2) The respondent seeking termination of the order
18 shall have the burden of proving by a preponderance of the
19 evidence that the respondent does not pose a substantial
20 danger of causing personal injury to self or others through
21 his or her ownership, purchase, control, possession, or
22 receipt of a firearm or ammunition.

23 (3) If the court finds that the respondent has met
24 his or her burden, the court shall terminate the order.

25 (b) A petitioner may request a renewal of a one-year
26 gun violence protective order at any time within the three
27 months before the expiration of the order.

1 (1) A court, after notice and a hearing, may renew
2 the one-year gun violence protective order if the court, by a
3 preponderance of the evidence, finds that the respondent
4 continues to pose a substantial danger of causing personal
5 injury to self or another through his or her ownership,
6 purchase, control, possession, or receipt of a firearm or
7 ammunition.

8 (2) In determining whether to renew a one-year gun
9 violence protective order, the court shall consider all
10 relevant evidence presented by the petitioner, and may also
11 consider other relevant evidence, including, but not limited
12 to, evidence of the events identified in subsection (d) of
13 Section 5.

14 (3) A one-year gun violence protective order renewed
15 under this subsection shall expire after one year, subject to
16 termination by further order of the court at a hearing held
17 under subsection (a) and further renewal by order of the court
18 under this subsection.

19 Section 8. Relinquishment of firearms and
20 ammunition.

21 (a) Upon issuance of an ex parte or one-year gun
22 violence protective order, the court shall order the
23 respondent to surrender to the local law enforcement agency
24 all firearms and ammunition of which the respondent has
25 custody, control, or ownership.

26 (b) A law enforcement officer serving a gun violence
27 protective order shall request that all firearms and

1 ammunition belonging to or in the custody or control of the
2 respondent be immediately surrendered and shall take
3 possession of the firearms and ammunition that are
4 surrendered. A law enforcement officer serving a gun violence
5 protective order may conduct a lawful search for firearms and
6 ammunition.

7 (c) At the time of surrender or removal, a law
8 enforcement officer taking possession of a firearm or
9 ammunition pursuant to a gun violence protective order shall
10 issue a receipt identifying all firearms and ammunition that
11 have been surrendered or removed and provide a copy of the
12 receipt to the respondent. Within 72 hours after serving the
13 order, the officer who served the order shall file the
14 original receipt with the court that issued the gun violence
15 protective order, and shall ensure that the law enforcement
16 agency retains a copy of the receipt.

17 (d) If a petitioner has probable cause to believe a
18 respondent to a gun violence protective order owns, controls,
19 or possesses a firearm or ammunition that the respondent has
20 failed to surrender pursuant to this section, or has received
21 or purchased a firearm or ammunition while subject to the
22 order, the petitioner may petition the court to issue a
23 warrant. The petition shall describe the firearm or ammunition
24 and where the firearm or ammunition is reasonably believed to
25 be located. The court may issue the warrant upon a finding of
26 probable cause.

1 (e) A law enforcement agency may charge the
2 respondent a fee not to exceed the reasonable and actual costs
3 incurred by the law enforcement agency for storing a firearm
4 or ammunition surrendered pursuant to this section for the
5 duration of the gun violence protective order and any
6 additional periods necessary under Section 7.

7 Section 9. Return and Disposal of Firearms or
8 Ammunition.

9 (a) As used in this section, dispose means to sell
10 or transfer a firearm or ammunition to a federally licensed
11 dealer, defined under 18 U.S.C. § 921 et seq., or to destroy
12 the firearm or ammunition.

13 (b) Thirty days before a one-year gun violence
14 protective order is set to expire, a law enforcement agency
15 holding a firearm or ammunition that has been surrendered
16 pursuant to the order shall notify the petitioner that the
17 order is set to expire. The notice shall advise the petitioner
18 of the procedures for seeking a renewal of the order pursuant
19 to Section 7.

20 (c) If a gun violence protective order is terminated
21 or expires and is not renewed, a law enforcement agency
22 holding any firearm or ammunition that has been surrendered
23 pursuant to Section 8 shall notify the respondent that he or
24 she may request the return of the firearm or ammunition. The
25 law enforcement agency shall return any surrendered firearms
26 or ammunition requested by a respondent only after confirming,

1 through a background check, that the respondent is currently
2 eligible to own or possess firearms and ammunition.

3 (d) A respondent who has surrendered a firearm or
4 ammunition to a law enforcement agency pursuant to Section 8
5 and who does not wish to have the firearm or ammunition
6 returned or who is no longer eligible to own or possess a
7 firearm or ammunition may sell or transfer title of the
8 firearm or ammunition to a licensed firearms dealer. The law
9 enforcement agency shall transfer possession of the firearm or
10 ammunition to a licensed firearms dealer only after the dealer
11 has displayed written proof of transfer of the firearm or
12 ammunition from the respondent to the dealer and the law
13 enforcement agency has verified the transfer.

14 (e) If an individual other than the respondent
15 claims title to a firearm or ammunition surrendered pursuant
16 to Section 8, and the individual is determined by the law
17 enforcement agency to be the lawful owner of the firearm or
18 ammunition, the gun or ammunition shall be returned to him or
19 her.

20 (f) A law enforcement agency holding a firearm or
21 ammunition that was surrendered by a respondent pursuant to
22 Section 8 may dispose of the firearm or ammunition only after
23 six months from the date of proper notice to the respondent of
24 the intent to dispose of the firearm or ammunition, unless the
25 firearm or ammunition has been claimed by the lawful owner. If
26 the firearm or ammunition remains unclaimed after six months
27 from the date of notice, then no party shall have the right to

1 assert ownership of the firearm or ammunition and the law
2 enforcement agency may dispose of the firearm or ammunition.

3 Section 10. Reporting of Orders to a Statewide
4 System.

5 (a) The court shall notify the Alabama State Law
6 Enforcement Agency (ALEA) no later than one business day after
7 issuing, renewing, dissolving, or terminating an ex parte or
8 one-year gun violence protective order under this act.

9 (b) The information required to be submitted to ALEA
10 pursuant to this section shall include identifying information
11 about the respondent and the date the order was issued,
12 renewed, dissolved, or terminated. In the case of a one-year
13 order, the court shall include the date the order is set to
14 expire. The court shall also indicate whether the respondent
15 to the one-year gun violence protective order was present in
16 court to be advised of the contents of the order or if the
17 respondent failed to appear. The respondent's presence in
18 court shall constitute proof of service of notice of the terms
19 of the order.

20 (c) Within one business day of service, a law
21 enforcement officer who serves a gun violence protective order
22 or the clerk of the court shall submit the proof of service
23 and a copy of the protection order to ALEA for entry into the
24 appropriate database.

25 (d) The information to be submitted to ALEA under
26 this section shall be submitted in an electronic format, in a
27 manner prescribed by ALEA. ALEA shall maintain a searchable

1 database of this information, available to law enforcement
2 agencies upon request.

3 (e) Within 30 days of submission of the information
4 under subsection (d), ALEA shall make information about an ex
5 parte or one-year gun violence protective order issued,
6 renewed, or terminated pursuant to this act available to the
7 National Instant Criminal Background Check System for the
8 purposes of firearm purchaser background checks.

9 Section 11. Penalties.

10 (a) A person who files a petition for a gun violence
11 protective order, knowing the information in the petition to
12 be materially false or with an intent to harass the
13 respondent, is guilty of a Class C misdemeanor.

14 (b) A person who owns, purchases, controls,
15 possesses, or receives a firearm or ammunition with knowledge
16 that he or she is prohibited from doing so by a gun violence
17 protective order is guilty of a Class C misdemeanor and shall
18 be prohibited from owning, purchasing, controlling,
19 possessing, or receiving, or attempting to purchase or
20 receive, a firearm or ammunition for a period of five years
21 from the date of conviction.

22 Section 12. Law Enforcement to Retain Other
23 Authority.

24 This act shall not affect the ability of a law
25 enforcement officer to remove firearms or ammunition from any
26 individual pursuant to other lawful authority.

1 Section 13. Lack of Liability for Failure to Seek
2 Order.

3 This act shall not be construed to impose criminal
4 or civil liability on any individual who chooses not to seek a
5 gun violence protective order pursuant to this act.

6 Section 14. Although this bill would have as its
7 purpose or effect the requirement of a new or increased
8 expenditure of local funds, the bill is excluded from further
9 requirements and application under Amendment 621, now
10 appearing as Section 111.05 of the Official Recompilation of
11 the Constitution of Alabama of 1901, as amended, because the
12 bill defines a new crime or amends the definition of an
13 existing crime.

14 Section 15. This act shall become effective on the
15 first day of the third month following its passage and
16 approval by the Governor, or its otherwise becoming law.