

1 AN ACT relating to extreme risk protection orders.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 11 of this Act:*

6 *(1) "Ex parte extreme risk protection order" means an order issued by a court,*
7 *pursuant to Section 3 of this Act, prohibiting the respondent from owning,*
8 *purchasing, possessing, receiving, or having in his or her custody or control any*
9 *firearms or ammunition until the court-scheduled hearing for a one (1) year*
10 *extreme risk protection order;*

11 *(2) "One (1) year extreme risk protection order" means an order issued by a court,*
12 *pursuant to Section 4 of this Act, prohibiting the respondent from owning,*
13 *purchasing, possessing, receiving, or having in his or her custody or control any*
14 *firearms or ammunition for a period of one (1) year;*

15 *(3) "Petitioner" means:*

16 *(a) A qualified mental health professional as defined in KRS 202A.011 who has*
17 *treated the respondent;*

18 *(b) A peace officer;*

19 *(c) A current or former legal guardian of the respondent;*

20 *(d) A person living in the same household as the respondent;*

21 *(e) A person related to the respondent by blood, marriage, or adoption; or*

22 *(f) A current or former family member or member of an unmarried couple as*
23 *defined in KRS 403.720, or a current or former member of a dating*
24 *relationship as defined in KRS 456.010; and*

25 *(4) "Respondent" means the person identified in the petition filed pursuant to*
26 *Section 3 or 4 of this Act.*

27 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO

1 READ AS FOLLOWS:

- 2 (1) A petitioner may seek a one (1) year extreme risk protection order by filing a
3 verified petition on a form prescribed by the Administrative Office of the Courts
4 in the District Court of the county where the respondent resides.
- 5 (2) The petition shall set forth the grounds for issuance of the order and shall
6 describe the number, types, and locations of any firearms or ammunition
7 presently believed by the petitioner to be possessed or controlled by the
8 respondent. The petition shall also name adults believed by the petitioner to be
9 living with the respondent as family or household members. The petition shall
10 also state whether there is an existing protective order in effect governing the
11 respondent and whether there is any pending lawsuit, complaint, petition, or
12 other action between the parties under the laws of this state. The court shall
13 verify the terms of any existing order governing the parties. The court may not
14 delay granting relief because of the existence of a pending action between the
15 parties or the necessity of verifying the terms of an existing order. A petition for
16 an extreme risk protection order may be granted whether or not there is a
17 pending action between the parties.
- 18 (3) All health records and other health information provided in a petition or
19 considered as evidence in a proceeding under Sections 1 to 11 of this Act shall be
20 protected from public disclosure to the extent they identify a respondent or
21 petitioner, except that such information may be provided to law enforcement
22 agencies as set forth in Section 8 of this Act. Aggregate statistical data about the
23 number of extreme risk protection orders issued, renewed, denied, dissolved, or
24 terminated shall be available to the public upon request.
- 25 (4) Upon receipt of the petition, the court shall set a date for a hearing within
26 fourteen (14) days, regardless of whether the court issues an ex parte extreme
27 risk protection order pursuant to Section 3 of this Act. Notice of the hearing shall

1 be personally served on the respondent by a law enforcement officer or, if
2 personal service by a law enforcement officer is not possible, in accordance with
3 the laws of this state regarding service of process. At the time of service, the
4 respondent shall be informed that he or she may request a hearing before a jury
5 by giving written notice to the court prior to the time of the hearing. If the court
6 does issue an ex parte extreme risk protection order pursuant to Section 3 of this
7 Act, notice of the hearing shall be served on the respondent with the ex parte
8 order.

9 (5) The Administrative Office of the Courts shall prescribe the form of the petitions
10 and orders and any other documents, and shall promulgate any rules of court,
11 necessary to implement this chapter.

12 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
13 READ AS FOLLOWS:

14 (1) A petitioner may request that an ex parte order be issued before a hearing for a
15 one (1) year extreme risk protection order, without notice to the respondent, by
16 including in the petition detailed allegations based on personal knowledge that
17 the respondent poses an immediate and present danger of causing serious
18 physical injury to self or others by owning, purchasing, possessing, receiving, or
19 having in his or her custody or control a firearm or ammunition.

20 (2) (a) The court shall issue or deny an ex parte extreme risk protection order on
21 the same day that the petition is submitted to the court, unless the petition is
22 filed too late in the day to permit effective review, in which case the order
23 shall be issued or denied on the next day of judicial business.

24 (b) Review of the request for an ex parte extreme risk protection order shall be
25 conducted by the court sitting without a jury.

26 (3) Before issuing an ex parte extreme risk protection order the court shall examine
27 under oath the petitioner and any witnesses the petitioner may produce. The

1 court may also:

2 (a) Ensure that a reasonable search has been conducted of available records to
3 determine whether the respondent owns any firearms or ammunition; and

4 (b) Ensure that a reasonable search has been conducted for criminal history
5 records related to the respondent.

6 (4) In determining whether grounds for an ex parte extreme risk protection order
7 exist, the court shall consider all relevant evidence presented by the petitioner,
8 and may also consider other relevant evidence, including but not limited to
9 evidence of facts relating to the respondent's:

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

12 (b) Act or threat of violence against self or another, whether or not this
13 violence involves a firearm;

14 (c) Violation of a protective order issued pursuant to KRS Chapter 403 or 456,
15 or similar laws in another state;

16 (d) Abuse of controlled substances or alcohol or any criminal offense that
17 involves controlled substances or alcohol; and

18 (e) The recent acquisition of firearms, ammunition, or other deadly weapons.

19 (5) The court shall also consider the time that has elapsed since the events
20 considered as evidence occurred.

21 (6) If a court finds reasonable cause to believe that the respondent poses an
22 immediate and present danger of causing serious physical injury to self or others
23 by owning, purchasing, possessing, receiving, or having in his or her custody or
24 control a firearm or ammunition, the court shall issue an ex parte extreme risk
25 protection order.

26 (7) An ex parte extreme risk protection order shall include:

27 (a) A statement that the respondent may not own, purchase, possess, receive, or

- 1 have in his or her custody or control, or attempt to purchase or receive, a
2 firearm or ammunition while the order is in effect;
- 3 (b) A description of the requirements for surrender or removal of firearms and
4 ammunition under Section 6 of this Act;
- 5 (c) A statement of the grounds asserted for the order;
- 6 (d) A notice of the hearing under subsection (4) of Section 2 of this Act to
7 determine whether to issue a one (1) year extreme risk protection order,
8 including the address of the court and the date and time when the hearing
9 is scheduled;
- 10 (e) A statement that at the hearing the court may extend the order for one (1)
11 year;
- 12 (f) A statement that the respondent may request a jury for the hearing by
13 giving written notice of the request to the court prior to the time set for the
14 hearing; and
- 15 (g) A statement that the respondent may seek the advice of an attorney as to any
16 matter connected with the order, and that the attorney should be consulted
17 promptly so that the attorney may assist the person in any matter connected
18 with the order.
- 19 (8) An ex parte extreme risk protection order shall be personally served on the
20 respondent by a law enforcement officer or, if personal service by a law
21 enforcement officer is not possible, in accordance with the laws of this state
22 regarding service of process.
- 23 (9) In accordance with subsection (4) of Section 2 of this Act, the court shall
24 schedule a hearing within fourteen (14) days of the issuance of an ex parte
25 extreme risk protection order to determine if a one (1) year extreme risk
26 protection order shall be issued. A respondent may seek an extension of time
27 before the hearing, or, if a respondent requests a jury, the court may extend the

1 time before the hearing in order to impanel a jury. The court shall dissolve any ex
2 parte extreme risk protection order in effect against the respondent when the
3 court holds the hearing.

4 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
5 READ AS FOLLOWS:

6 (1) A petitioner requesting a one (1) year extreme risk protection order shall include
7 in the petition detailed allegations based on personal knowledge that the
8 respondent poses a significant danger of causing serious physical injury to self or
9 others by owning, purchasing, possessing, receiving, or having in his or her
10 custody or control a firearm or ammunition.

11 (2) Before a hearing for a one (1) year extreme risk protection order, the court shall:

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

15 (b) Ensure that a reasonable search has been conducted for criminal history
16 records related to the respondent.

17 (3) (a) Proceedings shall be heard by a judge sitting without a jury unless the
18 respondent requests a hearing before a jury in writing prior to the time set
19 for the hearing.

20 (b) If a respondent requests a jury, the court may extend the time before the
21 hearing in order to impanel a jury, and any ex parte orders remain in effect
22 until the court holds the hearing.

23 (4) In determining whether to issue a one (1) year extreme risk protection order
24 under this section, the court, or the jury if one is impaneled, shall consider all
25 relevant evidence presented by the petitioner, and may also consider other
26 relevant evidence, including but not limited to evidence of the facts identified in
27 subsection (4) of Section 3 of this Act.

1 (5) If the court, or the jury if one is impaneled, finds by a clear and convincing
2 standard of evidence at the hearing that the respondent poses a significant
3 danger of serious physical injury to self or others by owning, purchasing,
4 possessing, receiving, or having in his or her custody or control a firearm or
5 ammunition, the court shall issue a one (1) year extreme risk protection order.

6 (6) A one (1) year extreme risk protection order issued pursuant to this section shall
7 include all of the following:

8 (a) A statement that the respondent shall not own, possess, purchase, receive,
9 or have in his or her custody or control, or attempt to purchase or receive, a
10 firearm or ammunition while the order is in effect;

11 (b) A description of the requirements for surrender or removal of firearms and
12 ammunition under Section 6 of this Act;

13 (c) A statement of the grounds supporting the issuance of the order;

14 (d) The date and time the order expires;

15 (e) The address of the court that issued the order;

16 (f) A statement that the respondent shall have the right to request one (1)
17 hearing to terminate the order at any time during its effective period; and

18 (g) A statement that the person may seek the advice of an attorney as to any
19 matter connected with the order.

20 (7) If the respondent fails to appear at the hearing, a one (1) year extreme risk
21 protection order issued pursuant to this section shall be personally served on the
22 respondent by a law enforcement officer or, if personal service by a law
23 enforcement officer is not possible, in accordance with the laws of this state
24 regarding service of process.

25 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
26 READ AS FOLLOWS:

27 (1) (a) A respondent to a one (1) year extreme risk protection order issued under

1 Section 4 of this Act may submit to the issuing court one (1) written request
2 at any time during the effective period of the order for a hearing before a
3 judge of the issuing court to terminate the order.

4 (b) Upon receipt of the request for termination, the court shall set a date for a
5 hearing. Notice of the request shall be served on the petitioner in
6 accordance with the laws of this state regarding service of process. The
7 hearing shall occur no sooner than fourteen (14) days from the date of
8 service of the request upon the petitioner.

9 (c) The respondent seeking termination of the order shall have the burden of
10 proving by a clear and convincing standard of evidence that the respondent
11 does not pose a significant danger of causing serious physical injury to self
12 or others by owning, purchasing, possessing, receiving, or having in his or
13 her custody or control a firearm or ammunition.

14 (d) Review of the request for termination shall be heard by the issuing court
15 sitting without a jury.

16 (e) If the judge finds after the hearing that the respondent has met his or her
17 burden, the court shall terminate the order.

18 (2) (a) A petitioner may request a renewal of a one (1) year extreme risk protection
19 order at any time within the three (3) months before the expiration of the
20 order.

21 (b) 1. Renewal proceedings for a one (1) year extreme risk protection order
22 shall be heard by a judge sitting without a jury unless the respondent
23 requests a hearing before a jury in writing prior to the time set for the
24 hearing.

25 2. If a respondent requests a jury, the court may extend the time before
26 the hearing in order to impanel a jury, and the existing one (1) year
27 extreme risk protection order shall remain in effect until the court

1 holds the hearing.

2 (c) The court, or the jury if one is impaneled, may, after notice and a hearing,
3 renew a one (1) year extreme risk protection order issued under Sections 1
4 to 11 of this Act if the court or jury finds, by a clear and convincing
5 standard of evidence, that the respondent continues to pose a significant
6 danger of causing serious physical injury to self or another by owning,
7 purchasing, possessing, receiving, or having in his or her custody or control
8 a firearm or ammunition.

9 (c) In determining whether to renew a one (1) year extreme risk protection
10 order issued under this section, the court, or the jury if one is impaneled,
11 shall consider all relevant evidence presented by the petitioner, and may
12 also consider other relevant evidence, including but not limited to evidence
13 of the facts identified in subsection (4) of Section 3 of this Act.

14 (d) A one (1) year extreme risk protection order renewed pursuant to this
15 section shall expire after one (1) year, subject to termination by further
16 order of the court at a hearing held pursuant to subsection (1) of this
17 section and further renewal by order of the court pursuant to this
18 subsection.

19 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
20 READ AS FOLLOWS:

21 (1) Upon issuance of an ex parte or one (1) year extreme risk protection order, the
22 court shall:

23 (a) 1. Order the respondent to surrender to the local law enforcement
24 agency all firearms and ammunition in the respondent's custody or
25 control, or which the respondent possesses or owns. The time, place,
26 and manner of surrender shall be included in the order; or

27 2. Direct a law enforcement agency having jurisdiction over the

1 respondent to immediately search for and remove all firearms and
2 ammunition in the respondent's custody or control, or which the
3 respondent possesses or owns; and

4 **(b) Direct a law enforcement agency having jurisdiction over the respondent to**
5 **conduct a reasonable search of available records in order to:**

6 **1. Identify adults living in the same household as the respondent; and**
7 **2. Provide notice to those adults that the respondent is prohibited from**
8 **having firearms in his or her custody or control while the order is in**
9 **effect.**

10 **(2) At the time of surrender or removal, a law enforcement officer taking possession**
11 **of a firearm or ammunition pursuant to an extreme risk protection order shall**
12 **issue a receipt identifying all firearms and ammunition that have been**
13 **surrendered or removed and provide a copy of the receipt to the respondent. The**
14 **officer serving the order shall file the original receipt with the court that issued**
15 **the extreme risk protection order, and shall ensure that the law enforcement**
16 **agency retains a copy of the receipt.**

17 **(3) A court that has probable cause to believe a respondent to an extreme risk**
18 **protection order owns, possesses, or has in his or her custody or control firearms**
19 **or ammunition that he or she has failed to surrender pursuant to this section, or**
20 **has received or purchased firearms or ammunition while subject to the order,**
21 **shall issue a warrant describing the firearms or ammunition and authorizing a**
22 **search of any location where the firearms or ammunition are reasonably believed**
23 **to be and the seizure of any firearms or ammunition discovered pursuant to such**
24 **search.**

25 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
26 READ AS FOLLOWS:

27 **(1) Sixty (60) days before a one (1) year extreme risk protection order is set to expire,**

1 a law enforcement agency holding any firearm or ammunition that has been
2 surrendered pursuant to the order shall notify the petitioner that the order is set
3 to expire. The notice shall advise the petitioner of the procedures for seeking a
4 renewal of the order pursuant to Section 5 of this Act.

5 (2) If an extreme risk protection order is terminated or expires and is not renewed, a
6 law enforcement agency holding any firearm or ammunition that has been
7 surrendered or removed pursuant to Section 6 of this Act shall notify the
8 respondent that he or she may request the return of the firearm or ammunition.
9 A law enforcement agency shall return any surrendered firearm or ammunition
10 requested by a respondent only after confirming, through a background check,
11 that the respondent is currently eligible to own or possess firearms and
12 ammunition.

13 (3) A respondent who surrendered any firearm or ammunition to a law enforcement
14 agency or had any firearm or ammunition removed pursuant to Section 6 of this
15 Act and who does not wish to have the firearm or ammunition returned or who is
16 no longer eligible to own or possess firearms or ammunition may sell or transfer
17 title of the firearm or ammunition to a licensed firearms dealer. The law
18 enforcement agency shall transfer possession of the firearm or ammunition to a
19 licensed firearms dealer only after the dealer has displayed written proof of
20 transfer of the firearm or ammunition from the respondent to the dealer and the
21 law enforcement agency has verified the transfer with the respondent.

22 (4) If a person other than the respondent claims title to any firearm or ammunition
23 surrendered or removed pursuant to Section 6 of this Act, and he or she is
24 determined by the law enforcement agency to be the lawful owner of the firearm
25 or ammunition, the firearm or ammunition shall be returned to him or her.

26 (5) Any firearm or ammunition which was surrendered by a respondent or removed
27 by law enforcement pursuant to Section 6 of this Act and that remains unclaimed

1 by the lawful owner shall be disposed of in accordance with KRS 16.220.

2 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
3 READ AS FOLLOWS:

4 (1) The court shall notify the Department of Kentucky State Police no later than one
5 (1) court day after issuing, renewing, dissolving, or terminating an ex parte or
6 one (1) year extreme risk protection order under Sections 1 to 11 of this Act.

7 (2) The information required to be submitted to the Department of Kentucky State
8 Police pursuant to this section shall include identifying information about the
9 respondent and the date the order was issued, renewed, dissolved, or terminated.
10 In the case of a one (1) year extreme risk protection order, the court shall include
11 the date the order is set to expire. The court shall also indicate whether the
12 respondent to the one (1) year extreme risk protection order was present in court
13 to be advised of the contents of the order or if the respondent failed to appear.
14 The respondent's presence in court shall constitute proof of service of notice of
15 the terms of the order.

16 (3) Within one (1) business day of service, a law enforcement officer who serves an
17 extreme risk protection order or the clerk of the court shall cause a copy of each
18 protection order issued under Sections 1 to 11 of this Act to be electronically
19 forwarded to the appropriate agency designated for entry of orders of protection
20 into the Law Information Network of Kentucky.

21 (4) All forms, affidavits, and protection orders issued or filed pursuant to Sections 1
22 to 11 of this Act which require entry into the Law Information Network of
23 Kentucky shall be entered on forms prescribed by the Administrative Office of the
24 Courts after consultation with the Justice and Public Safety Cabinet.

25 (5) The Department of Kentucky State Police shall immediately make information
26 about an ex parte or one (1) year extreme risk protection order issued, renewed,
27 or terminated pursuant to this chapter available to the National Instant Criminal

1 *Background Check System for the purposes of firearm purchaser background*
2 *checks.*

3 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) A person who files a petition for an extreme risk protection order, knowing the*
6 *information in the petition to be materially false or with an intent to harass the*
7 *respondent, is guilty of Class A misdemeanor.*

8 *(2) A person who owns, purchases, possesses, receives, or has in his or her custody*
9 *or control a firearm or ammunition with knowledge that he or she is prohibited*
10 *from doing so by an extreme risk protection order is guilty of a Class A*
11 *misdemeanor and shall be prohibited from owning, purchasing, possessing,*
12 *receiving, having in his or her custody or control, or attempting to purchase or*
13 *receive, a firearm or ammunition for a period of five (5) years from the date of*
14 *conviction.*

15 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
16 READ AS FOLLOWS:

17 *Sections 1 to 11 of this Act shall not affect the ability of a law enforcement officer to*
18 *remove firearms or ammunition from any person pursuant to other lawful authority.*

19 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
20 READ AS FOLLOWS:

21 *Sections 1 to 11 of this Act shall not be construed to impose criminal or civil liability*
22 *on any person who chooses not to seek an extreme risk protection order pursuant to*
23 *this chapter.*