

# House Bill 3234

Sponsored by Representative HELT

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires court issuing extreme risk protection order to further order community mental health program director to provide respondent with referral for mental health treatment within 12 hours of receiving notice of service of order.

## A BILL FOR AN ACT

1  
2 Relating to extreme risk protection orders; amending ORS 166.527.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 166.527 is amended to read:

5 166.527. (1) A law enforcement officer or a family or household member of a person may file a  
6 petition requesting that the court issue an extreme risk protection order enjoining the person from  
7 having in the person's custody or control, owning, purchasing, possessing or receiving, or attempting  
8 to purchase or receive, a deadly weapon.

9 (2) An extreme risk protection order petition shall be heard by the court and issued or denied  
10 on the same day the petition is submitted to the court or on the judicial business day immediately  
11 following the day the petition is filed.

12 (3) The petition for an extreme risk protection order must be supported by a written affidavit  
13 signed by the petitioner under oath, or an oral statement taken under oath by the petitioner or any  
14 other witness the petitioner may produce.

15 (4) In determining whether to issue an extreme risk protection order, the court shall consider  
16 the following:

17 (a) A history of suicide threats or attempts or acts of violence by the respondent directed  
18 against another person;

19 (b) A history of use, attempted use or threatened use of physical force by the respondent against  
20 another person;

21 (c) A previous conviction for:

22 (A) A misdemeanor involving violence as defined in ORS 166.470;

23 (B) A stalking offense under ORS 163.732 or 163.750, or a similar offense in another jurisdiction;

24 (C) An offense constituting domestic violence as defined in ORS 135.230;

25 (D) Driving under the influence of intoxicants under ORS 813.010 or 813.011; or

26 (E) An offense involving cruelty or abuse of animals;

27 (d) Evidence of recent unlawful use of controlled substances;

28 (e) Previous unlawful and reckless use, display or brandishing of a deadly weapon by the re-  
29 spondent;

30 (f) A previous violation by the respondent of a court order issued pursuant to ORS 107.716 or  
31 107.718;

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (g) Evidence of an acquisition or attempted acquisition within the previous 180 days by the re-  
 2 spondent of a deadly weapon; and

3 (h) Any additional information the court finds to be reliable, including a statement by the re-  
 4 spondent.

5 (5)(a) The petitioner has the burden of proof at the ex parte hearing.

6 (b) The petitioner may appear in person or by electronic video transmission.

7 (c) The court may continue a hearing under this section upon a showing of good cause.

8 (6)(a) The court shall issue an extreme risk protection order if the court finds by clear and  
 9 convincing evidence, based on the petition and supporting documentation and after considering a  
 10 statement by the respondent, if provided, that the respondent presents a risk in the near future, in-  
 11 cluding an imminent risk, of suicide or of causing physical injury to another person. The court may  
 12 not include in the findings any mental health diagnosis or any connection between the risk pre-  
 13 sented by the respondent and mental illness.

14 (b) Upon making the findings described in paragraph (a) of this subsection, the court shall issue  
 15 an extreme risk protection order prohibiting the respondent from having in the respondent's custody  
 16 or control, owning, purchasing, possessing or receiving, or attempting to purchase or receive, a  
 17 deadly weapon.

18 **(c) Upon issuing an extreme risk protection order under this section, the court shall**  
 19 **further order the community mental health program director, in the county in which the**  
 20 **respondent resides, to provide the respondent with a referral for mental health treatment**  
 21 **within 12 hours of receiving notice of service of the order. An order under this paragraph**  
 22 **does not constitute an order for the respondent to participate in mental health treatment.**

23 (7) An extreme risk protection order issued under this section must include:

24 (a) A statement of the evidence and the court's findings supporting issuance of the order;

25 (b) The date and time the order was issued;

26 (c) A description of the manner in which the respondent may request a hearing described in  
 27 subsection (9) of this section;

28 (d) The address of the court to which a request for a hearing must be sent;

29 (e) A description of the requirements for surrender of deadly weapons in the respondent's pos-  
 30 session under ORS 166.537; *[and]*

31 **(f) A statement indicating that the respondent will receive a referral for mental health**  
 32 **treatment after service of the order; and**

33 *[(f)]* (g) A statement in substantially the following form:  
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 36 To the subject of this protection order: An extreme risk protection order has been issued by the  
 37 court and is now in effect. You are required to surrender all deadly weapons in your custody, con-  
 38 trol or possession. You may not have in your custody or control, purchase, possess, receive, or at-  
 39 tempt to purchase or receive, deadly weapons while this order is in effect. You must, within 24  
 40 hours, surrender all deadly weapons in your custody, control or possession to (insert name of local  
 41 law enforcement agency), a gun dealer or a third party who may lawfully possess the deadly weap-  
 42 ons. You must, within 24 hours, surrender to (insert name of local law enforcement agency) any  
 43 concealed handgun license issued to you. You may request a hearing to contest this order. If you  
 44 do not request a hearing, the extreme risk protection order against you will be in effect for one year  
 45 unless terminated by the court. You have the right to request one hearing to terminate this order

1 during the 12 months that this order is in effect starting from the date of this order. You may seek  
 2 the advice of an attorney as to any matter connected with this order.

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 4  
 5 (8)(a) The respondent shall be personally served with both a copy of the extreme risk protection  
 6 order and a hearing request form described in subsection (9) of this section.

7 (b) Whenever an extreme risk protective order is served on a respondent, the person serving the  
 8 order shall immediately deliver to the county sheriff a true copy of proof of service, on which it is  
 9 stated that personal service of the order was made on the respondent, and a copy of the order. Proof  
 10 of service may be made by affidavit or by declaration under penalty of perjury in the form required  
 11 by ORCP 1 E.

12 (c) If the person serving the order cannot complete service within 10 days, the person shall no-  
 13 tify the petitioner, at the address provided by the petitioner, that the documents have not been  
 14 served. If the petitioner does not respond within 10 days, the person shall hold the order and peti-  
 15 tion for future service and file a return to the clerk of the court showing that service was not  
 16 completed.

17 (d) Upon receipt of a copy of the order and notice of completion of service by a member of a law  
 18 enforcement agency, the county sheriff shall immediately enter the order into the Law Enforcement  
 19 Data System maintained by the Department of State Police and request that the order be entered  
 20 into the databases of the National Crime Information Center of the United States Department of  
 21 Justice. If the order was served on the respondent by a person other than a member of a law  
 22 enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System,  
 23 and shall request that the information be entered into the databases of the National Crime Infor-  
 24 mation Center, upon receipt of a true copy of proof of service. The sheriff shall provide the  
 25 petitioner with a true copy of the proof of service. Entry into the Law Enforcement Data System  
 26 constitutes notice to all law enforcement agencies of the existence of the order. Law enforcement  
 27 agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged  
 28 violation of the order may be informed of the existence and terms of the order. The order is fully  
 29 enforceable in any county in this state.

30 (e) **Upon receiving proof of service of the order, the county sheriff shall immediately**  
 31 **provide to the community mental health program director in the county in which the re-**  
 32 **spondent resides:**

33 (A) **A copy of the order; and**

34 (B) **Any available contact information for the respondent.**

35 (9)(a) Within 30 days after an extreme risk protection order is served on the respondent under  
 36 this section, the respondent may request a court hearing using a form prescribed by the State Court  
 37 Administrator.

38 (b) If the respondent requests a hearing under paragraph (a) of this subsection, the clerk of the  
 39 court shall notify the petitioner and the respondent of the date and time of the hearing and shall  
 40 supply the petitioner with a copy of the respondent's request for a hearing. The petitioner and the  
 41 respondent shall give to the clerk of the court information sufficient to allow such notification.

42 (c) The hearing shall occur within 21 days of the date of the respondent's request for a hearing.

43 (10) If the respondent fails to request a hearing within 30 days after an extreme risk protection  
 44 order is served, the protection order is confirmed by operation of law and is effective for a period  
 45 of one year from the date the original order was issued or until the order is terminated, whichever

1 is sooner.

2 (11) A filing fee, service fee or hearing fee may not be charged for proceedings under this sec-  
3 tion or ORS 166.530 or 166.533.

4 (12) If the court declines to issue an extreme risk protection order under this section, the court  
5 shall state with particularity the reasons for the denial on the record.

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