

SENATE BILL 412

By Gilmore

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, relative to extreme risk protection orders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, is amended by adding the following as a new part:

**39-17-1901.**

(a) As used in this section:

(1) "Extreme risk protection order" means an order of protection issued pursuant to this part; and

(2) "Family or household member" means a person who is:

(A) A current or former spouse;

(B) An adult or minor who lives together with the respondent or who has previously lived together with the respondent;

(C) A person who is dating or has dated the respondent, but does not include a person whose relationship with the respondent is limited to fraternization in a business or social context;

(D) A person who is or has engaged in a sexual relationship with the respondent;

(E) A person related to the respondent by blood or adoption; or

(F) A person who is related to the respondent by marriage or who was formerly related by marriage.

(b) A law enforcement officer or a family or household member who reasonably believes that a person poses an imminent and significant risk of harm to the person or

others if allowed to purchase or possess a firearm may seek relief under this part by filing a sworn petition for an extreme risk protection order against the person in any court having jurisdiction over domestic relations matters.

(c) Venue for a petition for an extreme risk protection order, and all other matters relating to extreme risk protection orders, must be in the county where the family or household member resides; the law enforcement officer has jurisdiction; or the respondent resides.

(d) A petitioner seeking an extreme risk protection order is not required to be represented by an attorney and the court shall not award attorney fees to any party in any proceeding under this part.

(e) A petition for an extreme risk protection order must:

(1) Allege that the respondent poses an imminent and significant risk of causing harm to the respondent's self or others by having a firearm or any ammunition in the respondent's possession, custody, or control or by purchasing or receiving a firearm or any ammunition, and be accompanied by a sworn affidavit stating the specific statements, actions, or facts that give rise to a reasonable fear of harm by the respondent;

(2) Identify the quantity, type, and location of all firearms and ammunition the petitioner believes or knows to be in the respondent's current ownership, possession, custody, or control; and

(3) Identify whether there is a known existing order of protection governing the respondent under title 36, chapter 3, part 6, or any other jurisdiction.

(f) If the petitioner is a law enforcement officer, the petitioner shall make a good faith effort to provide written notice to a family or household member of the respondent

and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for an extreme risk protection order, or has already done so, and must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner shall attest in the petition to having provided such notice or to the steps that will be taken to provide the notice after filing of the petition.

(g) If the petitioner is a family or household member, and the petition states that disclosure of the petitioner's address would risk harm to the petitioner or any member of the petitioner's family or household, the petitioner's address may be omitted from all documents filed with the court. If the petitioner does not disclose an address under this subsection, the petitioner shall designate an alternative address at which the respondent may serve notice of any court filings.

(h) The clerk of court shall not charge the petitioner a fee for filing a petition for an extreme risk protection order or for service of process and the clerk of court shall provide the necessary number of certified copies, forms, and instructional brochures to the petitioner free of charge.

(i) The court shall not require the execution of a bond by the petitioner to issue an extreme risk protection order under this part.

(j) This section does not impose civil liability upon any law enforcement officer for acts or omissions related to obtaining an extreme risk protection order or ex parte extreme risk protection order, including, providing notice to the petitioner, a family or household member of the respondent, or any known third party who may be at risk of violence; failure to provide such notice; or declining to file a petition under this part.

**39-17-1902.**

(a) Upon the filing of a petition for an extreme risk protection order, the court may, for good cause shown, issue an ex parte extreme risk protection order if an ex parte order is requested in the petition.

(b) Before issuing an ex parte extreme risk protection order, the court shall conduct a hearing and the petitioner may testify either in person or by telephone. The ex parte hearing must be held no later than one (1) business day immediately following the filing of the petition.

(c) In considering whether to issue an ex parte extreme risk protection order, the court may consider all relevant evidence, including evidence described in subsection (i).

(d) If a court finds reasonable cause to believe that the respondent poses an imminent and significant risk of causing harm to respondent's self or others by having possession, custody, or control of or by purchasing or receiving a firearm or ammunition, the court shall issue an ex parte extreme risk protection order.

(e) An ex parte extreme risk protection order issued by the court must include:

(1) A statement of the evidence supporting the order;

(2) The date the order was issued;

(3) The address of the court in which any responsive pleading may be filed;

(4) Notice of the date and time of a scheduled hearing on the petition for an extreme risk protection order;

(5) A requirement that the respondent immediately relinquish to local law enforcement all firearms and ammunition owned by or in the respondent's custody, control, or possession; and

(6) The following statement: "To the subject of this protection order:

This order is valid until the hearing date noted above. You may not have in your

possession, custody, or control, or purchase, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. You must immediately relinquish to (insert name of local law enforcement agency) all firearms and ammunition in your custody, control, or possession. A hearing will be held on the date and time noted above to determine if an extreme risk protection order should be issued. Failure to appear at the hearing may result in a court issuing an order against you which is valid for a period of up to one (1) year. You may seek the advice of an attorney as to any matter connected with this order."

(f) An ex parte extreme risk protection order issued pursuant to this section shall remain in effect until the time of the hearing.

(g) The clerk of the court shall furnish a copy of the petition, any ex parte extreme risk protection order, and notice of hearing to the sheriff of the county where the respondent resides, who shall personally serve the documents upon the respondent as soon as possible. If the respondent is not a resident of Tennessee, then a copy of the petition, any ex parte extreme risk protection order, and notice of the hearing shall be served pursuant to §§ 20-2-215 and 20-2-216.

(h) Within fourteen (14) days of service of the petition, any ex parte extreme risk protection order issued by the court, and notice of the hearing on the respondent, a hearing shall be held, at which time the court shall either dissolve the ex parte order that has been issued or, if the petitioner has proved the allegation of an imminent and significant risk of the respondent causing harm to the respondent's self or others by having a firearm or any ammunition in the respondent's possession, custody, or control or by purchasing or receiving a firearm or any ammunition by clear and convincing evidence, extend the extreme risk protection order for a definite period of time, not to

exceed one (1) year. If no ex parte extreme risk protection order has been issued as of the time of the hearing, and the petitioner has proved the allegation of an imminent and significant risk of the respondent causing harm to the respondent's self or others by having a firearm or any ammunition in the respondent's possession, custody, or control or by purchasing or receiving a firearm or any ammunition by clear and convincing evidence, then the court shall, at that time, issue an extreme risk protection order prohibiting the respondent from possessing any firearm for a definite period of time, not to exceed one (1) year.

(i) The court may consider any relevant evidence in determining whether grounds for an extreme risk protection order exist, including, but not limited to, any of the following:

(1) A recent act or threat of violence or physical force by the respondent against the respondent's self or others, regardless of whether the act or threat involved a firearm;

(2) An act or threat of violence or physical force by the respondent against the respondent's self or others within the past twelve (12) months;

(3) Evidence of the respondent being seriously mentally ill or having recurring mental health issues;

(4) A previous or existing extreme risk protection order or other order of protection issued against the respondent pursuant to title 36, chapter 3, part 6, or by any other jurisdiction;

(5) A violation by the respondent of a previous or existing extreme risk protection order or an order of protection issued against the respondent pursuant to title 36, chapter 3, part 6, or by any other jurisdiction;

(6) Whether the respondent has been convicted of or entered a plea of guilty or nolo contendere to a crime that includes an act of domestic abuse as defined in § 36-3-601;

(7) Whether the respondent has recklessly used, displayed, or brandished a firearm;

(8) Whether the respondent has or is currently stalking another person as described in § 39-17-315;

(9) Whether the respondent has been convicted of or entered a plea of guilty or nolo contendere to a crime of violence, as that term is defined in 18 U.S.C. § 16;

(10) Corroborated evidence of the respondent's use of a controlled substance or abuse of alcohol;

(11) Evidence of the respondent's recent acquisition of a firearm or ammunition; and

(12) Any relevant sworn witness testimony.

(j) An extreme risk protection order issued pursuant to this part must include the following:

(1) A statement of the evidence supporting the issuance of the order;

(2) The date the order was issued;

(3) The date the order ends;

(4) The address of the court in which any subsequent motion or responsive pleading should be filed;

(5) A requirement that the respondent relinquish to local law enforcement all firearms and ammunition owned by the respondent or in the respondent's custody, control, or possession; and

(6) The following statement: "To the subject of this protection order: This order will be in effect until the date noted above. If you have not done so already, you must immediately relinquish to (insert name of local law enforcement agency) all firearms and ammunition that you own, or that are in your custody, control, or possession. You may not have a firearm or ammunition in your possession, custody, or control while this order is in effect, and you may not purchase, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect."

(k) The court may, if appropriate, order the respondent to submit to a mental health evaluation or a chemical dependency evaluation.

(l) An extreme risk protection order issued pursuant to this part is fully enforceable in any county in this state.

(m) If a court denies a petitioner's request for an ex parte extreme risk protection order, the court shall issue a written order stating the particular reasons for the denial.

(n) The clerk shall immediately forward a copy of any extreme risk protection order entered by the court to the local law enforcement agency having jurisdiction in the county where the respondent resides. The law enforcement agency shall immediately personally serve the respondent with a copy of the order and take any necessary action to immediately transmit the order to the national crime information center.

(o)

(1) The law enforcement officer serving an extreme risk protection order issued pursuant to this part, including an ex parte extreme risk protection order, shall request that the respondent immediately relinquish to law enforcement all firearms and ammunition owned by the respondent or that are the respondent's custody, control, or possession.



(2) At the time of relinquishment, a law enforcement officer taking possession of any firearm or ammunition in the respondent's ownership, possession, custody, or control shall issue to the respondent a receipt identifying all firearms and the quantity and type of ammunition that have been relinquished. Within seventy-two (72) hours after service of the order, the law enforcement officer serving the order shall file a copy of the original receipt with the court and retain an additional copy to be filed with the law enforcement agency's records.

(3) A law enforcement officer may seek a search warrant from a court of competent jurisdiction to conduct a search for firearms or ammunition owned by the respondent or in the respondent's care, custody, or control if the officer has probable cause to believe that there are firearms or ammunition in the respondent's custody, control, or possession which have not been relinquished in accordance with an extreme risk protection order issued pursuant to this part.

(4) If a person other than the respondent claims title to any firearms or ammunition relinquished pursuant to this part and the person is determined by the law enforcement agency to be the lawful owner of the firearm or ammunition, then the firearm or ammunition must be returned to the person, if:

(A) The lawful owner agrees to store the firearm or ammunition in a manner such that the respondent does not have access to or control of the firearm or ammunition; and

(B) The law enforcement agency confirms, by means of a background check, that the firearm or ammunition is not otherwise unlawfully possessed by the owner.

(5) All law enforcement agencies shall develop policies and procedures regarding the acceptance, storage, and return of firearms or ammunition required to be relinquished under this section.

(p) Upon the issuance of an extreme risk protection order, the court shall require the respondent to appear before the court no later than three (3) business days after the issuance of the order and present proof that the respondent has relinquished all firearms and ammunition in the respondent's custody, control, or possession to the appropriate law enforcement agency.

**39-17-1903.**

(a) A person against whom an extreme risk protection order has been granted, may file a motion to dismiss the extreme risk protection order.

(b) Upon receipt of the motion to dismiss an extreme risk protection order, the court shall set a date for a hearing. Notice of the motion must be served on all parties to the extreme risk protection order in accordance with the rules of the court. The hearing must occur no sooner than fourteen (14) days and no later than thirty (30) days after the date of service of the motion upon all parties.

(c) The movant shall have the burden of proving by clear and convincing evidence that the movant does not pose a significant risk of causing harm to the movant's self or others by having possession, custody, or control of or purchasing or receiving a firearm or ammunition.

(d) If the court finds after the hearing that the movant has met the burden of proof, the court shall enter an order dismissing the extreme risk protection order.

(e) The court shall notify the law enforcement agency holding any firearm or ammunition that has been relinquished pursuant to this part of the court order dismissing the extreme risk protection order.

(f) Copies of any order issued by the court dismissing the extreme risk protection order must be certified by the clerk of the court and served upon the parties within twenty-four (24) hours of the date of entry by mailing certified copies of the order to the last known address of each party. Service is complete upon mailing, and the clerk of court shall file with the court a certificate of service.

(g) If an extreme risk protection order is dismissed, the clerk of the court shall immediately forward a copy of the order to the appropriate law enforcement agency specified in the order of dismissal. Upon receipt of the order, the law enforcement agency shall promptly transmit a copy of the order to the national crime information center.

(h) If an extreme risk protection order is dismissed or ends without extension, a law enforcement agency holding a firearm or ammunition owned by the respondent that has been relinquished or seized pursuant to this part shall return such firearm or ammunition upon request of the respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the extreme risk protection order has been dismissed or has ended without extension.

(i) Any firearm and ammunition relinquished by a respondent pursuant to § 39-17-1902 which remains unclaimed by the lawful owner one (1) year after the dismissal or expiration of an extreme risk protection order shall be disposed of in accordance with § 39-17-1317.

**39-17-1904.**

(a) A person may request an extension of an extreme risk protection order by filing a motion for an extension within thirty (30) days prior to the expiration of the extreme risk protection order.

(b) Upon receipt of the motion for an extension, the court shall set the motion for a hearing within fourteen (14) days.

(c) The clerk of court shall furnish a copy of the motion to the sheriff of the county where the respondent resides and the sheriff shall personally serve the respondent with a copy of the motion and the notice of hearing.

(d) The court may hold the hearing in person or by telephone.

(e) In determining whether to extend an extreme risk protection order issued under this part, the court may consider all relevant evidence, including whether there has been a material change in circumstances since the entry of the extreme risk protection order.

(f) If the court finds by clear and convincing evidence that the requirements for issuance of an extreme risk protection order as provided in this part continue to be met, the court shall extend the order for up to one (1) year.

(g) Personal service of the court's order extending the extreme risk protection order must be made upon the respondent in the same manner as set forth in § 39-17-1902(n).

**39-17-1905.**

(a) The administrative office of the courts shall develop a petition for an extreme risk protection order, an ex parte extreme risk protection order, an extreme risk protection order, instructions and informational brochures for completing a petition, and a court staff handbook on the extreme risk protection order process. The instructions, brochures, forms, and handbook must be prepared in consultation with interested persons, including representatives of gun violence prevention groups, judges, and law enforcement personnel. Materials must be available in English and any other language of a significant non-English speaking population in this state. By January 1, 2022, the

materials must be provided to each clerk of court and available to the public on the administrative office of the court's website.

(1) The materials must:

(A) Be designed to assist petitioners in completing the petition and include a sample petition;

(B) Include a means for the petitioner to identify, with only layman's knowledge, the firearms or ammunition the respondent may own, possess, receive, or have in respondent's custody or control. The instructions must provide pictures of types of firearms and ammunition that the petitioner may choose from to identify the relevant firearms or ammunition, or must provide an equivalent means to allow petitioners to identify firearms or ammunition without requiring specific or technical knowledge regarding the firearms or ammunition;

(C) Describe the use of and the process for obtaining, extending, and dismissing an extreme risk protection order under this part and the relevant forms; and

(D) Include, in a conspicuous location, notice of criminal penalties resulting from violation of the order and the following statement: "You have the sole responsibility to avoid or refrain from violating this order's provisions. Only the court can change the order and only upon written request."

(2) The clerk of court shall create a community resource list of crisis intervention, mental health, substance abuse, interpreter, counseling, and other relevant resources serving the county in which the court is located. The court

shall make the community resource list available as part of or in addition to the informational brochures described in subdivision (a)(1).

(b) The forms must be revised as the laws relative to extreme risk protection orders and ex parte extreme risk protection orders are amended by the general assembly. To the extent possible, the forms must be uniform with those promulgated by surrounding states so that Tennessee forms may be afforded full faith and credit.

(c)

(1) By January 31, 2023, and each January 31 thereafter, each clerk of court shall report to the administrative office of the courts the following information:

(A) The total number of petitions filed during the previous year seeking an extreme risk protection order, and the total number of those petitions requesting an ex parte extreme risk protection order;

(B) The total number of ex parte extreme risk protection orders issued and denied during the previous year;

(C) The total number of extreme risk protection orders issued and denied during the previous year;

(D) The total number of extreme risk protection orders dismissed upon motion by the respondent during the previous year; and

(E) The total number of extreme risk protection orders extended during the previous year.

(2) By April 1, 2023, and April 1 of each year thereafter, the administrative office of the courts shall compile and publish on the administrative office of the court's website a report which compiles the information received

pursuant to this subsection (c) and lists each category by county and type of court.

SECTION 2. Tennessee Code Annotated, Section 39-17-1307, is amended to add the following as a new subsection (g):

(g)

(1) A person commits an offense who possesses a firearm, as defined in § 39-11-106(a), and who, at the time of possession, is subject to an extreme risk protection order issued pursuant to part 19 of this chapter.

(2) An offense under this subsection is a Class E felony.

SECTION 3. For the purpose of developing the required forms, this act takes effect upon becoming law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2022, the public welfare requiring it.