

118TH CONGRESS
1ST SESSION

S. 247

To support State, Tribal, and local efforts to remove access to firearms from individuals who are a danger to themselves or others pursuant to court orders for this purpose.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2023

Mrs. FEINSTEIN (for herself, Mr. BLUMENTHAL, Mr. KAINE, Mr. MARKEY, Ms. WARREN, Mr. BROWN, Mr. PADILLA, Ms. SMITH, Mr. CASEY, Mr. WHITEHOUSE, Mr. DURBIN, Mr. CARDIN, Mr. BOOKER, Mr. MERKLEY, Mrs. MURRAY, Mr. WYDEN, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To support State, Tribal, and local efforts to remove access to firearms from individuals who are a danger to themselves or others pursuant to court orders for this purpose.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Extreme Risk Protec-
5 tion Order Expansion Act of 2023”.

1 **SEC. 2. EXTREME RISK PROTECTION ORDER GRANT PRO-**
2 **GRAM.**

3 (a) DEFINITIONS.—In this section:

4 (1) ELIGIBLE ENTITY.—The term “eligible enti-
5 ty” means—

6 (A) a State or Indian Tribe—

7 (i) that enacts legislation described in
8 subsection (c);

9 (ii) with respect to which the Attorney
10 General determines that the legislation de-
11 scribed in clause (i) complies with the re-
12 quirements under subsection (c)(1); and

13 (iii) that certifies to the Attorney
14 General that the State or Indian Tribe
15 will, with respect to a grant received under
16 subsection (b)—

17 (I) use the grant for the purposes
18 described in subsection (b)(2); and

19 (II) allocate not less than 25 per-
20 cent and not more than 70 percent of
21 the amount received under the grant
22 for the development and dissemination
23 of training for law enforcement offi-
24 cers in accordance with subsection
25 (b)(4); or

1 (B) a unit of local government or other
2 public or private entity that—

3 (i) is located in a State or in the terri-
4 tory under the jurisdiction of an Indian
5 Tribe that meets the requirements de-
6 scribed in clauses (i) and (ii) of subpara-
7 graph (A); and

8 (ii) certifies to the Attorney General
9 that the unit of local government or entity
10 will, with respect to a grant received under
11 subsection (b)—

12 (I) use the grant for the purposes
13 described in subsection (b)(2); and

14 (II) allocate not less than 25 per-
15 cent and not more than 70 percent of
16 the amount received under the grant
17 for the development and dissemination
18 of training for law enforcement offi-
19 cers in accordance with subsection
20 (b)(4).

21 (2) EXTREME RISK PROTECTION ORDER.—The
22 term “extreme risk protection order” means a writ-
23 ten order or warrant, issued by a State or Tribal
24 court or signed by a magistrate (or other com-
25 parable judicial officer), the primary purpose of

1 which is to reduce the risk of firearm-related death
2 or injury by doing 1 or more of the following:

3 (A) Prohibiting a named individual from
4 having under the custody or control of the indi-
5 vidual, owning, purchasing, possessing, or re-
6 ceiving a firearm.

7 (B) Having a firearm removed or requiring
8 the surrender of firearms from a named indi-
9 vidual.

10 (3) FIREARM.—The term “firearm” has the
11 meaning given the term in section 921 of title 18,
12 United States Code.

13 (4) INDIAN TRIBE.—The term “Indian Tribe”
14 has the meaning given the term “Indian tribe” in
15 section 1709 of title I of the Omnibus Crime Control
16 and Safe Streets Act of 1968 (34 U.S.C. 10389).

17 (5) LAW ENFORCEMENT OFFICER.—The term
18 “law enforcement officer” means a public servant
19 authorized by Federal, State, local, or Tribal law or
20 by an agency of the Federal Government or of a
21 State, local, or Tribal government to—

22 (A) engage in or supervise the prevention,
23 detection, investigation, or prosecution of an of-
24 fense; or

25 (B) supervise sentenced criminal offenders.

1 (6) PETITIONER.—The term “petitioner”
2 means an individual authorized under State or Trib-
3 al law to petition for an extreme risk protection
4 order.

5 (7) RESPONDENT.—The term “respondent”
6 means an individual named in the petition for an ex-
7 treme risk protection order or subject to an extreme
8 risk protection order.

9 (8) STATE.—The term “State” means—

10 (A) a State;

11 (B) the District of Columbia;

12 (C) the Commonwealth of Puerto Rico;

13 and

14 (D) any other territory or possession of the
15 United States.

16 (9) UNIT OF LOCAL GOVERNMENT.—The term
17 “unit of local government” has the meaning given
18 the term in section 901 of title I of the Omnibus
19 Crime Control and Safe Streets Act of 1968 (34
20 U.S.C. 10251).

21 (b) GRANT PROGRAM ESTABLISHED.—

22 (1) IN GENERAL.—The Attorney General shall
23 establish a program under which, from amounts
24 made available to carry out this section, the Attor-
25 ney General may make grants to eligible entities to

1 assist in carrying out the provisions of the legisla-
2 tion described in subsection (c).

3 (2) USE OF FUNDS.—Funds awarded under
4 this subsection may be used by an applicant to—

5 (A) enhance the capacity of law enforce-
6 ment agencies and the courts of a State, unit
7 of local government, or Indian Tribe by pro-
8 viding personnel, training, technical assistance,
9 data collection, and other resources to carry out
10 enacted legislation described in subsection (c);

11 (B) train judges, court personnel, health
12 care and legal professionals, and law enforce-
13 ment officers to more accurately identify indi-
14 viduals whose access to firearms poses a danger
15 of causing harm to themselves or others by in-
16 creasing the risk of firearms suicide or inter-
17 personal violence;

18 (C) develop and implement law enforce-
19 ment and court protocols, forms, and orders so
20 that law enforcement agencies and the courts
21 may carry out the provisions of the enacted leg-
22 islation described in subsection (c) in a safe, eq-
23 uitable, and effective manner, including through
24 the removal and storage of firearms pursuant to

1 extreme risk protection orders under the en-
2 acted legislation; and

3 (D) raise public awareness and under-
4 standing of the enacted legislation described in
5 subsection (c), including through subgrants to
6 community-based organizations for the training
7 of community members, so that extreme risk
8 protection orders may be issued in appropriate
9 situations to reduce the risk of firearms-related
10 death and injury.

11 (3) APPLICATION.—An eligible entity desiring a
12 grant under this subsection shall submit to the At-
13 torney General an application at such time, in such
14 manner, and containing or accompanied by such in-
15 formation as the Attorney General may reasonably
16 require.

17 (4) TRAINING.—

18 (A) IN GENERAL.—A recipient of a grant
19 under this subsection shall provide training to
20 law enforcement officers, including officers of
21 relevant Federal, State, local, and Tribal law
22 enforcement agencies, in the safe, impartial, ef-
23 fective, and equitable use and administration of
24 extreme risk protection orders, including train-
25 ing to address—

1 (i) bias based on race and racism, eth-
2 nicity, gender, sexual orientation, gender
3 identity, religion, language proficiency,
4 mental health condition, disability, and
5 classism in the use and administration of
6 extreme risk protection orders;

7 (ii) the appropriate use of extreme
8 risk protection orders in cases of domestic
9 violence, including the applicability of other
10 policies and protocols to address domestic
11 violence in situations that may also involve
12 extreme risk protection orders and the ne-
13 cessity of safety planning with the victim
14 before a law enforcement officer petitions
15 for and executes an extreme risk protection
16 order, if applicable;

17 (iii) interacting with persons with a
18 mental illness or emotional distress, includ-
19 ing de-escalation and crisis intervention;
20 and

21 (iv) best practices for referring per-
22 sons subject to extreme risk protection or-
23 ders and associated victims of violence to
24 social service providers that may be avail-
25 able in the jurisdiction and appropriate for

1 those individuals, including health care,
2 mental health, substance abuse, and legal
3 services, employment and vocational serv-
4 ices, housing assistance, case management,
5 and veterans and disability benefits.

6 (B) CONSULTATION WITH EXPERTS.—A
7 recipient of a grant under this subsection, in
8 developing law enforcement training required
9 under subparagraph (A), shall seek advice from
10 domestic violence service providers (including
11 culturally specific (as defined in section 40002
12 of the Violence Against Women Act of 1994 (34
13 U.S.C. 12291)) organizations), social service
14 providers, suicide prevention advocates, violence
15 intervention specialists, law enforcement agen-
16 cies, mental health disability experts, and other
17 community groups working to reduce suicides
18 and violence, including domestic violence, within
19 the State or the territory under the jurisdiction
20 of the Indian Tribe, as applicable, that enacted
21 the legislation described in subsection (c) that
22 enabled the grant recipient to be an eligible en-
23 tity.

1 (5) AUTHORIZATION OF APPROPRIATIONS.—

2 There are authorized to be appropriated such sums
3 as are necessary to carry out this subsection.

4 (c) ELIGIBILITY FOR EXTREME RISK PROTECTION
5 ORDER GRANT PROGRAM.—

6 (1) REQUIREMENTS.—Legislation described in
7 this subsection is legislation that establishes require-
8 ments that are substantially similar to the following:

9 (A) PETITION FOR EXTREME RISK PRO-
10 TECTION ORDER.—A petitioner, including a law
11 enforcement officer, may submit a petition to a
12 State or Tribal court, on a form designed by
13 the court or a State or Tribal agency, that—

14 (i) describes the facts and cir-
15 cumstances justifying that an extreme risk
16 protection order be issued against the
17 named individual; and

18 (ii) is signed by the applicant, under
19 oath.

20 (B) NOTICE AND DUE PROCESS.—The in-
21 dividual named in a petition for an extreme risk
22 protection order as described in subparagraph
23 (A) shall be given written notice of the petition
24 and an opportunity to be heard on the matter
25 in accordance with this paragraph.

1 (C) ISSUANCE OF EXTREME RISK PROTEC-
2 TION ORDERS.—

3 (i) HEARING.—

4 (I) IN GENERAL.—Upon receipt
5 of a petition described in subpara-
6 graph (A) or request of an individual
7 named in such a petition, the court
8 shall order a hearing to be held within
9 a reasonable time, and not later than
10 30 days after the date of the petition
11 or request.

12 (II) DETERMINATION.—If the
13 court finds at the hearing ordered
14 under subclause (I), by a preponder-
15 ance of the evidence or according to a
16 higher evidentiary standard estab-
17 lished by the State or Indian Tribe,
18 that the respondent poses a danger of
19 causing harm to self or others by hav-
20 ing access to a firearm, the court may
21 issue an extreme risk protection order.

22 (ii) DURATION OF EXTREME RISK
23 PROTECTION ORDER.—An extreme risk
24 protection order shall be in effect—

1 (I) until an order terminating or
 2 superseding the extreme risk protec-
 3 tion order is issued; or

4 (II) for a set period of time.

5 (D) EX PARTE EXTREME RISK PROTEC-
 6 TION ORDERS.—

7 (i) IN GENERAL.—Upon receipt of a
 8 petition described in subparagraph (A), the
 9 court may issue an ex parte extreme risk
 10 protection order, if—

11 (I) the petition for an extreme
 12 risk protection order alleges that the
 13 respondent poses a danger of causing
 14 harm to self or others by having ac-
 15 cess to a firearm; and

16 (II) the court finds there is prob-
 17 able cause to believe, or makes a find-
 18 ing according to a higher evidentiary
 19 standard established by the State or
 20 Indian Tribe, that the respondent
 21 poses a danger of causing harm to self
 22 or others by having access to a fire-
 23 arm.

24 (ii) DURATION OF EX PARTE EX-
 25 TREME RISK PROTECTION ORDER.—An ex

1 parte extreme risk protection order shall
2 remain in effect only until the hearing re-
3 quired under subparagraph (C)(i).

4 (E) STORAGE OF REMOVED FIREARMS.—

5 (i) AVAILABILITY FOR RETURN.—All
6 firearms removed or surrendered pursuant
7 to an extreme risk protection order shall
8 only be available for return to the named
9 individual when the individual has regained
10 eligibility under Federal and State law
11 and, where applicable, Tribal law to pos-
12 sess firearms.

13 (ii) CONSENT REQUIRED FOR DIS-
14 POSAL OR DESTRUCTION.—Firearms
15 owned by a named individual may not be
16 disposed of or destroyed during the period
17 of the extreme risk protection order with-
18 out the consent of the named individual.

19 (F) NOTIFICATION.—

20 (i) IN GENERAL.—

21 (I) REQUIREMENT.—A State or
22 Tribal court that issues an extreme
23 risk protection order shall notify the
24 Attorney General or the comparable
25 State or Tribal agency, as applicable,

1 of the order as soon as practicable or
2 within a designated period of time.

3 (II) FORM AND MANNER.—A
4 State or Tribal court shall submit a
5 notification under subclause (I) in an
6 electronic format, in a manner pre-
7 scribed by the Attorney General or the
8 comparable State or Tribal agency.

9 (ii) UPDATE OF DATABASES.—As
10 soon as practicable or within the time pe-
11 riod designated by State or Tribal law
12 after receiving a notification under clause
13 (i), the Attorney General or the com-
14 parable State or Tribal agency shall ensure
15 that the extreme risk protection order is
16 reflected in the National Instant Criminal
17 Background Check System.

18 (2) ADDITIONAL PROVISIONS.—Legislation de-
19 scribed in this subsection may—

20 (A) provide procedures for the termination
21 of an extreme risk protection order;

22 (B) provide procedures for the renewal of
23 an extreme risk protection order;

24 (C) establish burdens and standards of
25 proof for issuance of orders described in para-

1 graph (1) that are substantially similar to or
2 higher than the burdens and standards of proof
3 set forth in that paragraph;

4 (D) limit the individuals who may submit
5 a petition described in paragraph (1), provided
6 that, at a minimum, 1 or more law enforcement
7 officers are authorized to do so; and

8 (E) include any other authorizations or re-
9 quirements that the State or Tribal authorities
10 determine appropriate.

11 (3) ANNUAL REPORT.—Not later than 1 year
12 after the date on which an eligible entity receives a
13 grant under subsection (b), and annually thereafter
14 for the duration of the grant period, the entity shall
15 submit to the Attorney General a report that in-
16 cludes, with respect to the preceding year—

17 (A) the number of petitions for ex parte
18 extreme risk protection orders filed, as well as
19 the number of such orders issued and the num-
20 ber denied, disaggregated by—

21 (i) the jurisdiction;

22 (ii) the individual authorized under
23 State or Tribal law to petition for an ex-
24 treme risk protection order, including the

1 relationship of the individual to the re-
2 spondent; and

3 (iii) the alleged danger posed by the
4 respondent, including whether the danger
5 involved a risk of suicide, unintentional in-
6 jury, domestic violence, or other inter-
7 personal violence;

8 (B) the number of petitions for extreme
9 risk protection orders filed, as well as the num-
10 ber of such orders issued and the number de-
11 nied, disaggregated by—

12 (i) the jurisdiction;

13 (ii) the individual authorized under
14 State or Tribal law to petition for an ex-
15 treme risk protection order, including the
16 relationship of the individual to the re-
17 spondent; and

18 (iii) the alleged danger posed by the
19 respondent, including whether the danger
20 involved a risk of suicide, unintentional in-
21 jury, domestic violence, or other inter-
22 personal violence;

23 (C) the number of petitions for renewals of
24 extreme risk protection orders filed, as well as

1 the number of such orders issued and the num-
2 ber denied;

3 (D) the number of cases in which a court
4 imposed a penalty for false reporting or frivo-
5 lous petitions;

6 (E) demographic data of petitioners, in-
7 cluding race, ethnicity, national origin, sex, gen-
8 der, age, disability, and English language pro-
9 ficiency, if available;

10 (F) demographic data of respondents, in-
11 cluding race, ethnicity, national origin, sex, gen-
12 der, age, disability, and English language pro-
13 ficiency, if available; and

14 (G) the number of firearms removed, if
15 available.

16 **SEC. 3. FEDERAL FIREARMS PROHIBITION.**

17 Section 922 of title 18, United States Code, is
18 amended—

19 (1) in subsection (d)—

20 (A) by redesignating paragraphs (10) and
21 (11) as paragraphs (11) and (12), respectively;

22 (B) by inserting after paragraph (9) the
23 following:

24 “(10) is subject to a court order that—

1 “(A) was issued after a hearing of which
2 such person received actual notice, and at which
3 such person had an opportunity to participate;

4 “(B) prevents such person from possessing
5 or receiving firearms; and

6 “(C) includes a finding that such person
7 poses a danger of harm to self or others.”; and

8 (C) in paragraph (12), as so redesignated,
9 by striking “(10)” and inserting “(11)”;
10 (2) in subsection (g)—

11 (A) in paragraph (8)(C)(ii), by striking
12 “or” at the end;

13 (B) in paragraph (9), by striking the
14 comma at the end and inserting “; or”; and

15 (C) by inserting after paragraph (9) the
16 following:

17 “(10) is subject to a court order that—

18 “(A) was issued after a hearing of which
19 such person received actual notice, and at which
20 such person had an opportunity to participate;

21 “(B) prevents such person from possessing
22 or receiving firearms; and

23 “(C) includes a finding that such person
24 poses a danger of harm to self or others.”.

1 **SEC. 4. IDENTIFICATION RECORDS.**

2 Section 534 of title 28, United States Code, is
3 amended—

4 (1) in subsection (a)—

5 (A) by redesignating paragraphs (4) and
6 (5) as paragraphs (5) and (6), respectively; and

7 (B) by inserting after paragraph (3) the
8 following:

9 “(4) acquire, collect, classify, and preserve
10 records from Federal, Tribal, and State courts and
11 other agencies identifying individuals subject to ex-
12 treme risk protection orders, as defined in section
13 2(a) of the Extreme Risk Protection Order Expans-
14 sion Act of 2023;”;

15 (2) in subsection (b)—

16 (A) by striking “(a)(5)” and inserting
17 “(a)(6)”; and

18 (B) by striking “(a)(4)” and inserting
19 “(a)(5)”; and

20 (3) by adding at the end the following:

21 “(g) **EXTREME RISK PROTECTION ORDERS IN NA-**
22 **TIONAL CRIME INFORMATION DATABASES.**—A Federal,
23 Tribal, or State criminal justice agency or criminal or civil
24 court may—

25 “(1) include extreme risk protection orders, as
26 defined in section 2(a) of the Extreme Risk Protec-

1 tion Order Expansion Act of 2023, in national crime
2 information databases, as that term is defined in
3 subsection (f)(3) of this section; and

4 “(2) have access to information regarding ex-
5 treme risk protection orders through the national
6 crime information databases.”.

7 **SEC. 5. CONFORMING AMENDMENT.**

8 Section 3(1) of the NICS Improvement Amendments
9 Act of 2007 (34 U.S.C. 40903(1)) is amended by striking
10 “section 922(g)(8)” and inserting “paragraph (8) or (10)
11 of section 922(g)”.

12 **SEC. 6. FULL FAITH AND CREDIT.**

13 (a) DEFINITIONS.—In this section, the terms “ex-
14 treme risk protection order”, “Indian Tribe”, and “State”
15 have the meanings given those terms in section 2(a).

16 (b) FULL FAITH AND CREDIT REQUIRED.—Any ex-
17 treme risk protection order issued under a State or Tribal
18 law enacted in accordance with this Act shall be accorded
19 the same full faith and credit by the court of another State
20 or Indian Tribe (referred to in this subsection as the “en-
21 forcing State or Indian Tribe”) and enforced by the court
22 and law enforcement personnel of the other State or Tribal
23 government as if it were the order of the enforcing State
24 or Indian Tribe.

1 (c) APPLICABILITY TO EXTREME RISK PROTECTION
2 ORDERS.—

3 (1) IN GENERAL.—Subsection (b) shall apply to
4 an extreme risk protection order issued by a State
5 or Tribal court if—

6 (A) the court has jurisdiction over the par-
7 ties and matter under the law of the State or
8 Indian Tribe; and

9 (B) reasonable notice and opportunity to
10 be heard is given to the person against whom
11 the order is sought sufficient to protect that
12 person’s right to due process.

13 (2) EX PARTE EXTREME RISK PROTECTION OR-
14 DERS.—For purposes of paragraph (1)(B), in the
15 case of an ex parte extreme risk protection order,
16 notice and opportunity to be heard shall be provided
17 within the time required by State or Tribal law, and
18 in any event within a reasonable time after the order
19 is issued, sufficient to protect the due process rights
20 of the respondent.

21 (d) TRIBAL COURT JURISDICTION.—For purposes of
22 this section, a court of an Indian Tribe shall have full civil
23 jurisdiction to issue and enforce an extreme risk protection
24 order involving any person, including the authority to en-
25 force any order through civil contempt proceedings, to ex-

1 clude violators from Indian land, and to use other appro-
2 priate mechanisms, in matters arising anywhere in the In-
3 dian country (as defined in section 1151 of title 18,
4 United States Code) of the Indian Tribe or otherwise with-
5 in the authority of the Indian Tribe.

6 **SEC. 7. SEVERABILITY.**

7 If any provision of this Act or amendment made by
8 this Act, or the application of such provision or amend-
9 ment to any person or circumstance, is held to be invalid,
10 the remaining provisions of this Act and amendments
11 made by this Act, or the application of such provision or
12 amendment to other persons or circumstances, shall not
13 be affected.

14 **SEC. 8. EFFECTIVE DATE.**

15 This Act and the amendments made by this Act shall
16 take effect on the date that is 180 days after the date
17 of enactment of this Act.

○