

HOUSE BILL No. 2769

By Committee on Taxation

3-6

1 AN ACT enacting the gun safety red flag act.

2

3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. (a) Sections 1 through 13, and amendments thereto, shall
5 be known and may be cited as the gun safety red flag act.

6 (b) As used in the gun safety red flag act:

7 (1) "Defendant" means the person identified in the petition filed
8 pursuant to section 2, and amendments thereto.

9 (2) "Ex parte gun safety protective order" means an order issued by a
10 court pursuant to section 3, and amendments thereto, prohibiting the
11 defendant from having in such person's custody or control, owning,
12 purchasing, possessing or receiving any firearms or ammunition until the
13 court-scheduled hearing for a gun safety protective order.

14 (3) "Gun safety protective order" means an order issued by a court
15 pursuant to section 3 or 4, and amendments thereto, prohibiting the
16 defendant from having in such person's custody or control, owning,
17 purchasing, possessing or receiving any firearms or ammunition.

18 (4) "Family member" means: Any person related to the defendant by
19 blood, marriage or adoption; any of the defendant's current or former
20 dating partners; any person who resides or has resided with the defendant;
21 or any person who is acting or has acted as the defendant's legal guardian.

22 (5) "Plaintiff" means a law enforcement officer, a family member of
23 the defendant or any teacher or administrator employed by a school district
24 where the defendant attended school who files a petition pursuant to
25 section 2, and amendments thereto.

26 Sec. 2. (a) A plaintiff may seek a gun safety protective order by filing
27 a petition in the district court of the county where the defendant resides.

28 (b) The petition shall set forth the grounds for issuance of the order
29 and shall describe the number, types and locations of any firearms or
30 ammunition presently believed by the plaintiff to be in the possession of or
31 controlled by the defendant. The petition shall also state whether there is
32 any current or prior protective order issued against the defendant and
33 whether there is any pending lawsuit, complaint, petition or other action
34 between the parties under the laws of this state. The clerk of the court shall
35 verify the terms of any current court order affecting the parties. The court
36 shall not delay granting relief because of the existence of a pending action

1 between the parties or the necessity of verifying the terms of a current
2 order. A petition for a gun safety protective order may be granted
3 regardless of whether there is a pending action between the parties.

4 (c) All health records and other health information provided in a
5 petition or considered as evidence in a proceeding under this act shall be
6 protected from public disclosure to the extent such records identify the
7 defendant or plaintiff, except that such information may be provided to law
8 enforcement agencies as set forth in section 9, and amendments thereto.
9 Aggregate statistical data about the numbers of gun safety protective
10 orders issued, renewed, denied, dissolved or terminated shall be available
11 to the public upon request.

12 (d) Upon the filing of the petition, the court shall set a date for a
13 hearing within 14 days, regardless of whether the court issues an ex parte
14 gun safety protective order pursuant to section 3, and amendments thereto.
15 If the court does issue an ex parte gun safety protective order pursuant to
16 section 3, and amendments thereto, notice of the hearing shall be served on
17 the defendant with the ex parte order. Notice of the hearing shall be
18 personally served on the defendant by a law enforcement officer, or if
19 personal service by a law enforcement officer is not possible, in
20 accordance with K.S.A. 60-301 et seq., and amendments thereto.

21 Sec. 3. (a) A plaintiff may request that an ex parte gun safety
22 protective order be issued before a hearing for a gun safety protective
23 order, without notice to the defendant, by including in the petition filed
24 pursuant to section 2, and amendments thereto, detailed allegations based
25 on personal knowledge that the defendant poses an immediate and present
26 danger of causing personal injury to self or others by having in such
27 person's custody or control, owning, purchasing, possessing or receiving a
28 firearm or ammunition.

29 (b) The court shall issue or deny an ex parte gun safety protective
30 order on the same day that the petition is submitted to the court, unless the
31 petition is filed too late in the day to permit effective review, in which case
32 the order shall be issued or denied on the next day of judicial business.

33 (c) Before issuing an ex parte gun safety protective order, the court
34 shall examine under oath the plaintiff and any witnesses the plaintiff may
35 produce. The court may also:

36 (1) Ensure that a reasonable search has been conducted of all
37 available records to determine whether the defendant owns any firearms or
38 ammunition; and

39 (2) ensure that a reasonable search has been conducted for criminal
40 history records related to the defendant.

41 (d) In determining whether grounds for an ex parte gun safety
42 protective order exist, the court shall consider all relevant evidence
43 presented by the plaintiff, and may also consider other relevant evidence,

1 including, but not limited to, evidence of facts relating to the defendant's:

2 (1) Unlawful, reckless or negligent use, display, storage, possession
3 or brandishing of a firearm;

4 (2) act or threat of violence against self or another, whether or not
5 such act or threat involves a firearm;

6 (3) violation of any protective order included in K.S.A. 2017 Supp.
7 21-5924, and amendments thereto;

8 (4) abuse of controlled substances or alcohol or any criminal offense
9 that involves controlled substances or alcohol; and

10 (5) recent acquisition of firearms, ammunition or other deadly
11 weapons.

12 (e) The court shall also consider the time that has elapsed since the
13 events described in subsection (d).

14 (f) If a court finds reasonable cause to believe that the defendant
15 poses an immediate and present danger of causing personal injury to self
16 or others by having in such person's custody or control, owning,
17 purchasing, possessing or receiving a firearm or ammunition, the court
18 shall issue an ex parte gun safety protective order.

19 (g) An ex parte gun safety protective order shall include:

20 (1) A statement that the defendant may not have in such person's
21 custody or control, own, purchase, possess or receive, or attempt to
22 purchase or receive a firearm or ammunition while the order is in effect;

23 (2) a description of the requirements for relinquishment of firearms
24 and ammunition under section 7, and amendments thereto;

25 (3) a statement of the grounds asserted for the order;

26 (4) a notice of the hearing required under section 2(e), and
27 amendments thereto, to determine whether to issue a gun safety protective
28 order, including the address of the court and the date and time when the
29 hearing is scheduled;

30 (5) a statement that, at the hearing, the court may issue a gun safety
31 protective order pursuant to section 4, and amendments thereto; and

32 (6) a statement that the defendant may seek the advice of an attorney
33 as to any matter connected with the order, and that the attorney should be
34 consulted promptly so that the attorney may assist the person in any matter
35 connected with the order.

36 (h) An ex parte gun safety protective order shall be personally served
37 on the defendant by a law enforcement officer, or if personal service by a
38 law enforcement officer is not possible, in accordance with K.S.A. 60-301
39 et seq., and amendments thereto.

40 (i) In accordance with section 2(e), and amendments thereto, the court
41 shall schedule a hearing within 14 days of the issuance of an ex parte gun
42 safety protective order to determine if a gun safety protective order shall
43 be issued. A defendant may seek an extension of time before the hearing.

1 The court shall dissolve any ex parte gun safety protective order in effect
2 against the defendant when the court holds the hearing.

3 Sec. 4. (a) A plaintiff requesting a gun safety protective order shall
4 include in the petition detailed allegations based on personal knowledge
5 that the defendant poses a significant danger of causing personal injury to
6 self or others by having in such person's custody or control, owning,
7 purchasing, possessing or receiving a firearm or ammunition.

8 (b) Before a hearing for a gun safety protective order, the court shall:

9 (1) Ensure that a reasonable search has been conducted of all
10 available records to determine whether the defendant owns any firearms or
11 ammunition; and

12 (2) ensure that a reasonable search has been conducted for criminal
13 history records related to the defendant.

14 (c) In determining whether to issue a gun safety protective order
15 pursuant to this section, the court shall consider all relevant evidence
16 presented by the plaintiff, and may also consider other relevant evidence,
17 including, but not limited to, evidence of the facts identified in section
18 3(d), and amendments thereto.

19 (d) If the court finds by a preponderance of the evidence at the
20 hearing that the defendant poses a significant danger of personal injury to
21 self or others by having in such person's custody or control, owning,
22 purchasing, possessing or receiving a firearm or ammunition, the court
23 shall issue a gun safety protective order.

24 (e) A gun safety protective order issued pursuant to this section shall
25 include all of the following:

26 (1) A statement that the defendant may not have in such person's
27 custody or control, own, possess, purchase or receive, or attempt to
28 purchase or receive a firearm or ammunition while the order is in effect;

29 (2) a description of the requirements for relinquishment of firearms
30 and ammunition under section 7, and amendments thereto;

31 (3) a statement of the grounds supporting the issuance of the order;

32 (4) the address of the court that issued the order;

33 (5) a statement that the defendant shall have the right to request a
34 hearing to terminate the order at any time while such order is in effect,
35 except no such request may be filed until one year after the date of
36 issuance of such order; and

37 (6) a statement that the person may seek the advice of an attorney as
38 to any matter connected with the order.

39 (f) If the defendant fails to appear at the hearing, a gun safety
40 protective order issued pursuant to this section shall be personally served
41 on the defendant by a law enforcement officer, or if personal service by a
42 law enforcement officer is not possible, in accordance with K.S.A. 60-301
43 et seq., and amendments thereto.

1 Sec. 5. (a) When the court is unavailable, a verified petition,
2 accompanied by a proposed order, may be presented to any district judge.
3 The judge may grant relief in accordance with section 3, and amendments
4 thereto, if the judge deems it necessary because the defendant poses an
5 immediate and present danger of causing personal injury to self or others
6 by having in such person's custody or control, owning, purchasing,
7 possessing or receiving a firearm or ammunition. An emergency order
8 issued pursuant to this section may be granted ex parte.

9 (b) An emergency order issued pursuant to this section shall expire on
10 5:00 p.m. on the first day when the court resumes court business. At that
11 time, the plaintiff may file a petition for a gun safety protective order
12 pursuant to section 3 or 4, and amendments thereto.

13 (c) The judge shall note on the petition and any order granted,
14 including any documentation in support thereof, the filing date, together
15 with the judge's signature, and shall deliver them to the clerk of the court
16 on the next day of the resumption of business of the court.

17 Sec. 6. (a) A defendant subject to a gun safety protective order issued
18 pursuant to section 4, and amendments thereto, may submit a written
19 request at any time during the effective period of the order for a hearing to
20 terminate the order, except no such request may be filed until one year
21 after the date of issuance of such order.

22 (b) Upon receipt of the request for termination, the court shall set a
23 date for a hearing. Notice of the request shall be served on the plaintiff in
24 accordance with K.S.A. 60-301 et seq., and amendments thereto. The
25 hearing shall occur no sooner than 14 days from the date of service of the
26 request upon the plaintiff.

27 (c) The defendant seeking termination of the order shall have the
28 burden of proving by a preponderance of the evidence that the defendant
29 does not pose a significant danger of causing personal injury to self or
30 others by having in such person's custody or control, owning, purchasing,
31 possessing or receiving a firearm or ammunition.

32 (d) If the court finds after the hearing that the defendant has met the
33 defendant's burden, the court shall terminate the order.

34 Sec. 7. (a) Upon issuance of a gun safety protective order, the court
35 shall order the defendant to surrender to the local law enforcement agency
36 all firearms and ammunition in the defendant's custody or control, or that
37 the defendant possesses or owns.

38 (b) A law enforcement officer serving a gun safety protective order
39 shall request that all firearms and ammunition belonging to the defendant
40 be immediately surrendered, and shall take possession of all firearms and
41 ammunition belonging to the defendant that are surrendered, in plain sight,
42 or discovered pursuant to a lawful search. Alternatively, if personal service
43 by a law enforcement officer is not possible, and service is made in

1 accordance with K.S.A. 60-301 et seq., and amendments thereto, the
2 defendant shall surrender the firearms and ammunition in a safe manner to
3 the control of local law enforcement officials within 48 hours of being
4 served with the order.

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

13 (d) A court that has probable cause to believe a defendant subject to a
14 gun safety protective order has in such person's custody or control, owns
15 or possesses firearms or ammunition that the defendant has failed to
16 surrender pursuant to this section, or has received or purchased any
17 firearms or ammunition while subject to the order, shall issue a warrant
18 describing the firearm or ammunition and authorizing a search of any
19 locations where the firearms or ammunition are reasonably believed to be
20 and the seizure of any firearms or ammunition discovered pursuant to such
21 search.

22 (e) A law enforcement agency may charge the defendant a fee not to
23 exceed the reasonable and actual costs incurred by the law enforcement
24 agency for storing a firearm or ammunition surrendered pursuant to this
25 section for the duration of the gun safety protective order.

26 Sec. 8. (a) If a gun safety protective order is terminated pursuant to
27 section 6, and amendments thereto, a law enforcement agency holding any
28 firearm or ammunition that has been surrendered pursuant to section 7, and
29 amendments thereto, shall notify the defendant that the defendant may
30 request the return of the firearm or ammunition. A law enforcement agency
31 shall return any surrendered firearm or ammunition requested by a
32 defendant only after confirming, through a background check, that the
33 defendant is currently eligible to own or possess firearms and ammunition.

34 (b) A defendant who has surrendered any firearm or ammunition to a
35 law enforcement agency pursuant to section 7, and amendments thereto,
36 and who does not wish to have the firearm or ammunition returned, or who
37 is no longer eligible to own or possess firearms or ammunition, may sell or
38 transfer title of the firearm or ammunition to a licensed firearms dealer.
39 The law enforcement agency shall transfer possession of the firearm or
40 ammunition to a licensed firearms dealer only after the dealer has
41 displayed written proof of transfer of the firearm or ammunition from the
42 defendant to the dealer and the law enforcement agency has verified the
43 transfer with the defendant.

1 (c) If a person other than the defendant claims ownership of any
2 firearm or ammunition surrendered pursuant to section 7, and amendments
3 thereto, and such person is determined by the law enforcement agency to
4 be the lawful owner of the firearm or ammunition, the firearm or
5 ammunition shall be returned to such person.

6 (d) Any firearm or ammunition that was surrendered by a defendant
7 pursuant to section 7, and amendments thereto, and that remains
8 unclaimed by the lawful owner for 60 days after termination of a gun
9 safety protective order shall be disposed of in accordance with K.S.A. 22-
10 2512, and amendments thereto.

11 Sec. 9. (a) The court shall notify the Kansas bureau of investigation
12 no later than one day after issuing or terminating a gun safety protective
13 order.

14 (b) The information required to be submitted to the Kansas bureau of
15 investigation pursuant to this section shall include identifying information
16 about the defendant and the date the order was issued or terminated. The
17 court shall also indicate whether the defendant was present in court to be
18 advised of the contents of the order or if the defendant failed to appear.
19 The defendant's presence in court shall constitute proof of service of notice
20 of the terms of the order.

21 (c) Within one business day of service, a law enforcement officer who
22 serves a gun safety protective order or the clerk of the court shall submit
23 the proof of service to the Kansas bureau of investigation, including the
24 name of the person submitting the proof of service and the law
25 enforcement agency employing such person, if any.

26 (d) The information to be submitted to the Kansas bureau of
27 investigation pursuant to this section shall be submitted in an electronic
28 format, in a manner prescribed by the director of the Kansas bureau of
29 investigation. The Kansas bureau of investigation shall maintain a
30 searchable database of this information, which shall be made available to
31 law enforcement agencies upon request.

32 (e) The Kansas bureau of investigation shall immediately make
33 information about a gun safety protective order issued or terminated
34 pursuant to the provisions of this act available to the national instant
35 criminal background check system for the purposes of firearm purchaser
36 background checks.

37 Sec. 10. (a) Every person who files a petition for a gun safety
38 protective order, knowing the information in the petition to be materially
39 false or with an intent to harass the defendant, shall be guilty of a class C
40 misdemeanor.

41 (b) Every person who has in such person's custody or control, owns,
42 purchases, possesses or receives a firearm or ammunition with knowledge
43 that such person is prohibited from doing so by a gun safety protective

1 order shall be guilty of a class C misdemeanor and shall be prohibited
2 from having in such person's custody or control, owning, purchasing,
3 possessing or receiving, or attempting to purchase or receive, a firearm or
4 ammunition for a period of five years from the date of conviction.

5 Sec. 11. The provisions of this act shall not affect the ability of a law
6 enforcement officer to remove firearms or ammunition from any person
7 pursuant to other lawful authority.

8 Sec. 12. The provisions of this act shall not be construed to impose
9 criminal or civil liability on any person who chooses not to seek a gun
10 safety protective order pursuant to the provisions of this act.

11 Sec. 13. Except as otherwise provided in this act, any proceedings
12 under this act shall be in accordance with chapter 60 of the Kansas Statutes
13 Annotated, and amendments thereto, and shall be in addition to any other
14 available civil or criminal remedies.

15 Sec. 14. This act shall take effect and be in force from and after its
16 publication in the statute book.