

SENATE BILL No. 431

By Committee on Ways and Means

2-22

1 AN ACT enacting the extreme risk protective order 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 extreme risk protective order act.

6 (b) As used in the extreme risk protective order act:

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

9 (2) "Ex parte extreme risk protective order" means an order issued by
10 a 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 an extreme risk protective order.

14 (3) "Extreme risk 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 for a
18 period of up to one year.

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

23 (5) "Plaintiff" means a law enforcement officer or a family member
24 of the defendant who files a petition pursuant to section 2, and
25 amendments thereto.

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

29 (b) The petition shall set forth the grounds for issuance of the order
30 and shall describe the number, types and locations of any firearms or
31 ammunition presently believed by the plaintiff to be in the possession of or
32 controlled by the defendant. The petition shall also state whether there is
33 any current or prior protective order issued against the defendant and
34 whether there is any pending lawsuit, complaint, petition or other action
35 between the parties under the laws of this state. The clerk of the court shall
36 verify the terms of any current court order affecting the parties. The court

1 shall not delay granting relief because of the existence of a pending action
2 between the parties or the necessity of verifying the terms of a current
3 order. A petition for an extreme risk protective order may be granted
4 regardless of whether there is a pending action between the parties.

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

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

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

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

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

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

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

42 (d) In determining whether grounds for an ex parte extreme risk
43 protective order exist, the court shall consider all relevant evidence

1 presented by the plaintiff, and may also consider other relevant evidence,
2 including, but not limited to, evidence of facts relating to the defendant's:

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

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

7 (3) violation of any protective order included in K.S.A. 2017 Supp.
8 21-5924, and amendments thereto;

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

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

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

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

20 (g) An ex parte extreme risk protective order shall include:

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

24 (2) a description of the requirements for relinquishment of firearms
25 and ammunition under section 6, and amendments thereto;

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

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

31 (5) a statement that, at the hearing, the court may issue an extreme
32 risk protective order under section 4, and amendments thereto, for up to
33 one year; and

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

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

42 (i) In accordance with section 2(d), and amendments thereto, the
43 court shall schedule a hearing within 14 days of the issuance of an ex parte

1 extreme risk protective order to determine if an extreme risk protective
2 order shall be issued. A defendant may seek an extension of time before
3 the hearing. The court shall dissolve any ex parte extreme risk protective
4 order in effect against the defendant when the court holds the hearing.

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

10 (b) Before a hearing for an extreme risk protective order, the court
11 shall:

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

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

17 (c) In determining whether to issue an extreme risk protective order
18 under this section, the court shall consider all relevant evidence presented
19 by the plaintiff, and may also consider other relevant evidence, including,
20 but not limited to, evidence of the facts identified in section 3(d), and
21 amendments thereto.

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

27 (e) An extreme risk protective order issued pursuant to this section
28 shall include all of the following:

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

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

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

35 (4) the date and time the order expires, which shall not be later than
36 one year from the date of issuance;

37 (5) the address of the court that issued the order;

38 (6) a statement that the defendant shall have the right to request one
39 hearing to terminate the order at any time during its effective period; and

40 (7) a statement that the person may seek the advice of an attorney as
41 to any matter connected with the order.

42 (f) If the defendant fails to appear at the hearing, an extreme risk
43 protective order issued pursuant to this section shall be personally served

1 on the defendant by a law enforcement officer, or if personal service by a
2 law enforcement officer is not possible, in accordance with K.S.A. 60-301
3 et seq., and amendments thereto.

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

12 (b) An emergency order issued under this section shall expire on 5:00
13 p.m. on the first day when the court resumes court business. At that time,
14 the plaintiff may file a petition for an extreme risk protective order under
15 section 3 or 4, and amendments thereto.

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

20 Sec. 6. (a) A defendant subject to an extreme risk protective order
21 issued under section 4, and amendments thereto, may submit one written
22 request at any time during the effective period of the order for a hearing to
23 terminate the order.

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

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

34 (3) If the court finds after the hearing that the defendant has met the
35 defendant's burden, the court shall terminate the order.

36 (b) A plaintiff may request a renewal of an extreme risk protective
37 order at any time within the three months immediately preceding the date
38 of expiration of the order.

39 (1) A court may, after notice and a hearing, renew an extreme risk
40 protective order issued under section 4, and amendments thereto, if the
41 court finds by a preponderance of the evidence that the defendant
42 continues to pose a significant danger of causing personal injury to self or
43 others by having in such person's custody or control, owning, purchasing,

1 possessing or receiving a firearm or ammunition.

2 (2) In determining whether to renew an extreme risk protective order
3 issued under section 4, and amendments thereto, the court shall consider
4 all relevant evidence presented by the plaintiff, and may also consider
5 other relevant evidence, including, but not limited to, evidence of the facts
6 identified in section 3(d), and amendments thereto.

7 (3) An extreme risk protective order renewed pursuant to this section
8 shall include the information required under section 4(e), and amendments
9 thereto. Any renewed order shall be effective for the period set by the
10 court, but not to exceed one year from the date of renewal, subject to
11 termination by further order of the court at a hearing held pursuant to
12 subsection (a) and subject to further renewal by order of the court pursuant
13 to this subsection.

14 Sec. 7. (a) Upon issuance of an extreme risk protective order, the
15 court shall order the defendant to surrender to the local law enforcement
16 agency all firearms and ammunition in the defendant's custody or control,
17 or that the defendant possesses or owns.

18 (b) A law enforcement officer serving an extreme risk protective
19 order shall request that all firearms and ammunition belonging to the
20 defendant be immediately surrendered, and shall take possession of all
21 firearms and ammunition belonging to the defendant that are surrendered,
22 in plain sight, or discovered pursuant to a lawful search. Alternatively, if
23 personal service by a law enforcement officer is not possible, and service
24 is made in accordance with K.S.A. 60-301 et seq., and amendments
25 thereto, the defendant shall surrender the firearms and ammunition in a
26 safe manner to the control of local law enforcement officials within 48
27 hours of being served with the order.

28 (c) At the time of surrender or removal, a law enforcement officer
29 taking possession of a firearm or ammunition pursuant to an extreme risk
30 protective order shall issue a receipt identifying all firearms and
31 ammunition that have been surrendered or removed and provide a copy of
32 the receipt to the defendant. Within 72 hours after serving the order, the
33 officer serving the order shall file the original receipt with the court that
34 issued the extreme risk protective order, and shall ensure that the law
35 enforcement agency order retains a copy of the receipt.

36 (d) A court that has probable cause to believe a defendant subject to
37 an extreme risk protective order has in such person's custody or control,
38 owns or possesses firearms or ammunition that the defendant has failed to
39 surrender pursuant to this section, or has received or purchased any
40 firearms or ammunition while subject to the order, shall issue a warrant
41 describing the firearm or ammunition and authorizing a search of any
42 locations where the firearms or ammunition are reasonably believed to be
43 and the seizure of any firearms or ammunition discovered pursuant to such

1 search.

2 (e) A law enforcement agency may charge the defendant a fee not to
3 exceed the reasonable and actual costs incurred by the law enforcement
4 agency for storing a firearm or ammunition surrendered pursuant to this
5 section for the duration of the extreme risk protective order and any
6 additional periods necessary under section 8, and amendments thereto.

7 Sec. 8. (a) Thirty days before an extreme risk protective order is set to
8 expire, a law enforcement agency holding any firearm or ammunition that
9 has been surrendered pursuant to the order shall notify the plaintiff that the
10 order is set to expire. The notice shall advise the plaintiff of the procedures
11 for seeking a renewal of the order pursuant to section 6, and amendments
12 thereto.

13 (b) If an extreme risk protective order is terminated or expires and is
14 not renewed, a law enforcement agency holding any firearm or
15 ammunition that has been surrendered pursuant to section 7, and
16 amendments thereto, shall notify the defendant that the defendant may
17 request the return of the firearm or ammunition. A law enforcement agency
18 shall return any surrendered firearm or ammunition requested by a
19 defendant only after confirming, through a background check, that the
20 defendant is currently eligible to own or possess firearms and ammunition.

21 (c) A defendant who has surrendered any firearm or ammunition to a
22 law enforcement agency pursuant to section 7, and amendments thereto,
23 and who does not wish to have the firearm or ammunition returned, or who
24 is no longer eligible to own or possess firearms or ammunition, may sell or
25 transfer title of the firearm or ammunition to a licensed firearms dealer.
26 The law enforcement agency shall transfer possession of the firearm or
27 ammunition to a licensed firearms dealer only after the dealer has
28 displayed written proof of transfer of the firearm or ammunition from the
29 defendant to the dealer and the law enforcement agency has verified the
30 transfer with the defendant.

31 (d) If a person other than the defendant claims ownership of any
32 firearm or ammunition surrendered pursuant to section 7, and amendments
33 thereto, and such person is determined by the law enforcement agency to
34 be the lawful owner of the firearm or ammunition, the firearm or
35 ammunition shall be returned to such person.

36 (e) Any firearm or ammunition that was surrendered by a defendant
37 pursuant to section 7, and amendments thereto, and that remains
38 unclaimed by the lawful owner for 60 days after termination of an extreme
39 risk protective order shall be disposed of in accordance with K.S.A. 22-
40 2512, and amendments thereto.

41 Sec. 9. (a) The court shall notify the Kansas bureau of investigation
42 no later than one day after issuing, renewing, dissolving or terminating an
43 extreme risk protective order.

1 (b) The information required to be submitted to the Kansas bureau of
2 investigation pursuant to this section shall include identifying information
3 about the defendant and the date the order was issued, renewed, dissolved
4 or terminated. The court shall include the date the order is set to expire.
5 The court shall also indicate whether the defendant was present in court to
6 be advised of the contents of the order or if the defendant failed to appear.
7 The defendant's presence in court shall constitute proof of service of notice
8 of the terms of the order.

9 (c) Within one business day of service, a law enforcement officer who
10 serves an extreme risk protective order or the clerk of the court shall
11 submit the proof of service to the Kansas bureau of investigation,
12 including the name of the person submitting the proof of service and the
13 law enforcement agency employing such person, if any.

14 (d) The information to be submitted to the Kansas bureau of
15 investigation under this section shall be submitted in an electronic format,
16 in a manner prescribed by the director of the Kansas bureau of
17 investigation. The Kansas bureau of investigation shall maintain a
18 searchable database of this information, which shall be made available to
19 law enforcement agencies upon request.

20 (e) The Kansas bureau of investigation shall immediately make
21 information about an extreme risk protective order issued, renewed or
22 terminated pursuant to the provisions of this act available to the national
23 instant criminal background check system for the purposes of firearm
24 purchaser background checks.

25 Sec. 10. (a) Every person who files a petition for an extreme risk
26 protective order, knowing the information in the petition to be materially
27 false or with an intent to harass the defendant, shall be guilty of a class C
28 misdemeanor.

29 (b) Every person who has in such person's custody or control, owns,
30 purchases, possesses or receives a firearm or ammunition with knowledge
31 that such person is prohibited from doing so by an extreme risk protective
32 order shall be guilty of a class C misdemeanor and shall be prohibited
33 from having in such person's custody or control, owning, purchasing,
34 possessing or receiving, or attempting to purchase or receive, a firearm or
35 ammunition for a period of five years from the date of conviction.

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

39 Sec. 12. The provisions of this act shall not be construed to impose
40 criminal or civil liability on any person who chooses not to seek an
41 extreme risk protective order pursuant to the provisions of this act.

42 Sec. 13. Except as otherwise provided in this act, any proceedings
43 under this act shall be in accordance with chapter 60 of the Kansas Statutes

- 1 Annotated, and amendments thereto, and shall be in addition to any other
- 2 available civil or criminal remedies.
- 3 Sec. 14. This act shall take effect and be in force from and after its
- 4 publication in the statute book.