

STATE OF KANSAS

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SENATE CHAMBER

MADAM PRESIDENT:

I move to amend **HB 2042**, as amended by Senate Committee, on page 13, following line 11, by inserting:

"New Sec. 3. (a) Sections 3 through 15, and amendments thereto, shall be known and may be cited as the extreme risk protective order act.

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

(1) "Defendant" means the person identified in the petition filed pursuant to section 4, and amendments thereto.

(2) "Ex parte extreme risk protective order" means an order issued by a court pursuant to section 5, and amendments thereto, prohibiting the defendant from having in such person's custody or control, owning, purchasing, possessing or receiving any firearms or ammunition until the court-scheduled hearing for an extreme risk protective order.

(3) "Extreme risk protective order" means an order issued by a court pursuant to section 5 or 6, and amendments thereto, prohibiting the defendant from having in such person's custody or control, owning, purchasing, possessing or receiving any firearms or ammunition for a period of up to one year.

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

(5) "Plaintiff" means a law enforcement officer or a family member of the defendant who files a petition pursuant to section 4, and amendments thereto.

New Sec. 4. (a) A plaintiff may seek an extreme risk protective order by filing a petition in the

district court of the county where the defendant resides.

(b) The petition shall set forth the grounds for issuance of the order and shall describe the number, types and locations of any firearms or ammunition presently believed by the plaintiff to be in the possession of or controlled by the defendant. The petition shall also state whether there is any current or prior protective order issued against the defendant and whether there is any pending lawsuit, complaint, petition or other action between the parties under the laws of this state. The clerk of the court shall verify the terms of any current court order affecting the parties. The court shall not delay granting relief because of the existence of a pending action between the parties or the necessity of verifying the terms of a current order. A petition for an extreme risk protective order may be granted regardless of whether there is a pending action between the parties.

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

(d) Upon the filing of the petition, the court shall set a date for a hearing within 14 days, regardless of whether the court issues an ex parte extreme risk protective order pursuant to section 5, and amendments thereto. If the court does issue an ex parte extreme risk protective order pursuant to section 5, and amendments thereto, notice of the hearing shall be served on the defendant with the ex parte order. Notice of the hearing shall be personally served on the defendant by a law enforcement officer, or if personal service by a law enforcement officer is not possible, in accordance with K.S.A. 60-301 et seq., and amendments thereto.

New Sec. 5. (a) A plaintiff may request that an ex parte extreme risk protective order be issued

before a hearing for an extreme risk protective order, without notice to the defendant, by including in the petition filed pursuant to section 4, and amendments thereto, detailed allegations based on personal knowledge that the defendant poses an immediate and present danger of causing personal injury to self or others by having in such person's custody or control, owning, purchasing, possessing or receiving a firearm or ammunition.

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

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

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

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

(d) In determining whether grounds for an ex parte extreme risk protective order exist, the court shall consider all relevant evidence presented by the plaintiff, and may also consider other relevant evidence, including, but not limited to, evidence of facts relating to the defendant's:

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

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

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

(4) abuse of controlled substances or alcohol or any criminal offense that involves controlled

substances or alcohol; and

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

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

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

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

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

(2) a description of the requirements for relinquishment of firearms and ammunition under section 9, and amendments thereto;

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

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

(5) a statement that, at the hearing, the court may issue an extreme risk protective order under section 6, and amendments thereto, for up to one year; and

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

(h) An ex parte extreme risk protective order shall be personally served on the defendant by a

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

(i) In accordance with section 4(d), and amendments thereto, the court shall schedule a hearing within 14 days of the issuance of an ex parte extreme risk protective order to determine if an extreme risk protective order shall be issued. A defendant may seek an extension of time before the hearing. The court shall dissolve any ex parte extreme risk protective order in effect against the defendant when the court holds the hearing.

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

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

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

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

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

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

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

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

(2) a description of the requirements for relinquishment of firearms and ammunition under section 9, and amendments thereto;

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

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

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

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

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

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

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

issued pursuant to this section may be granted ex parte.

(b) An emergency order issued under this section shall expire on 5:00 p.m. on the first day when the court resumes court business. At that time, the plaintiff may file a petition for an extreme risk protective order under section 5 or 6, and amendments thereto.

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

New Sec. 8. (a) A defendant subject to an extreme risk protective order issued under section 6, and amendments thereto, may submit one written request at any time during the effective period of the order for a hearing to terminate the order.

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

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

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

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

(1) A court may, after notice and a hearing, renew an extreme risk protective order issued under section 6, and amendments thereto, if the court finds by a preponderance of the evidence that the

defendant continues to pose a significant danger of causing personal injury to self or others by having in such person's custody or control, owning, purchasing, possessing or receiving a firearm or ammunition.

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

(3) An extreme risk protective order renewed pursuant to this section shall include the information required under section 6(e), and amendments thereto. Any renewed order shall be effective for the period set by the court, but not to exceed one year from the date of renewal, subject to termination by further order of the court at a hearing held pursuant to subsection (a) and subject to further renewal by order of the court pursuant to this subsection.

New Sec. 9. (a) Upon issuance of an extreme risk protective order, the court shall order the defendant to surrender to the local law enforcement agency all firearms and ammunition in the defendant's custody or control, or that the defendant possesses or owns.

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

(c) At the time of surrender or removal, a law enforcement officer taking possession of a firearm or ammunition pursuant to an extreme risk protective order shall issue a receipt identifying all

firearms and ammunition that have been surrendered or removed and provide a copy of the receipt to the defendant. Within 72 hours after serving the order, the officer serving the order shall file the original receipt with the court that issued the extreme risk protective order, and shall ensure that the law enforcement agency order retains a copy of the receipt.

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

(e) A law enforcement agency may charge the defendant a fee not to exceed the reasonable and actual costs incurred by the law enforcement agency for storing a firearm or ammunition surrendered pursuant to this section for the duration of the extreme risk protective order and any additional periods necessary under section 10, and amendments thereto.

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

(b) If an extreme risk protective order is terminated or expires and is not renewed, a law enforcement agency holding any firearm or ammunition that has been surrendered pursuant to section 9, and amendments thereto, shall notify the defendant that the defendant may request the return of the firearm or ammunition. A law enforcement agency shall return any surrendered firearm or ammunition requested by a defendant only after confirming, through a background check, that the defendant is currently eligible to own or possess firearms and ammunition.

(c) A defendant who has surrendered any firearm or ammunition to a law enforcement agency pursuant to section 9, and amendments thereto, and who does not wish to have the firearm or ammunition returned, or who is no longer eligible to own or possess firearms or ammunition, may sell or transfer title of the firearm or ammunition to a licensed firearms dealer. The law enforcement agency shall transfer possession of the firearm or ammunition to a licensed firearms dealer only after the dealer has displayed written proof of transfer of the firearm or ammunition from the defendant to the dealer and the law enforcement agency has verified the transfer with the defendant.

(d) If a person other than the defendant claims ownership of any firearm or ammunition surrendered pursuant to section 9, and amendments thereto, and such person is determined by the law enforcement agency to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to such person.

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

New Sec. 11. (a) The court shall notify the Kansas bureau of investigation no later than one day after issuing, renewing, dissolving or terminating an extreme risk protective order.

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

(c) Within one business day of service, a law enforcement officer who serves an extreme risk

protective order or the clerk of the court shall submit the proof of service to the Kansas bureau of investigation, including the name of the person submitting the proof of service and the law enforcement agency employing such person, if any.

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

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

New Sec. 12. (a) Every person who files a petition for an extreme risk protective order, knowing the information in the petition to be materially false or with an intent to harass the defendant, shall be guilty of a class C misdemeanor.

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

New Sec. 13. The provisions of sections 3 through 15, and amendments thereto, shall not affect the ability of a law enforcement officer to remove firearms or ammunition from any person pursuant to other lawful authority.

New Sec. 14. The provisions of sections 3 through 15, and amendments thereto, shall not be construed to impose criminal or civil liability on any person who chooses not to seek an extreme risk

protective order pursuant to the provisions of this act.

New Sec. 15. Except as otherwise provided in sections 3 through 15, and amendments thereto, any proceedings under this act shall be in accordance with chapter 60 of the Kansas Statutes Annotated, and amendments thereto, and shall be in addition to any other available civil or criminal remedies.";

And by renumbering sections accordingly;

On page 1, in the title, in line 2, by striking all after the semicolon; in line 3, by striking all after the semicolon; in line 6, before "amending" by inserting "enacting the extreme risk protective order act;"

Senator \_\_\_\_\_