

SENATE BILL No. 406

By Committee on Federal and State Affairs

1-27

1 AN ACT concerning firearms; creating the back the blue act; authorizing
2 the issuance of protective orders to prohibit the acquisition and
3 possession of firearms to reduce law enforcement officer deaths; civil
4 and criminal penalties for violations of such orders.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. (a) Sections 1 through 13, and amendments thereto, shall
8 be known and may be cited as the back the blue act.

9 Sec. 2. As used in the back the blue act:

10 (a) "Concealed carry license" means a license to carry concealed
11 handguns issued pursuant to the personal and family protection act, K.S.A.
12 75-7c01 et seq., and amendments thereto, or a substantially similar license
13 issued by any other jurisdiction.

14 (b) "Dating relationship" means the same as defined in K.S.A. 60-
15 3102, and amendments thereto.

16 (c) "Defendant" means the individual against whom a gun violence
17 restraining order is requested or who is the subject of a gun violence
18 restraining order issued pursuant to this act.

19 (d) "Family member" means an individual who is related to the
20 defendant as any of the following: A parent, son or daughter, sibling,
21 grandparent, grandchild, uncle, aunt or first cousin.

22 (e) "Gun violence restraining order" means an order issued by a court
23 under section 6, and amendments thereto.

24 (f) "Plaintiff" means the individual who requests a gun violence
25 restraining order in an action filed pursuant to section 4, and amendments
26 thereto.

27 Sec. 3. The district courts shall have jurisdiction over all proceedings
28 under the back the blue act.

29 Sec. 4. (a) Any of the following individuals may file a verified
30 petition with any judge of the district court or clerk of the court seeking
31 relief under the back the blue act:

32 (1) The spouse of the defendant;

33 (2) a former spouse of the defendant;

34 (3) an individual who has a child in common with the defendant;

35 (4) an individual who is or has been in a dating relationship with the
36 defendant;

1 (5) an individual who resides or has resided in the same household
2 with the defendant;

3 (6) a family member of the defendant; or

4 (7) an individual not described in paragraphs (1) through (6) but who
5 has a close relationship with the defendant.

6 (b) A verified petition shall allege facts sufficient to show the
7 following:

8 (1) The name of the petitioner;

9 (2) the name of the defendant;

10 (3) the petitioner's relationship with the defendant;

11 (4) the acts committed by the defendant that demonstrate that the
12 issuance of a gun violence restraining order is necessary because the
13 defendant poses a significant risk of personal injury to self or others by
14 possessing a firearm;

15 (5) whether the defendant holds a license to carry a concealed
16 handgun, if known to the petitioner;

17 (6) whether the defendant is required to carry a firearm as a condition
18 of such defendant's employment, if known to the petitioner; and

19 (7) what, if any, firearms the defendant possesses, if known to the
20 petitioner.

21 (c) The clerk of the court shall supply the forms for the petition and
22 orders. Such forms shall be prescribed by the judicial council.

23 (d) Service of process served under this section shall be by personal
24 service. No docket fee shall be required for proceedings under the back the
25 blue act.

26 (e) The petitioner's address and telephone number shall not be
27 disclosed to the defendant or to the public but only to authorized court or
28 law enforcement personnel.

29 Sec. 5. (a) Within 21 days of the filing of a petition pursuant to
30 section 4, and amendments thereto, a hearing shall be held at which the
31 plaintiff shall prove the allegations of the petition by a preponderance of
32 the evidence and the defendant shall have an opportunity to present
33 evidence on the defendant's behalf. Upon the filing of the petition, the
34 court shall set the case for hearing. At the hearing, the court shall advise
35 the parties of the right to be represented by counsel.

36 (b) Prior to the hearing on the petition and upon a finding of good
37 cause shown, the court on motion of a party may enter such temporary
38 relief orders in accordance with section 6, and amendments thereto, as it
39 deems necessary to prevent irreparable injury that will result from the
40 delay required to effectuate notice or if the notice itself will precipitate
41 adverse action before a gun violence restraining order can be issued.
42 Temporary orders may be granted ex parte on presentation of a verified
43 petition by the plaintiff supporting a claim of irreparable injury that will

1 result from the delay required to effectuate notice or if the notice itself will
2 precipitate adverse action before a gun violence restraining order can be
3 issued by a preponderance of the evidence.

4 (c) If a hearing under subsection (a) is continued, the court may make
5 or extend such temporary orders under subsection (b) as it deems
6 necessary.

7 Sec. 6. (a) The court may issue a gun violence restraining order if the
8 court determines that there is reasonable cause to believe that the
9 defendant poses a significant risk of personal injury to self or others by
10 possessing a firearm. In determining whether reasonable cause exists, the
11 court shall consider all of the following:

12 (1) Testimony, documents or other evidence offered in support of the
13 petition for the gun violence restraining order;

14 (2) whether the defendant has previously inflicted or threatened to
15 inflict personal injury on self or others; and

16 (3) any other facts that the court deems relevant.

17 (b) If the plaintiff is not an individual described in section 4(a)(1)
18 through (a)(6), and amendments thereto, the court shall not issue the gun
19 violence restraining order unless the court determines that the plaintiff has
20 a sufficiently close relationship with the defendant to justify the issuance
21 of the order.

22 (c) If the court determines that a gun violence restraining order is to
23 be issued, the court shall include all of the following provisions in the
24 order:

25 (1) A statement that the defendant shall not purchase or possess a
26 firearm;

27 (2) a statement that the defendant may file a motion to modify or
28 rescind the order and request a hearing within 14 days after the defendant
29 is served with or receives actual notice of the order and that motion forms
30 and filing instructions are available from the clerk of the court;

31 (3) a statement that violation of the order will subject the defendant to
32 immediate arrest and the civil and criminal contempt powers of the court;
33 and

34 (4) an expiration date that is not more than one year from the date of
35 issuance.

36 (d) A gun violence restraining order is effective and enforceable
37 immediately after the order is served on the defendant or after the
38 defendant receives actual notice of the order. The order may be enforced
39 anywhere in this state by a law enforcement agency that receives a true
40 copy of the order, is shown a copy of the order or has verified the order's
41 existence.

42 (e) A defendant subject to a gun violence restraining order may file a
43 motion to modify or rescind such order and request a hearing. The motion

1 to modify or rescind the order shall be filed within 14 days after the order
2 is served on the defendant or after the defendant receives actual notice of
3 the order, unless good cause is shown for filing the motion after the 14
4 days have elapsed. The court shall conduct a hearing on a motion filed
5 pursuant to this subsection within 14 days after the motion is filed.

6 (f) The court shall assess costs against the defendant and may award
7 attorney fees to the plaintiff in any case in which the court issues a gun
8 violence restraining order pursuant to this act. The court may award
9 attorney fees to the defendant in any case where the court finds that the
10 petition to seek relief pursuant to this act is without merit.

11 Sec. 7. (a) If the defendant is physically present in court at the time a
12 gun violence restraining order is entered against the defendant, the
13 defendant shall, within 24 hours after such
14 order is entered:

15 (1) Relinquish all firearms in the defendant's custody, control or
16 possession to the sheriff of the county where the court issuing such order is
17 located or to a licensed federal firearms dealer; and

18 (2) relinquish any concealed carry license issued to the defendant to
19 the sheriff of the county where the court issuing such order is located.

20 (b) If the defendant is not physically present in court at the time a gun
21 violence restraining order is entered against the defendant, such order shall
22 be personally served on the defendant by a law enforcement officer or, if
23 personal service by a law enforcement officer is not possible, in
24 accordance with K.S.A. 60-301 et seq., and amendments thereto. The
25 individual who serves a gun violence restraining order shall file proof of
26 service with the clerk of the court that issued the order.

27 (c) A copy of any gun violence restraining order issued under section
28 6, and amendments thereto, shall be provided to the plaintiff and the police
29 department of the city where the defendant resides. If the defendant does
30 not reside in a city or resides in a city with no police department, a copy of
31 the order shall be provided to the sheriff of the county where the order is
32 issued.

33 (d) The clerk of the court shall immediately notify the police
34 department of the city where the defendant resides or, if the defendant does
35 not reside in a city or resides in a city with no police department, the
36 sheriff of the county where the order is issued, if either of the following
37 occurs:

38 (1) The clerk of the court receives proof that the defendant has been
39 served; or

40 (2) the order is rescinded, modified or extended.

41 Sec. 8. (a) If a gun violence restraining order is personally served on
42 the defendant, the law enforcement officer serving such order shall require
43 that the defendant immediately surrender all firearms in the defendant's

1 custody, control or possession and any concealed carry license issued to
2 the defendant. The law enforcement officer shall conduct any search of the
3 defendant permitted by law for such firearms or license. The law
4 enforcement officer shall take possession of any such firearms and license
5 that are relinquished, in plain sight or discovered pursuant to a lawful
6 search.

7 (b) Within 24 hours after being served a gun violence restraining
8 order, the defendant shall relinquish any firearms in the defendant's
9 custody, control or possession and any concealed carry license issued to
10 the defendant that are not relinquished to or removed by a law
11 enforcement officer at the time of service of such order.

12 (c) Within 48 hours after being served a gun violence restraining
13 order, the defendant shall:

14 (1) File one or more proofs of relinquishment or removal showing
15 that all firearms previously in the defendant's custody, control or
16 possession and any concealed carry license issued to the defendant were
17 relinquished or removed pursuant to subsection (a) or (b) and attest to the
18 court that the defendant does not currently have any firearms in the
19 defendant's custody, control or possession and does not currently possess a
20 concealed carry license; or

21 (2) attest to the court that:

22 (A) At the time the gun violence restraining order was issued, the
23 defendant did not have any firearms in the defendant's custody, control or
24 possession and did not possess any concealed carry license; and

25 (B) the defendant does not currently have any firearms in the
26 defendant's custody, control or possession and does not currently possess a
27 concealed carry license.

28 (d) If the defendant fails to file any proofs of relinquishment or
29 removal or any attestations as required under subsection (c), the clerk of
30 the court that issued such order shall notify the sheriff of the county where
31 the court is located that the defendant has failed to make any such filings
32 with the court. Upon receipt of such notification, the sheriff shall make a
33 good faith effort to determine whether there is evidence that the defendant
34 has failed to relinquish any firearm in the defendant's custody, control or
35 possession or any concealed carry license issued to the defendant, as
36 required under such order.

37 (e) A law enforcement officer or licensed federal firearms dealer who
38 takes possession of a firearm or concealed carry license pursuant to
39 enforcement of a gun violence restraining order shall issue a proof of
40 relinquishment or removal to the defendant. The proof of relinquishment
41 or removal shall include:

42 (1) The name of the defendant;

43 (2) the date such firearm or concealed carry license was relinquished

1 or removed;

2 (3) the identification number of any relinquished or removed
3 concealed carry license; and

4 (4) the make, model and serial number of any relinquished or
5 removed firearm.

6 (f) Any law enforcement agency that seizes a firearm pursuant to
7 enforcement of a gun violence restraining order shall retain the firearm
8 subject to an order of the court that issued the gun violence restraining
9 order. In addition to any other order that the court determines is
10 appropriate, the court shall order that the firearm be returned to the
11 defendant when the defendant is no longer prohibited from possessing a
12 firearm or that the firearm be transferred to a licensed federal firearms
13 dealer if the defendant sells or transfers ownership of the firearm to such
14 dealer.

15 (g) If the location to be searched during the seizure of a firearm is
16 jointly occupied by multiple individuals and a firearm located during the
17 search is determined to be owned by an individual other than the
18 defendant, the law enforcement agency shall not seize the firearm if all of
19 the following conditions are satisfied:

20 (1) The firearm is stored so that the defendant does not have access to
21 or control of the firearm; and

22 (2) there is no evidence of unlawful possession of the firearm by the
23 owner.

24 (h) If the location to be searched during the seizure of a firearm is
25 jointly occupied by multiple individuals, a gun safe located during the
26 search is determined to be owned by an individual other than the defendant
27 and a valid search warrant has not been obtained, the law enforcement
28 agency shall not search the gun safe except in the owner's presence or with
29 the owner's consent.

30 (i) Except as provided in subsection (j), upon expiration or
31 termination of a gun violence restraining order and at the request of the
32 defendant, any items that were relinquished or removed by the law
33 enforcement agency shall be returned to the defendant, provided the law
34 enforcement agency conducts a state and national criminal history records
35 check that conforms to applicable federal standards, including an inquiry
36 of the national instant criminal background check system, and confirms
37 that the defendant is not currently prohibited from possessing or receiving
38 a firearm under state or federal law.

39 (j) A law enforcement agency may dispose of any firearms
40 relinquished by a defendant pursuant to a gun violence restraining order
41 only after the defendant is notified of the pending disposal of any such
42 firearm. The proceeds from the disposal of any such firearm, less the cost
43 to the law enforcement agency for taking possession of, storing and

1 disposing of any such firearm, shall be paid to the defendant.

2 (k) If an individual other than a defendant claims title to a firearm
3 relinquished to or removed by a law enforcement agency and such
4 individual is determined by the chief officer of such law enforcement
5 agency to be the lawful owner of such firearm, the law enforcement
6 agency shall return the firearm to the lawful owner if:

7 (1) The lawful owner agrees to maintain, keep or store such firearm
8 in a manner such that no individual who is prohibited from possessing or
9 receiving firearms under state or federal law shall have access to or control
10 of such firearm; and

11 (2) the law enforcement agency conducts a state and national criminal
12 history records check that conforms to applicable federal standards,
13 including an inquiry of the national instant criminal background check
14 system, to confirm that the lawful owner is not currently prohibited from
15 possessing or receiving a firearm under state or federal law.

16 Sec. 9. (a) At any time while a gun violence restraining order is in
17 effect, the plaintiff, the district attorney or county attorney or a law
18 enforcement officer may file an affidavit with the court that issued the
19 order alleging that the defendant has a firearm in the defendant's
20 custody, control or possession or possesses a concealed carry license.
21 Upon the filing of such affidavit, the court shall determine whether
22 probable cause exists to believe that the defendant has a firearm in the
23 defendant's custody, control or possession or that the defendant possesses a
24 concealed carry license. If the court finds that such probable cause exists,
25 the court shall issue a search warrant for such firearm or concealed carry
26 license in accordance with K.S.A. 22-2502, and amendments thereto.

27 (b) A law enforcement officer carrying out a search warrant issued
28 pursuant to subsection (a) or otherwise responding to a call alleging a
29 violation of a gun violence restraining order shall give the defendant an
30 opportunity to comply with the gun violence restraining order before the
31 law enforcement officer makes a custodial arrest for violation of the order.
32 The failure by the defendant to immediately comply with the order is
33 grounds for an immediate custodial arrest.

34 Sec. 10. (a) Upon verified motion of the plaintiff, or the court on its
35 own motion, and after the defendant has been personally served with a
36 copy of the motion and has had an opportunity to present evidence and
37 cross-examine witnesses at a hearing on the motion, the court may extend
38 a gun violence restraining order for up to one additional year, if the court
39 determines by a preponderance of the evidence that:

40 (1) The defendant has violated a valid gun violence restraining order;

41 (2) the defendant has previously violated a valid gun violence
42 restraining order; or

43 (3) there is reasonable cause to believe that the defendant poses a

1 significant risk of personal injury to self or others by possessing a firearm.

2 (b) No service fee shall be required for a motion filed pursuant to this
3 section.

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

8 Sec. 12. (a) If, upon hearing, the court finds a violation of any order
9 issued pursuant to section 6, and amendments thereto, the court may find
10 the defendant in contempt pursuant to K.S.A. 20-1204a, and amendments
11 thereto.

12 (b) If, upon hearing, the court finds a plaintiff has knowingly made a
13 false statement to the court in a petition for a gun violence restraining
14 order, a motion for an extension of any such order or in support of such
15 petition or motion, the court may find the plaintiff in contempt pursuant to
16 K.S.A. 20-1204a, and amendments thereto.

17 Sec. 13. (a) It shall be unlawful for an individual to possess a firearm
18 or concealed carry license issued to such individual while there is a valid
19 gun violence restraining order issued against such individual.

20 (b) Violation of this section is a severity level 8, nonperson felony.

21 (c) It is not a violation of this section if the individual is possessing,
22 carrying or otherwise transporting a firearm or a concealed carry license
23 for the sole purpose of relinquishing such firearm or concealed carry
24 license in accordance with section 8, and amendments thereto, if:

25 (1) The individual is in possession of a written gun violence
26 restraining order issued by a court and such order was issued within the
27 previous 24 hours;

28 (2) any firearm being transported is unloaded; and

29 (3) the individual transports the firearm or concealed carry license
30 directly to a law enforcement agency located in the county where the court
31 that issued such order is located or, in the case of a firearm, directly to a
32 licensed federal firearms dealer.

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