

1 AN ACT relating to extreme risk protective orders.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 11 of this Act:*

6 *(1) "One (1) year extreme risk protective order" means an order issued by a court,*
7 *pursuant to Section 4 of this Act, prohibiting the respondent from owning,*
8 *purchasing, possessing, receiving, or having in his or her custody or control any*
9 *firearms or ammunition for a period of one (1) year;*

10 *(2) "Ex parte extreme risk protective order" means an order issued by a court,*
11 *pursuant to Section 3 of this Act, prohibiting the respondent from owning,*
12 *purchasing, possessing, receiving, or having in his or her custody or control any*
13 *firearms or ammunition until the court-scheduled hearing for a one (1) year*
14 *extreme risk protective order;*

15 *(3) "Petitioner" means any person who files a petition pursuant to Section 2 of this*
16 *Act; and*

17 *(4) "Respondent" means the person identified in the petition filed pursuant to*
18 *Section 3 or 4 of this Act.*

19 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
20 READ AS FOLLOWS:

21 *(1) A petitioner may seek an extreme risk protective order by filing a verified petition*
22 *on a form prescribed by the Administrative Office of the Courts in the District*
23 *Court of the county where the respondent resides.*

24 *(2) The petition shall set forth the grounds for issuance of the order and shall*
25 *describe the number, types, and locations of any firearms or ammunition*
26 *presently believed by the petitioner to be possessed or controlled by the*
27 *respondent. The petition shall also state whether there is an existing protective*

1 order in effect governing the respondent and whether there is any pending
2 lawsuit, complaint, petition, or other action between the parties under the laws of
3 this state. The court shall verify the terms of any existing order governing the
4 parties. The court may not delay granting relief because of the existence of a
5 pending action between the parties or the necessity of verifying the terms of an
6 existing order. A petition for an extreme risk protective order may be granted
7 whether or not there is a pending action between the parties.

8 (3) If the respondent is alleged to pose an immediate and present danger of causing
9 personal injury to a member of the respondent's family, or a family member of
10 the respondent is alleged to have been the target of a threat or act of violence by
11 the respondent, petitioner shall make a good-faith effort to provide notice to any
12 and all adult family members of the respondent. The notice must include that the
13 petitioner intends to petition the court for an extreme risk protective order, and, if
14 petitioner is a law enforcement officer, a referral to relevant domestic violence or
15 stalking advocacy or counseling resources, if appropriate. Petitioner shall attest
16 to having provided such notice in the verified petition. If after making a good-
17 faith effort, the petitioner is unable to provide notice to any or all adult family
18 members of the respondent, the verified petition must describe what efforts were
19 made.

20 (4) All health records and other health information provided in a petition or
21 considered as evidence in a proceeding under Sections 1 to 11 of this Act shall be
22 protected from public disclosure to the extent they identify a respondent or
23 petitioner, except that such information may be provided to law enforcement
24 agencies as set forth in Section 8 of this Act. Aggregate statistical data about the
25 numbers of extreme risk protective orders issued, renewed, denied, dissolved, or
26 terminated shall be available to the public upon request.

27 (5) Upon receipt of the petition, the court shall set a date for a hearing within

1 fourteen (14) days, regardless of whether the court issues an ex parte extreme
2 risk protective order pursuant to Section 3 of this Act. If the court does issue an
3 ex parte extreme risk protective order pursuant to Section 3 of this Act, notice of
4 the hearing shall be served on the respondent with the ex parte order. Notice of
5 the hearing shall be personally served on the respondent by a law enforcement
6 officer or, if personal service by a law enforcement officer is not possible, in
7 accordance with the laws of this state regarding service of process.

8 (6) The Administrative Office of the Courts shall prescribe the form of the petitions
9 and orders and any other documents, and shall promulgate any rules of court,
10 necessary to implement this chapter.

11 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
12 READ AS FOLLOWS:

13 (1) A petitioner may request that an ex parte order be issued before a hearing for a
14 one (1) year extreme risk protective order, without notice to the respondent, by
15 including in the petition detailed allegations based on personal knowledge that
16 the respondent poses an immediate and present danger of causing personal
17 injury to self or others by owning, purchasing, possessing, receiving, or having in
18 his or her custody or control a firearm or ammunition.

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

23 (3) Before issuing an ex parte extreme risk protective order the court shall examine
24 under oath the petitioner and any witnesses the petitioner may produce. The
25 court may also:

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

- 1 and
- 2 (b) Ensure that a reasonable search has been conducted for criminal history
3 records related to the respondent.
- 4 (4) In determining whether grounds for an ex parte extreme risk protective order
5 exists, the judge shall consider all relevant evidence presented by the petitioner,
6 and may also consider other relevant evidence, including but not limited to
7 evidence of facts relating to the respondent's:
- 8 (a) Unlawful, reckless, or negligent use, display, storage, possession, or
9 brandishing of a firearm;
- 10 (b) Act or threat of violence against self or another, whether or not this
11 violence involves a firearm;
- 12 (c) Violation of a protective order issued pursuant to KRS Chapter 403 or 456,
13 or similar laws in another state;
- 14 (d) Abuse of controlled substances or alcohol or any criminal offense that
15 involves controlled substances or alcohol; and
- 16 (e) The recent acquisition of firearms, ammunition, or other deadly weapons.
- 17 (5) The court shall also consider the time that has elapsed since the events described
18 above.
- 19 (6) If a court finds reasonable cause to believe that the respondent poses an
20 immediate and present danger of causing personal injury to self or others by
21 owning, purchasing, possessing, receiving, or having in his or her custody or
22 control a firearm or ammunition, the court shall issue an ex parte extreme risk
23 protective order.
- 24 (7) An ex parte extreme risk protective order shall include:
- 25 (a) A statement that the respondent may not own, purchase, possess, receive, or
26 have in his or her custody or control, or attempt to purchase or receive, a
27 firearm or ammunition while the order is in effect;

1 (b) A description of the requirements for relinquishment of firearms and
2 ammunition under Section 6 of this Act;

3 (c) A statement of the grounds asserted for the order;

4 (d) A notice of the hearing under subsection (5) of Section 2 of this Act to
5 determine whether to issue a one (1) year extreme risk protective order,
6 including the address of the court and the date and time when the hearing
7 is scheduled;

8 (e) A statement that at the hearing, the court may extend the order for one (1)
9 year; and

10 (f) A statement that the respondent may seek the advice of an attorney as to any
11 matter connected with the order, and that the attorney should be consulted
12 promptly so that the attorney may assist the person in any matter connected
13 with the order.

14 (8) An ex parte extreme risk protective order shall be personally served on the
15 respondent by a law enforcement officer or, if personal service by a law
16 enforcement officer is not possible, in accordance with the laws of this state
17 regarding service of process.

18 (9) In accordance with subsection (5) of Section 2 of this Act, the court shall
19 schedule a hearing within fourteen (14) days of the issuance of an ex parte
20 extreme risk protective order to determine if a one (1) year extreme risk protective
21 order shall be issued. A respondent may seek an extension of time before the
22 hearing. The court shall dissolve any ex parte extreme risk protective order in
23 effect against the respondent when the court holds the hearing.

24 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
25 READ AS FOLLOWS:

26 (1) A petitioner requesting a one (1) year extreme risk protective order shall include
27 in the petition detailed allegations based on personal knowledge that the

1 respondent poses a significant danger of causing personal injury to self or others
2 by owning, purchasing, possessing, receiving, or having in his or her custody or
3 control a firearm or ammunition.

4 (2) Before a hearing for a one (1) year extreme risk protective order, the court shall:

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

8 (b) Ensure that a reasonable search has been conducted for criminal history
9 records related to the respondent.

10 (3) In determining whether to issue a one (1) year extreme risk protective order
11 under this section, the court shall consider all relevant evidence presented by the
12 petitioner, and may also consider other relevant evidence, including but not
13 limited to evidence of the facts identified in subsection (4) of Section 3 of this Act.

14 (4) If the court finds by a preponderance of the evidence at the hearing that the
15 respondent poses a significant danger of personal injury to self or others by
16 owning, purchasing, possessing, receiving, or having in his or her custody or
17 control a firearm or ammunition, the court shall issue a one (1) year extreme risk
18 protective order.

19 (5) A one (1) year extreme risk protective order issued pursuant to this section shall
20 include all of the following:

21 (a) A statement that the respondent may not own, possess, purchase, receive, or
22 have in his or her custody or control, or attempt to purchase or receive, a
23 firearm or ammunition while the order is in effect;

24 (b) A description of the requirements for relinquishment of firearms and
25 ammunition under Section 6 of this Act;

26 (c) A statement of the grounds supporting the issuance of the order;

27 (d) The date and time the order expires;

- 1 (e) The address of the court that issued the order;
2 (f) A statement that the respondent shall have the right to request one (1)
3 hearing to terminate the order at any time during its effective period; and
4 (g) A statement that the person may seek the advice of an attorney as to any
5 matter connected with the order.

6 (6) If the respondent fails to appear at the hearing, a one (1) year extreme risk
7 protective order issued pursuant to this section shall be personally served on the
8 respondent by a law enforcement officer or, if personal service by a law
9 enforcement officer is not possible, in accordance with the laws of this state
10 regarding service of process.

11 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
12 READ AS FOLLOWS:

13 (1) (a) A respondent to a one (1) year extreme risk protective order issued under
14 Section 4 of this Act may submit one (1) written request at any time during
15 the effective period of the order for a hearing to terminate the order.

16 (b) Upon receipt of the request for termination, the court shall set a date for a
17 hearing. Notice of the request shall be served on the petitioner in
18 accordance with the laws of this state regarding service of process. The
19 hearing shall occur no sooner than fourteen (14) days from the date of
20 service of the request upon the petitioner.

21 (c) The respondent seeking termination of the order shall have the burden of
22 proving by a preponderance of the evidence that the respondent does not
23 pose a significant danger of causing personal injury to self or others by
24 owning, purchasing, possessing, receiving, or having in his or her custody
25 or control a firearm or ammunition.

26 (d) If the court finds after the hearing that the respondent has met his or her
27 burden, the court shall terminate the order.

1 (2) (a) A petitioner may request a renewal of a one (1) year extreme risk protective
2 order at any time within the three (3) months before the expiration of the
3 order.

4 (b) A court may, after notice and a hearing, renew a one (1) year extreme risk
5 protective order issued under Sections 1 to 11 of this Act if the court finds,
6 by a preponderance of the evidence, that the respondent continues to pose a
7 significant danger of causing personal injury to self or another by owning,
8 purchasing, possessing, receiving, or having in his or her custody or control
9 a firearm or ammunition.

10 (c) In determining whether to renew a one (1) year extreme risk protective
11 order issued under this section, the court shall consider all relevant
12 evidence presented by the petitioner, and may also consider other relevant
13 evidence including but not limited to evidence of the facts identified in
14 subsection (4) of Section 3 of this Act.

15 (d) A one (1) year extreme risk protective order renewed pursuant to this
16 section shall expire after one (1) year, subject to termination by further
17 order of the court at a hearing held pursuant to subsection (1) of this
18 section and further renewal by order of the court pursuant to this
19 subsection.

20 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
21 READ AS FOLLOWS:

22 (1) Upon issuance of an ex parte or one (1) year extreme risk protective order, the
23 court shall order the respondent to surrender to the local law enforcement agency
24 all firearms and ammunition in the respondent's custody or control, or which the
25 respondent possesses or owns.

26 (2) A law enforcement officer serving an extreme risk protective order shall request
27 that all firearms and ammunition belonging to the respondent be immediately

1 surrendered and shall take possession of all firearms and ammunition belonging
2 to the respondent that are surrendered, in plain sight, or discovered pursuant to a
3 lawful search. Alternatively, if personal service by a law enforcement officer is
4 not possible, in accordance with the laws of this state regarding service of
5 process, the respondent shall surrender the firearms and ammunition in a safe
6 manner to the control of local law enforcement officials within forty-eight (48)
7 hours of being served with the order.

8 (3) At the time of surrender or removal, a law enforcement officer taking possession
9 of a firearm or ammunition pursuant to an extreme risk protective order shall
10 issue a receipt identifying all firearms and ammunition that have been
11 surrendered or removed and provide a copy of the receipt to the respondent.
12 Within seventy-two (72) hours after being served with the order, the officer
13 serving the order shall file the original receipt with the court that issued the
14 extreme risk protective order, and shall ensure that the law enforcement agency
15 order retains a copy of the receipt.

16 (4) A court that has probable cause to believe a respondent to an extreme risk
17 protective order owns, possesses, or has in his or her custody or control firearms
18 or ammunition that he or she has failed to surrender pursuant to this section, or
19 has received or purchased firearms or ammunition while subject to the order,
20 shall issue a warrant describing the firearm or ammunition and authorizing a
21 search of any location where the firearms or ammunition are reasonably believed
22 to be and the seizure of any firearms or ammunition discovered pursuant to such
23 search.

24 (5) A law enforcement agency may charge the respondent a fee not to exceed the
25 reasonable and actual costs incurred by the law enforcement agency for storing a
26 firearm or ammunition surrendered pursuant to this section for the duration of
27 the extreme risk protective order and any additional periods necessary under

1 Section 7 of this Act.

2 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
3 READ AS FOLLOWS:

4 (1) Thirty (30) days before a one (1) year extreme risk protective order is set to
5 expire, a law enforcement agency holding any firearm or ammunition that has
6 been surrendered pursuant to the order shall notify the petitioner that the order is
7 set to expire. The notice shall advise the petitioner of the procedures for seeking a
8 renewal of the order pursuant to Section 5 of this Act.

9 (2) If an extreme risk protective order is terminated or expires and is not renewed, a
10 law enforcement agency holding any firearm or ammunition that has been
11 surrendered pursuant to Section 6 of this Act shall notify the respondent that he
12 or she may request the return of the firearm or ammunition. A law enforcement
13 agency shall return any surrendered firearm or ammunition requested by a
14 respondent only after confirming, through a background check, that the
15 respondent is currently eligible to own or possess firearms and ammunition.

16 (3) A respondent who has surrendered any firearm or ammunition to a law
17 enforcement agency pursuant to Section 6 and who does not wish to have the
18 firearm or ammunition returned or who is no longer eligible to own or possess
19 firearms or ammunition may sell or transfer title of the firearm or ammunition to
20 a licensed firearms dealer. The law enforcement agency shall transfer possession
21 of the firearm or ammunition to a licensed firearms dealer only after the dealer
22 has displayed written proof of transfer of the firearm or ammunition from the
23 respondent to the dealer and the law enforcement has verified the transfer with
24 the respondent.

25 (4) If a person other than the respondent claims title to any firearm or ammunition
26 surrendered pursuant to Section 6 of this Act, and he or she is determined by the
27 law enforcement agency to be the lawful owner of the firearm or ammunition, the

1 firearm or ammunition shall be returned to him or her.

2 (5) Any firearm or ammunition which was surrendered by a respondent pursuant to
3 Section 6 of this Act and that remains unclaimed by the lawful owner shall be
4 disposed of in accordance with KRS 16.220.

5 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
6 READ AS FOLLOWS:

7 (1) The court shall notify the Department of Kentucky State Police no later than one
8 (1) court day after issuing, renewing, dissolving, or terminating an ex parte or
9 one (1) year extreme risk protective order under Sections 1 to 11 of this Act.

10 (2) The information required to be submitted to the Department of Kentucky State
11 Police pursuant to this section shall include identifying information about the
12 respondent and the date the order was issued, renewed, dissolved, or terminated.
13 In the case of a one (1) year order, the court shall include the date the order is set
14 to expire. The court shall also indicate whether the respondent to the one (1) year
15 extreme risk protective order was present in court to be advised of the contents of
16 the order or if the respondent failed to appear. The respondent's presence in
17 court shall constitute proof of service of notice of the terms of the order.

18 (3) Within one (1) business day of service, a law enforcement officer who serves an
19 extreme risk protective order or the clerk of the court shall cause a copy of each
20 protective order issued under Sections 1 to 11 of this Act to be electronically
21 forwarded to the appropriate agency designated for entry of orders of protection
22 into the Law Information Network of Kentucky.

23 (4) All forms, affidavits, and protective orders issued or filed pursuant to Sections 1
24 to 11 of this Act which require entry into the Law Information Network of
25 Kentucky shall be entered on forms prescribed by the Administrative Office of the
26 Courts after consultation with the Justice and Public Safety Cabinet.

27 (5) The Department of Kentucky State Police shall immediately make information

1 about an ex parte or one (1) year extreme risk protective order issued, renewed, or
2 terminated pursuant to this chapter available to the National Instant Criminal
3 Background Check System for the purposes of firearm purchaser background
4 checks.

5 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
6 READ AS FOLLOWS:

7 (1) A person who files a petition for an extreme risk protective order, knowing the
8 information in the petition to be materially false or with an intent to harass the
9 respondent, is guilty of Class A misdemeanor.

10 (2) A person who owns, purchases, possesses, receives, or has in his or her custody
11 or control a firearm or ammunition with knowledge that he or she is prohibited
12 from doing so by an extreme risk protective order is guilty of a Class A
13 misdemeanor and shall be prohibited from owning, purchasing, possessing,
14 receiving, having in his or her custody or control, or attempting to purchase or
15 receive, a firearm or ammunition for a period of five (5) years from the date of
16 conviction.

17 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
18 READ AS FOLLOWS:

19 Sections 1 to 11 of this Act shall not affect the ability of a law enforcement officer to
20 remove firearms or ammunition from any person pursuant to other lawful authority.

21 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 237 IS CREATED TO
22 READ AS FOLLOWS:

23 Sections 1 to 11 of this Act shall not be construed to impose criminal or civil liability
24 on any person who chooses not to seek an extreme risk protective order pursuant to
25 this chapter.