

HOUSE BILL No. 2198

By Representative Ballard

1-31

1 AN ACT concerning firearms; enacting the gun violence restraining order
2 act; authorizing the issuance of protective orders prohibiting the
3 acquisition and possession of firearms by certain individuals.
4

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

6 Section 1. (a) Sections 1 through 8, and amendments thereto, shall be
7 known and may be cited as the gun violence restraining order act.

8 (b) As used in the gun violence restraining order act:

9 (1) "Dating relationship" means a relationship that consists of
10 frequent, intimate associations primarily characterized by the expectation
11 of affectional involvement. "Dating relationship" does not include a casual
12 relationship or an ordinary fraternization between two individuals in a
13 business or social context.

14 (2) "Defendant" means the person against whom a gun violence
15 restraining order is requested in an action under section 2, and
16 amendments thereto.

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

20 (4) "Federal law enforcement officer" means an officer or agent
21 employed by a law enforcement agency of the United States government
22 whose primary responsibility is the enforcement of laws of the United
23 States.

24 (5) "Gun violence restraining order" means an order issued by a court
25 under section 4, and amendments thereto.

26 (6) "Plaintiff" means the individual who requests a gun violence
27 restraining order in an action under section 2, and amendments thereto.

28 (7) "Restrained individual" means the individual against whom a gun
29 restraining order has been issued and is in effect.

30 Sec. 2. (a) Any of the following individuals may file an action with
31 the district court requesting the court to enter a gun violence restraining
32 order pursuant to the gun violence restraining order act:

33 (1) The spouse of the defendant;

34 (2) a former spouse of the defendant;

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

36 (4) an individual who has or has had a dating relationship with the

1 defendant;

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

4 (6) a family member; or

5 (7) another individual who has a close relationship with the
6 defendant.

7 If the plaintiff files a complaint under this paragraph, the plaintiff shall
8 state in the complaint sufficient facts to allow the court to determine
9 whether the individual has a close relationship with the defendant.

10 (b) An individual who files an action under this section shall do so by
11 filing a summons and complaint on forms approved by the judicial
12 council. The complaint shall state facts that demonstrate that the issuance
13 of a gun violence restraining order is necessary because the defendant
14 poses a significant risk of personal injury to self or others by possessing a
15 firearm.

16 (c) If the plaintiff knows that the defendant is issued a license to carry
17 a concealed weapon and is required to carry a weapon as a condition of
18 such plaintiff's employment, the plaintiff shall state such condition of
19 employment in the complaint.

20 (d) If the plaintiff requests the court to issue an order seizing firearms
21 owned by the defendant, the plaintiff shall identify the firearms that the
22 plaintiff knows are in the possession of the defendant.

23 Sec. 3. (a) In an action under section 2, and amendments thereto, the
24 court may issue a gun violence restraining order if the court determines
25 that there is reasonable cause to believe that the defendant poses a
26 significant risk of personal injury to self or others by possessing a firearm.
27 In determining whether reasonable cause exists, the court shall consider all
28 of the following:

29 (1) Testimony, documents, or other evidence offered in support of the
30 request for the gun violence restraining order;

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

33 (3) any other facts that the court believes are relevant.

34 (b) If the plaintiff in an action filed under section 2, and amendments
35 thereto, is not an individual described in section (2)(a)(1) through (6), and
36 amendments thereto, the court shall not issue the gun violence restraining
37 order unless the court determines that the plaintiff has a close enough
38 relationship with the defendant to justify the issuance of the order.

39 (c) The court in an action under section 2, and amendments thereto,
40 may issue a gun violence restraining order without written or oral notice to
41 the defendant if the court determines that clear and convincing evidence
42 has been submitted under oath or affirmation that irreparable injury will
43 result from the delay required to effectuate notice or that the notice will

1 itself precipitate adverse action before a gun violence restraining order can
2 be issued.

3 (d) A restrained individual under an order issued under subsection (c)
4 may file a motion to modify or rescind the order and request a hearing.
5 The motion to modify or rescind the order must be filed within 14 days
6 after the order is served on the restrained individual or after the restrained
7 individual receives actual notice of the order, unless good cause is shown
8 for filing the motion after the 14 days have elapsed.

9 (e) The court shall conduct a hearing on a motion under subsection
10 (d) within 14 days after the motion is filed. If the restrained individual is
11 an individual described in section 2(d), and amendments thereto, the court
12 shall conduct a hearing on a motion under subsection (d) within five days
13 after the motion is filed.

14 Sec. 4. (a) If the court determines under section 3, and amendments
15 thereto, that a gun violence restraining order is to be issued, the court shall
16 include all of the following provisions in the order:

17 (1) That the restrained individual shall not purchase or possess a
18 firearm;

19 (2) a statement that the restrained individual may file a motion to
20 modify or rescind the order and request a hearing within 14 days after the
21 restrained individual is served with or receives actual notice of the order
22 and that motion forms and filing instructions are available from the clerk
23 of the court, if such order is issued under section 3, and amendments
24 thereto;

25 (3) a statement that violation of the order will subject the restrained
26 individual to immediate arrest and the civil and criminal contempt powers
27 of the court; and

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

30 (b) In the discretion of the court, a gun violence restraining order may
31 include an order to a law enforcement agency to seize firearms in the
32 possession of the restrained individual. An order issued under this
33 subsection shall specifically describe the firearms to be seized. The court
34 may also order that a law enforcement agency seizing firearms under this
35 subsection may seize any other firearms discovered that belong to or are in
36 the possession of the restrained individual.

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

42 Sec. 5. A court that issues a gun violence restraining order shall do all
43 of the following immediately after issuance and without requiring a proof

1 of service on the restrained individual:

2 (a) Provide a true copy of the order to the law enforcement agency
3 designated under section 4, and amendments thereto; and

4 (b) provide the plaintiff with at least two true copies of the order.

5 (c) If the restrained individual is identified in the complaint as an
6 individual described in section 2, and amendments thereto, notify the
7 individual's employer, if known, of the existence of the order.

8 Sec. 6. (a) A gun violence restraining order shall be served on the
9 restrained individual by any method. If the restrained individual has not
10 been served, a law enforcement officer or clerk of the court who knows
11 that the order exists may, at any time, serve the restrained individual with a
12 true copy of the order or advise the restrained individual of the existence
13 of the order, the specific conduct enjoined, the penalties for violating the
14 order and where the restrained individual may obtain a copy of the order.

15 (b) The person who serves a gun violence restraining order or gives
16 oral notice of the order shall file proof of service or proof of oral notice
17 with the clerk of the court that issued the order.

18 (c) The clerk of the court shall immediately notify the law
19 enforcement agency designated under section 4, and amendments thereto,
20 if either of the following occurs:

21 (1) The clerk of the court receives proof that the restrained individual
22 has been served; or

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

24 Sec. 7. (a) If a gun violence restraining order has not been served on
25 the restrained individual, a law enforcement agency or officer responding
26 to a call alleging a violation of the order shall serve the restrained
27 individual with a true copy of the order or advise the restrained individual
28 of the existence of the order, the specific conduct enjoined, the penalties
29 for violating the order and where the restrained individual may obtain a
30 copy of the order.

31 (b) Except as provided in subsection (c), the law enforcement officer
32 shall enforce the order and immediately enter or cause to be entered into
33 the law enforcement information network that the restrained individual has
34 actual notice of the order. The law enforcement officer also shall comply
35 with section 6, and amendments thereto.

36 (c) The law enforcement officer shall give the restrained individual an
37 opportunity to comply with the gun violence restraining order before the
38 law enforcement officer makes a custodial arrest for violation of the order.
39 The failure by the restrained individual to immediately comply with the
40 order is grounds for an immediate custodial arrest.

41 (d) The law enforcement agency ordered to seize a firearm under
42 section 4, and amendments thereto, may seize any firearm identified in the
43 order from any place or from any individual who has possession of such

1 firearms.

2 (e) The law enforcement agency may also seize any other firearms
3 discovered that are owned by or in the possession of the restrained
4 individual if so provided in the gun violence restraining order, or if
5 allowed under other applicable law.

6 (f) A law enforcement officer who seizes any firearm under this
7 section shall give a receipt for the firearm to the individual from whom it
8 was taken, specifying the firearm in detail. If no individual is present at the
9 time of seizure, the officer shall leave the receipt in the place where such
10 officer found such firearms.

11 (g) The law enforcement agency that seizes a firearm under this
12 section shall retain the firearm subject to an order of the court that issued
13 the gun violence restraining order under which the firearm was seized. In
14 addition to any other order that the court determines is appropriate, the
15 court shall order that the firearm be returned to the restrained individual
16 when the restrained individual is no longer prohibited from owning a
17 firearm or that the firearm be transferred to a federally licensed firearm
18 dealer if the restrained individual sells or transfers ownership of the
19 firearm to such dealer.

20 (h) If the location to be searched during the seizure of a firearm under
21 this section is jointly occupied by multiple individuals, and a firearm is
22 located during the search, and it is determined that the firearm is owned by
23 an individual other than the restrained individual, the law enforcement
24 agency shall not seize the firearm if all of the following conditions are
25 satisfied:

26 (1) The firearm is stored so that the restrained individual does not
27 have access to or control of the firearm; and

28 (2) there is no evidence of unlawful possession of the firearm by the
29 owner.

30 (i) If the location to be searched during the seizure of a firearm under
31 this section is jointly occupied by multiple individuals, and a gun safe is
32 located at the location, and it is determined that the gun safe is owned by
33 an individual other than the restrained individual and a valid search
34 warrant has not been obtained, the law enforcement agency shall not
35 search the gun safe except in the owner's presence or with the owner's
36 consent.

37 (j) If any individual other than the restrained individual claims title to
38 a firearm seized under this section, the firearm shall be returned to the
39 claimant if the court determines that the claimant is the lawful owner.

40 Sec. 8. (a) The plaintiff may move the court to issue, or the court on
41 its own motion may issue, one or more extended gun violence restraining
42 orders, each effective for up to one year after the expiration of the
43 preceding order. The court shall only issue an extended order if there is

1 probable cause to believe that the restrained individual continues to pose a
2 significant risk of personal injury to self or others by possessing a firearm.
3 The plaintiff or the court, as applicable, shall give the restrained individual
4 written notice of a hearing on a motion to extend the order.

5 (b) An individual who refuses or fails to comply with a gun violence
6 restraining order is subject to the criminal contempt powers of the court. A
7 plaintiff who knowingly makes a false statement to the court in the
8 complaint or in support of the complaint is subject to the contempt powers
9 of the court.

10 Sec. 9. This act shall take effect and be in force from and after its
11 publication in the Kansas register.