

**SENATE BILL No. 183**

By Committee on Judiciary

2-14

1 AN ACT concerning firearms; relating to protection orders; enacting the  
2 extreme risk protective order act.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Sections 1 through 13, and amendments thereto, shall  
6 be known and may be cited as the extreme risk protective order act.

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

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

10 (2) "Ex parte extreme risk protective order" means an order issued by  
11 a court pursuant to section 3, and amendments thereto, prohibiting the  
12 defendant from having in such person's custody or control, owning,  
13 purchasing, possessing or receiving any firearms or ammunition until the  
14 court-scheduled hearing for an extreme risk protective order.

15 (3) "Extreme risk protective order" means an order issued by a court  
16 pursuant to section 3 or 4, and amendments thereto, prohibiting the  
17 defendant from having in such person's custody or control, owning,  
18 purchasing, possessing or receiving any firearms or ammunition for a  
19 period of up to one year.

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

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

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

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

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

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

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

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

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

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

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

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

43 (d) In determining whether grounds for an ex parte extreme risk

1 protective order exist, the court shall consider all relevant evidence  
2 presented by the plaintiff, and may also consider other relevant evidence,  
3 including, but not limited to, evidence of facts relating to the defendant's:

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

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

8 (3) violation of any protective order included in K.S.A. 2018 Supp.  
9 21-5924, and amendments thereto;

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

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

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

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

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

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

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

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

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

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

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

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

43 (i) In accordance with section 2(e), and amendments thereto, the court

1 shall schedule a hearing within 14 days of the issuance of an ex parte  
2 extreme risk protective order to determine if an extreme risk protective  
3 order shall be issued. A defendant may seek an extension of time before  
4 the hearing. The court shall dissolve any ex parte extreme risk protective  
5 order in effect against the defendant when the court holds the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (f) If the defendant fails to appear at the hearing, an extreme risk

1 protective order issued pursuant to this section shall be personally served  
2 on the defendant by a law enforcement officer, or if personal service by a  
3 law enforcement officer is not possible, in accordance with K.S.A. 60-301  
4 et seq., and amendments thereto.

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

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

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

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

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

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

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

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

40 (1) A court may, after notice and a hearing, renew an extreme risk  
41 protective order issued under section 4, and amendments thereto, if the  
42 court finds by a preponderance of the evidence that the defendant  
43 continues to pose a significant danger of causing personal injury to self or

1 others by having in such person's custody or control, owning, purchasing,  
2 possessing or receiving a firearm or ammunition.

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

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

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

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

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

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

1 and the seizure of any firearms or ammunition discovered pursuant to such  
2 search.

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

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

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

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

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

37 (e) Any firearm or ammunition that was surrendered by a defendant  
38 pursuant to section 7, and amendments thereto, and that remains  
39 unclaimed by the lawful owner for 60 days after termination of an extreme  
40 risk protective order shall be disposed of in accordance with K.S.A. 22-  
41 2512, and amendments thereto.

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

1 extreme risk protective order.

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

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

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

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

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

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

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

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

43 Sec. 13. Except as otherwise provided in this act, any proceedings



1 under this act shall be in accordance with chapter 60 of the Kansas Statutes  
2 Annotated, and amendments thereto, and shall be in addition to any other  
3 available civil or criminal remedies.

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