

HOUSE BILL 961

By Turner

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 17, Part 13, relative to security temporary
orders of protection.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Security Temporary Order of Protection Act."

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 17, Part 13, is amended by adding the following language as new sections:

39-17-1365.

For purposes of this section and §§ 39-17-1366 - 39-17-1370:

(1) "Ammunition" means cartridge cases, primers, bullets, or propellant powder designed for use in any firearm;

(2) "Court" means any court with jurisdiction to issue an order of protection pursuant to § 36-3-601, or order of an involuntary mental health commitment pursuant to § 33-3-603;

(3) "Security temporary order of protection" means an order, in writing, signed by the court, prohibiting and enjoining a named person from having in the person's custody or control, owning, purchasing, possessing, or receiving, any firearm or ammunition;

(4) "Law enforcement agency" means a governmental unit of one (1) or more persons employed full-time or part-time by the state or federal government, or political subdivision of the state or federal government, for the purpose of preventing and detecting crime and enforcing laws or local ordinances, and the

employees of which are authorized to make arrests for crimes while acting within the scope of their authority; and

(5) "Restrained person" means a person who is the subject of a security temporary order of protection.

39-17-1366.

(a) The administrative office of the courts shall:

(1) Prescribe the form of any petitions, orders, or other documents necessary for a security temporary order of protection; and

(2) Promulgate any rules necessary to implement this section, § 39-17-1365, and §§ 39-17-1367 - 39-17-1370.

(b) A petition for a security temporary order of protection shall describe the number, types, and locations of any firearm and ammunition presently believed by the petitioner to be possessed or controlled by the subject of the petition.

(c) Nothing in this section shall require a law enforcement agency or a law enforcement officer to seek a security temporary order of protection in any case, including, but not limited to, a case in which the agency or officer concludes, after investigation, that the criteria for issuance of a security temporary order of protection, as provided in this section and §§ 39-17-1367 - 39-17-1370, are not satisfied.

(d) Prior to a hearing on the issuance, renewal, or termination of an order under § 39-17-1368 or § 39-17-1369, the court shall ensure that a national crime information center (NCIC) criminal history background check is conducted. The results of the background check shall remain confidential.

(e)

(1) The court shall notify the Tennessee bureau of investigation (TBI) when a security temporary order of protection has been issued or renewed under §§ 39-17-1367 - 39-17-1369 no later than one (1) business day after issuing or renewing the order.

(2) The court shall notify the TBI when a security temporary order of protection has been dissolved or terminated under §§ 39-17-1367 - 39-17-1369 no later than five (5) business days after dissolving or terminating the order. Upon receipt of either a notice of dissolution or a notice of termination of a security temporary order of protection, the TBI shall, within fifteen (15) days, document the updated status of any order issued under §§ 39-17-1367 - 39-17-1369, and enter the result into any affected database.

(3) The notices required to be submitted to the TBI pursuant to this subsection (e) shall be submitted in an electronic format, in a manner prescribed by the TBI.

(4) When notifying the TBI pursuant to subdivision (e)(1) or (e)(2), the court shall indicate in the notice whether the person subject to the security temporary order of protection was present in court to be informed of the contents of the order or if the person failed to appear. The person's presence in court shall constitute proof of service of notice of the terms of the order.

(5)

(A) Within one (1) business day of service, a law enforcement officer who served a security temporary order of protection shall enter the proof of service directly into the NCIC as provided in § 36-3-609(e), including the officer's name and law enforcement agency, and shall transmit the original proof of service form to the issuing court.

(B) Within one (1) business day of receipt of proof of service by a person other than a law enforcement officer, the clerk of the court shall submit the proof of service of a security temporary order of protection to the appropriate law enforcement agency that served the security

temporary order of protection, who shall submit it to the NCIC as provided in § 36-3-609(e), including the name of the person who served the order. If the court is unable to provide this notification to the NCIC by electronic transmission, the court shall, within one (1) business day of receipt, transmit a copy of the proof of service to a local law enforcement agency. The local law enforcement agency shall enter the proof of service directly into the NCIC within one (1) business day of receipt from the court.

(f)

(1) A person subject to a security temporary order of protection shall not have in the person's custody or control, own, purchase, possess, or receive any firearms or ammunition while that order is in effect.

(2) Upon issuance of a security temporary order of protection, the court shall order the restrained person to either surrender all firearms and ammunition in the restrained person's custody or control, or which the restrained person possesses or owns, to the law enforcement agency that served the security temporary order of protection in a safe manner, or sell all such firearms and ammunition to a licensed gun dealer.

(3)

(A)

(i) If a law enforcement officer serving a security temporary order of protection that indicates the restrained person possesses any firearms or ammunition requests that all firearms and ammunition be immediately surrendered to the control of the officer, the restrained person shall immediately comply.

(ii) If no request is made by the law enforcement officer, the surrender shall occur by the restrained person:

(a) Surrendering to the law enforcement agency that served the security temporary order of protection all firearms and ammunition within twenty-four (24) hours of being served with the order; or

(b) Selling all firearms and ammunition to a licensed gun dealer within twenty-four (24) hours of being served with the order.

(B) The law enforcement officer or licensed gun dealer taking possession of any firearm or ammunition pursuant to this subdivision (f)(3) shall issue a receipt to the person against whom the order was entered at the time of surrender or sale. Within forty-eight (48) hours after being served with the order, the person against whom the order was issued shall:

(i) File with the court that issued the security temporary order of protection the original receipt showing all firearms and ammunition have been surrendered to a local law enforcement agency or sold to a licensed gun dealer. Failure to timely file a receipt shall constitute a violation of the order of protection; and

(ii) File a copy of the receipt issued by the officer or licensed gun dealer with the law enforcement agency that served the security temporary order of protection. Failure to timely file a copy of the receipt shall constitute a violation of the order of protection.

(4)

(A) Any firearm or ammunition surrendered to a law enforcement officer or law enforcement agency pursuant to this section shall be retained by the law enforcement agency until the expiration of any security temporary order of protection that has been issued against the restrained person. Upon expiration of the order, any firearm or ammunition shall be returned to the restrained person. Firearms or ammunition that are not claimed are subject to the requirements of § 39-17-1317(g)(2).

(B) A restrained person who owns any firearm or ammunition that is in the custody of a law enforcement agency pursuant to this section and who does not wish to have the firearm or ammunition returned is entitled to sell or transfer title of any firearm or ammunition to a licensed gun dealer; provided, that the firearm or ammunition is otherwise legal to own or possess and the restrained person otherwise has right to title of the firearm or ammunition.

(C) The local law enforcement agency holding the firearm or ammunition pursuant to a security temporary order of protection shall be liable in damages to the owner of the property in the event of damage or destruction caused by the law enforcement agency.

(5) If a person other than the restrained person claims title to any firearm or ammunition surrendered pursuant to this section, and the person making the claim 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 the lawful owner.

39-17-1367.

(a)

(1) A temporary emergency security temporary order of protection may be issued on an ex parte basis only if a law enforcement officer asserts, and a judge or the court finds, that there is reasonable cause to believe:

(A) The subject of the petition poses an immediate and present danger of causing personal injury to the subject or to another by having in the subject's custody or control, owning, purchasing, possessing, or receiving a firearm; and

(B) A temporary emergency security temporary order of protection is necessary to prevent personal injury to the subject or to another because less-restrictive alternatives either have been tried and found to be ineffective, or have been determined to be inadequate or inappropriate for the circumstances of the subject.

(2) A temporary emergency security temporary order of protection issued pursuant to this section shall prohibit the subject of the petition from having in the subject's custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition, and shall expire twenty-one (21) days from the date the order is issued.

(b) A temporary emergency security temporary order of protection is valid only if it is issued by a judge or court after making the findings required by subsection (a) and pursuant to a specific request by a law enforcement officer.

(c) A temporary emergency security temporary order of protection issued under this section shall include:

(1) A statement of the grounds supporting the issuance of the order;

(2) The date and time the order expires;

(3) The address of the state trial court for the county in which the restrained party resides; and

(4) The following statement:

"To the restrained person: This order will last until the date and time noted above. You are required to surrender all firearms and ammunition that you own or possess in accordance with § 39-17-1366(f) and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, a firearm or ammunition, while this order is in effect. However, a more permanent security temporary order of protection may be obtained from the court. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order."

(d) A law enforcement officer who requests a temporary emergency security temporary order of protection shall:

(1) If the order is obtained orally, memorialize the order of the court on the form approved by the administrative office of the courts;

(2) Serve the order on the restrained person, if the restrained person can reasonably be located;

(3) File a copy of the order with the court as soon as practicable after issuance; and

(4) Have the order entered into the computer database system for protective and restraining orders maintained by the NCIC.

(e) The presiding judge of the court of each county shall designate at least one (1) judge, commissioner, or referee who shall be reasonably available to issue temporary emergency security temporary orders of protection when the court is not in session.

39-17-1368.

(a)

(1) A law enforcement officer may file a petition requesting that the court issue an ex parte security temporary order of protection enjoining the person from having in the person's custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition.

(2) A court may issue an ex parte security temporary order of protection if the petition, supported by an affidavit made in writing and signed by the petitioner under oath, or an oral statement taken pursuant to subdivision (b)(1)(A), and any additional information provided to the court shows that there is a substantial likelihood that:

(A) The subject of the petition poses a significant danger, in the near future, of personal injury to the subject or to another by having in the subject's custody or control, owning, purchasing, possessing, or receiving a firearm as determined by considering the factors listed in subdivision (b)(2); and

(B) An ex parte security temporary order of protection is necessary to prevent personal injury to the subject or to another because less-restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject.

(3) An affidavit supporting a petition for the issuance of an ex parte security temporary order of protection shall set forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist.

(4) An ex parte order under this section shall be issued or denied 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 in sufficient time for the order to be filed that day with the clerk of the court.

(b)

(1) Before issuing an ex parte security temporary order of protection, the court may:

(A) Examine, on oath, the petitioner and any witness the petitioner may produce; or

(B) Require the petitioner and any witness to submit a written affidavit signed under oath.

(2)

(A) In determining whether grounds for an ex parte security temporary order of protection exist, the court shall consider all evidence of the following:

(i) A recent threat of violence or act of violence by the subject of the petition directed toward another;

(ii) A recent threat of violence or act of violence by the subject of the petition directed toward the subject;

(iii) A violation of an ex parte order of protection issued pursuant to § 36-3-605 at the time the court is considering the petition;

(iv) A recent violation of an unexpired restraining order issued pursuant to § 20-14-102, § 20-14-104, § 36-3-606, § 36-3-612, § 37-1-152, § 39-13-113, or § 39-17-905;

(v) A conviction for any offense that prohibits the person from purchasing or possessing a firearm; and

(vi) A pattern of violent acts or violent threats within the past twelve (12) months, including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward the subject or to another.

(B) In determining whether grounds for an ex parte security temporary order of protection exist, the court may consider any other evidence of an increased risk for violence, including, but not limited to, evidence of the following:

(i) The unlawful and reckless use, display, or brandishing of a firearm by the subject of the petition;

(ii) The history of use, attempted use, or threatened use of physical force by the subject of the petition against another person;

(iii) Any prior arrest of the subject of the petition for a felony offense;

(iv) Any history of a violation by the subject of the petition of an ex parte order of protection issued pursuant to § 36-3-605;

(v) Any history of a violation by the subject of the petition of a protective or restraining order issued pursuant to § 20-14-102, § 20-14-104, § 36-3-606, § 36-3-612, § 37-1-152, § 39-13-113, or § 39-17-905;

(vi) Documentary evidence, including, but not limited to, police reports and records of convictions, of either recent criminal offenses by the subject of the petition that involve controlled substances or alcohol or ongoing abuse of controlled substances or alcohol by the subject of the petition; and

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

(C) For the purposes of this subdivision (b)(2), "recent" means within the six (6) months prior to the date the petition was filed.

(3) If the court determines that grounds to issue an ex parte security temporary order of protection exist, the court shall issue an ex parte security temporary order of protection that prohibits the subject of the petition from having in the subject's custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition, and expires no later than twenty-one (21) days from the date of the order.

(c)

(1) An ex parte security temporary order of protection issued under this section shall include:

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

(B) The date and time the order expires;

(C) The address of the court in which any responsive pleading should be filed;

(D) The date and time of the scheduled hearing; and

(E) The following statement:

"To the restrained person: This order is valid until the expiration date and time noted above. You are required to surrender all firearms and ammunition that you own or possess in accordance with T.C.A. § 39-17-1366(f) and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, a firearm or ammunition, while this order is in effect. A hearing will be held on the date and at the time noted above to determine if a more permanent security temporary order of protection should be issued. Failure to appear at that hearing may result in a court making an order against you that is valid for one (1) year. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order."

(2)

(A) An ex parte security temporary order of protection shall be personally served on the restrained person by a law enforcement officer, or any person who is at least eighteen (18) years of age and not a party

to the action, as provided in Tennessee Rules of Civil Procedure 4.01(2), if the restrained person can reasonably be located.

(B) When serving an ex parte security temporary order of protection, a law enforcement officer shall inform the restrained person of the hearing scheduled pursuant to subsection (d).

(d) Within twenty-one (21) days after the date on the ex parte security temporary order of protection, the court that issued the order or another court in the same jurisdiction shall hold a hearing pursuant to § 39-17-1369(b) to determine if a security temporary order of protection should be issued under § 39-17-1369.

39-17-1369.

(a) A law enforcement officer may request that a court, after notice and a hearing, issue a security temporary order of protection enjoining the person from having in the person's custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition for a period of one (1) year.

(b)

(1) In determining whether to issue a security temporary order of protection under this section, the court shall consider evidence of the facts identified in § 39-17-1368(b)(2)(A) and may consider any other evidence of an increased risk for violence, including, but not limited to, evidence of the facts identified in § 39-17-1368(b)(2)(B).

(2) At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that:

(A) The subject of the petition, or a person subject to an ex parte security temporary order of protection, as applicable, poses a significant danger of personal injury to the subject or to another by having in the

subject's custody or control, owning, purchasing, possessing, or receiving a firearm or ammunition; and

(B) A security temporary order of protection is necessary to prevent personal injury to the subject of the petition, or to the person subject to an ex parte security temporary order of protection, as applicable, or another because less-restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition, or the person subject to an ex parte security temporary order of protection, as applicable.

(3)

(A) If the court finds that there is clear and convincing evidence to issue a security temporary order of protection, the court shall issue a security temporary order of protection that prohibits the subject of the petition from having in the subject's custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or ammunition.

(B) If the court finds that there is not clear and convincing evidence to support the issuance of a security temporary order of protection, the court shall dissolve any temporary emergency or ex parte security temporary order of protection then in effect.

(4) The security temporary order of protection issued under this section shall have a duration of one (1) year, subject to termination by further order of the court at a hearing held pursuant to subsection (d) and renewal by further order of the court pursuant to subsection (e).

(c)

(1) A security temporary order of protection issued pursuant to this section shall include the following:

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

(B) The date and time the order expires;

(C) The address of the court for the county in which the restrained party resides; and

(D) The following statement:

"To the restrained person: This order will last until the date and time noted above. If you have not done so already, you must surrender all firearms and ammunition that you own or possess in accordance with § 39-17-1366(f). You may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, a firearm or ammunition, while this order is in effect. Pursuant to § 39-17-1369(d), you have the right to request one (1) hearing to terminate this order at any time during its effective period. You may seek the advice of an attorney as to any matter connected with the order."

(2) When the court issues a security temporary order of protection under this section, the court shall inform the restrained person that the person is entitled to one (1) hearing to request a termination of the order, pursuant to subsection (d), and shall provide the restrained person with a form to request a hearing.

(d)

(1) A person subject to a security temporary order of protection issued under this section may submit one (1) written request at any time during the effective period of the order for a hearing to terminate the order.

(2) If the court finds after the hearing that there is no longer clear and convincing evidence to believe that the facts established in subdivision (b)(2) are true, the court shall terminate the order.

(e)

(1) A court may, after notice and a hearing, renew a security temporary order of protection issued under this section if the petitioner proves, by clear and convincing evidence, that the facts of subdivision (b)(2) continue to be true.

(2) In determining whether to renew a security temporary order of protection issued under this section, the court shall consider the facts and evidence of § 39-13-1368.

(3) At the hearing, the petitioner shall have the burden of proving, by clear and convincing evidence, that the facts of subdivision (b)(2) are true.

(4) If the renewal petition is supported by clear and convincing evidence, the court shall renew the security temporary order of protection issued under this section.

(5) The renewal of a security temporary order of protection issued pursuant to this section shall have a duration of one (1) year, subject to termination by further order of the court at a hearing held pursuant to this subsection (e) and further renewal by order of the court pursuant to this section.

(6) A security temporary order of protection renewed pursuant to this section shall include the information identified in subdivision (c)(1).

(f) Any hearing held pursuant to this section may be continued upon a showing of good cause. Any existing order issued pursuant to this subsection (e) shall remain in full force and effect during the period of continuance.

(g) If a person subject to a security temporary order of protection issued or renewed pursuant to this section was not present in court at the time the order was issued or renewed, the security temporary order of protection shall be personally served on the restrained person by a law enforcement officer, or any person who is at least eighteen (18) years of age and not a party to the action, as provided in Tennessee Rules of Civil Procedure 4.01(2), if the restrained person can reasonably be located.

39-17-1370.

(a) A person commits a Class A misdemeanor who files a petition for an ex parte security temporary order of protection pursuant to § 39-17-1368, or a security temporary order of protection issued after notice and a hearing pursuant to § 39-17-1369, knowing the information in the petition to be false or with the intent to harass.

(b)

(1) It is an offense for a person to own or possess a firearm or ammunition with knowledge that the person is prohibited from doing so by a temporary emergency security temporary order of protection issued pursuant to § 39-17-1367, an ex parte security temporary order of protection issued pursuant to § 39-17-1368, or a security temporary order of protection issued after notice and a hearing pursuant to § 39-17-1369.

(2) A violation of subdivision (b)(1) is a Class A misdemeanor, punishable by fine, imprisonment, and a five-year prohibition on having in the person's custody or control, owning, purchasing, possessing, receiving, or attempting to purchase or receive, a firearm or ammunition. The five-year

prohibition shall commence upon the expiration of the existing temporary emergency security temporary order of protection, the ex parte security temporary order of protection, or the security temporary order of protection.

SECTION 3. This act shall take effect July 1, 2017, the public welfare requiring it.