

House File 2456

H-8117

1 Amend House File 2456 as follows:

2 1. Page 1, before line 1 by inserting:

3 <DIVISION I
4 BEHAVIORAL HEALTH — DISCLOSURES — MENTAL HEALTH AND
5 DISABILITY SERVICES>

6 2. Page 17, after line 26 by inserting:

7 <DIVISION ____
8 EXTREME RISK PROTECTIVE ORDER — FIREARMS

9 Sec. _____. Section 664A.1, subsection 2, Code 2018, is
10 amended to read as follows:

11 2. a. *“Protective order”* means a protective order issued
12 pursuant to [chapter 232](#), a court order or court-approved
13 consent agreement entered pursuant to [this chapter](#) or chapter
14 235F, a court order or court-approved consent agreement entered
15 pursuant to [chapter 236](#) or [236A](#), including a valid foreign
16 protective order under [section 236.19, subsection 3](#), or section
17 236A.19, subsection 3, a temporary or permanent protective
18 order or order to vacate the homestead under [chapter 598](#), or an
19 order that establishes conditions of release or is a protective
20 order or sentencing order in a criminal prosecution arising
21 from a domestic abuse assault under [section 708.2A](#), or a civil
22 injunction issued pursuant to [section 915.22](#).

23 b. *“Protective order”* does not include a protective order
24 issued pursuant to chapter 664B.

25 Sec. _____. NEW SECTION. 664B.1 Definitions.

26 As used in this chapter unless the context otherwise
27 requires:

28 1. *“Affidavit”* means a written declaration or statement of
29 fact made under oath, or legally sufficient affirmation, before
30 any person authorized to administer oaths within or without the
31 state.

32 2. *“Family member”* means a spouse, person cohabiting, a
33 parent, or other person related by consanguinity or affinity.

34 3. *“Firearm”* includes ammunition and any offensive weapon.

35 4. *“Intimate relationship”* means the same as defined in

1 section 235E.1.

2 5. "*Plaintiff*" means a family member, a person with whom the
3 respondent is having an intimate relationship with, or a peace
4 officer who files a petition under this chapter.

5 6. "*Possession*" includes ownership, custody, or control.

6 7. "*Respondent*" means a person against whom a protective
7 order is filed under this chapter.

8 Sec. ____ . NEW SECTION. **664B.2 Extreme risk protective order**
9 — **petition.**

10 1. A plaintiff may file a petition in the district court
11 requesting an extreme risk protective order. Venue shall lie
12 in the county where either party resides. The petition shall
13 contain all of the following:

14 a. Name of the plaintiff and the name and address of the
15 plaintiff's attorney, if any. If the plaintiff is proceeding
16 pro se, the petition shall state a mailing address for the
17 plaintiff. A mailing address may be provided by the plaintiff
18 pursuant to section 664B.6.

19 b. A statement of facts alleging the respondent presents
20 a significant danger to the respondent's self or others by
21 possessing, shipping, transporting, or receiving firearms
22 accompanied by an affidavit stating the specific statements,
23 actions, or facts that give rise to the reasons the respondent
24 presents a significant danger to the respondent's self or
25 others by possessing, shipping, transporting, or receiving
26 firearms.

27 c. The location, type, and number of firearms the plaintiff
28 believes are possessed by the respondent.

29 d. Whether the respondent is subject to a current protective
30 order or a no-contact order.

31 e. Whether any legal proceeding is pending between the
32 plaintiff and respondent, and if so, the nature of the legal
33 proceeding.

34 f. Desired relief, including a request for temporary or
35 emergency orders.

1 2. The filing fee and court costs for an extreme risk
2 protective order shall be waived for the plaintiff.

3 3. The clerk of the district court, the sheriff of any
4 county in this state, or any peace officer, or corrections
5 officer shall perform their duties relating to service of
6 process without charge to the plaintiff. When an order for
7 an extreme risk protective is entered by the court, the court
8 may direct the respondent to pay to the clerk of court the
9 fees for the filing of the petition and reasonable costs of
10 service of process if the court determines the respondent has
11 the ability to pay the plaintiff's fees and costs. In lieu of
12 personal service of a protective order issued pursuant to this
13 section, the sheriff of any county in this state, and other law
14 enforcement and corrections officers may serve a respondent
15 with a short-form notification pursuant to section 664B.3.

16 Sec. _____. NEW SECTION. **664B.3 Short-form notification.**

17 1. In lieu of personal service of an extreme risk protective
18 order or an emergency extreme risk protective order on a
19 respondent whose firearms are to be surrendered by such an
20 order, a sheriff of any county in this state or any peace
21 officer or corrections officer in this state may serve the
22 respondent with a short-form notification pursuant to this
23 section to effectuate service of an unserved order.

24 2. Service of a short-form notification under this section
25 shall be allowed during traffic stops and other contacts with
26 the respondent by a sheriff, peace officer, or corrections
27 officer in this state in the course of performing official
28 duties. The respondent may be detained for a reasonable period
29 of time to complete the short-form notification process.

30 3. When the short-form notification process is complete,
31 the sheriff, peace officer, or corrections officer serving the
32 notification shall file a copy of the notification with the
33 clerk of the district court. The filing shall indicate the
34 date and time the notification was served on the respondent.

35 4. The short-form notification shall be on a form

1 prescribed by the state court administrator. The state court
2 administrator shall prescribe rules relating to the content
3 and distribution of the form to appropriate law enforcement
4 agencies in this state. The form shall include but not be
5 limited to all of the following statements:

6 a. The respondent shall immediately surrender all firearms
7 in the respondent's possession and any permit to carry weapons
8 or permit to acquire in the possession of the respondent.

9 b. The respondent is responsible for obtaining a full copy
10 of the extreme risk protective order or emergency extreme risk
11 protective order from the county sheriff of the county in which
12 the order was entered or from the clerk of the district court.

13 c. The terms and conditions of the extreme risk protective
14 order or emergency extreme risk protective order are
15 enforceable, and the respondent is subject to arrest for
16 violating the protective order.

17 Sec. _____. NEW SECTION. **664B.4 Plaintiffs proceeding pro se**
18 **— provision of forms and assistance.**

19 1. The department of justice shall prescribe standard forms
20 to be used by a plaintiff proceeding pro se when filing a
21 petition under this chapter. The standard forms shall include
22 language in fourteen point boldface type. Standard forms
23 prescribed by the department shall be the exclusive forms used
24 by a plaintiff proceeding pro se, and may be used by other
25 plaintiffs. The department shall distribute the forms to the
26 clerks of the district courts.

27 2. The clerk of the district court shall furnish the
28 required forms to plaintiffs seeking an extreme risk protective
29 order through pro se proceedings pursuant to this chapter.

30 Sec. _____. NEW SECTION. **664B.5 Assistance by county**
31 **attorney.**

32 A county attorney's office may provide assistance to a
33 plaintiff wishing to initiate proceedings pursuant to this
34 chapter or to a plaintiff at any stage of a proceeding under
35 this chapter, if the plaintiff does not have sufficient funds

1 to pay for legal assistance and if the assistance does not
2 create a conflict of interest for the county attorney's office.
3 The assistance provided may include, but is not limited to,
4 assistance in obtaining or completing forms, filing a petition
5 or other necessary pleading, presenting evidence to the court,
6 and enforcing the orders of the court entered pursuant to this
7 chapter. Providing assistance pursuant to this section shall
8 not be considered the private practice of law for the purposes
9 of section 331.752.

10 Sec. _____. NEW SECTION. **664B.6 Plaintiff's address —**
11 **confidentiality of records.**

12 1. A plaintiff may use any of the following addresses as a
13 mailing address for purposes of filing a petition under this
14 chapter:

15 a. The mailing address of a shelter or other agency.

16 b. A public or private post office box.

17 c. Any other mailing address, with the permission of the
18 resident of that address.

19 2. A plaintiff shall report any change of address, whether
20 designated according to subsection 1 or otherwise, to the clerk
21 of the district court no more than five days after the previous
22 address on record becomes invalid.

23 3. The entire file or a portion of the file under this
24 chapter shall be sealed by the clerk of the district court as
25 ordered by the court to protect the privacy interest or safety
26 of any person.

27 4. Notwithstanding subsection 3, court orders shall remain
28 public records, although the court may order that address and
29 location information be redacted from the public records.

30 Sec. _____. NEW SECTION. **664B.7 Hearing.**

31 1. Not less than five and not more than fifteen days after
32 commencing a proceeding and upon notice to the other party,
33 a hearing shall be held at which the plaintiff must prove by
34 a preponderance of the evidence that the respondent presents
35 a significant danger to the respondent's self or others by

1 possessing, shipping, transporting, or receiving firearms.

2 2. Upon hearing, if the court finds by a preponderance of
3 the evidence that the respondent poses a significant danger
4 to the respondent's self or others by possessing, shipping,
5 transporting, or receiving firearms, the court shall issue an
6 extreme risk protective order for a period of one year.

7 3. In determining whether grounds for an extreme risk
8 protective order exist, the court may consider any relevant
9 evidence including but not limited to the following:

10 a. A recent act or threat of violence by the respondent
11 against the respondent's self or others, and whether such
12 violence or threat involves a firearm.

13 b. A pattern of acts or threats of violence against the
14 respondent's self or others within the preceding twelve months
15 of the filing of the petition.

16 c. Any serious mental impairment of the respondent.

17 d. Any violation of a no-contact order issued for violations
18 or alleged violations of sections 708.2A, 708.7, 708.11, 709.2,
19 709.3, and 709.4, and any other public offense for which there
20 is a victim.

21 e. Any violation of a protective order issued in a civil
22 proceeding under chapter 232, 235F, 236, 236A, 598, or 915.

23 f. The issuance of a previous extreme risk protective order
24 against the respondent under this chapter.

25 g. A violation of a previous extreme risk protective order
26 issued against the respondent under this chapter.

27 h. A conviction of the respondent for a crime that
28 constitutes domestic abuse assault in violation of section
29 708.2A.

30 i. The possession of or access to a firearm, or the intent
31 to possess a firearm by the respondent.

32 j. The unlawful or reckless use, display, or brandishing of
33 a firearm by the respondent.

34 k. Any history of use, attempted use, or threatened use of
35 physical force by the respondent against another person, or the

1 respondent's history of stalking or harassing another person.

2 1. Any prior arrest of the respondent for a felony offense
3 or violent crime.

4 m. Evidence of abuse of a controlled substance or alcohol
5 by the respondent.

6 n. Evidence of recent acquisition of a firearm by the
7 respondent.

8 4. The court may:

9 a. Examine under oath the plaintiff, the respondent, and
10 any witnesses that the plaintiff or respondent produces, or
11 in lieu of examination, consider affidavits of the plaintiff,
12 the respondent, or any witnesses the plaintiff or respondent
13 produces.

14 b. Ensure that a reasonable search has been conducted for
15 criminal history records relating to the respondent.

16 5. During the hearing, the court may order a substance abuse
17 evaluation.

18 6. An extreme risk protective order shall include all of the
19 following:

20 a. A statement of the grounds supporting the issuance of the
21 order.

22 b. The date and time the order was issued.

23 c. The date and time the order expires.

24 d. Whether a substance abuse evaluation is required.

25 e. Whether a responsive pleading may be filed.

26 f. A description of the firearms to be surrendered.

27 g. An extreme risk protective order shall contain the
28 following statement:

29 To the subject of this protective order: This order remains
30 effective until the date and time noted above. If you have not
31 done so already, you must surrender to the (insert the name of
32 a local law enforcement agency with jurisdiction) all firearms
33 in your possession, custody, or control and surrender any
34 permit to carry weapons or permit to acquire in your possession
35 to such agency. You shall not have in your possession a

1 firearm, or ship, transport, or receive, or attempt to ship,
2 transport, or receive such a firearm while this order is in
3 effect. You have the right to request one hearing to terminate
4 this order during each twelve-month period that this order is
5 in effect, starting from the date of this order and continuing
6 through any extension of the order. If the order requires
7 a substance abuse evaluation, you must first obtain such
8 evaluation and disclose the results of the evaluation to the
9 court prior to requesting a hearing.

10 7. If a hearing is continued, the court may make or extend
11 any order issued under subsection 2 that it deems necessary.

12 8. Upon the application of a party, the court shall issue
13 subpoenas requiring attendance and testimony of witnesses and
14 production of papers.

15 9. The court shall advise the respondent of a right to be
16 represented by counsel of the respondent's choosing and to have
17 a continuance to secure counsel.

18 10. If applicable, the court shall determine whether the
19 respondent has had sufficient opportunity to surrender the
20 respondent's firearms after service of an emergency extreme
21 risk protective order issued under section 664B.8.

22 11. Hearings shall be recorded.

23 Sec. ____ . NEW SECTION. **664B.8 Emergency extreme risk**
24 **protective order.**

25 1. A plaintiff may request that an emergency extreme risk
26 protective order be issued before a hearing for an extreme
27 risk protective order under section 664B.7, without notice
28 to the respondent, by including in the petition detailed
29 allegations based on personal knowledge that the respondent
30 poses a significant danger to the respondent's self or others,
31 in the near future, by possessing, shipping, transporting, or
32 receiving firearms.

33 2. In considering whether to issue an emergency extreme risk
34 protective order under this section, the court shall consider
35 all relevant evidence described in section 664B.7, subsection

1 3.

2 3. If the court finds there is good cause to believe that
3 the respondent poses a significant danger to the respondent's
4 self or others, in the near future, by possessing, shipping,
5 transporting, or receiving firearms, the court shall issue an
6 emergency extreme risk protective order.

7 4. The court shall hold an emergency extreme risk protective
8 order hearing in person or by telephone on the day the petition
9 is filed.

10 5. When the court is unavailable from the close of business
11 at the end of the day or week to the resumption of business
12 at the beginning of the day or week, a petition may be filed
13 before a district judge, or district associate judge designated
14 by the chief judge of the judicial district, who may grant
15 emergency relief under this section, if the district judge
16 or district associate judge finds there is good cause to
17 believe that the respondent poses a significant danger to the
18 respondent's self or others, in the near future, by possessing,
19 shipping, transporting, or receiving firearms.

20 6. An emergency extreme risk protective order shall include
21 the following:

22 a. A statement of the grounds supporting the issuance of the
23 order.

24 b. The date and time the order was issued.

25 c. The date and time the order expires.

26 d. Whether a responsive pleading may be filed.

27 e. A description of the firearms to be surrendered.

28 f. The date and time of the scheduled hearing.

29 g. An emergency extreme risk protective order shall contain
30 the following statement:

31 To the subject of this protective order: This order remains
32 effective until the date and time noted above. If you have not
33 done so already, you must immediately surrender to the (insert
34 the name of a local law enforcement agency with jurisdiction)
35 all firearms in your possession, custody, or control, and

1 surrender any permit to carry weapons or permit to acquire
2 in your possession to such agency. You shall not have in
3 your possession a firearm, or ship, transport, or receive, or
4 attempt to ship, transport, or receive such a firearm while
5 this order is in effect. A hearing will be held on the date
6 and time noted above to determine if an extreme risk protective
7 order shall be issued. Failure to appear at that hearing may
8 result in a court entering an extreme risk protective order
9 against you that is valid for a period of one year. You may
10 seek the advice of an attorney as to any matter connected with
11 this order.

12 7. An emergency extreme risk protective order issued under
13 this section shall expire upon the issuance of an extreme
14 risk protective order under section 664B.7 or if the court
15 determines at a hearing on the petition for an extreme risk
16 protective order under section 664B.7 that the plaintiff
17 has not proven by a preponderance of the evidence that the
18 respondent presents a significant danger to the respondent's
19 self or others by possessing, shipping, transporting, or
20 receiving firearms.

21 8. An emergency extreme risk protective order shall be
22 served by the sheriff of any county in this state, a peace
23 officer, or a corrections officer, in the same manner provided
24 in section 664B.2 for the service of the notice and petition,
25 and shall be served concurrently with such notice of hearing
26 and petition, if possible. Alternatively, an emergency
27 extreme risk protective order may be served using short-form
28 notification pursuant to section 664B.3, and shall be served
29 concurrently with the notice of hearing and petition, if
30 possible.

31 Sec. ____ . NEW SECTION. **664B.9 Notice of extreme risk**
32 **protective order or emergency extreme risk protective order.**

33 1. The clerk of the district court or other person
34 designated by the court shall provide a copy of the extreme
35 risk protective order or the emergency extreme risk protective

1 order to the plaintiff.

2 2. The clerk of the district court shall provide a notice
3 and copy of the protective order to the appropriate law
4 enforcement agencies and the twenty-four-hour dispatcher for
5 the law enforcement agencies in the same manner as provided in
6 section 235F.6, 236.5, or 236A.7, as applicable. The clerk
7 of the district court shall provide a notice and copy of a
8 termination or extension of the protective order in the same
9 manner.

10 Sec. ____ . NEW SECTION. **664B.10 Termination or extension of**
11 **order.**

12 1. The respondent may request a hearing to terminate
13 an extreme risk protective order issued under this chapter
14 during the twelve-month period that the order is in effect,
15 starting from the date of the order and continuing through any
16 extensions.

17 a. Upon receipt of a request for a hearing to terminate
18 an extreme risk protective order, the court shall set a date
19 for a hearing. Notice of the request shall be served on the
20 plaintiff. The hearing shall occur no sooner than fourteen
21 days and no later than thirty days from the date of service of
22 the request upon the plaintiff.

23 b. The respondent shall have the burden of proving by a
24 preponderance of the evidence that the respondent does not pose
25 a significant danger to the respondent's self or others by
26 possessing, shipping, transporting, or receiving firearms.

27 c. If the court finds after the hearing that the respondent
28 has met the burden of proof, the court shall terminate the
29 extreme risk protective order.

30 2. A family member may, by motion, request an extension
31 of an extreme risk protective order within ninety days of the
32 expiration of the order.

33 a. Upon receipt of a motion to extend an extreme risk
34 protective order, the court shall order the hearing be held no
35 earlier than fourteen days from the date of the motion.

1 as required by any order issued under this section, the court
2 shall determine whether probable cause exists to believe that
3 the respondent has failed to surrender all firearms or permits
4 in the possession of the respondent. If probable cause exists,
5 the court shall issue a search warrant describing the firearms
6 and authorizing a search of the locations where the firearms
7 are reasonably believed to be and the seizure of any firearms
8 discovered in the search.

9 4. If a person other than the respondent claims to own
10 any of the firearms seized or surrendered pursuant to this
11 chapter, and the law enforcement agency where the firearms are
12 stored determines that person to be the lawful owner of the
13 firearms, the firearms shall be returned to the lawful owner if
14 the lawful owner agrees to store the firearms in such a manner
15 that prevents the respondent from having access to the firearms
16 during the time an extreme risk protective order or emergency
17 extreme risk protective order is in effect.

18 Sec. ____ . NEW SECTION. **664B.12 Firearm surrender —**
19 **hearing.**

20 Upon the issuance of an extreme risk protective order, the
21 court shall order a new hearing within three business days
22 of the issuance of the order that requires the respondent
23 to provide evidence to the court that the respondent has
24 surrendered any firearms in the possession of the respondent.
25 The court may dismiss the hearing upon a satisfactory showing
26 the respondent has complied with the order.

27 Sec. ____ . NEW SECTION. **664B.13 Firearms — storage.**

28 All law enforcement agencies shall develop policies and
29 procedures by June 1, 2019, regarding the acceptance, storage,
30 and return of firearms surrendered to a law enforcement agency
31 under this chapter.

32 Sec. ____ . NEW SECTION. **664B.14 Return of firearms and**
33 **unclaimed firearms.**

34 1. If an extreme risk protective order is terminated or
35 expires without an extension, the law enforcement agency in

1 possession of any firearms surrendered by a respondent shall
2 return any such firearms upon request of the respondent,
3 provided the respondent is eligible to possess a firearm.

4 2. Notwithstanding section 809.21, for firearms that remain
5 unclaimed by the lawful owner, the firearms shall be destroyed
6 pursuant to 661 IAC 95.8.

7 Sec. _____. NEW SECTION. **664B.15 Penalties.**

8 1. A person who files a petition under this chapter knowing
9 the information in the petition to be materially false commits
10 a serious misdemeanor.

11 2. A respondent who possesses a firearm, or who ships,
12 transports, or receives, or attempts to ship, transport, or
13 receive a firearm while an extreme risk protective order or
14 emergency extreme risk protective order is in effect commits an
15 aggravated misdemeanor.

16 3. A person who claims ownership of a firearm pursuant to
17 section 664B.11, subsection 4, who agrees to store the firearm
18 in such a manner that prevents a respondent from having access
19 to the firearm commits a serious misdemeanor if the respondent
20 is later found to have access to the firearm that is subject
21 to the agreement while an extreme risk protective order is in
22 effect.

23 4. A respondent who violates subsection 2 shall be
24 prohibited from possessing, shipping, transporting, or
25 receiving a firearm for a period of five years from the date of
26 the conviction.

27 Sec. _____. Section 724.8, Code 2018, is amended by adding the
28 following new subsections:

29 NEW SUBSECTION. 7. Is subject to an extreme risk protective
30 order or an emergency extreme risk protective order issued
31 under chapter 664B.

32 NEW SUBSECTION. 8. Has been convicted of a violation of
33 section 664B.15, subsection 2, within the previous five years.

34 Sec. _____. Section 724.15, subsection 1, Code 2018, is
35 amended by adding the following new paragraphs:

1 NEW PARAGRAPH. *d.* Is subject to an extreme risk protective
2 order or an emergency extreme risk protective order issued
3 under chapter 664B.

4 NEW PARAGRAPH. *e.* Has been convicted of a violation of
5 section 664B.15, subsection 2, within the previous five years.
6 Sec. _____. Section 724.26, subsection 2, paragraph a, Code
7 2018, is amended to read as follows:

8 *a.* Except as provided in paragraph "b", a person ~~who is~~
9 ~~subject to a protective order under 18 U.S.C. §922(g)(8) or who~~
10 ~~has been convicted of a misdemeanor crime of domestic violence~~
11 ~~under 18 U.S.C. §922(g)(9) and~~ who knowingly possesses,
12 ships, transports, or receives a firearm, offensive weapon, or
13 ammunition and who is any of the following is guilty of a class
14 "D" felony.:

15 (i) Is subject to a protective order under 18 U.S.C.
16 §922(g)(8).

17 (ii) Has been convicted of a misdemeanor crime of domestic
18 violence under 18 U.S.C. §922(g)(9).

19 (iii) Is subject to an extreme risk protective order under
20 chapter 664B.>

21 3. Title page, line 4, by striking <and mental> and
22 inserting <mental>

23 4. Title page, line 5, by striking <services> and inserting
24 <services, and the creation of an extreme risk protective
25 order, and providing penalties>

26 5. By renumbering as necessary.

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