

Senate File 2311

H-8425

1 Amend the amendment, H-8340, to Senate File 2311, as
2 amended, passed, and reprinted by the Senate, as follows:

3 1. Page 12, after line 30 by inserting:

4 <Sec. _____. Section 664A.1, subsection 2, Code 2018, is
5 amended to read as follows:

6 2. a. "*Protective order*" means a protective order issued
7 pursuant to [chapter 232](#), a court order or court-approved
8 consent agreement entered pursuant to [this chapter](#) or chapter
9 235F, a court order or court-approved consent agreement entered
10 pursuant to [chapter 236](#) or [236A](#), including a valid foreign
11 protective order under [section 236.19, subsection 3](#), or section
12 236A.19, subsection 3, a temporary or permanent protective
13 order or order to vacate the homestead under [chapter 598](#), or an
14 order that establishes conditions of release or is a protective
15 order or sentencing order in a criminal prosecution arising
16 from a domestic abuse assault under [section 708.2A](#), or a civil
17 injunction issued pursuant to [section 915.22](#).

18 b. "*Protective order*" does not include a protective order
19 issued pursuant to chapter 664B.

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

21 As used in this chapter unless the context otherwise
22 requires:

23 1. "*Affidavit*" means a written declaration or statement of
24 fact made under oath, or legally sufficient affirmation, before
25 any person authorized to administer oaths within or without the
26 state.

27 2. "*Family member*" means a spouse, person cohabiting, a
28 parent, or other person related by consanguinity or affinity.

29 3. "*Firearm*" includes ammunition and any offensive weapon.

30 4. "*Intimate relationship*" means the same as defined in
31 section 235E.1.

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

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

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

3 Sec. ____ . NEW SECTION. 664B.2 Extreme risk protective order
4 — petition.

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

9 a. Name of the plaintiff and the name and address of the
10 plaintiff's attorney, if any. If the plaintiff is proceeding
11 pro se, the petition shall state a mailing address for the
12 plaintiff. A mailing address may be provided by the plaintiff
13 pursuant to section 664B.6.

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

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

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

26 e. Whether any legal proceeding is pending between the
27 plaintiff and respondent, and if so, the nature of the legal
28 proceeding.

29 f. Desired relief, including a request for temporary or
30 emergency orders.

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

33 3. The clerk of the district court, the sheriff of any
34 county in this state, or any peace officer, or corrections
35 officer shall perform their duties relating to service of

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

11 Sec. ____ . NEW SECTION. **664B.3 Short-form notification.**

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

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

25 3. When the short-form notification process is complete,
26 the sheriff, peace officer, or corrections officer serving the
27 notification shall file a copy of the notification with the
28 clerk of the district court. The filing shall indicate the
29 date and time the notification was served on the respondent.

30 4. The short-form notification shall be on a form
31 prescribed by the state court administrator. The state court
32 administrator shall prescribe rules relating to the content
33 and distribution of the form to appropriate law enforcement
34 agencies in this state. The form shall include but not be
35 limited to all of the following statements:

1 a. The respondent shall immediately surrender all firearms
2 in the respondent's possession and any permit to carry weapons
3 or permit to acquire in the possession of the respondent.

4 b. The respondent is responsible for obtaining a full copy
5 of the extreme risk protective order or emergency extreme risk
6 protective order from the county sheriff of the county in which
7 the order was entered or from the clerk of the district court.

8 c. The terms and conditions of the extreme risk protective
9 order or emergency extreme risk protective order are
10 enforceable, and the respondent is subject to arrest for
11 violating the protective order.

12 Sec. ____ . NEW SECTION. **664B.4 Plaintiffs proceeding pro se**
13 **— provision of forms and assistance.**

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

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

25 Sec. ____ . NEW SECTION. **664B.5 Assistance by county**
26 **attorney.**

27 A county attorney's office may provide assistance to a
28 plaintiff wishing to initiate proceedings pursuant to this
29 chapter or to a plaintiff at any stage of a proceeding under
30 this chapter, if the plaintiff does not have sufficient funds
31 to pay for legal assistance and if the assistance does not
32 create a conflict of interest for the county attorney's office.
33 The assistance provided may include, but is not limited to,
34 assistance in obtaining or completing forms, filing a petition
35 or other necessary pleading, presenting evidence to the court,

1 and enforcing the orders of the court entered pursuant to this
2 chapter. Providing assistance pursuant to this section shall
3 not be considered the private practice of law for the purposes
4 of section 331.752.

5 Sec. ____ . NEW SECTION. **664B.6 Plaintiff's address —**
6 **confidentiality of records.**

7 1. A plaintiff may use any of the following addresses as a
8 mailing address for purposes of filing a petition under this
9 chapter:

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

11 b. A public or private post office box.

12 c. Any other mailing address, with the permission of the
13 resident of that address.

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

18 3. The entire file or a portion of the file under this
19 chapter shall be sealed by the clerk of the district court as
20 ordered by the court to protect the privacy interest or safety
21 of any person.

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

25 Sec. ____ . NEW SECTION. **664B.7 Hearing.**

26 1. Not less than five and not more than fifteen days after
27 commencing a proceeding and upon notice to the other party,
28 a hearing shall be held at which the plaintiff must prove by
29 a preponderance of the evidence that the respondent presents
30 a significant danger to the respondent's self or others by
31 possessing, shipping, transporting, or receiving firearms.

32 2. Upon hearing, if the court finds by a preponderance of
33 the evidence that the respondent poses a significant danger
34 to the respondent's self or others by possessing, shipping,
35 transporting, or receiving firearms, the court shall issue an

1 extreme risk protective order for a period of one year.

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

5 *a.* A recent act or threat of violence by the respondent
6 against the respondent's self or others, and whether such
7 violence or threat involves a firearm.

8 *b.* A pattern of acts or threats of violence against the
9 respondent's self or others within the preceding twelve months
10 of the filing of the petition.

11 *c.* Any serious mental impairment of the respondent.

12 *d.* Any violation of a no-contact order issued for violations
13 or alleged violations of sections 708.2A, 708.7, 708.11, 709.2,
14 709.3, and 709.4, and any other public offense for which there
15 is a victim.

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

18 *f.* The issuance of a previous extreme risk protective order
19 against the respondent under this chapter.

20 *g.* A violation of a previous extreme risk protective order
21 issued against the respondent under this chapter.

22 *h.* A conviction of the respondent for a crime that
23 constitutes domestic abuse assault in violation of section
24 708.2A.

25 *i.* The possession of or access to a firearm, or the intent
26 to possess a firearm by the respondent.

27 *j.* The unlawful or reckless use, display, or brandishing of
28 a firearm by the respondent.

29 *k.* Any history of use, attempted use, or threatened use of
30 physical force by the respondent against another person, or the
31 respondent's history of stalking or harassing another person.

32 *l.* Any prior arrest of the respondent for a felony offense
33 or violent crime.

34 *m.* Evidence of abuse of a controlled substance or alcohol
35 by the respondent.

1 *n.* Evidence of recent acquisition of a firearm by the
2 respondent.

3 4. The court may:

4 *a.* Examine under oath the plaintiff, the respondent, and
5 any witnesses that the plaintiff or respondent produces, or
6 in lieu of examination, consider affidavits of the plaintiff,
7 the respondent, or any witnesses the plaintiff or respondent
8 produces.

9 *b.* Ensure that a reasonable search has been conducted for
10 criminal history records relating to the respondent.

11 5. During the hearing, the court may order a substance abuse
12 evaluation.

13 6. An extreme risk protective order shall include all of the
14 following:

15 *a.* A statement of the grounds supporting the issuance of the
16 order.

17 *b.* The date and time the order was issued.

18 *c.* The date and time the order expires.

19 *d.* Whether a substance abuse evaluation is required.

20 *e.* Whether a responsive pleading may be filed.

21 *f.* A description of the firearms to be surrendered.

22 *g.* An extreme risk protective order shall contain the
23 following statement:

24 To the subject of this protective order: This order remains
25 effective until the date and time noted above. If you have not
26 done so already, you must surrender to the (insert the name of
27 a local law enforcement agency with jurisdiction) all firearms
28 in your possession, custody, or control and surrender any
29 permit to carry weapons or permit to acquire in your possession
30 to such agency. You shall not have in your possession a
31 firearm, or ship, transport, or receive, or attempt to ship,
32 transport, or receive such a firearm while this order is in
33 effect. You have the right to request one hearing to terminate
34 this order during each twelve-month period that this order is
35 in effect, starting from the date of this order and continuing

1 through any extension of the order. If the order requires
2 a substance abuse evaluation, you must first obtain such
3 evaluation and disclose the results of the evaluation to the
4 court prior to requesting a hearing.

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

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

10 9. The court shall advise the respondent of a right to be
11 represented by counsel of the respondent's choosing and to have
12 a continuance to secure counsel.

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

17 11. Hearings shall be recorded.

18 Sec. ____ . NEW SECTION. **664B.8 Emergency extreme risk**
19 **protective order.**

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

28 2. In considering whether to issue an emergency extreme risk
29 protective order under this section, the court shall consider
30 all relevant evidence described in section 664B.7, subsection
31 3.

32 3. If the court finds there is good cause to believe that
33 the respondent poses a significant danger to the respondent's
34 self or others, in the near future, by possessing, shipping,
35 transporting, or receiving firearms, the court shall issue an

1 emergency extreme risk protective order.

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

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

15 6. An emergency extreme risk protective order shall include
16 the following:

17 a. A statement of the grounds supporting the issuance of the
18 order.

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

20 c. The date and time the order expires.

21 d. Whether a responsive pleading may be filed.

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

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

24 g. An emergency extreme risk protective order shall contain
25 the following statement:

26 To the subject of this protective order: This order remains
27 effective until the date and time noted above. If you have not
28 done so already, you must immediately surrender to the (insert
29 the name of a local law enforcement agency with jurisdiction)
30 all firearms in your possession, custody, or control, and
31 surrender any permit to carry weapons or permit to acquire
32 in your possession to such agency. You shall not have in
33 your possession a firearm, or ship, transport, or receive, or
34 attempt to ship, transport, or receive such a firearm while
35 this order is in effect. A hearing will be held on the date

1 and time noted above to determine if an extreme risk protective
2 order shall be issued. Failure to appear at that hearing may
3 result in a court entering an extreme risk protective order
4 against you that is valid for a period of one year. You may
5 seek the advice of an attorney as to any matter connected with
6 this order.

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

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

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

28 1. The clerk of the district court or other person
29 designated by the court shall provide a copy of the extreme
30 risk protective order or the emergency extreme risk protective
31 order to the plaintiff.

32 2. The clerk of the district court shall provide a notice
33 and copy of the protective order to the appropriate law
34 enforcement agencies and the twenty-four-hour dispatcher for
35 the law enforcement agencies in the same manner as provided in

1 section 235F.6, 236.5, or 236A.7, as applicable. The clerk
2 of the district court shall provide a notice and copy of a
3 termination or extension of the protective order in the same
4 manner.

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

7 1. The respondent may request a hearing to terminate
8 an extreme risk protective order issued under this chapter
9 during the twelve-month period that the order is in effect,
10 starting from the date of the order and continuing through any
11 extensions.

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

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

22 c. If the court finds after the hearing that the respondent
23 has met the burden of proof, the court shall terminate the
24 extreme risk protective order.

25 2. A family member may, by motion, request an extension
26 of an extreme risk protective order within ninety days of the
27 expiration of the order.

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

31 b. In considering whether to extend the extreme risk
32 protective order under this section, the court shall consider
33 all relevant evidence described in section 664B.7, subsection
34 3.

35 c. If the court finds by a preponderance of the evidence

1 that the requirements for issuance of an extreme risk
2 protective order continue to be met, the court shall extend
3 the order. However, if, after notice, the motion to extend is
4 uncontested and the plaintiff does not seek a modification of
5 the existing order, the order may be extended on the basis of
6 the plaintiff's motion or affidavit stating that there has been
7 no material change in relevant circumstances since entry of the
8 protective order.

9 Sec. ____ . NEW SECTION. **664B.11 Firearms and firearm permits**
10 **— surrender.**

11 1. Upon the issuance of an extreme risk protective order
12 or an emergency extreme risk protective order, the court shall
13 order the respondent to immediately surrender to the law
14 enforcement agency named in the protective order, all firearms
15 possessed by the respondent and any permit to carry weapons
16 or permit to acquire possessed by the respondent, within
17 forty-eight hours of service of the order or within forty-eight
18 hours of a hearing held pursuant to section 664B.7 at which the
19 respondent was present and an order was subsequently issued.

20 2. At the time of surrendering any firearms, a law
21 enforcement officer taking possession of any firearms
22 shall issue a receipt identifying all firearms that have
23 been surrendered and provide a copy of the receipt to the
24 respondent. Within seventy-two hours after service of the
25 order the law enforcement officer serving the order shall file
26 the original receipt with the court and shall ensure that the
27 law enforcement agency retains a copy of the receipt.

28 3. Upon a sworn statement or testimony of the plaintiff or
29 of any law enforcement officer alleging that the respondent has
30 failed to comply with the surrender of firearms and permits
31 as required by any order issued under this section, the court
32 shall determine whether probable cause exists to believe that
33 the respondent has failed to surrender all firearms or permits
34 in the possession of the respondent. If probable cause exists,
35 the court shall issue a search warrant describing the firearms

1 and authorizing a search of the locations where the firearms
2 are reasonably believed to be and the seizure of any firearms
3 discovered in the search.

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

13 Sec. _____. NEW SECTION. **664B.12 Firearm surrender —**
14 **hearing.**

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

22 Sec. _____. NEW SECTION. **664B.13 Firearms — storage.**

23 All law enforcement agencies shall develop policies and
24 procedures by June 1, 2019, regarding the acceptance, storage,
25 and return of firearms surrendered to a law enforcement agency
26 under this chapter.

27 Sec. _____. NEW SECTION. **664B.14 Return of firearms and**
28 **unclaimed firearms.**

29 1. If an extreme risk protective order is terminated or
30 expires without an extension, the law enforcement agency in
31 possession of any firearms surrendered by a respondent shall
32 return any such firearms upon request of the respondent,
33 provided the respondent is eligible to possess a firearm.

34 2. Notwithstanding section 809.21, for firearms that remain
35 unclaimed by the lawful owner, the firearms shall be destroyed

1 pursuant to 661 IAC 95.8.

2 Sec. _____. NEW SECTION. 664B.15 Penalties.

3 1. A person who files a petition under this chapter knowing
4 the information in the petition to be materially false commits
5 a serious misdemeanor.

6 2. A respondent who possesses a firearm, or who ships,
7 transports, or receives, or attempts to ship, transport, or
8 receive a firearm while an extreme risk protective order or
9 emergency extreme risk protective order is in effect commits an
10 aggravated misdemeanor.

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

18 4. A respondent who violates subsection 2 shall be
19 prohibited from possessing, shipping, transporting, or
20 receiving a firearm for a period of five years from the date of
21 the conviction.

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

24 NEW SUBSECTION. 7. Is subject to an extreme risk protective
25 order or an emergency extreme risk protective order issued
26 under chapter 664B.

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

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

31 NEW PARAGRAPH. *d.* Is subject to an extreme risk protective
32 order or an emergency extreme risk protective order issued
33 under chapter 664B.

34 NEW PARAGRAPH. *e.* Has been convicted of a violation of
35 section 664B.15, subsection 2, within the previous five years.

1 Sec. ____ . Section 724.26, subsection 2, paragraph a, Code
2 2018, is amended to read as follows:

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

10 (i) Is subject to a protective order under 18 U.S.C.
11 §922(g)(8).

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

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

16 2. Page 13, line 13, by striking <utilities,> and inserting
17 <utilities and mental health and disability services, providing
18 for the creation of an extreme risk protective order,>

19 3. Page 13, line 14, by striking <support,> and inserting
20 <support, providing penalties,>

21 4. By renumbering as necessary.

STAED of Linn