

House File 2255 - Introduced

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BY HUNTER, KELLEY, KEARNS, and
STAED

A BILL FOR

1 An Act relating to firearm violence protective orders and
2 making penalties applicable.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 724.26, subsection 2, paragraph a, Code
2 2016, 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 a firearm violence protective order
15 under chapter 724A.

16 Sec. 2. NEW SECTION. 724A.1 Definitions.

17 For purposes of this chapter, unless the context clearly
18 indicates otherwise:

19 1. "*Firearm violence protective order*" means a court order
20 issued pursuant to this chapter prohibiting a person from
21 possessing, shipping, transporting, or receiving firearms,
22 offensive weapons, or ammunition.

23 2. "*Immediate family member*" means all of the following of
24 a respondent:

25 a. Husband or wife.

26 b. Natural or adoptive parent, child, or sibling.

27 c. Stepparent, stepchild, or stepsibling.

28 d. Father-in-law, mother-in-law, son-in-law,
29 daughter-in-law, brother-in-law, or sister-in-law.

30 e. Grandparent or grandchild.

31 3. "*Law enforcement officer*" means the same as defined in
32 section 80B.3.

33 4. "*Respondent*" means a person against whom a petition is
34 filed under this chapter.

35 Sec. 3. NEW SECTION. 724A.2 Temporary emergency firearm

1 **violence protective order.**

2 1. When the court is unavailable from the close of business
3 at the end of the day or week to the resumption of business
4 at the beginning of the next day or week, a law enforcement
5 officer may orally contact a district judge or district
6 associate judge designated by the chief judge of the judicial
7 district, who may grant emergency relief if the district judge
8 or district associate judge finds that there is reasonable
9 cause to believe all of the following:

10 a. The respondent poses an immediate and present danger
11 of causing physical injury to the respondent's self or others
12 by possessing, shipping, transporting, or receiving firearms,
13 offensive weapons, or ammunition.

14 b. A temporary emergency firearm violence protective order
15 is necessary to prevent physical injury to the respondent's
16 self or others because less restrictive alternatives either
17 have been tried and found to be ineffective or are determined
18 to be inadequate or inappropriate for the respondent's
19 circumstances.

20 2. A temporary emergency firearm violence protective order
21 issued pursuant to this section shall prohibit the respondent
22 from possessing, shipping, transporting, or receiving firearms,
23 offensive weapons, or ammunition or attempting to possess,
24 ship, transport, or receive firearms, offensive weapons, or
25 ammunition, and shall expire twenty-one days from the date the
26 order is issued.

27 **Sec. 4. NEW SECTION. 724A.3 Ex parte firearm violence**
28 **protective order.**

29 1. An immediate family member or a law enforcement officer
30 may file a petition requesting that the court issue an ex parte
31 firearm violence protective order enjoining the respondent from
32 possessing, shipping, transporting, or receiving firearms,
33 offensive weapons, or ammunition.

34 2. A court shall issue an ex parte firearm violence
35 protective order if the petition, supported by an affidavit

1 made in writing and any additional information and signed by
2 the petitioner under oath, shows a substantial likelihood that
3 all of the following conditions exist:

4 *a.* The respondent poses a significant danger, in the near
5 future, of causing physical injury to the respondent's self
6 or others by possessing, shipping, transporting, or receiving
7 firearms, offensive weapons, or ammunition as determined by
8 evidence of any of the following:

9 (1) A recent threat of violence or act of violence by the
10 respondent directed toward the respondent's self or others.
11 For the purposes of this subparagraph, "*recent*" means within the
12 last six months prior to the date the petition was filed.

13 (2) A pattern of violent acts or violent threats within the
14 past twelve months, including but not limited to threats of
15 violence or acts of violence by the respondent directed toward
16 the respondent's self or others.

17 (3) The unlawful and reckless use, display, or brandishing
18 of a firearm, offensive weapon, or ammunition by the
19 respondent.

20 (4) Other evidence of an increased risk of violence by the
21 respondent.

22 *b.* An ex parte firearm violence protective order is
23 necessary to prevent physical injury to the respondent's self
24 or others because less restrictive alternatives have been tried
25 and found to be ineffective, or are determined to be inadequate
26 or inappropriate for the circumstances of the respondent.

27 3. If the court determines that grounds exist to issue an ex
28 parte firearm violence protective order, the court shall issue
29 an ex parte firearm violence protective order that prohibits
30 the respondent from possessing, shipping, transporting, or
31 receiving firearms, offensive weapons, or ammunition, and that
32 expires not later than twenty-one days from the date the order
33 is issued.

34 4. Within twenty-one days from the date the order is issued,
35 the court shall hold a hearing to determine if a firearm

1 violence protective order should be issued for a period of one
2 year pursuant to section 724A.4.

3 Sec. 5. NEW SECTION. **724A.4 Firearm violence protective**
4 **order — notice and hearing.**

5 1. Subsequent to the issuance of an ex parte firearm
6 violence protective order pursuant to section 724A.3, an
7 immediate family member or a law enforcement officer may
8 request the court, after notice and a hearing, to issue a
9 firearm violence protective order enjoining the respondent from
10 possessing, shipping, transporting, or receiving firearms,
11 offensive weapons, or ammunition for a period of one year.

12 2. In determining whether to issue a firearm violence
13 protective order under this section, the court shall consider
14 evidence of any of the following:

15 a. A recent threat of violence or act of violence by the
16 respondent directed toward the respondent's self or others.
17 For the purposes of this paragraph, "*recent*" means within the
18 last six months prior to the date the petition was filed.

19 b. A pattern of violent acts or violent threats within the
20 past twelve months, including but not limited to threats of
21 violence or acts of violence by the respondent directed toward
22 the respondent's self or others.

23 c. The unlawful and reckless use, display, or brandishing of
24 a firearm, offensive weapon, or ammunition by the respondent.

25 d. Other evidence of an increased risk for violence by the
26 respondent.

27 3. At the hearing, the petitioner shall have the burden
28 of proving, by clear and convincing evidence, all of the
29 following:

30 a. The respondent poses a significant danger of personal
31 injury to the respondent's self or others by possessing,
32 shipping, transporting, or receiving firearms, offensive
33 weapons, or ammunition.

34 b. A firearm violence protective order is necessary to
35 prevent physical injury to the respondent's self or others

1 because less restrictive alternatives have been tried and
2 found to be ineffective or are determined to be inadequate or
3 inappropriate for the respondent's circumstances.

4 c. (1) If the court finds that there is clear and
5 convincing evidence to issue a firearm violence protective
6 order, the court shall issue a firearm violence protective
7 order that prohibits the respondent from having in the
8 respondent's custody or control, or owning, purchasing,
9 possessing, or receiving, or attempting to purchase or receive,
10 a firearm, offensive weapon, or ammunition, and that expires
11 one year from the date of the order.

12 (2) If the court finds that there is not clear and
13 convincing evidence to support the issuance of a firearm
14 violence protective order, the court shall dissolve any
15 temporary emergency or ex parte firearm violence protective
16 order then in effect.

17 Sec. 6. NEW SECTION. 724A.5 Judicial branch forms and
18 rules.

19 The judicial branch shall prescribe standard forms and rules
20 necessary or expedient to carry out the intent and purposes of
21 this chapter.

22 EXPLANATION

23 The inclusion of this explanation does not constitute agreement with
24 the explanation's substance by the members of the general assembly.

25 This bill relates to firearm violence protective orders and
26 makes penalties applicable.

27 The bill establishes three categories of firearm violence
28 protective orders: (1) a temporary emergency firearm violence
29 protective order (available outside of regular court hours),
30 (2) an ex parte firearm violence protective order, and (3)
31 a firearm violence protective order issued after notice and
32 hearing.

33 TEMPORARY EMERGENCY FIREARM VIOLENCE PROTECTIVE ORDER.
34 The bill provides that a law enforcement officer may seek
35 a temporary emergency firearm protective order by orally

1 contacting a judicial officer. A court may issue a temporary
2 emergency firearm protective order if a judicial officer
3 finds there is reasonable cause to believe that a person
4 poses an immediate and present danger of physical injury to
5 the respondent's self or others by possessing, shipping,
6 transporting, or receiving firearms, offensive weapons, or
7 ammunition and that a temporary emergency firearm violence
8 protective order is necessary to prevent physical injury to
9 the respondent's self or others because less restrictive
10 alternatives have been tried and found to be ineffective or
11 are determined to be inadequate or inappropriate for the
12 respondent's circumstances. A temporary emergency firearm
13 violence protective order issued under the bill shall prohibit
14 the respondent from possessing, shipping, transporting,
15 or receiving firearms, offensive weapons, or ammunition or
16 attempting to possess, ship, transport, or receive a firearm,
17 offensive weapon, or ammunition, and expires 21 days from the
18 date the order is issued.

19 EX PARTE FIREARM VIOLENCE PROTECTIVE ORDER. An immediate
20 family member of a respondent or a law enforcement officer
21 may file a petition requesting the court to issue an ex parte
22 firearm violence protective order enjoining the respondent
23 from possessing, shipping, transporting, or receiving
24 firearms, offensive weapons, or ammunition. A court shall
25 issue an ex parte firearm violence protective order if the
26 petition, supported by an affidavit made in writing and any
27 additional information and signed by the petitioner under
28 oath, shows a substantial likelihood that the respondent poses
29 a significant danger, in the near future, of physical injury
30 to the respondent's self or others by possessing, shipping,
31 transporting, or receiving firearms, offensive weapons, or
32 ammunition as determined by certain evidence including threats
33 of or acts of violence by the respondent, and that the order is
34 necessary to prevent physical injury to the respondent's self
35 or others because less restrictive alternatives have been tried

1 and found to be ineffective, or are determined to be inadequate
2 or inappropriate for the circumstances of the respondent.
3 If the court issues an ex parte firearm violence protective
4 order that prohibits the respondent from possessing, shipping,
5 transporting, or receiving firearms, offensive weapons, or
6 ammunition, the order expires not later than 21 days from the
7 date the order is issued. Within 21 days after the date the
8 order is issued, the court shall hold a hearing to determine
9 if a firearm violence protective order should be issued for a
10 period of one year.

11 FIREARM PROTECTIVE ORDER — NOTICE AND HEARING. Subsequent
12 to the issuance of an ex parte firearm violence protective
13 order, an immediate family member or a law enforcement officer
14 may request the court, after notice and a hearing, to issue
15 a firearm violence protective order enjoining the respondent
16 from possessing, shipping, transporting, or receiving firearms,
17 offensive weapons, or ammunition for a period of one year. The
18 court may consider additional evidence to determine whether
19 to issue a firearm violence protective order for a period of
20 one year. The evidentiary requirements and standard of review
21 are similar to those required for an ex parte firearm violence
22 protective order.

23 PENALTIES. Under current Code section 724.26, a person who
24 is the subject of a domestic abuse protective order or who has
25 been convicted of a misdemeanor crime of domestic violence
26 under federal law who knowingly possesses, ships, transports,
27 or receives a firearm, offensive weapon, or ammunition is
28 guilty of a class "D" felony. The bill expands this category
29 of persons to include a person who is the subject of a firearm
30 violence protective order under the bill. The bill makes
31 certain provisions contained in Code section 724.26 relating to
32 the surrender of any firearm, offensive weapon, or ammunition
33 in the possession of a prohibited person under the bill,
34 including certain transfer, sale, reporting information, and
35 the return of any firearms, offensive weapons, and ammunition

1 to the person upon the expiration of the firearm protective
2 order.

3 RULES. The bill requires the judicial branch to prescribe
4 forms and rules necessary to carry out the intent and purposes
5 of the bill.