

House File 2180 - Introduced

HOUSE FILE 2180

BY STAED, KURTH, and HUNTER

A BILL FOR

1 An Act relating to the creation of an extreme risk protective
2 order against a person in possession of a firearm who
3 presents a significant danger to the person's self or
4 others, and providing penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

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

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

17 Sec. 2. NEW SECTION. 664B.1 Definitions.

18 As used in this chapter unless the context otherwise
19 requires:

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

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

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

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

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

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

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

35 Sec. 3. NEW SECTION. 664B.2 Extreme risk protective order

1 — petition.

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

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

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

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

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

23 e. Whether any legal proceeding is pending between the
24 plaintiff and respondent, and if so, the nature of the legal
25 proceeding.

26 f. Desired relief, including a request for temporary or
27 emergency orders.

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

30 3. The clerk of the district court, the sheriff of any
31 county in this state, or any peace officer, or corrections
32 officer shall perform their duties relating to service of
33 process without charge to the plaintiff. When an order for
34 an extreme risk protective is entered by the court, the court
35 may direct the respondent to pay to the clerk of court the

1 fees for the filing of the petition and reasonable costs of
2 service of process if the court determines the respondent has
3 the ability to pay the plaintiff's fees and costs. In lieu of
4 personal service of a protective order issued pursuant to this
5 section, the sheriff of any county in this state, and other law
6 enforcement and corrections officers may serve a respondent
7 with a short-form notification pursuant to section 664B.3.

8 **Sec. 4. NEW SECTION. 664B.3 Short-form notification.**

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

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

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

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

33 a. The respondent shall immediately surrender all firearms
34 in the respondent's possession and any permit to carry weapons
35 or permit to acquire in the possession of the respondent.

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

5 *c.* The terms and conditions of the extreme risk protective
6 order or emergency extreme risk protective order are
7 enforceable, and the respondent is subject to arrest for
8 violating the protective order.

9 Sec. 5. NEW SECTION. **664B.4 Plaintiffs proceeding pro se —**
10 **provision of forms and assistance.**

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

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

22 Sec. 6. NEW SECTION. **664B.5 Assistance by county attorney.**

23 A county attorney's office may provide assistance to a
24 plaintiff wishing to initiate proceedings pursuant to this
25 chapter or to a plaintiff at any stage of a proceeding under
26 this chapter, if the plaintiff does not have sufficient funds
27 to pay for legal assistance and if the assistance does not
28 create a conflict of interest for the county attorney's office.
29 The assistance provided may include, but is not limited to,
30 assistance in obtaining or completing forms, filing a petition
31 or other necessary pleading, presenting evidence to the court,
32 and enforcing the orders of the court entered pursuant to this
33 chapter. Providing assistance pursuant to this section shall
34 not be considered the private practice of law for the purposes
35 of section 331.752.

1 Sec. 7. NEW SECTION. **664B.6 Plaintiff's address —**
2 **confidentiality of records.**

3 1. A plaintiff may use any of the following addresses as a
4 mailing address for purposes of filing a petition under this
5 chapter:

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

7 b. A public or private post office box.

8 c. Any other mailing address, with the permission of the
9 resident of that address.

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

14 3. The entire file or a portion of the file under this
15 chapter shall be sealed by the clerk of the district court as
16 ordered by the court to protect the privacy interest or safety
17 of any person.

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

21 Sec. 8. NEW SECTION. **664B.7 Hearing.**

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

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

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

- 1 *a.* A recent act or threat of violence by the respondent
2 against the respondent's self or others, and whether such
3 violence or threat involves a firearm.
- 4 *b.* A pattern of acts or threats of violence against the
5 respondent's self or others within the preceding twelve months
6 of the filing of the petition.
- 7 *c.* Any serious mental impairment of the respondent.
- 8 *d.* Any violation of a no-contact order issued for violations
9 or alleged violations of sections 708.2A, 708.7, 708.11, 709.2,
10 709.3, and 709.4, and any other public offense for which there
11 is a victim.
- 12 *e.* Any violation of a protective order issued in a civil
13 proceeding under chapter 232, 235F, 236, 236A, 598, or 915.
- 14 *f.* The issuance of a previous extreme risk protective order
15 against the respondent under this chapter.
- 16 *g.* A violation of a previous extreme risk protective order
17 issued against the respondent under this chapter.
- 18 *h.* A conviction of the respondent for a crime that
19 constitutes domestic abuse assault in violation of section
20 708.2A.
- 21 *i.* The possession of or access to a firearm, or the intent
22 to possess a firearm by the respondent.
- 23 *j.* The unlawful or reckless use, display, or brandishing of
24 a firearm by the respondent.
- 25 *k.* Any history of use, attempted use, or threatened use of
26 physical force by the respondent against another person, or the
27 respondent's history of stalking or harassing another person.
- 28 *l.* Any prior arrest of the respondent for a felony offense
29 or violent crime.
- 30 *m.* Evidence of abuse of a controlled substance or alcohol
31 by the respondent.
- 32 *n.* Evidence of recent acquisition of a firearm by the
33 respondent.
- 34 4. The court may:
- 35 *a.* Examine under oath the plaintiff, the respondent, and

1 any witnesses that the plaintiff or respondent produces, or
2 in lieu of examination, consider affidavits of the plaintiff,
3 the respondent, or any witnesses the plaintiff or respondent
4 produces.

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

7 5. During the hearing, the court may order a substance abuse
8 evaluation.

9 6. An extreme risk protective order shall include all of the
10 following:

11 *a.* A statement of the grounds supporting the issuance of the
12 order.

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

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

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

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

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

18 *g.* An extreme risk protective order shall contain the
19 following statement:

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

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

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

6 9. The court shall advise the respondent of a right to be
7 represented by counsel of the respondent's choosing and to have
8 a continuance to secure counsel.

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

13 11. Hearings shall be recorded.

14 Sec. 9. NEW SECTION. **664B.8 Emergency extreme risk**
15 **protective order.**

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

24 2. In considering whether to issue an emergency extreme risk
25 protective order under this section, the court shall consider
26 all relevant evidence described in section 664B.7, subsection
27 3.

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

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

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

11 6. An emergency extreme risk protective order shall include
12 the following:

13 a. A statement of the grounds supporting the issuance of the
14 order.

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

16 c. The date and time the order expires.

17 d. Whether a responsive pleading may be filed.

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

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

20 g. An emergency extreme risk protective order shall contain
21 the following statement:

22 To the subject of this protective order: This order remains
23 effective until the date and time noted above. If you have not
24 done so already, you must immediately surrender to the (insert
25 the name of a local law enforcement agency with jurisdiction)
26 all firearms in your possession, custody, or control, and
27 surrender any permit to carry weapons or permit to acquire
28 in your possession to such agency. You shall not have in
29 your possession a firearm, or ship, transport, or receive, or
30 attempt to ship, transport, or receive such a firearm while
31 this order is in effect. A hearing will be held on the date
32 and time noted above to determine if an extreme risk protective
33 order shall be issued. Failure to appear at that hearing may
34 result in a court entering an extreme risk protective order
35 against you that is valid for a period of one year. You may

1 seek the advice of an attorney as to any matter connected with
2 this order.

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

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

22 Sec. 10. NEW SECTION. **664B.9 Notice of extreme risk**
23 **protective order or emergency extreme risk protective order.**

24 1. The clerk of the district court or other person
25 designated by the court shall provide a copy of the extreme
26 risk protective order or the emergency extreme risk protective
27 order to the plaintiff.

28 2. The clerk of the district court shall provide a notice
29 and copy of the protective order to the appropriate law
30 enforcement agencies and the twenty-four-hour dispatcher for
31 the law enforcement agencies in the same manner as provided in
32 section 235F.6, 236.5, or 236A.7, as applicable. The clerk
33 of the district court shall provide a notice and copy of a
34 termination or extension of the protective order in the same
35 manner.

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

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

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

14 *b.* The respondent shall have the burden of proving by a
15 preponderance of the evidence that the respondent does not pose
16 a significant danger to the respondent's self or others by
17 possessing, shipping, transporting, or receiving firearms.

18 *c.* If the court finds after the hearing that the respondent
19 has met the burden of proof, the court shall terminate the
20 extreme risk protective order.

21 2. A family member may, by motion, request an extension
22 of an extreme risk protective order within ninety days of the
23 expiration of the order.

24 *a.* Upon receipt of a motion to extend an extreme risk
25 protective order, the court shall order the hearing be held no
26 earlier than fourteen days from the date of the motion.

27 *b.* In considering whether to extend the extreme risk
28 protective order under this section, the court shall consider
29 all relevant evidence described in section 664B.7, subsection
30 3.

31 *c.* If the court finds by a preponderance of the evidence
32 that the requirements for issuance of an extreme risk
33 protective order continue to be met, the court shall extend
34 the order. However, if, after notice, the motion to extend is
35 uncontested and the plaintiff does not seek a modification of

1 the existing order, the order may be extended on the basis of
2 the plaintiff's motion or affidavit stating that there has been
3 no material change in relevant circumstances since entry of the
4 protective order.

5 Sec. 12. NEW SECTION. **664B.11 Firearms and firearm permits**
6 **— surrender.**

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

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

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

35 4. If a person other than the respondent claims to own

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

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

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

17 Sec. 14. NEW SECTION. **664B.13 Firearms — storage.**

18 All law enforcement agencies shall develop policies and
19 procedures by June 1, 2019, regarding the acceptance, storage,
20 and return of firearms surrendered to a law enforcement agency
21 under this chapter.

22 Sec. 15. NEW SECTION. **664B.14 Return of firearms and
23 unclaimed firearms.**

24 1. If an extreme risk protective order is terminated or
25 expires without an extension, the law enforcement agency in
26 possession of any firearms surrendered by a respondent shall
27 return any such firearms upon request of the respondent,
28 provided the respondent is eligible to possess a firearm.

29 2. Notwithstanding section 809.21, for firearms that remain
30 unclaimed by the lawful owner, the firearms shall be destroyed
31 pursuant to 661 IAC 95.8.

32 Sec. 16. NEW SECTION. **664B.15 Penalties.**

33 1. A person who files a petition under this chapter knowing
34 the information in the petition to be materially false commits
35 a serious misdemeanor.

1 2. A respondent who possesses a firearm, or who ships,
2 transports, or receives, or attempts to ship, transport, or
3 receive a firearm while an extreme risk protective order or
4 emergency extreme risk protective order is in effect commits an
5 aggravated misdemeanor.

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

13 4. A respondent who violates subsection 2 shall be
14 prohibited from possessing, shipping, transporting, or
15 receiving a firearm for a period of five years from the date of
16 the conviction.

17 Sec. 17. Section 724.8, Code 2018, is amended by adding the
18 following new subsections:

19 NEW SUBSECTION. 7. Is subject to an extreme risk protective
20 order or an emergency extreme risk protective order issued
21 under chapter 664B.

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

24 Sec. 18. Section 724.15, subsection 1, Code 2018, is amended
25 by adding the following new paragraphs:

26 NEW PARAGRAPH. *d.* Is subject to an extreme risk protective
27 order or an emergency extreme risk protective order issued
28 under chapter 664B.

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

31 Sec. 19. Section 724.26, subsection 2, paragraph a, Code
32 2018, is amended to read as follows:

33 *a.* Except as provided in paragraph "b", a person ~~who is~~
34 ~~subject to a protective order under 18 U.S.C. §922(g)(8) or who~~
35 ~~has been convicted of a misdemeanor crime of domestic violence~~

1 ~~under 18 U.S.C. §922(g)(9) and~~ who knowingly possesses,
2 ships, transports, or receives a firearm, offensive weapon, or
3 ammunition and who is any of the following is guilty of a class
4 "D" felony:

5 (i) Is subject to a protective order under 18 U.S.C.
6 §922(g)(8).

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

9 (iii) Is subject to an extreme risk protective order under
10 chapter 664B.

11 EXPLANATION

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

14 This bill relates to the creation of an extreme risk
15 protective order against a person who presents a significant
16 danger to the person's self or others by possessing, shipping,
17 transporting, or receiving firearms.

18 DEFINITIONS. The bill defines "family member" to mean a
19 spouse, person cohabiting, a parent, or other person related
20 by consanguinity or affinity. The bill defines "firearm" to
21 include ammunition and any offensive weapon. The bill defines
22 "possession" to include ownership, custody, or control. The
23 bill defines "plaintiff" to mean a family member, a person with
24 whom the respondent is having an intimate relationship with, or
25 a peace officer. The bill defines "intimate relationship" to
26 mean the same as defined in Code section 235E.1.

27 PETITION FOR EXTREME RISK PROTECTIVE ORDER. Under the bill,
28 a plaintiff may file a petition in district court requesting
29 an extreme risk protective order stating that the subject of
30 the extreme risk protective petition (respondent) presents
31 a significant danger to the respondent's self or others by
32 possessing, shipping, transporting, or receiving firearms.
33 The bill requires the petition to contain an affidavit
34 stating the specific facts that give rise to the reasons the
35 respondent presents a significant danger to the respondent's

1 self or others; the location, type, and number of firearms the
2 plaintiff believes are possessed by the respondent; whether
3 the respondent is subject to a current protective order or
4 no-contact order; and whether any legal proceedings are pending
5 between the plaintiff and respondent.

6 In lieu of personal service of an extreme risk protective
7 order on a respondent, the bill allows a sheriff of any county
8 in this state or any peace officer or corrections officer
9 in this state to serve the respondent with a short-form
10 notification to effectuate service of an unserved order.
11 Short-form notification includes service during traffic stops
12 and other contacts with the respondent by a sheriff, peace
13 officer, or corrections officer in this state in the course of
14 performing official duties.

15 The bill requires the department of justice to prescribe
16 standard forms to be used by a plaintiff proceeding pro se when
17 filing an extreme risk protective order petition.

18 The bill permits a county attorney's office to provide
19 assistance to a plaintiff wishing to initiate the filing of an
20 extreme risk protective order petition or to a plaintiff at any
21 stage of a proceeding under the bill, if the plaintiff does
22 not have sufficient funds to pay for legal assistance and if
23 the assistance does not create a conflict of interest for the
24 county attorney's office.

25 The bill permits the plaintiff to use an alternate mailing
26 address for the purposes of filing a petition for an extreme
27 risk protective order including the mailing address of a
28 shelter or other agency, a public or private post office box,
29 or any other mailing address with permission of the resident of
30 that address.

31 The bill requires that hearing on the petition for an extreme
32 risk protective order shall occur not less than five but no
33 more than 15 days after commencing the proceeding and after
34 notice to the respondent.

35 The bill provides that upon hearing on the petition, if

1 the court finds by a preponderance of the evidence that the
2 respondent presents a significant danger to the respondent's
3 self or others by possessing, shipping, transporting, or
4 receiving firearms, the court shall issue an extreme risk
5 protective order for a period of one year. In determining
6 whether grounds for an extreme risk protective order exist,
7 the court may consider any relevant evidence including but not
8 limited to the following: a recent act or threat of violence
9 by the respondent against the respondent's self or others; a
10 pattern of acts or threats of violence against the respondent's
11 self or others by the respondent within the preceding twelve
12 months of the filing of the petition; any serious mental
13 impairment of the respondent; any previous violations of
14 no-contact orders or protective orders by the respondent; a
15 previous issuance of an extreme risk protective order issued
16 against the respondent; a previous domestic abuse assault
17 conviction; the possession of a firearm or the reckless use,
18 display, or brandishing of a firearm by the respondent; any
19 history of use of physical force by the respondent against
20 another person; any prior criminal history of the respondent;
21 and evidence of abuse of a controlled substance or alcohol by
22 the respondent.

23 EMERGENCY EXTREME RISK PROTECTIVE ORDER. The bill allows
24 a plaintiff to request an emergency extreme risk protective
25 order, without notice to the respondent, by including in the
26 petition detailed allegations based on personal knowledge that
27 the respondent poses a significant danger to the respondent's
28 self or others, in the near future, by possessing, shipping,
29 transporting, or receiving firearms. If the court finds good
30 cause to believe that the respondent presents a significant
31 danger to the respondent's self or others, in the near future,
32 by possessing, shipping, transporting, or receiving firearms,
33 the court shall issue an emergency extreme risk protective
34 order.

35 The court shall hold an emergency extreme risk protective

1 order hearing in person or by telephone on the day the petition
2 is filed.

3 When the court is unavailable from the close of business
4 at the end of the day or week to the resumption of business
5 at the beginning of the day or week, the bill provides that
6 a petition for an extreme risk protective order may be filed
7 before a district judge, or district associate judge designated
8 by the chief judge of the judicial district, who may grant
9 emergency relief, if the district judge or district associate
10 judge finds good cause to believe that the respondent presents
11 a significant danger to the respondent's self or others, in
12 the near future, by possessing, shipping, transporting, or
13 receiving firearms.

14 The emergency extreme risk protective order shall be
15 in effect until the issuance of an extreme risk protective
16 order after a hearing on the petition for an extreme risk
17 protective order or the court determines at the hearing on the
18 petition the plaintiff has not proven by a preponderance of
19 the evidence that the respondent presents a significant danger
20 to the respondent's self or others by possessing, shipping,
21 transporting, or receiving firearms.

22 In lieu of personal service of an emergency extreme risk
23 protective order on a respondent, the bill allows a sheriff of
24 any county in this state or any peace officer or corrections
25 officer to serve the respondent with a short-form notification
26 to effectuate the service on an unserved order. Short-form
27 notification includes service during traffic stops and other
28 contacts with the respondent by the sheriff, peace officer, or
29 corrections officer.

30 REQUEST TO TERMINATE ORDER. Under the bill, the respondent
31 may submit a request for a hearing to terminate an extreme risk
32 protective order during each 12-month period that the order is
33 in effect, beginning from the date of the order and continuing
34 through any extensions. The bill provides that the respondent
35 shall have the burden of proving by a preponderance of the

1 evidence that the respondent does not present a significant
2 danger to the respondent's self or others by possessing,
3 shipping, transporting, or receiving firearms.

4 EXTENSION OF ORDER. An extreme risk protective order may be
5 extended under the bill. A family member may by motion request
6 an extension of an extreme risk protective order within 90
7 days of the expiration of the order. The bill provides that
8 if the court finds by a preponderance of the evidence that the
9 requirements for issuance of an extreme risk protective order
10 continue to be met, the court shall extend the order.

11 SURRENDER OF FIREARMS AND FIREARM PERMITS. Upon the
12 issuance of an extreme risk protective order or an emergency
13 extreme risk protective order, the bill provides that the court
14 shall order the respondent to immediately surrender to the law
15 enforcement agency named in the protective order, all firearms
16 possessed by the respondent and any permit to carry weapons or
17 permit to acquire possessed by the respondent, within 48 hours
18 of being served with the order or within 48 hours of the end of
19 the hearing on the petition at which the respondent was present
20 and an order was subsequently issued.

21 The bill requires that at the time of surrendering any
22 firearms, a peace officer taking possession of any firearms
23 shall issue a receipt identifying all firearms that have
24 been surrendered and provide a copy of the receipt to the
25 respondent.

26 Upon a sworn statement or testimony of the petitioner or of
27 any peace officer alleging that the respondent has failed to
28 comply with the surrender of firearms and permits as required
29 by any order, the bill requires the court to determine whether
30 probable cause exists to believe that the respondent has failed
31 to surrender all firearms or permits in the possession of the
32 respondent. If probable cause exists, the bill requires the
33 court to issue a search warrant describing the firearms and
34 authorizing a search of the locations where the firearms are
35 reasonably believed to be and the seizure of any firearms

1 discovered in the search.

2 If a person other than the respondent claims to own any of
3 the firearms seized or surrendered pursuant to the bill and the
4 law enforcement agency where the firearms are stored determines
5 the person to be the lawful owner of the firearms, the firearms
6 shall be returned to the lawful owner if the lawful owner
7 agrees to store the firearms in such a manner that prevents
8 the respondent from having access to the firearms during the
9 time an extreme risk protective order or emergency extreme risk
10 protective order is in effect. Under the bill, the lawful
11 owner commits a serious misdemeanor if the respondent is later
12 found to have access to the firearms while an extreme risk
13 protective order or emergency extreme risk protective order is
14 in effect against the respondent.

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

23 All law enforcement agencies must 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 the bill.

27 RETURN OF FIREARMS. Under the bill, if an extreme risk
28 protective order is terminated or expires without an extension,
29 the law enforcement agency holding any firearms surrendered by
30 the respondent shall return any firearms to the respondent upon
31 request of the respondent, provided the respondent is eligible
32 to possess a firearm.

33 Notwithstanding Code section 809.21 (disposition of seized
34 property — sale of certain ammunition and firearms) for
35 firearms that remain unclaimed by the lawful owner, the

1 firearms shall be destroyed pursuant to 661 IAC 95.8.

2 PENALTIES. The bill provides that a respondent shall not
3 be eligible to obtain a permit to carry weapons or a permit to
4 acquire pistols or revolvers while an extreme risk protective
5 order or emergency risk protective order is in effect against
6 the respondent.

7 The bill provides that a plaintiff who files a petition for
8 an extreme protective order knowing the information in the
9 petition to be materially false commits a serious misdemeanor.

10 The bill provides that a respondent who possesses a firearm,
11 or who ships, transports, or receives, or attempts to ship,
12 transport, or receive such a firearm while an extreme risk
13 protective order or emergency extreme risk protective order
14 is in effect against the respondent commits an aggravated
15 misdemeanor. A respondent who violates this provision shall
16 be prohibited from possessing, shipping, transporting, or
17 receiving a firearm for a period of five years from the date of
18 the conviction. If, during the five-year prohibition period
19 the respondent knowingly has under the respondent's dominion
20 and control or possession, or ships, transports, or receives,
21 or causes to be shipped, transported, or received a firearm,
22 the respondent commits a class "D" felony.