

House File 123 - Introduced

HOUSE FILE 123

BY HUNTER, STAED, MASCHER, and
LENSING

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 2019, 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 (1) Is subject to a protective order under 18 U.S.C.
11 §922(g)(8).

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

14 (3) Is subject to a firearm violence protective order under
15 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.

1 Sec. 3. NEW SECTION. **724A.2 Temporary emergency firearm**
2 **violence protective order.**

3 1. 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 next day or week, a law enforcement
6 officer may orally contact a district judge or district
7 associate judge designated by the chief judge of the judicial
8 district, who may grant temporary emergency relief if the
9 district judge or district associate judge finds that there is
10 reasonable cause to believe all of the following:

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

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

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

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

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

35 2. A court shall issue an ex parte temporary firearm

1 violence protective order if the petition, supported by an
2 affidavit made in writing and any additional information and
3 signed by the petitioner under oath, shows a substantial
4 likelihood that all of the following conditions exist:

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

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

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

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

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

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

29 3. If the court determines that grounds exist to issue an ex
30 parte temporary firearm violence protective order, the court
31 shall issue an ex parte temporary firearm violence protective
32 order that prohibits the respondent from possessing, shipping,
33 transporting, or receiving firearms, offensive weapons, or
34 ammunition, or attempting to possess, ship, transport, or
35 receive firearms, offensive weapons, or ammunition, and that

1 expires not later than twenty-one days from the date the order
2 is issued.

3 4. Within twenty-one days from the date the order is issued,
4 the court shall hold a hearing to determine if a firearm
5 violence protective order should be issued for a period of one
6 year pursuant to section 724A.4.

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

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

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

19 a. A recent threat of violence or act of violence by the
20 respondent directed toward the respondent's self or others.
21 For the purposes of this paragraph, "recent" means within the
22 last six months prior to the date the petition was filed.

23 b. A pattern of violent acts or violent threats within the
24 past twelve months, including but not limited to threats of
25 violence or acts of violence by the respondent directed toward
26 the respondent's self or others.

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

29 d. Other evidence indicating an increased risk for violence
30 by the respondent.

31 3. At the hearing, the petitioner shall have the burden
32 of proving, by clear and convincing evidence, all of the
33 following:

34 a. The respondent poses a significant danger of personal
35 injury to the respondent's self or others by possessing,

1 hearing.

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

23 EX PARTE TEMPORARY FIREARM VIOLENCE PROTECTIVE ORDER. An
24 immediate family member of a respondent or a law enforcement
25 officer may file a petition requesting the court to issue an
26 ex parte temporary firearm violence protective order enjoining
27 the respondent from possessing, shipping, transporting, or
28 receiving firearms, offensive weapons, or ammunition. A
29 court shall issue an ex parte temporary firearm violence
30 protective order if the petition, supported by an affidavit
31 made in writing and any additional information and signed by
32 the petitioner under oath, shows a substantial likelihood
33 that the respondent poses a significant danger, in the
34 near future, of physical injury to the respondent's self or
35 others by possessing, shipping, transporting, or receiving

1 firearms, offensive weapons, or ammunition as determined by
2 certain evidence including threats of or acts of violence by
3 the respondent, and that the order is necessary to prevent
4 physical injury to the respondent's self or others because
5 less restrictive alternatives have been tried and found
6 to be ineffective, or are determined to be inadequate or
7 inappropriate for the circumstances of the respondent. If the
8 court issues an ex parte temporary firearm violence protective
9 order that prohibits the respondent from possessing, shipping,
10 transporting, or receiving firearms, offensive weapons, or
11 ammunition, or attempting to possess, ship, transport, or
12 receive firearms, offensive weapons, or ammunition, the order
13 expires not later than 21 days from the date the order is
14 issued. Within 21 days after the date the order is issued, the
15 court shall hold a hearing to determine if a firearm violence
16 protective order should be issued for a period of one year.

17 FIREARM VIOLENCE PROTECTIVE ORDER — NOTICE AND HEARING.

18 Subsequent to the issuance of an ex parte firearm violence
19 protective order, an immediate family member or a law
20 enforcement officer may request the court, after notice and a
21 hearing, to issue a firearm violence protective order enjoining
22 the respondent from possessing, shipping, transporting, or
23 receiving firearms, offensive weapons, or ammunition for a
24 period of one year. The court may consider additional evidence
25 to determine whether to issue a firearm violence protective
26 order for a period of one year. The evidentiary requirements
27 and standard of review are similar to those required for an ex
28 parte firearm violence protective order.

29 PENALTIES. Under current Code section 724.26, a person who
30 is the subject of a domestic abuse protective order or who has
31 been convicted of a misdemeanor crime of domestic violence
32 under federal law who knowingly possesses, ships, transports,
33 or receives a firearm, offensive weapon, or ammunition is
34 guilty of a class "D" felony. The bill expands this category
35 of persons to include a person who is the subject of a firearm

1 violence protective order under the bill. A class "D" felony
2 is punishable by confinement for no more than five years and
3 a fine of at least \$750 but not more than \$7,500. The bill
4 makes applicable certain provisions contained in Code section
5 724.26 relating to the surrender of any firearm, offensive
6 weapon, or ammunition in the possession of a prohibited person
7 under the bill, including certain transfer, sale, reporting
8 information, and the return of any firearms, offensive weapons,
9 and ammunition to the person upon the expiration of the firearm
10 protective order.

11 RULES. The bill requires the supreme court to prescribe
12 forms and rules necessary to carry out the intent and purposes
13 of the bill.