

House File 2367 - Introduced

HOUSE FILE 2367

BY OLDSON and SUNDE

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 2020, 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. *“Firearm”* includes ammunition and any offensive weapon.

25 3. *“Plaintiff”* means a county attorney or, collectively, two
26 peace officers who file a petition under this chapter.

27 4. *“Possession”* includes ownership, custody, or control.

28 5. *“Respondent”* means a person against whom a petition for a
29 protective order is filed under this chapter.

30 Sec. 3. NEW SECTION. 664B.2 Extreme risk protective order
31 — petition.

32 1. A plaintiff may file a petition in the district court
33 requesting an extreme risk protective order. Venue shall lie
34 in the county where the respondent resides. The petition shall
35 contain all of the following:

- 1 *a.* The name of the plaintiff and the name and address of the
2 plaintiff's attorney, if any.
- 3 *b.* The name of the respondent and, if known, the
4 respondent's address.
- 5 *c.* Whether the respondent has a permit to carry weapons and
6 whether the respondent has a criminal record.
- 7 *d.* A statement of facts alleging the respondent presents
8 a significant danger to the respondent's self or others by
9 possessing, shipping, transporting, or receiving firearms
10 accompanied by an affidavit stating the specific statements,
11 actions, or facts that give rise to the reasons the respondent
12 presents a significant danger to the respondent's self or
13 others by possessing, shipping, transporting, or receiving
14 firearms.
- 15 *e.* The location, type, and number of firearms the plaintiff
16 believes are possessed by the respondent.
- 17 *f.* Whether the respondent is subject to a current protective
18 order or a no-contact order.
- 19 *g.* Whether any legal proceeding is pending between the
20 plaintiff and respondent, and if so, the nature of the legal
21 proceeding.
- 22 *h.* Desired relief, including a request for temporary or
23 emergency orders.
- 24 2. The filing fee and court costs for an extreme risk
25 protective order shall be waived for the plaintiff.
- 26 3. The clerk of the district court, the sheriff of any
27 county in this state, or any peace officer, or corrections
28 officer shall perform their duties relating to service of
29 process without charge to the plaintiff. In lieu of personal
30 service of a protective order issued pursuant to this section,
31 the sheriff of any county in this state, and other law
32 enforcement and corrections officers may serve a respondent
33 with a short-form notification pursuant to section 664B.3.
- 34 4. The court shall provide the respondent with a full copy
35 of the petition prior to a hearing.

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

2 1. In lieu of personal service of an extreme risk protective
3 order or an emergency extreme risk protective order on a
4 respondent whose firearms are to be surrendered by such an
5 order, a sheriff of any county in this state or any peace
6 officer or corrections officer in this state may serve the
7 respondent with a short-form notification pursuant to this
8 section to effectuate service of an unserved order.

9 2. Service of a short-form notification under this section
10 shall be allowed during traffic stops and other contacts with
11 the respondent by a sheriff, peace officer, or corrections
12 officer in this state in the course of performing official
13 duties. The respondent may be detained for a reasonable period
14 of time to complete the short-form notification process.

15 3. When the short-form notification process is complete,
16 the sheriff, peace officer, or corrections officer serving the
17 notification shall file a copy of the notification with the
18 clerk of the district court. The filing shall indicate the
19 date and time the notification was served on the respondent.

20 4. The short-form notification shall be on a form
21 prescribed by the state court administrator. The state court
22 administrator shall prescribe rules relating to the content
23 and distribution of the form to appropriate law enforcement
24 agencies in this state. The form shall include but not be
25 limited to all of the following statements:

26 *a.* The respondent shall immediately surrender all firearms
27 in the respondent's possession and any permit to carry weapons
28 or permit to acquire in the possession of the respondent.

29 *b.* The county sheriff shall mail a full copy of the extreme
30 risk protective order or emergency extreme risk protective
31 order to the respondent's last known address.

32 *c.* The terms and conditions of the extreme risk protective
33 order or emergency extreme risk protective order are
34 enforceable, and the respondent is subject to arrest for
35 violating the protective order.

1 Sec. 5. NEW SECTION. **664B.4 Assistance by county attorney.**

2 A county attorney's office may provide assistance to a
3 plaintiff wishing to initiate proceedings pursuant to this
4 chapter or to a plaintiff at any stage of a proceeding under
5 this chapter, if the assistance does not create a conflict of
6 interest for the county attorney's office. The assistance
7 provided may include, but is not limited to, assistance in
8 obtaining or completing forms, filing a petition or other
9 necessary pleading, presenting evidence to the court, and
10 enforcing the orders of the court entered pursuant to this
11 chapter. Providing assistance pursuant to this section shall
12 not be considered the private practice of law for the purposes
13 of section 331.752.

14 Sec. 6. NEW SECTION. **664B.5 Hearing.**

15 1. Not less than five and not more than seven days after
16 commencing a proceeding and upon notice to the other party,
17 a hearing shall be held at which the plaintiff must prove by
18 clear and convincing evidence that the respondent presents
19 a significant danger to the respondent's self or others by
20 possessing, shipping, transporting, or receiving firearms.

21 2. Upon hearing, if the court finds by clear and convincing
22 evidence that the respondent poses a significant danger to
23 the respondent's self or others by possessing, shipping,
24 transporting, or receiving firearms, the court shall issue an
25 extreme risk protective order for a period of up to one year.
26 However, the court shall not issue an extreme risk protective
27 order for an amount of time longer than the minimum amount of
28 time necessary for the danger identified in the hearing to
29 resolve.

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

33 a. A recent act or threat of violence by the respondent
34 against the respondent's self or others, and whether such
35 violence or threat involves a firearm.

1 *b.* A pattern of acts or threats of violence against the
2 respondent's self or others within the preceding twelve months
3 of the filing of the petition.

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

5 *d.* Within the preceding six years, any violation of a
6 no-contact order by the respondent issued for violations or
7 alleged violations of sections 708.2A, 708.7, 708.11, 709.2,
8 709.3, and 709.4, and any other public offense for which there
9 is a victim.

10 *e.* Within the preceding six years, any violation of a
11 protective order by the respondent issued in a civil proceeding
12 under chapter 232, 235F, 236, 236A, 598, or 915.

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

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

17 *h.* A conviction of the respondent for a crime that
18 constitutes domestic abuse assault in violation of section
19 708.2A.

20 *i.* The possession of or access to a firearm, or the intent
21 to possess a firearm by the respondent. Any such evidence
22 shall not be a court's sole reason for issuing an extreme risk
23 protective order.

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

26 *k.* Any history of use, attempted use, or threatened use of
27 physical force by the respondent against another person, or the
28 respondent's history of stalking or harassing another person.

29 *l.* Any pending arrest of the respondent for a 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. Any such evidence shall not be a court's sole
34 reason for issuing an extreme risk protective order.

35 4. The court may:

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

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

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

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

12 *a.* (1) A statement that the plaintiff has proven by clear
13 and convincing evidence that the respondent poses a significant
14 danger to the respondent's self or others based on the evidence
15 identified in the list required pursuant to subparagraph (2).

16 (2) A list of evidence the court considered in finding that
17 the respondent poses a significant danger to the respondent's
18 self or others.

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

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

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

22 *e.* An extreme risk protective order shall contain the
23 following statement in substantially the same form:

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

1 order is in effect, starting from the date of this order and
2 continuing through the expiration or termination of the order.
3 If the order requires a substance abuse evaluation, you must
4 first obtain such evaluation and disclose the results of the
5 evaluation to the court prior to requesting a hearing.

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

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

12 9. If applicable, the court shall determine whether the
13 respondent has had sufficient opportunity to surrender the
14 respondent's firearms after service of an emergency extreme
15 risk protective order issued under section 664B.6.

16 10. Hearings shall be recorded.

17 Sec. 7. NEW SECTION. **664B.6 Emergency extreme risk**
18 **protective order.**

19 1. A plaintiff may request that an emergency extreme risk
20 protective order be issued before a hearing for an extreme risk
21 protective order under section 664B.5, without notice to the
22 respondent, by including in the petition detailed allegations
23 based on personal knowledge that the respondent poses an
24 imminent, significant danger to the respondent's self or others
25 by possessing, shipping, transporting, or receiving firearms.

26 2. In considering whether to issue an emergency extreme risk
27 protective order under this section, the court shall consider
28 all relevant evidence described in section 664B.5, subsection
29 3.

30 3. If the court finds by a preponderance of the evidence
31 that the respondent poses an imminent, significant danger
32 to the respondent's self or others by possessing, shipping,
33 transporting, or receiving firearms, the court shall issue an
34 emergency extreme risk protective order that shall be effective
35 for not more than seven days.

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

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

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

16 a. (1) A statement that the plaintiff has proven by a
17 preponderance of the evidence that the respondent poses a
18 significant danger to the respondent's self or others based
19 on the evidence identified in the list required pursuant to
20 subparagraph (2).

21 (2) A list of evidence the court considered in finding that
22 the respondent poses a significant danger to the respondent's
23 self or others.

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

25 c. The date and time the order expires.

26 d. A description of the known firearms to be surrendered.
27 This paragraph shall not be interpreted to preclude the
28 surrender of additional firearms not described or firearms not
29 accurately described.

30 e. The date and time of the scheduled hearing.

31 f. An emergency extreme risk protective order shall contain
32 the following statement in substantially the same form:

33 To the subject of this protective order: This order remains
34 effective until the date and time noted above. If you have not
35 done so already, you must immediately surrender to the (insert

1 the name of a local law enforcement agency with jurisdiction
2 or a commercial dealer with a federal firearms license who
3 is designated by the court) all firearms in your possession,
4 ownership, custody, or control, and surrender any permit to
5 carry weapons or permit to acquire in your possession to such
6 agency. You shall not have in your possession a firearm, or
7 ship, transport, or receive, or attempt to ship, transport,
8 or receive such a firearm while this order is in effect. A
9 hearing will be held on the date and time noted above to
10 determine if an extreme risk protective order shall be issued.
11 Failure to appear at that hearing may result in a court
12 entering an extreme risk protective order against you that is
13 valid for a period of up to one year. You may seek the advice
14 of an attorney as to any matter connected with this order.

15 7. An emergency extreme risk protective order issued under
16 this section shall expire upon the issuance of an extreme
17 risk protective order under section 664B.5 or if the court
18 determines at a hearing on the petition for an extreme risk
19 protective order under section 664B.5 that the plaintiff has
20 not proven by clear and convincing evidence that the respondent
21 presents a significant danger to the respondent's self or
22 others by possessing, shipping, transporting, or receiving
23 firearms.

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

34 **Sec. 8. NEW SECTION. 664B.7 Notice of extreme risk**
35 **protective order or emergency extreme risk protective order.**

1 1. The clerk of the district court or other person
2 designated by the court shall provide a copy of the extreme
3 risk protective order or the emergency extreme risk protective
4 order to the plaintiff.

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

12 **Sec. 9. NEW SECTION. 664B.8 Termination of order.**

13 1. The respondent may request a hearing to terminate an
14 extreme risk protective order issued under this chapter during
15 the period that the order is in effect, starting from the
16 date of the order and continuing through the expiration or
17 termination of the order.

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

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

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

31 2. A court may extend an extreme risk protective order at
32 any time upon a petition filed by a plaintiff and after notice
33 and hearing. The court may extend the order if the court,
34 after a hearing at which the respondent has the opportunity
35 to be heard, finds that the respondent continues to pose a

1 significant danger to the respondent's self or others by
2 possessing, shipping, transporting, or receiving firearms. The
3 court shall issue no more than one extension of an extreme
4 risk protective order. If the court has already issued one
5 extension, a plaintiff may petition for a new extreme risk
6 protective order against a respondent only by following the
7 procedures set forth in this chapter.

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

10 1. Upon the issuance of an extreme risk protective order
11 or an emergency extreme risk protective order, the court shall
12 order the respondent to immediately surrender to the law
13 enforcement agency named in the protective order, or the person
14 designated by the court in the extreme risk protective order
15 or the commercial dealer pursuant to an emergency extreme risk
16 protective order, all firearms possessed by the respondent, and
17 to immediately surrender any permit to carry weapons or permit
18 to acquire possessed by the respondent to the law enforcement
19 agency.

20 2. If there is probable cause to believe that the respondent
21 has not surrendered any firearm or permit in the respondent's
22 possession, the court may issue and deliver to any peace
23 officer a search warrant that authorizes the officer to enter
24 and search any place where there is probable cause to believe
25 that such a firearm or permit is located and seize the firearm
26 or permit.

27 3. A law enforcement officer taking possession of any
28 firearms, or a law enforcement officer on behalf of the
29 person designated by the court in the extreme risk protective
30 order or on behalf of a commercial dealer pursuant to an
31 emergency extreme risk protective order, shall issue a receipt
32 identifying all firearms that have been surrendered and provide
33 a copy of the receipt to the respondent within seventy-two
34 hours of taking possession of the firearms. After service of
35 the order, the law enforcement officer serving the order shall

1 file the original receipt with the court within seventy-two
2 hours and shall ensure that the law enforcement agency retains
3 a copy of the receipt.

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

16 Sec. 11. NEW SECTION. **664B.10 Firearm surrender — hearing.**

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

24 Sec. 12. NEW SECTION. **664B.11 Firearms — storage.**

25 All law enforcement agencies shall develop policies and
26 procedures by June 1, 2021, regarding the acceptance, storage,
27 and return of firearms surrendered to a law enforcement agency
28 under this chapter.

29 Sec. 13. NEW SECTION. **664B.12 Return of firearms and
30 unclaimed firearms.**

31 1. If an extreme risk protective order is terminated or
32 expires, or an emergency extreme risk protective order expires
33 without the issuance of an extreme risk protective order, the
34 law enforcement agency, person designated by the court, or
35 commercial dealer in possession of any firearms surrendered by

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

4 2. Notwithstanding section 809.21, firearms that remain
5 unclaimed by the lawful owner for not less than one year after
6 either of the following shall be destroyed pursuant to 661 IAC
7 95.8:

8 a. The expiration or termination of an extreme risk
9 protective order.

10 b. The expiration of an emergency extreme risk protective
11 order for which an extreme risk protective order was not
12 issued.

13 Sec. 14. NEW SECTION. **664B.13 Report.**

14 When a court issues an extreme risk protective order, the
15 clerk of the district court shall forward only such information
16 as is necessary to identify the person to the department of
17 public safety, which in turn shall forward the information to
18 the federal bureau of investigation or its successor agency for
19 the sole purpose of inclusion in the national instant criminal
20 background check system database.

21 Sec. 15. NEW SECTION. **664B.14 Penalties.**

22 1. A person who files a petition under this chapter knowing
23 the information in the petition to be materially false commits
24 a serious misdemeanor.

25 2. A respondent who possesses a firearm, or who ships,
26 transports, or receives, or attempts to ship, transport, or
27 receive a firearm while an extreme risk protective order or
28 emergency extreme risk protective order is in effect commits
29 a serious misdemeanor.

30 3. A person who claims ownership of a firearm pursuant to
31 section 664B.9, subsection 4, who agrees to store the firearm
32 in such a manner that prevents a respondent from having access
33 to the firearm commits a serious misdemeanor if the respondent
34 is later found to have access to the firearm that is subject
35 to the agreement while an extreme risk protective order is in

1 effect.

2 Sec. 16. Section 724.8, Code 2020, is amended by adding the
3 following new subsections:

4 NEW SUBSECTION. 7. Is subject to an extreme risk protective
5 order or an emergency extreme risk protective order issued
6 under chapter 664B.

7 NEW SUBSECTION. 8. Has been convicted of a violation of
8 section 664B.14, subsection 2, within the previous five years.

9 Sec. 17. Section 724.15, subsection 1, Code 2020, is amended
10 by adding the following new paragraphs:

11 NEW PARAGRAPH. d. Is subject to an extreme risk protective
12 order or an emergency extreme risk protective order issued
13 under chapter 664B.

14 NEW PARAGRAPH. e. Has been convicted of a violation of
15 section 664B.14, subsection 2, within the previous five years.

16 EXPLANATION

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

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

23 DEFINITIONS. The bill defines "firearm" to include
24 ammunition and any offensive weapon. The bill defines
25 "possession" to include ownership, custody, or control.
26 The bill defines "plaintiff" to mean a county attorney or,
27 collectively, two peace officers.

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

1 permit to carry weapons, whether the respondent has a criminal
2 record, the specific facts that give rise to the reasons the
3 respondent presents a significant danger to the respondent's
4 self or others; the location, type, and number of firearms the
5 plaintiff believes are possessed by the respondent; whether
6 the respondent is subject to a current protective order or
7 no-contact order; and whether any legal proceedings are pending
8 between the plaintiff and respondent.

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

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 assistance does
22 not create a conflict of interest for the county attorney's
23 office.

24 The bill requires that a hearing on the petition for an
25 extreme risk protective order shall occur not less than five
26 but no more than seven days after commencing the proceeding and
27 after notice to the respondent.

28 The bill provides that upon a hearing on the petition,
29 if the court finds by clear and convincing evidence that the
30 respondent presents a significant danger to the respondent's
31 self or others by possessing, shipping, transporting, or
32 receiving firearms, the court shall issue an extreme risk
33 protective order for a period of up to one year. However,
34 the court shall not issue an extreme risk protective order
35 for an amount of time longer than the minimum amount of time

1 necessary for the danger identified in the hearing to resolve.
2 In determining whether grounds for an extreme risk protective
3 order exist, the court may consider any relevant evidence
4 including but not limited to the following: a recent act or
5 threat of violence by the respondent against the respondent's
6 self or others; a pattern of acts or threats of violence
7 against the respondent's self or others by the respondent
8 within the preceding 12 months of the filing of the petition;
9 any serious mental impairment of the respondent; any violations
10 of no-contact orders or protective orders by the respondent
11 within the preceding six years; a previous issuance of an
12 extreme risk protective order issued against the respondent;
13 a previous domestic abuse assault conviction; the possession
14 of a firearm or the reckless use, display, or brandishing of
15 a firearm by the respondent; any history of use of physical
16 force by the respondent against another person; any prior
17 criminal history of the respondent; and evidence of abuse of a
18 controlled substance or alcohol by the respondent.

19 EMERGENCY EXTREME RISK PROTECTIVE ORDER. The bill allows
20 a plaintiff to request an emergency extreme risk protective
21 order, without notice to the respondent, by including in the
22 petition detailed allegations based on personal knowledge
23 that the respondent poses an imminent, significant danger
24 to the respondent's self or others by possessing, shipping,
25 transporting, or receiving firearms. If the court finds by a
26 preponderance of the evidence that the respondent presents an
27 imminent, significant danger to the respondent's self or others
28 by possessing, shipping, transporting, or receiving firearms,
29 the court shall issue an emergency extreme risk protective
30 order that shall be effective for not more than seven days.

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

34 If a court is unavailable from the close of business at the
35 end of the day or week to the resumption of business at the

1 beginning of the day or week, the bill provides that a petition
2 for an emergency extreme risk protective order may be filed
3 before a district judge, or district associate judge designated
4 by the chief judge of the judicial district, who may grant
5 emergency relief, if the district judge or district associate
6 judge finds by a preponderance of the evidence that the
7 respondent presents a significant danger to the respondent's
8 self or others by possessing, shipping, transporting, or
9 receiving firearms.

10 The emergency extreme risk protective order shall be in
11 effect until its expiration, the issuance of an extreme risk
12 protective order after a hearing on the petition for an extreme
13 risk protective order, or the court determines at the hearing
14 on the petition the plaintiff has not proven by clear and
15 convincing evidence that the respondent presents a significant
16 danger to the respondent's self or others by possessing,
17 shipping, transporting, or receiving firearms, whichever
18 finalizing event occurs first.

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

27 REQUEST TO TERMINATE ORDER. Under the bill, the respondent
28 may submit a request for a hearing to terminate an extreme
29 risk protective order during the period that the order is in
30 effect, beginning from the date of the order and continuing
31 through the expiration or termination of the order. The bill
32 provides that the respondent shall have the burden of proving
33 by clear and convincing evidence that the respondent does not
34 pose a significant danger to the respondent's self or others by
35 possessing, shipping, transporting, or receiving firearms.

1 EXTENSION OF ORDER. The bill authorizes a court, upon
2 petition by a plaintiff and after notice and hearing, to
3 extend an extreme risk protective order at any time. The
4 court may extend the order if the court, after a hearing at
5 which the respondent has the opportunity to be heard, finds
6 that the respondent continues to pose a significant danger
7 to the respondent's self or others by possessing, shipping,
8 transporting, or receiving firearms. The bill prohibits a
9 court from issuing more than one extension of an extreme
10 risk protective order. If the court has already issued
11 one extension, the bill requires a plaintiff to follow the
12 procedures set forth in the bill to request a new extreme risk
13 protective order.

14 SURRENDER OF FIREARMS AND FIREARM PERMITS. Upon the
15 issuance of an extreme risk protective order or an emergency
16 extreme risk protective order, the bill provides that the
17 court shall order the respondent to immediately surrender to
18 the law enforcement agency named in the protective order, the
19 person designated by the court in the extreme risk protective
20 order, or, pursuant to an emergency extreme risk protective
21 order, a commercial dealer with a federal firearms license
22 who is designated by the court all firearms possessed by the
23 respondent, and the respondent shall immediately surrender
24 any permit to carry weapons or permit to acquire possessed by
25 the respondent to the law enforcement agency. A court may
26 issue and deliver to any peace officer a search warrant that
27 authorizes the officer to enter and search any place where
28 there is probable cause to believe a firearm or permit is
29 located and to seize the firearm or permit if there is probable
30 cause to believe that the respondent has not surrendered a
31 firearm or permit in the respondent's possession.

32 The bill requires that a peace officer taking possession
33 of any firearms, or a peace officer on behalf of the person
34 designated by the court in the extreme risk protective
35 order or on behalf of a commercial dealer pursuant to an

1 emergency extreme risk protective order, shall issue a receipt
2 identifying all firearms that have been surrendered and provide
3 a copy of the receipt to the respondent within 72 hours of
4 taking possession of the firearms.

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

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

28 All law enforcement agencies must develop policies and
29 procedures by June 1, 2021, regarding the acceptance, storage,
30 and return of firearms surrendered to a law enforcement agency
31 under the bill.

32 RETURN OF FIREARMS. Under the bill, if an extreme risk
33 protective order is terminated or expires, or an emergency
34 extreme risk protective order expires without the issuance of
35 an extreme risk protective order, the law enforcement agency,

1 person designated by the court, or commercial dealer holding
2 any firearms surrendered by the respondent shall return any
3 firearms to the respondent upon request of the respondent,
4 provided the respondent is eligible to possess a firearm.

5 Notwithstanding Code section 809.21 (disposition of seized
6 property — sale of certain ammunition and firearms), firearms
7 that remain unclaimed by the lawful owner for not less than
8 one year after the expiration or termination of the extreme
9 risk protective order, or for not less than one year after the
10 expiration of an emergency extreme risk protective order for
11 which an extreme risk protective order was not issued, shall be
12 destroyed pursuant to 661 IAC 95.8.

13 REPORT. Upon the issuance of an extreme risk protective
14 order, the bill requires the clerk of the district court to
15 forward only such information as is necessary to identify the
16 person to the department of public safety, which in turn shall
17 forward the information to the federal bureau of investigation
18 or its successor agency for the sole purpose of inclusion in
19 the national instant criminal background check system database.

20 PENALTIES. The bill provides that a respondent shall not
21 be eligible to obtain a permit to carry weapons or a permit to
22 acquire pistols or revolvers while an extreme risk protective
23 order or emergency risk protective order is in effect against
24 the respondent.

25 The bill provides that a plaintiff who files a petition for
26 an extreme risk protective order knowing the information in the
27 petition to be materially false commits a serious misdemeanor.

28 The bill provides that a respondent who possesses a firearm,
29 or who ships, transports, or receives, or attempts to ship,
30 transport, or receive such a firearm while an extreme risk
31 protective order or emergency extreme risk protective order is
32 in effect against the respondent commits a serious misdemeanor.