

117TH CONGRESS }
1st Session } HOUSE OF REPRESENTATIVES { REPORT
117-

FEDERAL EXTREME RISK PROTECTION ORDER ACT OF 2021

DECEMBER --, 2021.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

VIEWS

[To accompany H.R. 2377]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2377) to authorize the issuance of extreme risk protection orders, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Extreme Risk Protection Order Act of 2021”.

SEC. 2. FEDERAL EXTREME RISK PROTECTION ORDERS.

(a) IN GENERAL.—Chapter 44 of title 18, United States Code, is amended by adding at the end the following:

“§ 932. Extreme risk protection orders

“(a) DEFINITIONS.—In this section—

“(1) the term ‘court’ means a district court of the United States;

“(2) the term ‘designated law enforcement officer’ means a law enforcement officer, designated by a United States marshal, who agrees to receive firearms, ammunition, and permits, as applicable, surrendered under subsection (f);

“(3) the term ‘Director’ means the Director of the Administrative Office of the United States Courts;

“(4) the term ‘ex parte Federal extreme risk protection order’ or ‘ex parte Federal order’ means a Federal extreme risk protection order issued under subsection (c);

“(5) the term ‘Federal extreme risk protection order’ means an order issued by a Federal court that enjoins an individual from purchasing, possessing, or receiving, in or affecting interstate and foreign commerce, a firearm or ammunition;

“(6) the term ‘family or household member’, with respect to a Federal order respondent, means any—

“(A) parent, spouse, sibling, or child related by blood, marriage, or adoption to the respondent;

“(B) dating partner of the respondent;

“(C) individual who has a child in common with the respondent, regardless of whether the individual has—

“(i) been married to the respondent; or

“(ii) lived together with the respondent at any time;

“(D) individual who resides or has resided with the respondent during the past year;

“(E) domestic partner of the respondent;

“(F) individual who has a legal parent-child relationship with the respondent, including a stepparent-stepchild and grandparent-grandchild relationship; and

“(G) individual who is acting or has acted as the legal guardian of the respondent;

“(7) the term ‘Federal order petitioner’ means an individual authorized to petition for an ex parte or long-term Federal extreme risk protection order under subsection (b)(1);

“(8) the term ‘Federal order respondent’ means an individual named in the petition for an ex parte or long-term Federal extreme risk protection order or subject to an ex parte or long-term Federal extreme risk protection order;

“(9) the term ‘long-term Federal extreme risk protection order’ or ‘long-term Federal order’ means a Federal extreme risk protection order issued under subsection (d);

“(10) the term ‘mental health agency’ means an agency of a State, Tribal, or local government or its contracted agency that is responsible for mental health services or co-occurring mental health and substance abuse services; and

“(11) the term ‘national instant criminal background check system’ means the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act (34 U.S.C. 40901).

“(b) PETITION.—

“(1) IN GENERAL.—A family or household member of the applicable individual, or a law enforcement officer, may submit to an appropriate district court of the United States a petition requesting that the court issue an ex parte Federal extreme risk protection order or long-term Federal extreme risk protection order with respect to an individual.

“(2) NO FEES.—A court or law enforcement agency may not charge a petitioner or respondent any fee for—

“(A) filing, issuing, serving, or reporting an extreme risk protection order;

“(B) a petition for an extreme risk protection order or any pleading, subpoena, warrant, or motion in connection with an extreme risk protection order; or

“(C) any order or order to show cause necessary to obtain or give effect to this section.

“(3) CONFIDENTIALITY.—A Federal order petitioner who is a law enforcement officer may provide the identity of the petitioner’s sources, and any identifying information, to the court under seal.

“(c) EX PARTE ORDERS.—

“(1) TIMING.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a court that receives a petition for an ex parte Federal order under subsection (b) shall grant or deny the petition on the date on which the petition is submitted.

“(B) LATE PETITIONS.—If a court receives a petition for an ex parte Federal order submitted under subsection (b) too late in the day to permit effective review, the court shall grant or deny the petition on the next day of judicial business at a time early enough to permit the court to file an order with the clerk of the court during that day.

“(2) EVIDENCE REQUIRED.—Before issuing an ex parte Federal order, a court shall require that the petitioner for such order submit a signed affidavit, sworn to before the court, that—

- “(A) explains why such petitioner believes that the Federal order respondent poses a risk of imminent personal injury to self or another individual, by purchasing, possessing, or receiving a firearm or ammunition; and
- “(B) describes the interactions and conversations of the petitioner with—
 - “(i) the respondent; or
 - “(ii) another individual, if such petitioner believes that information obtained from that individual is credible and reliable.
- “(3) STANDARD FOR ISSUANCE OF ORDER.—A court may issue an ex parte Federal order only upon a finding of probable cause to believe that—
 - “(A) the Federal order respondent poses a risk of imminent personal injury to self or another individual, by purchasing, possessing, or receiving a firearm or ammunition; and
 - “(B) the order is necessary to prevent the injury described in subparagraph (A).
- “(4) DURATION.—An ex parte Federal order shall expire on the earlier of—
 - “(A) the date that is 14 days after the date of issuance; or
 - “(B) the date on which the court determines whether to issue a long-term Federal order with respect to the respondent.
- “(d) LONG-TERM FEDERAL ORDERS.—
 - “(1) HEARING REQUIRED.—If a court receives a petition for a long-term Federal extreme risk protection order for a respondent under subsection (b), the court shall hold a hearing to determine whether to issue a long-term Federal order with respect to the respondent either—
 - “(A)(i) if the court issues an ex parte order with respect to the respondent, not later than 72 hours after the ex parte order is served on the respondent; or
 - “(ii) if the respondent waives the right to a hearing within the 72-hour period under clause (i), or the court does not issue an ex parte order, within 14 days after the date on which the court receives the petition; or
 - “(B) in no event later than 14 days after the date on which the court receives the petition.
 - “(2) NOTICE AND OPPORTUNITY TO BE HEARD.—
 - “(A) IN GENERAL.—The court shall provide the Federal order respondent with notice and the opportunity to be heard at a hearing under this subsection, sufficient to protect the due process rights of the respondent.
 - “(B) RIGHT TO COUNSEL.—
 - “(i) IN GENERAL.—At a hearing under this subsection, the Federal order respondent may be represented by counsel who is—
 - “(I) chosen by the respondent; and
 - “(II) authorized to practice at such a hearing.
 - “(ii) COURT-PROVIDED COUNSEL.—If the Federal order respondent is financially unable to obtain representation by counsel, the court, at the request of the respondent, shall ensure, to the extent practicable, that the respondent is represented by an attorney with respect to the petition.
 - “(3) BURDEN OF PROOF; STANDARD.—At a hearing under this subsection, the Federal order petitioner—
 - “(A) shall have the burden of proving all material facts; and
 - “(B) shall be required to demonstrate, by clear and convincing evidence, that—
 - “(i) the respondent to such order poses a risk of personal injury to self or another individual, during the period to be covered by the proposed Federal extreme risk protection order, by purchasing, possessing, or receiving a firearm or ammunition; and
 - “(ii) the order is necessary to prevent the injury described in clause (i).
 - “(4) ISSUANCE.—Upon a showing of clear and convincing evidence under paragraph (3), the court shall issue a long-term Federal order with respect to the respondent that shall be in effect for a period of not more than 180 days.
 - “(5) DENIAL.—If the court finds that there is not clear and convincing evidence to support the issuance of a long-term Federal order, the court shall dissolve any ex parte Federal order then in effect with respect to the respondent.
 - “(6) RENEWAL.—
 - “(A) NOTICE OF SCHEDULED EXPIRATION.—Thirty days before the date on which a long-term Federal order is scheduled to expire, the court that issued the order shall—

- “(i) notify the petitioner and the respondent to such order that the order is scheduled to expire; and
 - “(ii) advise the petitioner and the respondent of the procedures for seeking a renewal of the order under this paragraph.
 - “(B) PETITION.—If a family or household member of the Federal order respondent, or a law enforcement officer, believes that the conditions under paragraph (3)(B) continue to apply with respect to a respondent who is subject to a long-term Federal order, the family or household member or law enforcement officer may submit to the court that issued the order a petition for a renewal of the order.
 - “(C) HEARING.—A court that receives a petition submitted under subparagraph (B) shall hold a hearing to determine whether to issue a renewed long-term Federal order with respect to the respondent.
 - “(D) APPLICABLE PROCEDURES.—The requirements under paragraphs (2) through (5) shall apply to the consideration of a petition for a renewed long-term Federal order submitted under subparagraph (B) of this paragraph.
 - “(E) ISSUANCE.—Upon a showing by clear and convincing evidence that the conditions under paragraph (3)(B) continue to apply with respect to the respondent, the court shall issue a renewed long-term Federal order with respect to the respondent.
 - “(e) FACTORS TO CONSIDER.—In determining whether to issue a Federal extreme risk protection order, a court—
 - “(1) shall consider factors including—
 - “(A) a recent threat or act of violence by the respondent directed toward another individual;
 - “(B) a recent threat or act of violence by the respondent directed toward self;
 - “(C) a recent act of cruelty to an animal by the respondent; and
 - “(D) evidence of ongoing abuse of a controlled substance or alcohol by the respondent that has led to a threat or act of violence directed to self or another individual; and
 - “(2) may consider other factors, including—
 - “(A) the reckless use, display, or brandishing of a firearm by the respondent;
 - “(B) a history of violence or attempted violence by the respondent against another individual; and
 - “(C) evidence of an explicit or implicit threat made by the person through any medium that demonstrate that the person poses a risk of personal injury to self or another individual.
 - “(f) RELINQUISHMENT OF FIREARMS AND AMMUNITION.—
 - “(1) ORDER OF SURRENDER.—Upon issuance of an ex parte Federal order or long-term Federal order, the court shall order the respondent to such order to surrender all firearms and ammunition that the respondent possesses or owns, in or affecting interstate commerce, as well as any permit authorizing the respondent to purchase or possess firearms (including a concealed carry permit), to—
 - “(A) the United States Marshals Service; or
 - “(B) a designated law enforcement officer.
 - “(2) SURRENDER AND REMOVAL.—
 - “(A) MANNER OF SERVICE.—
 - “(i) PERSONAL SERVICE.—Except as provided in clause (ii), a United States marshal or designated law enforcement officer shall serve a Federal extreme risk protection order on a respondent by handing the order to the respondent to such order.
 - “(ii) ALTERNATIVE SERVICE.—If the respondent cannot reasonably be located for service as described in clause (i), a Federal extreme risk protection order may be served on the respondent in any manner authorized under the Federal Rules of Civil Procedure.
 - “(B) REMOVAL.—Except as provided in subparagraph (C), a United States marshal or designated law enforcement officer serving a Federal extreme risk protection order personally on the respondent shall—
 - “(i) request that all firearms and ammunition, in or affecting interstate commerce, as well as any permit authorizing the respondent to purchase or possess firearms (including a concealed carry permit), that the respondent possesses or owns—

“(I) be immediately surrendered to the United States marshal or designated law enforcement officer; or

“(II) at the option of the respondent, be immediately surrendered and sold to a federally licensed firearms dealer; and

“(ii) take possession of all firearms and ammunition described in clause (i) that are not sold under subclause (II) of that clause, as well as any permit described in that clause, that are—

“(I) surrendered;

“(II) in plain sight; or

“(III) discovered pursuant to a lawful search.

“(C) ALTERNATIVE SURRENDER.—If a United States marshal or designated law enforcement officer is not able to personally serve a Federal extreme risk protection order under subparagraph (A)(i), or is not reasonably able to take custody of the firearms, ammunition, and permits under subparagraph (B), the respondent shall surrender the firearms, ammunition, and permits in a safe manner to the control of a United States marshal or designated law enforcement officer not later than 48 hours after being served with the order.

“(3) RECEIPT.—

“(A) ISSUANCE.—At the time of surrender or removal under paragraph (2), a United States marshal or designated law enforcement officer taking possession of a firearm, ammunition, or a permit pursuant to a Federal extreme risk protection order shall—

“(i) issue a receipt identifying all firearms, ammunition, and permits that have been surrendered or removed; and

“(ii) provide a copy of the receipt issued under clause (i) to the respondent to such order.

“(B) FILING.—Not later than 72 hours after issuance of a receipt under subparagraph (A), the United States marshal who issued the receipt or designated another law enforcement officer to do so shall—

“(i) file the original receipt issued under subparagraph (A) of this paragraph with the court that issued the Federal extreme risk protection order; and

“(ii) ensure that the United States Marshals Service retains a copy of the receipt.

“(C) DESIGNATED LAW ENFORCEMENT OFFICER.—If a designated law enforcement officer issues a receipt under subparagraph (A), the officer shall submit the original receipt and a copy of the receipt to the appropriate United States marshal to enable the United States marshal to comply with subparagraph (B).

“(4) FORFEITURE.—If a respondent knowingly attempts, in violation of a Federal extreme risk protection order, to access a firearm, ammunition, or a permit that was surrendered or removed under this subsection, the firearm, ammunition, or permit shall be subject to seizure and forfeiture under section 924(d).

“(g) RETURN OF FIREARMS AND AMMUNITION.—

“(1) NOTICE.—If a Federal extreme risk protection order is dissolved, or expires and is not renewed, the court that issued the order shall order the United States Marshals Service to—

“(A) confirm, through the national instant criminal background check system and any other relevant law enforcement databases, that the respondent to such order may lawfully own and possess firearms and ammunition; and

“(B)(i) if the respondent may lawfully own and possess firearms and ammunition, notify the respondent that the respondent may retrieve each firearm, ammunition, or permit surrendered by or removed from the respondent under subsection (f); or

“(ii) if the respondent may not lawfully own or possess firearms and ammunition, notify the respondent that each firearm, ammunition, or permit surrendered by or removed from the respondent under subsection (f) will be returned only when the respondent demonstrates to the United States Marshals Service that the respondent may lawfully own and possess firearms and ammunition.

“(2) RETURN.—If a Federal extreme risk protection order is dissolved, or expires and is not renewed, and the United States Marshals Service confirms under paragraph (1)(A) that the respondent may lawfully own and possess firearms and ammunition, the court that issued the order shall order the entity that possesses each firearm, ammunition, or permit surrendered by or removed

from the respondent under subsection (f) to return those items to the respondent.

“(h) RETURN OF FIREARMS AND AMMUNITION IMPROPERLY RECEIVED.—If a court, in a hearing under subsection (d), determines that a firearm or ammunition surrendered by or removed from a respondent under subsection (f) is owned by an individual other than the respondent, the court may order the United States marshal or designated law enforcement officer in possession of the firearm or ammunition to transfer the firearm or ammunition to that individual if—

“(1) the individual may lawfully own and possess firearms and ammunition; and

“(2) the individual will not provide the respondent with access to the firearm or ammunition.

“(i) PENALTY FOR FALSE REPORTING OR FRIVOLOUS PETITIONS.—An individual who knowingly submits materially false information to the court in a petition for a Federal extreme risk protection order under this section, or who knowingly files such a petition that is frivolous, unreasonable, or without foundation, shall be fined not more than \$5,000, or imprisoned not more than 5 years, or both, except to the extent that a greater sentence is otherwise provided by any other provision of law, as the court deems necessary to deter such abuse of process.

“(j) MODEL POLICY.—

“(1) IN GENERAL.—The Director shall draft a model policy to maximize the accessibility of Federal extreme risk protection orders.

“(2) CONTENTS.—In drafting the model policy under paragraph (1), the Director shall—

“(A) ensure that State, Tribal, and local law enforcement officers and members of the public without legal training are able to easily file petitions for Federal extreme risk protection orders;

“(B) prescribe outreach efforts by employees of the district courts of the United States to familiarize relevant law enforcement officers and the public with the procedures for filing petitions, either—

“(i) through direct outreach; or

“(ii) in coordination with—

“(I) relevant officials in the executive or legislative branch of the Federal Government; or

“(II) with relevant State, Tribal, and local officials;

“(C) prescribe policies for allowing the filing of petitions and prompt adjudication of petitions on weekends and outside of normal court hours;

“(D) prescribe policies for coordinating with law enforcement agencies to ensure the safe, timely, and effective service of Federal extreme risk protection orders and relinquishment of firearms, ammunition, and permits, as applicable; and

“(E) identify governmental and non-governmental resources and partners to help officials of the district courts of the United States coordinate with civil society organizations to ensure the safe and effective implementation of this section.

“(k) REPORTING.—

“(1) INDIVIDUAL REPORTS.—

“(A) IN GENERAL.—Not later than 2 court days after the date on which a court issues or dissolves a Federal extreme risk protection order under this section or a Federal extreme risk protection order expires without being renewed, the court shall notify—

“(i) the Attorney General;

“(ii) each relevant mental health agency in the State in which the order is issued; and

“(iii) State and local law enforcement officials in the jurisdiction in which the order is issued, including the national instant criminal background check system single point of contact for the State of residence of the respondent, where applicable.

“(B) FORMAT.—A court shall submit a notice under subparagraph (A) in an electronic format, in a manner prescribed by the Attorney General.

“(C) UPDATE OF DATABASES.—As soon as practicable and not later than 5 days after receiving a notice under subparagraph (A), the Attorney General shall update the background check databases of the Attorney General to reflect the prohibitions articulated in the applicable Federal extreme risk protection order.

“(2) ANNUAL REPORTS.—Not later than 1 year after the date of enactment of the Federal Extreme Risk Protection Order Act of 2021, and annually thereafter, the Director shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that includes, with respect to the preceding year—

“(A) the number of petitions for ex parte Federal orders filed, as well as the number of such orders issued and the number denied, disaggregated by—

“(i) the jurisdiction;

“(ii) whether the individual authorized under subsection (b) to petition for a Federal extreme risk protection order is a law enforcement officer, or a family or household member, and in the case of a family or household member, which of subparagraphs (A) through (G) of subsection (a)(6) describes the relationship; and

“(iii) the alleged danger posed by the Federal order respondent, including whether the danger involved a risk of suicide, unintentional injury, domestic violence, or other interpersonal violence;

“(B) the number of petitions for long-term Federal orders filed, as well as the number of such orders issued and the number denied, disaggregated by—

“(i) the jurisdiction;

“(ii) whether the individual authorized under subsection (b) to petition for a Federal extreme risk protection order is a law enforcement officer, or a family or household member, and in the case of a family or household member, which of subparagraphs (A) through (G) of subsection (a)(6) describes the relationship; and

“(iii) the alleged danger posed by the Federal order respondent, including whether the danger involved a risk of suicide, unintentional injury, domestic violence, or other interpersonal violence;

“(C) the number of petitions for renewals of long-term Federal orders filed, as well as the number of such orders issued and the number denied;

“(D) the number of cases in which a court has issued a penalty for false reporting or frivolous petitions;

“(E) demographic data of Federal order petitioners, including race, ethnicity, national origin, sex, gender, age, disability, average annual income, and English language proficiency, if available;

“(F) demographic data of Federal order respondents, including race, ethnicity, national origin, sex, gender, age, disability, average annual income, and English language proficiency, if available; and

“(G) the total number of firearms removed pursuant to Federal extreme risk protection orders, and, if available, the number of firearms removed pursuant to each such order.

“(1) TRAINING FOR FEDERAL LAW ENFORCEMENT OFFICERS.—

“(1) TRAINING REQUIREMENTS.—The head of each Federal law enforcement agency shall require each Federal law enforcement officer employed by the agency to complete training in the safe, impartial, effective, and equitable use and administration of Federal extreme risk protection orders, including training to address—

“(A) bias based on race and racism, ethnicity, gender, sexual orientation, gender identity, religion, language proficiency, mental health condition, disability, and classism in the use and administration of Federal extreme risk protection orders;

“(B) the appropriate use of Federal extreme risk protection orders in cases of domestic violence, including the applicability of other policies and protocols to address domestic violence in situations that may also involve Federal extreme risk protection orders and the necessity of safety planning with the victim before law enforcement petitions for and executes a Federal extreme risk protection order, if applicable;

“(C) interacting with persons with mental, behavioral, or physical disabilities, or emotional distress, including de-escalation techniques and crisis intervention;

“(D) training on community relations; and

“(E) best practices for referring persons subject to Federal extreme risk protection orders and associated victims of violence to social service providers that may be available in the jurisdiction and appropriate for those individuals, including health care, mental health, substance abuse, and

legal services, employment and vocational services, housing assistance, case management, and veterans and disability benefits.

“(2) TRAINING DEVELOPMENT.—Federal law enforcement agencies developing law enforcement training required under this section shall seek advice from domestic violence service providers (including culturally specific (as defined in section 40002 of the Violence Against Women Act of 1994 (34 U.S.C. 12291)) providers), social service providers, suicide prevention advocates, violence intervention specialists, law enforcement agencies, mental health disability experts, and other community groups working to reduce suicides and violence, including domestic violence, within the State.

“(m) RULE OF CONSTRUCTION.—Nothing in this section or shall be construed to alter the requirements of subsections (d)(8) or (g)(8) of section 922, related to domestic violence protective orders.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF SECTIONS.—The table of sections for chapter 44 of title 18, United States Code, is amended by adding at the end the following:

“932. Extreme risk protection orders.”.

(2) FORFEITURE.—Section 924(d)(3) of title 18, United States Code, is amended—

- (A) in subparagraph (E), by striking “and” at the end;
- (B) in subparagraph (F), by striking the period at the end and inserting “; and”; and
- (C) by adding at the end the following:

“(G) any attempt to violate a Federal extreme risk protection order issued under section 932.”.

SEC. 3. FEDERAL FIREARMS PROHIBITION.

Section 922 of title 18, United States Code, is amended—

(1) in subsection (d)—

- (A) in paragraph (8)(B)(ii), by striking “or” at the end;
- (B) in paragraph (9), by striking the period at the end and inserting “; or”; and
- (C) by inserting after paragraph (9) the following:

“(10) is subject to a court order that—

- “(A)(i) was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate; or
- “(ii) in the case of an ex parte order, relative to which notice and opportunity to be heard are provided—

“(I) within the time required by Federal, State, Tribal, or territorial law; and

“(II) in any event within a reasonable time after the order is issued, sufficient to protect the due process rights of the person;

“(B) prevents such person from possessing or receiving firearm; and

“(C) includes a finding that such person poses a danger of harm to self or others.”; and

(2) in subsection (g)—

- (A) in paragraph (8)(C)(ii), by striking “or” at the end;
- (B) in paragraph (9), by striking the comma at the end and inserting “; or”; and
- (C) by inserting after paragraph (9) the following:

“(10) is subject to a court order that—

- “(A)(i) was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate; or
- “(ii) in the case of an ex parte order, relative to which notice and opportunity to be heard are provided—

“(I) within the time required by Federal, State, Tribal, or territorial law; and

“(II) in any event within a reasonable time after the order is issued, sufficient to protect the due process rights of the person;

“(B) prevents such a person from possessing or receiving firearms; and

“(C) includes a finding that such person poses a danger of harm to self or others.”.

SEC. 4. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstance, is held to be invalid, the remainder

of this Act, or an amendment made by this Act, or the application of such provision to other persons or circumstances, shall not be affected.

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date that is 180 days after the date of enactment of this Act.

SEC. 6. PREEMPTION.

Nothing in this Act or an amendment made by this Act shall be construed to preempt any State law or policy.

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PURPOSE AND SUMMARY

On average, more than 100 Americans are lost to gun violence every day, and more than 200 are injured in gun-related incidents.¹ These shootings include individual shootings, mass shootings, and suicides. Often, there are signs that shooters are a danger to themselves or others before a life is lost. These warning signs create an opportunity for intervention that can save lives, if there is a tool in place to prevent access to firearms. H.R. 2377, the “Federal Extreme Risk Protection Order Act of 2021,” would establish procedures for obtaining an order in federal court to temporarily prohibit access to firearms when people are shown to be a danger to themselves or others, and such an order is necessary to prevent that danger.

¹ *The Facts that Make Us Act*, Brady United, <https://www.bradyunited.org/key-statistics> (last visited June 1, 2022).

BACKGROUND AND NEED FOR THE LEGISLATION

The Gun Control Act of 1968 established the framework for legally prohibiting certain categories of people from possessing firearms.² This list of “prohibited persons” has grown over the years and now includes categories such as felons, fugitives, domestic abusers, those who have been dishonorably discharged from the Armed Forces, and those who have renounced citizenship, among others. Only in 1993, with the passage of the Brady Act, did Congress provide the public with a pre-sale process for checking whether a prospective firearm purchaser is legally able to purchase the firearm.³ The Brady Act established the National Instant Criminal Background Check System (NICS) as a mechanism for federally licensed firearms dealers to accomplish pre-sale checks, now commonly referred to as background checks. Since 1994, NICS has denied more than three million sales to individuals who were prohibited from purchasing firearms from licensed sellers.⁴

One limitation of the current risk-factor-based approach to gun violence prevention policy is that firearm disqualifications do not go into effect until *after* an extreme event—such as the commission of a felony or misdemeanor domestic abuse—has already occurred.⁵ Prior to such a disqualifying event, family members, intimate partners, or others often observe a pattern of dangerous behavior.⁶ The identification of dangerous behaviors by individuals who know or are in contact with the person presents an opportunity for a more prevention-oriented approach than the current system that ties firearm prevention to adjudication by the criminal justice or mental health systems.⁷

² Gun Control Act of 1968, Pub. L. 90-618, 82 Stat. 1213-2 (1968).

³ Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

⁴ Jennifer C. Karberg et al., *Background Checks for Firearm Transfers, 2015 - Statistical Tables*, BUREAU OF JUST. STATS., U.S. DEP’T OF JUST, <https://www.bjs.gov/content/pub/pdf/bcft15st.pdf>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

In March of 2013, a group of leading researchers and practitioners met in Baltimore, Maryland—this group has come to be known as the Consortium for Risk-Based Firearm Policy—to examine the evidence on mental illness and gun violence and to answer the question whether dangerous behavior can be used to disqualify firearm purchase and possession.⁸ Following a review and discussion of the literature, the consensus among participants was that dangerous behaviors associated with violence, and not mental illness diagnoses, are the best predictor available to identify those at risk for committing future gun violence.⁹ The Consortium went on to recommend an evidence-informed strategy to temporarily restrict firearm access on the basis of dangerous behavior through what it called a “gun violence restraining order,” or GVRO.¹⁰

The GVRO concept was directly informed by the domestic violence restraining order (DVRO) system.¹¹ Domestic violence victims and advocates have long used DVROs as a tool for intervening in family violence.¹² DVROs provide victims with access to a judge who decides whether their case warrants court intervention and, if so, the terms of that intervention.¹³ In most locales, court access is immediate, in recognition of the importance of intervention when domestic violence has reached a crisis point and the court’s help is needed.¹⁴ All 50 states have systems in place to support DVRO petitions.¹⁵

⁸ See Emma E. McGinty et al., *Using Res. Evidence to Reframe the Policy Debate Around Mental Illness and Guns: Process and Recommendations*, 104 AM. J. OF PUB. HEALTH, e22-e26 (2014).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Shannon Frattaroli, et al., *Gun Violence Restraining Orders: Alternative or Adjunct to Mental Health-Based Restrictions on Firearms?*, 33 BEHAV. SCI. & THE L. 290, 294 (2015).

¹⁵ *Extreme Risk Protection Orders*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <https://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/extreme-risk-protection-orders/> (last visited Aug. 23, 2019).

While the terms of those laws vary somewhat across the states, all individuals are subject to a federal law prohibiting respondents of DVROs from purchasing and possessing guns.¹⁶

Nearly everyone seems to agree that people at genuine risk of harming themselves or others should not have guns.¹⁷ In gun policy debates, people who should not possess guns are often called “the mentally ill.” This phrase is highly misleading, however.¹⁸ An estimated 43.6 million Americans have diagnosable mental health conditions,¹⁹ and the vast majority pose no danger to anyone.²⁰ Disqualifying all of those individuals from gun ownership would be ineffective, unfair, and stigmatizing.²¹ It would also ignore large numbers of people who are not mentally ill, but who do pose a danger.²²

In fact, most mass shooters have no history of treatment for mental illness.²³ Many, however, have exhibited behaviors that worried their families, co-workers, teachers, or neighbors.²⁴ Nearly 80% of perpetrators of mass violence in public places make explicit threats or behave in a manner “indicative of their intent to carry out an attack.”²⁵ For example, public mass shootings in Parkland, Florida,²⁶

¹⁶ 18 U.S.C. § 922(g)(9) (2019).

¹⁷ Richard J. Bonnie, et al., *Extreme Risk Protection Orders—Effective Tools for Keeping Guns Out of Dangerous Hands*, 37 DEV. IN MENTAL HEALTH L. 2 (Winter 2018/2019).

¹⁸ *See id.* at 3.

¹⁹ Sarra L. Hedden, et al., *Behavioral Health Trends in the United States: Results from the 2014 National Survey on Drug Use and Health*, SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMIN., <https://store.samhsa.gov/system/files/nsduh-fr1-2014.pdf>.

²⁰ Jeffery W. Swanson & Alan R. Felthous, *Guns, Mental Illness and the Law.: Introduction to This Issue*, 22 BEHAV. SCI. & THE L. 167, 168.

²¹ Bonnie, et al., *supra* note 17, at 3.

²² *Id.*

²³ U.S. SECRET SERV., NAT’L THREAT ASSESSMENT SERV., MASS ATTACKS IN PUBLIC SPACES—2017 (March 2018), https://www.secretservice.gov/forms/USSS_NTAC-Mass_Attacks_in_Public_Spaces-2017.pdf.

²⁴ Bonnie, et al., *supra* note 17, at 3.

²⁵ U.S. SECRET SERV., NAT’L THREAT ASSESSMENT SERV., MASS ATTACKS IN PUB. SPACES—2018 (July 2019), <https://www.hsdl.org/?view&did=826876>.

²⁶ Richard A. Oppel, Jr., et al., *Tipster’s Warning to F.B.I. on Florida Shooting Suspect: ‘I Know He’s Going to Explode’*, N.Y. TIMES (Feb. 23, 2018), <https://www.nytimes.com/2018/02/23/us/fbi-tip-nikolas-cruz.html>.

Aurora, Colorado;²⁷ and Tucson, Arizona;²⁸ among others, were committed by assailants known to family members, acquaintances, law enforcement agencies, and in some cases health professionals to be at high risk for violence.²⁹

Urgent, individualized interventions to reduce firearm access provide a rapid, sharply-focused response when there is a risk for imminent firearm violence.³⁰ Bipartisan support is therefore growing for laws authorizing judges to issue what are properly known as “extreme risk protection orders,” or “ERPOs” (also known colloquially as “red flag” orders) that temporarily remove firearms from those at risk of harming themselves or others. In fact, public mass shootings in California, Texas and Ohio in late July and early August of 2019 led to widespread discussion of the potential for ERPOs to prevent such events.³¹

California enacted the nation’s first ERPO statute,³² which took effect in January 2016. As of June 2022, 19 states³³ and the District of Columbia have enacted an extreme risk law.³⁴ Policies and procedures for ERPOs are modeled on those for DVROs.³⁵ Depending on state law, petitions can be

²⁷ Ann O’Neill & Sara Weisfeldt, *Psychiatrist: Holmes Thought 3-4 Times A Day About Killing*, CNN (Jun. 17, 2015), <https://www.cnn.com/2015/06/16/us/james-holmes-theater-shooting-fenton/index.html>.

²⁸ Sarah Garrecht Gassen & Timothy Williams, *Before Attack, Parents of Gunman Tried to Address Son’s Strange Behavior*, N.Y. TIMES (Mar. 27, 2013), <https://www.nytimes.com/2013/03/28/us/documents-2011-tucson-shooting-case-gabrielle-giffords.html>.

²⁹ Garen J. Wintemute, et al., *Extreme Risk Protection Orders Intended to Prevent Mass Shootings: A Case Series*, ANNALS OF INTERNAL MED. (Aug. 20, 2019), <https://annals.org/aim/fullarticle/2748711/extreme-risk-protection-orders-intended-prevent-mass-shootings-case-series>.

³⁰ *Id.*

³¹ *See id.*

³² Cal. Penal Code § 18100-18205 (2019). ERPOs in California are known as gun violence restraining orders (GVROs).

³³ These states are California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington.

³⁴ *See* Wintemute, et al., *supra* note 29.

³⁵ *Id.*

submitted to the court by a variety of people who might believe a person is a danger to himself or others, including family members, law enforcement officers, counselors, and health professionals.

Almost all of the existing statutes require a judge to review submitted evidence and determine whether an individual poses an imminent risk of harm to self or others according to a common set of criteria and standard of proof.³⁶ Typically, this occurs in an *ex parte* process, with most current laws requiring a full evidentiary hearing (for which the individual is given prior notice and the opportunity to participate) within a set period of days from entry of the *ex parte* order.³⁷

The civil orders entered by the courts authorizing law enforcement officers to search for and take custody of an individual's firearms neither require, nor produce, a criminal record.³⁸ The orders also do not require the subject of an order to have a mental illness; instead, they require evidence of specific recent actions or threats of violence, and allow consideration of other factors (such as a history of using physical force against others) that establish a real risk of harm to self or others.³⁹

There is some variation across states in the specific features of these statutes.⁴⁰ They differ, for example, in the range of individuals authorized to petition for an order, the standard of proof required for the evidence of risk sufficient to initially remove a firearm, and the standard of proof required at any subsequent court hearing to retain the firearm.⁴¹ In all of the statutes, the burden remains on the petitioner to show that the statutory "extreme risk" criteria for taking custody of the firearms have been met.⁴²

³⁶ Bonnie, et al., *supra* note 17, at 3.

³⁷ *See id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

ERPO laws provide a focused and time-limited mechanism for restricting gun access for those who are at risk of self-harm.⁴³ Nationwide, about 60% of gun deaths are suicides, and the rate of firearm-related suicide in the population has increased 24% since 1999.⁴⁴ A total of 23,941 people used guns to end their own lives in 2019.⁴⁵ Numerous studies have shown that suicides are usually impulsive acts, and that restricting access to guns for people who are at risk of suicide reduces the likelihood of their dying by their own hand.⁴⁶ In addition, a recent analysis of California’s GVRO cases suggests that urgent, individualized intervention can play a role in efforts to prevent mass shootings, in healthcare settings and elsewhere.⁴⁷ The authors of the study conclude that “[i]n their demographic characteristics, frequent declarations of intent, declarations of animosity toward targeted populations, and access to firearms,...[individuals subjected to GVROs] resemble persons who have committed mass violence.”⁴⁸

Finally, reflecting expert consensus, the 2018 Final Report of the Federal Commission on School Safety included this recommendation: “States should adopt ERPO laws that incorporate an appropriate evidentiary standard to temporarily restrict firearms access by individuals found to be a danger to themselves or others.”⁴⁹

Although ERPO laws have proven to be successful in the states, a federal law is needed to provide these-life saving mechanisms to be utilized nationally and save lives.

⁴³ Bonnie, et al., *supra* note 17, at 4-5.

⁴⁴ *Id.*

⁴⁵ Centers for Disease Control and Prevention, Web-Based Injury Statistics Query System (WISQARS), “Fatal Injury Reports,” Last accessed Oct. 21, 2021, <https://wisqars.cdc.gov/fatal-reports>.

⁴⁶ Bonnie, et al., *supra* note 17, at 4.

⁴⁷ Wintemute, et al., *supra* note 29.

⁴⁸ *Id.*

⁴⁹ U.S. DEP’T. OF EDUC., ET AL., FINAL REPORT OF THE FEDERAL COMMISSION ON SCHOOL SAFETY (Dec. 18, 2018), at 94, <https://www2.ed.gov/documents/school-safety/school-safety-report.pdf>.

HEARINGS

For the purposes of clause 3(c)(6)(A) of House Rule XIII, the following hearing was used to consider H.R. 2377:

On May 20, 2021, the Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on “An Unending Crisis: Essential Steps to Reducing Gun Violence and Mass Shootings.” The Subcommittee heard testimony from:

- The Honorable Vikki Goodwin, Member of the House of Representatives, State of Texas;
- Fred Guttenberg, Author and Gun Safety Advocate;
- J. Adam Skaggs, Chief Counsel and Policy Director, Giffords Law Center to Prevent Gun Violence;
- Michael E. Grady, Senior Pastor, Prince of Peace Christian Fellowship; and
- Dianna Muller, Founder, The DC Project.

The hearing explored the facts and data on gun violence and a range of policy proposals to reduce gun violence, including extreme risk protection orders.

COMMITTEE CONSIDERATION

On October 27, 2021, the Committee met in open session and ordered the bill, H.R. 2377, favorably reported, as amended, by a rollcall vote of 24 to 18, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of House Rule XIII, the following rollcall votes occurred during the Committee’s consideration of H.R. 2377:

1. An amendment by Mr. Fitzgerald to prohibit a court from considering activities protected under the First Amendment, including parents voicing concerns about school board decisions, when determining whether to issue a federal ERPO was defeated by a rollcall vote of 19 to 23. The vote was as follows:

COMMITTEE ON THE JUDICIARY

House of Representatives

117th Congress

Amendment # 1 (ANS) to HR 2377 offered by Rep. Fitzgerald

PASSED

FAILED

| | AYES | NOS | PRES. |
|----------------------------|------|-----|-------|
| Jerrold Nadler (NY-10) | | ✓ | |
| Zoe Lofgren (CA-19) | | ✓ | |
| Sheila Jackson Lee (TX-18) | | ✓ | |
| Steve Cohen (TN-09) | | ✓ | |
| Hank Johnson (GA-04) | | ✓ | |
| Ted Deutch (FL-22) | | | |
| Karen Bass (CA-37) | | ✓ | |
| Hakeem Jeffries (NY-08) | | ✓ | |
| David Cicilline (RI-01) | | ✓ | |
| Eric Swalwell (CA-15) | | ✓ | |
| Ted Lieu (CA-33) | | | |
| Jamie Raskin (MD-08) | | ✓ | |
| Pramila Jayapal (WA-07) | | ✓ | |
| Val Demings (FL-10) | | ✓ | |
| Lou Correa (CA-46) | | ✓ | |
| Mary Gay Scanlon (PA-05) | | ✓ | |
| Sylvia Garcia (TX-29) | | ✓ | |
| Joseph Neguse (CO-02) | | ✓ | |
| Lucy McBath (GA-06) | | ✓ | |
| Greg Stanton (AZ-09) | | ✓ | |
| Madeleine Dean (PA-04) | | ✓ | |
| Veronica Escobar (TX-16) | | ✓ | |
| Mondaire Jones (NY-17) | | ✓ | |
| Deborah Ross (NC-02) | | ✓ | |
| Cori Bush (MO-01) | | ✓ | |
| | AYES | NOS | PRES. |
| Jim Jordan (OH-04) | ✓ | | |
| Steve Chabot (OH-01) | ✓ | | |
| Louie Gohmert (TX-01) | ✓ | | |
| Darrell Issa (CA-50) | ✓ | | |
| Ken Buck (CO-04) | ✓ | | |
| Matt Gaetz (FL-01) | ✓ | | |
| Mike Johnson (LA-04) | ✓ | | |
| Andy Biggs (AZ-05) | ✓ | | |
| Tom McClintock (CA-04) | ✓ | | |
| Greg Steube (FL-17) | ✓ | | |
| Tom Tiffany (WI-07) | ✓ | | |
| Thomas Massie (KY-04) | ✓ | | |
| Chip Roy (TX-21) | ✓ | | |
| Dan Bishop (NC-09) | ✓ | | |
| Michelle Fischbach (MN-07) | ✓ | | |
| Victoria Spartz (IN-05) | ✓ | | |
| Scott Fitzgerald (WI-05) | ✓ | | |
| Cliff Bentz (OR-02) | ✓ | | |
| Burgess Owens (UT-04) | ✓ | | |
| | AYES | NOS | PRES. |
| TOTAL | 19 | 23 | |

2. An amendment by Mr. Steube to allow a court to assess attorney fees against an individual who knowingly submits materially false information to the court in a petition for a federal ERPO, or who knowingly files such a petition that is frivolous, unreasonable, or without foundation was defeated by a rollcall vote of 18 to 24. The vote was as follows:

COMMITTEE ON THE JUDICIARY

House of Representatives

117th Congress

Amendment # 2 (AMJ) to HR 2377 offered by Rep. Stenbe

PASSED
 FAILED

| | AYES | NOS | PRES. |
|----------------------------|------|-----|-------|
| Jerrold Nadler (NY-10) | | ✓ | |
| Zoe Lofgren (CA-19) | | ✓ | |
| Sheila Jackson Lee (TX-18) | | ✓ | |
| Steve Cohen (TN-09) | | ✓ | |
| Hank Johnson (GA-04) | | ✓ | |
| Ted Deutch (FL-22) | | ✓ | |
| Karen Bass (CA-37) | | ✓ | |
| Hakeem Jeffries (NY-08) | | ✓ | |
| David Cicilline (RI-01) | | ✓ | |
| Eric Swalwell (CA-15) | | ✓ | |
| Ted Lieu (CA-33) | | | |
| Jamie Raskin (MD-08) | | ✓ | |
| Pramila Jayapal (WA-07) | | ✓ | |
| Val Demings (FL-10) | | ✓ | |
| Lou Correa (CA-46) | | ✓ | |
| Mary Gay Scanlon (PA-05) | | ✓ | |
| Sylvia Garcia (TX-29) | | ✓ | |
| Joseph Neguse (CO-02) | | ✓ | |
| Lucy McBath (GA-06) | | ✓ | |
| Greg Stanton (AZ-09) | | ✓ | |
| Madeleine Dean (PA-04) | | ✓ | |
| Veronica Escobar (TX-16) | | ✓ | |
| Mondaire Jones (NY-17) | | ✓ | |
| Deborah Ross (NC-02) | | ✓ | |
| Cori Bush (MO-01) | | ✓ | |
| | AYES | NOS | PRES |
| Jim Jordan (OH-04) | ✓ | | |
| Steve Chabot (OH-01) | ✓ | | |
| Louie Gohmert (TX-01) | ✓ | | |
| Darrell Issa (CA-50) | ✓ | | |
| Ken Buck (CO-04) | ✓ | | |
| Matt Gaetz (FL-01) | ✓ | | |
| Mike Johnson (LA-04) | ✓ | | |
| Andy Biggs (AZ-05) | ✓ | | |
| Tom McClintock (CA-04) | ✓ | | |
| Greg Steube (FL-17) | ✓ | | |
| Tom Tiffany (WI-07) | ✓ | | |
| Thomas Massie (KY-04) | ✓ | | |
| Chip Roy (TX-21) | ✓ | | |
| Dan Bishop (NC-09) | ✓ | | |
| Michelle Fischbach (MN-07) | ✓ | | |
| Victoria Spartz (IN-05) | | | |
| Scott Fitzgerald (WI-05) | ✓ | | |
| Cliff Bentz (OR-02) | ✓ | | |
| Burgess Owens (UT-04) | ✓ | | |
| | AYES | NOS | PRES. |
| TOTAL | 18 | 24 | |

3. An amendment by Mr. Steube to change the evidentiary standards for issuance of an *ex parte* or long-term ERPO to beyond a reasonable doubt was defeated by a rollcall vote of 19 to 23. The vote was as follows:

COMMITTEE ON THE JUDICIARY

House of Representatives
117th Congress

Amendment # 5 (ANS) to HR 2377 offered by Rep. Steube

PASSED
 FAILED

| | AYES | NOS | PRES. |
|----------------------------|------|-----|-------|
| Jerrold Nadler (NY-10) | | ✓ | |
| Zoe Lofgren (CA-19) | | ✓ | |
| Sheila Jackson Lee (TX-18) | | ✓ | |
| Steve Cohen (TN-09) | | ✓ | |
| Hank Johnson (GA-04) | | ✓ | |
| Ted Deutch (FL-22) | | | |
| Karen Bass (CA-37) | | ✓ | |
| Hakeem Jeffries (NY-08) | | ✓ | |
| David Cicilline (RI-01) | | ✓ | |
| Eric Swalwell (CA-15) | | ✓ | |
| Ted Lieu (CA-33) | | | |
| Jamie Raskin (MD-08) | | ✓ | |
| Pramila Jayapal (WA-07) | | ✓ | |
| Val Demings (FL-10) | | ✓ | |
| Lou Correa (CA-46) | | ✓ | |
| Mary Gay Scanlon (PA-05) | | ✓ | |
| Sylvia Garcia (TX-29) | | ✓ | |
| Joseph Neguse (CO-02) | | ✓ | |
| Lucy McBath (GA-06) | | ✓ | |
| Greg Stanton (AZ-09) | | ✓ | |
| Madeleine Dean (PA-04) | | ✓ | |
| Veronica Escobar (TX-16) | | ✓ | |
| Mondaire Jones (NY-17) | | ✓ | |
| Deborah Ross (NC-02) | | ✓ | |
| Cori Bush (MO-01) | | ✓ | |
| | AYES | NOS | PRES |
| Jim Jordan (OH-04) | ✓ | | |
| Steve Chabot (OH-01) | ✓ | | |
| Louie Gohmert (TX-01) | ✓ | | |
| Darrell Issa (CA-50) | ✓ | | |
| Ken Buck (CO-04) | ✓ | | |
| Matt Gaetz (FL-01) | ✓ | | |
| Mike Johnson (LA-04) | ✓ | | |
| Andy Biggs (AZ-05) | ✓ | | |
| Tom McClintock (CA-04) | ✓ | | |
| Greg Steube (FL-17) | ✓ | | |
| Tom Tiffany (WI-07) | ✓ | | |
| Thomas Massie (KY-04) | ✓ | | |
| Chip Roy (TX-21) | ✓ | | |
| Dan Bishop (NC-09) | ✓ | | |
| Michelle Fischbach (MN-07) | ✓ | | |
| Victoria Spartz (IN-05) | ✓ | | |
| Scott Fitzgerald (WI-05) | ✓ | | |
| Cliff Bentz (OR-02) | ✓ | | |
| Burgess Owens (UT-04) | ✓ | | |
| | AYES | NOS | PRES. |
| TOTAL | 19 | 23 | |

4. An amendment in the nature of a substitute by Mr. Nadler passed by a rollcall vote of 24 to 19. The vote was as follows:

COMMITTEE ON THE JUDICIARY

House of Representatives

117th Congress

Amendment # ANJ() to HR 2377 offered by Rep. Nadler

PASSED
 FAILED

| | AYES | NOS | PRES. |
|----------------------------|------|-----|-------|
| Jerrold Nadler (NY-10) | ✓ | | |
| Zoe Lofgren (CA-19) | ✓ | | |
| Sheila Jackson Lee (TX-18) | ✓ | | |
| Steve Cohen (TN-09) | ✓ | | |
| Hank Johnson (GA-04) | ✓ | | |
| Ted Deutch (FL-22) | ✓ | | |
| Karen Bass (CA-37) | ✓ | | |
| Hakeem Jeffries (NY-08) | ✓ | | |
| David Cicilline (RI-01) | ✓ | | |
| Eric Swalwell (CA-15) | ✓ | | |
| Ted Lieu (CA-33) | | | |
| Jamie Raskin (MD-08) | ✓ | | |
| Pramila Jayapal (WA-07) | ✓ | | |
| Val Demings (FL-10) | ✓ | | |
| Lou Correa (CA-46) | ✓ | | |
| Mary Gay Scanlon (PA-05) | ✓ | | |
| Sylvia Garcia (TX-29) | ✓ | | |
| Joseph Neguse (CO-02) | ✓ | | |
| Lucy McBath (GA-06) | ✓ | | |
| Greg Stanton (AZ-09) | ✓ | | |
| Madeleine Dean (PA-04) | ✓ | | |
| Veronica Escobar (TX-16) | ✓ | | |
| Mondaire Jones (NY-17) | ✓ | | |
| Deborah Ross (NC-02) | ✓ | | |
| Cori Bush (MO-01) | ✓ | | |
| | AYES | NOS | PRES. |
| Jim Jordan (OH-04) | | ✓ | |
| Steve Chabot (OH-01) | | ✓ | |
| Louie Gohmert (TX-01) | | ✓ | |
| Darrell Issa (CA-50) | | ✓ | |
| Ken Buck (CO-04) | | ✓ | |
| Matt Gaetz (FL-01) | | ✓ | |
| Mike Johnson (LA-04) | | ✓ | |
| Andy Biggs (AZ-05) | | ✓ | |
| Tom McClintock (CA-04) | | ✓ | |
| Greg Steube (FL-17) | | ✓ | |
| Tom Tiffany (WI-07) | | ✓ | |
| Thomas Massie (KY-04) | | ✓ | |
| Chip Roy (TX-21) | | ✓ | |
| Dan Bishop (NC-09) | | ✓ | |
| Michelle Fischbach (MN-07) | | ✓ | |
| Victoria Spartz (IN-05) | | ✓ | |
| Scott Fitzgerald (WI-05) | | ✓ | |
| Cliff Bentz (OR-02) | | ✓ | |
| Burgess Owens (UT-04) | | ✓ | |
| | AYES | NOS | PRES. |
| TOTAL | 24 | 19 | |

5. A motion to report H.R. 2377, as amended, was agreed to by a rollcall vote of 24 to 18. The vote was as follows:

COMMITTEE ON THE JUDICIARY

House of Representatives

117th Congress

Final Passage on: HR 2377

PASSED
 FAILED

| | AYES | NOS | PRES. |
|----------------------------|------|-----|-------|
| Jerrold Nadler (NY-10) | ✓ | | |
| Zoe Lofgren (CA-19) | ✓ | | |
| Sheila Jackson Lee (TX-18) | ✓ | | |
| Steve Cohen (TN-09) | ✓ | | |
| Hank Johnson (GA-04) | ✓ | | |
| Ted Deutch (FL-22) | ✓ | | |
| Karen Bass (CA-37) | ✓ | | |
| Hakeem Jeffries (NY-08) | ✓ | | |
| David Cicilline (RI-01) | ✓ | | |
| Eric Swalwell (CA-15) | ✓ | | |
| Ted Lieu (CA-33) | | | |
| Jamie Raskin (MD-08) | ✓ | | |
| Pramila Jayapal (WA-07) | ✓ | | |
| Val Demings (FL-10) | ✓ | | |
| Lou Correa (CA-46) | ✓ | | |
| Mary Gay Scanlon (PA-05) | ✓ | | |
| Sylvia Garcia (TX-29) | ✓ | | |
| Joseph Neguse (CO-02) | ✓ | | |
| Lucy McBath (GA-06) | ✓ | | |
| Greg Stanton (AZ-09) | ✓ | | |
| Madeleine Dean (PA-04) | ✓ | | |
| Veronica Escobar (TX-16) | ✓ | | |
| Mondaire Jones (NY-17) | ✓ | | |
| Deborah Ross (NC-02) | ✓ | | |
| Cori Bush (MO-01) | ✓ | | |
| | AYES | NOS | PRES |
| Jim Jordan (OH-04) | | ✓ | |
| Steve Chabot (OH-01) | | ✓ | |
| Louie Gohmert (TX-01) | | ✓ | |
| Darrell Issa (CA-50) | | ✓ | |
| Ken Buck (CO-04) | | ✓ | |
| Matt Gaetz (FL-01) | | ✓ | |
| Mike Johnson (LA-04) | | ✓ | |
| Andy Biggs (AZ-05) | | ✓ | |
| Tom McClintock (CA-04) | | ✓ | |
| Greg Steube (FL-17) | | ✓ | |
| Tom Tiffany (WI-07) | | ✓ | |
| Thomas Massie (KY-04) | | ✓ | |
| Chip Roy (TX-21) | | ✓ | |
| Dan Bishop (NC-09) | | ✓ | |
| Michelle Fischbach (MN-07) | | ✓ | |
| Victoria Spartz (IN-05) | | | |
| Scott Fitzgerald (WI-05) | | ✓ | |
| Cliff Bentz (OR-02) | | ✓ | |
| Burgess Owens (UT-04) | | ✓ | |
| | AYES | NOS | PRES. |
| TOTAL | 24 | 18 | |

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of House Rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House Rule X, are incorporated in the descriptive portions of this report.

COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

Pursuant to clause 3(d)(1) of House Rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(2) of House Rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause (3)(c)(3) of House Rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee sets forth, with respect to the bill, H.R. 2377, the following analysis and estimate prepared by the Director of the Congressional Budget Office:

At a Glance

H.R. 2377, Federal Extreme Risk Protection Order Act of 2021

As ordered reported by the House Committee on the Judiciary on October 27, 2021

| By Fiscal Year, Millions of Dollars | 2022 | 2022-2026 | 2022-2031 |
|---|------|-----------|-----------|
| Direct Spending (Outlays) | * | * | * |
| Revenues | * | * | * |
| Increase or Decrease (-) in the Deficit | * | * | * |

| | | | |
|---|-----------|------------|---------------|
| Spending Subject to Appropriation (Outlays) | 16 | 188 | not estimated |
|---|-----------|------------|---------------|

| | | | |
|--|------------|-------------------------------------|-----------------------------|
| Statutory pay-as-you-go procedures apply? | Yes | Mandate Effects | |
| Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032? | No | Contains intergovernmental mandate? | No |
| | | Contains private-sector mandate? | Yes, Under Threshold |

* = between -\$500,000 and \$500,000.

The bill would

- Allow family members and law enforcement officials to file petitions in federal courts requesting extreme risk protection orders (ERPOs) for the removal of firearms from people who are believed to present an extreme risk of harm to themselves or others
- Direct the U.S. Marshals Service (USMS) to serve federal ERPOs, remove firearms and ammunition if so ordered, and store those items
- Require federal law enforcement agencies to develop training on implementing the bill
- Make it a federal crime to possess or to ship, transport, or receive firearms or ammunition via interstate or foreign commerce while such a court order is in effect
- Impose private-sector mandates by prohibiting people who are subject to an ERPO from possessing, purchasing, or transferring firearms or ammunition while that order is in effect; and prohibiting other entities from selling or transferring firearms or ammunition to people who are subject to such an order

Estimated budgetary effects would mainly stem from

- Spending by federal courts to conduct hearings on ERPOs
- Spending by the USMS to serve ERPOs
- Spending by federal law enforcement agencies on training

Areas of significant uncertainty include

- Estimating the number of ERPOs that would be filed in federal courts

Detailed estimate begins on the next page.

Bill Summary

H.R. 2377 would allow family members and law enforcement officials to file petitions in federal courts requesting extreme risk protection orders (ERPOs) for the removal of firearms from people who are believed to present an extreme risk of harm to themselves or others. The bill would require the U.S. Marshals Service (USMS) to serve federal ERPOs, remove firearms if so ordered, and store firearms until a hearing can be held to determine whether the firearms should be returned to or kept from the respondent for a specific period.

Estimated Federal Cost

The costs of the legislation fall within budget function 750 (administration of justice).

Basis of Estimate

For this estimate, CBO assumes that the legislation will be enacted in late fiscal year 2022 and that the estimated amounts will be appropriated for each fiscal year. Estimated outlays are based on historical patterns for similar programs.

Direct Spending and Revenues

H.R. 2377 would prohibit people subject to an ERPO from receiving firearms or ammunition, and it would prohibit entities or other persons from providing, selling, or otherwise making such items available to people subject to an ERPO. Violations in either case could result in federal criminal charges and fines. Fines would be recorded as revenues and deposited in the Crime Victims Fund, and they could be spent without further appropriation. CBO expects any additional revenues and associated direct spending would not be significant because relatively few additional cases would be likely to occur.

Spending Subject to Appropriation

Assuming appropriation of the estimated amounts, CBO estimates that enacting H.R. 2377 would cost \$188 million over the 2022-2026 period (see Table 1).

**Table 1.
Estimated Increases in Spending Subject to Appropriation Under H.R. 2377**

| | By Fiscal Year, Millions of Dollars | | | | | 2022-2026 |
|--------------------------|-------------------------------------|------|------|------|------|-----------|
| | 2022 | 2023 | 2024 | 2025 | 2026 | |
| Federal Judiciary | | | | | | |
| Estimated Authorization | 1 | 12 | 12 | 13 | 13 | 51 |
| Estimated Outlays | 1 | 11 | 12 | 13 | 13 | 50 |
| U.S. Marshals Service | | | | | | |
| Estimated Authorization | 16 | 25 | 26 | 27 | 29 | 124 |
| Estimated Outlays | 15 | 24 | 26 | 27 | 28 | 121 |
| Law Enforcement Training | | | | | | |
| Estimated Authorization | 1 | 4 | 4 | 4 | 5 | 18 |
| Estimated Outlays | 1 | 4 | 4 | 4 | 5 | 18 |
| Total Changes | | | | | | |
| Estimated Authorization | 18 | 41 | 43 | 45 | 47 | 193 |
| Estimated Outlays | 16 | 39 | 43 | 45 | 46 | 188 |

Components may not sum to totals because of rounding.

Federal Judiciary. Nineteen states and the District of Columbia currently have “red flag laws,” which allow people to petition the courts to issue ERPOs; nine other states currently are considering such laws. H.R. 2377 would allow family members, household members, and law enforcement officials to file ERPO petitions in federal district courts instead of state courts. Under H.R. 2377, petitioners would not pay court filing fees.

Using information from the USMS, the Administrative Office of the U.S. Courts (AOUSC), and states with ERPO laws, CBO estimates that roughly 10,000 petitions would be filed each year over the 2022-2026 period in state and federal courts. Of that total, CBO expects roughly 4,500 each year would be filed in federal courts with the remaining filed in state courts.

The federal judiciary would incur costs to process and hold hearings for petitions that are filed in federal district courts. In addition, under the bill, respondents who cannot afford representation would be entitled to counsel appointed and paid by the court. Using information from the AOUSC about the average cost of a hearing, CBO estimates that federal courts would spend about \$10 million annually over the 2022-2026 period to hold hearings and perform other work for new filings and about \$2 million annually to provide representation for respondents.

U.S. Marshals Service. Under the bill, the USMS would serve respondents with ERPOs approved by a federal judge, remove firearms and ammunition from the respondents, and store those articles in agency facilities until an order expires. Using information about approval rates for state ERPO petitions, CBO estimates that roughly 4,500 federal petitions

would be filed annually and that judges would approve orders in about 60 percent of those cases, resulting in the issuance of about 2,700 ERPOs.

On the basis of information from the USMS, CBO estimates that the agency would require about \$25 million annually and \$121 million over the 2022-2026 period to implement the bill. Of that total, CBO estimates that the USMS would incur the following costs to plan and support field operations over the 2022-2026 period:

- \$45 million to compensate the equivalent of 94 employees for time spent on administrative support activities, such as managing documents and coordinating with officers and court personnel;
- \$36 million to compensate the equivalent of about 60 full-time federal marshals to plan field operations, remove firearms from respondents, coordinate with federal courts, and store firearms and ammunition;
- \$16 million to employ 22 intelligence analysts to assess security threats to field operations and to federal judges and courts;
- \$10 million to build secure storage areas for firearms and ammunition in 330 facilities used by the USMS;
- \$9 million for security training for marshals; and
- \$7 million to employ two attorneys, one paralegal, and six staff members to oversee the program.

Law Enforcement Training. H.R. 2377 would require all federal law enforcement officers to undergo ERPO training. About 4,000 of the nation's 133,000 federal law enforcement officers are U.S. Marshals. Assuming that their ERPO training costs are accounted for above, and assuming that all remaining officers undergo approximately two hours of ERPO training each year, CBO estimates that this provision would cost about \$4 million annually over the 2022-2026 period.

Uncertainty

In estimating the effects of H.R. 2377, CBO had to account for uncertainty in projecting the number of ERPO petitions that would be filed in federal courts, which in turn would affect the workload of the USMS and the federal judiciary. The volume of such filings would depend both on individual people's decisions about whether to file a petition and on the number of states that enact new red flag laws. Therefore, the volume of ERPOs could be larger or smaller than CBO has estimated and annual costs for the USMS could be higher or lower than CBO has estimated.

Pay-As-You-Go Considerations

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures would be less than \$500,000 in every year and over the 2022-2031 period.

Increase in Long-Term Deficits

CBO estimates that enacting H.R. 2377 would not significantly increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2032.

Mandates

H.R. 2377 contains private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate cost of complying with the mandates would fall below the annual threshold established in UMRA of \$170 million in 2021 (adjusted annually for inflation).

The bill does not contain intergovernmental mandates.

About half of the U.S. population lives in a state with current red flag laws similar to the types of restrictions that H.R. 2377 would impose. The mandates in the bill would affect the other half of the U.S. population that reside in states without red flag laws. CBO estimates that about 4,500 ERPOs would be filed each year in federal courts nationwide; of that total, CBO further estimates that about 2,500 would be filed and approved in states without current red flag laws.

H.R. 2377 would impose mandates on people who are subject to an ERPO and reside in states that currently do not have red flag laws by temporarily prohibiting them from purchasing or possessing firearms or ammunition. Because ERPOs are temporary in nature and relatively few people would be affected by the orders, CBO estimates that the cost of the mandate would be minimal.

H.R. 2377 also would impose a mandate on firearms dealers in states that currently do not have red flag laws by temporarily prohibiting them from selling firearms or ammunition to people who are subject to ERPOs. The cost of the mandate would be the lost revenue from the temporarily blocked sales. The amount and length of the delay could vary. Because of the small number of transactions that would be temporarily prevented, CBO estimates that the cost of the mandate would be small.

Estimate Prepared By

Federal Costs:

Lindsay Wylie (U.S. Marshals Service)

Jon Sperl (Federal Judiciary)

Mandates: Lilia Ledezma

Estimate Reviewed By

Justin Humphrey

Chief, Finance, Housing, and Education Cost Estimates Unit

Kathleen FitzGerald

Chief, Public and Private Mandates Unit

Leo Lex

Deputy Director of Budget Analysis

Theresa Gullo

Director of Budget Analysis



CONGRESSIONAL BUDGET OFFICE
U.S. Congress
Washington, DC 20515

Phillip L. Swagel, Director

February 16, 2022

Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2377, the Federal Extreme Risk Protection Order Act of 2021.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lindsay Wylie.

Sincerely,

A handwritten signature in black ink, appearing to read 'Phillip L. Swagel'.

Phillip L. Swagel

Enclosure

cc: Honorable Jim Jordan
Ranking Member

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House Rule XIII, no provision of H.R. 2377 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of House Rule XIII, H.R. 2377 would improve law enforcement's ability to prevent gun violence by providing a way to ensure that those who are a danger to themselves or others are not able to access firearms. Additionally, the bill would require the Director of the Administrative Office of the United States Courts to report to Congress on the number of petitions for *ex parte* and long-term ERPOs filed, issued, and denied; the number of renewals filed, issued, and denied; the number of cases in which a court issued a penalty for false reporting; demographic data on petitioners and respondents; and the total number of firearms removed pursuant to an ERPO.

ADVISORY ON EARMARKS

In accordance with clause 9 of House Rule XXI, H.R. 2377 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of House Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the “Federal Extreme Risk Protection Order Act of 2021.”

Sec. 2. Federal Extreme Risk Protection Orders. Section 2 sets forth a number of definitions applicable to the section. The term “federal extreme risk protection order” means an order issued by a

federal court that enjoins an individual from purchasing, possessing, or receiving, in or affecting interstate and foreign commerce, a firearm or ammunition. A petitioner is the person who applies for an ERPO and a respondent is the person who is prevented from accessing a firearm if the ERPO is granted. With respect to a petitioner, the term “family or household member” means: (1) any parent, spouse, sibling, or child related by blood, marriage, or adoption to the respondent; (2) any dating partner of the respondent; (3) any individual who has a child in common with the respondent; (4) any individual who resides or has resided with the respondent during the previous year; (5) any domestic partner of the respondent; (6) any individual who has a legal parent-child relationship with the respondent, including a stepparent-stepchild and grandparent-grandchild relationship; and (7) any individual who is acting or has acted as the legal guardian of the respondent.

A federal ERPO petition for either an *ex parte* (short-term) ERPO or a long-term ERPO may be initiated by a family or household member of an applicable individual, or by a law enforcement officer, who would begin the process by submitting a petition for the issuance of either type of ERPO to an appropriate district court. No fee would be charged to the petitioner. The bill would permit a law enforcement petitioner to submit to the court, under seal, the identity of their sources and any identifying information.

The bill would require a petition for an *ex parte* ERPO to be either granted or denied by the court on the date on which the petition is submitted, but if the court receives the petition too late in the day to permit effective review, the bill would require the court to grant or deny the petition on the next day of judicial business, but early enough to provide for an order to be filed with the clerk of the court on that day.

The bill would require a signed affidavit, sworn to before the court, explaining why the petitioner believes the respondent poses a risk of imminent injury to himself, herself, or another

individual, by purchasing, possessing, or receiving a firearm or ammunition, and describing the interactions and conversations of the petitioner with the respondent or with another individual (if the petitioner believes that individual is credible and reliable).

The standard for issuance of an *ex parte* ERPO would be a finding of probable cause to believe that the respondent poses a risk of imminent personal injury to himself, herself, or another individual by purchasing, possessing, or receiving a firearm, and that the ERPO is necessary to prevent the injury. The *ex parte* ERPO would expire 14 days after the date of its issuance or on the date on which the court determines whether to issue a long-term ERPO.

When the court receives a petition for a long-term ERPO, the bill would require the court to hold a hearing to determine whether to issue a long-term ERPO. If the court issues an *ex parte* order, the court would have to hold a hearing not later than 72 hours after the ERPO is served on the respondent. If the respondent waives the right to a hearing within 72 hours or the court does not issue an *ex parte* ERPO, the bill would direct the court to hold a hearing not later than 14 days from when the court receives the petition.

The court would be obligated to provide the respondent with notice and an opportunity to be heard at a hearing, sufficient to protect his or her due process rights. The respondent would also have a right to counsel of his or her choosing, or, if the respondent is financially unable to afford counsel, the court shall—at the respondent's request—ensure, to the extent practicable, that the respondent is represented by an attorney with respect to the petition.

The petitioner would have the burden of proving all material facts and of demonstrating, by clear and convincing evidence, that: (1) during the period covered by the proposed ERPO, the respondent poses a risk of harm to himself or herself, or to another person if the respondent purchases, possesses, or receives a firearm or ammunition, and (2) the ERPO is necessary to prevent injury. If the

petitioner establishes these facts by clear and convincing evidence, the bill directs the court to issue a long-term ERPO to remain in effect for no more than 180 days. If the evidence does not support the issuance of a long-term ERPO, the bill directs the court to dissolve any *ex parte* order then in effect against the respondent.

The bill would require the court to notify the petitioner and the respondent about the scheduled expiration of a long-term ERPO 30 days before it is scheduled to expire. The court would be required to advise both parties of the procedures for seeking a renewal of the ERPO. If a family or household member, or a law enforcement officer, believes that the conditions under which the long-term ERPO was issued continue to apply, he or she may submit a petition for renewal of the ERPO. The bill would require the court to hold a renewal hearing, and the same procedures as those that apply to the issuance of long-term ERPOs would apply again. The court would issue a renewed long-term ERPO if it were shown by clear and convincing evidence that the conditions under which the original ERPO was issued continue to apply.

The bill would direct the court to examine several factors when considering whether to issue an ERPO. These are: (1) a recent threat or act of violence by the respondent directed toward another individual; (2) a recent threat or act of violence by the respondent directed toward himself or herself; (3) a recent act of cruelty to an animal by the respondent; and (4) evidence of ongoing abuse of a controlled substance or alcohol by the respondent that has led to a threat or act of violence directed toward himself, herself, or other individuals. The court also would be permitted to consider other factors, including the reckless use, display, or brandishing of a firearm by the respondent, a history of violence or attempted violence by the respondent against another individual, and evidence of an explicit or implicit threat made by the person, through any medium, that demonstrates that the person poses a risk of personal injury to himself, herself, or others.

The bill would require personal service of an ERPO by a U.S. marshal or a designated law enforcement officer. If the respondent cannot reasonably be located, the ERPO could be served in a manner authorized by the Federal Rules of Civil Procedure.

Upon service, the respondent is ordered to surrender all firearms and ammunition possessed or owned by the respondent, in or affecting interstate commerce, as well as any permit authorizing the purchase or possession of firearms (including a concealed carry permit). The bill would require such surrender, immediately, at the time a respondent is personally served with an ERPO. The respondent would be allowed to choose between (1) immediate surrender to the U.S. marshal or designated law enforcement officer, and (2) immediate surrender and sale to a federally-licensed firearms dealer. A U.S. marshal or designated law enforcement officer taking possession of all firearms, ammunition and permits that are not sold, would take possession of those items that are surrendered, in plain sight, or discovered pursuant to a lawful search.

If a U.S. marshal or designated law enforcement officer were unable to personally serve the ERPO or were not reasonably able to take custody of firearms, ammunition, or permits, the respondent would be directed to surrender the firearms, ammunition and permits in a safe manner, not later than 48 hours after being served with the ERPO.

At the time of surrender or removal, the U.S. marshal or designated law enforcement officer would be required to issue a receipt identifying all items surrendered or removed pursuant to the ERPO and to provide a copy of the receipt to the respondent. The bill would require the U.S. marshal or law enforcement officer who issued the receipt to file the original receipt with the court that issued the ERPO not later than 72 hours after the receipt is issued and to ensure that the United States Marshals Service retains a copy of the receipt.

If a respondent knowingly attempts, in violation of an ERPO, to access a firearm, ammunition,

or a permit that was surrendered or removed, the items would be subject to seizure and forfeiture under section 924(d) of title 18.

If an ERPO is dissolved or expired, and not renewed, the court that issued the order would direct the U.S. Marshals Service to confirm through the NICS and other databases that the respondent may lawfully own and possess firearms and ammunition, and, if that were the case, notify the respondent that he or she may retrieve any surrendered or removed firearms, ammunition, or permits. The bill would then direct the court to order the entity that possesses each firearm, ammunition, or permit surrendered or removed from the respondent pursuant to this bill to return those items. If the respondent may not lawfully own or possess firearms and ammunition, the court would notify him or her that each item surrendered or removed will be returned only when the respondent demonstrates to the U.S. Marshals Service that he or she may lawfully own and possess firearms and ammunition.

If a court in a hearing on a long-term ERPO determines that a firearm or ammunition is owned by an individual other than the respondent, it may order that the firearm or ammunition be returned to that individual upon confirmation that the individual is authorized to own and possess the firearm or ammunition and that the individual will not provide the respondent access to the firearm or ammunition.

If a person knowingly provides materially false information to the court during an ERPO hearing, or knowingly files a petition that is frivolous, unreasonable, or without foundation, they would be fined not more than \$5,000, or imprisoned not more than 5 years, or both, except to the extent that a greater sentence is otherwise provided by any other provision of law, as the court deems necessary to deter abuse of the ERPO process.

The bill would direct the Director of the Administrative Office of the U.S. Courts to develop a model policy to maximize the accessibility of federal ERPOs. The model policy would be required to include provisions to: (1) ensure that state, tribal, and local law enforcement officers and members of

the public without legal training are able to easily file ERPO petitions; (2) prescribe outreach efforts by district court employees to familiarize relevant law enforcement officers and the public with the procedures for filing petitions; (3) prescribe policies for allowing filing of petitions and adjudication on weekends and outside of normal court hours; (4) prescribe policies for coordinating with law enforcement agencies for safe, timely, and effective service of ERPOs and relinquishment of firearms, ammunition and permits; and (5) identify governmental and non-governmental resources and partners to help officials of the district courts coordinate with civil society organizations to ensure safe and effective implementation.

The bill would direct a district court that issues or dissolves an ERPO, or under whose purview an ERPO expires without being renewed, not later than 2 court days after any of these events, to notify (in electronic format) the Attorney General, each relevant mental health agency in the state where the ERPO is issued, and the State or local law enforcement officials in the jurisdiction where the order issued (and the NICS single point of contact for the respondent's State of residence, where applicable). The bill would direct the Attorney General to update the background check databases of the Attorney General to articulate the prohibitions in the applicable ERPO, as quickly as practicable, but not later than five days after receiving notice of the ERPO.

Not later than one year after enactment of this bill, and annually thereafter, the Director of the Administrative Office of the U.S. Courts would be required to submit a report to the Committees on the Judiciary of the Senate and the House of Representatives, including the following statistics about the preceding year: (1) the number of *ex parte* ERPO petitions, long-term ERPO petitions, and petitions for renewal filed, issued, and denied; (2) the number of cases in which a court issued a penalty for false reporting or for filing a frivolous ERPO petition; (3) demographic data of petitioners and respondents, including race, ethnicity, national origin, sex, gender, age, disability, average annual income, and

English language proficiency, if available; and (4) the total number of firearms removed, and, if available, the number of firearms removed pursuant to each ERPO.

The bill would require federal law enforcement agencies to train their officers in the safe, impartial, effective, and equitable use and administration of federal ERPOs, including training to address (1) bias based on race and racism, ethnicity, gender identity, sexual orientation, gender identity, religion, language proficiency, mental health condition, disability, and classism; (2) the appropriate use of ERPOs in cases of domestic violence; (3) interacting with persons with mental, behavioral, or physical disabilities, or emotional distress, including de-escalation; (4) community relations; and (5) best practices for referrals to social service providers, including health care, mental health, substance abuse, legal services, employment and vocational services, housing assistance, case management, and veterans and disability benefits. The bill would require federal agencies developing the required training to seek advice from relevant experts within the state they are located.

The bill would underscore that nothing in the bill shall be construed to alter the requirements relating to domestic violence protective orders contained in 18 U.S.C. sections 922(d)(8) and (g)(8). The bill would make technical and conforming amendments to ensure forfeiture, under certain circumstances, in the event of an attempt to violate an ERPO.

Sec. 3. Federal Firearms Prohibition. Section 3 would amend section 922 of title 18 of the U.S. Code to prohibit the sale, transfer, possession, or receipt of firearms or ammunition by those who are subject to a prohibition on the ownership, purchase, possession, or receipt of a firearm or ammunition, or who are required to surrender a firearm, so long as the order is issued in a manner consistent with due process rights and is based on a finding that the person poses a danger of causing harm to himself, herself, or others by having access to a firearm.

Sec. 4. Severability. Section 4 would provide that if any provision of the bill, any amendment

thereto, or any application of such a provision to any particular person or circumstance were later to be held invalid, the bill would ensure that any remaining provisions, amendments, or application of such invalid provision to other persons or circumstances would not be affected.

Sec. 5. Effective Date. Section 5 would provide that the bill shall take effect 180 days after enactment.

Sec. 6. Preemption. Section 6 would state that nothing in the bill shall be construed to preempt any state law or policy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 44—FIREARMS

Sec.

921. Definitions.

* * * * *

932. *Extreme risk protection orders.*

* * * * *

§ 922. Unlawful acts

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal,

State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, unless—

(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery—

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's

place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if—

(1) the transferee submits to the transferor a sworn statement in the following form:

“Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are

Signature _____ Date _____.”

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

- (B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
- (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; **[or]**
- (9) has been convicted in any court of a misdemeanor crime of domestic violence**[.];** or
- (10) is subject to a court order that—
- (A)(i) was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate; or
- (ii) in the case of an ex parte order, relative to which notice and opportunity to be heard are provided—
- (I) within the time required by Federal, State, Tribal, or territorial law; and
- (II) in any event within a reasonable time after the order is issued, sufficient to protect the due process rights of the person;
- (B) prevents such person from possessing or receiving firearm; and
- (C) includes a finding that such person poses a danger of harm to self or others.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe

that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; **[or]**

(9) who has been convicted in any court of a misdemeanor crime of domestic violence **[,]**; or

(10) is subject to a court order that—

(A)(i) was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate; or

(ii) in the case of an *ex parte* order, relative to which notice and opportunity to be heard are provided—

(I) within the time required by Federal, State, Tribal, or territorial law; and

(II) in any event within a reasonable time after the order is issued, sufficient to protect the due process rights of the person;

(B) prevents such a person from possessing or receiving firearms; and

(C) includes a finding that such person poses a danger of harm to self or others,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one

year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to—

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2) For purposes of this subsection—

(A) the term “firearm” does not include the frame or receiver of any such weapon;

(B) the term “major component” means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term “Security Exemplar” means an object, to be fabricated at the direction of the Attorney General, that is—

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17–4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors: *Provided, however,* That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a “Security Exemplar” which contains 3.7 ounces of material type 17–4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules

and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which—

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.

(q)(1) The Congress finds and declares that—

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary the House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm—

- (i) on private property not part of school grounds;
- (ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;
- (iii) that is—
 - (I) not loaded; and
 - (II) in a locked container, or a locked firearms rack that is on a motor vehicle;
- (iv) by an individual for use in a program approved by a school in the school zone;
- (v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
- (vi) by a law enforcement officer acting in his or her official capacity; or
- (vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm—

- (i) on private property not part of school grounds;
- (ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;
- (iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or
- (iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to—

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless—

(A) after the most recent proposal of such transfer by the transferee—

(i) the transferor has—

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)(i) the transferee has presented to the transferor a permit that—

(I) allows the transferee to possess or acquire a handgun; and

- (II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and
- (ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;
- (D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;
- (E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or
- (F) on application of the transferor, the Attorney General has certified that compliance with subparagraph (A)(i)(III) is impracticable because—
- (i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;
- (ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and
- (iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.
- (2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.
- (3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only—
- (A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;
- (B) a statement that the transferee—
- (i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;
- (ii) is not a fugitive from justice;
- (iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);
- (iv) has not been adjudicated as a mental defective or been committed to a mental institution;

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(v) is not an alien who—

(I) is illegally or unlawfully in the United States;

or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to—

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law—

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the

officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages—

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term “chief law enforcement officer” means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless—

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

(B)(i) the system provides the licensee with a unique identification number; or

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall—

(A) assign a unique identification number to the transfer;

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if—

(A)(i) such other person has presented to the licensee a permit that—

(I) allows such other person to possess or acquire a firearm; and

- (II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and
- (ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;
- (B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or
- (C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because—
- (i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;
- (ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and
- (iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.
- (4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g) or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.
- (5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than \$5,000.
- (6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages—
- (A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or
- (B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.
- (u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or

dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile—

(A) a handgun; or
 (B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess—

(A) a handgun; or
 (B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to—

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile—

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except—

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against

an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term “juvenile” means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant’s parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) PROVISIONS RELATING TO ALIENS ADMITTED UNDER NON-IMMIGRANT VISAS.—

(1) DEFINITIONS.—In this subsection—

(A) the term “alien” has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(B) the term “nonimmigrant visa” has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

(2) EXCEPTIONS.—Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is—

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is—

(i) accredited to the United States Government or the Government’s mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) WAIVER.—

(A) CONDITIONS FOR WAIVER.—Any individual who has been admitted to the United States under a nonimmigrant

visa may receive a waiver from the requirements of subsection (g)(5), if—

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(ii) the Attorney General approves the petition.

(B) PETITION.—Each petition under subparagraph (B) shall—

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) APPROVAL OF PETITION.—The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner—

(i) would be in the interests of justice; and

(ii) would not jeopardize the public safety.

(z) SECURE GUN STORAGE OR SAFETY DEVICE.—

(1) IN GENERAL.—Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer directly employed by or contracted by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated

in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) LIABILITY FOR USE.—

(A) IN GENERAL.—Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

(B) PROSPECTIVE ACTIONS.—A qualified civil liability action may not be brought in any Federal or State court.

(C) DEFINED TERM.—As used in this paragraph, the term “qualified civil liability action”—

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if—

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.

* * * * *

§ 924. Penalties

(a)(1) Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever—

(A) knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l); or

(D) willfully violates any other provision of this chapter, shall be fined under this title, imprisoned not more than five years, or both.

(2) Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

(3) Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

(A) makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

(B) violates subsection (m) of section 922, shall be fined under this title, imprisoned not more than one year, or both.

(4) Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

(5) Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

(6)(A)(i) A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

(ii) A juvenile is described in this clause if—

(I) the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

(II) the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

(B) A person other than a juvenile who knowingly violates section 922(x)—

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a violation of this subsection that occurs after a prior conviction under this subsection has become final, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term “drug trafficking crime” means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term “crime of violence” means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term “brandish” means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

(d)(1) Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l), or knowing violation of section 924, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the re-

turn of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

(2)(A) In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(B) In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

(C) Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

(D) The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

(3) The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

(A) any crime of violence, as that term is defined in section 924(c)(3) of this title;

(B) any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(C) any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

(D) any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title; **[and]**

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition**[.]**; *and*

(G) *any attempt to violate a Federal extreme risk protection order issued under section 932.*

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another,

such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term “serious drug offense” means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term “conviction” includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which—

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46,

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly transfers a firearm, knowing that such firearm will be used to commit a crime of violence (as defined in subsection (c)(3)) or drug trafficking crime (as defined in subsection

(c)(2)) shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(i)(1) A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

(k) A person who, with intent to engage in or to promote conduct that—

(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802); or

(3) constitutes a crime of violence (as defined in subsection (c)(3)),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.

(l) A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

(m) A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

(n) A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

(o) A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

(p) PENALTIES RELATING TO SECURE GUN STORAGE OR SAFETY DEVICE.—

(1) IN GENERAL.—

(A) SUSPENSION OR REVOCATION OF LICENSE; CIVIL PENALTIES.—With respect to each violation of section

922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

(i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or

(ii) subject the licensee to a civil penalty in an amount equal to not more than \$2,500.

(B) REVIEW.—An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

(2) ADMINISTRATIVE REMEDIES.—The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

* * * * *

§ 932. Extreme risk protection orders

(a) DEFINITIONS.—In this section—

(1) the term “court” means a district court of the United States;

(2) the term “designated law enforcement officer” means a law enforcement officer, designated by a United States marshal, who agrees to receive firearms, ammunition, and permits, as applicable, surrendered under subsection (f);

(3) the term “Director” means the Director of the Administrative Office of the United States Courts;

(4) the term “ex parte Federal extreme risk protection order” or “ex parte Federal order” means a Federal extreme risk protection order issued under subsection (c);

(5) the term “Federal extreme risk protection order” means an order issued by a Federal court that enjoins an individual from purchasing, possessing, or receiving, in or affecting interstate and foreign commerce, a firearm or ammunition;

(6) the term “family or household member”, with respect to a Federal order respondent, means any—

(A) parent, spouse, sibling, or child related by blood, marriage, or adoption to the respondent;

(B) dating partner of the respondent;

(C) individual who has a child in common with the respondent, regardless of whether the individual has—

(i) been married to the respondent; or

(ii) lived together with the respondent at any time;

(D) individual who resides or has resided with the respondent during the past year;

(E) domestic partner of the respondent;

(F) individual who has a legal parent-child relationship with the respondent, including a stepparent-stepchild and grandparent-grandchild relationship; and

(G) individual who is acting or has acted as the legal guardian of the respondent;

(7) the term “Federal order petitioner” means an individual authorized to petition for an *ex parte* or long-term Federal extreme risk protection order under subsection (b)(1);

(8) the term “Federal order respondent” means an individual named in the petition for an *ex parte* or long-term Federal extreme risk protection order or subject to an *ex parte* or long-term Federal extreme risk protection order;

(9) the term “long-term Federal extreme risk protection order” or “long-term Federal order” means a Federal extreme risk protection order issued under subsection (d);

(10) the term “mental health agency” means an agency of a State, Tribal, or local government or its contracted agency that is responsible for mental health services or co-occurring mental health and substance abuse services; and

(11) the term “national instant criminal background check system” means the national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act (34 U.S.C. 40901).

(b) **PETITION.**—

(1) **IN GENERAL.**—A family or household member of the applicable individual, or a law enforcement officer, may submit to an appropriate district court of the United States a petition requesting that the court issue an *ex parte* Federal extreme risk protection order or long-term Federal extreme risk protection order with respect to an individual.

(2) **NO FEES.**—A court or law enforcement agency may not charge a petitioner or respondent any fee for—

(A) filing, issuing, serving, or reporting an extreme risk protection order;

(B) a petition for an extreme risk protection order or any pleading, subpoena, warrant, or motion in connection with an extreme risk protection order; or

(C) any order or order to show cause necessary to obtain or give effect to this section.

(3) **CONFIDENTIALITY.**—A Federal order petitioner who is a law enforcement officer may provide the identity of the petitioner’s sources, and any identifying information, to the court under seal.

(c) **EX PARTE ORDERS.**—

(1) **TIMING.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), a court that receives a petition for an *ex parte* Federal order under subsection (b) shall grant or deny the petition on the date on which the petition is submitted.

(B) **LATE PETITIONS.**—If a court receives a petition for an *ex parte* Federal order submitted under subsection (b) too late in the day to permit effective review, the court shall grant or deny the petition on the next day of judicial business at a time early enough to permit the court to file an order with the clerk of the court during that day.

(2) **EVIDENCE REQUIRED.**—Before issuing an *ex parte* Federal order, a court shall require that the petitioner for such

order submit a signed affidavit, sworn to before the court, that—

(A) explains why such petitioner believes that the Federal order respondent poses a risk of imminent personal injury to self or another individual, by purchasing, possessing, or receiving a firearm or ammunition; and

(B) describes the interactions and conversations of the petitioner with—

(i) the respondent; or

(ii) another individual, if such petitioner believes that information obtained from that individual is credible and reliable.

(3) **STANDARD FOR ISSUANCE OF ORDER.**—A court may issue an *ex parte* Federal order only upon a finding of probable cause to believe that—

(A) the Federal order respondent poses a risk of imminent personal injury to self or another individual, by purchasing, possessing, or receiving a firearm or ammunition; and

(B) the order is necessary to prevent the injury described in subparagraph (A).

(4) **DURATION.**—An *ex parte* Federal order shall expire on the earlier of—

(A) the date that is 14 days after the date of issuance; or

(B) the date on which the court determines whether to issue a long-term Federal order with respect to the respondent.

(d) **LONG-TERM FEDERAL ORDERS.**—

(1) **HEARING REQUIRED.**—If a court receives a petition for a long-term Federal extreme risk protection order for a respondent under subsection (b), the court shall hold a hearing to determine whether to issue a long-term Federal order with respect to the respondent either—

(A)(i) if the court issues an *ex parte* order with respect to the respondent, not later than 72 hours after the *ex parte* order is served on the respondent; or

(ii) if the respondent waives the right to a hearing within the 72-hour period under clause (i), or the court does not issue an *ex parte* order, within 14 days after the date on which the court receives the petition; or

(B) in no event later than 14 days after the date on which the court receives the petition.

(2) **NOTICE AND OPPORTUNITY TO BE HEARD.**—

(A) **IN GENERAL.**—The court shall provide the Federal order respondent with notice and the opportunity to be heard at a hearing under this subsection, sufficient to protect the due process rights of the respondent.

(B) **RIGHT TO COUNSEL.**—

(i) **IN GENERAL.**—At a hearing under this subsection, the Federal order respondent may be represented by counsel who is—

(I) chosen by the respondent; and

- (II) authorized to practice at such a hearing.
- (ii) *COURT-PROVIDED COUNSEL.*—If the Federal order respondent is financially unable to obtain representation by counsel, the court, at the request of the respondent, shall ensure, to the extent practicable, that the respondent is represented by an attorney with respect to the petition.
- (3) *BURDEN OF PROOF; STANDARD.*—At a hearing under this subsection, the Federal order petitioner—
- (A) shall have the burden of proving all material facts; and
- (B) shall be required to demonstrate, by clear and convincing evidence, that—
- (i) the respondent to such order poses a risk of personal injury to self or another individual, during the period to be covered by the proposed Federal extreme risk protection order, by purchasing, possessing, or receiving a firearm or ammunition; and
- (ii) the order is necessary to prevent the injury described in clause (i).
- (4) *ISSUANCE.*—Upon a showing of clear and convincing evidence under paragraph (3), the court shall issue a long-term Federal order with respect to the respondent that shall be in effect for a period of not more than 180 days.
- (5) *DENIAL.*—If the court finds that there is not clear and convincing evidence to support the issuance of a long-term Federal order, the court shall dissolve any ex parte Federal order then in effect with respect to the respondent.
- (6) *RENEWAL.*—
- (A) *NOTICE OF SCHEDULED EXPIRATION.*—Thirty days before the date on which a long-term Federal order is scheduled to expire, the court that issued the order shall—
- (i) notify the petitioner and the respondent to such order that the order is scheduled to expire; and
- (ii) advise the petitioner and the respondent of the procedures for seeking a renewal of the order under this paragraph.
- (B) *PETITION.*—If a family or household member of the Federal order respondent, or a law enforcement officer, believes that the conditions under paragraph (3)(B) continue to apply with respect to a respondent who is subject to a long-term Federal order, the family or household member or law enforcement officer may submit to the court that issued the order a petition for a renewal of the order.
- (C) *HEARING.*—A court that receives a petition submitted under subparagraph (B) shall hold a hearing to determine whether to issue a renewed long-term Federal order with respect to the respondent.
- (D) *APPLICABLE PROCEDURES.*—The requirements under paragraphs (2) through (5) shall apply to the consideration of a petition for a renewed long-term Federal order submitted under subparagraph (B) of this paragraph.

(E) ISSUANCE.—Upon a showing by clear and convincing evidence that the conditions under paragraph (3)(B) continue to apply with respect to the respondent, the court shall issue a renewed long-term Federal order with respect to the respondent.

(e) FACTORS TO CONSIDER.—In determining whether to issue a Federal extreme risk protection order, a court—

(1) shall consider factors including—

(A) a recent threat or act of violence by the respondent directed toward another individual;

(B) a recent threat or act of violence by the respondent directed toward self;

(C) a recent act of cruelty to an animal by the respondent; and

(D) evidence of ongoing abuse of a controlled substance or alcohol by the respondent that has led to a threat or act of violence directed to self or another individual; and

(2) may consider other factors, including—

(A) the reckless use, display, or brandishing of a firearm by the respondent;

(B) a history of violence or attempted violence by the respondent against another individual; and

(C) evidence of an explicit or implicit threat made by the person through any medium that demonstrate that the person poses a risk of personal injury to self or another individual.

(f) RELINQUISHMENT OF FIREARMS AND AMMUNITION.—

(1) ORDER OF SURRENDER.—Upon issuance of an ex parte Federal order or long-term Federal order, the court shall order the respondent to such order to surrender all firearms and ammunition that the respondent possesses or owns, in or affecting interstate commerce, as well as any permit authorizing the respondent to purchase or possess firearms (including a concealed carry permit), to—

(A) the United States Marshals Service; or

(B) a designated law enforcement officer.

(2) SURRENDER AND REMOVAL.—

(A) MANNER OF SERVICE.—

(i) PERSONAL SERVICE.—Except as provided in clause (ii), a United States marshal or designated law enforcement officer shall serve a Federal extreme risk protection order on a respondent by handing the order to the respondent to such order.

(ii) ALTERNATIVE SERVICE.—If the respondent cannot reasonably be located for service as described in clause (i), a Federal extreme risk protection order may be served on the respondent in any manner authorized under the Federal Rules of Civil Procedure.

(B) REMOVAL.—Except as provided in subparagraph (C), a United States marshal or designated law enforcement officer serving a Federal extreme risk protection order personally on the respondent shall—

(i) request that all firearms and ammunition, in or affecting interstate commerce, as well as any permit authorizing the respondent to purchase or possess firearms (including a concealed carry permit), that the respondent possesses or owns—

(I) be immediately surrendered to the United States marshal or designated law enforcement officer; or

(II) at the option of the respondent, be immediately surrendered and sold to a federally licensed firearms dealer; and

(ii) take possession of all firearms and ammunition described in clause (i) that are not sold under subclause (II) of that clause, as well as any permit described in that clause, that are—

(I) surrendered;

(II) in plain sight; or

(III) discovered pursuant to a lawful search.

(C) *ALTERNATIVE SURRENDER.*—If a United States marshal or designated law enforcement officer is not able to personally serve a Federal extreme risk protection order under subparagraph (A)(i), or is not reasonably able to take custody of the firearms, ammunition, and permits under subparagraph (B), the respondent shall surrender the firearms, ammunition, and permits in a safe manner to the control of a United States marshal or designated law enforcement officer not later than 48 hours after being served with the order.

(3) *RECEIPT.*—

(A) *ISSUANCE.*—At the time of surrender or removal under paragraph (2), a United States marshal or designated law enforcement officer taking possession of a firearm, ammunition, or a permit pursuant to a Federal extreme risk protection order shall—

(i) issue a receipt identifying all firearms, ammunition, and permits that have been surrendered or removed; and

(ii) provide a copy of the receipt issued under clause (i) to the respondent to such order.

(B) *FILING.*—Not later than 72 hours after issuance of a receipt under subparagraph (A), the United States marshal who issued the receipt or designated another law enforcement officer to do so shall—

(i) file the original receipt issued under subparagraph (A) of this paragraph with the court that issued the Federal extreme risk protection order; and

(ii) ensure that the United States Marshals Service retains a copy of the receipt.

(C) *DESIGNATED LAW ENFORCEMENT OFFICER.*—If a designated law enforcement officer issues a receipt under subparagraph (A), the officer shall submit the original receipt and a copy of the receipt to the appropriate United

States marshal to enable the United States marshal to comply with subparagraph (B).

(4) *FORFEITURE.—If a respondent knowingly attempts, in violation of a Federal extreme risk protection order, to access a firearm, ammunition, or a permit that was surrendered or removed under this subsection, the firearm, ammunition, or permit shall be subject to seizure and forfeiture under section 924(d).*

(g) *RETURN OF FIREARMS AND AMMUNITION.—*

(1) *NOTICE.—If a Federal extreme risk protection order is dissolved, or expires and is not renewed, the court that issued the order shall order the United States Marshals Service to—*

(A) *confirm, through the national instant criminal background check system and any other relevant law enforcement databases, that the respondent to such order may lawfully own and possess firearms and ammunition; and*

(B)(i) *if the respondent may lawfully own and possess firearms and ammunition, notify the respondent that the respondent may retrieve each firearm, ammunition, or permit surrendered by or removed from the respondent under subsection (f); or*

(ii) *if the respondent may not lawfully own or possess firearms and ammunition, notify the respondent that each firearm, ammunition, or permit surrendered by or removed from the respondent under subsection (f) will be returned only when the respondent demonstrates to the United States Marshals Service that the respondent may lawfully own and possess firearms and ammunition.*

(2) *RETURN.—If a Federal extreme risk protection order is dissolved, or expires and is not renewed, and the United States Marshals Service confirms under paragraph (1)(A) that the respondent may lawfully own and possess firearms and ammunition, the court that issued the order shall order the entity that possesses each firearm, ammunition, or permit surrendered by or removed from the respondent under subsection (f) to return those items to the respondent.*

(h) *RETURN OF FIREARMS AND AMMUNITION IMPROPERLY RECEIVED.—If a court, in a hearing under subsection (d), determines that a firearm or ammunition surrendered by or removed from a respondent under subsection (f) is owned by an individual other than the respondent, the court may order the United States marshal or designated law enforcement officer in possession of the firearm or ammunition to transfer the firearm or ammunition to that individual if—*

(1) *the individual may lawfully own and possess firearms and ammunition; and*

(2) *the individual will not provide the respondent with access to the firearm or ammunition.*

(i) *PENALTY FOR FALSE REPORTING OR FRIVOLOUS PETITIONS.—An individual who knowingly submits materially false information to the court in a petition for a Federal extreme risk protection order under this section, or who knowingly files such a petition that is frivolous, unreasonable, or without foundation, shall be fined not*

more than \$5,000, or imprisoned not more than 5 years, or both, except to the extent that a greater sentence is otherwise provided by any other provision of law, as the court deems necessary to deter such abuse of process.

(j) *MODEL POLICY.*—

(1) *IN GENERAL.*—The Director shall draft a model policy to maximize the accessibility of Federal extreme risk protection orders.

(2) *CONTENTS.*—In drafting the model policy under paragraph (1), the Director shall—

(A) ensure that State, Tribal, and local law enforcement officers and members of the public without legal training are able to easily file petitions for Federal extreme risk protection orders;

(B) prescribe outreach efforts by employees of the district courts of the United States to familiarize relevant law enforcement officers and the public with the procedures for filing petitions, either—

(i) through direct outreach; or

(ii) in coordination with—

(I) relevant officials in the executive or legislative branch of the Federal Government; or

(II) with relevant State, Tribal, and local officials;

(C) prescribe policies for allowing the filing of petitions and prompt adjudication of petitions on weekends and outside of normal court hours;

(D) prescribe policies for coordinating with law enforcement agencies to ensure the safe, timely, and effective service of Federal extreme risk protection orders and relinquishment of firearms, ammunition, and permits, as applicable; and

(E) identify governmental and non-governmental resources and partners to help officials of the district courts of the United States coordinate with civil society organizations to ensure the safe and effective implementation of this section.

(k) *REPORTING.*—

(1) *INDIVIDUAL REPORTS.*—

(A) *IN GENERAL.*—Not later than 2 court days after the date on which a court issues or dissolves a Federal extreme risk protection order under this section or a Federal extreme risk protection order expires without being renewed, the court shall notify—

(i) the Attorney General;

(ii) each relevant mental health agency in the State in which the order is issued; and

(iii) State and local law enforcement officials in the jurisdiction in which the order is issued, including the national instant criminal background check system single point of contact for the State of residence of the respondent, where applicable.

(B) *FORMAT.*—A court shall submit a notice under subparagraph (A) in an electronic format, in a manner prescribed by the Attorney General.

(C) *UPDATE OF DATABASES.*—As soon as practicable and not later than 5 days after receiving a notice under subparagraph (A), the Attorney General shall update the background check databases of the Attorney General to reflect the prohibitions articulated in the applicable Federal extreme risk protection order.

(2) *ANNUAL REPORTS.*—Not later than 1 year after the date of enactment of the Federal Extreme Risk Protection Order Act of 2021, and annually thereafter, the Director shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that includes, with respect to the preceding year—

(A) the number of petitions for *ex parte* Federal orders filed, as well as the number of such orders issued and the number denied, disaggregated by—

(i) the jurisdiction;

(ii) whether the individual authorized under subsection (b) to petition for a Federal extreme risk protection order is a law enforcement officer, or a family or household member, and in the case of a family or household member, which of subparagraphs (A) through (G) of subsection (a)(6) describes the relationship; and

(iii) the alleged danger posed by the Federal order respondent, including whether the danger involved a risk of suicide, unintentional injury, domestic violence, or other interpersonal violence;

(B) the number of petitions for long-term Federal orders filed, as well as the number of such orders issued and the number denied, disaggregated by—

(i) the jurisdiction;

(ii) whether the individual authorized under subsection (b) to petition for a Federal extreme risk protection order is a law enforcement officer, or a family or household member, and in the case of a family or household member, which of subparagraphs (A) through (G) of subsection (a)(6) describes the relationship; and

(iii) the alleged danger posed by the Federal order respondent, including whether the danger involved a risk of suicide, unintentional injury, domestic violence, or other interpersonal violence;

(C) the number of petitions for renewals of long-term Federal orders filed, as well as the number of such orders issued and the number denied;

(D) the number of cases in which a court has issued a penalty for false reporting or frivolous petitions;

(E) demographic data of Federal order petitioners, including race, ethnicity, national origin, sex, gender, age,

disability, average annual income, and English language proficiency, if available;

(F) demographic data of Federal order respondents, including race, ethnicity, national origin, sex, gender, age, disability, average annual income, and English language proficiency, if available; and

(G) the total number of firearms removed pursuant to Federal extreme risk protection orders, and, if available, the number of firearms removed pursuant to each such order.

(l) TRAINING FOR FEDERAL LAW ENFORCEMENT OFFICERS.—

(1) TRAINING REQUIREMENTS.—The head of each Federal law enforcement agency shall require each Federal law enforcement officer employed by the agency to complete training in the safe, impartial, effective, and equitable use and administration of Federal extreme risk protection orders, including training to address—

(A) bias based on race and racism, ethnicity, gender, sexual orientation, gender identity, religion, language proficiency, mental health condition, disability, and classism in the use and administration of Federal extreme risk protection orders;

(B) the appropriate use of Federal extreme risk protection orders in the cases of domestic violence, including the applicability of other policies and protocols to address domestic violence in situations that may also involve Federal extreme risk protection orders and the necessity of safety planning with the victim before law enforcement petitions for and executes a Federal extreme risk protection order, if applicable;

(C) interacting with persons with mental, behavioral, or physical disabilities, or emotional distress, including de-escalation techniques and crisis intervention;

(D) training on community relations; and

(E) best practices for referring persons subject to Federal extreme risk protection orders and associated victims of violence to social service providers that may be available in the jurisdiction and appropriate for those individuals, including health care, mental health, substance abuse, and legal services, employment and vocational services, housing assistance, case management, and veterans and disability benefits.

(2) TRAINING DEVELOPMENT.—Federal law enforcement agencies developing law enforcement training required under this section shall seek advice from domestic violence service providers (including culturally specific (as defined in section 4002 of the Violence Against Women Act of 1994 (34 U.S.C. 12291)) providers), social service providers, suicide prevention advocates, violence intervention specialists, law enforcement agencies, mental health disability experts, and other community groups working to reduce suicides and violence, including domestic violence, within the State.

(m) RULE OF CONSTRUCTION.—Nothing in this section or shall be construed to alter the requirements of subsections (d)(8) or (g)(8) of section 922, related to domestic violence protective orders.

* * * * *

H.R. 2377, the Federal Extreme Risk Protection Order Act of 2021

June 2, 2022

MINORITY VIEWS

H.R. 2377, the Federal Extreme Risk Protection Order Act of 2021, is an undeniable infringement on an individual’s due process and Second Amendment rights. This bill authorizes federal courts to issue *ex parte* orders that would require law enforcement to seize firearms and ammunition from an individual without the individual being afforded notice or an opportunity to be heard. An *ex parte* order may be issued “upon a finding of probable cause that the respondent poses a risk of imminent personal injury to himself or herself, or another individual, by purchasing, possessing, or receiving a firearm or ammunition.”¹ Probable cause is an incredibly low standard to deprive individuals of their constitutional rights without an allegation of criminal activity or giving the individual an opportunity to be heard.

This legislation creates a process that is ripe for abuse and destroys the presumption of innocence that is the bedrock of our criminal justice system. It does away with the notion that an individual is innocent until proven guilty and replaces it, for anyone subject to an extreme risk protection order, with the standard of guilty until proven innocent. Proponents of this legislation would be wise to remember what Benjamin Franklin once said: “Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.”

Federal Law Already Prohibits Dangerous and Unfit Individuals from Purchasing or Possessing Firearms

Federal law prohibits dangerous and unfit individuals from purchasing or possessing firearms or ammunition.² For example, an individual with a misdemeanor domestic violence conviction, an individual who was involuntarily committed to a mental institution or has been adjudicated “mentally defective,” or an individual who is “under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year” are all currently prohibited from possessing or purchasing a firearm.³ Each of these determinations follow a fair proceeding that respects the individual’s rights. Federal law does not give law enforcement the authority to seize an individual’s firearms or ammunition because someone else merely claims the individual is a threat to themselves or others.

Studies Have Shown that Red Flag Laws Do Not Save Lives or Reduce Crime

So-called “red flag” laws would allow law enforcement to seize an individual’s firearm upon *ex parte* orders. A study conducted by John R. Lott, Jr. and Carlisle Moody, however, found that “red flag laws had no significant effect on murder, suicide, the number of people killed in mass public shootings, robbery, aggravated assault, or burglary.”⁴ Additionally, data from states has shown that many extreme risk protection orders resulting from red flag laws have been overturned when the respondent had an opportunity to be heard. For example, in Connecticut, thirty-two percent of extreme risk protection orders were overturned once the

¹ H.R. 2377, 117th Cong. (2021).

² See 18 U.S.C. § 922(g).

³ *Id.*

⁴ John R. Lott, Jr., and Carlisle E. Moody, *Do Red Flag Laws Save Lives or Reduce Crime?* (Dec. 2018).

respondent finally had an opportunity to be heard in court.⁵ That is a disturbingly high percentage of individuals who were denied their Second Amendment rights without adequate due process.

H.R. 2377 will Strip Americans of their Second Amendment Rights Without Due Process

This legislation affords no due process to the respondent when a court issues an *ex parte* order to seize the respondent's firearms, ammunition, or concealed carry license. The respondent is afforded neither a notice of the original petition nor an opportunity to be heard before law enforcement confiscates the respondent's firearms and ammunition. A respondent will typically only have knowledge of a hearing when law enforcement officers serve the respondent with the order to seize his firearms and ammunition.

In order to obtain an *ex parte* order, an individual petitioning a court need only demonstrate to the court that there is probable cause to believe that the respondent poses a threat to himself or others. This is an unreasonably low evidentiary threshold to meet when seeking to deprive someone of their constitutional rights without necessarily alleging criminal activity or giving the individual an opportunity to first be heard. If criminal activity is alleged, law enforcement can investigate and arrest if appropriate.

The expansive list of individuals who can petition a court for an extreme risk protection order under this bill is too broad and creates a process that is ripe for abuse. The list includes a law enforcement officer, parent, spouse, sibling, child, dating partner, roommate, ex-roommate, and domestic partner. Any one of these individuals would be permitted to petition a court for an extreme risk protection order after overcoming the low evidentiary bar of probable cause. That means this bill will create an opportunity for a disgruntled ex-roommate, aggrieved domestic partner, or angry adult child to use the judicial system to harass and burden an individual by requiring law enforcement to seize the individual's firearm.

Once a firearm has been seized, respondents would be forced to spend a considerable amount of time and financial resources in defending themselves in court to get their property back and their constitutional rights restored. These procedures could lead to missed work and sizable legal bills. Economic factors alone may be reason enough for many individuals to not challenge the order in court, despite the fact that it may very well be unfounded.

In addition, the bill increases the risks on law enforcement officers who will be tasked with executing extreme risk protection orders and confiscating an individual's firearms and ammunition. Requiring law enforcement officers to serve extreme risk protection orders on respondents could potentially put officers in a situation in which they must forcibly confiscate a firearm from an individual who has had no notice or opportunity to be heard and who may therefore be defensive during the encounter. For example, in Maryland, a man was fatally shot when two law enforcement officers attempted to serve an extreme risk protection order on him

⁵ Michael A. Norko & Madelon Baranoski, *Gun Control Legislation in Connecticut: Effects on Persons with Mental Illness*, 6 CONN. LAW REVIEW 1609, 1619 (2014).

after it was alleged he was a threat to himself and others.⁶ Sheriffs across the country have stated that they will not enforce extreme risk protection order laws.⁷

Democrats Rejected Republican Amendments that Would Have Improved the Legislation

During the Committee’s business meeting to consider H.R. 2377, Republicans offered several amendments to improve the legislation. Chairman Nadler and the Democrat members of the Committee rejected the following common-sense amendments offered by Republicans:

Representative Fitzgerald offered an amendment that would have prohibited courts from considering activities protected under the First Amendment to the Constitution when making a determination as to whether to issue a federal extreme risk protection order. The Committee has received whistleblower information that Biden Administration believes that passionate parents advocating for their children at school board meetings are the equivalent of domestic terrorists. This amendment would have ensured that radical progressives could not strip anyone of their Second Amendment rights solely on the basis of their exercise of First Amendment rights. Specifically, the amendment explicitly stated that courts could not consider “parents voicing concerns about school board decisions” as a factor in its determination of whether to issue a federal extreme risk protection order. Committee Democrats rejected the amendment.

Representative Steube offered an amendment that would have allowed the courts to award attorney’s fees to a respondent if the petitioner had either knowingly submitted materially false information to the court or had knowingly filed a frivolous petition while seeking a federal extreme risk protection order. Committee Democrats rejected the amendment.

Representative Steube offered a second amendment that would have replaced all evidentiary standards throughout the bill with a “beyond a reasonable doubt” standard. Most notably, the amendment would have replaced the probable cause standard needed for the issuance of an *ex parte* extreme risk protection order. With such a low evidentiary standard in place in the bill as drafted, getting an *ex parte* extreme risk protection order would almost be a rubber-stamp process. This amendment would have required that a petitioner meet the highest evidentiary standard when seeking an order that would deprive an individual of their due process and Second Amendment rights. Committee Democrats rejected this amendment as well.

Conclusion

H.R. 2377 is an undeniable infringement on American citizen’s due process and Second Amendment rights. This bill is an extreme and unconstitutional measure. Therefore, I am unable to support this bill and must respectfully dissent.


Jim Jordan
Ranking Member

⁶ Kimberly Eiten, *Maryland’s ‘Red Flag’ Law Turns Deadly: Officer Kills Man Who Refused To Turn In Gun*, CBS BALTIMORE (Nov. 5, 2018).

⁷ Dan Frosch & Jacob Greshman, *Rural Sheriffs Defy New Gun Measures*, WALL ST. J. (Mar. 10, 2019); Mary Hudetz, *New Mexico Sheriffs’ Gun Laws Protest Follows Other States*, ASSOCIATED PRESS (Mar. 1, 2019).