

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 1236
OFFERED BY MR. CHABOT OF OHIO**

Page 4, insert after line 15 the following:

1 (9) FAMILY MEMBER.—The term “family mem-
2 ber” means, with respect to an individual, a spouse,
3 child, parent, sibling, grandchild, or grandparent of
4 the individual, a person with whom the individual
5 shares a child in common, the legal guardian of the
6 individual, or a person who cohabits or has
7 cohabited with the individual within the previous 12
8 months.

Page 7, strike line 15 and all that follows through
line 7 on page 11, and insert the following:

9 (C) STANDARD FOR ISSUANCE OF PRE-
10 LIMINARY EXTREME RISK PROTECTION
11 ORDER.—

12 (i) IN GENERAL.—A State court or
13 magistrate may issue a preliminary ex
14 parte extreme risk protection order upon
15 finding by a preponderance of evidence
16 that the respondent poses an imminent,

1 particularized, and substantial risk of un-
2 lawfully using a firearm to cause death or
3 serious physical injury to himself or herself
4 or to another person. No such order shall
5 remain in effect for more than 21 days un-
6 less the respondent is detained for or sub-
7 mits to an evaluation for commitment to a
8 mental institution or for assisted out-
9 patient treatment, in which case the pre-
10 liminary order may be extended for the du-
11 ration of any such commitment or treat-
12 ment. Before issuing an order under this
13 paragraph, the court or magistrate shall
14 consider whether the respondent meets the
15 applicable standard for involuntary obser-
16 vation, temporary commitment, or any
17 other procedure that begins the State's
18 process for involuntary commitment or as-
19 sisted outpatient treatment. If the court or
20 magistrate determines that the respondent
21 meets such standard, then, in addition to
22 issuing a preliminary ex parte extreme risk
23 protection order, the court or magistrate
24 shall order the respondent to undergo a
25 mental evaluation to determine the most

1 appropriate treatment, including involun-
2 tary commitment or assisted outpatient
3 treatment, and may issue an order requir-
4 ing the respondent to undergo such treat-
5 ment.

6 (ii) APPLICATION MADE UNDER
7 OATH.—A State court or magistrate shall,
8 before issuing a preliminary ex parte ex-
9 treme risk protection order—

10 (I) examine under oath the indi-
11 vidual who applied for the order under
12 subparagraph (A) and any witnesses
13 the individual produces; or

14 (II) require that the individual or
15 any witness submit a signed affidavit,
16 subject to the penalties of perjury,
17 which describes the facts the applicant
18 or witness believes establish the
19 grounds of the application.

20 (iii) LIMITATION ON FIREARM PROHI-
21 BITIONS BASED ON EX PARTE PRO-
22 CEEDINGS.—Any restriction imposed pur-
23 suant to a preliminary ex parte order,
24 which is based on ex parte proceedings

1 shall be limited to receiving firearms or
2 transporting or carrying firearms in public.

3 (iv) REPORTING OF PRELIMINARY EX-
4 TREME RISK PROTECTION ORDER.—The
5 court shall notify the Department of Jus-
6 tice and comparable State agency of the
7 issuance of the preliminary ex parte ex-
8 treme risk protection order not later than
9 48 hours after issuing the order. Such no-
10 tice shall be submitted in an electronic for-
11 mat, in a manner prescribed by the De-
12 partment of Justice and the comparable
13 State agency.

14 (D) HEARING ON PERMANENT EXTREME
15 RISK PROTECTION ORDER.—

16 (i) IN GENERAL.—Not later than 14
17 days after the date on which a court issues
18 a preliminary ex parte extreme risk protec-
19 tion order, the issuing court, or another
20 court in the same jurisdiction, shall hold a
21 hearing to determine whether to issue a
22 permanent extreme risk protection order
23 and, if applicable, whether to continue pro-
24 cedures for involuntary commitment or as-
25 sisted outpatient treatment. The respons-

1 ent shall have the opportunity to appear
2 with counsel, present opposing witnesses,
3 and cross-examine the petitioner or any
4 witnesses offered by the petitioner.

5 (ii) NOTICE.—A court may not issue a
6 permanent extreme risk protection order
7 unless the respondent receives actual no-
8 tice of the hearing under clause (i).

9 (iii) BURDEN OF PROOF.—At any
10 hearing conducted under clause (i), the
11 State or petitioner shall have the burden of
12 establishing by clear and convincing evi-
13 dence that the respondent poses an immi-
14 nent, particularized, and substantial risk of
15 unlawfully using a firearm to cause death
16 or serious physical injury to himself or her-
17 self or to another person.

18 (iv) REQUIREMENTS ON ISSUANCE OF
19 A PERMANENT ORDER.—If the court finds
20 by clear and convincing evidence that the
21 respondent poses an imminent, particular-
22 ized, and substantial risk of unlawfully
23 using a firearm to cause death or serious
24 physical injury to himself or herself or to
25 another person, the following shall apply:

1 (I) The respondent shall be pro-
2 hibited from possessing or receiving,
3 or attempting to possess or receive, a
4 firearm for a period not to exceed 1
5 year.

6 (II) If the court determines that
7 there is probable cause to believe that
8 the respondent possesses a firearm
9 when the order is issued, the court
10 shall issue a warrant ordering the sei-
11 zure of such firearm and shall further
12 order the firearm to be retained pur-
13 suant to subparagraph (E) for the du-
14 ration of the permanent extreme risk
15 protection order.

16 (E) SEIZURE AND RETENTION OF FIRE-
17 ARMS.—

18 (i) IN GENERAL.—In the case that a
19 law enforcement officer takes possession of
20 a firearm pursuant to a warrant issued
21 pursuant to subparagraph (D)(iv)(II), the
22 law enforcement officer shall provide to the
23 individual from whom the firearm was
24 taken a receipt, which includes the make,
25 model, caliber, finish, and serial number of

1 any such firearm. In the case that an indi-
2 vidual is not present at the time of the sei-
3 zure, the law enforcement officer shall post
4 the receipt at the location from which the
5 firearm was seized.

6 (ii) CUSTODY OF SEIZED FIREARMS.—

7 A firearm seized pursuant to subparagraph
8 (D)(iv)(II) shall, for the duration of the
9 permanent extreme risk protection order,
10 be retained by the law enforcement agency
11 that seized the firearm, or by a third party
12 not prohibited from possessing or receiving
13 a firearm, as specified by the court that
14 issued the permanent extreme risk protec-
15 tion order.

16 (iii) LIMITATION ON SEIZURE OF
17 FIREARMS.—In the case that the location
18 to be searched during the execution of a
19 warrant to enforce a permanent extreme
20 risk protection order is occupied by mul-
21 tiple parties, and a law enforcement officer
22 executing the search determines that a
23 firearm that is located during the search is
24 owned by an individual other than the re-

1 spondent named in the warrant, the fire-
2 arm may not be seized if—

3 (I) the firearm will be stored in
4 a manner that ensures that the re-
5 spondent named in the warrant does
6 not have access to or control of the
7 firearm; and

8 (II) there is no probable cause to
9 believe that the owner of the firearm
10 does not lawfully possess the firearm.

11 (iv) GUN SAFE.—In the case that the
12 location to be searched during the execu-
13 tion of a warrant issued pursuant to sub-
14 paragraph (D)(iv)(II) is occupied by mul-
15 tiple parties, and a law enforcement officer
16 executing the search locates a gun safe,
17 which the officer determines is owned by
18 an individual other than the individual
19 named in the warrant, the contents of the
20 gun safe shall not be searched except in
21 the owner's presence and with the owner's
22 consent.

23 (v) RETURN OF FIREARM TO RIGHT-
24 FUL OWNER.—In the case that any indi-
25 vidual who is not subject to an extreme

1 risk protection order can demonstrate title
2 to a firearm seized pursuant to a warrant
3 issued pursuant to subparagraph
4 (D)(iv)(II), the firearm shall be returned
5 to the lawful owner as soon as possible and
6 without an additional order of a court.

7 (F) PETITION TO COURT FOR RESCISSION
8 OF PERMANENT EXTREME RISK PROTECTION
9 ORDER.—An individual subject to a permanent
10 extreme risk protection order may at any time
11 during the effective period of the order file one
12 petition with the issuing court to rescind the
13 permanent extreme risk protection order. The
14 court shall hold a hearing on the petition within
15 14 days and grant the petition if the individual
16 proves by a preponderance of evidence that his
17 or her possession of a firearm does not pose an
18 imminent, particularized, and substantial risk
19 of death or serious bodily injury to the indi-
20 vidual or another person.

21 (G) RETURN OF FIREARMS TO A PERSON
22 SUBJECT TO AN EXTREME RISK PROTECTION
23 ORDER.—Any firearms seized pursuant to a
24 warrant issued pursuant to paragraph
25 (6)(D)(ii) shall be returned to the respondent

1 within 5 business days of the expiration or re-
2 scission of the order. Notwithstanding any
3 other provision of law, the court may require
4 that the respondent submit to an inquiry
5 through the national instant criminal back-
6 ground check system as a condition of receiving
7 the firearm.

8 (H) RENEWAL OF EXTREME RISK PROTEC-
9 TION ORDER.—A family member or law enforce-
10 ment officer may petition the court that issued
11 a permanent extreme risk protection order to
12 renew the order for a period not to exceed 1
13 year. The requirements and proceedings for re-
14 newal of an extreme risk protection order shall
15 be the same as for the issuance of a permanent
16 extreme risk protection order under subpara-
17 graph (D). A permanent extreme risk protec-
18 tion order may not be renewed more than 2
19 times.

20 (I) NOTIFICATION.—

21 (i) IN GENERAL.—Except as provided
22 in subparagraph (C), the court shall notify
23 the Department of Justice and comparable
24 State agency of the issuance or renewal of
25 an extreme risk protection order not later

1 than 5 court days after issuing or renewing
2 the order. The court shall also notify the
3 Department of Justice and comparable
4 State agency of the rescission or expiration
5 of an extreme risk protection order not
6 later than 5 court days after such rescis-
7 sion or expiration. Such notice shall be
8 submitted in an electronic format, in a
9 manner prescribed by the Department of
10 Justice and the comparable State agency.

11 (ii) UPDATE OF DATABASES.—As
12 soon as practicable after receiving a notifi-
13 cation under subparagraph (C) or clause
14 (i), but in no case later than 48 hours, the
15 Department of Justice and comparable
16 State agency shall update the background
17 check databases of the Department and
18 agency, respectively, to reflect—

19 (I) the issuance or renewal of the
20 extreme risk protection order; or

21 (II) the rescission or expiration
22 of an extreme risk protection order.

23 (J) CONFIDENTIALITY PROTECTIONS.—All
24 information provided to the Department of Jus-
25 tice and comparable State agency pursuant to

1 legislation described under this section shall be
2 kept confidential, separate, and apart from all
3 other records maintained by the Department of
4 Justice and the comparable State agency.

Page 11, insert after line 25 the following:

5 (3) RULE OF CONSTRUCTION.—The use of
6 terms in a State law that differ from the terms used
7 in this section, or the definitions in section 2, shall
8 not affect the availability of funds to a State under
9 this section, provided that the State otherwise com-
10 plies with the substantive requirements of this sec-
11 tion. A State may not receive funds under this sec-
12 tion if does not meet the substantive requirements of
13 this section, including required findings, evidentiary
14 standards, burdens of proof, limitations on duration
15 and renewal of orders, and rules governing the re-
16 turn of firearms.

