

Amendment No. _____

Signature of Sponsor

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AMEND Senate Bill No. 1178*

House Bill No. 1446

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, Part 13, is amended by adding the following language as a new section:

39-17-1366.

(a) As used in this section, unless context otherwise requires:

(1) "Extreme risk protection order" means a temporary ex parte order or a final order granted under this section;

(2) "Family or household member" means:

(A) A person who is a current or former spouse;

(B) A person who lives together with the respondent or who has lived together with the respondent;

(C) A person who is dating or has dated or has or had a sexual relationship with the respondent. As used in this subdivision (a)(4)(c), "dating" and "dated" do not include fraternization between two (2) individuals in a business or social context;

(D) A person related to the respondent by blood or adoption;

(E) A person who is related to the respondent or who was formerly related by marriage; or

(F) A person who is a child of the respondent;



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(3) "Petitioner" means a law enforcement officer, a law enforcement agency, or a family or household member of the respondent that petitions a court for an extreme risk protection order under this section; and

(4) "Respondent" means an individual who is identified as the respondent in a petition filed under this section.

(b) A petitioner may obtain an extreme risk protection order pursuant to this section.

(1) A petition for an extreme risk protection order may be filed by a law enforcement officer, a law enforcement agency, or a family or household member.

(2) An action must be filed in the county in which the family or household member resides, the county where the petitioner's law enforcement office is located, or in the county where the respondent resides.

(3) Such petition for an extreme risk protection order does not require either party to be represented by an attorney.

(4) Notwithstanding any law to the contrary, attorney's fees may not be awarded in any proceeding under this section.

(5) A petition for an extreme risk protection order must:

(A) Allege that the respondent poses a significant risk of self-harm or harm to others by having a firearm or ammunition in the person's possession, custody, or control or by purchasing or receiving a firearm or ammunition. The petition must be accompanied by an affidavit made under oath stating the specific statements, actions, or facts giving rise to a reasonable fear of future dangerous acts by the respondent;

(B) Identify the quantity, type, and location of all firearms and ammunition the petitioner believes or knows to be in the respondent's current ownership, possession, custody, or control; and

(C) Identify whether there is a known existing order of protection governing the respondent under title 36, chapter 3, part 6, by another jurisdiction as provided by § 36-3-622, or under any other applicable statute.

(6) If the petitioner is a law enforcement officer or agency, the petitioner must make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for an extreme risk protection order or has already done so and must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice or must attest to the steps that will be taken to provide such notice.

(7) If the petitioner is a family or household member, and the petition states that disclosure of the petitioner's address would risk harm to the petitioner or any member of the petitioner's family or household, the petitioner's address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address under this subdivision (b)(7), the petitioner must designate an alternative address at which the respondent may serve notice of any motions. If the petitioner is a law enforcement officer or agency, the address of record must be that of the law enforcement agency.

(8) A court or public agency may not charge fees for filing or for service of process to a petitioner seeking relief under this section and must provide the necessary number of certified copies, forms, and instructional brochures free of charge.

(9) A petitioner is not required to post a bond to obtain relief in any proceeding under this section.

(10) Any court with jurisdiction over domestic relations matters, or a general sessions court, has jurisdiction over proceedings under this section.

(c)

(1) Upon receipt of a petition, the court must order a hearing to be held no later than fourteen (14) days after the date of the order and must issue a notice of hearing to the respondent for the same.

(2) The clerk of court shall cause a copy of the notice of hearing and petition to be forwarded on or before the next business day to the appropriate law enforcement agency for service upon the respondent as provided in subsection (e).

(3) The court may, as provided in subsection (d), issue a temporary ex parte extreme risk protection order pending the hearing required by this subsection (c). A temporary ex parte order, if issued, must be served concurrently with the notice of hearing and petition as provided in subsection (e).

(4) The court may conduct a hearing by telephone pursuant to local court rules to reasonably accommodate a disability or exceptional circumstances. The court must verify the petitioner's identity before conducting a telephonic hearing.

(5) Upon notice and a hearing on the matter, if the court finds by clear and convincing evidence that the respondent poses a significant risk of self-harm or harm to others by possessing, purchasing, or receiving a firearm or any ammunition, the court must issue an extreme risk protection order for a period of one (1) year.

(6) In determining whether grounds for an extreme risk protection order exist, the court may consider any relevant evidence, including:

(A) An act or threat of violence by the respondent within the past twelve (12) months, whether or not such act or threat involved a firearm;

(B) Evidence of the respondent having recurring mental health issues;

(C) A violation by the respondent of:

(i) A previous extreme risk protection order; or

(ii) Any order of protection;

(D) Whether the respondent, in this state or any other state, has been convicted of, had a sentence suspended or adjudication withheld for, or pled nolo contendere to:

(i) Domestic abuse, as defined in § 36-3-601; or

(ii) Any violent crime or crime involving the threat of violence;

(E) The unlawful or reckless use, display, or brandishing of a firearm by the respondent;

(F) The recurring threat or use of physical force by the respondent against another person or a violation of § 39-17-315;

(G) Evidence of the abuse of controlled substances or alcohol by the respondent;

(H) Evidence of recent acquisition of firearms or ammunition by the respondent;

(I) Any relevant information from family and household members concerning the respondent; and

(J) Witness testimony, taken while the witness is under oath, relating to the matter before the court.

(7) A person, including an officer of the court, who offers evidence or recommendations relating to the petition must either present evidence or recommendations in writing to the court with copies to each party and the party's

attorney or present the evidence under oath at a hearing at which all parties are present.

(8) In a hearing under this section, the rules of evidence apply to the same extent as in a proceeding under title 36, chapter 3, part 6.

(9) During the hearing, the court must consider whether a mental health evaluation or chemical dependency evaluation is appropriate and may order such evaluations.

(10) An extreme risk protection order must include all of the following:

(A) A statement of the grounds supporting the issuance of the order;

(B) The date the order was issued;

(C) The date the order ends;

(D) Whether a mental health evaluation or chemical dependency evaluation of the respondent is required;

(E) The address of the court in which any responsive pleading may be filed;

(F) A description of the requirements for the surrender of all firearms and ammunition that the respondent owns, under subsection (g); and

(G) The following statement:

To the subject of this protection order: This order will last until the date noted above. If you have not done so already, you must immediately surrender to the (insert name of local law enforcement agency) all firearms and ammunition that you own, or that are in your custody, control, or possession and any handgun carry permit issued to you under § 39-17-1351. You may not have in your possession, custody, or control, or purchase, receive, or

attempt to purchase or receive, a firearm or ammunition while this order is in effect. You have the right to request a hearing to vacate this order starting after the date of the issuance of this order, and to request another hearing after every extension of the order. You may seek the advice of an attorney as to any matter connected with this order.

(11) If the court issues an extreme risk protection order, the court must inform the respondent of the right to request a hearing to vacate the order in the manner provided by subsection (f). The court shall provide the respondent with a form to request a hearing to vacate.

(12) If the court denies the petitioner's request for an extreme risk protection order, the court must state the particular reasons for the denial.

(d)

(1) A petitioner may request that the court issue a temporary ex parte extreme risk protection order, by including in the petition detailed evidence based on personal knowledge that the respondent poses a significant risk of self-harm or harm to others in the near future by possessing, purchasing, or receiving a firearm or ammunition.

(2) In considering whether to issue a temporary ex parte extreme risk protection order, the court shall consider all relevant evidence, including the evidence described in subdivision (c)(6).

(3) The court must hold a temporary ex parte extreme risk protection order hearing in person or by telephone within one (1) business day following the day the petition is filed.

(4) If a court finds there is reasonable cause to believe the evidence provided under subdivision (d)(1), the court must issue a temporary ex parte extreme risk protection order.

(5) A temporary ex parte extreme risk protection order must include the following:

(A) A statement of the grounds asserted for the order;

(B) The date the order was issued;

(C) The address of the court in which any responsive pleading may be filed;

(D) A description of the requirements for the relinquishment of all firearms and ammunition that the respondent owns, under subsection (g); and

(E) The following statement:

To the subject of this protection order: This order is valid until the date noted above. You are required to surrender all firearms and ammunition that you own or that are in your possession, custody, or control. You may not have in your possession, custody, or control, or purchase, receive, or attempt to purchase or receive a firearm or ammunition while this order is in effect. You must immediately surrender to the (insert name of local law enforcement agency) all firearms and ammunition in your custody, control, or possession and any handgun carry permit issued to you under § 39-17-1351. A hearing will be held on the date and time noted above to determine if an extreme risk protection order should be issued. Failure to appear at that hearing may result in a court issuing an order against you which is valid for one (1) year. You may seek the advice of an attorney as to any matter connected with this order.

(6) A temporary ex parte extreme risk protection order ends upon the hearing on the extreme risk protection order.

(7) A temporary ex parte extreme risk protection order must be served by a law enforcement officer in the same manner as provided for in subsection (e) for service of the notice of hearing and petition and must be served concurrently with the notice of hearing and petition.

(8) If the court denies the petitioner's request for a temporary ex parte extreme risk protection order, the court must state the particular reasons for the denial.

(e)

(1) The clerk of the court shall furnish a copy of the notice of hearing, petition, and if issued, temporary ex parte extreme risk protection order or extreme risk protection order to the sheriff of the county in which the respondent resides or can be found, who shall serve it upon the respondent as soon as possible. When requested by the sheriff, the clerk of the court may transmit a facsimile copy of a temporary ex parte risk extreme protection order or extreme risk protection order that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy. Upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. The clerk of the court is responsible for furnishing to the sheriff information on the respondent's physical description and location. Notwithstanding any law to the contrary, the presiding judge of each court, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency effecting service pursuant to this section shall use service and verification procedures consistent with those of the sheriff. Service under this section takes precedence over the service of other documents, unless the other documents are of a similar urgent nature.

(2) All orders issued, changed, continued, extended, or vacated after the original service of documents must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this section, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

(f)

(1) The respondent may submit one (1) written request for a hearing to vacate an extreme risk protection order issued under this section, starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any.

(2) Upon receipt of the request for a hearing to vacate an extreme risk protection order, the court shall set a date for a hearing. Notice of the request must be served on the petitioner in accordance with subsection (e). The hearing must occur no sooner than fourteen (14) days and no later than thirty (30) days after the date of service of the request upon the petitioner.

(3) The respondent has the burden of proving by clear and convincing evidence that the respondent does not pose a significant risk of self-harm or harm to others by possessing, purchasing, or receiving a firearm or ammunition. The court may consider any relevant evidence, including evidence of the considerations listed in subdivision (c)(6).

(4) If the court finds after the hearing that the respondent has met the burden of proof, the court must vacate the order.

(5) The law enforcement agency holding any firearm or ammunition or handgun carry permit that has been surrendered pursuant to this section shall be notified of the court order to vacate the extreme risk protection order.

(6) The court must notify the petitioner of the upcoming termination of an extreme risk protection order. Notice must be received by the petitioner at least thirty (30) days prior to the date the order ends.

(7) The petitioner may, by motion, request an extension of an extreme risk protection order at any time within thirty (30) days prior to the end of the order.

(A) Upon receipt of the motion to extend, the court shall order that a hearing be held no later than fourteen (14) days after the date the order is issued and shall schedule such hearing.

(B) The court may schedule a hearing by telephone in the manner provided by subdivision (c)(4).

(C) The respondent must be personally served in the same manner provided by subsection (e).

(D) In determining whether to extend an extreme risk protection order issued under this section, the court may consider all relevant evidence, including evidence of the considerations listed in subdivision (c)(3).

(E) If the court finds by clear and convincing evidence that the requirements for issuance of an extreme risk protection order as provided in subdivision (c)(5) continue to be met, the court must extend the order. However, if, after notice, the motion for extension is uncontested and no modification of the order is sought, the order may be extended on the

basis of a motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested extension.

(F) The court may extend an extreme risk protection order for a period that the court deems appropriate, up to one (1) year, subject to an order to vacate as provided in subdivision (f)(1) or to another extension order by the court.

(g)

(1) Upon issuance of an extreme risk protection order under this section, including a temporary ex parte extreme risk protection order, the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition owned by or in the custody, control, or possession of the respondent, and any handgun carry permit issued under § 39-17-1351.

(2) The law enforcement officer serving an extreme risk protection order under this section, including a temporary ex parte extreme risk protection order, shall request that the respondent immediately surrender all firearms and ammunition owned or in the custody, control, or possession of the respondent, and any handgun carry permit issued under § 39-17-1351. The law enforcement officer shall take possession of all firearms, ammunition, and handgun carry permit owned, possessed, or issued to the respondent. Alternatively, if personal service by a law enforcement officer is not possible or is not required because the respondent was present at the extreme risk protection order hearing, the respondent must surrender any firearms and ammunition owned by the respondent or that are in the respondent's custody or control and any handgun carry permit, within twenty-four (24) hours after being served with the order or immediately after the hearing at which the respondent was present. A law enforcement officer may seek a search warrant from a court of competent

jurisdiction to conduct a search for firearms or ammunition owned by or in the respondent's care, custody, or control if the officer has probable cause to believe that all of the respondent's firearms and ammunition have not been surrendered.

(3) At the time of surrender, a law enforcement officer taking possession of any firearm or ammunition in the respondent's ownership, possession, custody, or control, or a handgun carry permit issued under § 39-17-1351, shall issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered, and any permit surrendered and shall provide a copy of the receipt to the respondent. Within seventy-two (72) hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and shall ensure that the law enforcement agency retains a copy of the receipt.

(4) Upon the sworn statement or testimony of any person alleging that the respondent has failed to comply with the surrender of any firearms or ammunition, as required by an order issued under this section, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or ammunition owned by the respondent or in the respondent's possession, custody, or control. If the court finds that probable cause exists, the court must issue a warrant describing the firearms or ammunition possessed by the respondent and authorizing a search of the locations where the firearms or ammunition are reasonably believed to be found and the seizure of any firearms or ammunition owned by the respondent discovered pursuant to such search.

(5) If a person other than the respondent claims title to any firearms or ammunition surrendered pursuant to this section and the person is determined by the law enforcement agency to be the lawful owner of the firearms or ammunition, the firearms or ammunition shall be returned, if:

(A) The lawful owner agrees to store the firearms or ammunition in a manner such that the respondent does not have access to or control of the firearms or ammunition; and

(B) The law enforcement agency confirms, by means of a background check, that the firearms or ammunition are lawfully possessed.

(6) Upon the issuance of an extreme risk protection order, the court shall order a new hearing date and require the respondent to appear no later than three (3) business days after the issuance of the order. The court shall require proof that the respondent has surrendered any firearms or ammunition in the respondent's custody, control, or possession. The court may cancel the hearing upon a satisfactory showing that the respondent is in compliance with the order.

(7) All law enforcement agencies must develop policies and procedures regarding the acceptance, storage, and return of firearms, ammunition, or permits required to be surrendered under this section.

(h)

(1) If an extreme risk protection order is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition owned by the respondent or a handgun carry permit held by the respondent that has been surrendered or seized pursuant to this section must return such firearm, ammunition, or handgun carry permit, as requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the extreme risk protection order has been vacated or has ended without extension.

(2) If an extreme risk protection order is vacated or ends without extension, the department of safety must reinstate a handgun carry permit

previously issued to the respondent only after confirming that the respondent is currently eligible to have a permit to carry a handgun pursuant to § 39-17-1351.

(3) A law enforcement agency must provide notice to any family or household members of the respondent before the return of any surrendered firearm and ammunition owned by the respondent.

(4) Any firearm or ammunition surrendered by a respondent pursuant to subsection (g) which remains unclaimed for one (1) year by the lawful owner shall be disposed of in accordance with § 39-17-1317.

(i)

(1) Within twenty-four (24) hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order and the Tennessee bureau of investigation. Upon receipt of the copy of the order, the Tennessee bureau of investigation shall enter the order into the National Instant Criminal Background Check System, any other federal or state computer-based systems used by law enforcement or others to identify prohibited purchasers of firearms, and any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order must remain in each system for the period stated in the order, and the bureau shall only remove an order that has expired or been terminated by the court. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(2) The issuing court shall, within three (3) business days after issuance of an extreme risk protection order or temporary ex parte extreme risk protection order, forward all available identifying information concerning the respondent, along with the date of order issuance, to the department of safety. Upon receipt

of the information, the department shall determine if the respondent has a handgun carry permit. If the respondent has a handgun carry permit, the department must immediately suspend the permit.

(3) If an extreme risk protection order is vacated before the end date listed on the order, the clerk of the court shall, on the day of the order to vacate, forward a copy of the order to the Tennessee bureau of investigation, the department of safety, and the appropriate law enforcement agency specified in the order to vacate. Upon receipt of the order to vacate, the bureau shall promptly remove the order from any computer-based system in which it was entered.

(j)

(1) It is an offense for a person to have a firearm or ammunition in the person's custody or control or to purchase, possess, or receive a firearm or ammunition with knowledge that the purchase or possession is a violation of an extreme risk protection order or temporary ex parte extreme risk protection order.

(2) A violation of subdivision (j)(1) is a Class E felony.

(k) This section does not affect the ability of a law enforcement officer to remove a firearm, ammunition, or handgun carry permit from any person or to conduct any search and seizure for firearms or ammunition pursuant to other lawful authority.

(l) Except as provided in subsection (j), this section does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining an extreme risk protection order or temporary ex parte extreme risk protection order, including, but not limited to, providing notice to the petitioner, a family or household member of the respondent, and any known third party who may be at risk of violence or failure to provide such notice, or reporting, declining to report, investigating, declining to investigate, filing, or declining to file, a petition under this section.

(m)

(1) The administrative office of the courts shall develop and prepare instructions and informational brochures, standard petitions and extreme risk protection order forms, and a court staff handbook on the extreme risk protection order process. The standard petition and order forms must be used after January 1, 2020, for all petitions filed and orders issued pursuant to this section. The office shall determine the significant non-English-speaking or limited English-speaking populations in the state and prepare the instructions and informational brochures and standard petitions and extreme risk protection order forms in such languages. The instructions, brochures, forms, and handbook must be prepared in consultation with representatives of gun violence prevention groups, judges, and law enforcement personnel. Materials must be based on best practices and must be available online to the public.

(A) The instructions must be designed to assist petitioners in completing the petition and must include a sample of a standard petition and order of protection forms.

(B) The instructions and standard petition must include a means for the petitioner to identify, with only layman's knowledge, the firearms or ammunition the respondent may own, possess, receive, or have in the respondent's custody or control. The instructions must provide pictures of types of firearms and ammunition that the petitioner may choose from to identify the relevant firearms or ammunition, or must provide an equivalent means to allow petitioners to identify firearms or ammunition without requiring specific or technical knowledge regarding the firearms or ammunition.

(C) The informational brochure must describe the use of and the process for obtaining, extending, and vacating an extreme risk protection order under this section and must provide relevant forms.

(D) The extreme risk protection order form must include, in a conspicuous location, notice of criminal penalties resulting from violation of the order and the following statement:

You have the sole responsibility to avoid or refrain from violating this order's provisions. Only the court can change the order and only upon written request.

(E) The court staff handbook must allow for the addition of a community resource list by the clerk of the court.

(2) Any clerk of court may create a community resource list of crisis intervention, mental health, substance abuse, interpreter, counseling, and other relevant resources serving the county in which the court is located. The court may make the community resource list available as part of or in addition to the informational brochures described in subdivision (m)(1).

(3) The administrative office of the courts shall distribute a master copy of the petition and order forms, instructions, and informational brochures to the clerks of court. Distribution of all documents shall be in an electronic format that is accessible to all courts and clerks of court.

(4) Within ninety (90) days after receipt of the master copy from the administrative office of the court, the clerk of the court shall make available to the public the standardized forms, instructions, and informational brochures required by this subsection.

(5) The administrative office of the courts shall update the instructions, brochures, standard petition, extreme risk protection order forms, and court staff handbook as necessary, including when changes in the law make an update necessary.

(n)

(1) No later than January 31 of each year, clerks of courts shall report to the administrative office of the courts the following information:

(A) The total number of petitions for an extreme risk protection order issued and the total number of those petitions that requested the order be issued ex parte during the previous year;

(B) The total number of temporary ex parte extreme risk protection orders issued and the total number denied during the previous year;

(C) The total number of extreme risk protection orders issued and the total number denied during the previous year;

(D) The total number of extreme risk protection orders vacated upon petition by the respondent during the previous year; and

(E) The total number of extreme risk protection orders extended during the previous year.

(2) No later than April 1 of each year, the administrative office of the courts shall compile and publish on its website a report which aggregates the information received pursuant to subdivision (n)(1). The report must list each category by county and type of court.

SECTION 2. This act shall take effect July 1, 2019, the public welfare requiring it.