

# HOUSE BILL No. 4942

October 6, 2015, Introduced by Rep. Wittenberg and referred to the Committee on Judiciary.

A bill to provide for the issuance of restraining orders prohibiting certain individuals from possessing or purchasing firearms and ordering the seizure of a restrained individual's firearms; to provide for the powers and duties of certain state and local governmental officers and entities; to prescribe penalties; and to provide remedies.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 1. This act shall be known and may be cited as the "gun  
2 violence restraining order act".

3           Sec. 3. As used in this act:

4           (a) "C.J.I.S. policy council act" means the C.J.I.S. policy  
5 council act, 1974 PA 163, MCL 28.211 to 28.215.

6           (b) "Dating relationship" means a relationship that consists  
7 of frequent, intimate associations primarily characterized by the

1 expectation of affectional involvement. Dating relationship does  
2 not include a casual relationship or an ordinary fraternization  
3 between 2 individuals in a business or social context.

4 (c) "Defendant" means the person against whom a gun violence  
5 restraining order is requested in an action under section 5.

6 (d) "Family member" means an individual who is related to the  
7 defendant as any of the following:

8 (i) A parent.

9 (ii) A son or daughter.

10 (iii) A sibling.

11 (iv) A grandparent.

12 (v) A grandchild.

13 (vi) An uncle or aunt.

14 (vii) A first cousin.

15 (e) "Federal law enforcement officer" means an officer or  
16 agent employed by a law enforcement agency of the United States  
17 government whose primary responsibility is the enforcement of laws  
18 of the United States.

19 (f) "Gun violence restraining order" means an order issued by  
20 a court under section 9.

21 (g) "Plaintiff" means the individual who requests a gun  
22 violence restraining order in an action under section 5.

23 (h) "Restrained individual" means the individual against whom  
24 a gun restraining order has been issued and is in effect.

25 Sec. 5. (1) An individual described in subsection (2) may file  
26 an action with the circuit court requesting the court to enter a  
27 gun violence restraining order.

1 (2) Any of the following may file an action under this  
2 section:

3 (a) The spouse of the defendant.

4 (b) A former spouse of the defendant.

5 (c) An individual who has a child in common with the  
6 defendant.

7 (d) An individual who has or has had a dating relationship  
8 with the defendant.

9 (e) An individual who resides or has resided in the same  
10 household with the individual.

11 (f) A family member.

12 (g) Another individual who has a close relationship with the  
13 defendant. If the plaintiff files a complaint under this  
14 subdivision, the plaintiff shall state in the complaint sufficient  
15 facts to allow the court to determine whether the individual has a  
16 close relationship with the defendant.

17 (3) An individual who files an action under this section shall  
18 do so by filing a summons and complaint on forms approved by the  
19 state court administrative office as directed by the supreme court.  
20 The complaint must state facts that show that issuance of a gun  
21 violence restraining order is necessary because the defendant poses  
22 a significant risk of personal injury to himself or herself or  
23 others by possessing a firearm.

24 (4) If the plaintiff knows that the defendant is issued a  
25 license to carry a concealed weapon and is required to carry a  
26 weapon as a condition of his or her employment, a police officer  
27 certified by the commission on law enforcement standards act, 1965

1 PA 203, MCL 28.601 to 28.616, a sheriff, a deputy sheriff, a member  
2 of the department of state police, a local corrections officer, an  
3 employee of the department of corrections, or a federal law  
4 enforcement officer who carries a firearm during the normal course  
5 of his or her employment, the plaintiff shall state that in the  
6 complaint.

7 (5) If the plaintiff requests the court to issue an order  
8 seizing firearms owned by the defendant, the plaintiff shall  
9 identify the firearms that the plaintiff knows are in the  
10 possession of the defendant.

11 Sec. 7. (1) In an action under section 5, the court may issue  
12 a gun violence restraining order if the court determines that there  
13 is reasonable cause to believe that the defendant poses a  
14 significant risk of personal injury to himself or herself or others  
15 by possessing a firearm. In determining whether reasonable cause  
16 exists, the court shall consider all of the following:

17 (a) Testimony, documents, or other evidence offered in support  
18 of the request for the gun violence restraining order.

19 (b) Whether the defendant has previously inflicted or  
20 threatened to inflict personal injury on himself or herself or  
21 others.

22 (c) Any other facts that the court believes are relevant.

23 (2) If the plaintiff in an action filed under section 5 is not  
24 an individual described in section 5(2)(a) to (f), the court shall  
25 not issue the gun violence restraining order unless the court  
26 determines that the plaintiff has a close enough relationship with  
27 the defendant to justify the issuance of the order.

1           (3) The court in an action under section 5 may issue a  
2 gun violence restraining order without written or oral notice to  
3 the defendant if the court determines that clear and convincing  
4 evidence has been submitted under oath or affirmation that  
5 irreparable injury will result from the delay required to  
6 effectuate notice or that the notice will itself precipitate  
7 adverse action before a gun violence restraining order can be  
8 issued.

9           (4) A restrained individual under an order issued under  
10 subsection (3) may file a motion to modify or rescind the order and  
11 request a hearing under supreme court rules. The motion to modify  
12 or rescind the order must be filed within 14 days after the order  
13 is served on the restrained individual or after the restrained  
14 individual receives actual notice of the order, unless good cause  
15 is shown for filing the motion after the 14 days have elapsed.

16           (5) The court shall conduct a hearing on a motion under  
17 subsection (4) within 14 days after the motion is filed. If the  
18 restrained individual is an individual described in section 5(4),  
19 the court shall conduct a hearing on a motion under subsection (4)  
20 within 5 days after the motion is filed.

21           Sec. 9. (1) If the court determines under section 7 that a gun  
22 violence restraining order should be issued, the court shall  
23 include all of the following provisions in the order:

24           (a) That the restrained individual shall not purchase or  
25 possess a firearm.

26           (b) If the order is issued under section 7(3), a statement  
27 that the restrained individual may file a motion to modify or

1 rescind the order and request a hearing within 14 days after the  
2 restrained individual is served with or receives actual notice of  
3 the order and that motion forms and filing instructions are  
4 available from the clerk of the court.

5 (c) A designation of the law enforcement agency that is  
6 responsible for entering the order into the law enforcement  
7 information network as provided by the C.J.I.S. policy council act.

8 (d) A statement that violation of the order will subject the  
9 restrained individual to immediate arrest and the civil and  
10 criminal contempt powers of the court, and that if the restrained  
11 individual is found guilty of criminal contempt, he or she will be  
12 imprisoned for not more than 93 days and may be fined not more than  
13 \$500.00.

14 (e) An expiration date that is not more than 1 year from the  
15 date of issuance.

16 (2) In the discretion of the court, a gun violence restraining  
17 order may include an order to a law enforcement agency to seize  
18 firearms in the possession of the restrained individual. An order  
19 issued under this subsection must specifically describe the  
20 firearms to be seized. The court may also order that a law  
21 enforcement agency seizing firearms under this subsection may seize  
22 any other firearms discovered that belong to or are in the  
23 possession of the restrained individual.

24 (3) A gun violence restraining order is effective and  
25 enforceable immediately after it is served on the restrained  
26 individual or after the restrained individual receives actual  
27 notice of the order. The order may be enforced anywhere in this

1 state by a law enforcement agency that receives a true copy of the  
2 order, is shown a copy of it, or has verified its existence on the  
3 law enforcement information network as provided by the C.J.I.S.  
4 policy council act.

5 Sec. 11. The clerk of a court that issues a gun violence  
6 restraining order shall do all of the following immediately after  
7 issuance and without requiring a proof of service on the restrained  
8 individual:

9 (a) Provide a true copy of the order to the law enforcement  
10 agency designated under section 9(1)(c).

11 (b) Provide the plaintiff with at least 2 true copies of the  
12 order.

13 (c) If the restrained individual is identified in the  
14 complaint as an individual described in section 5(4), notify the  
15 individual's employer, if known, of the existence of the order.

16 (d) Notify the concealed weapon licensing board in the  
17 restrained individual's county of residence of the existence of the  
18 order.

19 (e) Inform the plaintiff that the plaintiff may take a true  
20 copy of the order to the law enforcement agency designated under  
21 section 9(1)(c) to be immediately entered into the law enforcement  
22 information network.

23 Sec. 13. (1) A gun violence restraining order must be served  
24 on the restrained individual by any method allowed under Michigan  
25 court rules. If the restrained individual has not been served, a  
26 law enforcement officer or clerk of the court who knows that the  
27 order exists may, at any time, serve the restrained individual with

1 a true copy of the order or advise the restrained individual of the  
2 existence of the order, the specific conduct enjoined, the  
3 penalties for violating the order, and where the restrained  
4 individual may obtain a copy of the order.

5 (2) The person who serves a gun violence restraining order or  
6 gives oral notice of the order shall file proof of service or proof  
7 of oral notice with the clerk of the court that issued the order.  
8 The clerk of the court shall immediately notify the law enforcement  
9 agency designated under section 9(1)(c) if either of the following  
10 occurs:

11 (a) The clerk of the court receives proof that the restrained  
12 individual has been served.

13 (b) The order is rescinded, modified, or extended.

14 Sec. 15. (1) A law enforcement agency designated in a gun  
15 violence restraining order under section 9(1)(c) that receives a  
16 true copy of the order shall immediately and without requiring  
17 proof of service enter the order into the law enforcement  
18 information network as provided by the C.J.I.S. policy council act.

19 (2) A law enforcement agency that receives information under  
20 section 13(2) shall enter the information into the law enforcement  
21 information network as provided by the C.J.I.S. policy council act.

22 (3) If a gun violence restraining order has not been served on  
23 the restrained individual, a law enforcement agency or officer  
24 responding to a call alleging a violation of the order shall serve  
25 the restrained individual with a true copy of the order or advise  
26 the restrained individual of the existence of the order, the  
27 specific conduct enjoined, the penalties for violating the order,



1 and where the restrained individual may obtain a copy of the order.  
2 Subject to subsection (4), the law enforcement officer shall  
3 enforce the order and immediately enter or cause to be entered into  
4 the law enforcement information network that the restrained  
5 individual has actual notice of the order. The law enforcement  
6 officer also shall comply with section 13(2).

7 (4) In the circumstances described in subsection (3), the law  
8 enforcement officer shall give the restrained individual an  
9 opportunity to comply with the gun violence restraining order  
10 before the law enforcement officer makes a custodial arrest for  
11 violation of the order. The failure by the restrained individual to  
12 immediately comply with the order is grounds for an immediate  
13 custodial arrest. This subsection does not preclude an arrest under  
14 section 15 or 15a of chapter IV of the code of criminal procedure,  
15 1927 PA 175, MCL 764.15 and 764.15a.

16 (5) The law enforcement agency ordered to seize a firearm  
17 under section 9(2) may seize a firearm identified in the order from  
18 any place or from any individual who has possession of the firearm.  
19 The law enforcement agency may also seize any other firearms  
20 discovered that are owned by or in the possession of the restrained  
21 individual if so provided in the gun violence restraining order, or  
22 if allowed under other applicable law.

23 (6) A law enforcement officer who seizes a firearm under  
24 subsection (5) shall give a receipt for the firearm to the  
25 individual from whom it was taken, specifying the firearm in  
26 detail. If no individual is present at the time of seizure, the  
27 officer shall leave the receipt in the place where he or she found

1 the firearm.

2 (7) The law enforcement agency that seizes a firearm under  
3 subsection (5) shall retain the firearm subject to order of the  
4 court that issued the gun violence restraining order under which  
5 the firearm was seized. In addition to any other order that the  
6 court determines is appropriate, the court shall order that the  
7 firearm be returned to the restrained individual when the  
8 restrained individual is no longer prohibited from owning a firearm  
9 or that the firearm be transferred to a licensed firearm dealer if  
10 the restrained individual sells or transfers ownership of the  
11 firearm to the dealer.

12 (8) If the location to be searched during the seizure of a  
13 firearm under subsection (5) is jointly occupied by multiple  
14 individuals, a firearm is located during the search, and it is  
15 determined that the firearm is owned by an individual other than  
16 the restrained individual, the law enforcement agency shall not  
17 seize the firearm if all of the following conditions are satisfied:

18 (a) The firearm is stored so that the restrained individual  
19 does not have access to or control of the firearm.

20 (b) There is no evidence of unlawful possession of the firearm  
21 by the owner.

22 (9) If the location to be searched during the seizure of a  
23 firearm under subsection (5) is jointly occupied by multiple  
24 individuals, a gun safe is located at the location, it is  
25 determined that the gun safe is owned by an individual other than  
26 the restrained individual, and a valid search warrant has not been  
27 obtained, the law enforcement agency shall not search the gun safe

1 except in the owner's presence or with the owner's consent.

2 (10) If any individual other than the restrained individual  
3 claims title to a firearm seized under subsection (5), the firearm  
4 must be returned to the claimant if the court determines that the  
5 claimant is the lawful owner.

6 Sec. 17. The plaintiff may move the court to issue, or the  
7 court on its own motion may issue, 1 or more extended gun violence  
8 restraining orders, each effective for up to 1 year after the  
9 expiration of the preceding order. The court shall only issue an  
10 extended order if there is probable cause to believe that the  
11 restrained individual continues to pose a significant risk of  
12 personal injury to himself or herself or others by possessing a  
13 firearm. The plaintiff or the court, as applicable, shall give the  
14 restrained individual written notice of a hearing on a motion to  
15 extend the order.

16 Sec. 19. (1) An individual who refuses or fails to comply with  
17 a gun violence restraining order is subject to the criminal  
18 contempt powers of the court and, if found guilty, may be  
19 imprisoned for not more than 93 days or may be fined not more than  
20 \$500.00, or both. The criminal penalty provided for under this  
21 section may be imposed in addition to a penalty imposed for another  
22 criminal offense arising from the same conduct.

23 (2) A gun violence restraining order may also be enforced  
24 under chapter 17 of the revised judicature act of 1961, 1961 PA  
25 236, MCL 600.1701 to 600.1745.

26 (3) A plaintiff who knowingly and intentionally makes a false  
27 statement to the court in the complaint or in support of the

1 complaint is subject to the contempt powers of the court.

2 Enacting section 1. This act does not take effect unless

3 Senate Bill No. \_\_\_\_\_ or House Bill No. 4943 (request no. 04044'15 a)

4 of the 98th Legislature is enacted into law.