

SENATE BILL NO. 856

February 08, 2022, Introduced by Senators MCMORROW, BAYER, GEISS, HOLLIER, IRWIN, WOJNO, MCCANN, POLEHANKI, ALEXANDER, BULLOCK, CHANG, BRINKS, MOSS and ANANICH and referred to the Committee on Government Operations.

A bill to provide for the issuance of restraining orders prohibiting certain individuals from possessing or purchasing firearms and ordering the surrender and 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
2 "extreme risk protection order act".

1 Sec. 3. As used in this act:

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

4 (b) "Dating relationship" means a relationship that consists
5 of frequent, intimate associations primarily characterized by the
6 expectation of affectional involvement. Dating relationship does
7 not include a casual relationship or an ordinary fraternization
8 between 2 individuals in a business or social context.

9 (c) "Defendant" means the person against whom an extreme risk
10 protection order is requested in an action under section 5.

11 (d) "Extreme risk protection order" means an order issued by a
12 court under section 9.

13 (e) "Family member" means an individual who is related to the
14 defendant as any of the following:

15 (i) A parent.

16 (ii) A son or daughter.

17 (iii) A sibling.

18 (iv) A grandparent.

19 (v) A grandchild.

20 (vi) An uncle or aunt.

21 (vii) A first cousin.

22 (f) "Law enforcement agency" means any of the following:

23 (i) A county sheriff's department.

24 (ii) The department of state police.

25 (iii) A police department of an incorporated city or village.

26 (g) "Law enforcement officer" means an individual employed by
27 a law enforcement agency to enforce the criminal laws of this
28 state.

29 (h) "Plaintiff" means the individual who requests an extreme

1 risk protection order in an action under section 5.

2 (i) "Restrained individual" means the individual against whom
3 an extreme risk protection order has been issued and is in effect.

4 Sec. 5. (1) An individual described in subsection (2) may file
5 an action with the circuit court requesting the court to enter an
6 extreme risk protection order.

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

9 (a) The spouse of the defendant.

10 (b) A former spouse of the defendant.

11 (c) An individual who has a child in common with the
12 defendant.

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

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

17 (f) A family member.

18 (g) A law enforcement officer.

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

26 (4) If the plaintiff knows that the defendant is issued a
27 license to carry a concealed pistol, is required to carry a weapon
28 as a condition of his or her employment, or is a law enforcement
29 officer, a local corrections officer, or an employee of the

1 department of corrections, who carries a firearm during the normal
2 course of his or her employment, the plaintiff shall state that in
3 the complaint.

4 (5) If the plaintiff knows or believes that the defendant owns
5 or possesses firearms, the plaintiff shall state that and identify
6 the firearms in the complaint.

7 (6) In an action under this section, the address of the
8 plaintiff must not be disclosed in any pleading or paper or
9 otherwise.

10 Sec. 6. The court in which an action is filed under section 5
11 shall expedite and give priority to a hearing on the issuance of an
12 extreme risk protection order and to any other hearings required
13 under this act.

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

20 (a) Testimony, documents, or other evidence, including, but
21 not limited to, electronic data, offered in support of the request
22 for the extreme risk protection order.

23 (b) Whether the defendant has previously inflicted or
24 threatened to inflict personal injury on himself or herself or
25 others.

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

27 (2) The court in an action under section 5 may issue an
28 extreme risk protection order without written or oral notice to the
29 defendant if the court determines that evidence of specific facts

1 has been submitted under oath or affirmation that clearly
2 establishes that immediate and irreparable injury will result from
3 the delay required to effectuate notice or that the notice will
4 itself precipitate adverse action before an extreme risk protection
5 order can be issued.

6 (3) If a court issues an extreme risk protection order under
7 subsection (2), the court shall conduct a hearing on the order
8 within 14 days after the order is served on the restrained
9 individual or after the restrained individual receives actual
10 notice of the order.

11 (4) An individual restrained under an extreme risk protection
12 order may file a motion to modify or rescind the order at any time
13 and request a hearing under supreme court rules. The restrained
14 individual may file only 1 motion to modify or rescind the order
15 during the time the order is in effect under section 9(1)(j), and
16 only 1 motion to modify or rescind an extended order during the
17 time the extended order is in effect under section 17.

18 Sec. 9. (1) If the court determines under section 7 that an
19 extreme risk protection order should be issued, the court shall
20 include all of the following provisions in the order:

21 (a) That the restrained individual shall not purchase or
22 possess a firearm.

23 (b) That the restrained individual shall not apply for a
24 concealed pistol license and, if the restrained individual has been
25 issued a license to carry a concealed pistol, the license will be
26 suspended or revoked under section 8 of 1927 PA 372, MCL 28.428,
27 once the order is entered into the law enforcement information
28 network and that the individual shall surrender the license as
29 required by section 8 of 1927 PA 372, MCL 28.428.

1 (c) That the restrained individual shall, within 24 hours
2 after being served with the order, surrender all firearms in the
3 individual's possession to the law enforcement agency designated
4 under subdivision (h).

5 (d) That, if the restrained individual does not surrender all
6 firearms in the individual's possession as ordered under
7 subdivision (c), the law enforcement agency designated under
8 subdivision (h) will be authorized to seize firearms in the
9 possession of the restrained individual.

10 (e) If the plaintiff has identified any firearms under section
11 5(5), a specific description of the firearms to be surrendered or
12 seized.

13 (f) If the order is issued under section 7(2), a statement
14 that a hearing will be held within 14 days after the restrained
15 individual is served with or receives actual notice of the order
16 and that the restrained individual may appear at the hearing and
17 request the court to modify or rescind the order.

18 (g) A statement that the restrained individual may, 1 time
19 while the order is in effect, file a motion to modify or rescind
20 the order and that motion forms and filing instructions are
21 available from the clerk of the court.

22 (h) A designation of the law enforcement agency that is
23 responsible for entering the order into the law enforcement
24 information network and forwarding the order to the Federal Bureau
25 of Investigation and the Bureau of Alcohol, Tobacco, Firearms, and
26 Explosives under section 15(1). The law enforcement agency
27 designated under this subdivision must be an agency within whose
28 jurisdiction the restrained individual resides.

29 (i) A statement that violation of the order will subject the

1 restrained individual to immediate arrest and the civil and
2 criminal contempt powers of the court, and that if the restrained
3 individual is found guilty of criminal contempt, he or she will be
4 imprisoned for not more than 93 days and may be fined not more than
5 \$500.00.

6 (j) An expiration date that is 1 year from the date of
7 issuance.

8 (2) An extreme risk protection order is effective and
9 enforceable immediately after it is served on the restrained
10 individual or after the restrained individual receives actual
11 notice of the order. The order may be enforced anywhere in this
12 state by a law enforcement agency that receives a true copy of the
13 order, is shown a copy of it, or has verified its existence on the
14 law enforcement information network as provided by the C.J.I.S.
15 policy council act or on an information network maintained by the
16 Federal Bureau of Investigation.

17 Sec. 10. (1) Within 24 hours after an extreme risk protection
18 order is issued, the restrained individual may do either of the
19 following:

20 (a) File with the court that issued the order 1 or more proofs
21 of relinquishment or removal showing that all firearms previously
22 in the individual's possession or control were relinquished to or
23 removed by the local law enforcement agency designated under
24 section 9(1)(h) and that any concealed pistol license was
25 surrendered to the county clerk as required by the order and
26 section 8 of 1927 PA 372, MCL 28.428, and verify to the court that
27 at the time of the verification the individual does not have any
28 firearms or a concealed pistol license in his or her possession or
29 control.

1 (b) Verify to the court that both of the following are true:

2 (i) At the time the order was issued, the individual did not
3 have a firearm or a concealed pistol license in his or her
4 possession or control.

5 (ii) At the time of the verification, the individual does not
6 have a firearm or a concealed pistol license in his or her
7 possession or control.

8 (2) If a restrained individual has not satisfied the
9 requirements of subsection (1)(a) or (b) within 24 hours after the
10 extreme risk protection order was issued, the clerk of the court
11 that issued the order shall inform the local law enforcement agency
12 designated under section 9(1)(h) of that fact.

13 (3) A local law enforcement agency that receives a
14 notification under subsection (2) shall make a good-faith effort to
15 determine whether there is evidence that the restrained individual
16 has failed to relinquish a firearm or concealed pistol license in
17 the restrained individual's possession or control as required.

18 (4) At any time while an extreme risk protection order is in
19 effect, the plaintiff or a law enforcement officer may file an
20 affidavit with the court that issued the order alleging that the
21 restrained individual has a firearm or a concealed pistol license
22 in his or her possession or control. If an affidavit is filed under
23 this subsection, the court shall determine whether probable cause
24 exists to believe that the restrained individual has a firearm or
25 concealed pistol license in his or her possession or control. If
26 the court finds that probable cause exists, the court shall issue a
27 warrant describing the firearm or firearms or the concealed pistol
28 license believed to be in the restrained individual's possession or
29 control and authorizing a search of the location or locations where

1 the firearm or firearms or concealed pistol license are believed to
2 be and the seizure of any firearm or concealed pistol license
3 discovered by the search.

4 Sec. 11. The clerk of a court that issues an extreme risk
5 protection order shall do all of the following immediately after
6 issuance and without requiring a proof of service on the restrained
7 individual:

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

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

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

15 (d) Notify the department of state police and the clerk of the
16 restrained individual's county of residence of the existence of the
17 order for purposes of performing their duties under 1927 PA 372,
18 MCL 28.421 to 28.435.

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)(h) to be immediately entered into the law enforcement
22 information network and provided to the Federal Bureau of
23 Investigation and the Bureau of Alcohol, Tobacco, Firearms, and
24 Explosives.

25 Sec. 13. (1) An extreme risk protection order must be served
26 on the restrained individual personally. If the restrained
27 individual has not been served, a law enforcement officer or clerk
28 of the court who knows that the order exists may, at any time,
29 serve the restrained individual with a true copy of the order or

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

4 (2) The person who serves an extreme risk protection order or
5 gives oral notice of the order shall file proof of service or proof
6 of oral notice with the clerk of the court that issued the order.

7 The clerk of the court shall immediately notify the law enforcement
8 agency designated under section 9(1)(h) if either of the following
9 occurs:

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

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

13 Sec. 15. (1) A law enforcement agency designated in an extreme
14 risk protection order under section 9(1)(h) that receives a true
15 copy of the order shall immediately and without requiring proof of
16 service do both of the following:

17 (a) Enter the order into the law enforcement information
18 network as provided by the C.J.I.S. policy council act.

19 (b) Report the entry of the order to the Criminal Justice
20 Information Services Division of the Federal Bureau of
21 Investigation for purposes of the national crime information center
22 and to the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

23 (2) A law enforcement agency that receives information under
24 section 13(2) shall enter the information into the law enforcement
25 information network as provided by the C.J.I.S. policy council act
26 and report the information to the Federal Bureau of Investigation
27 and to the Bureau of Alcohol, Tobacco, Firearms, and Explosives as
28 described in subsection (1)(b).

29 (3) If an extreme risk protection order has not been served on

1 the restrained individual, a law enforcement agency or officer
2 responding to a call alleging a violation of the order shall serve
3 the restrained individual with a true copy of the order or advise
4 the restrained individual of the existence of the order, the
5 specific conduct enjoined, the penalties for violating the order,
6 and where the restrained individual may obtain a copy of the order.
7 Subject to subsection (4), the law enforcement officer shall
8 enforce the order and immediately enter or cause to be entered into
9 the law enforcement information network and reported to the Federal
10 Bureau of Investigation and the Bureau of Alcohol, Tobacco,
11 Firearms, and Explosives that the restrained individual has actual
12 notice of the order. The law enforcement officer also shall comply
13 with section 13(2).

14 (4) In the circumstances described in subsection (3), the law
15 enforcement officer shall give the restrained individual an
16 opportunity to comply with the extreme risk protection order before
17 the law enforcement officer makes a custodial arrest for violation
18 of the order. The failure by the restrained individual to
19 immediately comply with the order is grounds for an immediate
20 custodial arrest. This subsection does not preclude an arrest under
21 section 15 or 15a of chapter IV of the code of criminal procedure,
22 1927 PA 175, MCL 764.15 and 764.15a.

23 (5) The law enforcement agency ordered to seize a firearm
24 under this act shall do all of the following:

25 (a) Seize a firearm identified in an order issued under this
26 act from any place or from any individual who has possession or
27 control of the firearm.

28 (b) Seize any other firearms discovered that are owned by or
29 in the possession or control of the restrained individual or if

1 allowed under other applicable law.

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

7 (7) The law enforcement agency that seizes a firearm under
8 this act shall retain and store the firearm subject to order of the
9 court that issued the extreme risk protection order under which the
10 firearm was seized. In addition to any other order that the court
11 determines is appropriate, the court shall order that the firearm
12 be returned to the restrained individual when the restrained
13 individual is no longer prohibited from owning a firearm or that
14 the firearm be transferred to a licensed firearm dealer if the
15 restrained individual sells or transfers ownership of the firearm
16 to the dealer.

17 (8) If any individual other than the restrained individual
18 claims title to a firearm seized under this act, the firearm must
19 be returned to the claimant if the court determines that the
20 claimant is the lawful owner.

21 Sec. 16. If the court that issues an extreme risk protection
22 order determines that the restrained individual resides at premises
23 that are also occupied by another individual who possesses a
24 firearm, the court may order the other individual to do 1 or more
25 of the following:

26 (a) Keep the firearm in a securely locked box or container.

27 (b) Keep the firearm in a location that a reasonable person
28 would believe is secure.

29 (c) Securely lock the firearm with a locking device.

1 Sec. 17. The plaintiff may move the court to issue, or the
2 court on its own motion may issue, 1 or more extended extreme risk
3 protection orders, each effective for 1 year after the expiration
4 of the preceding order. The court shall only issue an extended
5 order if there is reasonable cause to believe that the restrained
6 individual continues to pose a significant risk of personal injury
7 to himself or herself or others by possessing a firearm. The
8 plaintiff or the court, as applicable, shall give the restrained
9 individual written notice of a hearing on a motion to extend the
10 order.

11 Sec. 19. (1) An individual who refuses or fails to comply with
12 an extreme risk protection order is subject to the criminal
13 contempt powers of the court and, if found guilty, may be
14 imprisoned for not more than 93 days or may be fined not more than
15 \$500.00, or both. The criminal penalty provided for under this
16 section may be imposed in addition to a penalty imposed for another
17 criminal offense arising from the same conduct.

18 (2) An extreme risk protection order may also be enforced as
19 contempt of court or otherwise under chapter 17 of the revised
20 judicature act of 1961, 1961 PA 236, MCL 600.1701 to 600.1745.

21 (3) A plaintiff who knowingly and intentionally makes a false
22 statement to the court in the complaint or in support of the
23 complaint under this act is guilty and subject to penalties as
24 follows:

25 (a) For a first offense under this subsection, guilty of a
26 misdemeanor and subject to imprisonment for not more than 93 days
27 or a fine of not more than \$500.00, or both.

28 (b) For a second offense under this subsection, guilty of a
29 felony and subject to imprisonment for not more than 4 years or a

1 fine of not more than \$2,000.00, or both.

2 (c) For a third or subsequent offense under this subsection,
3 guilty of a felony and subject to imprisonment for not more than 5
4 years or a fine of not more than \$20,000.00, or both.

5 Enacting section 1. This act does not take effect unless
6 Senate Bill No. 857 of the 101st Legislature is enacted into law.