

117TH CONGRESS
1ST SESSION

H. R. 2377

To authorize the issuance of extreme risk protection orders.

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2021

Mrs. MCBATH (for herself, Mr. NADLER, Mr. THOMPSON of California, Ms. JACKSON LEE, Ms. BASS, Mr. JOHNSON of Georgia, Mr. CICILLINE, Mr. LIEU, Mr. RASKIN, Ms. DEAN, Ms. GARCIA of Texas, Mr. NEGUSE, Mrs. BEATTY, Ms. CLARK of Massachusetts, Mr. EVANS, Mrs. CAROLYN B. MALONEY of New York, Ms. MOORE of Wisconsin, Mr. DANNY K. DAVIS of Illinois, Mr. DESAULNIER, Ms. WILSON of Florida, Mr. GALLEG0, Mr. SCHNEIDER, Mrs. TRAHAN, Mrs. WATSON COLEMAN, Ms. HOULAHAN, Ms. NEWMAN, Miss RICE of New York, Ms. ADAMS, Mr. RUPPERSBERGER, Mr. PASCRELL, Mr. COOPER, Mr. AUCHINCLOSS, Mr. CARSON, Mr. GARCÍA of Illinois, Mr. BROWN, Ms. PRESSLEY, Mr. MEEKS, Mrs. DEMINGS, Mr. SCHRADER, Mr. CROW, Mr. BEYER, Mr. CRIST, and Ms. SHERRILL) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To authorize the issuance of extreme risk protection orders.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. EXTREME RISK PROTECTION ORDERS.**

2 (a) IN GENERAL.—Chapter 44 of title 18, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 **“§ 932. Extreme risk protection orders**

6 “(a) DEFINITIONS.—In this section—

7 “(1) the term ‘designated law enforcement offi-
8 cer’ means a law enforcement officer, designated by
9 a United States marshal, who agrees to receive fire-
10 arms, ammunition, and permit, as applicable, sur-
11 rendered under subsection (f);

12 “(2) the term ‘Director’ means the Director of
13 the Administrative Office of the United States
14 Courts;

15 “(3) the term ‘ex parte extreme risk protection
16 order’ or ‘ex parte order’ means an extreme risk pro-
17 tection order issued under subsection (c);

18 “(4) the term ‘extreme risk protection order’
19 means an order issued by a Federal court that en-
20 joins an individual from purchasing, possessing, or
21 receiving, in or affecting interstate and foreign com-
22 merce, a firearm or ammunition;

23 “(5) the term ‘family or household member’,
24 with respect to a respondent, means any—

1 “(A) parent, spouse, sibling, or child re-
2 lated by blood, marriage, or adoption to the re-
3 spondent;

4 “(B) dating partner of the respondent;

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

8 “(i) been married to the respondent;

9 or

10 “(ii) lived together with the respond-
11 ent at any time;

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

14 “(E) domestic partner of the respondent;

15 “(F) individual who has a legal parent-
16 child relationship with the respondent, including
17 a stepparent-stepchild and grandparent-grand-
18 child relationship; and

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

21 “(6) the term ‘law enforcement officer’ means
22 any officer, agent, or employee of the Federal Gov-
23 ernment or a State government, unit of local govern-
24 ment, or Indian tribe (as defined in section 4 of the

1 Indian Self-Determination and Education Assistance
2 Act (25 U.S.C. 5304)) authorized—

3 “(A) by law or by a government agency to
4 engage in or supervise the prevention, detection,
5 or investigation of any violation of criminal law;
6 or

7 “(B) by law to supervise sentenced crimi-
8 nal offenders;

9 “(7) the term ‘long-term extreme risk protec-
10 tion order’ or ‘long-term order’ means an extreme
11 risk protection order issued under subsection (d);

12 “(8) the term ‘mental health agency’ means an
13 agency of a State or local government or its con-
14 tracted agency that is responsible for mental health
15 services or co-occurring mental health and substance
16 abuse services; and

17 “(9) the term ‘national instant criminal back-
18 ground check system’ means the national instant
19 criminal background check system established under
20 section 103 of the Brady Handgun Violence Preven-
21 tion Act (34 U.S.C. 40901).

22 “(b) PETITION.—

23 “(1) IN GENERAL.—A family or household
24 member of the applicable individual, or a law en-
25 forcement officer, may submit to an appropriate dis-

1 trict court of the United States a petition requesting
2 that the court issue an ex parte extreme risk protec-
3 tion order or long-term extreme risk protection order
4 with respect to an individual.

5 “(2) NO FEES.—A court may not charge a peti-
6 tioner any fee for filing a petition under paragraph
7 (1).

8 “(3) CONFIDENTIALITY.—A petitioner who is a
9 law enforcement officer may provide the identity of
10 the petitioner’s sources, and any identifying informa-
11 tion, to the court under seal.

12 “(c) EX PARTE ORDERS.—

13 “(1) TIMING.—

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

19 “(B) LATE PETITIONS.—If a court receives
20 a petition for an ex parte order submitted
21 under subsection (b) too late in the day to per-
22 mit effective review, the court shall grant or
23 deny the petition on the next day of judicial
24 business at a time early enough to permit the

1 court to file an order with the clerk of the court
2 during that day.

3 “(2) EVIDENCE REQUIRED.—Before issuing an
4 ex parte order, a court shall require that the peti-
5 tioner submit a signed affidavit, sworn to before the
6 court, that—

7 “(A) explains why the petitioner believes
8 that the respondent poses a risk of imminent
9 personal injury to himself or herself, or another
10 individual, by purchasing, possessing, or receiv-
11 ing a firearm or ammunition; and

12 “(B) describes the interactions and con-
13 versations of the petitioner with—

14 “(i) the respondent; or

15 “(ii) another individual, if the peti-
16 tioner believes that information obtained
17 from that individual is credible and reli-
18 able.

19 “(3) STANDARD FOR ISSUANCE OF ORDER.—A
20 court may issue an ex parte order only upon a find-
21 ing of probable cause to believe that—

22 “(A) the respondent poses a risk of immi-
23 nent personal injury to himself or herself, or
24 another individual, by purchasing, possessing,
25 or receiving a firearm or ammunition; and

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

3 “(4) DURATION.—An ex parte order shall ex-
4 pire on the earlier of—

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

7 “(B) the date on which the court deter-
8 mines whether to issue a long-term order with
9 respect to the respondent.

10 “(d) LONG-TERM ORDERS.—

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

16 “(A)(i) except as provided in clause (ii),
17 not later than 72 hours after the court issues
18 an ex parte order with respect to the respond-
19 ent; or

20 “(ii) if the court issues an ex parte order
21 with respect to the respondent but the order is
22 not served on the respondent within 72 hours of
23 the issuance, not later than 72 hours after the
24 order is served on the respondent; or

1 “(B) if the respondent waives the right to
2 a hearing under subparagraph (A) or the court
3 does not issue an ex parte order, not later than
4 14 days after the date on which the court re-
5 ceives the petition.

6 “(2) NOTICE AND OPPORTUNITY TO BE
7 HEARD.—

8 “(A) IN GENERAL.—The court shall pro-
9 vide the respondent with notice and the oppor-
10 tunity to be heard at a hearing under this sub-
11 section, sufficient to protect the due process
12 rights of the respondent.

13 “(B) RIGHT TO COUNSEL.—

14 “(i) IN GENERAL.—At a hearing
15 under this subsection, the respondent may
16 be represented by counsel who is—

17 “(I) chosen by the respondent;

18 and

19 “(II) authorized to practice at
20 such a hearing.

21 “(ii) COURT-PROVIDED COUNSEL.—If
22 the respondent is financially unable to ob-
23 tain representation by counsel, the court,
24 at the request of the respondent, shall en-
25 sure to the extent practicable that the re-

1 spondent is represented by an attorney for
2 the Legal Services Corporation with re-
3 spect to the petition.

4 “(3) BURDEN OF PROOF; STANDARD.—At a
5 hearing under this subsection, the petitioner—

6 “(A) shall have the burden of proving all
7 material facts; and

8 “(B) shall be required to demonstrate, by
9 clear and convincing evidence, that—

10 “(i) the respondent poses a risk of
11 personal injury to himself or herself, or an-
12 other individual, during the period to be
13 covered by the proposed extreme risk pro-
14 tection order, by purchasing, possessing, or
15 receiving a firearm or ammunition; and

16 “(ii) the order is necessary to prevent
17 the injury described in clause (i).

18 “(4) ISSUANCE.—Upon a showing of clear and
19 convincing evidence under paragraph (3), the court
20 shall issue a long-term order with respect to the re-
21 spondent that shall be in effect for a period of not
22 more than 180 days.

23 “(5) DENIAL.—If the court finds that there is
24 not clear and convincing evidence to support the
25 issuance of a long-term order, the court shall dis-

1 solve any ex parte order then in effect with respect
2 to the respondent.

3 “(6) RENEWAL.—

4 “(A) NOTICE OF SCHEDULED EXPIRA-
5 TION.—Thirty days before the date on which a
6 long-term order is scheduled to expire, the court
7 that issued the order shall—

8 “(i) notify the petitioner and the re-
9 spondent that the order is scheduled to ex-
10 pire; and

11 “(ii) advise the petitioner and the re-
12 spondent of the procedures for seeking a
13 renewal of the order under this paragraph.

14 “(B) PETITION.—If a family or household
15 member of the respondent, or a law enforce-
16 ment officer, believes that the conditions under
17 paragraph (3)(B) continue to apply with respect
18 to a respondent who is subject to a long-term
19 order, the family or household member or law
20 enforcement officer may submit to the court
21 that issued the order a petition for a renewal of
22 the order.

23 “(C) HEARING.—A court that receives a
24 petition submitted under subparagraph (B)
25 shall hold a hearing to determine whether to

1 issue a renewed long-term order with respect to
2 the respondent.

3 “(D) APPLICABLE PROCEDURES.—The re-
4 quirements under paragraphs (2) through (5)
5 shall apply to the consideration of a petition for
6 a renewed long-term order submitted under
7 subparagraph (B) of this paragraph.

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

14 “(e) FACTORS TO CONSIDER.—In determining
15 whether to issue an extreme risk protection order, a
16 court—

17 “(1) shall consider factors including—

18 “(A) recent threats or acts of violence by
19 the respondent directed toward other individ-
20 uals;

21 “(B) recent threats or acts of violence by
22 the respondent directed toward himself or her-
23 self;

24 “(C) recent acts of cruelty to animals by
25 the respondent; and

1 “(D) evidence of—

2 “(i) recent criminal offenses by the re-
3 spondent that involve controlled substances
4 or alcohol; or

5 “(ii) ongoing abuse of controlled sub-
6 stances or alcohol by the respondent; and

7 “(2) may consider other factors, including—

8 “(A) the reckless use, display, or bran-
9 dishing of a firearm by the respondent;

10 “(B) a history of violence or attempted vio-
11 lence by the respondent against other individ-
12 uals; and

13 “(C) prior involuntary confinement of the
14 respondent in a hospital for individuals with
15 psychiatric disabilities.

16 “(f) RELINQUISHMENT OF FIREARMS AND AMMUNI-
17 TION.—

18 “(1) ORDER OF SURRENDER.—Upon issuance
19 of an ex parte order or long-term order, the court
20 shall order the respondent to surrender all firearms
21 and ammunition that the respondent possesses or
22 owns, in or affecting interstate commerce, as well as
23 any permit authorizing the respondent to purchase
24 or possess firearms (including a concealed carry per-
25 mit), to—

1 “(A) the United States Marshals Service;
2 or

3 “(B) a designated law enforcement officer.

4 “(2) SURRENDER AND REMOVAL.—

5 “(A) MANNER OF SERVICE.—

6 “(i) PERSONAL SERVICE.—Except as
7 provided in clause (ii), a United States
8 marshal or designated law enforcement of-
9 ficer shall serve an extreme risk protection
10 order on a respondent by handing the
11 order to the respondent.

12 “(ii) ALTERNATIVE SERVICE.—If the
13 respondent cannot reasonably be located
14 for service as described in clause (i), an ex-
15 treme risk protection order may be served
16 on the respondent in any manner author-
17 ized under the Federal Rules of Civil Pro-
18 cedure.

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

24 “(i) request that all firearms and am-
25 munition, in or affecting interstate com-

1 merce, as well as any permit authorizing
2 the respondent to purchase or possess fire-
3 arms (including a concealed carry permit),
4 that the respondent possesses or owns—

5 “(I) be immediately surrendered
6 to the United States marshal or des-
7 ignated law enforcement officer; or

8 “(II) at the option of the re-
9 spondent, be immediately surrendered
10 and sold to a federally licensed fire-
11 arms dealer; and

12 “(ii) take possession of all firearms
13 and ammunition described in clause (i)
14 that are not sold under subclause (II) of
15 that clause, as well as any permit de-
16 scribed in that clause, that are—

17 “(I) surrendered;

18 “(II) in plain sight; or

19 “(III) discovered pursuant to a
20 lawful search.

21 “(C) ALTERNATIVE SURRENDER.—If a
22 United States marshal or designated law en-
23 forcement officer is not able to personally serve
24 an extreme risk protection order under subpara-
25 graph (A)(i), or is not reasonably able to take

1 custody of the firearms, ammunition, and per-
2 mits under subparagraph (B), the respondent
3 shall surrender the firearms, ammunition, and
4 permits in a safe manner to the control of a
5 United States marshal or designated law en-
6 forcement officer not later than 48 hours after
7 being served with the order.

8 “(3) RECEIPT.—

9 “(A) ISSUANCE.—At the time of surrender
10 or removal under paragraph (2), a United
11 States marshal or designated law enforcement
12 officer taking possession of a firearm, ammuni-
13 tion, or a permit pursuant to an extreme risk
14 protection order shall—

15 “(i) issue a receipt identifying all fire-
16 arms, ammunition, and permits that have
17 been surrendered or removed; and

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

20 “(B) FILING.—Not later than 72 hours
21 after service of an order under paragraph
22 (2)(A), the United States marshal who served
23 the order or designated another law enforce-
24 ment officer to do so shall—

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

5 “(ii) ensure that the United States
6 Marshals Service retains a copy of the re-
7 ceipt.

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

15 “(4) FORFEITURE.—If a respondent knowingly
16 attempts, in violation of an extreme risk protection
17 order, to access a firearm, ammunition, or a permit
18 that was surrendered or removed under this sub-
19 section, the firearm, ammunition, or permit shall be
20 subject to seizure and forfeiture under section
21 924(d).

22 “(g) RETURN OF FIREARMS AND AMMUNITION.—

23 “(1) NOTICE.—If an extreme risk protection
24 order is dissolved, or expires and is not renewed, the

1 court that issued the order shall order the United
2 States Marshals Service to—

3 “(A) confirm, through the national instant
4 criminal background check system and any
5 other relevant law enforcement databases, that
6 the respondent may lawfully own and possess
7 firearms and ammunition; and

8 “(B)(i) if the respondent may lawfully own
9 and possess firearms and ammunition, notify
10 the respondent that the respondent may re-
11 trieve each firearm, ammunition, or permit sur-
12 rendered by or removed from the respondent
13 under subsection (f); or

14 “(ii) if the respondent may not lawfully
15 own or possess firearms and ammunition, notify
16 the respondent that each firearm, ammunition,
17 or permit surrendered by or removed from the
18 respondent under subsection (f) will be returned
19 only when the respondent demonstrates to the
20 United States Marshals Service that the re-
21 spondent may lawfully own and possess fire-
22 arms and ammunition.

23 “(2) RETURN.—If an extreme risk protection
24 order is dissolved, or expires and is not renewed, and
25 the United States Marshals Service confirms under

1 paragraph (1)(A) that the respondent may lawfully
2 own and possess firearms and ammunition, the court
3 that issued the order shall order the entity that pos-
4 sesses each firearm, ammunition, or permit surren-
5 dered by or removed from the respondent under sub-
6 section (f) to return those items to the respondent.

7 “(h) RETURN OF FIREARMS AND AMMUNITION IM-
8 PROPERLY RECEIVED.—If a court, in a hearing under
9 subsection (d), determines that a firearm or ammunition
10 surrendered by or removed from a respondent under sub-
11 section (f) is owned by an individual other than the re-
12 spondent, the court may order the United States marshal
13 or designated law enforcement officer in possession of the
14 firearm or ammunition to transfer the firearm or ammuni-
15 tion to that individual if—

16 “(1) the individual may lawfully own and pos-
17 sess firearms and ammunition; and

18 “(2) the individual will not provide the respond-
19 ent with access to the firearm or ammunition.

20 “(i) PENALTY FOR FALSE REPORTING OR FRIVO-
21 LOUS PETITIONS.—An individual who knowingly submits
22 materially false information to the court in a petition for
23 an extreme risk protection order under this section, or who
24 knowingly files such a petition that is frivolous, unreason-
25 able, or without foundation, shall be fined not less than

1 \$1,000, in addition to any other penalty authorized by law,
2 as the court deems necessary to deter such abuse of proc-
3 ess.

4 “(j) MODEL POLICY.—

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

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

10 “(A) ensure that State and local law en-
11 forcement officers and members of the public
12 without legal training are able to easily file pe-
13 titions for extreme risk protection orders;

14 “(B) prescribe outreach efforts by employ-
15 ees of the district courts of the United States
16 to familiarize relevant law enforcement officers
17 and the public with the procedures for filing pe-
18 titions, either—

19 “(i) through direct outreach; or

20 “(ii) in coordination with—

21 “(I) relevant officials in the exec-
22 utive or legislative branch of the Fed-
23 eral Government; or

24 “(II) with State and local offi-
25 cials;

1 “(C) prescribe policies for allowing the fil-
2 ing of petitions and prompt adjudication of pe-
3 titions on weekends and outside of normal court
4 hours;

5 “(D) prescribe policies for coordinating
6 with law enforcement agencies to ensure the
7 safe, timely, and effective service of extreme
8 risk protection orders and relinquishment of
9 firearms, ammunition, and permits, as applica-
10 ble; and

11 “(E) identify governmental and non-gov-
12 ernmental resources and partners to help offi-
13 cials of the district courts of the United States
14 coordinate with civil society organizations to en-
15 sure the safe and effective implementation of
16 this section.

17 “(k) REPORTING.—

18 “(1) INDIVIDUAL REPORTS.—

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

25 “(i) the Attorney General;

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

4 “(iii) State and local law enforcement
5 officials in the jurisdiction in which the
6 order is issued, including the national in-
7 stant criminal background check system
8 single point of contact for the State of res-
9 idence of the respondent, where applicable.

10 “(B) FORMAT.—A court shall submit a no-
11 tice under subparagraph (A) in an electronic
12 format, in a manner prescribed by the Attorney
13 General.

14 “(C) UPDATE OF DATABASES.—As soon as
15 practicable and not later than 5 days after re-
16 ceiving a notice under subparagraph (A), the
17 Attorney General shall update the background
18 check databases of the Attorney General to re-
19 flect the prohibitions articulated in the applica-
20 ble extreme risk protection order.

21 “(2) ANNUAL REPORTS.—Not later than 1 year
22 after the date of enactment of the Federal Extreme
23 Risk Protection Order Act of 2021, and annually
24 thereafter, the Director shall submit to the Com-
25 mittee on the Judiciary of the Senate and the Com-

mittee 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 orders filed, as well as the number of such orders issued and the number denied;

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

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

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

(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;

1 (B) in subparagraph (F), by striking the
2 period at the end and inserting “; and”; and
3 (C) by adding at the end the following:
4 “(G) any attempt to violate an extreme
5 risk protection order issued under section
6 932.”.

7 **SEC. 3. BRADY ACT PROHIBITORS.**

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

10 (1) in subsection (d)—

11 (A) in paragraph (8), by striking “or” at
12 the end;

13 (B) in paragraph (9), by striking the pe-
14 riod at the end and inserting “; or”; and

15 (C) by inserting after paragraph (9) the
16 following:

17 “(10) is subject to a court order that prohibits
18 the person from purchasing, possessing, or receiving
19 a firearm or ammunition.”; and

20 (2) in subsection (g)—

21 (A) in paragraph (8), by striking “or” at
22 the end;

23 (B) in paragraph (9), by striking the
24 comma at the end and inserting “; or”; and

1 (C) by inserting after paragraph (9) the
2 following:

3 “(10) who is subject to a court order that pro-
4 hibits the person from purchasing, possessing, or re-
5 ceiving a firearm or ammunition,”.

6 **SEC. 4. SEVERABILITY.**

7 If any provision of this Act or any amendment made
8 by this Act, or any application of such provision or amend-
9 ment to any person or circumstance, is held to be invalid,
10 the remainder of the provisions of this Act and the amend-
11 ments made by this Act and the application of the provi-
12 sion or amendment to any other person or circumstance
13 shall not be affected.

14 **SEC. 5. PREEMPTION.**

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

○