

HOUSE BILL NO. 622

INTRODUCED BY T. FRANCE, B. EDWARDS, J. ISALY, P. STRAND, P. ELVERUM, J. WEBER, J. SOOKTIS,
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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PROTECTION ORDER LAWS;
PROVIDING A PROCEDURE FOR OBTAINING AN EXTREME RISK ORDER OF PROTECTION AND EX
PARTE EXTREME RISK ORDER OF PROTECTION; PROVIDING DEFINITIONS; PROVIDING THAT
FIREARMS IN THE POSSESSION OF A PERSON AGAINST WHOM AN EXTREME RISK PROTECTIVE
ORDER IS ISSUED MUST BE SURRENDERED AND A PERMIT FOR CARRYING A CONCEALED WEAPON
MUST BE REVOKED; PROVIDING PENALTIES; PROVIDING CIRCUMSTANCES IN WHICH FIREARMS
ARE RETURNED; PROVIDING FOR DEVELOPMENT OF EDUCATIONAL MATERIALS; AND REQUIRING
ANNUAL REPORTS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 12], unless the context
clearly indicates otherwise, the following definitions apply:

(1) "Crime of domestic violence" means any felony offense involving the use or attempted use of
physical force or the use or threatened use of a weapon as defined in 45-2-101 that is committed against a
partner or family member or any misdemeanor offense that has as an element of the use or attempted use of
physical force or the threatened use of a weapon that is committed against a partner or family member.

(2) "Extreme risk order of protection" means an ex parte temporary order or a final order granted
under [sections 1 through 12].

(3) "Family member" has the same meaning as provided in 45-5-206.

(4) "Partner" has the same meaning as provided in 45-5-206.

(5) "Petitioner" means a person who petitions for an order under [sections 1 through 12].

(6) "Respondent" means a person who is the subject of and identified as the named respondent in

(b) (i) Upon receipt of the motion to renew, the court shall order that a hearing be held within 14 days.

(ii) The court may schedule a hearing by telephone in the manner provided in [section 3].

(iii) The respondent must be personally served in the manner provided in [section 5].

(c) In determining whether to renew an extreme risk order of protection, the court shall consider all relevant evidence presented by the petitioner and follow the same procedure as provided in [section 3].

(d) If the court finds there is continued good cause to believe that there is danger of harm if the court does not act immediately as provided in [section 3], the court shall renew the order. If, following notice, the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's 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 renewal.

(e) An extreme risk order of protection may be renewed for 1 year, subject to termination as provided in subsection (1), or further renewal by order of the court.

NEW SECTION. Section 7. Surrender of firearms. (1) Upon issuance of an extreme risk order of protection, including an ex parte extreme risk order of protection, the court shall order the respondent to surrender to the local law enforcement agency or a federally licensed firearms dealer all firearms in the respondent's custody, control, or possession and any concealed weapons permit issued under 45-8-321.

(2) (a) The law enforcement officer serving an extreme risk order of protection under [sections 1 through 12], including an ex parte extreme risk order of protection, shall request that the respondent immediately surrender all firearms in the respondent's custody, control, or possession and any concealed weapons permit issued under 45-8-321. The law enforcement officer may obtain a search warrant and conduct any search permitted by law for the firearms.

(b) The law enforcement officer shall take possession of all firearms belonging to the respondent that are surrendered, in plain view, or discovered pursuant to a lawful search.

(c) Alternatively, if personal service by a law enforcement officer is not possible, or not required because the respondent was present at the extreme risk order of protection hearing, the respondent shall surrender the firearms in a safe manner to the control of the local law enforcement agency within 48 hours of

1 being served with the order by alternate service or within 48 hours of the hearing at which the respondent was
2 present.

3 (3) At the time of surrender, a law enforcement officer taking possession of a firearm or concealed
4 weapons permit shall provide a receipt identifying all firearms that have been surrendered and provide a copy
5 of the receipt to the respondent. Within 72 hours after service of the order, the law enforcement officer serving
6 the order shall file the original receipt with the court and retain a copy of the receipt for the law enforcement
7 agency.

8 (4) Upon the sworn statement or testimony of the petitioner or of any law enforcement officer
9 alleging that the respondent failed to comply with the surrender of firearms as required, the court shall
10 determine whether probable cause exists to believe that the respondent has failed to surrender all firearms in
11 the respondent's custody, control, or possession. If probable cause exists, the court shall issue a warrant
12 describing the firearms and authorizing a search of the locations where the firearms are reasonably believed to
13 be and authorizing the seizure of any firearms discovered pursuant to the search.

14 (5) If a person other than the respondent claims title to any firearms surrendered pursuant to this
15 section, and the person is determined by the law enforcement agency to be the lawful owner of the firearm, the
16 firearm must be returned to the person, provided that:

17 (a) the firearm is removed from the respondent's custody, control, or possession and the lawful
18 owner agrees to store the firearm in a manner that prevents the respondent from having access to or control of
19 the firearm; and

20 (b) the firearm is not otherwise unlawfully possessed by the lawful owner.

21 (6) Upon the issuance of a 1-year extreme risk order of protection, the court shall order a new
22 hearing date and require the respondent to appear within 3 days from the issuance of the order. The court shall
23 require a showing that the respondent has surrendered any firearms in the respondent's custody, control, or
24 possession. The court may dismiss the hearing upon a satisfactory showing that the respondent is in
25 compliance with the order.

26 (7) All law enforcement agencies shall develop policies and procedures by October 1, 2025,
27 regarding the acceptance, storage, and return of firearms and concealed weapons permits required to be
28 surrendered under [sections 1 through 12].

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2 **NEW SECTION. Section 8. Return of firearms and concealed weapons permit and disposal of**
3 **firearms.** (1) If an extreme risk order of protection is terminated or expires without renewal, a law enforcement
4 agency holding any firearm or concealed weapons permit that has been surrendered pursuant to [sections 1
5 through 12] shall return any surrendered firearm or concealed weapons permit requested by a respondent after
6 confirming, through a background check, that the respondent is currently eligible to own or possess firearms
7 under federal and state law and after confirming with the court that the extreme risk order of protection has
8 terminated or has expired without renewal.

9 (2) A law enforcement agency shall provide notice to any family member or partner of the
10 respondent before the return of any surrendered firearm owned by the respondent.

11 (3) Any firearm surrendered by a respondent pursuant to [section 7] that remains unclaimed by the
12 lawful owner must be disposed of in accordance with the law enforcement agency's policies and procedures for
13 the disposal of firearms in the agency's custody.

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15 **NEW SECTION. Section 9. Reporting of orders.** (1) The clerk of court shall enter any extreme risk
16 order of protection or ex parte extreme risk order of protection issued into a statewide judicial information
17 system on the same day the order is issued.

18 (2) (a) The clerk of the court shall forward a copy of an order issued under [sections 1 through 12]
19 the same day the order is issued to the appropriate law enforcement agency specified in the order.

20 (b) Upon receipt of the copy of the order, the law enforcement agency shall immediately provide a
21 copy to the department of justice for entry of the order into:

22 (i) the national instant criminal background check system;

23 (ii) any other federal or state computer-based systems used by law enforcement or other entities
24 that identify prohibited purchasers of firearms; and

25 (iii) any computer-based criminal intelligence information system available in the state that is used
26 by law enforcement agencies to list outstanding warrants.

27 (c) The order must remain in each system for the period stated in the order, and the department of
28 justice may only expunge orders from the systems that have expired or terminated.