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U.S. GOVERNMENT
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116TH CONGRESS
1ST SESSION

S. 7

To provide family members of an individual who they fear is a danger to himself, herself, or others, or law enforcement, with new tools to prevent gun violence.

IN THE SENATE OF THE UNITED STATES

JANUARY 3, 2019

Mr. RUBIO (for himself, Mr. REED, Mr. KING, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To provide family members of an individual who they fear is a danger to himself, herself, or others, or law enforcement, with new tools to prevent gun violence.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Extreme Risk Protection Order and Violence Prevention Act of 2019''.

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) each State and Indian tribe should enact extreme risk protection order legislation described in

part NN of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as added by section 3; and

(2) such extreme risk protection order legislation is an important tool in the efforts of States and Indian tribes to ensure that firearms and ammunition are kept out of the hands of individuals whom a court has determined to be a significant danger to themselves or others.

SEC. 3. EXTREME RISK PROTECTION ORDER GRANT PROGRAM.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10101 et seq.) is amended by adding at the end the following:

"PART NN—EXTREME RISK PROTECTION ORDER GRANT PROGRAM

"SEC. 3041. DEFINITIONS.

''In this title—

''(1) the terms 'ammunition' and 'firearm' have the meanings given those terms in section 921(a) of title 18, United States Code;

''(2) the term 'extreme risk protection order' means a written order, issued by a State or tribal court or signed by a magistrate that, for a period not to exceed 12 months—

"(A) prohibits the individual named in the order from having under the custody or control of the individual, purchasing, possessing, or receiving any firearms; and

"(B) requires a firearm be removed;

"(3) the term 'family or household member' means, with respect to an individual, any—

"(A) individual related by blood, marriage, or adoption to the respondent;

"(B) dating partner (as defined in section 2266 of title 18, United States Code) of the respondent;

"(C) individual who has a child in common with the respondent, regardless of whether the individual has—

"(i) been married to the respondent; or

"(ii) lived together with the respondent at any time;

"(D) an individual who resides or has resided with the respondent during the past year;

"(E) a spouse or intimate partner (as defined in section 2266 of title 18, United States Code) of the respondent;

"(F) individual who has a biological or legal parent-child relationship with the respondent, including a stepparent-stepchild and grandparent-grandchild relationship; and

"(G) any individual who is acting or has acted as the legal guardian of the respondent;

"(4) the term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304);

"(5) the term 'petitioner' means the law enforcement officer, or family or household member of an individual, who submits a petition for an extreme risk protection order under section 3042(b)(1);

"(6) the term 'qualifying State or tribal law' means a law of a State or Indian tribe that the Attorney General has determined to be in compliance with the minimum requirements described in section 3042;

"(7) the term 'respondent' means an individual who is named in a petition for an extreme risk protection order under section 3042(b)(1);

"(8) the term 'State' means—

"(A) a State;

"(B) the District of Columbia;

"(C) the Commonwealth of Puerto Rico; and

"(D) any other territory or possession of the United States; and

"(9) the term 'temporary ex parte extreme risk protection order' means a written order, issued by a State court or signed by a magistrate prohibiting a named individual from possessing, purchasing, receiving, or transporting a firearm after the date on which the order is issued until the date on which the hearing for the extreme risk protection order is held.

"SEC. 3042. EXTREME RISK PROTECTION ORDER LEGISLATION.

"(a) ENACTMENT OF EXTREME RISK PROTECTION ORDER LEGISLATION.—In order to receive a grant under section 3043, each State or Indian tribe shall have in effect a qualifying State or tribal law.

"(b) MINIMUM REQUIREMENTS FOR EXTREME RISK PROTECTION ORDERS.—A qualifying State or tribal law shall have in effect the following minimum requirements for the issuance of an extreme risk protection order:

"(1) PETITION FOR EXTREME RISK PROTECTION ORDER.—

"(A) IN GENERAL.—A law enforcement officer, or family or household member of an indi-

vidual, may submit a petition to a State or tribal court, on a form designed by the courts administrator of the State or similar office, that—

"(i) describes the facts and circumstances necessitating that an extreme risk protection order be issued against the respondent because the respondent poses a significant danger of causing personal injury to himself or herself or others by—

"(I) having a firearm or ammunition in his or her custody or control; or

"(II) purchasing, possessing, or receiving a firearm or ammunition;

"(ii) is accompanied by a sworn affidavit, signed by the petitioner, stating the specific facts that give rise to reasonable fear of significant dangerous acts by the respondent;

"(iii) identifies the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the current ownership, possession, custody, or control of the respondent; and

''(iv) identifies whether there is a known extreme risk protection order already in effect against the respondent.

''(B) GOOD FAITH NOTICE.—A petitioner who submits a petition under subparagraph (A) shall be required to make a good faith effort to provide notice to other family or household members of the respondent, or to any other known third party, who may be at risk of violence because of the submission of such petition.

''(2) ISSUANCE OF EXTREME RISK PROTECTION ORDERS.—

''(A) HEARING.—

''(i) IN GENERAL.—Upon receipt of a petition under paragraph (1), the court shall—

''(I) order a hearing to be held not later than 14 days after the date of such order; and

''(II) issue a notice of the hearing ordered under subclause (I) to the respondent.

''(ii) TELEPHONE HEARING.—A court may conduct the hearing required under

clause (i) by telephone, pursuant to local court rules.

''(iii) DETERMINATION.—If the court finds by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition, the court shall issue an extreme risk protection order for a period the court determines is appropriate, which may not exceed 12 months.

''(B) CONSIDERATION OF EVIDENCE.—

''(i) IN GENERAL.—In determining whether to issue an extreme risk protection order, the court—

''(I) may consider relevant evidence, such as—

''(aa) a recent threat or act of violence by the respondent against himself or herself or others;

''(bb) a threat or act of violence by the respondent against

himself or herself or others in the past 12 months;

"(cc) evidence of a serious mental illness;

"(dd) a previously issued extreme risk protection order or a violation of a previously issued extreme risk protection order;

"(ee) whether the respondent has been convicted of a crime of domestic violence or other violence;

"(ff) whether the respondent has used or threatened to use weapons against himself or herself or others;

"(gg) the unlawful use of a firearm by the respondent;

"(hh) the recurring use or threat of use of physical force against another person or stalking another person;

"(ii) corroborated evidence of the abuse of controlled sub-

stances or alcohol by the respondent;

''(jj) relevant information from family or household members concerning the respondent; and

''(kk) witness testimony taken while the witness is under oath relating to the matter before the court; and

''(II) shall consider whether a mental health evaluation or chemical dependency evaluation is appropriate.

''(ii) PRESENTATION OF EVIDENCE.—Anyone who offers evidence or recommendations relating to the petition submitted under paragraph (1) shall—

''(I) present the evidence or recommendations in writing to the court and submit a copy of such evidence or recommendations to each party or the attorney for a party; or

''(II) present the evidence under oath at a hearing at which all parties are present.

"(iii) MENTAL HEALTH AND CHEMICAL DEPENDENCY EVALUATIONS.—If a court determines that a mental health evaluation or chemical dependency evaluation is appropriate under clause (i)(II), the court may order the appropriate evaluation.

"(C) CONTENTS OF ORDER.—If a court issues an extreme risk protection order, the order shall contain—

"(i) a statement on the grounds supporting the issuance of the order;

"(ii) the date on which the order was issued;

"(iii) the date on which the order expires;

"(iv) whether a mental health evaluation or chemical dependency evaluation of the respondent is required;

"(v) the address of the court in which a responsive pleading may be filed;

"(vi) a description of the requirements for surrender of all firearms and ammunition owned by the respondent; and

''(vii) a clear statement of instruction on surrendering to the appropriate local law enforcement agency all firearms and ammunition owned by the respondent or in the custody, control, or possession of the respondent and any license to carry a concealed weapon or firearm issued pursuant to the laws of the State or Indian tribe, which shall include—

''(I) a clear statement that the respondent may not, during the period for which the order is in effect—

''(aa) have in the control or custody of the respondent a firearm or ammunition; or

''(bb) purchase, possess, or receive, or attempt to do so, a firearm or ammunition; and

''(II) a clear description of the right of the respondent to request not less than 1 hearing to vacate the order and, if the order is renewed, to request a hearing to vacate such renewal.

''(D) DENIAL OF EXTREME RISK PROTECTION ORDER.—If a court declines to issue an extreme risk protection order applied for under this paragraph, the court shall issue a written statement describing the specific reasons for declining to issue such order.

''(3) TEMPORARY EX PARTE EXTREME RISK PROTECTION ORDER.—

''(A) IN GENERAL.—Upon receipt of a petition under paragraph (1), the court may issue a temporary ex parte extreme risk protection order before conducting the hearing required under paragraph (2), if—

''(i) a request for a temporary ex parte extreme risk protection order is included in the petition and includes detailed allegations based on personal knowledge that the respondent poses a significant danger of causing personal injury to himself or herself or others in the near future by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition; and

''(ii) the court finds there is probable cause to believe that the respondent poses

a significant danger of causing personal injury to himself or herself or others in the near future by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition.

''(B) REQUIREMENTS.—In determining whether to issue a temporary ex parte extreme risk protection order, the court shall—

''(i) conduct a hearing, either in person or by telephone, pursuant to local court rules, on the date on which the petition is filed or on the business day immediately following such date; and

''(ii) consider all relevant evidence, such as—

''(I) a recent threat or act of violence by the respondent against himself or herself or others;

''(II) a threat or act of violence by the respondent against himself or herself or others in the past 12 months;

''(III) evidence of a serious mental illness;

''(IV) a previously issued extreme risk protection order or a violation of a previously issued extreme risk protection order;

''(V) whether the respondent has been convicted of a crime of domestic violence or other violence;

''(VI) whether the respondent has used or threatened to use weapons against himself or herself or others;

''(VII) the unlawful use of a firearm by the respondent;

''(VIII) the recurring use or threat of use of physical force against another person or stalking another person;

''(IX) corroborated evidence of the abuse of controlled substances or alcohol by the respondent;

''(X) relevant information from family or household members concerning the respondent; and

"(XI) witness testimony taken while the witness is under oath relating to the matter before the court.

"(C) NOTICE.—If a court issues a temporary ex parte extreme risk protection order, the court shall provide notice of the temporary ex parte firearm violence order to the respondent concurrently with the notice of hearing required under paragraph (2)(A)(i)(II).

"(D) CONTENTS OF ORDER.—If a court issues a temporary ex parte extreme risk protection order, the order shall include, at a minimum—

"(i) a statement for the grounds of the order;

"(ii) the date on which the order was issued;

"(iii) the date and time of the hearing on the extreme risk protection order;

"(iv) the address of the court in which a responsive pleading may be filed;

"(v) a clear description of the requirements and process for surrender of firearms and ammunition; and

''(vi) a clear statement outlining the prohibitions and rights of the respondent under the order, including—

''(I) a clear statement that the respondent may consult an attorney; and

''(II) a clear statement that failure of the respondent to appear at the hearing described in clause (iii) may result in an extreme risk protection order being issued for a period not to exceed 12 months.

''(4) TERMINATION AND EXTENSION OF EXTREME RISK PROTECTION ORDERS.—

''(A) HEARING TO VACATE ORDER.—

''(i) IN GENERAL.—A respondent may request not less than 1 hearing to vacate an extreme risk protection order issued against the respondent.

''(ii) HEARING.—Not later than 30 days after the date on which a petitioner is notified of the request of the respondent to vacate an extreme risk protection order, the court shall conduct a hearing on the request.

"(iii) DETERMINATION.—

"(I) IN GENERAL.—The court shall vacate an extreme risk protection order if the respondent demonstrates by clear and convincing evidence that the respondent does not pose a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition.

"(II) CONSIDERATIONS.—In making a determination under this subparagraph, the court may consider relevant evidence, such as—

"(aa) a recent threat or act of violence by the respondent against himself or herself or others;

"(bb) a threat or act of violence by the respondent against himself or herself or others in the past 12 months;

"(cc) evidence of a serious mental illness;

"(dd) a previously issued extreme risk protection order or a violation of a previously issued extreme risk protection order;

"(ee) whether the respondent has been convicted of a crime of domestic violence or other violence;

"(ff) whether the respondent has used or threatened to use weapons against himself or herself or others;

"(gg) the unlawful use of a firearm by the respondent;

"(hh) the recurring use or threat of use of physical force against another person or stalking another person;

"(ii) corroborated evidence of the abuse of controlled substances or alcohol by the respondent;

"(jj) relevant information from family or household members concerning the respondent; and

"(kk) witness testimony taken while the witness is under oath relating to the matter before the court.

"(iv) NOTICE TO LAW ENFORCEMENT OFFICIALS.—If a court vacates an extreme risk protection order under this subparagraph, the court shall provide notice to the relevant law enforcement agency of such determination and the law enforcement agency shall promptly return any surrendered firearms and ammunition to the respondent.

"(B) EXTENSION OF ORDER.—

"(i) NOTICE TO PETITIONER.—Not later than 30 days before the date on which an extreme risk protection order is set to expire, the court shall provide notice to the petitioner of such expiration date.

"(ii) REQUEST FOR EXTENSION.—During the 30-day period described in

clause (i), a petitioner may submit a request to extend the extreme risk protection order.

''(iii) HEARING.—Upon receipt of a request for an extension under clause (ii), the court shall schedule, provide notice for, and conduct a hearing in accordance with the requirements described in paragraph (2)(A).

''(iv) DETERMINATION.—If a court finds that there is clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition, the court shall extend the extreme risk protection order for a period the court determines is appropriate, which may not exceed 12 months.

''(5) AUTHORITY TO SUBMIT PETITION.—For purposes of this subsection, a qualifying State or Tribal law shall be considered to have met the minimum requirement described in paragraph (1)(A) if, under the qualifying State or Tribal law, only a law

enforcement officer is authorized to submit a petition for an extreme risk protection order.

''(c) MINIMUM REQUIREMENTS FOR SURRENDER OF FIREARMS AND AMMUNITION.—A qualifying State or tribal law shall have in effect the following minimum requirements for the surrender of firearms and ammunition:

''(1) SURRENDER OF FIREARMS AND AMMUNITION.—Upon issuance of a temporary ex parte extreme risk protection order or extreme risk protection order under subsection (b), a respondent shall surrender all firearms and ammunition in the custody or control of the respondent to the appropriate local law enforcement agency, as determined by the State or Indian tribe.

''(2) RECEIPT FOR SURRENDERED FIREARMS AND AMMUNITION.—The local law enforcement agency that takes custody of any firearms or ammunition surrendered under paragraph (1) shall—

''(A) issue to the respondent a receipt identifying all firearms and ammunition that have been surrendered; and

''(B) not later than 72 hours after taking custody of the firearms and ammunition, file a copy of such receipt with the court.

''(3) ISSUANCE OF WARRANT.—If a court receives sworn testimony from an individual alleging that not all firearms required to be surrendered by a respondent under a temporary ex parte extreme risk protection order or extreme risk protection order have been surrendered, the court shall issue a warrant for the seizure of the remaining firearms or ammunition if the court determines that probable cause exists to believe the respondent has failed to surrender any firearms or ammunition.

''(d) OTHER REQUIREMENTS.—A qualifying State or tribal law shall—

''(1) make clear accommodations for the case in which an individual other than the respondent claims title to any firearms or ammunition required to be surrendered under a temporary ex parte extreme risk protection order or extreme risk protection order;

''(2) have clear instruction about the immediate return of firearms to a respondent upon the expiration of a temporary ex parte extreme risk protection order or extreme risk protection order;

''(3) provide clear instructions for the reporting of a temporary ex parte extreme risk protection

order or extreme risk protection order to the appropriate Federal, State, and tribal databases;

''(4) establish a felony criminal offense for knowingly making a false statement under oath in a hearing relating to a temporary ex parte extreme risk protection order or extreme risk protection order regarding any material matter;

''(5) establish a felony criminal offense for an individual to receive or possess a firearm or ammunition with knowledge that the individual is subject to a temporary ex parte extreme risk protection order or extreme risk protection order;

''(6) a clear statement that use of the authority in the qualifying State or tribal law does not affect the ability of a law enforcement officer to use any other lawful authority to effect the surrender of a firearm, ammunition, or concealed carry permit; and

''(7) clear direction for State or tribal courts to implement the procedures described in this section.

''(e) ADDITIONAL AUTHORITY.—A qualifying State or tribal law may provide for—

''(1) notice and hearing requirements in addition to the requirements described in this section;

''(2) a timely background check under Federal and State law before a law enforcement agency re-

turns any surrendered firearms and ammunition to a respondent after the expiration of a temporary ex parte extreme risk protection order or extreme risk protection order;

''(3) a requirement that family or household members of a respondent be notified before a law enforcement agency returns any surrendered firearms and ammunition to the respondent; and

''(4) an option for a respondent to elect to transfer all firearms and ammunition owned by the respondent that have been ordered to be surrendered or seized to another individual who is willing to receive them, if such individual—

''(A) is currently eligible to own or possess such firearms and ammunition under Federal and State law, and a background check is conducted;

''(B) attests to storing the firearms or ammunition in a manner so that respondent does not have access; and

''(C) attests to not transfer the firearms or ammunition back to respondent until after the date on which the order expires or is vacated.

''(f) LIMITATIONS.—A qualifying State or tribal law may not—

''(1) at any point require or allow for the surrender of any firearm or ammunition without the issuance of a court order;

''(2) provide for the issuance of a temporary ex parte extreme risk protection order or extreme risk protection order without sworn affidavits or testimony;

''(3) establish criminal penalties for false allegations or false testimony in connection with a temporary ex parte extreme risk protection order or extreme risk protection order that are less than a felony under State or tribal law;

''(4) allow for witness testimony in connection with a temporary ex parte extreme risk protection order or extreme risk protection order that is not sworn or under oath;

''(5) prohibit or otherwise discourage the respondent from consulting or retaining an attorney;

''(6) allow a law enforcement officer or other custodian of a firearm or any ammunition surrendered pursuant to a court order under the qualifying State or tribal law to destroy, disable, sell, assert ownership over, dispose of, use or otherwise employ, harm, or dispense with the firearm or ammunition; or

''(7) allow for the ordering of a sequential series of ex parte extreme risk protection orders against a respondent based on the same evidence used to order the initial ex parte extreme risk protection order against the respondent.

''(g) RULE OF CONSTRUCTION.—Nothing in subsection (f)(1) shall be construed to limit or have an effect on any State or Federal law other than a qualifying State or tribal law.

''SEC. 3043. VIOLENCE PREVENTION GRANT PROGRAM.

''(a) IN GENERAL.—The Assistant Attorney General shall make grants to an eligible State or Indian tribe to assist the State or Indian tribe in carrying out the provisions of a qualifying State or tribal law.

''(b) ELIGIBLE STATE OR INDIAN TRIBE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a State or Indian tribe shall be eligible to receive grants under this section on and after the date on which—

''(A) the State or Indian tribe enacts a qualifying State or tribal law; and

''(B) the Attorney General determines that the State or tribal law complies with the requirements of section 3042.

''(2) FIRST YEAR ELIGIBILITY EXCEPTION.—

''(A) IN GENERAL.—A covered State or Indian tribe shall be eligible to receive a grant under this section during the 1-year period beginning on the date of enactment of this part.

''(B) COVERED STATE OR INDIAN TRIBE.—In this paragraph, the term 'covered State or Indian tribe' means a State or Indian tribe that, before the date of enactment of this part, enacted legislation that—

''(i) authorizes the issuance of a gun violence restraining order or extreme risk protection order similar to a violence prevention order described in this part; and

''(ii) requires a standard of proof for the issuance of a gun violence restraining order or extreme risk protection order described in clause (i) that is substantially similar to the standard of proof required under this part.

''(c) USE OF FUNDS.—Funds awarded under this section may be used by a State or Indian tribe to assist law enforcement agencies or the courts of the State or Indian tribe in carrying out the provisions of the qualifying State or tribal law.

''(d) APPLICATION.—An eligible State or Indian tribe desiring a grant under this section shall submit to the Assistant Attorney General an application at such time, in such manner, and containing or accompanied by such information, as the Assistant Attorney General may reasonably require.

''(e) INCENTIVES.—For each of fiscal years 2019 through 2023, the Attorney General shall give affirmative preference to all Bureau of Justice Assistance discretionary grant applications of a State or Indian tribe that has enacted a qualifying State or tribal law.

''SEC. 3044. FULL FAITH AND CREDIT.

''Any violence prevention order issued under a State or tribal law enacted in accordance with this part shall have the same full faith and credit in every court within the United States as they have by law or usage in the courts of such State or Indian tribe from which they are issued.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10261(a)) is amended by adding at the end the following:

''(28) There are authorized to be appropriated to carry out part NN $20,000,000 for each of fiscal years 2019 through 2023.''.

SEC. 4. FEDERAL FIREARMS PROHIBITION.

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

(1) in subsection (d)—

(A) in paragraph (8)(B)(ii), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; or''; and

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

''(10) is subject to a court order that—

''(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

''(B) restrains such person from possessing and purchasing a firearm; and

''(C) includes a finding that such person poses a significant danger of causing personal injury to himself or herself or other persons.''; and

(2) in subsection (g)—

(A) in paragraph (8)(C)(ii), by striking ''or'' at the end;

(B) in paragraph (9), by striking the comma at the end and inserting ''; or''; and

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

''(10) who is subject to a court order that—

''(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

''(B) restrains such person from possessing and purchasing a firearm; and

''(C) includes a finding that such person poses a significant danger of causing personal injury to himself or herself or other persons,''.

SEC. 5. SEVERABILITY; RULES OF CONSTRUCTION.

(a) SEVERABILITY.—If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this Act, or an amendment made by this Act, or the application of such provision to other persons or circumstances, shall not be affected.

(b) RULES OF CONSTRUCTION.—Nothing in this Act, or an amendment made by this Act, shall be construed to—

(1) limit the ability of a State or Indian tribe to enact legislation with additional due process protections, additional rights for a respondent or sub-

ject of an extreme risk protection order, or higher standards of proof; or

(2) supersede or contradict any State or tribal law enacted before or after the date of enactment of this Act relating to the removal of firearms from individuals determined to be a danger to themselves or others.

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