

1 HB478
2 192223-1
3 By Representatives Coleman, Moore (M), Rogers, Scott, England
4 and McClammy
5 RFD: Public Safety and Homeland Security
6 First Read: 01-MAR-18

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8 SYNOPSIS: This bill would establish the Gun Violence
9 Protective Order Act.

10 This bill would authorize the issuance of ex
11 parte gun violence protective orders and one-year
12 gun violence protective orders. A court may
13 authorize the issuance of the orders if the court
14 finds that the respondent, as defined, poses an
15 immediate and present danger of causing personal
16 injury to self or others.

17 This bill would provide that upon issuance
18 of an ex parte or one-year gun violence protective
19 order, the court shall order the respondent to
20 surrender to the local law enforcement agency all
21 guns and ammunition of which the respondent has
22 custody, control, ownership, or possession.

23 This bill would provide for the renewal or
24 early termination of a one-year gun violence
25 protective order under certain conditions.

26 This bill would provide criminal penalties
27 for a violation.

1 Amendment 621 of the Constitution of Alabama
2 of 1901, now appearing as Section 111.05 of the
3 Official Recompilation of the Constitution of
4 Alabama of 1901, as amended, prohibits a general
5 law whose purpose or effect would be to require a
6 new or increased expenditure of local funds from
7 becoming effective with regard to a local
8 governmental entity without enactment by a 2/3 vote
9 unless: it comes within one of a number of
10 specified exceptions; it is approved by the
11 affected entity; or the Legislature appropriates
12 funds, or provides a local source of revenue, to
13 the entity for the purpose.

14 The purpose or effect of this bill would be
15 to require a new or increased expenditure of local
16 funds within the meaning of the amendment. However,
17 the bill does not require approval of a local
18 governmental entity or enactment by a 2/3 vote to
19 become effective because it comes within one of the
20 specified exceptions contained in the amendment.

21
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25
26 Relating to firearms; to establish the Gun Violence
27 Protective Order Act; to provide for an issuance of ex parte

1 gun violence protective order and one-year gun violence
2 protective order; to require the surrender of all guns and
3 ammunition of a person subject to an ex parte gun violence
4 protective order or one-year gun violence protective order; to
5 provide for the renewal or early termination of an order; to
6 provide criminal penalties for a violation; and in connection
7 therewith would have as its purpose or effect the requirement
8 of a new or increased expenditure of local funds within the
9 meaning of Amendment 621 of the Constitution of Alabama of
10 1901, now appearing as Section 111.05 of the Official
11 Recompilation of the Constitution of Alabama of 1901, as
12 amended.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. This act shall be known and may be cited
15 as the Gun Violence Protective Order Act.

16 Section 2. Legislative purpose and intent.

17 The Legislature finds and declares the following:

18 (1) Over 100,000 people become victims of a gunshot
19 wound each year and more than 30,000 of those victims lose
20 their lives. In 2013, the most recent year for which data is
21 available, guns killed 33,636 Americans, an average of more
22 than 92 deaths each day, including 11,208 homicides, 21,175
23 suicides, and 505 unintentional gun deaths.

24 (2) Federal law prohibits any individual subject to
25 certain domestic violence restraining orders from purchasing
26 or possessing guns. Many states have similar laws. About half
27 of the states also authorize or require a court that is

1 issuing a domestic violence protective order to require the
2 abuser to surrender guns that he or she may already have in
3 his or her possession. This act is modeled on existing
4 domestic violence laws with guns surrender provisions.

5 (3) Studies have shown that an individual who
6 engages in certain dangerous behaviors is significantly more
7 likely to commit an act of violence towards himself or herself
8 or others within the near future. These behaviors, which might
9 include other acts or threats of violence, self-harm, or the
10 abuse of drugs or alcohol, serve as warning signs that the
11 individual might soon commit an act of violence. Research
12 indicates that these behaviors are strong predictors of future
13 violence.

14 (4) Under federal law, an individual suffering from
15 mental illness is not prohibited from purchasing and
16 possessing a gun unless he or she has been involuntarily
17 committed to a mental institution, found not guilty of a crime
18 by reason of insanity, or undergone some other formalized
19 court proceeding regarding his or her mental illness.
20 Similarly, an individual who has committed a violent act
21 towards another is not prohibited from possessing a gun under
22 federal law until after he or she has been convicted of a
23 felony or domestic violence misdemeanor.

24 (5) It is the purpose and intent of the Legislature
25 in enacting this act to reduce gun deaths and injuries by
26 providing a formal court procedure for law enforcement
27 officers and family members may obtain a court order that

1 prevents an individual from access to guns and ammunition. The
2 Legislature intends for these court orders to be limited to
3 situations in which the individual poses a significant danger
4 of causing personal injury to self or others by owning,
5 purchasing, controlling, possessing, or receiving a gun or
6 ammunition.

7 Section 3. Definitions.

8 The following terms shall have the following
9 meanings:

10 (1) EX PARTE GUN VIOLENCE PROTECTIVE ORDER. An order
11 issued by a court, pursuant to Section 5, prohibiting the
12 respondent from owning, purchasing, controlling, possessing,
13 or receiving guns or ammunition until a court-scheduled
14 hearing for a one-year gun violence protective order.

15 (2) FAMILY MEMBER. Any individual related by blood,
16 marriage, or adoption, current or former dating partners, and
17 any individual who resides or has resided with the respondent,
18 or who is acting or has acted as the respondent's legal
19 guardian.

20 (3) GUN. A weapon from which a shot is discharged by
21 gun powder.

22 (4) ONE-YEAR GUN VIOLENCE PROTECTIVE ORDER. An order
23 issued by a court, pursuant to Section 6, prohibiting the
24 respondent from owning, purchasing, controlling, possessing,
25 or receiving guns or ammunition for a period of one year.

1 (5) PETITIONER. A law enforcement officer or a
2 family member of the respondent who files a petition pursuant
3 to Section 4.

4 (6) RESPONDENT. The individual identified in the
5 petition filed under Section 5 or Section 6.

6 Section 4. Commencement of Action; Forms.

7 (a) A petitioner may seek a gun violence protective
8 order by filing a verified petition on a form approved by the
9 Administrative Office of Courts in the court of the county
10 where the respondent resides.

11 (b) The petition shall set forth the grounds for
12 issuance of the order and shall describe the number, types,
13 and locations of any guns or ammunition presently believed by
14 the petitioner to be possessed or controlled by the
15 respondent. The petition shall also state whether there is an
16 existing domestic violence protective order in effect
17 governing the respondent and whether there is any pending
18 lawsuit, complaint, petition, or other action between the
19 parties under the laws of this state. The court administrator
20 shall verify the terms of any existing order governing the
21 parties. The court may not delay granting relief because of
22 the existence of a pending action between the parties or the
23 necessity of verifying the terms of an existing order. A
24 petition for a gun violence protective order may be granted
25 whether or not there is a pending action between the parties.

26 (c) If the respondent is alleged to pose an
27 immediate and present danger of causing personal injury to a

1 family member, or a family member is alleged to have been the
2 target of a threat or act of violence by the respondent, the
3 petitioner shall make a good faith effort to provide notice to
4 any and all adult family members of the respondent. The notice
5 must include that the petitioner intends to petition the court
6 for a gun violence protective order, and, if petitioner is a
7 law enforcement officer, a referral to relevant domestic
8 violence or stalking advocacy or counseling resources, if
9 appropriate. The petitioner shall attest to having provided
10 the notice in the verified petition. If the petitioner is
11 unable to provide notice to any or all adult family members of
12 the respondent, the verified petition should describe what
13 good faith efforts were made.

14 (d) All health records and other health information
15 provided in a petition or considered as evidence in a
16 proceeding under this act shall be protected from public
17 disclosure to the extent the information identifies a
18 respondent or petitioner, except that the information may be
19 provided to law enforcement agencies as set forth in Section
20 10. Aggregate statistical data about the numbers of gun
21 violence protective orders issued, renewed, denied, dissolved,
22 or terminated shall be available to the public upon request.

23 (e) Upon receipt of the petition, the court shall
24 set a date for a hearing within 14 calendar days, regardless
25 of whether the court issues an ex parte gun violence
26 protective order. If the court issues an ex parte gun violence
27 protective order, notice of the hearing shall be served on the

1 respondent with the ex parte order. Notice of the hearing
2 shall be personally served on the respondent by a law
3 enforcement officer.

4 (f) The Administrative Office of Courts shall
5 prescribe the form of the petitions and orders and any other
6 documents, and shall adopt any rules of court, necessary to
7 implement this act.

8 Section 5. Ex Parte Gun Violence Protective Order.

9 (a) A petitioner may request that an ex parte order
10 be issued before a hearing for a one-year gun violence
11 protective order, without notice to the respondent, by
12 including in the petition detailed allegations based on
13 personal knowledge that the respondent poses an immediate and
14 present danger of causing personal injury to self or others
15 through his or her ownership, purchase, control, possession,
16 or receipt of a gun or ammunition.

17 (b) The court shall issue or deny an ex parte gun
18 violence protective order on the same day that the petition is
19 submitted to the court, unless the petition is filed too late
20 in the day to allow for its effective review, in which case
21 the order shall be issued or denied on the next business day.

22 (c) Before issuing an ex parte gun violence
23 protective order, the court shall examine under oath the
24 petitioner and any witnesses the petitioner may produce. The
25 court may also do either of the following:

1 (1) Ensure that a reasonable search has been
2 conducted of all available records to determine whether the
3 respondent owns any guns or ammunition.

4 (2) Ensure that a reasonable search has been
5 conducted for criminal history records related to the
6 respondent.

7 (d) In determining whether grounds for an ex parte
8 gun violence protective order exists, the judge shall consider
9 all relevant evidence presented by the petitioner, and may
10 also consider other relevant evidence, including, but not
11 limited to, evidence of the following facts relating to the
12 respondent:

13 (1) Unlawful, reckless, or negligent use, display,
14 storage, possession, or brandishing of a gun.

15 (2) Act or threat of violence against self or
16 another, whether or not the violence involved a gun.

17 (3) Violation of a protective order issued under
18 Chapter 5 or Chapter 5B of Title 30 of the Code of Alabama
19 1975, or a similar law in another state.

20 (4) Abuse of controlled substances or alcohol or any
21 criminal offense that involves controlled substances or
22 alcohol.

23 (5) The recent acquisition of guns, ammunition, or
24 other deadly weapons.

25 (e) The court shall also consider the time that has
26 elapsed since the occurrence of the events described in
27 subsection (d).

1 (f) If a court finds reasonable cause to believe
2 that the respondent poses an immediate and present danger of
3 causing personal injury to self or others by owning,
4 purchasing, controlling, possessing, or receiving a gun or
5 ammunition, the court shall issue an ex parte gun violence
6 protective order.

7 (g) An ex parte gun violence protective order shall
8 include all of the following:

9 (1) A statement that the respondent may not own,
10 purchase, control, possess, or receive, or attempt to purchase
11 or receive, a gun or ammunition while the order is in effect.

12 (2) A description of the requirements for
13 relinquishment of guns and ammunition under Section 8.

14 (3) A statement of the grounds asserted for the
15 order.

16 (4) A notice of the hearing under subsection (e) of
17 Section 4 to determine whether to issue a one-year gun
18 violence protective order, including the address of the court
19 and the date and time when the hearing is scheduled.

20 (5) A statement that at the hearing, the court may
21 extend the order for one year.

22 (6) A statement that the respondent may seek the
23 advice of an attorney as to any matter connected with the
24 order, and that the attorney should be consulted promptly so
25 that the attorney may assist the individual in any matter
26 connected with the order.

1 (h) An ex parte gun violence protective order shall
2 be personally served on the respondent by a law enforcement
3 officer.

4 (i) In accordance with subsection (c) of Section 4,
5 the court shall schedule a hearing within 14 calendar days of
6 the issuance of an ex parte gun violence protective order to
7 determine if a one-year gun violence protective order shall be
8 issued; provided, however, that a respondent may seek an
9 extension of time before the hearing. The court shall dissolve
10 any ex parte gun violence protective order in effect against
11 the respondent when the court holds the hearing.

12 Section 6. One-Year Gun Violence Protective Order
13 Issued After Notice and Hearing.

14 (a) A petitioner requesting a one-year gun violence
15 protective order shall include in the petition detailed
16 allegations based on personal knowledge that the respondent
17 poses a significant danger of causing personal injury to self
18 or others through his or her ownership, purchase, control,
19 possession, or receipt of a gun or ammunition.

20 (b) Before a hearing for a one-year gun violence
21 protective order, the court shall do both of the following:

22 (1) Ensure that a reasonable search has been
23 conducted of all available records to determine whether the
24 respondent owns any guns or ammunition.

25 (2) Ensure that a reasonable search has been
26 conducted for criminal history records related to the
27 respondent.

1 (c) In determining whether to issue a one-year gun
2 violence protective order under this section, the court shall
3 consider all relevant evidence presented by the petitioner,
4 and may also consider other relevant evidence, including, but
5 not limited to, evidence of the facts identified in subsection
6 (d) of Section 5.

7 (d) If the court finds by a preponderance of the
8 evidence at the hearing that the respondent poses a
9 significant danger of personal injury to self or others
10 through his or her ownership, purchase, control, possession,
11 or receipt of a gun or ammunition, the court shall issue a
12 one-year gun violence protective order.

13 (e) A one-year gun violence protective order issued
14 under this section shall include all of the following:

15 (1) A statement that the respondent may not own,
16 possess, control, purchase, or receive, or attempt to purchase
17 or receive, a gun or ammunition while the order is in effect.

18 (2) A description of the requirements for
19 relinquishment of guns and ammunition under Section 8.

20 (3) A statement of the grounds supporting the
21 issuance of the order.

22 (4) The date and time the order expires.

23 (5) The address of the court that issued the order.

24 (6) A statement that the respondent shall have the
25 right to request one hearing to terminate the order at any
26 time during its effective period.

1 (7) A statement that the respondent may seek the
2 advice of an attorney as to any matter connected with the
3 order.

4 (f) If the respondent fails to appear at the hearing
5 and the court determines that a one-year gun violence
6 protective order shall be issued, the order shall be
7 personally served on the respondent by a law enforcement
8 officer.

9 Section 7. Termination and Renewal.

10 (a) A respondent subject to a one-year gun violence
11 protective order may submit one written request at any time
12 during the effective period of the order for a hearing to
13 terminate the order.

14 (1) Upon receipt of the request for termination, the
15 court shall set a date for a hearing. Notice of the request
16 shall be served on the petitioner in accordance with the
17 Alabama Rules of Civil Procedure. The hearing shall occur no
18 sooner than 14 calendar days from the date of service of the
19 request upon the petitioner.

20 (2) The respondent seeking termination of the order
21 shall have the burden of proving by a preponderance of the
22 evidence that the respondent does not pose a significant
23 danger of causing personal injury to self or others through
24 his or her ownership, purchase, control, possession, or
25 receipt of a gun or ammunition.

26 (3) If the court finds that the respondent has met
27 his or her burden, the court shall terminate the order.

1 (b) A petitioner may request a renewal of a one-year
2 gun violence protective order at any time within the three
3 months before the expiration of the order.

4 (1) A court, after notice and a hearing, may renew
5 the one-year gun violence protective order if the court, by a
6 preponderance of the evidence, finds that the respondent
7 continues to pose a significant danger of causing personal
8 injury to self or another through his or her ownership,
9 purchase, control, possession, or receipt of a gun or
10 ammunition.

11 (2) In determining whether to renew a one-year gun
12 violence protective order, the court shall consider all
13 relevant evidence presented by the petitioner, and may also
14 consider other relevant evidence including, but not limited
15 to, evidence of the facts identified in subsection (d) of
16 Section 5.

17 (3) A one-year gun violence protective order renewed
18 under this section shall expire after one year, subject to
19 termination by further order of the court at a hearing held
20 under subsection (a) and further renewal by order of the court
21 under this subsection.

22 Section 8. Relinquishment of guns and ammunition.

23 (a) Upon issuance of an ex parte or one-year gun
24 violence protective order, the court shall order the
25 respondent to surrender to the local law enforcement agency
26 all guns and ammunition of which the respondent has custody,
27 control, or ownership.

1 (b) A law enforcement officer serving a gun violence
2 protective order shall request that all guns and ammunition
3 belonging to the respondent be immediately surrendered and
4 shall take possession of all guns and ammunition belonging to
5 the respondent that are surrendered, in plain sight, or
6 discovered pursuant to a lawful search.

7 (c) At the time of surrender or removal, a law
8 enforcement officer taking possession of a gun or ammunition
9 pursuant to a gun violence protective order shall issue a
10 receipt identifying all guns and ammunition that have been
11 surrendered or removed and provide a copy of the receipt to
12 the respondent. Within 72 hours after being served with the
13 order, the officer serving the order shall file the original
14 receipt with the court that issued the gun violence protective
15 order, and shall ensure that the law enforcement agency
16 retains a copy of the receipt.

17 (d) A petitioner that has probable cause to believe
18 a respondent to a gun violence protective order owns,
19 controls, or possesses a gun or ammunition that he or she has
20 failed to surrender pursuant to this section, or has received
21 or purchased a gun or ammunition while subject to the order,
22 may petition the court to issue a warrant describing the gun
23 or ammunition and authorizing a search of where the gun or
24 ammunition is reasonably believed to be located. The court may
25 issue the warrant upon a finding of probable cause.

26 (e) A law enforcement agency may charge the
27 respondent a fee not to exceed the reasonable and actual costs

1 incurred by the law enforcement agency for storing a gun or
2 ammunition surrendered pursuant to this section for the
3 duration of the gun violence protective order and any
4 additional periods necessary under Section 7.

5 Section 9. Return and Disposal of guns or
6 Ammunition.

7 (a) As used in this section, dispose means to sell
8 or transfer a gun or ammunition to a federally licensed
9 dealer, defined under 18 U.S.C. § 921 et seq; or to destroy
10 the gun or ammunition.

11 (b) Thirty days before a one-year gun violence
12 protective order is set to expire, a law enforcement agency
13 holding a gun or ammunition that has been surrendered pursuant
14 to the order shall notify the petitioner that the order is set
15 to expire. The notice shall advise the petitioner of the
16 procedures for seeking a renewal of the order pursuant to
17 Section 7.

18 (c) If a gun violence protective order is terminated
19 or expires and is not renewed, a law enforcement agency
20 holding any gun or ammunition that has been surrendered
21 pursuant to Section 8 shall notify the respondent that he or
22 she may request the return of the gun or ammunition. A law
23 enforcement agency shall return any surrendered guns or
24 ammunition requested by a respondent only after confirming,
25 through a background check, that the respondent is currently
26 eligible to own or possess guns and ammunition.

1 (d) A respondent who has surrendered a gun or
2 ammunition to a law enforcement agency pursuant to Section 8
3 and who does not wish to have the gun or ammunition returned
4 or who is no longer eligible to own or possess a gun or
5 ammunition may sell or transfer title of the gun or ammunition
6 to a licensed firearms dealer. The law enforcement agency
7 shall transfer possession of the gun or ammunition to a
8 licensed firearms dealer only after the dealer has displayed
9 written proof of transfer of the gun or ammunition from the
10 respondent to the dealer and the law enforcement agency has
11 verified the transfer.

12 (e) If an individual other than the respondent
13 claims title to a gun or ammunition surrendered pursuant to
14 Section 8, and he or she is determined by the law enforcement
15 agency to be the lawful owner of the gun or ammunition, the
16 gun or ammunition shall be returned to him or her.

17 (f) A law enforcement agency holding a gun or
18 ammunition that was surrendered by a respondent pursuant to
19 Section 8 may dispose of the gun or ammunition only after six
20 months from the date of proper notice to the respondent of the
21 intent to dispose of the gun or ammunition, unless the gun or
22 ammunition has been claimed by the lawful owner. If the gun or
23 ammunition remains unclaimed after six months from the date of
24 notice, then no party shall have the right to assert ownership
25 of the gun or ammunition and the law enforcement agency may
26 dispose of the gun or ammunition.

1 Section 10. Reporting of Orders to a Statewide
2 System.

3 (a) The court shall notify the Alabama State Law
4 Enforcement Agency (ALEA) no later than one court day after
5 issuing, renewing, dissolving, or terminating an ex parte or
6 one-year gun violence protective order under this act.

7 (b) The information required to be submitted to ALEA
8 pursuant to this section shall include identifying information
9 about the respondent and the date the order was issued,
10 renewed, dissolved, or terminated. In the case of a one-year
11 order, the court shall include the date the order is set to
12 expire. The court shall also indicate whether the respondent
13 to the one-year gun violence protective order was present in
14 court to be advised of the contents of the order or if the
15 respondent failed to appear. The respondent's presence in
16 court shall constitute proof of service of notice of the terms
17 of the order.

18 (c) Within one business day of service, a law
19 enforcement officer who serves a gun violence protective order
20 or the clerk of the court shall submit the proof of service
21 and a copy of the protection order to the ALEA for entry into
22 the appropriate database.

23 (d) The information to be submitted to ALEA under
24 this section shall be submitted in an electronic format, in a
25 manner prescribed by ALEA. ALEA shall maintain a searchable
26 database of this information available to law enforcement
27 agencies upon request.

1 (e) ALEA shall immediately make information about an
2 ex parte or one-year gun violence protective order issued,
3 renewed, or terminated pursuant to this act available to the
4 National Instant Criminal Background Check System for the
5 purposes of gun purchaser background checks.

6 Section 11. Penalties.

7 (a) A person who files a petition for a gun violence
8 protective order, knowing the information in the petition to
9 be materially false or with an intent to harass the
10 respondent, is guilty of a Class C misdemeanor.

11 (b) A person who owns, purchases, controls,
12 possesses, or receives a gun or ammunition with knowledge that
13 he or she is prohibited from doing so by a gun violence
14 protective order is guilty of a Class C misdemeanor and shall
15 be prohibited from owning, purchasing, controlling,
16 possessing, or receiving, or attempting to purchase or
17 receive, a gun or ammunition for a period of five years from
18 the date of conviction.

19 Section 12. Law Enforcement to Retain Other
20 Authority.

21 This act shall not affect the ability of a law
22 enforcement officer to remove guns or ammunition from any
23 individual pursuant to other lawful authority.

24 Section 13. Lack of Liability for Failure to Seek
25 Order.

1 This act shall not be construed to impose criminal
2 or civil liability on any individual who chooses not to seek a
3 gun violence protective order pursuant to this act.

4 Section 14. Although this bill would have as its
5 purpose or effect the requirement of a new or increased
6 expenditure of local funds, the bill is excluded from further
7 requirements and application under Amendment 621, now
8 appearing as Section 111.05 of the Official Recompilation of
9 the Constitution of Alabama of 1901, as amended, because the
10 bill defines a new crime or amends the definition of an
11 existing crime.

12 Section 15. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.