

SENATE BILL 1807

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 36
and Title 39, relative to emergency protection
orders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, is amended by adding the following as a new part:

39-17-1901.

(a) Any family member, household member, intimate partner, or law enforcement officer who has a reasonable belief that a person poses an imminent risk of harm to the person or others if allowed to purchase or possess a firearm may seek relief under this section by filing a sworn petition for an emergency protection order against the respondent.

(b) Venue for a petition for an emergency protection order, and all other matters relating to extreme risk orders of protection, shall be in the county where the respondent resides. If the respondent is not a resident of Tennessee, the petition may be filed in the county where the petitioner resides.

(c) Notwithstanding any other law to the contrary, a person filing a petition for an emergency protection order shall not be required to bear the costs, including any court costs, filing fees, litigation taxes, or any other costs associated with the filing, issuance, registration, service, dismissal or nonsuit, appeal or enforcement of an ex parte emergency protection order, emergency protection order, or a petition for either such order, whether issued inside or outside the state. If the court, after the hearing on the

petition, issues or extends an emergency protection order, all court costs, filing fees, litigation taxes, and attorney fees shall be assessed against the respondent.

(d) As used in this part:

(1) "Emergency protection order" means an order of protection issued pursuant to this part;

(2) "Family member" means a person who is related to the respondent by blood, adoption, or marriage or was formerly related to the respondent by marriage;

(3) "Household member" means a person who lives or has lived in the same household with the respondent; and

(4) "Intimate partner" means a person who is dating or has dated the respondent or has or had a sexual relationship with the respondent.

39-17-1902.

(a) Upon the filing of a petition for an emergency protection order, the court may immediately, for good cause shown, issue an ex parte emergency protection order. An immediate and present risk of harm to the respondent or others if allowed to purchase or possess a firearm shall constitute good cause for purposes of this section. An ex parte emergency protection order shall prohibit the respondent from purchasing or possessing any firearm during the period that the order is in effect.

(b) Within thirty (30) days of service of an ex parte emergency protection order on the respondent, a hearing shall be held, at which time the court shall either dissolve the order that has been issued, or shall, if the petitioner has proved the allegation of an imminent risk of harm by a preponderance of the evidence, extend the emergency protection order for a definite period of time, not to exceed one (1) year, unless a further hearing on the continuation of such order is requested by the respondent or the petitioner; in which case, on proper showing of cause, such order may be continued for a further definite period of one (1) year, after which time a further hearing must be held for any subsequent one-year period. Any ex parte emergency protection order shall be in

effect until the time of the hearing, and, if the hearing is held within thirty (30) days of service of such order, the ex parte order shall continue in effect until the entry of any subsequent emergency protection order issued pursuant to this section. If no ex parte emergency protection order has been issued as of the time of the hearing, and the petitioner has proven the allegation of an imminent risk of harm by a preponderance of the evidence, the court may, at that time, issue an emergency protection order prohibiting the respondent from purchasing or possessing any firearm for a definite period of time, not to exceed one (1) year.

(c) The court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as a copy of any ex parte emergency protection order, if applicable, to be served upon the respondent at least five (5) days prior to such hearing. An ex parte emergency protection order issued pursuant to this section shall be personally served upon the respondent. However, if the respondent is not a resident of Tennessee, the ex parte emergency protection order shall be served pursuant to §§ 20-2-215 and 20-2-216. The notice shall advise the respondent that the respondent may be represented by counsel. In any case in which the petitioner is a minor, unless the court finds that the action would create a threat of serious harm to the minor, a copy of the petition, notice of hearing, and any ex parte emergency protection order shall also be served on the parents of the minor, or in the event that the parents are not living together and jointly caring for the minor, upon the primary residential parent, pursuant to the requirements of this section.

(d) Within the time the emergency protection order is in effect, any court of competent jurisdiction may modify the emergency protection order, either upon the court's own motion or upon motion of the petitioner.

(e) Within the time the emergency protection order is in effect, any court of competent jurisdiction may terminate the emergency protection order, either upon the court's own motion or upon motion of the respondent. In order to terminate the emergency protection order, the court must find that the respondent no longer poses an imminent risk of harm to the person or others if allowed to purchase or possess a firearm.

(f) The clerk shall immediately forward a copy of any emergency protection order issued and any subsequent modifications or dismissals to the petitioner, respondent, and the local law enforcement agencies having jurisdiction in the area where the respondent resides. Upon receipt of the copy of the emergency protection order, modification, or dismissal from the issuing court or clerk's office, the local law enforcement agency shall take any necessary action to immediately transmit the order to the national crime information center.

39-17-1903.

(a) If the respondent has been served with a copy of a petition for an emergency protection order, notice of hearing, and any ex parte order issued pursuant to § 39-17-1902, any subsequent protection order shall be effective when the order is entered. For purposes of this section, an order shall be considered entered when such order is signed by:

(1) The judge and all parties or counsel;

(2) The judge and one (1) party or counsel and contains a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel; or

(3) The judge and contains a certificate of the clerk that a copy has been served on all other parties or counsel.

(b) As used in subsection (a), service upon a party or counsel shall be made by delivering to such party or counsel a copy of the emergency protection order, or by the clerk mailing the order to the party's last known address. In the event the party's last known address is unknown and cannot be ascertained upon diligent inquiry, the certificate of service shall so state. Service by mail is complete upon mailing. In order to complete service of process in a timely manner on a party who lives outside the county where the order was issued, the clerk may transmit the order to the sheriff in the appropriate county by facsimile or other electronic transmission.

(c) Notwithstanding when an order is considered entered under subsection (a), if the court finds that the protection of the petitioner, respondent, or others so requires, the court may order, in the manner provided by law or rule, that the protection order take effect immediately.

(d) If the respondent has been served with a copy of the petition, notice of hearing, and any ex parte order issued pursuant to § 39-17-1902, an emergency protection order issued pursuant to this section after a hearing shall be in full force and effect against the respondent from the time the order is entered regardless of whether the respondent is present at the hearing.

39-17-1904.

(a)

(1) It is an offense to knowingly violate an emergency protection order.

(2) A violation of subdivision (a)(1) is a Class A misdemeanor.

(b) After a respondent has been arrested for a violation of this section, the arresting officer shall inform the person who petitioned the court to issue the emergency protection order that the respondent has been arrested for a violation of that order and

that the respondent may be eligible to post bond for the offense and be released until the date of trial for the offense.

(c) Neither an arrest nor the issuance of a warrant or capias for a violation of this section in any way affects the validity or enforceability of any emergency protection order.

(d) In order to constitute a violation of subsection (a):

(1) The respondent must have received notice of the request for an emergency protection order;

(2) The respondent must have had an opportunity to appear and be heard in connection with the emergency protection order; and

(3) The court must have made specific findings of fact in the emergency protection order that the respondent posed an imminent risk of harm to the person or others if allowed to purchase or possess a firearm.

(e) An arrest for violation of an emergency protection order may be with or without a warrant. Any law enforcement officer shall arrest the respondent without a warrant if:

(1) The officer has proper jurisdiction over the area in which the violation occurred;

(2) The officer has reasonable cause to believe the respondent has violated or is in violation of the emergency protection order; and

(3) The officer has verified whether an emergency protection order is in effect against the respondent. If necessary, the police officer may verify the existence of an emergency protection order by telephone or radio communication with the appropriate law enforcement department.

(f) No ex parte order of protection can be enforced by arrest under subsection (e) until the respondent has been served with the emergency protection order or otherwise has acquired actual knowledge of such order.

39-17-1905.

(a) Upon issuance of an emergency protection order, the order shall include on its face the following disclosures:

(1) That the respondent is required to dispossess the respondent by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, of all firearms the respondent possesses within forty-eight (48) hours of the issuance of the order;

(2) That the respondent is prohibited from possessing a firearm for so long as the protection order or any successive protection order is in effect, and may reassume possession of the dispossessed firearm at such time as the order expires or is otherwise no longer in effect; and

(3) Notice of the penalty for any violation of § 39-17-1904.

(b) The court shall then order and instruct the respondent:

(1) To terminate the respondent's physical possession of the firearms in the respondent's possession by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, within forty-eight (48) hours; and

(2) That if the respondent possesses firearms as business inventory or that are registered under the National Firearms Act (26 U.S.C. §§ 5801 et seq.), there are additional statutory provisions that may apply and shall include these additional provisions in the content of the order.

(c) When the respondent is lawfully dispossessed of firearms as required by this section, the respondent shall complete an affidavit of firearms dispossession form and return it to the court issuing the protection order.

(d) In determining what a lawful means of dispossession is:

(1) If the dispossession, including, but not limited to, the transfer of weapons registered under the National Firearms Act (26 U.S.C. §§ 5801 et seq.), requires the approval of any state or federal agency prior to the transfer of the firearm, the respondent may comply with the dispossession requirement by having the firearm or firearms placed into a safe or similar container that is securely locked and to which the respondent does not have the combination, keys, or other means of normal access; and

(2) If the respondent is licensed as a federal firearms dealer or a responsible party under a federal firearms license, the determination of whether such an individual possesses firearms that constitute business inventory under the federal license must be determined based upon the applicable federal statutes or the rules, regulations and official letters, and rulings and publications of the bureau of alcohol, tobacco, firearms and explosives. The protection order shall not require the surrender or transfer of the inventory if there are one (1) or more individuals who are responsible parties under the federal license who are not the respondent subject to the protection order.

(e) A firearm subject to this section shall not be forfeited as provided in § 39-17-1317, unless the possession of the firearm prior to the entry of the protection order constituted an independent crime of which the respondent has been convicted or the firearms are abandoned by the respondent.

(f)

(1) It is an offense for a person subject to an emergency protection order to knowingly fail to surrender or transfer all firearms the respondent possesses as required by this section.

(2) A violation of subdivision (f)(1) is a Class A misdemeanor and each violation shall constitute a separate offense.

(3) If the violation of subdivision (f)(1) also constitutes a violation of § 39-17-1904, the respondent may be charged and convicted under that section.

39-17-1906.

(a)

(1) The office of the clerk of court must provide forms that may be necessary to seek an emergency protection order. The forms must be limited to use in petitions filed under this part and made available to all who request assistance in filing a petition. The clerk may obtain the most current forms by printing them from the website of the administrative office of the courts.

(2) The petitioner is not limited to the use of these forms and may present to the court any legally sufficient petition in whatever form. The office of the clerk shall also assist a person who is not represented by counsel by filling in the name of the court on the petition, indicating where the petitioner's name must be filled in, reading through the petition form with the petitioner, and rendering any other assistance that is necessary for the filing of the petition. All such petitions that are filed pro se shall be liberally construed procedurally in favor of the petitioner.

(b) The administrative office of the courts shall develop a petition for an emergency protection order form, an amended emergency protection order form, an ex parte emergency protection order form, an affidavit of firearms dispossession form, and

other forms that are found to be necessary and advisable. These forms shall be revised as the laws relative to emergency protection orders and ex parte emergency protection orders are amended by the general assembly. To the extent possible, the forms shall be uniform with those promulgated by surrounding states so that Tennessee forms may be afforded full faith and credit.

(c) The form developed by the administrative office of the court must fully advise the respondent in language substantially similar to the following:

(1) If the emergency protection order is granted, the respondent is required to terminate physical possession by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, of all firearms that the respondent possesses within forty-eight (48) hours of the granting of the order;

(2) It is a criminal offense for a person subject to an emergency protection order, to purchase or possess a firearm while that order is in effect; and

(3) The issuance of an emergency protection order will terminate or, at least, suspend the individual's right to purchase or possess a firearm while the order is in effect.

(d) These forms shall be used exclusively in all courts exercising jurisdiction over emergency protection orders.

SECTION 2. For the purpose of developing the required forms, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2020, the public welfare requiring it.