

115TH CONGRESS
2D SESSION

S. 2521

To authorize the issuance of extreme risk protection orders.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2018

Mr. BLUMENTHAL (for himself and Mr. GRAHAM) introduced the following bill; which was read twice and 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 2018”.

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

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

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

11 **“(a) DEFINITIONS.—In this section—**

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

6 “(2) the term ‘Director’ means the Director of
7 the Administrative Office of the United States
8 Courts;

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

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

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

19 “(A) parent, spouse, sibling, or child re-
20 lated by blood, marriage, or adoption to the re-
21 spondent;

22 “(B) dating partner of the respondent;

23 “(C) individual who has a child in common
24 with the respondent, regardless of whether the
25 individual has—

1 “(i) been married to the respondent;

2 or

3 “(ii) lived together with the respond-
4 ent at any time;

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

7 “(E) domestic partner of the respondent;

8 “(F) individual who has a legal parent-
9 child relationship with the respondent, including
10 a stepparent-stepchild and grandparent-grand-
11 child relationship; and

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

14 “(6) the term ‘law enforcement officer’ means
15 any officer, agent, or employee of the Federal Gov-
16 ernment or a State government, unit of local govern-
17 ment, or Indian tribe (as defined in section 4 of the
18 Indian Self-Determination and Education Assistance
19 Act (25 U.S.C. 5304)) authorized—

20 “(A) by law or by a government agency to
21 engage in or supervise the prevention, detection,
22 or investigation of any violation of criminal law;

23 or

24 “(B) by law to supervise sentenced crimi-
25 nal offenders;

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

4 “(8) the term ‘mental health agency’ means an
5 agency of a State or local government or its con-
6 tracted agency that is responsible for mental health
7 services or co-occurring mental health and substance
8 abuse services; and

9 “(9) the term ‘national instant criminal back-
10 ground check system’ means the national instant
11 criminal background check system established under
12 section 103 of the Brady Handgun Violence Preven-
13 tion Act (34 U.S.C. 40901).

14 “(b) PETITION.—

15 “(1) IN GENERAL.—A family or household
16 member of the applicable individual, or a law en-
17 forcement officer, may submit to an appropriate dis-
18 trict court of the United States a petition requesting
19 that the court issue an ex parte extreme risk protec-
20 tion order or long-term extreme risk protection order
21 with respect to an individual.

22 “(2) NO FEES.—A court may not charge a peti-
23 tioner any fee for filing a petition under paragraph
24 (1).

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

5 “(c) EX PARTE ORDERS.—

6 “(1) TIMING.—

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

12 “(B) LATE PETITIONS.—If a court receives
13 a petition for an ex parte order submitted
14 under subsection (b) too late in the day to per-
15 mit effective review, the court shall grant or
16 deny the petition on the next day of judicial
17 business at a time early enough to permit the
18 court to file an order with the clerk of the court
19 during that day.

20 “(2) EVIDENCE REQUIRED.—Before issuing an
21 ex parte order, a court shall require that the peti-
22 tioner submit a signed affidavit, sworn to before the
23 court, that—

24 “(A) explains why the petitioner believes
25 that the respondent poses a risk of imminent

1 personal injury to himself or herself, or another
2 individual, by purchasing, possessing, or receiv-
3 ing a firearm or ammunition; and

4 “(B) describes the interactions and con-
5 versations of the petitioner with—

6 “(i) the respondent; or

7 “(ii) another individual, if the peti-
8 tioner believes that information obtained
9 from that individual is credible and reli-
10 able.

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

14 “(A) the respondent poses a risk of immi-
15 nent personal injury to himself or herself, or
16 another individual, by purchasing, possessing,
17 or receiving a firearm or ammunition; and

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

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

22 “(A) the date that is 14 days after the
23 date of issuance; or

1 “(B) the date on which the court deter-
2 mines whether to issue a long-term order with
3 respect to the respondent.

4 “(d) LONG-TERM ORDERS.—

5 “(1) HEARING REQUIRED.—If a court receives
6 a petition for an extreme risk protection order for a
7 respondent under subsection (b), the court shall hold
8 a hearing to determine whether to issue a long-term
9 order with respect to the respondent either—

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

14 “(ii) if the court issues an ex parte order
15 with respect to the respondent but the order is
16 not served on the respondent within 72 hours of
17 the issuance, not later than 72 hours after the
18 order is served on the respondent; or

19 “(B) if the respondent waives the right to
20 a hearing under subparagraph (A) or the court
21 does not issue an ex parte order, not later than
22 14 days after the date on which the court re-
23 ceives the petition.

24 “(2) NOTICE AND OPPORTUNITY TO BE
25 HEARD.—

1 “(A) IN GENERAL.—The court shall pro-
2 vide the respondent with notice and the oppor-
3 tunity to be heard at a hearing under this sub-
4 section, sufficient to protect the due process
5 rights of the respondent.

6 “(B) RIGHT TO COUNSEL.—

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

10 “(I) chosen by the respondent;

11 and

12 “(II) authorized to practice at
13 such a hearing.

14 “(ii) COURT-PROVIDED COUNSEL.—If
15 the respondent is financially unable to ob-
16 tain representation by counsel, the court,
17 at the request of the respondent, shall en-
18 sure to the extent practicable that the re-
19 spondent is represented by an attorney for
20 the Legal Services Corporation with re-
21 spect to the petition.

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

24 “(A) shall have the burden of proving all
25 material facts; and

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

3 “(i) the respondent poses a risk of
4 personal injury to himself or herself, or an-
5 other individual, during the period to be
6 covered by the proposed extreme risk pro-
7 tection order, by purchasing, possessing, or
8 receiving a firearm or ammunition; and

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

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

16 “(5) DENIAL.—If the court finds that there is
17 not clear and convincing evidence to support the
18 issuance of a long-term order, the court shall dis-
19 solve any ex parte order then in effect with respect
20 to the respondent.

21 “(6) RENEWAL.—

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

1 “(i) notify the petitioner and the re-
2 spondent that the order is scheduled to ex-
3 pire; and

4 “(ii) advise the petitioner and the re-
5 spondent of the procedures for seeking a
6 renewal of the order under this paragraph.

7 “(B) PETITION.—If a family or household
8 member of the respondent, or a law enforce-
9 ment officer, believes that the conditions under
10 paragraph (3)(B) continue to apply with respect
11 to a respondent who is subject to a long-term
12 order, the family or household member or law
13 enforcement officer may submit to the court
14 that issued the order a petition for a renewal of
15 the order.

16 “(C) HEARING.—A court that receives a
17 petition submitted under subparagraph (B)
18 shall hold a hearing to determine whether to
19 issue a renewed long-term order with respect to
20 the respondent.

21 “(D) APPLICABLE PROCEDURES.—The re-
22 quirements under paragraphs (2) through (5)
23 shall apply to the consideration of a petition for
24 a renewed long-term order submitted under
25 subparagraph (B) of this paragraph.

1 “(E) ISSUANCE.—Upon a showing by clear
2 and convincing evidence that the conditions
3 under paragraph (3)(B) continue to apply with
4 respect to the respondent, the court shall issue
5 a renewed long-term order with respect to the
6 respondent.

7 “(e) FACTORS TO CONSIDER.—In determining
8 whether to issue an extreme risk protection order, a
9 court—

10 “(1) shall consider factors including—

11 “(A) recent threats or acts of violence by
12 the respondent directed toward other individ-
13 uals;

14 “(B) recent threats or acts of violence by
15 the respondent directed toward himself or her-
16 self;

17 “(C) recent acts of cruelty to animals by
18 the respondent; and

19 “(D) evidence of—

20 “(i) recent criminal offenses by the re-
21 spondent that involve controlled substances
22 or alcohol; or

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

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

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

3 “(B) a history of violence or attempted vio-
4 lence by the respondent against other individ-
5 uals; and

6 “(C) prior involuntary confinement of the
7 respondent in a hospital for individuals with
8 psychiatric disabilities.

9 “(f) RELINQUISHMENT OF FIREARMS AND AMMUNI-
10 TION.—

11 “(1) ORDER OF SURRENDER.—Upon issuance
12 of an ex parte order or long-term order, the court
13 shall order the respondent to surrender all firearms
14 and ammunition that the respondent possesses or
15 owns, in or affecting interstate commerce, as well as
16 any permit authorizing the respondent to purchase
17 or possess firearms (including a concealed carry per-
18 mit), to—

19 “(A) the United States Marshals Service;
20 or

21 “(B) a designated law enforcement officer.

22 “(2) SURRENDER AND REMOVAL.—

23 “(A) MANNER OF SERVICE.—

24 “(i) PERSONAL SERVICE.—Except as
25 provided in clause (ii), a United States

1 marshal or designated law enforcement of-
2 ficer shall serve an extreme risk protection
3 order on a respondent by handing the
4 order to the respondent.

5 “(ii) ALTERNATIVE SERVICE.—If the
6 respondent cannot reasonably be located
7 for service as described in clause (i), an ex-
8 treme risk protection order may be served
9 on the respondent in any manner author-
10 ized under the Federal Rules of Civil Pro-
11 cedure.

12 “(B) REMOVAL.—Except as provided in
13 subparagraph (C), a United States marshal or
14 designated law enforcement officer serving an
15 extreme risk protection order personally on the
16 respondent shall—

17 “(i) request that all firearms and am-
18 munition, in or affecting interstate com-
19 merce, as well as any permit authorizing
20 the respondent to purchase or possess fire-
21 arms (including a concealed carry permit),
22 that the respondent possesses or owns—

23 “(I) be immediately surrendered
24 to the United States marshal or des-
25 igned law enforcement officer; or

1 “(II) at the option of the re-
2 spondent, be immediately surrendered
3 and sold to a federally licensed fire-
4 arms dealer; and

5 “(ii) take possession of all firearms
6 and ammunition described in clause (i)
7 that are not sold under subclause (II) of
8 that clause, as well as any permit de-
9 scribed in that clause, that are—

10 “(I) surrendered;

11 “(II) in plain sight; or

12 “(III) discovered pursuant to a
13 lawful search.

14 “(C) ALTERNATIVE SURRENDER.—If a
15 United States marshal or designated law en-
16 forcement officer is not able to personally serve
17 an extreme risk protection order under subpara-
18 graph (A)(i), or is not reasonably able to take
19 custody of the firearms, ammunition, and per-
20 mits under subparagraph (B), the respondent
21 shall surrender the firearms, ammunition, and
22 permits in a safe manner to the control of a
23 United States marshal or designated law en-
24 forcement officer not later than 48 hours after
25 being served with the order.

1 “(3) RECEIPT.—

2 “(A) ISSUANCE.—At the time of surrender
3 or removal under paragraph (2), a United
4 States marshal or designated law enforcement
5 officer taking possession of a firearm, ammuni-
6 tion, or a permit pursuant to an extreme risk
7 protection order shall—

8 “(i) issue a receipt identifying all fire-
9 arms, ammunition, and permits that have
10 been surrendered or removed; and

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

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

18 “(i) file the original receipt issued
19 under subparagraph (A) of this paragraph
20 with the court that issued the extreme risk
21 protection order; and

22 “(ii) ensure that the United States
23 Marshals Service retains a copy of the re-
24 ceipt.

1 “(C) DESIGNATED LAW ENFORCEMENT
2 OFFICER.—If a designated law enforcement of-
3 ficer issues a receipt under subparagraph (A),
4 the officer shall submit the original receipt and
5 a copy of the receipt to the appropriate United
6 States marshal to enable the United States
7 marshal to comply with subparagraph (B).

8 “(4) FORFEITURE.—If a respondent knowingly
9 attempts, in violation of an extreme risk protection
10 order, to access a firearm, ammunition, or a permit
11 that was surrendered or removed under this sub-
12 section, the firearm, ammunition, or permit shall be
13 subject to seizure and forfeiture under section
14 924(d).

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

16 “(1) NOTICE.—If an extreme risk protection
17 order is dissolved, or expires and is not renewed, the
18 court that issued the order shall order the United
19 States Marshals Service to—

20 “(A) confirm, through the national instant
21 criminal background check system and any
22 other relevant law enforcement databases, that
23 the respondent may lawfully own and possess
24 firearms and ammunition; and

1 “(B)(i) if the respondent may lawfully own
2 and possess firearms and ammunition, notify
3 the respondent that the respondent may re-
4 trieve each firearm, ammunition, or permit sur-
5 rendered by or removed from the respondent
6 under subsection (f); or

7 “(ii) if the respondent may not lawfully
8 own or possess firearms and ammunition, notify
9 the respondent that each firearm, ammunition,
10 or permit surrendered by or removed from the
11 respondent under subsection (f) will be returned
12 only when the respondent demonstrates to the
13 United States Marshals Service that the re-
14 spondent may lawfully own and possess fire-
15 arms and ammunition.

16 “(2) RETURN.—If an extreme risk protection
17 order is dissolved, or expires and is not renewed, and
18 the United States Marshals Service confirms under
19 paragraph (1)(A) that the respondent may lawfully
20 own and possess firearms and ammunition, the court
21 that issued the order shall order the entity that pos-
22 sesses each firearm, ammunition, or permit surren-
23 dered by or removed from the respondent under sub-
24 section (f) to return those items to the respondent.

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

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

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

14 “(i) PENALTY FOR FALSE REPORTING OR FRIVO-
15 LOUS PETITIONS.—An individual who knowingly submits
16 materially false information to the court in a petition for
17 an extreme risk protection order under this section, or who
18 knowingly files such a petition that is frivolous, unreason-
19 able, or without foundation, shall be fined not less than
20 \$1,000, in addition to any other penalty authorized by law,
21 as the court deems necessary to deter such abuse of proc-
22 ess.

23 “(j) MODEL POLICY.—

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

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

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

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

15 “(i) through direct outreach; or

16 “(ii) in coordination with—

17 “(I) relevant officials in the exec-
18 utive or legislative branch of the Fed-
19 eral Government; or

20 “(II) with State and local offi-
21 cials;

22 “(C) prescribe policies for allowing the fil-
23 ing of petitions and prompt adjudication of pe-
24 titions on weekends and outside of normal court
25 hours;

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

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

13 “(k) REPORTING.—

14 “(1) INDIVIDUAL REPORTS.—

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

21 “(i) the Attorney General;

22 “(ii) each relevant mental health
23 agency in the State in which the order is
24 issued; and

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

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

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

18 “(2) ANNUAL REPORTS.—Not later than 1 year
19 after the date of enactment of the Federal Extreme
20 Risk Protection Order Act of 2018, and annually
21 thereafter, the Director shall submit to the Com-
22 mittee on the Judiciary of the Senate and the Com-
23 mittee on the Judiciary of the House of Representa-
24 tives a report that includes, with respect to the pre-
25 ceding year—

1 “(A) the number of petitions for ex parte
2 orders filed, as well as the number of such or-
3 ders issued and the number denied;

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

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

11 “(D) the number of cases in which a court
12 has issued a penalty for false reporting or frivo-
13 lous petitions.”.

14 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

15 (1) TABLE OF SECTIONS.—The table of sections
16 for chapter 44 of title 18, United States Code, is
17 amended by adding at the end the following:

“932. Extreme risk protection orders.”.

18 (2) FORFEITURE.—Section 924(d)(3) of title
19 18, United States Code, is amended—

20 (A) in subparagraph (E), by striking
21 “and” at the end;

22 (B) in subparagraph (F), by striking the
23 period at the end and inserting “; and”; and

24 (C) by adding at the end the following:

1 “(G) any attempt to violate an extreme
2 risk protection order issued under section
3 932.”.

4 **SEC. 3. BRADY ACT PROHIBITORS.**

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

7 (1) in subsection (d)—

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

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

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

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

17 (2) in subsection (g)—

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

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

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

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

4 **SEC. 4. SEVERABILITY.**

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

12 **SEC. 5. PREEMPTION.**

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

○