

116TH CONGRESS  
1ST SESSION

# H. R. 1236

To support State, Tribal, and local efforts to remove access to firearms from individuals who are a danger to themselves or others pursuant to court orders for this purpose.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2019

Mr. CARBAJAL (for himself, Mr. FITZPATRICK, Mr. BEYER, Mr. DEUTCH, and Ms. BROWNLEY of California) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To support State, Tribal, and local efforts to remove access to firearms from individuals who are a danger to themselves or others pursuant to court orders for this purpose.

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 “Extreme Risk Protec-  
5       tion Order Act of 2019”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

1           (1) ELIGIBLE ENTITY.—The term “eligible enti-  
2           ty” means—

3                   (A) a State or Indian Tribe—

4                           (i) that enacts legislation described in  
5                           section 4;

6                           (ii) with respect to which the Attorney  
7                           General determines that the legislation de-  
8                           scribed in clause (i) complies with the re-  
9                           quirements of section 4; and

10                          (iii) that certifies to the Attorney  
11                          General that the State or Indian Tribe  
12                          shall—

13                                   (I) use the grant for the purposes  
14                                   described in section 3(b); and

15                                   (II) allocate not less than 25 per-  
16                                   cent of the amount received under a  
17                                   grant under section 3 for training for  
18                                   law enforcement; or

19                          (B) a unit of local government or other  
20                          public or private entity that—

21                                   (i) is located in a State or in the terri-  
22                                   tory under the jurisdiction of an Indian  
23                                   Tribe that meets the requirements de-  
24                                   scribed in clauses (i), (ii), (iii) of subpara-  
25                                   graph (A); and

1 (ii) certifies to the Attorney General  
2 that the unit of local government or entity  
3 shall—

4 (I) use the grant for the purposes  
5 described in section 3(b); and

6 (II) allocate not less than 25 per-  
7 cent of the amount received under a  
8 grant under section 3 for training for  
9 law enforcement.

10 (2) EXTREME RISK PROTECTION ORDER.—The  
11 term “extreme risk protection order” means a writ-  
12 ten order or warrant, issued by a State or Tribal  
13 court or signed by a magistrate (or other com-  
14 parable judicial officer), the primary purpose of  
15 which is to reduce the risk of firearm-related death  
16 or injury by doing one or more of the following:

17 (A) Prohibiting a named individual from  
18 having under the custody or control of the indi-  
19 vidual, owning, purchasing, possessing, or re-  
20 ceiving a firearm.

21 (B) Having a firearm removed or requiring  
22 the surrender of firearms from a named indi-  
23 vidual.

1           (3) FIREARM.—The term “firearm” has the  
2 meaning given the term in section 921 of title 18,  
3 United States Code.

4           (4) INDIAN TRIBE.—The term “Indian Tribe”  
5 has the meaning given the term “Indian tribe” in  
6 section 1709 of the Public Safety and Community  
7 Policing Act of 1994 (34 U.S.C. 10389).

8           (5) LAW ENFORCEMENT OFFICER.—The term  
9 “law enforcement officer” means a public servant  
10 authorized by State, local, or Tribal law or by a  
11 State, local, or Tribal government agency to—

12                   (A) engage in or supervise the prevention,  
13 detection, investigation, or prosecution of an of-  
14 fense; or

15                   (B) supervise sentenced criminal offenders.

16           (6) PETITIONER.—The term “petitioner”  
17 means an individual authorized under State or Trib-  
18 al law to petition for an extreme risk protection  
19 order.

20           (7) STATE.—The term “State” means—

21                   (A) a State;

22                   (B) the District of Columbia;

23                   (C) the Commonwealth of Puerto Rico;

24                   and

1 (D) any other territory or possession of the  
2 United States.

3 (8) UNIT OF LOCAL GOVERNMENT.—The term  
4 “unit of local government” has the meaning given  
5 the term in section 901 of the Omnibus Crime Con-  
6 trol and Safe Streets Act of 1968 (34 U.S.C.  
7 10251).

8 **SEC. 3. EXTREME RISK PROTECTION GRANT PROGRAM.**

9 (a) IN GENERAL.—The Director of the Office of  
10 Community Oriented Policing Services of the Department  
11 of Justice shall establish a program under which, from  
12 amounts made available to carry out this section, the Di-  
13 rector may make grants to eligible entities to assist in car-  
14 rying out the provisions of the legislation described in sec-  
15 tion 4.

16 (b) USE OF FUNDS.—Funds awarded under this sec-  
17 tion may be used by an applicant to—

18 (1) enhance the capacity of law enforcement  
19 agencies and the courts of a State, unit of local gov-  
20 ernment, or Indian Tribe by providing personnel,  
21 training, technical assistance, data collection, and  
22 other resources to carry out legislation described in  
23 section 4;

24 (2) train judges, court personnel, and law en-  
25 forcement officers to more accurately identify indi-

1       viduals whose access to firearms poses a danger of  
2       causing harm to themselves or others by increasing  
3       the risk of firearms suicide or interpersonal violence;

4               (3) develop and implement law enforcement and  
5       court protocols, forms, and orders so that law en-  
6       forcement agencies and the courts may carry out the  
7       provisions of the legislation described in section 4 in  
8       a safe and effective manner, including through the  
9       removal and storage of firearms pursuant to extreme  
10      risk protection orders under the legislation; and

11              (4) raise public awareness and understanding of  
12      the legislation described in section 4 so that extreme  
13      risk protection orders may be issued in appropriate  
14      situations to reduce the risk of firearms-related  
15      death and injury.

16      (c) APPLICATION.—An eligible entity desiring a grant  
17      under this section shall submit to the Attorney General  
18      an application at such time, in such manner, and con-  
19      taining or accompanied by such information as the Attor-  
20      ney General may reasonably require.

21      (d) INCENTIVES.—For each of fiscal years 2020  
22      through 2024, the Attorney General shall give affirmative  
23      preference in awarding any discretionary grant awarded  
24      by the Bureau of Justice Assistance to a State or Indian  
25      Tribe that has enacted legislation described in section 4.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated such sums as are nec-  
3 essary to carry out this section.

4 **SEC. 4. NATIONAL EXTREME RISK PROTECTION ORDER**  
5 **LAW.**

6 (a) REQUIREMENTS.—Legislation described in this  
7 section is legislation that establishes requirements that are  
8 substantially similar to the following:

9 (1) APPLICATION FOR EXTREME RISK PROTEC-  
10 TION ORDER.—A petitioner, including a law enforce-  
11 ment officer, may submit an application to a State  
12 or Tribal court, on a form designed by the court or  
13 a State or Tribal agency, that—

14 (A) describes the facts and circumstances  
15 justifying that an extreme risk protection order  
16 be issued against the named individual; and

17 (B) is signed by the applicant, under oath.

18 (2) NOTICE.—The individual named in an ap-  
19 plication for an extreme risk protection order as de-  
20 scribed in paragraph (1) shall be given written no-  
21 tice of the application and an opportunity to be  
22 heard on the matter in accordance with this section.

23 (3) ISSUANCE OF EXTREME RISK PROTECTION  
24 ORDERS.—

25 (A) HEARING.—

1 (i) IN GENERAL.—Upon receipt of an  
2 application described in paragraph (1), the  
3 court shall order a hearing to be held not  
4 later than 30 days after the date of such  
5 application.

6 (ii) DETERMINATION.—If the court  
7 finds by a preponderance of the evidence  
8 that the respondent poses a danger of  
9 causing harm to himself, herself, or others  
10 by having access to a firearm, the court  
11 may issue an extreme risk protection  
12 order.

13 (B) LENGTH OF EXTREME RISK PROTEC-  
14 TION ORDER.—An extreme risk protection order  
15 shall be in effect for a period not to exceed 1  
16 year, unless renewed.

17 (4) EX PARTE EXTREME RISK PROTECTION OR-  
18 DERS.—

19 (A) IN GENERAL.—Upon receipt of an ap-  
20 plication described in paragraph (1), the court  
21 may issue an ex parte extreme risk protection  
22 order before conducting the hearing required  
23 under paragraph (3), if—

24 (i) the application for an extreme risk  
25 protection order alleges that the respond-



1 ent poses a danger of causing harm to  
2 himself, herself, or others in the near fu-  
3 ture by having access to a firearm; and

4 (ii) the court finds there is reasonable  
5 cause to believe that the respondent poses  
6 a danger of causing harm to himself, her-  
7 self, or others in the near future by having  
8 access to a firearm.

9 (B) LENGTH OF EX PARTE EXTREME RISK  
10 PROTECTION ORDER.—An ex parte extreme risk  
11 protection order shall be in effect for a period  
12 not to exceed 30 days, unless continued for  
13 good cause.

14 (5) STORAGE OF REMOVED FIREARMS.—All  
15 firearms removed or surrendered pursuant to an ex-  
16 treme risk protection order shall be retained by a  
17 law enforcement officer or a law enforcement agency  
18 until the named individual regains his or her eligi-  
19 bility to possess firearms, except that the legislation  
20 may authorize a law enforcement agency to—

21 (A) contract with a manufacturer, dealer,  
22 or importer licensed under chapter 44 of title  
23 18, United States Code, for the secure storage  
24 of firearms; and

1 (B) transfer the firearm upon proof that  
2 the named individual will no longer have access  
3 to the firearm.

4 (6) NOTIFICATION.—

5 (A) IN GENERAL.—A State or tribal court  
6 that issues an extreme risk protection order  
7 shall notify the Department of Justice or the  
8 comparable State or Tribal agency, as applica-  
9 ble, of the order as soon as practicable. Such  
10 notice shall be submitted in an electronic for-  
11 mat, in a manner prescribed by the Department  
12 of Justice or the comparable State or Tribal  
13 agency.

14 (B) UPDATE OF DATABASES.—As soon as  
15 practicable after receiving a notification under  
16 subparagraph (A), the Department of Justice  
17 or the comparable State or Tribal agency shall  
18 ensure the extreme risk protection order is re-  
19 flected in the National Instant Criminal Back-  
20 ground Check System.

21 (7) CONFIDENTIALITY PROTECTIONS.—All per-  
22 sonally identifiable information provided to the  
23 court, the Department of Justice, and comparable  
24 State or Tribal agencies shall be kept confidential,  
25 except as necessary to carry out the legislation.

1 (b) ADDITIONAL AUTHORITIES.—Legislation de-  
2 scribed in this section may—

3 (1) provide procedures for the termination of an  
4 extreme risk protection order;

5 (2) provide procedures for the renewal of an ex-  
6 treme risk protection order;

7 (3) establish burdens of proof for issuance of  
8 orders described in paragraphs (3) and (4) of sub-  
9 section (a) that are higher than the burdens of proof  
10 required under those paragraphs; and

11 (4) limit the individuals who may submit an ap-  
12 plication described in subsection (a)(1), provided  
13 that, at a minimum, law enforcement officers are  
14 authorized to do so.

15 **SEC. 5. FEDERAL FIREARMS PROHIBITION.**

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

18 (1) in subsection (d)—

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

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

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

1           “(10) is subject to a court order that prohibits  
2 such person from having under his or her custody or  
3 control, owning, purchasing, possessing, or receiving  
4 any firearms, or requires the surrender or removal  
5 of firearms from the person, provided that the  
6 order—

7           “(A) is issued in a manner consistent with  
8 the due process rights of the person; and

9           “(B) is based on a finding that the person  
10 poses a danger of causing harm to himself, her-  
11 self, or others by having access to a firearm.”;  
12 and

13 (2) in subsection (g)—

14           (A) in paragraph (8)(C)(ii), by striking  
15 “or” at the end;

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

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

20           “(10) is subject to a court order that prohibits  
21 such person from having under his or her custody or  
22 control, owning, purchasing, possessing, or receiving  
23 any firearms, or requires the surrender or removal  
24 of firearms from the person, provided that the  
25 order—

1           “(A) is issued in a manner consistent with  
2           the due process rights of the person; and

3           “(B) is based on a finding that the person  
4           poses a danger of causing harm to himself, her-  
5           self, or others by having access to a firearm,”.

6 **SEC. 6. CONFORMING AMENDMENT.**

7           Section 3(1) of the NICS Improvement Amendments  
8 Act of 2007 (34 U.S.C. 40903(1)) is amended by striking  
9 “section 922(g)(8)” and inserting “paragraph (8) or (10)  
10 of section 922(g)”.

11 **SEC. 7. FULL FAITH AND CREDIT.**

12           Any extreme risk protection order issued under a  
13 State or Tribal law enacted in accordance with this Act  
14 shall be accorded the same full faith and credit by the  
15 court of another State or Indian Tribe (the enforcing  
16 State or Indian Tribe) and enforced by the court and law  
17 enforcement personnel of the other State or Tribal govern-  
18 ment as if it were the order of the enforcing State or  
19 Tribe.

20 **SEC. 8. SEVERABILITY.**

21           If any provision of this Act, or an amendment made  
22 by this Act, or the application of such provision to any  
23 person or circumstance, is held to be invalid, the remain-  
24 der of this Act, or an amendment made by this Act, or

- 1 the application of such provision to other persons or cir-
- 2 cumstances, shall not be affected.

○