

.....
(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

To authorize the issuance of extreme risk protection orders.

IN THE HOUSE OF REPRESENTATIVES

Mrs. MCBATH introduced the following bill; which was referred to the
Committee on _____

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 2019”.

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:

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

2 “(a) DEFINITIONS.—In this section—

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

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

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

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

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

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

24 “(B) dating partner of the respondent;

1 “(C) individual who has a child in common
2 with the respondent, regardless of whether the
3 individual has—

4 “(i) been married to the respondent;
5 or

6 “(ii) lived together with the respond-
7 ent at any time;

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

10 “(E) domestic partner of the respondent;

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

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

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

23 “(A) by law or by a government agency to
24 engage in or supervise the prevention, detection,

1 or investigation of any violation of criminal law;

2 or

3 “(B) by law to supervise sentenced crimi-
4 nal offenders;

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

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

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

18 “(b) PETITION.—

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

1 “(2) NO FEES.—A court may not charge a peti-
2 tioner any fee for filing a petition under paragraph
3 (1).

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

8 “(c) EX PARTE ORDERS.—

9 “(1) TIMING.—

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

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

23 “(2) EVIDENCE REQUIRED.—Before issuing an
24 ex parte order, a court shall require that the peti-

1 petitioner submit a signed affidavit, sworn to before the
2 court, that—

3 “(A) explains why the petitioner believes
4 that the respondent poses a risk of imminent
5 personal injury to himself or herself, or another
6 individual, by purchasing, possessing, or receiv-
7 ing a firearm or ammunition; and

8 “(B) describes the interactions and con-
9 versations of the petitioner with—

10 “(i) the respondent; or

11 “(ii) another individual, if the peti-
12 tioner believes that information obtained
13 from that individual is credible and reli-
14 able.

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

18 “(A) the respondent poses a risk of immi-
19 nent personal injury to himself or herself, or
20 another individual, by purchasing, possessing,
21 or receiving a firearm or ammunition; and

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

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

1 “(A) the date that is 14 days after the
2 date of issuance; or

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

6 “(d) LONG-TERM ORDERS.—

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

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

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

21 “(B) if the respondent waives the right to
22 a hearing under subparagraph (A) or the court
23 does not issue an ex parte order, not later than
24 14 days after the date on which the court re-
25 ceives the petition.

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

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

8 “(B) RIGHT TO COUNSEL.—

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

12 “(I) chosen by the respondent;

13 and

14 “(II) authorized to practice at
15 such a hearing.

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

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

1 “(A) shall have the burden of proving all
2 material facts; and

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

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

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

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

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

23 “(6) RENEWAL.—

24 “(A) NOTICE OF SCHEDULED EXPIRA-
25 TION.—Thirty days before the date on which a

1 long-term order is scheduled to expire, the court
2 that issued the order shall—

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

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

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

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

23 “(D) APPLICABLE PROCEDURES.—The re-
24 quirements under paragraphs (2) through (5)
25 shall apply to the consideration of a petition for

1 a renewed long-term order submitted under
2 subparagraph (B) of this paragraph.

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

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

12 “(1) shall consider factors including—

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

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

19 “(C) recent acts of cruelty to animals by
20 the respondent; and

21 “(D) evidence of—

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

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

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

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

6 “(B) a history of violence or attempted vio-
7 lence by the respondent against other individ-
8 uals; and

9 “(C) prior involuntary confinement of the
10 respondent in a hospital for individuals with
11 psychiatric disabilities.

12 “(f) RELINQUISHMENT OF FIREARMS AND AMMUNI-
13 TION.—

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

22 “(A) the United States Marshals Service;
23 or

24 “(B) a designated law enforcement officer.

25 “(2) SURRENDER AND REMOVAL.—

1 “(A) MANNER OF SERVICE.—

2 “(i) PERSONAL SERVICE.—Except as
3 provided in clause (ii), a United States
4 marshal or designated law enforcement of-
5 ficer shall serve an extreme risk protection
6 order on a respondent by handing the
7 order to the respondent.

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

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

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

1 “(I) be immediately surrendered
2 to the United States marshal or des-
3 ignated law enforcement officer; or

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

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

13 “(I) surrendered;

14 “(II) in plain sight; or

15 “(III) discovered pursuant to a
16 lawful search.

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

1 United States marshal or designated law en-
2 forcement officer not later than 48 hours after
3 being served with the order.

4 “(3) RECEIPT.—

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

11 “(i) issue a receipt identifying all fire-
12 arms, ammunition, and permits that have
13 been surrendered or removed; and

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

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

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

1 “(ii) ensure that the United States
2 Marshals Service retains a copy of the re-
3 ceipt.

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

11 “(4) FORFEITURE.—If a respondent knowingly
12 attempts, in violation of an extreme risk protection
13 order, to access a firearm, ammunition, or a permit
14 that was surrendered or removed under this sub-
15 section, the firearm, ammunition, or permit shall be
16 subject to seizure and forfeiture under section
17 924(d).

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

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

23 “(A) confirm, through the national instant
24 criminal background check system and any
25 other relevant law enforcement databases, that

1 the respondent may lawfully own and possess
2 firearms and ammunition; and

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

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

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

1 dered by or removed from the respondent under sub-
2 section (f) to return those items to the respondent.

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

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

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

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

25 “(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 2019, 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.