

# HOUSE BILL No. 4706

June 7, 2017, Introduced by Reps. Wittenberg, Hoadley and Chang and referred to the Committee on Judiciary.

A bill to provide for the issuance of restraining orders prohibiting certain individuals from possessing or purchasing firearms and ordering the seizure of a restrained individual's firearms; to provide for the powers and duties of certain state and local governmental officers and entities; to prescribe penalties; and to provide remedies.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "extreme risk protection order act".

3       Sec. 3. As used in this act:

4       (a) "C.J.I.S. policy council act" means the C.J.I.S. policy  
5 council act, 1974 PA 163, MCL 28.211 to 28.215.

6       (b) "Dating relationship" means a relationship that consists  
7 of frequent, intimate associations primarily characterized by the

1 expectation of affectional involvement. Dating relationship does  
2 not include a casual relationship or an ordinary fraternization  
3 between 2 individuals in a business or social context.

4 (c) "Defendant" means the person against whom an extreme risk  
5 protection order is requested in an action under section 5.

6 (d) "Extreme risk protection order" means an order issued by a  
7 court under section 9.

8 (e) "Family member" means an individual who is related to the  
9 defendant as any of the following:

10 (i) A parent.

11 (ii) A son or daughter.

12 (iii) A sibling.

13 (iv) A grandparent.

14 (v) A grandchild.

15 (vi) An uncle or aunt.

16 (vii) A first cousin.

17 (f) "Federal law enforcement officer" means an officer or  
18 agent employed by a law enforcement agency of the United States  
19 government whose primary responsibility is the enforcement of laws  
20 of the United States.

21 (g) "Law enforcement officer" means an individual who is any  
22 of the following:

23 (i) A police officer certified under the Michigan commission  
24 on law enforcement standards act, 1965 PA 203, MCL 28.601 to  
25 28.615.

26 (ii) A sheriff.

27 (iii) A deputy sheriff.

1 (iv) A member of the department of state police.

2 (v) A federal law enforcement officer.

3 (h) "Plaintiff" means the individual who requests an extreme  
4 risk protection order in an action under section 5.

5 (i) "Restrained individual" means the individual against whom  
6 an extreme risk protection order has been issued and is in effect.

7 Sec. 5. (1) An individual described in subsection (2) may file  
8 an action with the circuit court requesting the court to enter an  
9 extreme risk protection order.

10 (2) Any of the following may file an action under this  
11 section:

12 (a) The spouse of the defendant.

13 (b) A former spouse of the defendant.

14 (c) An individual who has a child in common with the  
15 defendant.

16 (d) An individual who has or has had a dating relationship  
17 with the defendant.

18 (e) An individual who resides or has resided in the same  
19 household with the individual.

20 (f) A family member.

21 (g) Another individual who has a close relationship with the  
22 defendant. If the plaintiff files a complaint under this  
23 subdivision, the plaintiff shall state in the complaint sufficient  
24 facts to allow the court to determine whether the individual has a  
25 close relationship with the defendant.

26 (h) A law enforcement officer.

27 (3) An individual who files an action under this section shall

1 do so by filing a summons and complaint on forms approved by the  
2 state court administrative office as directed by the supreme court.  
3 The complaint must state facts that show that issuance of an  
4 extreme risk protection order is necessary because the defendant  
5 poses a significant risk of personal injury to himself or herself  
6 or others by possessing a firearm.

7 (4) If the plaintiff knows that the defendant is issued a  
8 license to carry a concealed weapon and is required to carry a  
9 weapon as a condition of his or her employment, a law enforcement  
10 officer, a local corrections officer, or an employee of the  
11 department of corrections, who carries a firearm during the normal  
12 course of his or her employment, the plaintiff shall state that in  
13 the complaint.

14 (5) If the plaintiff requests the court to issue an order  
15 seizing firearms owned by the defendant, the plaintiff shall  
16 identify the firearms that the plaintiff knows are in the  
17 possession of the defendant.

18 Sec. 7. (1) In an action under section 5, the court may issue  
19 an extreme risk protection order if the court determines that there  
20 is reasonable cause to believe that the defendant poses a  
21 significant risk of personal injury to himself or herself or others  
22 by possessing a firearm. In determining whether reasonable cause  
23 exists, the court shall consider all of the following:

24 (a) Testimony, documents, or other evidence offered in support  
25 of the request for the extreme risk protection order.

26 (b) Whether the defendant has previously inflicted or  
27 threatened to inflict personal injury on himself or herself or

1 others.

2 (c) Any other facts that the court believes are relevant.

3 (2) If the plaintiff in an action filed under section 5 is an  
4 individual described in section 5(2)(g), the court shall not issue  
5 the extreme risk protection order unless the court determines that  
6 the plaintiff has a close enough relationship with the defendant to  
7 justify the issuance of the order.

8 (3) The court in an action under section 5 may issue an  
9 extreme risk protection order without written or oral notice to the  
10 defendant if the court determines that clear and convincing  
11 evidence has been submitted under oath or affirmation that  
12 irreparable injury will result from the delay required to  
13 effectuate notice or that the notice will itself precipitate  
14 adverse action before an extreme risk protection order can be  
15 issued.

16 (4) A restrained individual under an order issued under  
17 subsection (3) may file a motion to modify or rescind the order and  
18 request a hearing under supreme court rules. The motion to modify  
19 or rescind the order must be filed within 14 days after the order  
20 is served on the restrained individual or after the restrained  
21 individual receives actual notice of the order, unless good cause  
22 is shown for filing the motion after the 14 days have elapsed.

23 (5) The court shall conduct a hearing on a motion under  
24 subsection (4) within 14 days after the motion is filed. If the  
25 restrained individual is an individual described in section 5(4),  
26 the court shall conduct a hearing on a motion under subsection (4)  
27 within 5 days after the motion is filed.

1           Sec. 9. (1) If the court determines under section 7 that an  
2 extreme risk protection order should be issued, the court shall  
3 include all of the following provisions in the order:

4           (a) That the restrained individual shall not purchase or  
5 possess a firearm.

6           (b) If the order is issued under section 7(3), a statement  
7 that the restrained individual may file a motion to modify or  
8 rescind the order and request a hearing within 14 days after the  
9 restrained individual is served with or receives actual notice of  
10 the order and that motion forms and filing instructions are  
11 available from the clerk of the court.

12           (c) A designation of the law enforcement agency that is  
13 responsible for entering the order into the law enforcement  
14 information network as provided by the C.J.I.S. policy council act.

15           (d) A statement that violation of the order will subject the  
16 restrained individual to immediate arrest and the civil and  
17 criminal contempt powers of the court, and that if the restrained  
18 individual is found guilty of criminal contempt, he or she will be  
19 imprisoned for not more than 93 days and may be fined not more than  
20 \$500.00.

21           (e) An expiration date that is not more than 1 year from the  
22 date of issuance.

23           (2) In the discretion of the court, an extreme risk protection  
24 order may include an order to a law enforcement agency to seize  
25 firearms in the possession of the restrained individual. An order  
26 issued under this subsection must specifically describe the  
27 firearms to be seized. The court may also order that a law

1 enforcement agency seizing firearms under this subsection may seize  
2 any other firearms discovered that belong to or are in the  
3 possession of the restrained individual.

4 (3) An extreme risk protection order is effective and  
5 enforceable immediately after it is served on the restrained  
6 individual or after the restrained individual receives actual  
7 notice of the order. The order may be enforced anywhere in this  
8 state by a law enforcement agency that receives a true copy of the  
9 order, is shown a copy of it, or has verified its existence on the  
10 law enforcement information network as provided by the C.J.I.S.  
11 policy council act.

12 Sec. 11. The clerk of a court that issues an extreme risk  
13 protection order shall do all of the following immediately after  
14 issuance and without requiring a proof of service on the restrained  
15 individual:

16 (a) Provide a true copy of the order to the law enforcement  
17 agency designated under section 9(1)(c).

18 (b) Provide the plaintiff with at least 2 true copies of the  
19 order.

20 (c) If the restrained individual is identified in the  
21 complaint as an individual described in section 5(4), notify the  
22 individual's employer, if known, of the existence of the order.

23 (d) Notify the department of state police and the clerk of the  
24 restrained individual's county of residence of the existence of the  
25 order for purposes of performing their duties under 1927 PA 372,  
26 MCL 28.421 to 28.435.

27 (e) Inform the plaintiff that the plaintiff may take a true

1 copy of the order to the law enforcement agency designated under  
2 section 9(1)(c) to be immediately entered into the law enforcement  
3 information network.

4       Sec. 13. (1) An extreme risk protection order must be served  
5 on the restrained individual by any method allowed under Michigan  
6 court rules. If the restrained individual has not been served, a  
7 law enforcement officer or clerk of the court who knows that the  
8 order exists may, at any time, serve the restrained individual with  
9 a true copy of the order or advise the restrained individual of the  
10 existence of the order, the specific conduct enjoined, the  
11 penalties for violating the order, and where the restrained  
12 individual may obtain a copy of the order.

13       (2) The person who serves an extreme risk protection order or  
14 gives oral notice of the order shall file proof of service or proof  
15 of oral notice with the clerk of the court that issued the order.  
16 The clerk of the court shall immediately notify the law enforcement  
17 agency designated under section 9(1)(c) if either of the following  
18 occurs:

19       (a) The clerk of the court receives proof that the restrained  
20 individual has been served.

21       (b) The order is rescinded, modified, or extended.

22       Sec. 15. (1) A law enforcement agency designated in an extreme  
23 risk protection order under section 9(1)(c) that receives a true  
24 copy of the order shall immediately and without requiring proof of  
25 service enter the order into the law enforcement information  
26 network as provided by the C.J.I.S. policy council act.

27       (2) A law enforcement agency that receives information under



1 section 13(2) shall enter the information into the law enforcement  
2 information network as provided by the C.J.I.S. policy council act.

3 (3) If an extreme risk protection order has not been served on  
4 the restrained individual, a law enforcement agency or officer  
5 responding to a call alleging a violation of the order shall serve  
6 the restrained individual with a true copy of the order or advise  
7 the restrained individual of the existence of the order, the  
8 specific conduct enjoined, the penalties for violating the order,  
9 and where the restrained individual may obtain a copy of the order.  
10 Subject to subsection (4), the law enforcement officer shall  
11 enforce the order and immediately enter or cause to be entered into  
12 the law enforcement information network that the restrained  
13 individual has actual notice of the order. The law enforcement  
14 officer also shall comply with section 13(2).

15 (4) In the circumstances described in subsection (3), the law  
16 enforcement officer shall give the restrained individual an  
17 opportunity to comply with the extreme risk protection order before  
18 the law enforcement officer makes a custodial arrest for violation  
19 of the order. The failure by the restrained individual to  
20 immediately comply with the order is grounds for an immediate  
21 custodial arrest. This subsection does not preclude an arrest under  
22 section 15 or 15a of chapter IV of the code of criminal procedure,  
23 1927 PA 175, MCL 764.15 and 764.15a.

24 (5) The law enforcement agency ordered to seize a firearm  
25 under section 9(2) may seize a firearm identified in the order from  
26 any place or from any individual who has possession of the firearm.  
27 The law enforcement agency may also seize any other firearms

1 discovered that are owned by or in the possession of the restrained  
2 individual if so provided in the extreme risk protection order, or  
3 if allowed under other applicable law.

4 (6) A law enforcement officer who seizes a firearm under  
5 subsection (5) shall give a receipt for the firearm to the  
6 individual from whom it was taken, specifying the firearm in  
7 detail. If no individual is present at the time of seizure, the  
8 officer shall leave the receipt in the place where he or she found  
9 the firearm.

10 (7) The law enforcement agency that seizes a firearm under  
11 subsection (5) shall retain the firearm subject to order of the  
12 court that issued the extreme risk protection order under which the  
13 firearm was seized. In addition to any other order that the court  
14 determines is appropriate, the court shall order that the firearm  
15 be returned to the restrained individual when the restrained  
16 individual is no longer prohibited from owning a firearm or that  
17 the firearm be transferred to a licensed firearm dealer if the  
18 restrained individual sells or transfers ownership of the firearm  
19 to the dealer.

20 (8) If the location to be searched during the seizure of a  
21 firearm under subsection (5) is jointly occupied by multiple  
22 individuals, a firearm is located during the search, and it is  
23 determined that the firearm is owned by an individual other than  
24 the restrained individual, the law enforcement agency shall not  
25 seize the firearm if all of the following conditions are satisfied:

26 (a) The firearm is stored so that the restrained individual  
27 does not have access to or control of the firearm.

1 (b) There is no evidence of unlawful possession of the firearm  
2 by the owner.

3 (9) If the location to be searched during the seizure of a  
4 firearm under subsection (5) is jointly occupied by multiple  
5 individuals, a gun safe is located at the location, it is  
6 determined that the gun safe is owned by an individual other than  
7 the restrained individual, and a valid search warrant has not been  
8 obtained, the law enforcement agency shall not search the gun safe  
9 except in the owner's presence or with the owner's consent.

10 (10) If any individual other than the restrained individual  
11 claims title to a firearm seized under subsection (5), the firearm  
12 must be returned to the claimant if the court determines that the  
13 claimant is the lawful owner.

14 Sec. 17. The plaintiff may move the court to issue, or the  
15 court on its own motion may issue, 1 or more extended extreme risk  
16 protection orders, each effective for up to 1 year after the  
17 expiration of the preceding order. The court shall only issue an  
18 extended order if there is probable cause to believe that the  
19 restrained individual continues to pose a significant risk of  
20 personal injury to himself or herself or others by possessing a  
21 firearm. The plaintiff or the court, as applicable, shall give the  
22 restrained individual written notice of a hearing on a motion to  
23 extend the order.

24 Sec. 19. (1) An individual who refuses or fails to comply with  
25 an extreme risk protection order is subject to the criminal  
26 contempt powers of the court and, if found guilty, may be  
27 imprisoned for not more than 93 days or may be fined not more than

1 \$500.00, or both. The criminal penalty provided for under this  
2 section may be imposed in addition to a penalty imposed for another  
3 criminal offense arising from the same conduct.

4 (2) An extreme risk protection order may also be enforced  
5 under chapter 17 of the revised judicature act of 1961, 1961 PA  
6 236, MCL 600.1701 to 600.1745.

7 (3) A plaintiff who knowingly and intentionally makes a false  
8 statement to the court in the complaint or in support of the  
9 complaint is subject to the contempt powers of the court.

10 Enacting section 1. This act does not take effect unless  
11 Senate Bill No. \_\_\_\_ or House Bill No. 4707 (request no. 01604'17 a  
12 \*\*) of the 99th Legislature is enacted into law.