

SB126 INTRODUCED



1 8T6M2H-1
2 By Senator Coleman
3 RFD: Judiciary
4 First Read: 22-Mar-23
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SYNOPSIS:

This bill would establish the Gun Violence Protective Order Act.

This bill would authorize courts to issue ex parte gun violence protective orders and one-year gun violence protective orders, which may be authorized if the court finds that the respondent, as defined, poses an immediate and present danger of causing personal injury to self or others.

This bill would provide that upon the issuance of an ex parte or one-year gun violence protective order, the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition of which the respondent has custody, control, ownership, or possession.

This bill would provide for the renewal or early termination of a one-year gun violence protective order under certain conditions.

This bill would provide criminal penalties for a violation.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3



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29 vote unless: it comes within one of a number of
30 specified exceptions; it is approved by the affected
31 entity; or the Legislature appropriates funds, or
32 provides a local source of revenue, to the entity for
33 the purpose.

34 The purpose or effect of this bill would be to
35 require a new or increased expenditure of local funds
36 within the meaning of the amendment. However, the bill
37 does not require approval of a local governmental
38 entity or enactment by a 2/3 vote to become effective
39 because it comes within one of the specified exceptions
40 contained in the amendment.

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A BILL

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TO BE ENTITLED

45

AN ACT

46

47 Relating to firearms; to establish the Gun Violence
48 Protective Order Act; to provide for the issuance of ex parte
49 gun violence protective orders and one-year gun violence
50 protective orders; to require the surrender of all firearms
51 and ammunition of a person subject to an ex parte gun violence
52 protective order or one-year gun violence protective order; to
53 provide for the renewal or early termination of an order; to
54 provide criminal penalties for a violation; and in connection
55 therewith would have as its purpose or effect the requirement
56 of a new or increased expenditure of local funds within the



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57 meaning of Section 111.05 of the Constitution of Alabama of
58 2022.

59 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

60 Section 1. This act shall be known and may be cited as
61 the Gun Violence Protective Order Act.

62 Section 2. The Legislature finds and declares the
63 following:

64 (1) Over 100,000 people become victims of a gunshot
65 wound each year and more than 30,000 of those victims lose
66 their lives.

67 (2) Federal law prohibits any individual subject to
68 certain domestic violence restraining orders from purchasing
69 or possessing firearms. Many states have similar laws. About
70 half of the states also authorize or require a court that is
71 issuing a domestic violence protective order to require the
72 abuser to surrender firearms that he or she may already have
73 in his or her possession. This act is modeled on existing
74 domestic violence laws that have firearms surrender
75 provisions.

76 (3) Studies have shown that an individual who engages
77 in certain dangerous behaviors is significantly more likely to
78 commit an act of violence toward himself or herself or others
79 in the near future. These behaviors, which might include other
80 acts or threats of violence, self-harm, or the abuse of drugs
81 or alcohol, serve as warning signs that the individual might
82 soon commit an act of violence.

83 (4) Under federal law, an individual suffering from
84 mental illness is not prohibited from purchasing or possessing



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85 a firearm unless he or she has been involuntarily committed to
86 a mental institution, found not guilty of a crime by reason of
87 insanity, or undergone some other formalized court proceeding
88 regarding his or her mental illness. Similarly, an individual
89 who has committed a violent act toward another is not
90 prohibited from possessing a firearm under federal law until
91 after he or she has been convicted of a felony or domestic
92 violence misdemeanor.

93 (5) It is the purpose and intent of the Legislature to
94 reduce firearm deaths and injuries by providing a formal court
95 procedure that law enforcement officers, teachers, and family
96 members may use to obtain a court order that prevents an
97 individual who poses a significant danger of causing personal
98 injury to self or others from gaining access to firearms and
99 ammunition. The Legislature intends for these court orders to
100 be limited to situations in which the individual poses a
101 significant danger of causing personal injury to self or
102 others by owning, purchasing, controlling, possessing, or
103 receiving a firearm or ammunition.

104 Section 3. The following terms have the following
105 meanings:

106 (1) EX PARTE GUN VIOLENCE PROTECTIVE ORDER. An order
107 issued by a court, pursuant to Section 5, that prohibits the
108 respondent from owning, purchasing, controlling, possessing,
109 or receiving firearms or ammunition until a court-scheduled
110 hearing for a one-year gun violence protective order.

111 (2) FAMILY MEMBER. An individual related by blood,
112 marriage, or adoption to the respondent, current or former



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113 dating partner of the respondent, and any individual who
114 resides or has resided with the respondent, or who is acting
115 or has acted as the respondent's legal guardian.

116 (3) FIREARM. A weapon from which a shot is discharged
117 by gun powder.

118 (4) ONE-YEAR GUN VIOLENCE PROTECTIVE ORDER. An order
119 issued by a court, pursuant to Section 6, prohibiting the
120 respondent from owning, purchasing, controlling, possessing,
121 or receiving guns or ammunition for a period of one year.

122 (5) PETITIONER. A law enforcement officer, teacher, or
123 family member of the respondent who files a petition pursuant
124 to Section 4.

125 (6) RESPONDENT. The individual identified in the
126 petition filed under Section 5 or Section 6.

127 (7) TEACHER. A teacher, school administrator, school
128 counselor, college professor, student teacher, safety or
129 resource officer, or coach of the respondent.

130 Section 4. (a) A petitioner may seek a gun violence
131 protective order by filing a verified petition on a form
132 approved by the Administrative Office of Courts in the court
133 of the county where the respondent resides.

134 (b) The petition shall set forth the grounds for the
135 issuance of the order and shall describe the number, types,
136 and locations of any firearms or ammunition presently believed
137 by the petitioner to be possessed or controlled by the
138 respondent. The petition shall also state whether there is an
139 existing domestic violence protective order in effect
140 governing the respondent and whether there is any pending



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141 lawsuit, complaint, petition, or other action between the
142 parties under the laws of this state. The court administrator
143 shall verify the terms of any existing order governing the
144 parties. The court may not delay granting relief because of
145 the existence of a pending action between the parties or the
146 necessity of verifying the terms of an existing order. A
147 petition for a gun violence protective order may be granted
148 whether or not there is a pending action between the parties.

149 (c) If the respondent is alleged to pose an immediate
150 and present danger of causing personal injury to a family
151 member, or a family member is alleged to have been the target
152 of a threat or act of violence by the respondent, the
153 petitioner shall make a good faith effort to provide notice to
154 any and all adult family members of the respondent. The notice
155 must state that the petitioner intends to petition the court
156 for a gun violence protective order, and, if the petitioner is
157 a law enforcement officer, must also include a referral to
158 relevant domestic violence or stalking advocacy or counseling
159 resources, if appropriate. The petitioner shall attest to
160 having provided the notice in the verified petition. If the
161 petitioner is unable to provide notice to any or all adult
162 family members of the respondent, the verified petition shall
163 describe what good faith efforts were made.

164 (d) All health records and other health information
165 provided in a petition or considered as evidence in a
166 proceeding under this act shall be protected from public
167 disclosure to the extent the information identifies a
168 respondent or petitioner, except that the information may be



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169 provided to law enforcement agencies as set forth in Section
170 10. Aggregate statistical data about the numbers of gun
171 violence protective orders issued, renewed, denied, dissolved,
172 or terminated shall be available to the public upon request.

173 (e) Upon receipt of the petition, the court shall set a
174 date for a hearing within 14 calendar days, regardless of
175 whether the court issues an ex parte gun violence protective
176 order. If the court issues an ex parte gun violence protective
177 order, notice of the hearing shall be served on the respondent
178 with the ex parte order. Notice of the hearing shall be
179 personally served on the respondent by a law enforcement
180 officer.

181 (f) The Administrative Office of Courts shall prescribe
182 the form of the petitions, orders, and any other documents and
183 shall adopt any rules of court necessary for the
184 implementation of this act.

185 Section 5. (a) A petitioner may request that an ex
186 parte order be issued prior to a hearing for a one-year gun
187 violence protective order, without notice to the respondent,
188 by including in the petition detailed allegations based on
189 personal knowledge that the respondent poses an immediate and
190 present danger of causing personal injury to self or others
191 through his or her ownership, purchase, control, possession,
192 or receipt of a firearm or ammunition.

193 (b) The court shall issue or deny an ex parte gun
194 violence protective order on the same day that the petition is
195 submitted to the court, unless the petition is filed too late
196 in the day to allow for its effective review, in which case



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197 the order shall be issued or denied on the next business day.

198 (c) Before issuing an ex parte gun violence protective
199 order, the court shall examine under oath the petitioner and
200 any witnesses the petitioner may produce. The court may also
201 do the following:

202 (1) Ensure that a reasonable search has been conducted
203 of all available records to determine whether the respondent
204 owns any firearms or ammunition.

205 (2) Ensure that a reasonable search has been conducted
206 for criminal history records related to the respondent.

207 (d) In determining whether grounds for an ex parte gun
208 violence protective order exists, the court shall consider all
209 relevant evidence presented by the petitioner, and may also
210 consider other relevant evidence, including, but not limited
211 to, evidence of the occurrence of any of the following events
212 by the respondent:

213 (1) Unlawful, reckless, or negligent use, display,
214 storage, possession, or brandishing of a firearm.

215 (2) Act or threat of violence against self or another,
216 whether or not the violence involved a firearm.

217 (3) Violation of a protective order issued under
218 Chapter 5 or Chapter 5B of Title 30 of the Code of Alabama
219 1975, or a similar law in another state.

220 (4) Abuse of controlled substances or alcohol or any
221 criminal offense that involves controlled substances or
222 alcohol.

223 (5) The recent acquisition of firearms, ammunition, or
224 other deadly weapons.



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225 (e) The court shall also consider the time that has
226 elapsed since the occurrence of any event described in
227 subsection (d).

228 (f) If a court finds reasonable cause to believe that
229 the respondent poses an immediate and present danger of
230 causing personal injury to self or others by owning,
231 purchasing, controlling, possessing, or receiving a firearm or
232 ammunition, the court shall issue an ex parte gun violence
233 protective order.

234 (g) An ex parte gun violence protective order shall
235 include all of the following:

236 (1) A statement that the respondent may not own,
237 purchase, control, possess, or receive, or attempt to purchase
238 or receive, a firearm or ammunition while the order is in
239 effect.

240 (2) A description of the requirements for
241 relinquishment of firearms and ammunition under Section 8.

242 (3) A statement of the grounds asserted for the order.

243 (4) A notice of the hearing under subsection (e) of
244 Section 4 to determine whether to issue a one-year gun
245 violence protective order, including the address of the court
246 and the date and time for when the hearing is scheduled.

247 (5) A statement that the court may extend the order by
248 one year at the hearing.

249 (6) A statement that the respondent may seek the advice
250 of an attorney as to any matter connected with the order, and
251 that the attorney should be consulted promptly so that the
252 attorney may assist the individual in any matter connected



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253 with the order.

254 (h) An ex parte gun violence protective order shall be
255 personally served on the respondent by a law enforcement
256 officer.

257 (i) In accordance with subsection (e) of Section 4, the
258 court shall schedule a hearing within 14 calendar days of the
259 issuance of an ex parte gun violence protective order to
260 determine if a one-year gun violence protective order shall be
261 issued; provided, however, that a respondent may seek an
262 extension of time before the hearing. The court shall dissolve
263 any ex parte gun violence protective order in effect against
264 the respondent when the court holds the hearing.

265 Section 6. (a) A petitioner requesting a one-year gun
266 violence protective order shall include in the petition
267 detailed allegations based on personal knowledge that the
268 respondent poses a substantial danger of causing personal
269 injury to self or others through his or her ownership,
270 purchase, control, possession, or receipt of a firearm or
271 ammunition.

272 (b) Prior to a hearing for a one-year gun violence
273 protective order, the court shall do both of the following:

274 (1) Ensure that a reasonable search has been conducted
275 of all available records to determine whether the respondent
276 owns any firearms or ammunition.

277 (2) Ensure that a reasonable search has been conducted
278 for criminal history records related to the respondent.

279 (c) In determining whether to issue a one-year gun
280 violence protective order under this section, the court shall



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281 consider all relevant evidence presented by the petitioner and
282 may also consider other relevant evidence, including, but not
283 limited to, evidence of events identified in subsection (d) of
284 Section 5.

285 (d) If the court finds by a preponderance of the
286 evidence at the hearing that the respondent poses a
287 substantial danger of personal injury to self or others
288 through his or her ownership, purchase, control, possession,
289 or receipt of a firearm or ammunition, the court shall issue a
290 one-year gun violence protective order.

291 (e) A one-year gun violence protective order issued
292 under this section shall include all of the following:

293 (1) A statement that the respondent may not own,
294 possess, control, purchase, or receive, or attempt to purchase
295 or receive, a firearm or ammunition while the order is in
296 effect.

297 (2) A description of the requirements for
298 relinquishment of firearms and ammunition under Section 8.

299 (3) A statement of the grounds supporting the issuance
300 of the order.

301 (4) The date and time the order expires.

302 (5) The address of the court that issued the order.

303 (6) A statement that the respondent shall have the
304 right to request one hearing to terminate the order at any
305 time during its effective period.

306 (7) A statement that the respondent may seek the advice
307 of an attorney as to any matter connected with the order.

308 (f) If the respondent fails to appear at the hearing



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309 and the court determines that a one-year gun violence
310 protective order shall be issued, the order shall be
311 personally served on the respondent by a law enforcement
312 officer.

313 Section 7. (a) A respondent subject to a one-year gun
314 violence protective order may submit one written request at
315 any time during the effective period of the order for a
316 hearing to terminate the order.

317 (1) Upon receipt of the request for termination, the
318 court shall set a date for a hearing. Notice of the request
319 shall be served on the petitioner in accordance with the
320 Alabama Rules of Civil Procedure. The hearing shall occur no
321 sooner than 14 calendar days from the date of service of the
322 request upon the petitioner.

323 (2) The respondent seeking termination of the order
324 shall have the burden of proving by a preponderance of the
325 evidence that the respondent does not pose a substantial
326 danger of causing personal injury to self or others through
327 his or her ownership, purchase, control, possession, or
328 receipt of a firearm or ammunition.

329 (3) If the court finds that the respondent has met his
330 or her burden, the court shall terminate the order.

331 (b) A petitioner may request a renewal of a one-year
332 gun violence protective order at any time within the three
333 months before the expiration of the order.

334 (1) A court, after notice and a hearing, may renew the
335 one-year gun violence protective order if the court, by a
336 preponderance of the evidence, finds that the respondent



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337 continues to pose a substantial danger of causing personal
338 injury to self or another through his or her ownership,
339 purchase, control, possession, or receipt of a firearm or
340 ammunition.

341 (2) In determining whether to renew a one-year gun
342 violence protective order, the court shall consider all
343 relevant evidence presented by the petitioner, and may also
344 consider other relevant evidence, including, but not limited
345 to, evidence of the events identified in subsection (d) of
346 Section 5.

347 (3) A one-year gun violence protective order renewed
348 under this subsection shall expire after one year, subject to
349 termination by further order of the court at a hearing held
350 under subsection (a) and further renewal by order of the court
351 under this subsection.

352 Section 8. (a) Upon issuance of an ex parte or one-year
353 gun violence protective order, the court shall order the
354 respondent to surrender to the local law enforcement agency
355 all firearms and ammunition of which the respondent has
356 custody, control, or ownership.

357 (b) A law enforcement officer serving a gun violence
358 protective order shall request that all firearms and
359 ammunition belonging to or in the custody or control of the
360 respondent be immediately surrendered and shall take
361 possession of the firearms and ammunition that are
362 surrendered. A law enforcement officer serving a gun violence
363 protective order may conduct a lawful search for firearms and
364 ammunition.



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365 (c) At the time of surrender or removal, a law
366 enforcement officer taking possession of a firearm or
367 ammunition pursuant to a gun violence protective order shall
368 issue a receipt identifying all firearms and ammunition that
369 have been surrendered or removed and provide a copy of the
370 receipt to the respondent. Within 72 hours after serving the
371 order, the officer who served the order shall file the
372 original receipt with the court that issued the gun violence
373 protective order, and shall ensure that the law enforcement
374 agency retains a copy of the receipt.

375 (d) If a petitioner has probable cause to believe a
376 respondent to a gun violence protective order owns, controls,
377 or possesses a firearm or ammunition that the respondent has
378 failed to surrender pursuant to this section, or has received
379 or purchased a firearm or ammunition while subject to the
380 order, the petitioner may petition the court to issue a
381 warrant. The petition shall describe the firearm or ammunition
382 and where the firearm or ammunition is reasonably believed to
383 be located. The court may issue the warrant upon a finding of
384 probable cause.

385 (e) A law enforcement agency may charge the respondent
386 a fee not to exceed the reasonable and actual costs incurred
387 by the law enforcement agency for storing a firearm or
388 ammunition surrendered pursuant to this section for the
389 duration of the gun violence protective order and any
390 additional periods necessary under Section 7.

391 Section 9. (a) As used in this section, dispose means
392 to sell or transfer a firearm or ammunition to a federally



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393 licensed dealer, defined under 18 U.S.C. § 921 et seq., or to
394 destroy the firearm or ammunition.

395 (b) Thirty days before a one-year gun violence
396 protective order is set to expire, a law enforcement agency
397 holding a firearm or ammunition that has been surrendered
398 pursuant to the order shall notify the petitioner that the
399 order is set to expire. The notice shall advise the petitioner
400 of the procedures for seeking a renewal of the order pursuant
401 to Section 7.

402 (c) If a gun violence protective order is terminated or
403 expires and is not renewed, a law enforcement agency holding
404 any firearm or ammunition that has been surrendered pursuant
405 to Section 8 shall notify the respondent that he or she may
406 request the return of the firearm or ammunition. The law
407 enforcement agency shall return any surrendered firearms or
408 ammunition requested by a respondent only after confirming,
409 through a background check, that the respondent is currently
410 eligible to own or possess firearms and ammunition.

411 (d) A respondent who has surrendered a firearm or
412 ammunition to a law enforcement agency pursuant to Section 8
413 and who does not wish to have the firearm or ammunition
414 returned or who is no longer eligible to own or possess a
415 firearm or ammunition may sell or transfer title of the
416 firearm or ammunition to a licensed firearms dealer. The law
417 enforcement agency shall transfer possession of the firearm or
418 ammunition to a licensed firearms dealer only after the dealer
419 has displayed written proof of transfer of the firearm or
420 ammunition from the respondent to the dealer and the law



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421 enforcement agency has verified the transfer.

422 (e) If an individual other than the respondent claims
423 title to a firearm or ammunition surrendered pursuant to
424 Section 8, and the individual is determined by the law
425 enforcement agency to be the lawful owner of the firearm or
426 ammunition, the gun or ammunition shall be returned to him or
427 her.

428 (f) A law enforcement agency holding a firearm or
429 ammunition that was surrendered by a respondent pursuant to
430 Section 8 may dispose of the firearm or ammunition only after
431 six months from the date of proper notice to the respondent of
432 the intent to dispose of the firearm or ammunition, unless the
433 firearm or ammunition has been claimed by the lawful owner. If
434 the firearm or ammunition remains unclaimed after six months
435 from the date of notice, then no party shall have the right to
436 assert ownership of the firearm or ammunition and the law
437 enforcement agency may dispose of the firearm or ammunition.

438 Section 10. (a) The court shall notify the Alabama
439 State Law Enforcement Agency (ALEA) no later than one business
440 day after issuing, renewing, dissolving, or terminating an ex
441 parte or one-year gun violence protective order under this
442 act.

443 (b) The information required to be submitted to ALEA
444 pursuant to this section shall include identifying information
445 about the respondent and the date the order was issued,
446 renewed, dissolved, or terminated. In the case of a one-year
447 order, the court shall include the date the order is set to
448 expire. The court shall also indicate whether the respondent



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449 to the one-year gun violence protective order was present in
450 court to be advised of the contents of the order or if the
451 respondent failed to appear. The respondent's presence in
452 court shall constitute proof of service of notice of the terms
453 of the order.

454 (c) Within one business day of service, a law
455 enforcement officer who serves a gun violence protective order
456 or the clerk of the court shall submit the proof of service
457 and a copy of the protection order to ALEA for entry into the
458 appropriate database.

459 (d) The information to be submitted to ALEA under this
460 section shall be submitted in an electronic format, in a
461 manner prescribed by ALEA. ALEA shall maintain a searchable
462 database of this information, available to law enforcement
463 agencies upon request.

464 (e) Within 30 days of submission of the information
465 under subsection (d), ALEA shall make information about an ex
466 parte or one-year gun violence protective order issued,
467 renewed, or terminated pursuant to this act available to the
468 National Instant Criminal Background Check System for the
469 purposes of firearm purchaser background checks.

470 Section 11. (a) A person who files a petition for a gun
471 violence protective order, knowing the information in the
472 petition to be materially false or with an intent to harass
473 the respondent, is guilty of a Class C misdemeanor.

474 (b) A person who owns, purchases, controls, possesses,
475 or receives a firearm or ammunition with knowledge that he or
476 she is prohibited from doing so by a gun violence protective



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477 order is guilty of a Class C misdemeanor and shall be
478 prohibited from owning, purchasing, controlling, possessing,
479 or receiving, or attempting to purchase or receive, a firearm
480 or ammunition for a period of five years from the date of
481 conviction.

482 Section 12. This act shall not affect the ability of a
483 law enforcement officer to remove firearms or ammunition from
484 any individual pursuant to other lawful authority.

485 Section 13. This act shall not be construed to impose
486 criminal or civil liability on any individual who chooses not
487 to seek a gun violence protective order pursuant to this act.

488 Section 14. Although this bill would have as its
489 purpose or effect the requirement of a new or increased
490 expenditure of local funds, the bill is excluded from further
491 requirements and application under Section 111.05 of the
492 Constitution of Alabama of 2022, because the bill defines a
493 new crime or amends the definition of an existing crime.

494 Section 15. This act shall become effective on the
495 first day of the third month following its passage and
496 approval by the Governor, or its otherwise becoming law.