



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **H.B. 585**

132nd General Assembly  
(As Introduced)

Rep. Henne

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## **BILL SUMMARY**

### **Definitions of dangerous ordnance and automatic firearm**

- Expands the definition of dangerous ordnance to include the federal definition of armor piercing ammunition.
- Expands the definition of automatic firearm to include any device within the federal definition of machine gun.

### **Offense of "having weapons while under disability"**

- Creates additional conditions under which a person may not possess a firearm or dangerous ordnance relating to persons subject to protection orders, noncitizens, and persons dishonorably discharged from the Armed Forces.
- Modifies existing conditions under which a person may not possess a firearm or dangerous ordnance to include all felonies and domestic violence-related offenses.
- Eliminates the process by which a person may obtain relief from a weapons disability.

### **Unlawful transactions in weapons on behalf of third parties**

- Prohibits a person from buying, purchasing, obtaining, or furnishing a firearm on behalf of a third party.

## NCIC protection order database and LEADS

- Requires certain protection orders to be in a form that ensures the order is accepted into the National Crime Information Center (NCIC) protection order database maintained by the FBI.
- Requires law enforcement agencies to enter records of protection orders into the Law Enforcement Automated Data System, known as LEADS.

## Extreme risk protection orders

- Provides a mechanism for the issuance by a court of an extreme risk protection order (ERPO), as follows:
  - Authorizes a family or household member of a respondent, a person living as a spouse of a respondent, or a law enforcement officer to petition a common pleas court requesting the court to issue an ERPO temporarily enjoining the respondent from having any deadly weapon or firearm.
  - Unless the petition requires an *ex parte* order, requires the court to conduct a full hearing on the petition at which the respondent may appear and present evidence.
  - Provides that the court may issue an ERPO after a full hearing if the petitioner proves by clear and convincing evidence that the respondent presents a significant risk of specified danger to self or another to such an extent that the respondent should be immediately and temporarily enjoined from having any deadly weapon or firearm.
  - Upon the issuance of an ERPO after a full hearing, requires the respondent to voluntarily transfer the respondent's deadly weapons and firearms to a law enforcement agency within a specified period of time, and provides for the issuance of a warrant for seizure of the weapons and firearms if the respondent does not make such a transfer.
  - Authorizes a person who petitions for an ERPO and who believes that the respondent's risk of the specified danger to self or another is imminent to seek an *ex parte* ERPO, and provides for an *ex parte* hearing on the petition and criteria for the issuance of an *ex parte* ERPO.
  - Upon the issuance of an *ex parte* ERPO, provides for the issuance of a warrant for the seizure of the weapons and firearms, and for a full hearing within 72 hours to consider whether to issue an ERPO after a full hearing as described above.



- Provides factors that a court must consider in determining whether to issue an ERPO after a full hearing or *ex parte* hearing.
- Provides that any ERPO must be in a form that ensures it is accepted into the NCIC Protection Order Database and that law enforcement enter it into LEADS within 24 hours of receipt.
- Provides procedures for voluntary transfers of deadly weapons and firearms to a law enforcement agency by a respondent who is subject to an ERPO and for seizure pursuant to a warrant issued in relation to an ERPO.
- Provides procedures under which a respondent whose deadly weapons or firearms were voluntarily transferred or seized under an ERPO may petition a court to reclaim the items.
- Provides that an ERPO issued after a full hearing generally terminates 180 days after issuance.
- Provides procedures under which: the petitioner may petition for an extension of the ERPO for an additional 180 days, the court must hold a hearing on the petition, and the court if it makes specified findings by clear and convincing evidence must extend the ERPO for an additional 180 days.
- Generally requires a law enforcement agency with possession of a respondent's deadly weapons or firearms under an ERPO to safely keep them until further court order, allows for the transfer of the items to the State Highway Patrol, and allows the court upon request of the respondent to order the sale of the items.

**Prohibition against filing false petition for ERPO and sanctions**

- Prohibits a person from filing a petition requesting an ERPO if the person knows the petition's allegation regarding the respondent's danger to self or another is false and makes a violation a first degree misdemeanor.
- Provides that an individual injured by the violation has a civil action.

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## CONTENT AND OPERATION

### Definitions of dangerous ordnance and automatic firearm

#### Dangerous ordnance

The bill expands the definition of "dangerous ordnance" to include "armor piercing ammunition" as defined by the Gun Control Act of 1968.<sup>1</sup> Armor piercing

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<sup>1</sup> R.C. 2923.11(K)(7).

ammunition under the Gun Control Act of 1968 means either of the following: (1) a projectile or projectile core which may be used in a handgun and which is constructed entirely from tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium, or (2) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.<sup>2</sup>

Under current law, the definition of dangerous ordnance is any of the following: (1) any automatic or sawed-off firearm, zip-gun, or ballistic knife, (2) any explosive or incendiary device, (3) high explosives or high explosive compositions, (4) plastic explosives, (5) blasting agents, (6) any explosive substances suitable for military, mining, quarrying, excavating, or demolition use, (7) any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo, or similar weapon or ammunition designed and manufactured for military use, (8) any firearm or muffler suppressor, and (9) any combination of parts that are intended by the owner for use in converting any firearm or other device into a dangerous ordnance.<sup>3</sup>

### **Automatic firearm**

The bill expands the definition of "automatic firearm" to include any device that is a "machine gun" as defined by the Gun Control Act of 1968.<sup>4</sup> A machine gun under the Gun Control Act of 1968 means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term also includes the following: (1) the frame or receiver of a machine gun, (2) any part or combination of parts designed and intended for use in converting a weapon into a machine gun, or (3) any combination of parts from which a machine gun can be assembled.<sup>5</sup>

Under current law, the definition of automatic firearm is any firearm designed or specially adapted to fire a succession of cartridges with a single function of the trigger.<sup>6</sup>

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<sup>2</sup> 18 U.S.C. 921(a)(17)(B).

<sup>3</sup> R.C. 2923.11(K)(1) to (6).

<sup>4</sup> R.C. 2923.11(E)(2).

<sup>5</sup> 18 U.S.C. 921(a)(23) and 26 U.S.C. 5845(b).

<sup>6</sup> R.C. 2923.11(E)(1).



## Offense of "having weapons while under disability"

### Expansion of prohibition

The bill expands the offense of "having weapons while under disability" to include the following categories of persons who are prohibited from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance:<sup>7</sup>

- A person subject to a criminal protection order or civil protection order that meets all of the following requirements:<sup>8</sup>
  - The order was issued after a hearing, and the person subject to the order received actual notice and an opportunity to participate.
  - The order restrains the person from harassing, stalking, or threatening an "intimate partner"<sup>9</sup> of the person or a child of the intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.
  - The order includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child or, by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.
- A person who has been discharged from the Armed Forces under dishonorable conditions.
- A person who is an "alien" (meaning, not a U.S. citizen) prohibited from owning, purchasing, or possessing a firearm pursuant to federal law under 18 U.S.C. 922(g)(5).
- A person who, having been a U.S. citizen, has renounced the person's citizenship.

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<sup>7</sup> R.C. 2923.13(A)(6) to (10) and (C).

<sup>8</sup> R.C. 2923.13(A)(6) and (C)(4), 2903.213, 2903.214, 2919.26, and 3113.31.

<sup>9</sup> Defined, with respect to the person subject to the protection order, as a spouse or former spouse of the person, a parent of the person's child, or an individual who cohabits or has cohabited with the person. R.C. 2923.13(C)(3).

- A person who is subject to an extreme risk protection order or *ex parte* extreme risk protection order (described under "Extreme risk protection orders"), during the time the order is in effect.

The bill also expands the types of criminal indictments and convictions that result in a weapons disability. Under the bill, the prohibition against having weapons while under disability applies to a person who is under indictment for or has been convicted of or adjudicated a delinquent child for *any* felony offense. The prohibition also applies to any person who is convicted of domestic violence or violating a protection order, regardless of whether the offense is a misdemeanor or felony. Under current law, the prohibition against having weapons while under disability applies if the person is under indictment for or has been convicted of or adjudicated a delinquent child for committing a felony offense of violence; or is under indictment for or has been convicted of or adjudicated a delinquent child for committing a felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.<sup>10</sup>

The bill preserves three currently specified disabilities, which apply to any person who is a fugitive from justice; is drug dependent, in danger of drug dependence, or a chronic alcoholic; or is under adjudication of mental incompetence, has been adjudicated as a mental defective, has been committed to a mental institution, has been found by a court to be a mentally ill person subject to court order, or is an involuntary patient other than one only under observation.<sup>11</sup>

### **No relief from disability**

The bill eliminates the process in existing law by which a person subject to the prohibition against "having weapons while under disability" may seek relief from the weapons disability. Under the bill, there is no relief from a weapons disability once the prohibition applies.<sup>12</sup>

Under existing law, repealed by the bill, a person who is prohibited from acquiring, having, carrying, or using firearms may apply to the common pleas court in the county in which the person resides for relief from the prohibition. This relief mechanism does not apply to a person who has been convicted of the offense of "unlawful use of a weapon by a violent career criminal"<sup>13</sup> or who, two or more times,

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<sup>10</sup> R.C. 2923.13(A)(2) and (3).

<sup>11</sup> R.C. 2923.13(A)(1), (4), and (5).

<sup>12</sup> R.C. 2923.13(A) and (C), 2923.14, repealed by the bill, and 2923.23.

<sup>13</sup> R.C. 2923.132, not in the bill.



has been convicted of a felony and any of six designated firearms specifications.<sup>14</sup> The application must include specified information regarding the applicant's fitness for relief and the basis of the applicant's disability. The prosecutor is served with a copy of and may object to the application, and the court conducts a hearing on it. The court may grant the applicant relief from the prohibition if it makes specified findings at the hearing.

Relief from disability granted under the mechanism in current law restores the applicant to all civil firearm rights to the full extent enjoyed by any citizen, but it applies only with respect to the factor that was the basis for the applicant's disability; applies only with respect to firearms lawfully acquired, possessed, carried, or used by the applicant; and may be revoked by the court at any time for good cause shown and upon notice to the applicant. The relief from disability is automatically void if the person later commits any offense or enters any category that subjects the person to the prohibition against "having weapons while under disability."<sup>15</sup>

### **Unlawful transactions in weapons on behalf of third parties**

The bill expands the offense of "unlawful transactions in weapons." Under the bill, a person is prohibited from knowingly buying, purchasing, obtaining, or furnishing a firearm on behalf of a third party if both of the following apply: (1) the firearm is not a *bona fide* gift, and (2) the person who buys, purchases, obtains, or furnishes the firearm knows that the firearm is not a *bona fide* gift. The bill specifies that a gift is not *bona fide* if there is an offer or exchange of money, services, or items of value between the person buying, purchasing, obtaining, or furnishing the firearm and the third party.<sup>16</sup> A violation of the prohibition is a second degree felony.<sup>17</sup>

The prohibitions do not apply if a firearm is furnished to any of the following individuals:<sup>18</sup>

- A law enforcement officer who is properly appointed or employed as a law enforcement officer and has received firearms training approved by the Ohio Peace Officer Training Commission or equivalent firearms training.

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<sup>14</sup> R.C. 2941.141, 2941.144, 2941.145, 2941.146, 2941.1412, and 2941.1424, not in the bill.

<sup>15</sup> R.C. 2923.14, repealed by the bill.

<sup>16</sup> R.C. 2923.18, 2923.20(A)(3) and (D).

<sup>17</sup> R.C. 2923.20(C).

<sup>18</sup> R.C. 2923.20(B).

- An active duty member of the Armed Forces of the United States who has received firearms training that meets or exceeds the training requirements for a concealed handgun licensee.
- A person who uses the firearm for lawful hunting, sporting, or educational purposes, including, instruction in firearms safety, care, handling, or marksmanship.

Existing law also prohibits a person from doing any of the following:<sup>19</sup>

(1) Recklessly selling, lending, giving, or furnishing any firearm or dangerous ordnance to any person otherwise prohibited by state law from acquiring or using any firearm or dangerous ordnance (a fourth degree felony);

(2) Possessing any firearm or dangerous ordnance with purpose to dispose of it in violation of (1) (a fourth degree felony)

(3) Manufacturing, possessing for sale, selling, or furnishing to any person other than a law enforcement agency for authorized use in police work, any brass knuckles, cestus, billy, blackjack, sandbag, switchblade knife, springblade knife, gravity knife, or similar weapon (a second degree misdemeanor);

(4) When transferring any dangerous ordnance to another, negligently failing to follow any of several specified requirements (a second degree misdemeanor); and

(5) Knowingly failing to report the loss or theft of any firearm or dangerous ordnance in the person's possession or under the person's control to law enforcement authorities (a fourth degree misdemeanor).

The bill increases the penalty for (1) and (2), above, from a fourth degree felony to a second degree felony.<sup>20</sup>

## **NCIC protection order database and records in LEADS**

Under the bill, if a court issues a protection order and the protection order would prohibit the person from having weapons, the order must be in a form that ensures the protection order is accepted into the National Crime Information Center (NCIC) protection order database, which is maintained by the FBI. More specifically, the requirement applies to the following types of protection orders:

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<sup>19</sup> R.C. 2923.20(A)(1), (2), (4), (5), and (6).

<sup>20</sup> R.C. 2923.20(C).

(1) A juvenile court protection order against a person under age 18 if the order will be valid after the respondent's eighteenth birthday.<sup>21</sup>

(2) A civil protection order against a person: (a) age 18 or older who allegedly committed menacing by stalking or a sexually oriented offense against the person to be protected by the order,<sup>22</sup> or (b) who allegedly has engaged in domestic violence (including any sexually oriented offense) against a specified family or household member to be protected under the order;<sup>23</sup>

(3) A criminal protection order against a person: (a) charged with a specified assault or menacing offense or aggravated trespass, a substantially equivalent municipal ordinance violation, or a sexually oriented offense against a victim who is not a family or household member of the offender,<sup>24</sup> or (b) charged with criminal damaging or endangering, criminal mischief, burglary, or aggravated trespass, a municipal ordinance violation that is substantially similar to any of those offenses, an offense of violence (including domestic violence), or a sexually oriented offense against an alleged victim who was a family or household member;<sup>25</sup>

(4) An extreme risk protection order against a person who presents a significant risk in the near future of committing suicide, serious self-harm, or injury to another person, as described under "**Extreme risk protection orders.**"<sup>26</sup>

Additionally, when a law enforcement agency is provided a copy of any of the protection orders described above, the agency must ensure the order is entered into the Law Enforcement Automated Data System (LEADS) within 24 hours of receipt.<sup>27</sup>

## **Extreme risk protection orders**

The bill enacts a mechanism for the issuance by a court of an extreme risk protection order (ERPO).

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<sup>21</sup> R.C. 2151.34(F)(1).

<sup>22</sup> R.C. 2903.214(F)(1).

<sup>23</sup> R.C. 3113.31(F)(1).

<sup>24</sup> R.C. 2903.213(G)(1).

<sup>25</sup> R.C. 2919.26(G)(1).

<sup>26</sup> R.C. 3113.27(F)(2).

<sup>27</sup> R.C. 2151.34(F)(3), 2903.213(G)(2), 2903.214(F)(3), 2919.26(G)(3), 3113.27(F)(3), and 3113.31(F)(3).

## Petition requesting issuance of order

The bill authorizes a "family or household member" of a "respondent," a "person living as a spouse" of a respondent, or a "law enforcement officer" to file a petition in the court of common pleas of the county in which the respondent resides requesting that the court issue an ERPO temporarily enjoining the respondent from having in the respondent's possession, custody, or control any deadly weapon or any firearm (see "**Extreme risk protection order definitions**," below, for definitions of the terms in quotation marks). The petition must be in the form described below, and must be supported by a written affidavit signed by the petitioner under oath, an oral statement given by the petitioner under oath, or any other admissible evidence the petitioner chooses to produce that sets forth the facts alleged in the petition that gives rise to a reasonable belief on the petitioner's part that the respondent presents a significant risk of the type described in the petition. If the petitioner is a law enforcement officer, the officer also must include in the affidavit under oath that the officer has conducted an independent investigation of the circumstances giving rise to the filing of the petition and that there is good cause for its filing.<sup>28</sup>

The petition must do all of the following:<sup>29</sup>

(1) Allege facts showing that the respondent presents a significant risk in the near future of committing suicide, committing another form of serious self-harm less than death, or causing physical injury to another person;

(2) Identify the number, types, and locations of any deadly weapons or firearms the petitioner believes to be in the respondent's possession, custody, or control at the time the petition is filed;

(3) Include the respondent's residence address at the time the petition is filed as well as any other information the petitioner has concerning the respondent's whereabouts, so that service of the petition on the respondent promptly can be made;

(4) Identify whether there is a current protection order or restraining order governing the respondent under any of the existing juvenile court protection order, temporary protection order, or civil protection order statutes<sup>30</sup> or under any other applicable statute.

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<sup>28</sup> R.C. 3113.27(A)(1) and (3).

<sup>29</sup> R.C. 3113.27(A)(2).

<sup>30</sup> R.C. 2151.34, 2903.213, 2903.214, 2919.26, and 3113.31.



## **Court procedures after filing of petition; full hearing**

Upon the filing of a petition for an ERPO, the court must set a date for a full hearing on the petition that is not later than three calendar days after the day on which the petition is filed. On the same business day the petition is filed, the court must direct a law enforcement officer to serve on the respondent a copy of the petition and a notice of the hearing. The hearing notice must notify the respondent of the date, time, and location of the hearing and of the respondent's opportunity to be heard to contest the issuance of the ERPO. On motion of the petitioner or respondent, or on its own motion, the court may grant a continuance of the hearing for any of a list of specified circumstances or reasons and, upon granting a continuance, the court must notify the petitioner and respondent of the new date, time, and location of the hearing. The circumstances or reasons for which the court may grant a continuance of the hearing to a reasonable time determined by the court are: (1) prior to the hearing date scheduled, the respondent has not been served with the petition requesting the ERPO and the notice of the hearing, (2) the petitioner and the respondent consent to the continuance, (3) the continuance is to allow either the petitioner or the respondent to obtain counsel, or (4) the continuance is needed for other good cause.<sup>31</sup>

## **Conduct of full hearing; issuance of order**

In any proceeding before the court in which the petitioner is seeking an ERPO or an extension of an ERPO, the petitioner has the burden of proof. In any proceeding before the court in which the petitioner is seeking an ERPO, the Rules of Civil Procedure and the Rules of Evidence apply.<sup>32</sup>

At the full hearing for an ERPO, the petitioner must prove, by clear and convincing evidence, that the respondent presents a significant risk of committing suicide, committing another form of serious self-harm less than death, or causing physical injury to another person in the near future to such an extent that the respondent should be immediately and temporarily enjoined from having possession, custody, or control of any deadly weapon or any firearm. If the court at the hearing finds that the petitioner has so proved, the court may issue an ERPO. Absent such a finding, the court is barred from issuing an ERPO. In determining whether to issue an ERPO, the court must consider all of the factors identified below in "**Factors to be considered in determining whether to issue an order.**"<sup>33</sup>

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<sup>31</sup> R.C. 3113.27(A)(6).

<sup>32</sup> R.C. 3113.27(A)(4) and (5).

<sup>33</sup> R.C. 3113.27(B)(1) and (2).

## Content of order issued after full hearing

If the court at the full hearing finds, by clear and convincing evidence, that an ERPO should be issued and issues the order, the order must include all of the following:<sup>34</sup>

(1) A statement of the evidence presented and the court's findings supporting issuance of the ERPO;

(2) The date the ERPO was issued;

(3) The duration of the ERPO, which may be not longer than 180 days after the date on which a copy of the proof of a voluntary transfer or an affidavit is filed with a court or a return is filed with a court (see "**Voluntary transfers; seizures under a warrant**," below);

(4) A notice to the respondent that, beginning 90 days after a copy of the proof of a voluntary transfer is filed with a court or a return is filed with a court (see "**Voluntary transfers; seizures under a warrant**," below), the respondent may file a petition with the court for a hearing pursuant to the bill's mechanism for reclaiming possession of the respondent's voluntarily transferred or seized deadly weapons or firearms (see "**Procedure for reclamation of items, while order is in effect**," below);

(5) A notice that the ERPO can be appealed to the court of appeals;

(6) A notice that the issuance of the ERPO makes it unlawful for the respondent to possess, purchase, acquire, or obtain a deadly weapon or firearm, including ammunition, while the ERPO is in effect;

(7) An order that requires the respondent, within 24 hours of being served with a copy of the ERPO, to transfer all deadly weapons and all firearms in the respondent's possession, custody, or control in accordance with the transfer procedures described below in "**Voluntary transfers; seizures under a warrant**," must inform the respondent that, if the respondent does not transfer the deadly weapons and firearms in accordance with those procedures, the court will issue a warrant for seizure of the deadly weapons and firearms (see "**Issuance of warrant**," below).

## Service of the order on the respondent

If the court issues an ERPO after a full hearing, the court immediately must direct a law enforcement officer to serve the ERPO on the respondent as soon as

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<sup>34</sup> R.C. 3113.27(B)(3) and (5).

possible, either at the respondent's residence address set forth in the petition or at any other location that either the petitioner or officer has reason to believe the respondent can be found and served. After the law enforcement officer serves the ERPO on the respondent, the officer must file with the court notice of service on the respondent, which must state the date, time, and location of the service.<sup>35</sup>

### **Issuance of warrant**

If a court issues an ERPO after a full hearing and the respondent does not transfer all deadly weapons and all firearms under the respondent's possession, custody, or control within 24 hours of being served with a copy of the order in accordance with the bill's transfer procedures, the court must issue a warrant under the bill's warrant procedures (both of those procedures are described below in "**Voluntary transfers; seizures under a warrant**") commanding a law enforcement officer in the county in which the respondent resides to enter the respondent's residence or any other property owned, leased, or controlled by the respondent to search for and seize all deadly weapons and firearms in the respondent's possession, custody, or control.<sup>36</sup>

### ***Ex parte* orders – petition, hearing, issuance, and subsequent procedures**

#### **Petition requesting *ex parte* order**

If a petitioner who files a petition for an ERPO has a good faith belief that the respondent presents a significant and imminent risk of committing suicide, committing another form of serious self-harm less than death, or causing physical injury to another person, the petitioner may seek an *ex parte* ERPO. If the petitioner chooses to seek an *ex parte* ERPO, the petition must state that the relief sought is an *ex parte* order. A petition for an *ex parte* ERPO and the accompanying affidavit must comply with all of the requirements described above regarding petitions for ERPOs and supporting written affidavits, and must allege and contain evidence of specific statements or actions by the respondent, or any other information about the respondent, that created in the petitioner a reasonable belief that the respondent may act imminently.<sup>37</sup>

#### ***Ex parte* hearing**

If a petitioner who files a petition for an ERPO requests an *ex parte* ERPO, the court is required to hold an *ex parte* hearing on the same day the petition is filed or on the next calendar day immediately following the filing of the petition. The *ex parte*

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<sup>35</sup> R.C. 3113.27(B)(4).

<sup>36</sup> R.C. 3113.27(B)(5).

<sup>37</sup> R.C. 3113.27(C)(1).

hearing must be conducted in accordance with the Rules of Civil Procedure and the Rules of Evidence. The court must either grant or deny the request for an *ex parte* ERPO the same day that the *ex parte* hearing is held. At the *ex parte* hearing, the petitioner must prove, by clear and convincing evidence, that the respondent presents a significant and imminent risk of committing suicide, committing another form of serious self-harm less than death, or causing physical injury to another person to such an extent that the respondent should be immediately and temporarily enjoined from having in the respondent's possession, custody, or control any deadly weapon or any firearm. In determining whether to issue an *ex parte* ERPO, the court must consider all of the factors identified below in "**Factors to be considered in determining whether to issue an order.**" If the court finds that the petitioner has so proved, the court may issue an *ex parte* ERPO. Absent such a finding, the court is barred from issuing an *ex parte* ERPO.<sup>38</sup>

#### **Content of *ex parte* order**

If the court at an *ex parte* hearing conducted as described above finds, by clear and convincing evidence, that an *ex parte* ERPO should be issued and issues the order, the *ex parte* ERPO must include all of the following:<sup>39</sup>

(1) A statement of the evidence presented and the court's findings supporting issuance of the order;

(2) The date and time the order was issued;

(3) The duration of the *ex parte* ERPO, which must not be longer than 72 hours from the date on which, and time at which, the order was issued or until the date and time the full hearing regarding the order is held, whichever period is longer;

(4) Notice of the date, time, and location of the full hearing scheduled regarding the order (see below) and of the respondent's opportunity to be heard to contest the issuance of the ERPO;

(5) Notice that the issuance of an *ex parte* ERPO makes it unlawful for the respondent to possess, purchase, acquire, or obtain a deadly weapon or firearm, including ammunition, while the *ex parte* order is in effect.

#### **Court's additional duties after issuance of *ex parte* order**

After a court issues an *ex parte* ERPO, the court must do all of the following:<sup>40</sup>

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<sup>38</sup> R.C. 3113.27(C)(2) to (4).

<sup>39</sup> R.C. 3113.27(C)(5).

(1) Immediately direct a law enforcement officer to serve the *ex parte* ERPO, a copy of the petition, and the notice of the full hearing regarding the *ex parte* ERPO on the respondent as soon as possible, either at the respondent's residence address set forth in the petition or at any other location either the petitioner or the law officer has reason to believe the respondent can be found and served. After the law enforcement officer serves the *ex parte* ERPO, petition, and notice of the full hearing on the respondent, the officer must file with the court notice of service on the respondent, which must state the date, time, and location of the service.

(2) Issue a warrant under the warrant procedure described below in "**Voluntary transfers; seizures under a warrant**" commanding a law enforcement officer in the county in which the respondent resides to enter the respondent's residence or any other property owned, leased, or controlled by the respondent to search for and seize all deadly weapons and firearms in the respondent's possession, custody, or control.

#### **Full hearing requirement**

If the court issues an *ex parte* ERPO, or if the petitioner requests an *ex parte* order but the court does not issue the *ex parte* order, the court must schedule a full hearing under the provisions described above in "**Court procedures after filing of petition; full hearing**," to be held not later than 72 hours after the *ex parte* ERPO is issued or the date on which the hearing is held and the *ex parte* ERPO is not issued, whichever is applicable. The full hearing may be continued for any of the reasons described above in "**Court procedures after filing of petition; full hearing**" and, if the hearing is continued, the court must notify the petitioner and respondent of the date, time, and location of the new hearing.<sup>41</sup>

#### **Factors to be considered in determining whether to issue an order**

In determining whether to issue an ERPO, whether following an *ex parte* hearing or a full hearing, the court is required to consider a list of specified factors, listed below, including a mental-health related factor. But any evidence presented in a petition for an ERPO or in any hearing on such a petition that the respondent has been diagnosed with any "mental illness" (see "**Extreme risk protection order definitions**," below) or any other mental health condition is not sufficient by itself for the court to issue an ERPO, whether *ex parte* or after a full hearing. For the ERPO to be issued in that situation, the court must find that one or more of the specified factors, listed below, applies, in addition to any mental illness or any other mental health condition from which the

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<sup>40</sup> R.C. 3113.27(C)(6).

<sup>41</sup> R.C. 3113.27(C)(3).



respondent may suffer.<sup>42</sup> The factors that a court is required to consider in determining whether to issue an ERPO, whether following an *ex parte* hearing or a full hearing are:<sup>43</sup>

(1) Recent threats or acts of violence by the respondent directed toward the petitioner or toward any other person;

(2) Recent acts of the respondent's cruelty to animals;

(3) The respondent's reckless use, display, or brandishing of a deadly weapon or a firearm;

(4) A history of suicide threats or attempts by the respondent or other attempts by the respondent to engage in any form of self-harm;

(5) A history of the respondent's use, attempted use, or threatened use of physical force or violence against another person;

(6) The respondent's illegal use of controlled substances or abuse of alcohol;

(7) A prior involuntary confinement of the respondent under the statute<sup>44</sup> that allows emergency hospitalization for examination of a person who is believed to be mentally ill subject to court order and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination;

(8) Any other factors relevant to an evaluation of whether the respondent presents a significant risk, whether imminently or in the near future, of committing suicide, committing another form of self-harm less than death, or causing physical injury to another person.

### **Issuance of order and inclusion in databases**

If a court issues an ERPO after a full hearing or *ex parte* hearing, a copy of the ERPO must be issued to the petitioner, to the respondent, and to all law enforcement agencies with jurisdiction to enforce the order. The order must be in a form that ensures the order is accepted into the Protection Order Database of the NCIC maintained by the FBI. Law enforcement agencies provided a copy of the ERPO must ensure the ERPO is entered into the LEADS created by statute<sup>45</sup> within 24 hours of receipt.<sup>46</sup>

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<sup>42</sup> R.C. 3113.27(D) and (E).

<sup>43</sup> R.C. 3113.27(D).

<sup>44</sup> R.C. 5122.10, not in the bill.

<sup>45</sup> R.C. 5503.10, not in the bill.

## Voluntary transfers; seizures under a warrant

### Voluntary transfers

Any person who is a respondent subject to an ERPO issued after a full hearing and who has been served with the order may voluntarily transfer all deadly weapons and firearms in the respondent's possession, custody, or control. To voluntarily transfer the deadly weapons or firearms, the respondent is required to comply with the following:<sup>47</sup>

(1) Within 24 hours after being served with the ERPO, the respondent must transfer all deadly weapons and firearms in the respondent's possession, custody, or control to a law enforcement agency. The respondent must provide a copy of the order to the agency at the time of transfer. The agency must issue a proof of transfer to the respondent, which proof of transfer must include the respondent's name, the date of transfer, and the serial number, make, and model or any other relevant description of each transferred deadly weapon and firearm.

(2) Within 48 hours after being served with the ERPO, the respondent must do one of the following: (a) file a copy of the proof of transfer with the court that issued the order and an affidavit stating that all deadly weapons and firearms in the respondent's possession, custody, or control at the time the respondent was served with the order have been transferred in accordance with the procedure described in (1), above, and that the respondent currently has no deadly weapons or firearms in the respondent's possession, custody, or control, or (b) file an affidavit with the court that issued the order stating that at the time the respondent was served with the order, the respondent had no deadly weapons or firearms in the respondent's possession, custody, or control, and that the respondent currently has no deadly weapons or firearms in the respondent's possession, custody, or control.

### Warrant issuance and seizures

If a respondent who is subject to an ERPO following a full hearing does not voluntarily transfer all deadly weapons and firearms in compliance with the procedures described above in "**Voluntary transfers**," or if a respondent is subject to an *ex parte* ERPO, the court that issued the order is required to issue a warrant to a law enforcement officer commanding the officer to search for and seize all deadly weapons and firearms in the respondent's possession or control. The officer who served the warrant, not later than 48 hours after the warrant was served, must file a return with

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<sup>46</sup> R.C. 3113.27(F).

<sup>47</sup> R.C. 3113.28(A).



the court that states that the warrant was served and that sets forth the time and date on which it was served, the name and address of the respondent it names, and the serial number, make, and model or any other relevant description of each deadly weapon and firearm seized by the officer.<sup>48</sup>

#### **Return of items seized under warrant regarding *ex parte* order, if no order issued after full hearing**

If a court issued an *ex parte* ERPO and the respondent's deadly weapons or firearms were seized pursuant to a warrant, as described above in "**Warrant issuance and seizures**" and if, at the full hearing held subsequent to the issuance of the *ex parte* ERPO, the court denies the petitioner's request to issue an ERPO, the law enforcement agency having possession of the respondent's deadly weapons or firearms under the *ex parte* ERPO promptly must return them to the respondent upon the respondent's request.<sup>49</sup>

#### **Duration of order issued after a full hearing, reclamation procedure, and extension procedure**

##### **Duration in general**

An ERPO issued by a court after a full hearing is in effect for a period of not longer than 180 days, beginning after a copy of the proof of a voluntary transfer or an affidavit is filed with a court as described above in "**Voluntary transfers**" or a return is filed with a court as described above in "**Warrant issuance and seizures**."<sup>50</sup> The 180-day duration is subject to the provisions described below in "**Procedure for reclamation of items, while order is in effect**," "**Termination in general**," and "**Procedure for extension of order**."

##### **Procedure for reclamation of items, while order is in effect**

With respect to an ERPO issued by a court after a full hearing, beginning 90 days after a copy of the proof of a voluntary transfer or an affidavit is filed with a court as described above in "**Voluntary transfers**" or a return is filed with a court as described above in "**Warrant issuance and seizures**," the respondent may file a petition with the court that issued the order requesting a hearing to reclaim possession of the respondent's deadly weapons or firearms. Upon receipt of such a petition, the court

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<sup>48</sup> R.C. 3113.28(B).

<sup>49</sup> R.C. 3113.28(C).

<sup>50</sup> R.C. 3113.29(A).

must schedule a hearing on the petition and notify the petitioner and the respondent of the date, time, and location of the hearing.<sup>51</sup>

At a hearing on a petition described in the preceding paragraph, the respondent has the burden of proving by a preponderance of the evidence that the respondent no longer presents a significant risk, whether imminent or in the near future, of committing suicide, committing another form of serious self-harm less than death, or causing physical injury to another person to such an extent that the respondent should be enjoined from having in the respondent's possession, custody, or control any deadly weapon or any firearm. At the hearing, the petitioner may present evidence to rebut the respondent's evidence or assertion that the respondent presently does not present such a risk.<sup>52</sup> Upon the completion of the hearing and consideration of the record, the court must do one of the following:<sup>53</sup>

(1) If the court finds that the respondent no longer presents a significant risk, whether imminent or in the near future, of committing suicide, committing another form of serious self-harm less than death, or causing physical injury to another person to such an extent that the respondent should be enjoined from having in the respondent's possession, custody, or control any deadly weapon or any firearm, the court must grant the respondent's petition, terminate the ERPO, and order the law enforcement agency having custody of the deadly weapons or firearms to promptly return them to the respondent upon the respondent's request. Upon receipt of the order, the agency promptly must return the deadly weapons or firearms to the respondent upon the respondent's request.

(2) If the court finds that the respondent continues to present a significant risk, whether imminent or in the near future, of committing suicide, committing another form of serious self-harm less than death, or causing physical injury to another person to such an extent that the respondent should be enjoined from having in the respondent's possession, custody, or control any deadly weapon or any firearm, the court must deny the respondent's petition and the ERPO will remain in effect for the remainder of the duration of the 180-day period. In such a case, the respondent may not file a subsequent petition to reclaim the deadly weapons or firearms at any time during the remainder of the duration of the 180-day period.

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<sup>51</sup> R.C. 3113.29(B)(1) and (2).

<sup>52</sup> R.C. 3113.29(B)(3).

<sup>53</sup> R.C. 3113.29(B)(4).

## Termination in general

If an ERPO has been issued by a court after a full hearing for a 180-day period and if the court has not ordered that the respondent's deadly weapons or firearms be returned to the respondent after a hearing as described above in "**Procedure for reclamation of items, while order is in effect**," unless the order is extended for an additional 180-day period under the procedure described below in "**Procedure for extension of order**," at the conclusion of the 180-day period the order terminates and the law enforcement agency having possession of the respondent's deadly weapons and firearms promptly must return them to the respondent upon the respondent's request.<sup>54</sup>

## Procedure for extension of order

If an ERPO has been issued by the court after a full hearing for a 180-day period and if the court has not ordered that the respondent's deadly weapons or firearms be returned to the respondent after a hearing as described above in "**Procedure for reclamation of items, while order is in effect**," at any time prior to the day that is 165 days after the order was issued, the petitioner may file a motion with the court that issued the order to extend the order for an additional 180-day period. Upon the filing of such a motion, the court must schedule a hearing for a date and time that is prior to the expiration of the 180-day period in the original ERPO. The court must notify the petitioner and the respondent of the date, time, and location of the hearing. At the hearing, the petitioner must prove, by clear and convincing evidence, that the respondent continues to present a significant risk of committing suicide, committing another form of serious self-harm less than death, or causing physical injury to another person in the near future to such an extent that the respondent should remain temporarily enjoined from having in the respondent's possession, custody, or control any deadly weapon or any firearm. In determining at a hearing on the motion whether to extend an ERPO, the court is required to consider all of the factors identified above in "**Factors to be considered in determining whether to issue an order**."<sup>55</sup>

Upon the completion of a hearing on the motion for extension filed as described above and consideration of the record, the court is required to do one of the following:<sup>56</sup>

(1) If the court finds that the petitioner has not proven by clear and convincing evidence that the respondent continues to present a significant risk, whether imminent or in the near future, of committing suicide, committing another form of serious self-

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<sup>54</sup> R.C. 3113.29(C).

<sup>55</sup> R.C. 3113.29(D)(1) to (3).

<sup>56</sup> R.C. 3113.29(D)(4), (5), and (6).



harm less than death, or causing physical injury to another person to such an extent that the respondent should be enjoined from having possession, custody, or control of any deadly weapon or any firearm, the court must deny the petitioner's motion. If the court denies the petitioner's motion, the initial ERPO will expire at the end of the current 180-day period and the law enforcement agency having custody of the deadly weapons or firearms promptly must return them to the respondent upon the respondent's request after the expiration of the 180-day period. The court must make a written statement of the evidence presented and the court's findings supporting the denial of the motion and provide the same to the petitioner and the respondent.

(2) If the court finds that the petitioner has proven by clear and convincing evidence that the respondent continues to present a significant risk, whether imminent or in the near future, of committing suicide, committing another form of serious self-harm less than death, or causing physical injury to another person to such an extent that the respondent should be enjoined from having possession, custody, or control of any deadly weapon or any firearm, the court must grant the petitioner's motion and extend the current ERPO for an additional 180-day period immediately following the expiration of the current 180-day period. The court must make a written statement of the evidence presented and the court's findings supporting the grant of the motion and provide the same to the petitioner and the respondent. The court also must notify the law enforcement agency that then possesses the respondent's deadly weapons or firearms that the court has extended the order for an additional 180 days and notify the respondent that the respondent may file a petition to reclaim the respondent's deadly weapons or firearms under the procedure described above in "**Procedure for reclamation of items, while order is in effect**" or that the respondent may appeal the 180-day extension of the order to the court of appeals.

### **Law enforcement agency maintenance, transfer, or sale of items**

A law enforcement agency having custody of any deadly weapons or firearms that, under the procedures described above, were voluntarily transferred by or seized from a respondent who was subject to an ERPO or *ex parte* ERPO must safely keep the deadly weapons and firearms until further order of the court that issued the order.<sup>57</sup>

But a law enforcement agency that has possession of a respondent's deadly weapons or firearms pursuant to an ERPO or *ex parte* ERPO, whether by a voluntary transfer by the respondent or by a seizure by a law enforcement officer pursuant to a warrant, both as described above, may transfer the respondent's deadly weapons or firearms for storage by the State Highway Patrol for the duration of the order. The

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<sup>57</sup> R.C. 3113.29(E).

Patrol must issue the law enforcement agency that originally took possession of the respondent's deadly weapons or firearms a proof of transfer that includes the name and address of the respondent from whom the deadly weapons or firearms were received and the serial number, make, and model or any other relevant description of each transferred deadly weapon and firearm. The Patrol must notify the court, the petitioner, and the respondent that the Patrol then is in possession of the respondent's deadly weapons or firearms.<sup>58</sup>

The bill also provides the following procedure for the sale of the deadly weapons or firearms in the possession of a law enforcement agency under an ERPO or *ex parte* ERPO, upon the request of the respondent:<sup>59</sup>

(1) A respondent who is subject to an ERPO or *ex parte* ERPO and whose deadly weapons or firearms are in the possession of a law enforcement agency may request the court to order the agency to sell one or more of the weapons or firearms that lawfully may be sold, with the sale to be at auction under a specified sale procedure<sup>60</sup> as if the weapons or firearms were unclaimed or forfeited firearms in the custody of the agency, and to return the proceeds to the individual. The request must specify each weapon or firearm the respondent wishes to be sold.

(2) If a respondent requests a sale of one or more deadly weapons or firearms as described above in (1), the court must order the law enforcement agency having custody of the specified weapons or firearms to sell them at auction under the specified sale procedure as if they were unclaimed or forfeited weapons or firearms in the custody of the agency, unless the serial numbers of the specified weapons or firearms have been obliterated. The specified sale procedure provides that unclaimed or forfeited firearms in the custody of a law enforcement agency may be sold at public auction if they are suitable for sporting use or as museum pieces or collectors' items, that other firearms and dangerous ordnance may be sold to a federally licensed firearms dealer, and that firearms and dangerous ordnance not sold must be destroyed or sent to the Bureau of Criminal Identification and Investigation for destruction by the Bureau.<sup>61</sup>

(3) If a court issues an order as described above in (2), the order must require that all deadly weapons or firearms that are subject to the order be sold not more than three months after receipt of the order, and that the proceeds of the sale be distributed as

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<sup>58</sup> R.C. 3113.28(D).

<sup>59</sup> R.C. 3113.29(F).

<sup>60</sup> R.C. 2981.12(A)(2), not in the bill.

<sup>61</sup> R.C. 2981.12(A)(2), not in the bill.

follows: (a) the law enforcement agency may retain not more than 3% of the sale price to pay the costs of the sale, including administrative costs and the auctioneer's fee and, if the agency retains any of the sale price under this authority, the remainder of the proceeds of the sale must be returned to the individual who owned the weapon or the firearm, and (b) if the law enforcement agency does not retain any of the sale price under authority of clause (a), the entire amount of the proceeds must be returned to the respondent or individual who owns the weapon or firearm that is sold.

### **Prohibition against filing false petition and sanctions**

The bill prohibits any person from filing a petition for an ERPO or an *ex parte* ERPO alleging that the respondent presents a significant risk, whether imminent or in the near future, of committing suicide, committing another form of serious self-harm less than death, or causing physical injury to another person to such an extent that the respondent should be temporarily enjoined from having in the respondent's possession, custody, or control any deadly weapon or any firearm if the person knows the allegation is false.<sup>62</sup> A violation of the prohibition is a first degree misdemeanor.<sup>63</sup>

The bill specifies that an individual injured in person or property by a violation of the prohibition has, and may recover full damages in, a civil action under the statute<sup>64</sup> that specifies that a person injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of the civil action and attorney's fees if authorized by the Civil Rules or any statute or the common law, and may recover punitive or exemplary damages if authorized by a separate specified statute.<sup>65</sup> The bill specifies that a civil action of that nature is in addition to, and does not preclude, any possible criminal prosecution of the person who violates the prohibition for the violation.<sup>66</sup>

### **Extreme risk protection order definitions**

As used in the bill's provisions regarding ERPOs:<sup>67</sup>

**"Court"** means the court of common pleas in each county.

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<sup>62</sup> R.C. 3113.30(A).

<sup>63</sup> R.C. 3113.99(B)(2).

<sup>64</sup> R.C. 2307.60, not in the bill.

<sup>65</sup> R.C. 2315.21, not in the bill.

<sup>66</sup> R.C. 3113.30(B).

<sup>67</sup> R.C. 3113.26.

**"Deadly weapon"** means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon.<sup>68</sup>

**"Firearm"** means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. **"Firearm"** includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable. When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm.<sup>69</sup>

**"Family or household member"** means any of the following:<sup>70</sup>

(1) Any of the following who is residing with or has resided with the respondent: (a) a spouse, a person living as a spouse, or a former spouse of the respondent, (b) a parent, a foster parent, or a child of the respondent, or another person related by consanguinity or affinity to the respondent, or (c) a parent or a child of a spouse, person living as a spouse, or former spouse of the respondent, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the respondent.

(2) The natural parent of any child of whom the respondent is the other natural parent or is the putative other natural parent.

**"Person living as a spouse"** means a person who is living or has lived with the respondent in a common law marital relationship, who otherwise is cohabiting with the respondent, or who otherwise has cohabited with the respondent within five years prior to the date of the alleged occurrence of the act in question.<sup>71</sup>

**"Law enforcement officer"** means a sheriff, deputy sheriff, member of the organized police department of any municipal corporation, member of a police force employed by a metropolitan housing authority, or a state university law enforcement officer.

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<sup>68</sup> R.C. 2923.11, not in the bill, by reference.

<sup>69</sup> R.C. 2923.11, not in the bill, by reference.

<sup>70</sup> R.C. 3113.31, by reference.

<sup>71</sup> R.C. 3113.31, by reference.

"**Mental illness**" means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life.<sup>72</sup>

"**Petitioner**" means a family or household member, a person living as a spouse, or a law enforcement officer who files a petition for an ERPO under the bill.

"**Respondent**" means a person who is identified in a petition for an ERPO filed under the bill as the person to which the ERPO will apply if the order is issued.

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## HISTORY

ACTION	DATE
Introduced	04-05-18

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<sup>72</sup> R.C. 5122.01, not in the bill, by reference.

