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SUMMARY

Offense of “having weapons while under disability”

- Creates additional conditions under which a person may not possess a firearm or dangerous ordnance relating to the person being convicted of the offense of “domestic violence” or being subject to a potential risk protection order, or extension of such an order, issued under the bill.

NCIC Protection Order Database and records in 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, within 24 hours after receipt.
- Requires the court that issues such an order, if the order is terminated or cancelled, to notify law enforcement agencies and other specified persons of the termination or cancellation.
- Requires law enforcement agencies, upon receipt of notice of termination or cancellation of such an order, to take steps necessary to ensure that it is terminated, cleared, or cancelled in the NCIC Protection Order Database.

Potential risk protection orders

- Provides a mechanism for the issuance by a court of a potential risk protection order (PRPO), as follows:
 - Authorizes a law enforcement officer in specified circumstances to petition a probate court requesting the court to issue a PRPO temporarily enjoining the respondent from having any deadly weapon.

- Requires the court to conduct a hearing on the petition, set for not later than three days after the petition is filed, at which the respondent may appear and present evidence.
- Provides that the court may issue a PRPO after a hearing if the petitioner proves by proof beyond a reasonable doubt 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.
- Upon the issuance of a PRPO, requires the court to issue a warrant for retrieval of the deadly weapons and requires that a law enforcement officer execute the order.
- Provides factors that a court must consider in determining whether to issue a PRPO after a hearing.
- Provides that any PRPO must be in a form that ensures it is accepted into the NCIC Protection Order Database and that law enforcement ensure it is entered into LEADS within 24 hours of receipt.
- Requires the court that issues such an order, if the order is terminated or cancelled, to notify law enforcement agencies and other specified persons of the termination or cancellation.
- Requires law enforcement agencies, upon receipt of notice of termination or cancellation of such an order, to take steps necessary to ensure that it is terminated, cleared, or cancelled in the NCIC Protection Order Database.
- Provides procedures under which a respondent whose deadly weapons were retrieved under a PRPO may petition a court to terminate the PRPO and reclaim the items.
- Provides that a PRPO issued after a hearing generally terminates 180 days after issuance.
- Provides procedures under which: the petitioner may petition for an extension of a PRPO, the court must hold a hearing, and the court if it makes specified findings by proof beyond a reasonable doubt must extend the PRPO for an additional period not exceeding 180 days.
- Generally requires a law enforcement agency with possession of a respondent's deadly weapons under a PRPO 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 and sanctions

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

Emergency mental health evaluations

- Extends the existing provisions regarding emergency mental health evaluations (sometimes referred to as the “pink slip” law) to also authorize a law enforcement officer to take a person into custody for such an evaluation if the officer files a petition for a PRPO against the person.
- Provides special procedures that apply with respect to a person who is taken into custody for such an evaluation under those circumstances.

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DETAILED ANALYSIS

Offense of “having weapons while under disability”

Expansion of prohibition

The bill expands the offense of “having weapons while under disability” to include, as disabilities, the following categories of persons who are prohibited from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance:¹

1. A person who has been convicted of the offense of “domestic violence” or the offense of “violating a protection order.”
2. A person who is subject to a potential risk protection order or an extension of such an order (described under “**Potential risk protection orders**”), during the time the order or extension is in effect.

The bill preserves five currently specified disabilities, which apply to any person who is a fugitive from justice; is under indictment for or has been convicted of or adjudicated a delinquent child for any felony offense of violence; is under indictment for or has been convicted of or adjudicated a delinquent child for committing a felony offense involving the

¹ R.C. 2923.13(A)(4) and (7).

illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse; 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.²

Relief from disability

The bill retains the mechanism in existing law by which a person subject to the prohibition against “having weapons while under disability” may seek relief from the weapons disability, and conforms one portion of the process to the expansion of the offense described above.

Under the mechanism, 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. The 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”³ or who, two or more times, has been convicted of a felony and any of six designated firearms specifications.⁴ 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 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” – the bill modifies this provision to include references to the two new disabilities it adds, as described above.⁵

NCIC protection order database and records in LEADS

Form of protection order to ensure acceptance into NCIC database

Under the bill, if a court issues any of five existing types of protection orders, the order must be in a form that ensures the protection order is accepted into the protection order database of the National Crime Information Center (NCIC) Protection Order Database, which is

² R.C. 2923.13(A)(1), (2), (3), (5), and (6).

³ R.C. 2923.132, not in the bill.

⁴ R.C. 2941.141, 2941.144, 2941.145, 2941.146, 2941.1412, and 2941.1424, not in the bill.

⁵ R.C. 2923.14.

maintained by the FBI (a similar requirement applies with respect to potential risk protection orders issued under the bill, as described below in “**Potential risk protection orders**”). More specifically, the requirement applies to the following types of protection orders:

1. A juvenile court protection order against a person under age 18 if the order will be valid after the respondent’s eighteenth birthday.⁶
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,⁷ or (b) who allegedly has engaged in domestic violence (including any sexually oriented offense) against a specified family or household member, or who has engaged in dating violence against a person with whom the respondent was in a dating relationship, and who is to be protected under the order.⁸
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,⁹ 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.¹⁰

Law enforcement agency entry of protection order into LEADS

When a law enforcement agency is provided a copy of any of the protection orders described above, the agency must enter the order into the Law Enforcement Automated Data System (LEADS) within 24 hours of receipt (note that this provision appears to apply with respect to all juvenile court protection orders against a person under age 18, regardless of whether the order will be valid after the child’s 18th birthday).¹¹ A similar requirement applies with respect to potential risk protection orders issued under the bill, as described below in “**Potential risk protection orders.**”

Duties upon termination or cancellation of order

If the court that issues any of the protection orders described above (or the court of common pleas with respect to a criminal protection order when the respondent is bound over to that court) terminates or cancels the order, the court must cause delivery of the notice of

⁶ R.C. 2151.34(F)(1).

⁷ R.C. 2903.214(F)(1).

⁸ R.C. 3113.31(F)(1).

⁹ R.C. 2903.213(G)(1).

¹⁰ R.C. 2919.26(G)(1).

¹¹ R.C. 2151.34(F)(3), 2903.213(G)(2), 2903.214(F)(3), 2919.26(G)(3), and 3113.31(F)(3).

termination or cancellation to the same persons and entities that were delivered a copy of the order (the petitioner, the respondent, and all law enforcement agencies with jurisdiction to enforce the order). Upon the termination or cancellation of the order, the law enforcement agency must take all steps necessary to ensure that the order is removed from LEADS within 24 hours after receipt of the notice of the termination or cancellation and that it is terminated, cleared, or cancelled in the NCIC Protection Order Database.¹² A similar requirement applies with respect to potential risk protection orders issued under the bill, as described below in **“Potential risk protection orders.”**

Potential risk protection orders

The bill enacts a mechanism for the issuance by a “court” of a potential risk protection order (PRPO) to temporarily enjoin a “respondent” from having in the respondent’s possession, custody, or control any “deadly weapon” (see **“Potential risk protection order definitions,”** below, for definitions of the terms in quotation marks).

Arrest of person as basis for law enforcement officer’s filing of a petition requesting issuance of order

If a “law enforcement officer” (see **“Potential risk protection order definitions,”** below) arrests a person for committing the offense of “menacing,” “menacing by stalking,” “aggravated menacing,” “making a terroristic threat,” “terrorism,” “aggravated burglary,” “aggravated trespass,” “telecommunications harassment,” “inducing panic,” or “making false alarms,” and if the officer has reasonable cause to believe that the person has possession, custody, or control of one or more deadly weapons and that it might be appropriate for the person to be subjected to a PRPO, the officer may file a petition, as described below in **“Petition requesting issuance of order,”** requesting that the court issue a PRPO temporarily enjoining the person, who would be the respondent under the order, from having in the person’s possession, custody, or control any deadly weapon.¹³ If a law enforcement officer files such a petition, all of the following apply:¹⁴

1. The officer’s filing of the petition based on the officer’s reasonable cause to believe that the person has possession, custody, or control of one or more deadly weapons and that it might be appropriate for the person to be subjected to a PRPO constitutes a “public safety emergency” (also see **“Potential risk protection order definitions,”** below);
2. Because of the public safety emergency described in paragraph (1), notwithstanding any other Revised Code provision or Criminal Rules provision to the contrary, the person arrested must be confined and may not be released from confinement while the

¹² R.C. 2151.34(F)(1) and (3), 2903.213(G)(1) and (2), 2903.214(F)(1) and (3), 2919.26(G)(1) and (3), and 3113.31(F)(1) and (3).

¹³ R.C. 3113.261(A).

¹⁴ R.C. 3113.261(A)(1) to (3).

petition is pending, provided that in no case may the person be confined due to the pendency of the petition for more than 72 hours after the petition is filed (see **COMMENT**);

3. If bail is set for the person after the arrest and the filing of the petition, because of the public safety emergency described in paragraph (1), notwithstanding any other Revised Code provision or Criminal Rules provision to the contrary, the person may not be released on bail while the petition is pending, provided that in no case may the person be confined due to the pendency of the petition for more than 72 hours after the petition is filed (see **COMMENT**).

Reasonable cause to believe a person presents a significant risk of suicide, harm to self, or harm to another as basis for law enforcement officer's filing of a petition requesting issuance of order

Under the bill, any person may present information to a law enforcement officer that asserts that the person has reasonable cause to believe that another person 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. If a person presents information of that nature to a law enforcement officer with respect to another person, or if a law enforcement officer otherwise has reasonable cause to believe that a person presents a significant risk of any of those types, the officer may interview the subject person.¹⁵ Upon completion of the interview, the officer must do whichever of three options specified in the bill, as described below, is applicable.¹⁶

First option – take the person into custody for a mental health evaluation

If the officer has reason to believe that the person is a “mentally ill person subject to court order” (see “**Potential risk protection order definitions**,” below) and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination, the officer may take the person into custody and transport the person to a hospital or general hospital under the bill’s provisions described below in “**Emergency mental health evaluations**,” and the officer may file a petition, as described below in “**Petition requesting issuance of order**,” requesting that the court issue a PRPO temporarily enjoining the person, who would be the respondent under the order, from having in the person’s possession, custody, or control any deadly weapon.¹⁷

¹⁵ R.C. 3113.261(B)(1).

¹⁶ R.C. 3113.261(B)(2).

¹⁷ R.C. 3113.261(B)(2)(a).

Second option – follow-up evaluation by mental health professional and resulting filing of petition requesting issuance of order or release

If the officer does not have reason to believe that the person is a mentally ill person subject to court order and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination, but the officer has reasonable cause to believe that the person has possession, custody, or control of one or more deadly weapons and that it might be appropriate for the person to be subjected to a PRPO, the officer's reasonable cause to believe those facts constitutes a "public safety emergency" (also see "**Potential risk protection order definitions**," below).

Because of that public safety emergency, the officer immediately must contact a "mental health professional" (see "**Potential risk protection order definitions**," below), consult with the mental health professional, and have the mental health professional interview the person and conduct a preliminary evaluation of the person. The mental health professional must conduct the interview and preliminary evaluation at the same location at which the officer interviewed the person or, if that is not possible, at a mental health facility, a detention facility, or another suitable location. The officer must remain with the person from the conclusion of the officer's interview with the person until the conclusion of the mental health professional's interview with, and preliminary evaluation of, the person.

Because of that public safety emergency, notwithstanding any other Revised Code provision or Criminal Rules provision to the contrary, the person may be confined at a mental health facility, a detention facility, or another suitable location until the mental health professional makes a decision based on the professional's interview with, and evaluation of, the person. The mental health professional must make a decision based on the professional's interview with, and evaluation of, the person not later than 24 hours after being contacted by the law enforcement officer, and no person may be confined under authority of this provision for more than 24 hours (see **COMMENT**).¹⁸

Upon the mental health professional's making a decision under this provision, one of the following applies:¹⁹

1. If the professional and officer have reason to believe that the person is a mentally ill person subject to court order and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination, the officer may take the person into custody and transport the person to a hospital or general hospital under the bill's provisions described below in "**Emergency mental health evaluations**," for the purposes described in those provisions and the officer may file a petition, as described below in "**Petition requesting issuance of order**," requesting that the court issue a PRPO temporarily enjoining the person, who would be the respondent

¹⁸ R.C. 3113.261(B)(2)(b).

¹⁹ R.C. 3113.261(B)(2)(b)(i) and (ii).

under the order, from having in the person's possession, custody, or control any deadly weapon;

2. If the professional and officer do not have reason to believe that the person is a mentally ill person subject to court order and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination, the person must be released and the officer may take no further action based on the officer's belief before the officer's interview that it might be appropriate for the person to be subjected to a PRPO. This provision does not affect the authority of a law enforcement officer to file a petition for a PRPO under authority of the provisions described above in "**Arrest of person as basis for law enforcement officer's filing of a petition requesting issuance of order.**"

Third option – take no further action

If neither the first option nor the second option described above applies, the officer may take no further action based on the officer's interview or the officer's belief before the interview that it might be appropriate for the person to be subjected to a PRPO. This provision does not affect the authority of a law enforcement officer to file a petition for a PRPO under authority of the provisions described above in "**Arrest of person as basis for law enforcement officer's filing of a petition requesting issuance of order.**"²⁰

Petition requesting issuance of order

When either of the two bases for filing a PRPO petition that are described above applies, the bill authorizes a law enforcement officer to file a petition in the probate court of the county in which the respondent resides, or in the probate court of a county in which a respondent engaged in an activity or made statements leading to the law enforcement officer's determination that the petition should be filed, requesting that the court issue a PRPO temporarily enjoining the respondent from having in the respondent's possession, custody, or control any deadly weapon. The probate court has jurisdiction over all proceedings regarding the petition and, if one is issued, a PRPO, unless a court other than a probate court is expressly given jurisdiction. The petition must be in the form described below, and must be supported by a written affidavit signed by the petitioner (the law enforcement officer who files the petition) 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. The petitioner also must include with the petition an 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.²¹

²⁰ R.C. 3113.261(B)(2)(c).

²¹ R.C. 3113.27(A)(1) and (3); also R.C. 3113.26.

The petition must do all of the following:²²

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 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 statutes²³ or under any other applicable statute;
5. If, at the time of the filing of the petition, the respondent is in custody under the provisions described below in "**Emergency mental health evaluations**" for an examination as a person who is believed to be a mentally ill person subject to court order and to represent a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination, or is under confinement or disposition after the examination that is subsequent to that custody as described below in "**Emergency mental health evaluations**," state the fact of the custody or the confinement or disposition and the date on which the person was taken into custody, identify the location of the custody, and include a request that the hearing on the petition be expedited.

Court procedures after filing of petition; hearing

Upon the filing of a petition for a PRPO, the court must set a date for a hearing on the petition that is not later than three calendar days after the day on which the petition is filed. If, as described above, the petition includes a request that the hearing be expedited, the court must hold the hearing at the earliest possible time, but not later than the specified three-day deadline. 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, of the respondent's opportunity to be heard to contest the issuance of the PRPO, and of the opportunity for a family or household member of the respondent or business partner or associate of the respondent to be heard to request an exemption from the order of a motor vehicle or equipment needed by the family or household member, partner, or associate. On motion of the petitioner or respondent, or on its own motion, the court may grant a

²² R.C. 3113.27(A)(2).

²³ R.C. 2151.34, 2903.213, 2903.214, 2919.26, and 3113.31.

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 PRPO 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, (4) the continuance is needed for other good cause, or (5) at the time of the filing of the petition, the respondent is in custody under the provisions described below in **“Emergency mental health evaluations”** for an examination as a person who is believed to be a mentally ill person subject to court order and to represent a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination (although not expressly stated, this reason also could include the respondent being under confinement or disposition after the examination that is subsequent to that custody as described below in **“Emergency mental health evaluations”**).²⁴

Conduct of hearing; issuance of order

In any proceeding before the court in which the petitioner is seeking a PRPO or an extension of a PRPO, the petitioner has the burden of proof. In any proceeding before the court in which the petitioner is seeking a PRPO, the Rules of Civil Procedure and the Rules of Evidence apply.²⁵

If, at the time scheduled for the hearing for a PRPO, the respondent is in custody under the provisions described below in **“Emergency mental health evaluations”** for an examination as a person who is believed to be a mentally ill person subject to court order and to represent a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination or is under confinement or disposition after the examination that is subsequent to that custody as described below in **“Emergency mental health evaluations,”** the respondent must be temporarily released from the custody, confinement, or disposition for the purpose of attending the hearing. If, on completion of the hearing, the period of the custody of the respondent for the examination or of the confinement or disposition has not ended and the respondent has not been discharged from that custody, confinement, or disposition, the respondent must return to the hospital or other facility from which the respondent was temporarily released to attend the hearing. The court may direct that a law enforcement officer transport the respondent to and from the hearing.²⁶

At the hearing for a PRPO, the petitioner must prove, by proof beyond a reasonable doubt, 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

²⁴ R.C. 3113.27(A)(6).

²⁵ R.C. 3113.27(A)(4) and (5).

²⁶ R.C. 3113.27(A)(7).

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. If the court at the hearing finds that the petitioner has so proved, the court may issue a PRPO. Absent such a finding, the court is barred from issuing a PRPO. In determining whether to issue a PRPO, the court must consider all of the factors identified below in **“Factors to be considered in determining whether to issue an order.”**²⁷

Request for exemption for motor vehicle or equipment

At the hearing for a PRPO, any family or household member of the respondent (see **“Potential risk protection order definitions,”** below) or business partner or associate of the respondent may request an exemption from the PRPO of a motor vehicle or equipment that is needed by the family or household member, partner, or associate and present evidence as to the need for the vehicle or equipment. If the court at the hearing finds that the family or household member, partner, or associate has proved that the family or household member, partner, or associate needs the motor vehicle or equipment, except as otherwise described in the next paragraph, the court may exempt the vehicle or equipment from the PRPO. If the court exempts any motor vehicle or equipment from the PRPO, the vehicle or equipment is not subject to retrieval under the provisions described below in **“Warrant issuance and retrieval of deadly weapons,”** those retrieval provisions do not apply with respect to the vehicle or equipment, the respondent may not possess or maintain the vehicle or equipment while the order is in effect, and the vehicle or equipment may be possessed or used while the order is in effect only by the family or household member, partner, or associate. The limitations on the respondent’s possession, maintenance, or use of the motor vehicle or equipment do not apply after the expiration or termination of the PRPO.

A court may not exempt any motor vehicle or equipment from a PRPO under authority of the provision described in the preceding paragraph if the petitioner or a prosecutor proves to the court that the motor vehicle or equipment is needed as evidence in any pending or contemplated criminal action or proceeding.²⁸

Content of order issued after hearing

If the court at the hearing finds, by proof beyond a reasonable doubt, that a PRPO should be issued and issues the order, the order must include all of the following:²⁹

1. A statement of the evidence presented and the court’s findings supporting issuance of the PRPO;
2. The date the PRPO was issued;

²⁷ R.C. 3113.27(B)(1)(a) and (2).

²⁸ R.C. 3113.27(B)(1)(b).

²⁹ R.C. 3113.27(B)(3) and (5).

3. The duration of the PRPO, which is 180 days after the date on which the order is issued, and a notice that the duration may be extended upon request of the petitioner under the bill's extension mechanism described below if the court makes certain findings;
4. A notice to the respondent that, beginning 90 days after the PRPO is issued, the respondent may file a petition with the court for a hearing pursuant to the bill's mechanism for terminating the order and reclaiming possession of the respondent's deadly weapons that were retrieved under the order (see "**Procedure for termination of order and reclamation of items**," below);
5. A notice that the PRPO can be appealed to the court of appeals;
6. A notice that the issuance of the PRPO, or the extension of such an order under the bill's extension mechanism described below, makes it unlawful for the respondent to possess, purchase, acquire, or obtain any deadly weapon that is within the scope of the offense of "having weapons while under disability" while the PRPO is in effect;
7. If the court has exempted a motor vehicle or equipment from the PRPO under the provision described above, a specific description of that vehicle or equipment, a statement that that vehicle or equipment is not subject to retrieval under the provisions described below in "**Warrant issuance and retrieval of deadly weapons**," and a statement informing the respondent and law enforcement officers that those retrieval provisions do not apply with respect to that vehicle or equipment;
8. A notice to the respondent that the court will issue a warrant under the provisions described below in "**Warrant issuance and retrieval of deadly weapons**" commanding a law enforcement officer in the county in which the respondent resides, or in a county in which the respondent engaged in an activity or made statements leading to the law enforcement officer's determination that the petition for the PRPO should be filed, to enter the respondent's residence or any other property owned, leased, controlled, or inhabited by the respondent to search for and retrieve all nonexempt deadly weapons in the respondent's possession, custody, or control (but a court that otherwise is required to issue a warrant as described in this paragraph may decide to not issue the warrant or to delay the issuance of the warrant, in the circumstances described below in "**Warrant issuance and retrieval of deadly weapons**."

Service of the order on the respondent

If the court issues a PRPO after a hearing, the court immediately must direct a law enforcement officer to serve the PRPO on the respondent as soon as possible, either at the respondent's residence address set forth in the petition or at any other location that either the petitioner or the officer has reason to believe the respondent can be found and served. If, at that time, the respondent is in custody under the provisions described below in "**Emergency mental health evaluations**" for an examination as a person who is believed to be a mentally ill person subject to court order and to represent a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination or is under confinement or disposition after the examination that is subsequent to that custody as described below in

“Emergency mental health evaluations,” the law enforcement officer must serve the order on the respondent at the hospital or other facility in which the respondent is in custody or under confinement or disposition. After the law enforcement officer serves the PRPO 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.³⁰

Factors to be considered in determining whether to issue an order

Factors

In determining whether to issue a PRPO, 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 a PRPO or in any hearing on such a petition that the respondent has been diagnosed with any “mental illness” (see **“Potential risk protection order definitions,”** below) or any other mental health condition is not sufficient by itself for the court to issue a PRPO. For the PRPO 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 respondent may suffer.³¹ The factors that a court is required to consider in determining whether to issue a PRPO following a hearing are:³²

1. Recent threats or acts of violence by the respondent directed toward any person;
2. Recent acts of the respondent’s cruelty to animals;
3. The respondent’s reckless use, display, or brandishing of any deadly weapon;
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 any person;
6. The respondent’s illegal use of controlled substances or abuse of alcohol;
7. A prior confinement of the respondent under the statute³³ 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 (see **“Emergency mental health evaluations,”** below) or under the statute³⁴ providing for a civil commitment;

³⁰ R.C. 3113.27(B)(4).

³¹ R.C. 3113.27(C) and (D).

³² R.C. 3113.27(C)(1).

³³ R.C. 5122.10.

³⁴ R.C. 5122.11, not in the bill.

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

Definitions of terms used in factors

As used in the factors listed above:³⁵

1. “Recent” means at any time within the six-month period immediately prior to the filing of the petition requesting the issuance of a PRPO order with respect to which the hearing pertains.
2. “A history of” a specified type of activity or conduct means that the specified activity or conduct has occurred multiple times within the six-month period immediately prior to the filing of the petition requesting the issuance of a PRPO with respect to which the hearing pertains.

Issuance of order and inclusion in databases

If a court issues a PRPO after a hearing, a copy of the PRPO must be issued to the petitioner, to the respondent, and to all law enforcement agencies with jurisdiction to enforce the order. The PRPO 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 PRPO must ensure the PRPO is entered into the LEADS created by statute³⁶ within 24 hours of receipt.

If the court that issued the PRPO terminates or cancels the order, or if the order automatically terminates as a matter of law, the court must cause delivery of the notice of termination or cancellation to the same persons and entities that were issued a copy of the order. If the respondent appeals the PRPO or an extension of the PRPO to the court of appeals and the court of appeals overturns the probate court’s decision to issue or extend the order, the court of appeals must cause delivery of notice of its decision to the same persons and entities that were issued a copy of the order. Upon the termination or cancellation of the order, or upon a decision of a court of appeals that overturns the probate court’s decision to issue or extend the order, the law enforcement agency must take all steps necessary to ensure that the order is removed from LEADS within 24 hours after receipt of the notice of the termination, cancellation, or overturning of the order or extension and that the order is terminated, cleared, or cancelled in the NCIC Protection Order Database.³⁷

Warrant issuance and retrieval of deadly weapons

If a court issues a PRPO following a hearing, subject to the limited exception described below, the court that issued the order is required to immediately issue a warrant to a law

³⁵ R.C. 3113.27(C)(2).

³⁶ R.C. 5503.10, not in the bill.

³⁷ R.C. 3113.27(E).

enforcement officer commanding the officer to search for and retrieve all “nonexempt deadly weapons” (see “**Potential risk protection order definitions,**” below) 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 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 retrieved by the officer. This provision applies even if, when the PRPO is issued, the respondent is in custody or under confinement or disposition under the provisions described below in “**Emergency mental health evaluations.**” If a court that otherwise is required to issue a warrant under this provision determines that the respondent is in custody or that the respondent’s deadly weapons already have been surrendered and are in the possession of a law enforcement agency, the court may decide to delay the issuance of the warrant pending the respondent’s release or the return of the deadly weapons to the respondent.³⁸

The bill establishes three sets of rules and procedures regarding nonexempt deadly weapons that a law enforcement officer has retrieved under a warrant, as described above.³⁹

1. First, it specifies that a law enforcement agency that has taken possession of a respondent’s nonexempt deadly weapons pursuant to a PRPO by a retrieval by a law enforcement officer may not mark, damage, deface, or destroy the deadly weapons while they are in the agency’s possession. The agency must maintain the integrity and identity of the deadly weapons in such a manner that, if the deadly weapons subsequently are to be returned to the respondent, they can be identified and returned to the respondent in the same condition they were in when they were retrieved. The agency may not relinquish control of the deadly weapons other than pursuant to a return or sale, as described below in “**Law enforcement agency maintenance, transfer, or sale of items,**” or under a court order.
2. Second, it specifies that a law enforcement agency that has taken possession of a respondent’s nonexempt deadly weapons pursuant to a PRPO by a retrieval by a law enforcement officer may transfer the deadly weapons for storage by the State Highway Patrol for the duration of the order. The Patrol must issue the law enforcement agency that originally took possession of the deadly weapons a proof of transfer that includes the name and address of the respondent from whom the deadly weapons were received and the serial number, make, and model or any other relevant description of each transferred deadly weapon. The Patrol must notify the court, the petitioner, and the respondent that the Patrol then is in possession of the respondent’s deadly weapons.
3. Third, it specifies that a law enforcement agency that has taken possession of a respondent’s nonexempt deadly weapons as described in paragraph (1) or (2), above, or

³⁸ R.C. 3113.28(A).

³⁹ R.C. 3113.28(B).

the State Highway Patrol that has custody of a respondent's nonexempt deadly weapons as described in paragraph (2), above, must make a record of the deadly weapons for purposes of the law governing PRPOs. Notwithstanding the state's Public Records Law,⁴⁰ the record is confidential, is not a public record, and may be used only for purposes of the law governing PRPOs. No person may disseminate the record or any information on it, other than as required for purposes of the law governing PRPOs or as required to do so by a court order. The agency or Patrol may not submit the record or any information on it to any government entity for purposes of a centralized database and no government entity may establish or maintain any centralized database including the record or any information on it.

Duration of order, reclamation procedure, termination, and extension procedure

Duration in general

A PRPO issued by a court after a hearing is in effect for a period of 180 days, beginning on the date of issuance of the order.⁴¹ The 180-day duration is subject to the provisions described below in "**Procedure for termination of order and reclamation of items**," "**Termination in general**," and "**Procedure for extension of order**."

Procedure for termination of order and reclamation of items

With respect to a PRPO issued by a court after a hearing, beginning 90 days after the date of issuance of the order, the respondent may file a petition with the court that issued the order requesting a hearing to terminate the order and reclaim possession of the respondent's deadly weapons. If the PRPO has been extended for an additional period under the extension provisions described below, the respondent may file a motion of this nature at any time after the extension. Upon receipt of such a petition, the court must schedule a hearing on the petition and notify the petitioner and the respondent of the date, time, and location of the hearing.⁴²

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 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. 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

⁴⁰ R.C. 149.43, not in the bill.

⁴¹ R.C. 3113.29(A).

⁴² R.C. 3113.29(B)(1) and (2).

risk.⁴³ Upon the completion of the hearing and consideration of the record, the court must do one of the following:⁴⁴

1. If the court finds that the respondent no longer 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 to such an extent that the respondent should be enjoined from having in the respondent's possession, custody, or control any deadly weapon, the court must grant the respondent's petition, terminate the PRPO, and order the law enforcement agency having custody of the deadly weapons to return them to the respondent upon the respondent's request as soon as possible, but not later than the end of the next business day after, the day on which the respondent makes the request. Upon receipt of the order, the agency must return the deadly weapons to the respondent upon the respondent's request, with the return being as soon as possible, but not later than the end of the next business day after the day on which, the respondent makes the request.
2. If the court finds that the respondent continues to present 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 to such an extent that the respondent should be enjoined from having in the respondent's possession, custody, or control any deadly weapon, the court must deny the respondent's petition and the PRPO 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 at any time during the remainder of the duration of the 180-day period.

Termination in general

If a PRPO has been issued by a court after a hearing for a 180-day period and if the court has not terminated the order and ordered that the respondent's deadly weapons be returned to the respondent after a hearing as described above in "**Procedure for termination of order and reclamation of items**," unless the order is extended for an additional period of not longer than 180 days under the procedure described below in "**Procedure for extension of order**," at the conclusion of the 180-day period the order automatically terminates and the law enforcement agency having possession of the respondent's deadly weapons must return them to the respondent upon the respondent's request. The agency must return the deadly weapons to the respondent as soon as possible after, but not later than the end of the next business day after the day on which, the respondent makes the request.⁴⁵

⁴³ R.C. 3113.29(B)(3).

⁴⁴ R.C. 3113.29(B)(4).

⁴⁵ R.C. 3113.29(C).

Procedure for extension of order

If a PRPO has been issued by the court after a hearing for a 180-day period and if the court has not terminated the order and ordered that the respondent's deadly weapons be returned to the respondent after a hearing as described above in "**Procedure for termination of order and reclamation of items**" and the order has not automatically terminated by operation of law as described above in "**Termination in general,**" at any time prior to the day that is 165 days after the day on which the order was issued, the petitioner may file a motion with the court that issued the order to extend the order for an additional period of not longer than 180 days. If a PRPO that has been issued has been extended by the court, and if the court has not terminated the order and ordered that the respondent's deadly weapons be returned to the respondent after a hearing as described above in "**Procedure for termination of order and reclamation of items**" and the order has not automatically terminated by operation of law as described above in "**Termination in general,**" at any time prior to the day that is 15 days before the date of termination of the "extended order" (see "**Potential risk protection order definitions,**" below), the petitioner may file a motion with the court that issued the order to extend the order for an additional period of not longer than 180 days.

Upon the filing of such a motion in either situation, 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 PRPO or prior to the expiration of the date of termination of the extended order, whichever is applicable. 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 proof beyond a reasonable doubt, 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. In determining at a hearing on the motion whether to extend a PRPO, the court is required to consider all of the factors identified above in "**Factors to be considered in determining whether to issue an order.**"⁴⁶

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:⁴⁷

1. If the court finds that the petitioner has not proven by proof beyond a reasonable doubt that the respondent continues to present 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 to such an extent that the respondent should be enjoined from having possession, custody, or control of any deadly weapon, the court must deny the petitioner's motion. If the court denies the petitioner's motion, the

⁴⁶ R.C. 3113.29(D)(1) to (3).

⁴⁷ R.C. 3113.29(D)(4), (5), and (6).

PRPO will expire at the end of the specified 180-day period if the order is an initial order or on the date of termination of the extension if the order is an extended order, whichever is applicable, and the law enforcement agency having custody of the deadly weapons must return them to the respondent upon the respondent's request after the expiration of the applicable specified period. The agency must return the deadly weapons to the respondent as soon as possible after, but not later than the end of the next business day after, the respondent makes the request. 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 proof beyond a reasonable doubt that the respondent continues to present 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 to such an extent that the respondent should be enjoined from having possession, custody, or control of any deadly weapon, the court must grant the petitioner's motion and shall extend the current PRPO for an additional period of not longer than 180 days immediately following the expiration of the specified 180-day period if the order is an initial order or the date of termination of the extension if the order is an extended order, whichever is applicable. 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 that the court has extended the order for an additional period of not longer than 180 days and the duration of the extension and notify the respondent that, at any time after the extension, the respondent may file a petition to terminate the order and reclaim the respondent's deadly weapons under the procedure described above in "**Procedure for termination of order and reclamation of items**" or that the respondent may appeal the 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 that were retrieved from a respondent who was subject to a PRPO must safely keep the deadly weapons until further order of the court that issued the order.⁴⁸ Also see "**Warrant issuance and retrieval of deadly weapons,**" above regarding the maintenance, transfer, and return of the deadly weapons.

The bill provides the following procedure for the sale of the deadly weapons in the possession of a law enforcement agency under a PRPO, upon the request of the respondent:⁴⁹

⁴⁸ R.C. 3113.29(E).

⁴⁹ R.C. 3113.29(F).

1. A respondent who is subject to a PRPO and whose deadly weapons are in the possession of a law enforcement agency may request the court to order the agency to sell one or more of those deadly weapons that lawfully may be sold, with the sale to be at auction under a specified sale procedure⁵⁰ as if the weapons were unclaimed or forfeited deadly weapons in the custody of the agency, and to return the proceeds to the individual. The request must specify each deadly weapon the respondent wishes to be sold.
2. If a respondent requests a sale of one or more deadly weapons as described above in (1), the court must order the law enforcement agency having custody of the specified weapons to sell them at auction under the specified sale procedure as if they were unclaimed or forfeited weapons in the custody of the agency, unless the specified deadly weapons have or had serial numbers and the serial numbers 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.⁵¹
3. If a court issues an order as described above in (2), the order must require that all deadly weapons 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 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 owns the weapon that is sold, 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 that is sold.

Prohibition against filing false petition and sanctions

The bill prohibits any person from filing a petition for a PRPO alleging 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 to such an extent that the respondent should be temporarily enjoined from having in the respondent's possession, custody, or control any deadly weapon if the person knows the allegation is false.⁵² A violation of the prohibition is a fifth degree felony.⁵³

⁵⁰ R.C. 2981.12(A)(2), not in the bill.

⁵¹ R.C. 2981.12(A)(2), not in the bill.

⁵² R.C. 3113.30(A).

⁵³ R.C. 3113.99(B).

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 existing statute⁵⁴ 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 existing statute.⁵⁵ 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.⁵⁶

Potential risk protection order definitions

As used in the bill's provisions regarding PRPOs:⁵⁷

"Court" means the probate court in each county, unless the reference expressly refers to a court other than a probate court.

"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.⁵⁸

"Extended potential risk protection order" and **"extended order"** mean a PRPO that has been extended under the bill's provisions for extension of PRPOs.

"Family or household member" means any of the following:⁵⁹

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. **"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 state university law enforcement officer.

⁵⁴ R.C. 2307.60, not in the bill.

⁵⁵ R.C. 2315.21, not in the bill.

⁵⁶ R.C. 3113.30(B).

⁵⁷ R.C. 3113.26.

⁵⁸ R.C. 2923.11, not in the bill, by reference.

⁵⁹ R.C. 3113.31, by reference.

“Nonexempt deadly weapon” means a deadly weapon other than a motor vehicle or equipment that the court issuing a PRPO after a hearing has exempted from the bill’s provisions for retrieval of deadly weapons under a PRPO.

“Mental health professional” means an individual who is licensed, certified, or registered under the Revised Code, or otherwise authorized in Ohio, to provide mental health services for compensation, remuneration, or other personal gain.⁶⁰

“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.⁶¹

“Mentally ill person subject to court order” means a mentally ill person who, because of the person’s illness:⁶²

1. Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
2. Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
3. Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person’s basic physical needs because of the person’s mental illness and that appropriate provision for those needs cannot be made immediately available in the community;
4. Would benefit from treatment for the person’s mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person;
5. Would benefit from treatment as manifested by evidence of behavior that indicates any of a list of specified types of outcomes, factors, or evidence.

“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.⁶³

⁶⁰ R.C. 2305.51, not in the bill, by reference.

⁶¹ R.C. 5122.01, not in the bill, by reference.

⁶² R.C. 5122.01, not in the bill, by reference.

⁶³ R.C. 3113.31, by reference.

“Petitioner” means a family or household member, a person living as a spouse, or a law enforcement officer who files a petition for a PRPO under the bill.

“Public safety emergency” means either of the following: (1) a law enforcement officer has filed a petition requesting a PRPO based on the arrest of a person for a specified criminal offense, and the officer has reasonable cause to believe that the person has possession, custody, or control of one or more deadly weapons and that it might be appropriate for the person to be subjected to a PRPO, or (2) a law enforcement officer has interviewed a person based on a reasonable cause to believe the person presents a significant risk of suicide, harm to self, or harm to another, the officer has not taken the person into custody for a mental health evaluation, and the officer has reasonable cause to believe that the person has possession, custody, or control of one or more deadly weapons and that it might be appropriate for the person to be subjected to a PRPO.

“Respondent” means a person who is identified in a petition for a PRPO filed under the bill as the person with respect to whom the PRPO will apply if the order is issued.

Emergency mental health evaluations

Currently

A mechanism in existing law (sometimes referred to as the “pink slip” law) authorizes certain mental health professionals, law enforcement personnel, or health officers who have reason to believe that a person is a mentally ill person subject to court order and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination to take the person into custody and immediately transport the person to a hospital or to a general hospital not licensed by the Department of Mental Health and Addiction Services where the person may be held for the specified period of time. It also authorizes the chief of the Adult Parole Authority or a parole or probation officer with the approval of the chief of the Authority who has reason to believe that a parolee or an offender under a specified type of supervised release is a mentally ill person subject to court order and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination, to take the parolee or offender into custody and immediately transport the parolee or offender to such a place where the parolee or offender may be held for the specified period of time.

A person transported or transferred to a hospital or community mental health services provider under this authority must be examined by the staff of the hospital or services provider within 24 hours after arrival at the hospital or services provider. If to conduct the examination requires that the person remain overnight, the hospital or services provider must admit the person in an unclassified status until making a disposition. After the examination, if the chief clinical officer of the hospital or services provider believes that the person is not a mentally ill person subject to court order, the chief clinical officer must release or discharge the person immediately unless a court has issued a temporary order of detention applicable to the person under the law governing mental health civil commitment. After the examination, if the chief clinical officer believes that the person is a mentally ill person subject to court order, the officer may detain the person for not more than three court days following the day of the

examination, and during such period, admit the person as a voluntary patient or file an affidavit under the law governing mental health civil commitments. If neither action is taken and a court has not otherwise issued a temporary order of detention applicable to the person under the law governing civil commitments, the chief clinical officer must discharge the person at the end of the three-day period unless the person has been sentenced to the Department of Rehabilitation and Correction and has not been released from the person's sentence, in which case the person shall be returned to that Department.⁶⁴

Operation of the bill

The bill modifies the existing provisions regarding emergency mental health evaluations to apply them to a context involving the potential issuance of a PRPO.

Taking of person into custody for evaluation

Under the bill, in either of the two circumstances described above under **“Reasonable cause to believe a person presents a significant risk of suicide, harm to self, or harm to another as basis for law enforcement officer’s filing of a petition requesting issuance of order”** that authorize the taking of a person into custody for purposes of an emergency mental health evaluation related to the potential issuance of a PRPO, upon the filing of the petition requesting the issuance of a PRPO with respect to the person, a law enforcement officer may take a person into custody and immediately transport the person to a hospital or to a general hospital not licensed by the Department of Mental Health and Addiction Services where the person may be held for the period prescribed in the bill, described below. The officer must inform the person taken into custody that an officer has petitioned a court requesting the issuance of a PRPO. These provisions are separate from and independent of, and do not limit or affect the operation of, the provisions of existing law regarding the taking of a person into custody for an emergency mental health evaluation. The filing of the PRPO petition with respect to the person and the taking of the person into custody and transport of the person to a facility under this section is a public safety emergency (see **COMMENT**).⁶⁵

Officer cannot take person’s deadly weapons, subject to limited exception

When a person is taken into custody under the bill’s provision described above for transport or transfer to a hospital, except as otherwise described in this paragraph, the law enforcement officer who takes the person into custody may not take custody or possession of any deadly weapons present when the person is taken into custody. But this bar does not limit or restrict a law enforcement officer who takes a person into custody under the provision from taking custody or possession of any deadly weapons as otherwise permitted by law.⁶⁶

⁶⁴ R.C. 5122.10.

⁶⁵ R.C. 5122.10(A)(3) and (C).

⁶⁶ R.C. 5122.10(F)(1).

Procedures after examination

If a person is taken into custody under the bill's provision described above for transport or transfer to a hospital, the bill prescribes procedures that apply after the examination of the person, with the applicable procedure depending upon the belief of the chief clinical officer of the hospital or services provider.

1. **Belief that the person is not a mentally ill person subject to court order**. If the chief clinical officer believes that the person is not a mentally ill person subject to court order, one of the following applies:⁶⁷
 - a. If a court has issued a temporary order of detention applicable to the person under the law governing mental health civil commitments that provides for a longer period of detention, the person must be detained in accordance with the order, provided that, because of the public safety emergency, except as otherwise described in this paragraph, the person must remain confined pending the hearing under the bill on the petition requesting the issuance of a PRPO with respect to the person. In no case may the person be confined due to the pendency of the petition for more than 72 hours after the petition is filed (see **COMMENT**).
 - b. If the person is not detained as described in paragraph (1), above, because of the public safety emergency, the person must remain confined pending the hearing under the bill on the petition requesting the issuance of a PRPO with respect to the person, provided that in no case may the person be confined due to the pendency of the petition for more than 72 hours after the petition is filed (see **COMMENT**).
2. **Belief that the person is a mentally ill person subject to court order**. If the chief clinical officer believes that the person is a mentally ill person subject to court order and detains the person following the examination under existing authority for such detention based on such a belief, one of the following applies:⁶⁸
 - a. If the chief clinical officer admits the person as a voluntary patient or files an affidavit under the law governing mental health civil commitments or if a court has issued a temporary order of detention applicable to the person under the law governing mental health civil commitments, the person must be detained in accordance with the provisions of the applicable section or order, provided that, because of the public safety emergency, except as otherwise described in this paragraph, the person must remain confined pending the hearing under the bill on the petition requesting the issuance of a PRPO with respect to the person. In no case may the person be confined due to the pendency of the petition for more than 72 hours after the petition is filed (see **COMMENT**).

⁶⁷ R.C. 5122.10(F)(2).

⁶⁸ R.C. 5122.10(F)(3).

- b. If the chief clinical officer does not admit the person as a voluntary patient or file an affidavit and a court has not issued a temporary order of detention, as described in paragraph (2)(a), above, because of the public safety emergency, the person must remain confined pending the hearing under the bill on the petition requesting the issuance of a PRPO with respect to the person, provided that in no case may the person be confined due to the pendency of the petition for more than 72 hours after the petition is filed (see **COMMENT**).

Procedure if person taken into custody after the issuance of PRPO or if order issued while person is in custody

If a person is taken into custody under the bill's provision described above for transport or transfer to a hospital, or under the provisions of existing law for that purpose, and if the person was taken into such custody after the issuance of a PRPO that applies with respect to the person but before the person's deadly weapons were retrieved under the order or the person was taken into such custody before the issuance of a PRPO that applies with respect to the person and such an order was issued while the person was in that custody or under any other authorized disposition that is subsequent and related to that custody, the bill's provisions regarding retrieval of the person's deadly weapons, as specified above in "**Warrant issuance and retrieval of deadly weapons,**" applies with respect to the person.⁶⁹

No effect on other basis for filing of a petition requesting the issuance of a PRPO

The bill specifies that if a person, parolee, or offender is taken into custody under the provisions of existing law regarding the taking of a person into custody for an emergency mental health evaluation, the bill's provisions described in the preceding paragraphs do not limit or affect the authority of a law enforcement officer to file a petition with a court requesting the issuance of a PRPO to apply with respect to the person, based on the person's arrest for a specified criminal offense, as described above in "**Arrest of person as basis for law enforcement officer's filing of a petition requesting issuance of order.**"⁷⁰

Name of act

The bill specifies that its provision are to be known as the Mental Health Awareness and Community Violence Protection Act.⁷¹

COMMENT

The bill, in several circumstances in which a petition requesting a PRPO is filed under its provisions, declares a public safety emergency and provides that the public safety emergency

⁶⁹ R.C. 5122.10(F)(4).

⁷⁰ R.C. 5122.10(A)(3).

⁷¹ Section 4.

requires that the person who would be the respondent under the PRPO be held for not more than 72 hours in some situations and for not more than 24 hours in other situations while the petition is pending, even if the respondent under another Revised Code or Criminal Rules provision would have to be released. It is unclear whether Ohio’s courts would recognize the circumstances specified in the bill, or the bill’s declaration of those circumstances as a public emergency, as a valid basis for the holding of the respondent in the specified manners.

HISTORY

Action	Date
Introduced	09-17-19
