

HB383 INTRODUCED



1 H9VA83-1
2 By Representative Ensler
3 RFD: Public Safety and Homeland Security
4 First Read: 25-Apr-23
5
6 2023 Regular Session



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SYNOPSIS:

This bill would establish the Red Flag Protective Order Act.

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

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

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

This bill would provide criminal penalties for a violation.

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



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

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

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A BILL

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TO BE ENTITLED

45

AN ACT

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47 Relating to public safety; to establish the Red Flag
48 Protective Order Act; to provide for the issuance of ex parte
49 red flag protective orders and one-year red flag protective
50 orders; to require the surrender of all firearms and
51 ammunition of a person subject to a red flag protective order;
52 to provide for the renewal or early termination of an order;
53 to provide criminal penalties for a violation; and in
54 connection therewith would have as its purpose or effect the
55 requirement of a new or increased expenditure of local funds
56 within the meaning of Section 111.05 of the Constitution of



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57 Alabama of 2022.

58 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

59 Section 1. This act shall be known and may be cited as
60 the Red Flag Protective Order Act.

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

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

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

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

82 (4) Under federal law, an individual suffering from
83 mental illness is not prohibited from purchasing or possessing
84 a firearm unless he or she has been involuntarily committed to



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

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

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

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

110 (2) FAMILY MEMBER. An individual related by blood,
111 marriage, or adoption to the respondent, current or former
112 dating partner of the respondent, and any individual who



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113 resides or has resided with the respondent, or who is acting
114 or has acted as the respondent's legal guardian.

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

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

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

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

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

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

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



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

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

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



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169 10. Aggregate statistical data about the numbers of gun
170 violence protective orders issued, renewed, denied, dissolved,
171 or terminated shall be available to the public upon request.

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

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

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

192 (b) The court shall issue or deny an ex parte red flag
193 protective order on the same day that the petition is
194 submitted to the court, unless the petition is filed too late
195 in the day to allow for its effective review, in which the
196 order shall be issued or denied on the next business day.



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

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

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

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

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

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

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

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

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

224 (e) The court shall also consider the time that has



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225 elapsed since the occurrence of any event described in
226 subsection (d).

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

233 (g) An ex parte red flag protective order shall include
234 all of the following:

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

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

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

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

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

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



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253 (h) An ex parte red flag protective order shall be
254 personally served on the respondent by a law enforcement
255 officer.

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

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

270 (b) Prior to a hearing for a one-year red flag
271 protective order, the court shall do both of the following:

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

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

277 (c) In determining whether to issue a one-year red
278 flag protective order under this section, the court shall
279 consider all relevant evidence presented by the petitioner and
280 may also consider other relevant evidence, including, but not



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281 limited to, evidence of events identified in subsection (d) of
282 Section 5.

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

289 (e) A one-year red flag protective order issued under
290 this section shall include all of the following:

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

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

297 (3) A statement of the grounds supporting the issuance
298 of the order.

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

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

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

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

306 (f) If the respondent fails to appear at the hearing
307 and the court determines that a one-year red flag protective
308 order shall be issued, the order shall be personally served on



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309 the respondent by a law enforcement officer.

310 Section 7. (a) A respondent subject to a one-year red
311 flag protective order may submit one written request at any
312 time during the effective period of the order for a hearing to
313 terminate the order.

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

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

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

328 (b) A petitioner may request a renewal of a one-year
329 red flag protective order at any time within the three months
330 before the expiration of the order.

331 (1) A court, after notice and a hearing, may renew the
332 one-year red flag protective order if the court, by a
333 preponderance of the evidence, finds that the respondent
334 continues to pose a substantial danger of causing personal
335 injury to self or another through his or her ownership,
336 purchase, control, possession, or receipt of a firearm or



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337 ammunition.

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

344 (3) A one-year red flag protective order renewed under
345 this subsection shall expire after one year, subject to
346 termination by further order of the court at a hearing held
347 under subsection (a) and further renewal by order of the court
348 under this subsection.

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

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

362 (c) At the time of surrender or removal, a law
363 enforcement officer taking possession of a firearm or
364 ammunition pursuant to any red flag protective order shall



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365 issue a receipt identifying all firearms and ammunition that
366 have been surrendered or removed and provide a copy of the
367 receipt to the respondent. Within 72 hours after serving the
368 order, the officer who served the order shall file the
369 original receipt with the court that issued the red flag
370 protective order, and shall ensure that the law enforcement
371 agency retains a copy of the receipt.

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

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

388 Section 9. (a) As used in this section, dispose means
389 to sell or transfer a firearm or ammunition to a federally
390 licensed dealer, defined under 18 U.S.C. § 921 et seq., or to
391 destroy the firearm or ammunition.

392 (b) Thirty days before a one-year red flag protective



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393 order is set to expire, a law enforcement agency holding a
394 firearm or ammunition that has been surrendered pursuant to
395 the order shall notify the petitioner that the order is set to
396 expire. The notice shall advise the petitioner of the
397 procedures for seeking a renewal of the order pursuant to
398 Section 7.

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

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

419 (e) If an individual other than the respondent claims
420 title to a firearm or ammunition surrendered pursuant to



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421 Section 8, and the individual is determined by the law
422 enforcement agency to be the lawful owner of the firearm or
423 ammunition, the firearm or ammunition shall be returned to him
424 or her.

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

435 Section 10. (a) The court shall notify the Alabama
436 State Law Enforcement Agency (ALEA) no later than one business
437 day after issuing, renewing, dissolving, or terminating an ex
438 parte or one-year red flag protective order under this act.

439 (b) The information required to be submitted to ALEA
440 pursuant to this section shall include identifying information
441 about the respondent and the date the order was issued,
442 renewed, dissolved, or terminated. In the case of a one-year
443 red flag order, the court shall include the date the order is
444 set to expire. The court shall also indicate whether the
445 respondent to the one-year red flag protective order was
446 present in court to be advised of the contents of the order or
447 if the respondent failed to appear. The respondent's presence
448 in court shall constitute proof of service of notice of the



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449 terms of the order.

450 (c) Within one business day of service, a law
451 enforcement officer who serves a red flag protective order or
452 the clerk of the court shall submit the proof of service and a
453 copy of the protection order to ALEA for entry into the
454 appropriate database.

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

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

466 Section 11. (a) A person who files a petition for a red
467 flag protective order, knowing the information in the petition
468 to be materially false or with an intent to harass the
469 respondent, is guilty of a Class C misdemeanor.

470 (b) A person who owns, purchases, controls, possesses,
471 or receives a firearm or ammunition with knowledge that he or
472 she is prohibited from doing so by a red flag protective order
473 is guilty of a Class C misdemeanor and shall be prohibited
474 from owning, purchasing, controlling, possessing, or
475 receiving, or attempting to purchase or receive, a firearm or
476 ammunition for a period of five years from the date of



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477 conviction.

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

481 Section 13. This act shall not be construed to impose
482 criminal or civil liability on any individual who chooses not
483 to seek a red flag protective order pursuant to this act.

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

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