
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2859 Session of
2022

INTRODUCED BY ZABEL, MADDEN, FREEMAN, KINSEY, T. DAVIS,
SCHLOSSBERG, GUENST, HOHENSTEIN, SAMUELSON, HILL-EVANS,
DELLOSO, SANCHEZ, HOWARD, FITZGERALD, KINKEAD, INNAMORATO AND
CIRESI, SEPTEMBER 29, 2022

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 29, 2022

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in firearms and other dangerous articles, further
4 providing for persons not to possess, use, manufacture,
5 control, sell or transfer firearms and for abandonment of
6 firearms, weapons or ammunition; in community and municipal
7 courts, further providing for masters; and providing for
8 extreme risk protection orders.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 6105(a)(2)(ii), (a.1)(3) and (5), (c)(10)
12 and (f)(4)(i) of Title 18 of the Pennsylvania Consolidated
13 Statutes are amended and subsections (a.1) and (c) are amended
14 by adding paragraphs to read:

15 § 6105. Persons not to possess, use, manufacture, control, sell
16 or transfer firearms.

17 (a) Offense defined.--

18 * * *

19 (2) * * *

20 (ii) This paragraph shall not apply to any person

1 whose disability is imposed pursuant to subsection (c) (6)
2 or (10).

3 * * *

4 (a.1) Penalty.--

5 * * *

6 (2.1) A person who is the subject of an extreme risk
7 protection order issued under 42 Pa.C.S. Ch. 64A (relating to
8 extreme risk protection orders) commits a misdemeanor of the
9 second degree if the person intentionally or knowingly fails
10 to relinquish a firearm or firearms license as required by
11 the order.

12 (3) (i) A person commits a misdemeanor of the third
13 degree if [he] the person intentionally or knowingly
14 accepts possession of a firearm, other weapon or
15 ammunition from another person [he] who the person knows
16 is the subject of an active final protection from abuse
17 order issued pursuant to 23 Pa.C.S. § 6108 or an active
18 protection from abuse order issued pursuant to 23 Pa.C.S.
19 § 6107(b), which order provided for the relinquishment of
20 the firearm, other weapon or ammunition during the period
21 of time the order is in effect[.] or intentionally or
22 knowingly accepts possession of a firearm or firearms
23 license from another person who the person knows is the
24 subject of an extreme risk protection order issued under
25 42 Pa.C.S. Ch. 64A.

26 (ii) This paragraph shall not apply to:

27 (A) a third party who accepts possession of a
28 firearm, other weapon or ammunition relinquished
29 pursuant to 23 Pa.C.S. § 6108.3; or

30 (B) a dealer licensed pursuant to section 6113

1 (relating to licensing of dealers) or subsequent
2 purchaser from a dealer licensed pursuant to section
3 6113, who accepts possession of a firearm, other
4 weapon or ammunition relinquished pursuant to 23
5 Pa.C.S. § 6108.2 or 42 Pa.C.S. Ch. 64A.

6 * * *

7 (5) A person who has accepted possession of a firearm,
8 other weapon or ammunition pursuant to 23 Pa.C.S. § 6108.3 or
9 a firearm or firearms license under 42 Pa.C.S. Ch. 64A
10 commits a misdemeanor of the [first] second degree if [he]
11 the person intentionally or knowingly returns a firearm,
12 other weapon or ammunition to a defendant or intentionally or
13 knowingly allows a defendant to have access to the firearm,
14 other weapon or ammunition prior to [either] any of the
15 following:

16 (i) The sheriff accepts return of the safekeeping
17 permit issued to the party pursuant to 23 Pa.C.S. §
18 6108.3(d)(1)(i).

19 (ii) The issuance of a court order pursuant to
20 subsection (f)(2) or 23 Pa.C.S. § 6108.1(b) (relating to
21 return of relinquished firearms, other weapons and
22 ammunition and additional relief) which modifies a valid
23 protection from abuse order issued pursuant to 23 Pa.C.S.
24 § 6108, which order provided for the relinquishment of
25 the firearm, other weapon or ammunition by allowing the
26 defendant to take possession of the firearm, other weapon
27 or ammunition that had previously been ordered
28 relinquished.

29 (iii) The expiration of an extreme risk protection
30 order or the issuance of a court order that terminates an

1 extreme risk protection order under 42 Pa.C.S. Ch. 64A.

2 * * *

3 (c) Other persons.--In addition to any person who has been
4 convicted of any offense listed under subsection (b), the
5 following persons shall be subject to the prohibition of
6 subsection (a):

7 * * *

8 (10) A person who has been convicted of an offense under
9 subsection [(a.1)(2)] (a.1)(2.1) or (5). The prohibition
10 shall terminate five years after the date of conviction,
11 final release from confinement or final release from
12 supervision, whichever is later.

13 (11) A person who is the subject of an active extreme
14 risk protection order issued under 42 Pa.C.S. Ch. 64A.

15 * * *

16 (f) Other exemptions and proceedings.--

17 * * *

18 (4) (i) The owner of any seized or confiscated firearms
19 or of any firearms ordered relinquished under 23 Pa.C.S.
20 § 6108 or 42 Pa.C.S. Ch. 64A shall be provided with a
21 signed and dated written receipt by the appropriate law
22 enforcement agency. This receipt shall include, but not
23 limited to, a detailed identifying description indicating
24 the serial number and condition of the firearm. In
25 addition, the appropriate law enforcement agency shall be
26 liable to the lawful owner of said confiscated, seized or
27 relinquished firearm for any loss, damage or substantial
28 decrease in value of said firearm that is a direct result
29 of a lack of reasonable care by the appropriate law
30 enforcement agency.

1 * * *

2 Section 2. Section 6128(a) introductory paragraph of Title
3 18 is amended to read:

4 § 6128. Abandonment of firearms, weapons or ammunition.

5 (a) General rule.--Firearms, weapons or ammunition which are
6 itemized on a list required under 23 Pa.C.S. § 6108(a)(7)(v)
7 (relating to relief) or the possession or acquisition of which
8 is prohibited under 42 Pa.C.S. Ch. 64A (relating to extreme risk
9 protection orders) or 18 U.S.C. § 922(g)(9) (relating to
10 unlawful acts) and relinquished into or otherwise coming into
11 the custody of a police department, Pennsylvania State Police,
12 coroner, medical examiner, district attorney, sheriff or
13 licensed dealer shall be deemed abandoned when:

14 * * *

15 Section 3. Section 1126 of Title 42 is amended to read:

16 § 1126. Masters.

17 The President Judge of the Philadelphia Municipal Court may
18 appoint attorneys who are members of the Pennsylvania Bar to
19 serve as masters in proceedings under Chapter 64A (relating to
20 extreme risk protection orders) or 23 Pa.C.S. Ch. 61 (relating
21 to protection from abuse).

22 Section 4. Title 42 is amended by adding a chapter to read:

23 CHAPTER 64A

24 EXTREME RISK PROTECTION ORDERS

25 Sec.

26 64A01. Scope of chapter.

27 64A02. Definitions.

28 64A03. Preliminary matters.

29 64A04. Establishment.

30 64A05. Requirements.

1 § 64A01. Scope of chapter.

2 This chapter relates to extreme risk protection orders.

3 § 64A02. Definitions.

4 The following words and phrases when used in this chapter
5 shall have the meanings given to them in this section unless the
6 context clearly indicates otherwise:

7 "Court." A court of common pleas in this Commonwealth.

8 "Extreme risk protection order." A court order prohibiting
9 an individual from having in the individual's possession or
10 control, purchasing or receiving, or attempting to purchase or
11 receive, a firearm, based upon a finding that the individual
12 presents a substantial risk of suicide or of causing the death
13 of or serious bodily injury to another individual.

14 "Family or household member." Any of the following:

15 (1) A spouse.

16 (2) An individual who has been a spouse.

17 (3) An individual living as a spouse or who lived as a
18 spouse.

19 (4) A parent.

20 (5) A child.

21 (6) Any other individual related by consanguinity or
22 affinity.

23 (7) A current or former sexual or intimate partner.

24 (8) An individual who shares biological parenthood.

25 "Firearm." A weapon designed to or that may readily be
26 converted to expel a projectile by the action of an explosive or
27 the frame or receiver of the weapon.

28 "Firearms dealer." A person licensed to sell firearms under
29 18 Pa.C.S. § 6113 (relating to licensing of dealers).

30 "Firearms license." Any of the following:

1 (1) A concealed carry license issued under 18 Pa.C.S. §
2 6109 (relating to licenses).

3 (2) A safekeeping license issued under 23 Pa.C.S. §
4 6108.3 (relating to relinquishment to third party for
5 safekeeping).

6 (3) A hunting license required under 34 Pa.C.S. § 2701
7 (relating to license requirements).

8 (4) Any similar license issued in accordance with the
9 laws of another state.

10 "Hearing officer." Any of the following:

11 (1) A magisterial district judge.

12 (2) A judge of the Philadelphia Municipal Court.

13 (3) An arraignment court magistrate appointed under
14 section 1123 (relating to jurisdiction and venue).

15 (4) A master appointed under section 1126 (relating to
16 masters).

17 (5) A master for emergency relief.

18 "Law enforcement officer." An officer of the United States,
19 of another state or political subdivision thereof or of the
20 Commonwealth or political subdivision thereof who is empowered
21 by law to conduct investigations of or to make an arrest for an
22 offense enumerated in this chapter or an equivalent crime in
23 another jurisdiction and an attorney authorized by law to
24 prosecute or participate in the prosecution of the offense.

25 § 64A03. Preliminary matters.

26 (a) Standing.--A law enforcement officer or a family or
27 household member of an individual believed to present a risk of
28 suicide or of causing the death of or extreme bodily injury to
29 another individual may file a petition requesting that the court
30 issue an extreme risk protection order or renew an existing

1 extreme risk protection order.

2 (b) Filing fee.--No filing fee may be charged for a petition
3 under this chapter.

4 (c) Effect of service.--An extreme risk protection order is
5 effective at the time of service.

6 (d) Other persons.--Nothing in this section shall be
7 construed to prohibit a county from allowing other persons from
8 requesting that the court issue an extreme risk protection order
9 or renew an existing extreme risk protection order.

10 § 64A04. Establishment.

11 (a) Local rules.--A county may establish an extreme risk
12 protection order and may adopt local rules for the
13 administration of extreme risk protection orders and interim
14 extreme risk protection orders. The local rules may not be
15 inconsistent with this chapter.

16 (b) Program coordinator.--The Supreme Court of Pennsylvania
17 may appoint a Statewide extreme risk protection order program
18 coordinator. The program coordinator may:

19 (1) Encourage and assist in the establishment of an
20 extreme risk protection order program in each county.

21 (2) Identify sources of funding for extreme risk
22 protection order programs.

23 (3) Provide coordination and technical assistance for
24 extreme risk protection order programs.

25 (4) Develop model guidelines for the administration of
26 extreme risk protection order programs.

27 (5) Establish procedures for monitoring extreme risk
28 protection order programs to evaluate the effectiveness of
29 the programs.

30 (c) Advisory committee.--The Supreme Court of Pennsylvania

1 may establish an interdisciplinary and interbranch advisory
2 committee to advise and assist the Statewide extreme risk
3 protection order program coordinator in monitoring and
4 administrating extreme risk protection order programs and court
5 procedures under this chapter on a Statewide basis.

6 § 64A05. Requirements.

7 (a) Due process.--Each extreme risk protection order program
8 must:

9 (1) Prevent a violation or infringement of the
10 Constitution of the United States, including the Bill of
11 Rights and the substantive and procedural due process rights
12 guaranteed under the Fifth and Fourteenth Amendments to the
13 Constitution of the United States, as applied to the states,
14 and the Constitution of Pennsylvania, and as interpreted by
15 United States courts, including the Supreme Court of the
16 United States, and Pennsylvania courts.

17 (2) Include, at the appropriate phase to prevent a
18 violation of constitutional rights, at a minimum:

19 (i) Proper notice.

20 (ii) The right to an in-person hearing.

21 (iii) An unbiased adjudicator.

22 (iv) The right to know opposing evidence.

23 (v) The right to present evidence.

24 (vi) The right to confront adverse witnesses.

25 (b) Representation.--A respondent under this chapter shall
26 have the right to be represented by counsel. If the respondent
27 cannot afford an attorney and meets the income guidelines
28 applicable to representation by a public defender in a criminal
29 case, the court shall appoint counsel upon the request of the
30 respondent.

1 (c) Evidentiary standards and proof.--

2 (1) Each extreme risk protection order program must
3 include pre-deprivation and post-deprivation heightened
4 evidentiary standards and proof, which are:

5 (i) Not less than the protections afforded to a
6 similarly situated litigant in Federal court or
7 promulgated by Pennsylvania's evidentiary body.

8 (ii) Sufficient to ensure the full protections of
9 the Constitution of the United States, including the Bill
10 of Rights and the substantive and procedural due process
11 rights guaranteed under the Fifth and Fourteenth
12 Amendments to the Constitution of the United States, as
13 applied to the states, and as interpreted by Pennsylvania
14 courts and United States courts, including the Supreme
15 Court of the United States.

16 (2) The heightened evidentiary standards and proof under
17 each extreme risk protection order program must, at all
18 appropriate phases to prevent a violation of any
19 constitutional right, at a minimum, prevent reliance upon
20 evidence that is unsworn or unaffirmed, irrelevant, based on
21 inadmissible hearsay, unreliable, vague, speculative or
22 lacking a foundation.

23 (d) Penalties for abuse of program.--Each extreme risk
24 protection order program must include penalties for abuse of the
25 extreme risk protection order program, including false reporting
26 and false swearing.

27 (e) Relinquishment.--

28 (1) An extreme risk protection order or an interim
29 extreme risk protection order shall require the
30 relinquishment of all firearms and firearms licenses owned by

1 the respondent or in the respondent's possession or control
2 within 24 hours following service of the order, except for
3 cause shown, in which case the court or hearing officer
4 issuing the order shall specify the time for relinquishment
5 of any or all of the respondent's firearms.

6 (2) A law enforcement officer or sheriff serving an
7 extreme risk protection order shall request that all firearms
8 and any firearms license in the respondent's possession or
9 control be immediately relinquished into the custody of the
10 law enforcement officer or sheriff. A law enforcement officer
11 taking custody of a firearm or firearms license under this
12 subsection shall transfer the firearm or firearms license to
13 the sheriff or to a firearms dealer for safekeeping.

14 (f) Return to respondent.--

15 (1) If, following a hearing, a court vacates an interim
16 extreme risk protection order, the court shall order the
17 return of all relinquished firearms and firearms licenses to
18 the respondent following the confirmation that the person
19 requesting return of the firearms is legally eligible to
20 possess firearms under Federal and State law, by conducting a
21 background check as soon as possible, but not later than the
22 end of the next business day after the day on which the
23 person makes the request.

24 (2) Upon termination or expiration of an extreme risk
25 protection order, the respondent may request that the sheriff
26 or firearms dealer in possession of a relinquished firearm or
27 firearms license return the firearm or firearms license. The
28 sheriff or firearms dealer shall return the firearm or
29 firearms license to the respondent as soon as possible
30 following the confirmation that the person requesting return

1 of the firearm is legally eligible to possess firearms under
2 Federal and State law, by conducting a background check as
3 soon as possible, but not later than the end of the next
4 business day after the day on which the person makes the
5 request.

6 (g) Content of orders.--

7 (1) An extreme risk protection order must include at
8 least:

9 (i) The date and time that the order was issued.

10 (ii) Notice of the right to petition the court for a
11 termination of the order.

12 (iii) Instructions for relinquishment of:

13 (A) a firearm that the respondent owns or that
14 is in the respondent's possession or control; and

15 (B) a firearms license that is issued to the
16 respondent.

17 (iv) Notice of the provisions of 18 Pa.C.S. § 6128
18 (relating to abandonment of firearms, weapons or
19 ammunition).

20 (v) Notice of the penalties for violating the order.

21 (vi) Notice of the right to appeal to the Superior
22 Court within 30 days of the issuance of the order.

23 (2) An interim extreme risk protection order must
24 include at least:

25 (i) The date and time that the order was issued.

26 (ii) Instructions for relinquishment of:

27 (A) a firearm that the respondent owns or that
28 is in the respondent's possession or control; and

29 (B) a firearms license that is issued to the
30 respondent.

1 (iii) Notice of the provisions of 18 Pa.C.S. § 6128.

2 (iv) Notice of the penalties for violating the
3 order.

4 (v) If the order was issued by a court and a hearing
5 is scheduled:

6 (A) Notice of the time, date and location of the
7 hearing.

8 (B) Notice of the right to request a continuance
9 and instructions on requesting a continuance or
10 waiving the hearing.

11 (C) Notice of the fact that, at the hearing, or
12 if the hearing is waived, the court may extend the
13 order for up to one year.

14 (D) Notice of the right to an attorney under
15 this section.

16 Section 5. This act shall take effect in 60 days.