

HOUSE BILL 7112

By Pearson

AN ACT to amend Tennessee Code Annotated, Title 33;
Title 37; Title 38 and Title 39, relative to mental
health orders of protection.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 33, is amended by adding the following
as a new chapter:

33-12-101.

As used in this chapter:

(1) "Mental health order of protection" means a final order granted under
this chapter;

(2) "Petitioner" means a law enforcement officer or a law enforcement
agency that petitions a court for a mental health order of protection under this
chapter;

(3) "Respondent" means the individual who is identified as the
respondent in a petition filed under this chapter; and

(4) "Substantial likelihood of serious harm" means:

(A) A person has threatened or attempted suicide or to inflict
serious bodily harm on the person's self;

(B) The person has threatened or attempted homicide or other
violent behavior against another; or

(C) The person has placed another in reasonable fear of violent
behavior and serious physical harm.

33-12-102.

(a)

(1) There is created an action known as a petition for a mental health order of protection.

(2) A petition for a mental health order of protection may be filed by a law enforcement officer or law enforcement agency.

(3) A petition for a mental health order of protection must be filed in the county where the petitioner's law enforcement office is located or the county where the respondent resides.

(4)

(A) A petition for a mental health order of protection does not require the petitioner to be represented by an attorney.

(B) If the respondent does not employ an attorney, the court shall appoint an attorney to represent the respondent not later than three (3) days before the date of the hearing.

(C) If the court determines that the respondent is not able to understand the nature of the proceedings and cannot communicate with counsel in the conduct of the case, the court may appoint another person to serve as the respondent's guardian ad litem. An attorney representing the respondent shall not serve as guardian ad litem.

(5) Notwithstanding another law to the contrary, attorney fees must not be awarded in a proceeding under this chapter.

(6) A petition must:

(A) Allege that the respondent poses a substantial likelihood of serious harm to respondent's self or others by having a firearm or ammunition in the respondent's custody or control or by purchasing,

possessing, or receiving a firearm or ammunition, and must be accompanied by an affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent;

(B) Identify the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the respondent's current ownership, possession, custody, or control;

(C) Identify whether there is a known existing order of protection governing the respondent under title 36, chapter 3, part 6 or under any other applicable statute; and

(D) Include a physical description of the respondent and the respondent's last known location.

(7) The petitioner must make a good faith effort to provide notice to any known third party who the petitioner asserts in the petition may be at risk of violence. The notice must state that the petitioner intends to petition the court for a mental health order of protection or has already done so and must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice or must attest to the steps that will be taken to provide such notice.

(8) The petitioner must list the address of record on the petition as being where the appropriate law enforcement agency is located.

(9) A court or a public agency shall not charge fees for filing or for service of process to a petitioner seeking relief under this chapter and must provide the

necessary number of certified copies, forms, and instructional brochures free of charge.

(10) A person is not required to post a bond to obtain relief in any proceeding under this chapter.

(11) The circuit courts of this state have jurisdiction over proceedings under this chapter.

(b)

(1) Upon receipt of a petition, the court must order:

(A) A hearing to be held no later than fourteen (14) days after the date the petition is filed and must issue a notice of hearing to the respondent; and

(B) The respondent to undergo an assessment for suicidal or homicidal ideation by an evaluator who has been certified by the commissioner of mental health and substance abuse services, which must occur prior to the hearing. When making this determination, the evaluator is immune from any civil liability and has an affirmative defense to any criminal liability arising from the evaluation.

(2) The clerk of the court shall cause a copy of the notice of hearing and petition to be forwarded on or before the next business day to the appropriate law enforcement agency for service upon the respondent as provided in § 33-12-103.

(c) Upon notice and a hearing on the matter, if the court finds by clear and convincing evidence that the respondent poses a substantial likelihood of serious harm to the respondent's self or others by having in the respondent's custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition, then the court shall

issue a mental health order of protection for an appropriate period of up to one hundred eighty (180) days.

(d) In determining whether grounds for a mental health order of protection exist, the court may consider any relevant evidence, including, but not limited to, any of the following:

(1) A recent act or threat of violence by the respondent against the respondent's self or others, whether or not the violence or threat of violence involves a firearm;

(2) An act or threat of violence by the respondent within the past twelve (12) months, including, but not limited to, acts or threats of violence by the respondent against the respondent's self or others;

(3) Evidence of the respondent being seriously mentally ill or having recurring mental health issues;

(4) A violation by the respondent of an order of protection issued pursuant to title 36, chapter 3, part 6;

(5) A previous or existing mental health order of protection issued against the respondent;

(6) A violation of a previous or existing mental health order of protection issued against the respondent;

(7) Whether the respondent, in this state or another state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving domestic abuse as defined in § 36-3-601;

(8) Whether the respondent has used or threatened to use, against the respondent's self or others, any weapons;

(9) The unlawful or reckless use, display, or brandishing of a firearm by the respondent;

(10) The recurring use of, or threat to use, physical force by the respondent against another person or evidence of the respondent stalking another person;

(11) Whether the respondent, in this state or another state, has been arrested for, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence;

(12) Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;

(13) Evidence of recent acquisition of firearms or ammunition by the respondent;

(14) Any relevant information from family and household members concerning the respondent;

(15) Witness testimony, taken while the witness is under oath, relating to the matter before the court;

(16) Whether the respondent has a mental illness that may be controlled by medication, and has not demonstrated a pattern of voluntarily and consistently taking the respondent's medication while not under supervision; and

(17) Any action taken by a qualified mental health professional or behavior analyst to protect an individual from an actual threat of bodily harm made by the respondent, pursuant to § 33-3-206.

(e) A person, including an officer of the court, who offers evidence or recommendations relating to the petition shall present the evidence under oath at a hearing at which all parties are present.

(f) A mental health order of protection must include the following:

(1) A statement of the grounds supporting the issuance of the order;

(2) The date the order was issued;

(3) The date the order ends;

(4) Whether an additional mental health evaluation or substance abuse assessment is required;

(5) A requirement that the respondent attend available mental health treatment, which may include counseling programs that address violence and control issues, anger management, or substance abuse problems;

(6) A description of the requirements for the surrender of all firearms and ammunition that the respondent owns under § 33-12-106; and

(7) The following statement:

To the subject of this protection order: This order will last until the date noted above. If you have not done so already, you must immediately surrender to the (insert name of local law enforcement agency) all firearms and ammunition that you own or have in your custody, control, or possession and any license to carry a handgun issued to you under Tennessee Code Annotated, § 39-17-1351 or § 39-17-1366. You may not have in your custody or control, or purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. You have the right to request a hearing to vacate this order, starting after the date of the issuance of this order, and to request another hearing after every extension of this order, if any. You may seek the advice of an attorney as to any matter connected with this order.

(g) If the court issues a mental health order of protection, then the court must inform the respondent that the respondent is entitled to request a hearing to vacate the order in the manner provided by § 33-12-104. The court shall provide the respondent with a form to request a hearing to vacate.

(h) If the court denies the petitioner's request for a mental health order of protection, then the court must issue a written order stating the particular reasons for the denial and ordering the expunction of all public records of the petition for a mental health order of protection.

33-12-103.

(a) The clerk of the court shall furnish a copy of the notice of hearing, petition, and mental health order of protection, as applicable, to the sheriff of the county where the respondent resides or can be found, who shall serve the document upon the respondent as soon as possible on any day of the week and at any time of the day or night. When requested by the sheriff, the clerk of the court may transmit a facsimile or electronic copy of a mental health order of protection that has been certified by the clerk of the court, and this facsimile or electronic copy may be served in the same manner as a certified copy. Upon receiving a facsimile or electronic copy, the sheriff shall verify receipt with the sender before attempting to serve the copy upon the respondent. The clerk of the court is responsible for furnishing to the sheriff information on the respondent's physical description and location. Service under this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.

(b) All orders issued, changed, continued, extended, or vacated after the original service of documents pursuant to subsection (a) must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may

acknowledge receipt of such order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, then the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, then the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection (b), the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

33-12-104.

(a) The respondent may submit one (1) written request for a hearing to vacate a mental health order of protection issued under this chapter, starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any.

(b) Upon receipt of the request for a hearing to vacate a mental health order of protection, the court shall set a date for a hearing. Notice of the request and hearing must be served on the petitioner in accordance with § 33-12-103. The hearing must occur no sooner than fourteen (14) days and no later than thirty (30) days after the date of service of the request upon the petitioner.

(c) The respondent has the burden of proving by clear and convincing evidence that the respondent does not pose a substantial likelihood of serious harm by having in the respondent's custody or control, purchasing, possessing, or receiving a firearm or ammunition. The court may consider any relevant evidence, including the evidence described in § 33-12-102(d).

(d) If the court finds after the hearing that the respondent has met the burden of proof, then the court must vacate the order.

(e) If the court vacates the order, then the clerk of the court shall notify the law enforcement agency holding any firearm or ammunition or handgun carry permit that has been surrendered pursuant to this chapter of the court order to vacate the mental health order of protection.

33-12-105.

(a) The court shall notify the petitioner of the impending end of a mental health order of protection. Notice must be received by the petitioner at least thirty (30) days before the date the order ends.

(b)

(1) The petitioner may, by motion, request an extension of a mental health order of protection at any time within thirty (30) days before the end of the order.

(2) Upon receipt of the motion to extend, the court shall order that a hearing be held no later than fourteen (14) days after receipt of the motion and shall schedule such hearing; provided, that if the motion to extend is filed within fourteen (14) days of the date the mental health order of protection is due to expire, then the court shall also order a temporary extension of the mental health order of protection to coincide with the date of the hearing. The respondent must be personally served in the same manner provided by § 33-12-103.

(3) In determining whether to extend a mental health order of protection issued under this chapter, the court may consider all relevant evidence, including the evidence described in § 33-12-102(d).

(4) If the court finds by clear and convincing evidence that the requirements for issuance of a mental health order of protection as provided in § 33-12-102 continue to be met, then the court must extend the order. However, if,

after notice to the respondent, the motion for extension is uncontested and no modification of the order is sought, then the order may be extended on the basis of a motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested extension.

(5) The court may extend a mental health order of protection for a period that the court deems appropriate, up to one hundred eighty (180) days.

33-12-106.

(a) Upon issuance of a mental health order of protection under this chapter, the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition owned by the respondent or in the respondent's custody, control, or possession and any handgun carry permit issued under § 39-17-1351 or § 39-17-1366, held by the respondent.

(b) The law enforcement officer serving a mental health order of protection under this chapter shall request that the respondent immediately surrender all firearms and ammunition owned by the respondent or in the respondent's custody, control, or possession and any handgun carry permit issued under § 39-17-1351 or § 39-17-1366, held by the respondent. The law enforcement officer shall take possession of all firearms and ammunition owned by the respondent or in the respondent's custody, control, or possession and any handgun carry permit issued under § 39-17-1351 or § 39-17-1366, held by the respondent, which are surrendered. Alternatively, if personal service by a law enforcement officer is not possible or is not required because the respondent was present at the mental health order of protection hearing, then the respondent must surrender any firearms and ammunition owned by the respondent or in the respondent's custody, control, or possession and any handgun carry permit issued

under § 39-17-1351 or § 39-17-1366, held by the respondent, in a safe manner to the control of the local law enforcement agency immediately after being served with the order by service or immediately after the hearing at which the respondent was present. A law enforcement officer may seek a search warrant from a court of competent jurisdiction to conduct a search for firearms or ammunition owned or held by the respondent if the officer has probable cause to believe that there are firearms or ammunition in the respondent's custody, control, or possession that have not been surrendered.

(c) At the time of surrender, a law enforcement officer taking possession of any firearm or ammunition owned by the respondent or in the respondent's custody, control, or possession, or any handgun carry permit issued under § 39-17-1351 or § 39-17-1366, held by the respondent shall issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered, and any permit surrendered, and shall provide a copy of the receipt to the respondent. Within seventy-two (72) hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and shall ensure that the officer's law enforcement agency retains a copy of the receipt.

(d) Upon the sworn statement or testimony of any person alleging that the respondent has failed to comply with the surrender of firearms or ammunition as required by an order issued under this chapter, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or ammunition owned by the respondent or in the respondent's custody, control, or possession. If the court finds that probable cause exists, then the court must issue a warrant describing the firearms or ammunition owned or possessed by the respondent and authorizing a search of the locations where the firearms or ammunition owned or

possessed by the respondent are reasonably believed to be found and the seizure of any firearms or ammunition owned or possessed by the respondent discovered pursuant to the search.

(e) If a person other than the respondent claims title to any firearms or ammunition surrendered pursuant to this section and the person is determined by the law enforcement agency to be the lawful owner of the firearm or ammunition, then the firearm or ammunition must be returned to the person, if:

(1) The lawful owner agrees to store the firearm or ammunition in a manner such that the respondent does not have access to or control of the firearm or ammunition; and

(2) The firearm or ammunition is not otherwise unlawfully possessed by the owner.

(f) Upon the issuance of a mental health order of protection, the court shall order a new hearing date and require the respondent to appear no later than three (3) business days after the issuance of the order. At the hearing, the court shall require proof that the respondent has surrendered all firearms or ammunition owned by the respondent or in the respondent's custody, control, or possession. The court may cancel the hearing upon a satisfactory showing that the respondent is in compliance with the order.

(g) All law enforcement agencies must develop policies and procedures regarding the acceptance, storage, and return of firearms, ammunition, or licenses required to be surrendered under this section.

33-12-107.

(a) If a mental health order of protection is vacated or ends without extension, then a law enforcement agency holding a firearm or any ammunition owned by the

respondent or any handgun carry permit issued under § 39-17-1351 or § 39-17-1366, held by the respondent, that has been surrendered or seized pursuant to this chapter must return the surrendered firearm, ammunition, or permit, as requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the mental health order of protection has been vacated or has ended without extension. The background check shall be conducted at no cost to the respondent.

(b) If a mental health order of protection is vacated or ends without extension, then the department of safety, if the department has suspended a handgun carry permit issued under § 39-17-1351 or § 39-17-1366 pursuant to this chapter, must reinstate the permit only after confirming that the respondent is currently eligible to have a handgun carry permit issued under § 39-17-1351 or § 39-17-1366.

(c) A law enforcement agency must provide notice to any family or household members of the respondent before returning any surrendered firearm and ammunition owned by the respondent.

(d) Any firearm and ammunition surrendered by a respondent pursuant to § 33-12-106 that remains unclaimed by the lawful owner for five (5) years after a mental health order of protection is vacated or ends without extension must be disposed of pursuant to § 39-17-1317; provided, that any proceeds from the sale of the firearm or ammunition shall be paid to the respondent.

33-12-108.

A respondent may elect to transfer all firearms and ammunition owned by the respondent that have been surrendered to or seized by a local law enforcement agency pursuant to § 33-12-106 to another person who is willing to receive the respondent's

firearms and ammunition. The law enforcement agency shall allow such a transfer only if the law enforcement agency determines that the chosen recipient:

(1) Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check, which must be performed at no cost to the recipient;

(2) Attests to storing the firearms and ammunition in a manner such that the respondent does not have access to or control of the firearms and ammunition until the mental health order of protection against the respondent is vacated or ends without extension; and

(3) Attests not to transfer the firearms or ammunition back to the respondent until the mental health order of protection against the respondent is vacated or ends without extension.

33-12-109.

(a) Within twenty-four (24) hours after issuance, the clerk of the court shall enter any mental health order of protection issued under this chapter into the uniform case reporting system.

(b) Within twenty-four (24) hours after issuance, the clerk of the court shall forward a copy of an order issued under this chapter to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the national crime information center and similar state databases. The order must remain in each system for the period stated in the order, and the law enforcement agency may only remove an order from the systems that has ended or has been vacated. Entry of the order into the national crime information center and similar state databases constitutes notice to all law enforcement

agencies of the existence of the order. The order is fully enforceable in any county in this state.

(c) The issuing court shall, within three (3) business days after issuance of a mental health order of protection, forward all available identifying information concerning the respondent, along with the date of order issuance, to the department of safety. Upon receipt of the information, the department shall determine if the respondent has a handgun carry permit issued pursuant to § 39-17-1351 or § 39-17-1366. If the respondent does have a handgun carry permit, then the department must immediately suspend the permit.

(d) If a mental health order of protection is vacated before its end date, the clerk of the court shall, on the day of the order to vacate, forward a copy of the order to the department of safety and the appropriate law enforcement agency specified in the order to vacate. Within one (1) business day of receipt of the order, the law enforcement agency shall remove the order from any computer-based system in which the order was entered pursuant to subsection (b).

33-12-110.

(a) A person who intentionally makes a false statement or omits relevant information, with intent to deceive, when testifying under oath in a hearing under this chapter in regard to any material matter commits perjury under § 39-16-702.

(b) A person who has in the person's custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition with knowledge that the person is prohibited from doing so by an order issued under this chapter commits a Class E felony.

(c) A person who gives, sells, lends, or otherwise transfers a firearm to another, when the person knows that the person receiving the firearm is subject to a mental health order of protection commits a Class E felony.

33-12-111.

This chapter does not affect the ability of a law enforcement officer to remove a firearm or ammunition or handgun carry permit from any person or to conduct any search and seizure for firearms or ammunition pursuant to other lawful authority.

33-12-112.

Except as provided in § 33-12-110, this chapter does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining a mental health order of protection, including, but not limited to, providing notice to the petitioner, a family or household member of the respondent, and any known third party who may be at risk of violence or failure to provide such notice, or reporting, declining to report, investigating, declining to investigate, filing, or declining to file, a petition under this chapter.

33-12-113.

(a)

(1) The administrative office of the courts shall develop and prepare instructions and informational brochures, standard petitions and mental health order of protection forms, and a court staff handbook on the mental health order of protection process. The standard petition and order forms must be used after January 1, 2024, for all petitions filed and orders issued pursuant to this chapter. The instructions, brochures, forms, and handbook must be prepared in consultation with interested persons, including clerks, judges, and law

enforcement personnel. Materials must be based on best practices and must be available online to the public.

(2) The instructions must be designed to assist petitioners in completing the petition and must include a sample of a standard petition and mental health order of protection forms.

(3) The instructions and standard petition must include a means for the petitioner to identify the firearms or ammunition the respondent may own, possess, receive, or have in the respondent's custody or control. The instructions must provide pictures of types of firearms and ammunition that the petitioner may choose from to identify the relevant firearms or ammunition, or must provide an equivalent means to allow petitioners to identify firearms or ammunition without requiring specific or technical knowledge regarding the firearms or ammunition.

(4) The informational brochure must describe the use of and the process for obtaining, extending, and vacating a mental health order of protection under this chapter and must provide relevant forms.

(5) The mental health order of protection form must include, in a conspicuous location, notice of criminal penalties resulting from violation of the order and the following statement: "You have the sole responsibility to avoid or refrain from violating this order's provisions. Only the court can change the order and only upon written request."

(6) The court staff handbook must allow for the addition of a community resource list by the clerk of the court.

(b) A clerk of the court may create a community resource list of crisis intervention, mental health, substance abuse, interpreter, counseling, and other relevant

resources serving the county in which the court is located. The court may make the community resource list available as part of or in addition to the informational brochures described in subsection (a).

(c) The administrative office of the courts shall distribute a master copy of the petition and order forms, instructions, and informational brochures to the clerks of court. Distribution of all documents must, at a minimum, be in an electronic format or formats accessible to all courts and clerks of court in this state.

(d) Within ninety (90) days after receipt of the master copy from the administrative office of the courts, the clerk of the court shall make available the standardized forms, instructions, and informational brochures required by this section.

(e) The administrative office of the courts shall update the instructions, brochures, standard petition and mental health order of protection forms, and court staff handbook as necessary, including when changes in the law make an update necessary.

SECTION 2. Tennessee Code Annotated, Title 38, Chapter 8, Part 1, is amended by adding the following as a new section:

The course of training leading to the basic certification of compliance issued by the Tennessee peace officer standards and training commission, pursuant to § 38-8-107, shall include a course of instruction in filing a petition for a mental health order of protection pursuant to § 33-12-102.

SECTION 3. Tennessee Code Annotated, Title 38, Chapter 1, is amended by adding the following as a new part:

38-1-801.

(a) The department of safety shall create a public awareness campaign designed to educate the public about mental health orders of protection.

(b) The public awareness campaign must include information on who can file a petition for a mental health order of protection, the criteria for the issuance of a mental health order of protection, and the effect of such an order.

SECTION 4. For the purpose of implementation, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect October 1, 2023, the public welfare requiring it.