

HOUSE BILL No. 2129

By Representatives Ward, Gartner and Warfield

2-4

1 AN ACT concerning firearms; relating to protective orders; enacting the
2 gun safety red flag act.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Sections 1 through 13, and amendments thereto, shall
6 be known and may be cited as the gun safety red flag act.

7 (b) As used in the gun safety red flag act:

8 (1) "Defendant" means the person identified in the petition filed
9 pursuant to section 2, and amendments thereto.

10 (2) "Ex parte gun safety protective order" means an order issued by a
11 court pursuant to section 3, and amendments thereto, prohibiting the
12 defendant from having in such person's custody or control, owning,
13 purchasing, possessing or receiving any firearms or ammunition until the
14 court-scheduled hearing for a gun safety protective order.

15 (3) "Gun safety protective order" means an order issued by a court
16 pursuant to section 3 or 4, and amendments thereto, prohibiting the
17 defendant from having in such person's custody or control, owning,
18 purchasing, possessing or receiving any firearms or ammunition.

19 (4) "Family member" means: Any person related to the defendant by
20 blood, marriage or adoption; any of the defendant's current or former
21 dating partners; any person who resides or has resided with the defendant;
22 or any person who is acting or has acted as the defendant's legal guardian.

23 (5) "Plaintiff" means a law enforcement officer, a family member of
24 the defendant or any teacher or administrator employed by a school district
25 where the defendant attended school who files a petition pursuant to
26 section 2, and amendments thereto.

27 Sec. 2. (a) A plaintiff may seek a gun safety protective order by filing
28 a petition in the district court of the county where the defendant resides.

29 (b) The petition shall set forth the grounds for issuance of the order
30 and shall describe the number, types and locations of any firearms or
31 ammunition presently believed by the plaintiff to be in the possession of or
32 controlled by the defendant. The petition shall also state whether there is
33 any current or prior protective order issued against the defendant and
34 whether there is any pending lawsuit, complaint, petition or other action
35 between the parties under the laws of this state. The clerk of the court shall
36 verify the terms of any current court order affecting the parties. The court

1 shall not delay granting relief because of the existence of a pending action
2 between the parties or the necessity of verifying the terms of a current
3 order. A petition for a gun safety protective order may be granted
4 regardless of whether there is a pending action between the parties.

5 (c) All health records and other health information provided in a
6 petition or considered as evidence in a proceeding under this act shall be
7 protected from public disclosure to the extent such records identify the
8 defendant or plaintiff, except that such information may be provided to law
9 enforcement agencies as set forth in section 9, and amendments thereto.
10 Aggregate statistical data about the numbers of gun safety protective
11 orders issued, renewed, denied, dissolved or terminated shall be available
12 to the public upon request.

13 (d) Upon the filing of the petition, the court shall set a date for a
14 hearing within 14 days, regardless of whether the court issues an ex parte
15 gun safety protective order pursuant to section 3, and amendments thereto.
16 If the court does issue an ex parte gun safety protective order pursuant to
17 section 3, and amendments thereto, notice of the hearing shall be served on
18 the defendant with the ex parte order. Notice of the hearing shall be
19 personally served on the defendant by a law enforcement officer, or if
20 personal service by a law enforcement officer is not possible, in
21 accordance with K.S.A. 60-301 et seq., and amendments thereto.

22 Sec. 3. (a) A plaintiff may request that an ex parte gun safety
23 protective order be issued before a hearing for a gun safety protective
24 order, without notice to the defendant, by including in the petition filed
25 pursuant to section 2, and amendments thereto, detailed allegations based
26 on personal knowledge that the defendant poses an immediate and present
27 danger of causing personal injury to self or others by having in such
28 person's custody or control, owning, purchasing, possessing or receiving a
29 firearm or ammunition.

30 (b) The court shall issue or deny an ex parte gun safety protective
31 order on the same day that the petition is submitted to the court, unless the
32 petition is filed too late in the day to permit effective review, in which case
33 the order shall be issued or denied on the next day of judicial business.

34 (c) Before issuing an ex parte gun safety protective order, the court
35 shall examine under oath the plaintiff and any witnesses the plaintiff may
36 produce. The court may also:

37 (1) Ensure that a reasonable search has been conducted of all
38 available records to determine whether the defendant owns any firearms or
39 ammunition; and

40 (2) ensure that a reasonable search has been conducted for criminal
41 history records related to the defendant.

42 (d) In determining whether grounds for an ex parte gun safety
43 protective order exist, the court shall consider all relevant evidence

1 presented by the plaintiff, and may also consider other relevant evidence,
2 including, but not limited to, evidence of facts relating to the defendant's:

3 (1) Unlawful, reckless or negligent use, display, storage, possession
4 or brandishing of a firearm;

5 (2) act or threat of violence against self or another, whether or not
6 such act or threat involves a firearm;

7 (3) violation of any protective order included in K.S.A. 2018 Supp.
8 21-5924, and amendments thereto;

9 (4) abuse of controlled substances or alcohol or any criminal offense
10 that involves controlled substances or alcohol; and

11 (5) recent acquisition of firearms, ammunition or other deadly
12 weapons.

13 (e) The court shall also consider the time that has elapsed since the
14 events described in subsection (d).

15 (f) If a court finds reasonable cause to believe that the defendant
16 poses an immediate and present danger of causing personal injury to self
17 or others by having in such person's custody or control, owning,
18 purchasing, possessing or receiving a firearm or ammunition, the court
19 shall issue an ex parte gun safety protective order.

20 (g) An ex parte gun safety protective order shall include:

21 (1) A statement that the defendant may not have in such person's
22 custody or control, own, purchase, possess or receive, or attempt to
23 purchase or receive a firearm or ammunition while the order is in effect;

24 (2) a description of the requirements for relinquishment of firearms
25 and ammunition under section 7, and amendments thereto;

26 (3) a statement of the grounds asserted for the order;

27 (4) a notice of the hearing required under section 2(e), and
28 amendments thereto, to determine whether to issue a gun safety protective
29 order, including the address of the court and the date and time when the
30 hearing is scheduled;

31 (5) a statement that, at the hearing, the court may issue a gun safety
32 protective order pursuant to section 4, and amendments thereto; and

33 (6) a statement that the defendant may seek the advice of an attorney
34 as to any matter connected with the order, and that the attorney should be
35 consulted promptly so that the attorney may assist the person in any matter
36 connected with the order.

37 (h) An ex parte gun safety protective order shall be personally served
38 on the defendant by a law enforcement officer, or if personal service by a
39 law enforcement officer is not possible, in accordance with K.S.A. 60-301
40 et seq., and amendments thereto.

41 (i) In accordance with section 2(e), and amendments thereto, the court
42 shall schedule a hearing within 14 days of the issuance of an ex parte gun
43 safety protective order to determine if a gun safety protective order shall

1 be issued. A defendant may seek an extension of time before the hearing.
2 The court shall dissolve any ex parte gun safety protective order in effect
3 against the defendant when the court holds the hearing.

4 Sec. 4. (a) A plaintiff requesting a gun safety protective order shall
5 include in the petition detailed allegations based on personal knowledge
6 that the defendant poses a significant danger of causing personal injury to
7 self or others by having in such person's custody or control, owning,
8 purchasing, possessing or receiving a firearm or ammunition.

9 (b) Before a hearing for a gun safety protective order, the court shall:

10 (1) Ensure that a reasonable search has been conducted of all
11 available records to determine whether the defendant owns any firearms or
12 ammunition; and

13 (2) ensure that a reasonable search has been conducted for criminal
14 history records related to the defendant.

15 (c) In determining whether to issue a gun safety protective order
16 pursuant to this section, the court shall consider all relevant evidence
17 presented by the plaintiff, and may also consider other relevant evidence,
18 including, but not limited to, evidence of the facts identified in section
19 3(d), and amendments thereto.

20 (d) If the court finds by a preponderance of the evidence at the
21 hearing that the defendant poses a significant danger of personal injury to
22 self or others by having in such person's custody or control, owning,
23 purchasing, possessing or receiving a firearm or ammunition, the court
24 shall issue a gun safety protective order.

25 (e) A gun safety protective order issued pursuant to this section shall
26 include all of the following:

27 (1) A statement that the defendant may not have in such person's
28 custody or control, own, possess, purchase or receive, or attempt to
29 purchase or receive a firearm or ammunition while the order is in effect;

30 (2) a description of the requirements for relinquishment of firearms
31 and ammunition under section 7, and amendments thereto;

32 (3) a statement of the grounds supporting the issuance of the order;

33 (4) the address of the court that issued the order;

34 (5) a statement that the defendant shall have the right to request a
35 hearing to terminate the order at any time while such order is in effect,
36 except no such request may be filed until one year after the date of
37 issuance of such order; and

38 (6) a statement that the person may seek the advice of an attorney as
39 to any matter connected with the order.

40 (f) If the defendant fails to appear at the hearing, a gun safety
41 protective order issued pursuant to this section shall be personally served
42 on the defendant by a law enforcement officer, or if personal service by a
43 law enforcement officer is not possible, in accordance with K.S.A. 60-301

1 et seq., and amendments thereto.

2 Sec. 5. (a) When the court is unavailable, a verified petition,
3 accompanied by a proposed order, may be presented to any district judge.
4 The judge may grant relief in accordance with section 3, and amendments
5 thereto, if the judge deems it necessary because the defendant poses an
6 immediate and present danger of causing personal injury to self or others
7 by having in such person's custody or control, owning, purchasing,
8 possessing or receiving a firearm or ammunition. An emergency order
9 issued pursuant to this section may be granted ex parte.

10 (b) An emergency order issued pursuant to this section shall expire on
11 5:00 p.m. on the first day when the court resumes court business. At that
12 time, the plaintiff may file a petition for a gun safety protective order
13 pursuant to section 3 or 4, and amendments thereto.

14 (c) The judge shall note on the petition and any order granted,
15 including any documentation in support thereof, the filing date, together
16 with the judge's signature, and shall deliver them to the clerk of the court
17 on the next day of the resumption of business of the court.

18 Sec. 6. (a) A defendant subject to a gun safety protective order issued
19 pursuant to section 4, and amendments thereto, may submit a written
20 request at any time during the effective period of the order for a hearing to
21 terminate the order, except no such request may be filed until one year
22 after the date of issuance of such order.

23 (b) Upon receipt of the request for termination, the court shall set a
24 date for a hearing. Notice of the request shall be served on the plaintiff in
25 accordance with K.S.A. 60-301 et seq., and amendments thereto. The
26 hearing shall occur no sooner than 14 days from the date of service of the
27 request upon the plaintiff.

28 (c) The defendant seeking termination of the order shall have the
29 burden of proving by a preponderance of the evidence that the defendant
30 does not pose a significant danger of causing personal injury to self or
31 others by having in such person's custody or control, owning, purchasing,
32 possessing or receiving a firearm or ammunition.

33 (d) If the court finds after the hearing that the defendant has met the
34 defendant's burden, the court shall terminate the order.

35 Sec. 7. (a) Upon issuance of a gun safety protective order, the court
36 shall order the defendant to surrender to the local law enforcement agency
37 all firearms and ammunition in the defendant's custody or control, or that
38 the defendant possesses or owns.

39 (b) A law enforcement officer serving a gun safety protective order
40 shall request that all firearms and ammunition belonging to the defendant
41 be immediately surrendered, and shall take possession of all firearms and
42 ammunition belonging to the defendant that are surrendered, in plain sight,
43 or discovered pursuant to a lawful search. Alternatively, if personal service

1 by a law enforcement officer is not possible, and service is made in
2 accordance with K.S.A. 60-301 et seq., and amendments thereto, the
3 defendant shall surrender the firearms and ammunition in a safe manner to
4 the control of local law enforcement officials within 48 hours of being
5 served with the order.

6 (c) At the time of surrender or removal, a law enforcement officer
7 taking possession of a firearm or ammunition pursuant to a gun safety
8 protective order shall issue a receipt identifying all firearms and
9 ammunition that have been surrendered or removed and provide a copy of
10 the receipt to the defendant. Within 72 hours after serving the order, the
11 officer serving the order shall file the original receipt with the court that
12 issued the gun safety protective order, and shall ensure that the law
13 enforcement agency order retains a copy of the receipt.

14 (d) A court that has probable cause to believe a defendant subject to a
15 gun safety protective order has in such person's custody or control, owns
16 or possesses firearms or ammunition that the defendant has failed to
17 surrender pursuant to this section, or has received or purchased any
18 firearms or ammunition while subject to the order, shall issue a warrant
19 describing the firearm or ammunition and authorizing a search of any
20 locations where the firearms or ammunition are reasonably believed to be
21 and the seizure of any firearms or ammunition discovered pursuant to such
22 search.

23 (e) A law enforcement agency may charge the defendant a fee not to
24 exceed the reasonable and actual costs incurred by the law enforcement
25 agency for storing a firearm or ammunition surrendered pursuant to this
26 section for the duration of the gun safety protective order.

27 Sec. 8. (a) If a gun safety protective order is terminated pursuant to
28 section 6, and amendments thereto, a law enforcement agency holding any
29 firearm or ammunition that has been surrendered pursuant to section 7, and
30 amendments thereto, shall notify the defendant that the defendant may
31 request the return of the firearm or ammunition. A law enforcement agency
32 shall return any surrendered firearm or ammunition requested by a
33 defendant only after confirming, through a background check, that the
34 defendant is currently eligible to own or possess firearms and ammunition.

35 (b) A defendant who has surrendered any firearm or ammunition to a
36 law enforcement agency pursuant to section 7, and amendments thereto,
37 and who does not wish to have the firearm or ammunition returned, or who
38 is no longer eligible to own or possess firearms or ammunition, may sell or
39 transfer title of the firearm or ammunition to a licensed firearms dealer.
40 The law enforcement agency shall transfer possession of the firearm or
41 ammunition to a licensed firearms dealer only after the dealer has
42 displayed written proof of transfer of the firearm or ammunition from the
43 defendant to the dealer and the law enforcement agency has verified the

1 transfer with the defendant.

2 (c) If a person other than the defendant claims ownership of any
3 firearm or ammunition surrendered pursuant to section 7, and amendments
4 thereto, and such person is determined by the law enforcement agency to
5 be the lawful owner of the firearm or ammunition, the firearm or
6 ammunition shall be returned to such person.

7 (d) Any firearm or ammunition that was surrendered by a defendant
8 pursuant to section 7, and amendments thereto, and that remains
9 unclaimed by the lawful owner for 60 days after termination of a gun
10 safety protective order shall be disposed of in accordance with K.S.A. 22-
11 2512, and amendments thereto.

12 Sec. 9. (a) The court shall notify the Kansas bureau of investigation
13 no later than one day after issuing or terminating a gun safety protective
14 order.

15 (b) The information required to be submitted to the Kansas bureau of
16 investigation pursuant to this section shall include identifying information
17 about the defendant and the date the order was issued or terminated. The
18 court shall also indicate whether the defendant was present in court to be
19 advised of the contents of the order or if the defendant failed to appear.
20 The defendant's presence in court shall constitute proof of service of notice
21 of the terms of the order.

22 (c) Within one business day of service, a law enforcement officer who
23 serves a gun safety protective order or the clerk of the court shall submit
24 the proof of service to the Kansas bureau of investigation, including the
25 name of the person submitting the proof of service and the law
26 enforcement agency employing such person, if any.

27 (d) The information to be submitted to the Kansas bureau of
28 investigation pursuant to this section shall be submitted in an electronic
29 format, in a manner prescribed by the director of the Kansas bureau of
30 investigation. The Kansas bureau of investigation shall maintain a
31 searchable database of this information, which shall be made available to
32 law enforcement agencies upon request.

33 (e) The Kansas bureau of investigation shall immediately make
34 information about a gun safety protective order issued or terminated
35 pursuant to the provisions of this act available to the national instant
36 criminal background check system for the purposes of firearm purchaser
37 background checks.

38 Sec. 10. (a) Every person who files a petition for a gun safety
39 protective order, knowing the information in the petition to be materially
40 false or with an intent to harass the defendant, shall be guilty of a class C
41 misdemeanor.

42 (b) Every person who has in such person's custody or control, owns,
43 purchases, possesses or receives a firearm or ammunition with knowledge

1 that such person is prohibited from doing so by a gun safety protective
2 order shall be guilty of a class C misdemeanor and shall be prohibited
3 from having in such person's custody or control, owning, purchasing,
4 possessing or receiving, or attempting to purchase or receive, a firearm or
5 ammunition for a period of five years from the date of conviction.

6 Sec. 11. The provisions of this act shall not affect the ability of a law
7 enforcement officer to remove firearms or ammunition from any person
8 pursuant to other lawful authority.

9 Sec. 12. The provisions of this act shall not be construed to impose
10 criminal or civil liability on any person who chooses not to seek a gun
11 safety protective order pursuant to the provisions of this act.

12 Sec. 13. Except as otherwise provided in this act, any proceedings
13 under this act shall be in accordance with chapter 60 of the Kansas Statutes
14 Annotated, and amendments thereto, and shall be in addition to any other
15 available civil or criminal remedies.

16 Sec. 14. This act shall take effect and be in force from and after its
17 publication in the statute book.