

115TH CONGRESS
1ST SESSION

H. R. 2598

To provide family members of an individual who they fear is a danger to himself, herself, or others new tools to prevent gun violence.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2017

Mr. CARBAJAL (for himself, Ms. ESTY of Connecticut, and Mr. BEYER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide family members of an individual who they fear is a danger to himself, herself, or others new tools to prevent gun violence.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Gun Violence Restrain-
5 ing Order Act of 2017”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1 (1) the term “family member” means, with re-
2 spect to an individual, a spouse, child, parent, sib-
3 ling, grandchild, or grandparent of the individual;

4 (2) the term “firearm” has the meaning given
5 the term in section 921 of title 18, United States
6 Code;

7 (3) the term “gun violence prevention order”
8 means a written order, issued by a State court or
9 signed by a magistrate (or other comparable judicial
10 officer)—

11 (A) prohibiting a named individual from
12 having under the custody or control of the indi-
13 vidual, owning, purchasing, possessing, or re-
14 ceiving any firearms; or

15 (B) having a firearm removed;

16 (4) the term “gun violence prevention warrant”
17 means a written order, issued by a State court or
18 signed by a magistrate (or other comparable judicial
19 officer), regarding an individual who is subject to a
20 gun violence prevention order and who is known to
21 own or possess one or more firearms, that directs a
22 law enforcement officer to temporarily seize and re-
23 tain any firearm in the possession of the individual;

24 (5) the term “law enforcement officer” means
25 a public servant authorized by State law or by a

1 State government agency to engage in or supervise
2 the prevention, detection, investigation, or prosecu-
3 tion of an offense; and

4 (6) the term “wellness check” means a visit
5 conducted by a law enforcement officer to the resi-
6 dence of an individual for the purpose of assessing
7 whether the individual poses a danger to the indi-
8 vidual or others due to a mental, behavioral, or
9 physical condition.

10 **SEC. 3. NATIONAL GUN VIOLENCE PREVENTION ORDER**
11 **AND WARRANT LAW.**

12 (a) ENACTMENT OF GUN VIOLENCE PREVENTION
13 ORDER LAW.—In order to receive a grant under section
14 4, on the date that is 3 years after the date of enactment
15 of this Act, each State shall have in effect legislation
16 that—

17 (1) authorizes a gun violence prevention order
18 and gun violence prevention warrant in accordance
19 with subsection (b); and

20 (2) requires each law enforcement agency of the
21 State to comply with subsection (c).

22 (b) REQUIREMENTS FOR GUN VIOLENCE PREVEN-
23 TION ORDERS AND WARRANTS.—Legislation required
24 under subsection (a) shall be subject to the following re-
25 quirements:

1 (1) APPLICATION FOR GUN VIOLENCE PREVEN-
2 TION ORDER.—A family member of an individual
3 may submit an application to a State court, on a
4 form designed by the court, that—

5 (A) describes the facts and circumstances
6 necessitating that a gun violence prevention
7 order be issued against the named individual;

8 (B) is signed by the applicant, under oath;
9 and

10 (C) includes any additional information re-
11 quired by the State court or magistrate (or
12 other comparable judicial officer) to dem-
13 onstrate that possession of a firearm by the
14 named individual poses a substantial risk or a
15 higher standard of risk of personal injury to the
16 named individual or others.

17 (2) EXAMINATION OF APPLICANT AND WIT-
18 NESSES.—A State court or magistrate (or other
19 comparable judicial officer) may, before issuing a
20 gun violence prevention order—

21 (A) examine under oath, the individual
22 who applied for the order under paragraph (1)
23 and any witnesses the individual produces; and

24 (B)(i) require that the individual or any
25 witness submit a signed affidavit, which de-

1 scribes the facts the applicant or witness be-
2 lieves establish the grounds of the application;
3 or

4 (ii) take an oral statement from the indi-
5 vidual or witness under oath.

6 (3) STANDARD FOR ISSUANCE OF ORDER.—

7 (A) IN GENERAL.—A State court or mag-
8 istrate (or other comparable judicial officer)
9 may issue a gun violence prevention order upon
10 a finding that there is a reasonable suspicion
11 that possession of a firearm by the named indi-
12 vidual poses a significant risk of personal injury
13 to the named individual or others.

14 (B) NOTIFICATION.—

15 (i) IN GENERAL.—The court shall no-
16 tify the Department of Justice and com-
17 parable State agency of the gun violence
18 prevention order not later than 2 court
19 days after issuing the order. The court
20 shall also notify the Department of Justice
21 and comparable State agency of any order
22 restoring the ability of the individual to
23 own or possess firearms not later than 2
24 court days after issuing the order to re-
25 store the individual's right to own or pos-

1 sess any type of firearms that may be law-
2 fully owned and possessed. Such notice
3 shall be submitted in an electronic format,
4 in a manner prescribed by the Department
5 of Justice and the comparable State agen-
6 cy.

7 (ii) UPDATE OF DATABASES.—As
8 soon as practicable after receiving a notifi-
9 cation under clause (i), the Department of
10 Justice and comparable State agency shall
11 update the background check databases of
12 the Department and agency, respectively,
13 to reflect the prohibitions articulated in the
14 gun violence prevention order.

15 (4) ISSUANCE OF GUN VIOLENCE PREVENTION
16 WARRANT.—

17 (A) IN GENERAL.—After issuing a gun vio-
18 lence prevention order, a State court or mag-
19 istrate (or other comparable judicial officer)
20 shall, upon a finding of probable cause to be-
21 lieve that the named individual subject to the
22 order has a firearm in his custody or control,
23 issue a gun violence prevention warrant order-
24 ing the temporary seizure of all firearms speci-
25 fied in the warrant.

1 (B) REQUIREMENT.—Subject to paragraph
2 (6), a gun violence prevention warrant issued
3 under subparagraph (A) shall require that any
4 firearm described in the warrant be taken from
5 any place, or from any individual in whose pos-
6 session, the firearm may be.

7 (5) SERVICE OF GUN VIOLENCE PREVENTION
8 ORDER.—When serving a gun violence prevention
9 order or warrant, a law enforcement officer or proc-
10 ess server shall provide the individual with a form to
11 request a hearing in accordance with paragraph
12 (6)(F).

13 (6) TEMPORARY SEIZURE OF FIREARMS.—

14 (A) IN GENERAL.—When a law enforce-
15 ment officer takes property under a gun vio-
16 lence prevention warrant or a gun violence pre-
17 vention order, the law enforcement officer shall
18 give a receipt for the property taken, specifying
19 the property in detail, to the individual from
20 whom it was taken. In the absence of a person,
21 the law enforcement officer shall leave the re-
22 ceipt in the place where the law enforcement of-
23 ficer found the property, if such information is
24 available.

1 (B) TEMPORARY CUSTODY OF SEIZED
2 FIREARMS.—All firearms seized pursuant to a
3 gun violence prevention warrant shall be re-
4 tained by the law enforcement officer or the law
5 enforcement agency in custody, subject to the
6 order of the court that issued the warrant or to
7 any other court in which an offense with re-
8 spect to the firearm is triable.

9 (C) LIMITATION ON SEIZURE OF FIRE-
10 ARMS.—If the location to be searched during
11 the execution of a gun violence prevention war-
12 rant is jointly occupied by multiple parties and
13 a firearm is located during the execution of the
14 seizure warrant, and it is determined that the
15 firearm is owned by an individual other than
16 the individual named in the gun violence pre-
17 vention warrant, the firearm may not be seized
18 if—

19 (i) the firearm is stored in a manner
20 that the individual named in the gun vio-
21 lence prevention warrant does not have ac-
22 cess to or control of the firearm; and

23 (ii) there is no evidence of unlawful
24 possession of the firearm by the owner.

1 (D) GUN SAFE.—If the location to be
2 searched during the execution of a gun violence
3 prevention warrant is jointly occupied by mul-
4 tiple parties and a gun safe is located, and it
5 is determined that the gun safe is owned by an
6 individual other than the individual named in
7 the gun violence prevention warrant, the con-
8 tents of the gun safe shall not be searched ex-
9 cept in the owner’s presence, or with the own-
10 er’s consent, or unless a valid search warrant
11 has been obtained.

12 (E) RETURN OF FIREARM TO RIGHTFUL
13 OWNER.—If any individual who is not a named
14 individual in a gun violence prevention warrant
15 claims title to a firearm seized pursuant to a
16 gun violence prevention warrant, the firearm
17 shall be returned to the lawful owner not later
18 than 30 days after the date on which the title
19 is claimed.

20 (F) RIGHT TO REQUEST A HEARING.—A
21 named individual may submit 1 written request
22 at any time during the effective period of a gun
23 violence prevention order issued against the in-
24 dividual for a hearing for an order allowing the

1 individual to own, possess, purchase, or receive
2 a firearm.

3 (7) HEARING ON GUN VIOLENCE PREVENTION
4 ORDER AND GUN VIOLENCE PREVENTION WAR-
5 RANT.—

6 (A) IN GENERAL.—Except as provided in
7 subparagraph (E), not later than 30 days after
8 the date on which a gun violence prevention
9 order and, when applicable, a gun violence pre-
10 vention warrant, is issued, the court that issued
11 the order and, when applicable, the warrant, or
12 another court in that same jurisdiction, shall
13 hold a hearing to determine whether the indi-
14 vidual who is the subject of the order may have
15 under the custody or control of the individual,
16 own, purchase, possess, or receive firearms and,
17 when applicable, whether any seized firearms
18 should be returned to the individual named in
19 the warrant.

20 (B) NOTICE.—The individual named in a
21 gun violence prevention order requested to be
22 renewed under subparagraph (A) shall be given
23 written notice and an opportunity to be heard
24 on the matter.

25 (C) BURDEN OF PROOF.—

1 (i) IN GENERAL.—Except as provided
2 in clause (ii), at any hearing conducted
3 under subparagraph (A), the State or peti-
4 tioner shall have the burden of establishing
5 probable or reasonable cause that the indi-
6 vidual poses a significant risk of personal
7 injury to the individual or others by own-
8 ing or possessing the firearm.

9 (ii) HIGHER BURDEN OF PROOF.—A
10 State may establish a burden of proof for
11 hearings conducted under subparagraph
12 (A) that is higher than the burden of proof
13 required under clause (i).

14 (D) REQUIREMENTS UPON FINDING OF
15 SIGNIFICANT RISK OR A HIGHER STANDARD OF
16 RISK.—If the named individual is found at the
17 hearing to pose a substantial risk or a higher
18 standard of risk of personal injury to the
19 named individual or others by owning or pos-
20 sessing a firearm, the following shall apply:

21 (i) The firearm or firearms seized
22 pursuant to the warrant shall be retained
23 by the law enforcement agency for a period
24 not to exceed 3 year.

1 (ii) The named individual shall be
2 prohibited from owning or possessing, pur-
3 chasing or receiving, or attempting to pur-
4 chase or receive a firearm for a period not
5 to exceed 1 year, a violation of which shall
6 be considered a misdemeanor offense.

7 (iii) The court shall notify the Depart-
8 ment of Justice and comparable State
9 agency of the gun violence prevention order
10 not later than 10 court days after issuing
11 the order. The court shall also notify the
12 Department of Justice and comparable
13 State agency of any order restoring the
14 ability of the individual to own or possess
15 firearms not later than 10 court days after
16 issuing the order to restore the individual's
17 right to own or possess any type of fire-
18 arms that may be lawfully owned and pos-
19 sessed. Such notice shall be submitted in
20 an electronic format, in a manner pre-
21 scribed by the Department of Justice and
22 the comparable State agency.

23 (iv) As soon as practicable after re-
24 ceiving a notification under clause (iii), the
25 Department of Justice and comparable

1 State agency shall update the background
2 check databases of the Department and
3 agency, respectively, to reflect—

4 (I) the prohibitions articulated in
5 the gun violence prevention order; or

6 (II) an order issued to restore an
7 individual's right to own or possess a
8 firearm.

9 (E) RETURN OF FIREARMS.—If the court
10 finds that the State has not met the required
11 standard of proof, any firearm seized pursuant
12 to the warrant shall be returned to the named
13 individual in a timely manner.

14 (F) LIMITATION ON HEARING REQUIRE-
15 MENT.—If an individual named in a gun vio-
16 lence prevention warrant is prohibited from
17 owning or possessing a firearm for a period of
18 1 year or more by another provision of State or
19 Federal law, a hearing pursuant to subpara-
20 graph (A) is not required and the court shall
21 issue an order to hold the firearm until either
22 the individual is no longer prohibited from own-
23 ing a firearm or the individual sells or transfers
24 ownership of the firearm to a licensed firearm
25 dealer.

1 (8) RENEWING GUN VIOLENCE PREVENTION
2 ORDER AND GUN VIOLENCE PREVENTION WAR-
3 RANT.—

4 (A) IN GENERAL.—Except as provided in
5 subparagraph (E), if a law enforcement agency
6 has probable cause to believe that an individual
7 who is subject to a gun violence prevention
8 order continues to pose a significant risk of per-
9 sonal injury to the named individual or others
10 by possessing a firearm, the agency may initiate
11 a request for a renewal of the order, on a form
12 designed by the court, describing the facts and
13 circumstances necessitating the request.

14 (B) NOTICE.—The individual named in the
15 gun violence prevention order requested to be
16 renewed under subparagraph (A) shall be given
17 written notice and an opportunity to be heard
18 on the matter.

19 (C) HEARING.—After notice is given under
20 subparagraph (B), a hearing shall be held to
21 determine if a request for renewal of the order
22 shall be issued.

23 (D) ISSUANCE OF RENEWAL.—Except as
24 provided in subparagraph (E), a State court
25 may issue a renewal of a gun violence preven-

tion order if there is probable cause to believe that the individual who is subject to the order continues to pose a significant risk of personal injury to the named individual or others by possessing a firearm.

(E) HIGHER BURDEN OF PROOF.—A State may establish a burden of proof for initiating a request for or issuing a renewal of a gun violence prevention order that is higher than the burden of proof required under subparagraph (A) or (D).

(F) NOTIFICATION.—

(i) IN GENERAL.—The court shall notify the Department of Justice and comparable State agency of a renewal of the gun violence prevention order not later than 2 court days after renewing the order. The court shall also notify the Department of Justice and comparable State agency of any order restoring the ability of the individual to own or possess firearms not later than 2 court days after issuing the order to restore the individual's right to own or possess any type of firearms that may be lawfully owned and possessed. Such notice

1 shall be submitted in an electronic format,
2 in a manner prescribed by the Department
3 of Justice and the comparable State agen-
4 cy.

5 (ii) UPDATE OF DATABASES.—As
6 soon as practicable after receiving a notifi-
7 cation under clause (i), the Department of
8 Justice and comparable State agency shall
9 update the background check databases of
10 the Department and agency, respectively,
11 to reflect—

12 (I) the prohibitions articulated in
13 the renewal of the gun violence pre-
14 vention order; or

15 (II) an order issued to restore an
16 individual's right to own or possess a
17 firearm.

18 (c) LAW ENFORCEMENT CHECK OF STATE FIREARM
19 DATABASE.—Each law enforcement agency of the State
20 shall establish a procedure that requires a law enforcement
21 officer to, in conjunction with performing a wellness check
22 on an individual, check whether the individual is listed on
23 any of the firearm and ammunition databases of the State
24 or jurisdiction in which the individual resides.

1 (d) CONFIDENTIALITY PROTECTIONS.—All informa-
2 tion provided to the Department of Justice and com-
3 parable State agency pursuant to legislation required
4 under subsection (a) shall be kept confidential, separate,
5 and apart from all other records maintained by the De-
6 partment of Justice and comparable State agency.

7 **SEC. 4. PAUSE FOR SAFETY GRANT PROGRAM.**

8 (a) IN GENERAL.—The Director of the Office of
9 Community Oriented Policing Services of the Department
10 of Justice may make grants to an eligible State to assist
11 the State in carrying out the provisions of the State legis-
12 lation described in section 3.

13 (b) ELIGIBLE STATE.—A State shall be eligible to re-
14 ceive grants under this section on and after the date on
15 which—

16 (1) the State enacts legislation described in sec-
17 tion 3; and

18 (2) the Attorney General determines that the
19 legislation of the State described in paragraph (1)
20 complies with the requirements of section 3.

21 (c) USE OF FUNDS.—Funds awarded under this sec-
22 tion may be used by a State to assist law enforcement
23 agencies or the courts of the State in carrying out the
24 provisions of the State legislation described in section 3.

1 (d) APPLICATION.—An eligible State desiring a grant
 2 under this section shall submit to the Director of the Of-
 3 fice of Community Oriented Policing Services an applica-
 4 tion at such time, in such manner, and containing or ac-
 5 companied by such information, as the Director may rea-
 6 sonably require.

7 (e) AUTHORIZATION OF APPROPRIATIONS.—There
 8 are authorized to be appropriated such sums as are nec-
 9 essary to carry out this section.

10 **SEC. 5. FEDERAL FIREARMS PROHIBITION.**

11 Section 922 of title 18, United States Code, is
 12 amended—

13 (1) in subsection (d)—

14 (A) in paragraph (8)(B)(ii), by striking
 15 “or” at the end;

16 (B) in paragraph (9), by striking the pe-
 17 riod at the end and inserting “; or”; and

18 (C) by inserting after paragraph (9) the
 19 following:

20 “(10) is subject to a court order that prohibits
 21 such person from having under the custody or con-
 22 trol of the person, owning, purchasing, possessing,
 23 or receiving any firearms.”; and

24 (2) in subsection (g)—

1 (A) in paragraph (8)(C)(ii), by striking
2 “or” at the end;

3 (B) in paragraph (9), by striking the
4 comma at the end and inserting “; or”; and

5 (C) by inserting after paragraph (9) the
6 following:

7 “(10) who is subject to a court order that pro-
8 hibits such person from having under the custody or
9 control of the person, owning, purchasing, pos-
10 sessing, or receiving any firearms,”.

11 **SEC. 6. FULL FAITH AND CREDIT.**

12 Any gun violence prevention order issued under a
13 State law enacted in accordance with this Act shall have
14 the same full faith and credit in every court within the
15 United States as they have by law or usage in the courts
16 of such State from which they are issued.

17 **SEC. 7. SEVERABILITY.**

18 If any provision of this Act, or an amendment made
19 by this Act, or the application of such provision to any
20 person or circumstance, is held to be invalid, the remain-
21 der of this Act, or an amendment made by this Act, or
22 the application of such provision to other persons or cir-
23 cumstances, shall not be affected.

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