

115TH CONGRESS
2D SESSION

H. R. 6747

To provide States with funding to establish new tools to prevent suicide and violence, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 7, 2018

Mr. KATKO (for himself, Mr. PETERSON, Mr. CURTIS, Mr. CUELLAR, Mr. DIAZ-BALART, Mrs. COMSTOCK, and Mr. YOUNG of Iowa) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide States with funding to establish new tools to prevent suicide and violence, and for other purposes.

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 “Protecting Our Com-
5 munities and Rights Act of 2018”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

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

1 person with whom the individual shares a child in
2 common, the legal guardian of the individual, or a
3 person who cohabits or has cohabited with the indi-
4 vidual within the previous 12 months;

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

8 (3) the term “extreme risk protection order”
9 means a written order, issued by a State court or
10 signed by a magistrate prohibiting the respondent
11 from purchasing, possessing, or receiving a firearm;
12 and

13 (4) the term “law enforcement officer” means
14 a public servant authorized by State law or by a
15 State government agency to engage in or supervise
16 the prevention, detection, investigation, or prosecu-
17 tion of a criminal offense.

18 **SEC. 3. NATIONAL EXTREME RISK PROTECTION ORDER**

19 **LAW.**

20 (a) ENACTMENT OF EXTREME RISK PROTECTION
21 ORDER LAW.—In order to receive a grant under section
22 4, a State shall have in effect a law that authorizes the
23 issuance of an extreme risk protection order in accordance
24 with subsection (b).

1 (b) REQUIREMENTS FOR EXTREME RISK PROTEC-
2 TION ORDERS.—Legislation required under subsection (a)
3 shall be subject to the following requirements:

4 (1) GENERALIZED CONCERNS INSUFFICIENT.—

5 A generalized concern related to any hazards posed
6 by firearm ownership or use generally shall not con-
7 stitute sufficient basis for the issuance or renewal of
8 an extreme risk protection order under this section.

9 (2) APPLICATION FOR PRELIMINARY EX PARTE
10 EXTREME RISK PROTECTION ORDER.—A family
11 member or a law enforcement officer, whether acting
12 on the officer's own initiative or in response to a
13 complaint the officer has substantiated through
14 independent investigation, may submit an applica-
15 tion to a State court for the issuance of a prelimi-
16 nary ex parte extreme risk protection order, on a
17 form designed by the court, that—

18 (A) describes the facts and circumstances
19 necessitating that a preliminary ex parte ex-
20 treme risk protection order be issued against
21 the respondent;

22 (B) is signed by the applicant, under oath;
23 and

24 (C) includes any additional information re-
25 quired by the State court or magistrate to dem-

1 onstrate that the respondent poses an immi-
2 nent, particularized, and substantial risk of un-
3 lawfully using a firearm to cause death or seri-
4 ous physical injury to himself or herself or to
5 another person.

6 (3) STANDARD FOR ISSUANCE OF A PRELIMI-
7 NARY EX PARTE ORDER.—

8 (A) IN GENERAL.—A State court or mag-
9 istrate may issue a preliminary ex parte ex-
10 treme risk protection order upon finding by a
11 preponderance of evidence that the respondent
12 poses an imminent, particularized, and substan-
13 tial risk of unlawfully using a firearm to cause
14 death or serious physical injury to himself or
15 herself or to another person. No such order
16 shall remain in effect for more than 21 days
17 unless the respondent is detained for or submits
18 to an evaluation for commitment to a mental
19 institution or for assisted outpatient treatment,
20 in which case the preliminary order may be ex-
21 tended for the duration of any such commit-
22 ment or treatment. Before issuing an order
23 under this paragraph, the court or magistrate
24 shall consider whether the respondent meets the
25 applicable standard for involuntary observation,

1 temporary commitment, or any other procedure
2 that begins the State's process for involuntary
3 commitment or assisted outpatient treatment. If
4 the court or magistrate determines that the re-
5 spondent meets such standard, then, in addition
6 to issuing a preliminary ex parte extreme risk
7 protection order, the court or magistrate shall
8 order the respondent to undergo a mental eval-
9 uation to determine the most appropriate treat-
10 ment, including involuntary commitment or as-
11 sisted outpatient treatment, and may issue an
12 order requiring the respondent to undergo such
13 treatment.

14 (B) APPLICATION TO BE MADE UNDER
15 OATH.—A State court or magistrate shall, be-
16 fore issuing a preliminary ex parte extreme risk
17 protection order—

18 (i) examine under oath the individual
19 who applied for the order under paragraph
20 (2) and any witnesses the individual pro-
21 duces; or

22 (ii) require that the individual or any
23 witness submit a signed affidavit, subject
24 to the penalties of perjury, which describes

1 the facts the applicant or witness believes
2 establish the grounds of the application.

3 (4) LIMITATION ON FIREARM PROHIBITIONS
4 BASED ON EX PARTE PROCEEDINGS.—Any restric-
5 tion imposed pursuant to a preliminary ex parte
6 order, which is based on ex parte proceedings shall
7 be limited to receiving firearms or transporting or
8 carrying firearms in public.

9 (5) REPORTING OF PRELIMINARY EX PARTE
10 EXTREME RISK PROTECTION ORDER.—The court
11 shall notify the Department of Justice and com-
12 parable State agency of the issuance of the prelimi-
13 nary ex parte extreme risk protection order not later
14 than 48 hours after issuing the order. Such notice
15 shall be submitted in an electronic format, in a man-
16 ner prescribed by the Department of Justice and the
17 comparable State agency.

18 (6) HEARING ON A PERMANENT EXTREME RISK
19 PROTECTION ORDER.—

20 (A) IN GENERAL.—Not later than 14 days
21 after the date on which a court issues a prelimi-
22 nary ex parte extreme risk protection order, the
23 issuing court, or another court in the same ju-
24 risdiction, shall hold a hearing to determine
25 whether to issue a permanent extreme risk pro-

1 tection order and, if applicable, whether to con-
2 tinue procedures for involuntary commitment or
3 assisted outpatient treatment. The respondent
4 shall have the opportunity to appear with coun-
5 sel, present opposing witnesses, and cross-exam-
6 ine the petitioner or any witnesses offered by
7 the petitioner.

8 (B) NOTICE.—A court may not issue a
9 permanent extreme risk protection order unless
10 the respondent receives actual notice of the
11 hearing under subparagraph (A).

12 (C) BURDEN OF PROOF.—At any hearing
13 conducted under subparagraph (A), the State
14 or petitioner shall have the burden of estab-
15 lishing by clear and convincing evidence that
16 the respondent poses an imminent, particular-
17 ized, and substantial risk of unlawfully using a
18 firearm to cause death or serious physical in-
19 jury to himself or herself or to another person.

20 (D) REQUIREMENTS UPON ISSUANCE OF A
21 PERMANENT ORDER.—If the court finds by
22 clear and convincing evidence that the respon-
23 dent poses an imminent, particularized, and sub-
24 stantial risk of unlawfully using a firearm to
25 cause death or serious physical injury to himself

1 or herself or to another person, the following
2 shall apply:

3 (i) The respondent shall be prohibited
4 from possessing or receiving, or attempting
5 to possess or receive, a firearm for a period
6 not to exceed 1 year.

7 (ii) If the court determines that there
8 is probable cause to believe that the re-
9 spondent possesses a firearm when the
10 order is issued, the court shall issue a war-
11 rant ordering the seizure of such firearm
12 and shall further order the firearm to be
13 retained pursuant to paragraph (7) for the
14 duration of the permanent extreme risk
15 protection order.

16 (7) SEIZURE AND TEMPORARY RETENTION OF
17 FIREARMS.—

18 (A) IN GENERAL.—In the case that a law
19 enforcement officer takes possession of a fire-
20 arm pursuant to a warrant issued pursuant to
21 paragraph (6)(D)(ii), the law enforcement offi-
22 cer shall provide to the individual from whom
23 the firearm was taken a receipt, which includes
24 the make, model, caliber, finish, and serial
25 number of any such firearm. In the case that

1 an individual is not present at the time of the
2 seizure, the law enforcement officer shall post
3 the receipt at the location from which the fire-
4 arm was seized.

5 (B) CUSTODY OF SEIZED FIREARMS.—A
6 firearm seized pursuant to paragraph (6)(D)(ii)
7 shall, for the duration of the permanent ex-
8 treme risk protection order, be retained by the
9 law enforcement agency that seized the firearm,
10 or by a third party not prohibited from pos-
11 sessing or receiving a firearm, as specified by
12 the court that issued the permanent extreme
13 risk protection order.

14 (C) LIMITATION ON SEIZURE OF FIRE-
15 ARMS.—In the case that the location to be
16 searched during the execution of a warrant to
17 enforce a permanent extreme risk protection
18 order is occupied by multiple parties, and a law
19 enforcement officer executing the search deter-
20 mines that a firearm that is located during the
21 search is owned by an individual other than the
22 respondent named in the warrant, the firearm
23 may not be seized if—

24 (i) the firearm will be stored in a
25 manner that ensures that the respondent

1 named in the warrant does not have access
2 to or control of the firearm; and

3 (ii) there is no probable cause to be-
4 lieve that the owner of the firearm does
5 not lawfully possess the firearm.

6 (D) GUN SAFE.—In the case that the loca-
7 tion to be searched during the execution of a
8 warrant issued pursuant to paragraph
9 (6)(D)(ii) is occupied by multiple parties, and a
10 law enforcement officer executing the search lo-
11 cates a gun safe, which the officer determines
12 is owned by an individual other than the indi-
13 vidual named in the warrant, the contents of
14 the gun safe shall not be searched except in the
15 owner's presence and with the owner's consent.

16 (E) RETURN OF FIREARM TO RIGHTFUL
17 OWNER.—In the case that any individual who is
18 not subject to an extreme risk protection order
19 can demonstrate title to a firearm seized pursu-
20 ant to a warrant issued pursuant to paragraph
21 (6)(D)(ii), the firearm shall be returned to the
22 lawful owner as soon as possible and without an
23 additional order of a court.

24 (8) PETITION FOR RESCISSION OF A PERMA-
25 NENT EXTREME RISK PROTECTION ORDER.—An in-

1 dividual subject to a permanent extreme risk protec-
2 tion order may at any time during the effective pe-
3 riod of the order file one petition with the issuing
4 court to rescind the permanent extreme risk protec-
5 tion order. The court shall hold a hearing on the pe-
6 tition within 14 days and grant the petition if the
7 individual proves by a preponderance of evidence
8 that his or her possession of a firearm does not pose
9 an imminent, particularized, and substantial risk of
10 death or serious bodily injury to the individual or
11 another person.

12 (9) RETURN OF FIREARMS TO INDIVIDUAL SUB-
13 JECT TO AN EXTREME RISK PROTECTION ORDER.—
14 Any firearms seized pursuant to a warrant issued
15 pursuant to paragraph (6)(D)(ii) shall be returned
16 to the respondent within 5 business days of the expi-
17 ration or rescission of the order. Notwithstanding
18 any other provision of law, the court may require
19 that the respondent submit to an inquiry through
20 the national instant criminal background check sys-
21 tem as a condition of receiving the firearm.

22 (10) RENEWING AN EXTREME RISK PROTEC-
23 TION ORDER.—A family member or law enforcement
24 officer may petition the court that issued a perma-
25 nent extreme risk protection order to renew the

1 order for a period not to exceed 1 year. The require-
2 ments and proceedings for renewal of an extreme
3 risk protection order shall be the same as for the
4 issuance of a permanent extreme risk protection
5 order under paragraph (6). A permanent extreme
6 risk protection order may not be renewed more than
7 2 times.

8 (11) NOTIFICATION.—

9 (A) IN GENERAL.—Except as provided in
10 paragraph (5), the court shall notify the De-
11 partment of Justice and comparable State
12 agency of the issuance or renewal of an extreme
13 risk protection order not later than 5 court
14 days after issuing or renewing the order. The
15 court shall also notify the Department of Jus-
16 tice and comparable State agency of the rescis-
17 sion or expiration of an extreme risk protection
18 order not later than 5 court days after such re-
19 scission or expiration. Such notice shall be sub-
20 mitted in an electronic format, in a manner
21 prescribed by the Department of Justice and
22 the comparable State agency.

23 (B) UPDATE OF DATABASES.—As soon as
24 practicable after receiving a notification under
25 paragraph (5) or subparagraph (A), but in no

1 case later than 48 hours, the Department of
2 Justice and comparable State agency shall up-
3 date the background check databases of the De-
4 partment and agency, respectively, to reflect—

5 (i) the issuance or renewal of the ex-
6 treme risk protection order; or

7 (ii) the rescission or expiration of an
8 extreme risk protection order.

9 (c) CONFIDENTIALITY PROTECTIONS.—All informa-
10 tion provided to the Department of Justice and com-
11 parable State agency pursuant to legislation described
12 under this section shall be kept confidential, separate, and
13 apart from all other records maintained by the Depart-
14 ment of Justice and the comparable State agency.

15 (d) RULE OF CONSTRUCTION.—The use of terms in
16 a State law that differ from the terms used in this section,
17 or the definitions in section 2, shall not affect the avail-
18 ability of funds to a State under this section, provided that
19 the State otherwise complies with the substantive require-
20 ments of this section. A State may not receive funds under
21 this section if does not meet the substantive requirements
22 of this section, including required findings, evidentiary
23 standards, burdens of proof, limitations on duration and
24 renewal of orders, and rules governing the return of fire-
25 arms.

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

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

7 (b) ELIGIBLE STATE.—A State shall be eligible to re-
8 ceive grants under this section beginning on the date on
9 which—

10 (1) the State enacts legislation described in sec-
11 tion 3; and

12 (2) the Attorney General determines that the
13 legislation of the State described in paragraph (1)
14 complies with the requirements of section 3.

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

19 (d) APPLICATION.—A State seeking a grant under
20 this section shall submit to the Director of the Office of
21 Community Oriented Policing Services an application at
22 such time, in such manner, and containing such informa-
23 tion, as the Director may reasonably require.

24 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
25 authorized to be appropriated such sums as may be nec-
26 essary to carry out this section.

1 **SEC. 5. FEDERAL FIREARMS PROHIBITION.**

2 Section 922 of title 18, United States Code, is
3 amended—

4 (1) in subsection (d)—

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

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

9 (C) by inserting after paragraph (9) the
10 following:

11 “(10) who is subject to a court order that—

12 “(A) was issued after a hearing of which
13 such person received actual notice, and at which
14 such person had an opportunity to participate;

15 “(B) restrains such person from possessing
16 a firearm;

17 “(C) includes a finding by clear and con-
18 vincing evidence that such person poses an im-
19 minent, particularized, and substantial risk of
20 unlawfully using a firearm to cause death or se-
21 rious physical injury to himself or herself or to
22 another person; and

23 “(D) was initiated by a family member or
24 law enforcement officer (as such terms are de-
25 fined under section 2 of the Protecting Our
26 Communities and Rights Act of 2018).”; and

1 (2) in subsection (g)—

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

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

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

8 “(10) who is subject to a court order that—

9 “(A) was issued after a hearing of which
10 such person received actual notice, and at which
11 such person had an opportunity to participate;

12 “(B) restrains such person from possessing
13 a firearm;

14 “(C) includes a finding by clear and con-
15 vincing evidence that such person poses an im-
16 minent, particularized, and substantial risk of
17 unlawfully using a firearm to cause death or se-
18 rious physical injury to himself or herself or to
19 another person; and

20 “(D) was initiated by a family member or
21 law enforcement officer (as such terms are de-
22 fined under section 2 of the Protecting Our
23 Communities and Rights Act of 2018),”.

1 **SEC. 6. SEVERABILITY; NONPREEMPTION OF STATE AU-**
2 **THORITY.**

3 (a) SEVERABILITY.—If any provision of this Act, or
4 an amendment made by this Act, or the application of
5 such provision to any person or circumstance, is held to
6 be invalid, the remainder of this Act, or an amendment
7 made by this Act, or the application of such provision to
8 other persons or circumstances, shall not be affected.

9 (b) NONPREEMPTION.—Nothing in this Act, or an
10 amendment made by this Act, shall be construed to—

11 (1) limit the ability of a State to enact legisla-
12 tion with additional due process protections or addi-
13 tional rights for a respondent or subject of an ex-
14 treme risk protection order; or

15 (2) supersede or contradict any State authority
16 or law established or enacted before or after the date
17 of enactment of this Act relating to the emergency
18 removal of firearms from individuals determined to
19 be an imminent danger to themselves or others.

○