

115TH CONGRESS
1ST SESSION

S. 1212

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

IN THE SENATE OF THE UNITED STATES

MAY 24, 2017

Mrs. FEINSTEIN (for herself, Mrs. GILLIBRAND, Mr. MARKEY, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and 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, and law enforcement, with 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 Preven-
5 tion Order Act of 2017”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “family or household member”
9 means, with respect to an individual, any—

1 (A) individual related by blood, marriage,
2 or adoption to the respondent;

3 (B) dating partner of the respondent;

4 (C) individual who has a child in common
5 with the respondent, regardless of whether the
6 individual has—

7 (i) been married to the respondent; or

8 (ii) lived together with the respondent
9 at any time;

10 (D) an individual who resides or has re-
11 sided with the respondent during the past year;

12 (E) domestic partner of the respondent;

13 (F) individual who has a biological or legal
14 parent-child relationship with the respondent,
15 including a stepparent-stepchild and grand-
16 parent-grandchild relationship; and

17 (G) any individual who is acting or has
18 acted as the legal guardian of the respondent;

19 (2) the term “firearm” has the meaning given
20 the term in section 921 of title 18, United States
21 Code;

22 (3) the term “gun violence prevention order”
23 means a written order, issued by a State court or
24 signed by a magistrate (or other comparable judicial
25 officer)—

1 (A) prohibiting a named individual from
2 having under the custody or control of the indi-
3 vidual, owning, purchasing, possessing, or re-
4 ceiving any firearms; or

5 (B) having a firearm removed;

6 (4) the term “gun violence prevention warrant”
7 means a written order, issued by a State court or
8 signed by a magistrate (or other comparable judicial
9 officer), regarding an individual who is subject to a
10 gun violence prevention order and who is known to
11 own or possess one or more firearms, that directs a
12 law enforcement officer to temporarily remov and re-
13 tain any firearm in the possession of the individual;

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

19 (6) the term “wellness check” means a visit
20 conducted by a law enforcement officer to the resi-
21 dence of an individual for the purpose of assessing
22 whether the individual poses a danger to the indi-
23 vidual or others due to a mental, behavioral, or
24 physical condition.

1 **SEC. 3. NATIONAL GUN VIOLENCE PREVENTION ORDER**
2 **AND WARRANT LAW.**

3 (a) ENACTMENT OF GUN VIOLENCE PREVENTION
4 ORDER LAW.—In order to receive a grant under section
5 4, on the date that is 3 years after the date of enactment
6 of this Act, each State shall have in effect legislation
7 that—

8 (1) authorizes a gun violence prevention order
9 and gun violence prevention warrant in accordance
10 with subsection (b); and

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

13 (b) REQUIREMENTS FOR GUN VIOLENCE PREVEN-
14 TION ORDERS AND WARRANTS.—Legislation required
15 under subsection (a) shall be subject to the following re-
16 quirements:

17 (1) APPLICATION FOR GUN VIOLENCE PREVEN-
18 TION ORDER.—A family or household member of an
19 individual, or a law enforcement officer, may submit
20 an application to a State court, on a form designed
21 by the court, that—

22 (A) describes the facts and circumstances
23 necessitating that a gun violence prevention
24 order be issued against the named individual;

25 (B) is signed by the applicant, under oath;
26 and

(C) includes any additional information required by the State court or magistrate (or other comparable judicial officer) to demonstrate that possession of a firearm by the named individual poses a substantial risk or a higher standard of risk of personal injury to the named individual or others.

(2) EXAMINATION OF APPLICANT AND WITNESSES.—A State court or magistrate (or other comparable judicial officer) shall, before issuing a gun violence prevention order—

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

(B)(i) require that the individual or any witness submit a signed affidavit, which describes the facts the applicant or witness believes establish the grounds of the application; or

(ii) take an oral statement from the individual or witness under oath.

(3) STANDARD FOR ISSUANCE OF ORDER.—

(A) IN GENERAL.—A State court or magistrate (or other comparable judicial officer) may issue a gun violence prevention order upon

1 a finding that there is a reasonable suspicion
2 that possession of a firearm by the named indi-
3 vidual poses a significant risk of personal injury
4 to the named individual or others.

5 (B) NOTIFICATION.—

6 (i) IN GENERAL.—The court shall no-
7 tify the Department of Justice and com-
8 parable State agency of the gun violence
9 prevention order not later than 2 court
10 days after issuing the order. The court
11 shall also notify the Department of Justice
12 and comparable State agency of any order
13 restoring the ability of the individual to
14 own or possess firearms not later than 2
15 court days after issuing the order to re-
16 store the individual's right to own or pos-
17 sess any type of firearms that may be law-
18 fully owned and possessed. Such notice
19 shall be submitted in an electronic format,
20 in a manner prescribed by the Department
21 of Justice and the comparable State agen-
22 cy.

23 (ii) UPDATE OF DATABASES.—As
24 soon as practicable after receiving a notifi-
25 cation under clause (i), the Department of

1 Justice and comparable State agency shall
2 update the background check databases of
3 the Department and agency, respectively,
4 to reflect the prohibitions articulated in the
5 gun violence prevention order.

6 (4) ISSUANCE OF GUN VIOLENCE PREVENTION
7 WARRANT.—

8 (A) IN GENERAL.—After issuing a gun vio-
9 lence prevention order, a State court or mag-
10 istrate (or other comparable judicial officer)
11 shall, upon a finding of probable cause to be-
12 lieve that the named individual subject to the
13 order has a firearm in his custody or control,
14 issue a gun violence prevention warrant order-
15 ing the temporary seizure of all firearms speci-
16 fied in the warrant.

17 (B) REQUIREMENT.—Subject to paragraph
18 (6), a gun violence prevention warrant issued
19 under subparagraph (A) shall require that any
20 firearm described in the warrant be taken from
21 any place, or from any individual in whose pos-
22 session, the firearm may be.

23 (5) SERVICE OF GUN VIOLENCE PREVENTION
24 ORDER.—When serving a gun violence prevention
25 order or warrant, a law enforcement officer or proc-

1 ess server shall provide the individual with a form to
2 request a hearing in accordance with paragraph
3 (6)(F).

4 (6) TEMPORARY SEIZURE OF FIREARMS.—

5 (A) IN GENERAL.—When a law enforce-
6 ment officer takes property under a gun vio-
7 lence prevention warrant or a gun violence pre-
8 vention order, the law enforcement officer shall
9 give a receipt for the property taken, specifying
10 the property in detail, to the individual from
11 whom it was taken. In the absence of a person,
12 the law enforcement officer shall leave the re-
13 ceipt in the place where the law enforcement of-
14 ficer found the property, if such information is
15 available.

16 (B) TEMPORARY CUSTODY OF REMOVED
17 FIREARMS.—All firearms removed pursuant to
18 a gun violence prevention warrant shall be re-
19 tained by the law enforcement officer or the law
20 enforcement agency in custody, subject to the
21 order of the court that issued the warrant or to
22 any other court in which an offense with re-
23 spect to the firearm is triable.

24 (C) LIMITATION ON SEIZURE OF FIRE-
25 ARMS.—If the location to be searched during

1 the execution of a gun violence prevention war-
2 rant is jointly occupied by multiple parties and
3 a firearm is located during the execution of the
4 seizure warrant, and it is determined that the
5 firearm is owned by an individual other than
6 the individual named in the gun violence pre-
7 vention warrant, the firearm may not be re-
8 moved if—

9 (i) the firearm is stored in a manner
10 that the individual named in the gun vio-
11 lence prevention warrant does not have ac-
12 cess to or control of the firearm; and

13 (ii) there is no evidence of unlawful
14 possession of the firearm by the owner.

15 (D) GUN SAFE.—If the location to be
16 searched during the execution of a gun violence
17 prevention warrant is jointly occupied by mul-
18 tiple parties and a gun safe is located, and it
19 is determined that the gun safe is owned by an
20 individual other than the individual named in
21 the gun violence prevention warrant, the con-
22 tents of the gun safe shall not be searched ex-
23 cept in the owner's presence, or with the own-
24 er's consent, or unless a valid search warrant
25 has been obtained.

1 (E) RETURN OF FIREARM TO RIGHTFUL
2 OWNER.—If any individual who is not a named
3 individual in a gun violence prevention warrant
4 claims title to a firearm removed pursuant to a
5 gun violence prevention warrant, the firearm
6 shall be returned to the lawful owner not later
7 than 30 days after the date on which the title
8 is claimed.

9 (F) RIGHT TO REQUEST A HEARING.—A
10 named individual may submit 1 written request
11 at any time during the effective period of a gun
12 violence prevention order issued against the in-
13 dividual for a hearing for an order allowing the
14 individual to own, possess, purchase, or receive
15 a firearm.

16 (7) HEARING ON GUN VIOLENCE PREVENTION
17 ORDER AND GUN VIOLENCE PREVENTION WAR-
18 RANT.—

19 (A) IN GENERAL.—Except as provided in
20 subparagraph (E), not later than 30 days after
21 the date on which a gun violence prevention
22 order and, when applicable, a gun violence pre-
23 vention warrant, is issued, the court that issued
24 the order and, when applicable, the warrant, or
25 another court in that same jurisdiction, shall

1 hold a hearing to determine whether the indi-
2 vidual who is the subject of the order may have
3 under the custody or control of the individual,
4 own, purchase, possess, or receive firearms and,
5 when applicable, whether any removed firearms
6 should be returned to the individual named in
7 the warrant.

8 (B) NOTICE.—The individual named in a
9 gun violence prevention order requested to be
10 renewed under subparagraph (A) shall be given
11 written notice and an opportunity to be heard
12 on the matter.

13 (C) BURDEN OF PROOF.—

14 (i) IN GENERAL.—Except as provided
15 in clause (ii), at any hearing conducted
16 under subparagraph (A), the State or peti-
17 tioner shall have the burden of establishing
18 probable or reasonable suspicion that the
19 individual poses a significant risk of per-
20 sonal injury to the individual or others by
21 owning or possessing the firearm.

22 (ii) HIGHER BURDEN OF PROOF.—A
23 State may establish a burden of proof for
24 hearings conducted under subparagraph

1 (A) that is higher than the burden of proof
2 required under clause (i).

3 (D) REQUIREMENTS UPON FINDING OF
4 SIGNIFICANT RISK OR A HIGHER STANDARD OF
5 RISK.—If the named individual is found at the
6 hearing to pose a substantial risk or a higher
7 standard of risk of personal injury to the
8 named individual or others by owning or pos-
9 sessing a firearm, the following shall apply:

10 (i) The firearm or firearms removed
11 pursuant to the warrant shall be retained
12 by the law enforcement agency for a period
13 not to exceed 3 years.

14 (ii) The named individual shall be
15 prohibited from owning or possessing, pur-
16 chasing or receiving, or attempting to pur-
17 chase or receive a firearm for a period not
18 to exceed 1 year, a violation of which shall
19 be considered a misdemeanor offense.

20 (iii) The court shall notify the Depart-
21 ment of Justice and comparable State
22 agency of the gun violence prevention order
23 not later than 10 court days after issuing
24 the order. The court shall also notify the
25 Department of Justice and comparable

1 State agency of any order restoring the
2 ability of the individual to own or possess
3 firearms not later than 10 court days after
4 issuing the order to restore the individual's
5 right to own or possess any type of fire-
6 arms that may be lawfully owned and pos-
7 sessed. Such notice shall be submitted in
8 an electronic format, in a manner pre-
9 scribed by the Department of Justice and
10 the comparable State agency.

11 (iv) As soon as practicable after re-
12 ceiving a notification under clause (iii), the
13 Department of Justice and comparable
14 State agency shall update the background
15 check databases of the Department and
16 agency, respectively, to reflect—

17 (I) the prohibitions articulated in
18 the gun violence prevention order; or

19 (II) an order issued to restore an
20 individual's right to own or possess a
21 firearm.

22 (E) RETURN OF FIREARMS.—If the court
23 finds that the State has not met the required
24 standard of proof, any firearm removed pursu-

1 ant to the warrant shall be returned to the
2 named individual in a timely manner.

3 (F) LIMITATION ON HEARING REQUIRE-
4 MENT.—If an individual named in a gun vio-
5 lence prevention warrant is prohibited from
6 owning or possessing a firearm for a period of
7 1 year or more by another provision of State or
8 Federal law, a hearing pursuant to subpara-
9 graph (A) is not required and the court shall
10 issue an order to hold the firearm until either
11 the individual is no longer prohibited from own-
12 ing a firearm or the individual sells or transfers
13 ownership of the firearm to a licensed firearm
14 dealer.

15 (8) RENEWING GUN VIOLENCE PREVENTION
16 ORDER AND GUN VIOLENCE PREVENTION WAR-
17 RANT.—

18 (A) IN GENERAL.—Except as provided in
19 subparagraph (E), if a law enforcement agency,
20 a law enforcement officer, or a family or house-
21 hold member, has probable cause to believe that
22 an individual who is subject to a gun violence
23 prevention order continues to pose a significant
24 risk of personal injury to the named individual
25 or others by possessing a firearm, the agency,

1 law enforcement officer, or family or household
2 member may initiate a request for a renewal of
3 the order, on a form designed by the court, de-
4 scribing the facts and circumstances necessi-
5 tating the request.

6 (B) NOTICE.—The individual named in the
7 gun violence prevention order requested to be
8 renewed under subparagraph (A) shall be given
9 written notice and an opportunity to be heard
10 on the matter.

11 (C) HEARING.—After notice is given under
12 subparagraph (B), a hearing shall be held to
13 determine if a request for renewal of the order
14 shall be issued.

15 (D) ISSUANCE OF RENEWAL.—Except as
16 provided in subparagraph (E), a State court
17 may issue a renewal of a gun violence preven-
18 tion order if there is probable cause to believe
19 that the individual who is subject to the order
20 continues to pose a significant risk of personal
21 injury to the named individual or others by pos-
22 sessing a firearm.

23 (E) HIGHER BURDEN OF PROOF.—A State
24 may establish a burden of proof for initiating a
25 request for or issuing a renewal of a gun vio-

1 lence prevention order that is higher than the
2 burden of proof required under subparagraph
3 (A) or (D).

4 (F) NOTIFICATION.—

5 (i) IN GENERAL.—The court shall no-
6 tify the Department of Justice and com-
7 parable State agency of a renewal of the
8 gun violence prevention order not later
9 than 2 court days after renewing the order.
10 The court shall also notify the Department
11 of Justice and comparable State agency of
12 any order restoring the ability of the indi-
13 vidual to own or possess firearms not later
14 than 2 court days after issuing the order
15 to restore the individual's right to own or
16 possess any type of firearms that may be
17 lawfully owned and possessed. Such notice
18 shall be submitted in an electronic format,
19 in a manner prescribed by the Department
20 of Justice and the comparable State agen-
21 cy.

22 (ii) UPDATE OF DATABASES.—As
23 soon as practicable after receiving a notifi-
24 cation under clause (i), the Department of
25 Justice and comparable State agency shall

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

4 (I) the prohibitions articulated in
5 the renewal of the gun violence pre-
6 vention order; or

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

10 (c) **LAW ENFORCEMENT CHECK OF STATE FIREARM**
11 **DATABASE.**—Each law enforcement agency of the State
12 shall establish a procedure that requires a law enforcement
13 officer to, in conjunction with performing a wellness check
14 on an individual, check whether the individual is listed on
15 any of the firearm and ammunition databases of the State
16 or jurisdiction in which the individual resides.

17 (d) **CONFIDENTIALITY PROTECTIONS.**—All informa-
18 tion provided to the Department of Justice and com-
19 parable State agency pursuant to legislation required
20 under subsection (a) shall be kept confidential, separate,
21 and apart from all other records maintained by the De-
22 partment of Justice and comparable State agency.

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

24 (a) **IN GENERAL.**—The Director of the Office of
25 Community Oriented Policing Services of the Department

1 of Justice may make grants to an eligible State to assist
2 the State in carrying out the provisions of the State legis-
3 lation described in section 3.

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

7 (1) the State enacts legislation described in sec-
8 tion 3; and

9 (2) the Attorney General determines that the
10 legislation of the State described in paragraph (1)
11 complies with the requirements of section 3.

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

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

22 (e) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated such sums as are nec-
24 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) is subject to a court order that prohibits
12 such person from having under the custody or con-
13 trol of the person, owning, purchasing, possessing,
14 or receiving any firearms.”; and

15 (2) in subsection (g)—

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

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

20 (C) by inserting after paragraph (9) the
21 following:

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

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

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

7 **SEC. 7. SEVERABILITY.**

8 If any provision of this Act, or an amendment made
9 by this Act, or the application of such provision to any
10 person or circumstance, is held to be invalid, the remain-
11 der of this Act, or an amendment made by this Act, or
12 the application of such provision to other persons or cir-
13 cumstances, shall not be affected.

