

117TH CONGRESS
1ST SESSION

S. 1819

To support State, Tribal, and local efforts to remove access to firearms from individuals who are a danger to themselves or others pursuant to court orders for this purpose.

IN THE SENATE OF THE UNITED STATES

MAY 25, 2021

Mrs. FEINSTEIN (for herself, Mr. BLUMENTHAL, Mr. WHITEHOUSE, Mr. CASEY, Mr. SCHATZ, Mr. MARKEY, Ms. HASSAN, Ms. SMITH, Mr. DURBIN, Ms. BALDWIN, Mr. MURPHY, Mrs. MURRAY, Mr. PADILLA, Mr. LEAHY, Ms. CANTWELL, Ms. WARREN, Ms. KLOBUCHAR, Mr. MENENDEZ, Ms. DUCKWORTH, and Mr. BOOKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To support State, Tribal, and local efforts to remove access to firearms from individuals who are a danger to themselves or others pursuant to court orders for this purpose.

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 “Extreme Risk Protec-
5 tion Order Act of 2021”.

1 **SEC. 2. EXTREME RISK PROTECTION ORDER GRANT PRO-**
2 **GRAM.**

3 (a) DEFINITIONS.—In this section:

4 (1) ELIGIBLE ENTITY.—The term “eligible enti-
5 ty” means—

6 (A) a State or Indian Tribe—

7 (i) that enacts legislation described in
8 subsection (c);

9 (ii) with respect to which the Attorney
10 General determines that the legislation de-
11 scribed in clause (i) complies with the re-
12 quirements under subsection (c)(1); and

13 (iii) that certifies to the Attorney
14 General that the State or Indian Tribe
15 shall—

16 (I) use the grant for the purposes
17 described in subsection (b)(2); and

18 (II) allocate not less than 25 per-
19 cent and not more than 70 percent of
20 the amount received under a grant
21 under subsection (b) for the develop-
22 ment and dissemination of training
23 for law enforcement officers in accord-
24 ance with subsection (b)(4); or

25 (B) a unit of local government or other
26 public or private entity that—

1 (i) is located in a State or in the terri-
2 tory under the jurisdiction of an Indian
3 Tribe that meets the requirements de-
4 scribed in clauses (i) and (ii) of subpara-
5 graph (A); and

6 (ii) certifies to the Attorney General
7 that the unit of local government or entity
8 shall—

9 (I) use the grant for the purposes
10 described in subsection (b)(2); and

11 (II) allocate not less than 25 per-
12 cent and not more than 70 percent of
13 the amount received under a grant
14 under this section for the development
15 and dissemination of training for law
16 enforcement officers in accordance
17 with subsection (b)(4).

18 (2) EXTREME RISK PROTECTION ORDER.—The
19 term “extreme risk protection order” means a writ-
20 ten order or warrant, issued by a State or Tribal
21 court or signed by a magistrate (or other com-
22 parable judicial officer), the primary purpose of
23 which is to reduce the risk of firearm-related death
24 or injury by doing 1 or more of the following:

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 a firearm.

5 (B) Having a firearm removed or requiring
6 the surrender of firearms from a named indi-
7 vidual.

8 (3) FIREARM.—The term “firearm” has the
9 meaning given the term in section 921 of title 18,
10 United States Code.

11 (4) INDIAN TRIBE.—The term “Indian Tribe”
12 has the meaning given the term “Indian tribe” in
13 section 1709 of title I of the Omnibus Crime Control
14 and Safe Streets Act of 1968 (34 U.S.C. 10389).

15 (5) LAW ENFORCEMENT OFFICER.—The term
16 “law enforcement officer” means a public servant
17 authorized by Federal, State, local, or Tribal law or
18 by a Federal, State, local, or Tribal government
19 agency to—

20 (A) engage in or supervise the prevention,
21 detection, investigation, or prosecution of an of-
22 fense; or

23 (B) supervise sentenced criminal offenders.

24 (6) PETITIONER.—The term “petitioner”
25 means an individual authorized under State or Trib-

1 al law to petition for an extreme risk protection
2 order.

3 (7) RESPONDENT.—The term “respondent”
4 means an individual named in the petition for an ex-
5 treme risk protection order or subject to an extreme
6 risk protection order.

7 (8) STATE.—The term “State” means—

8 (A) a State;

9 (B) the District of Columbia;

10 (C) the Commonwealth of Puerto Rico;

11 and

12 (D) any other territory or possession of the
13 United States.

14 (9) UNIT OF LOCAL GOVERNMENT.—The term
15 “unit of local government” has the meaning given
16 the term in section 901 of title I of the Omnibus
17 Crime Control and Safe Streets Act of 1968 (34
18 U.S.C. 10251).

19 (b) GRANT PROGRAM ESTABLISHED.—

20 (1) IN GENERAL.—The Attorney General shall
21 establish a program under which, from amounts
22 made available to carry out this section, the Attor-
23 ney General may make grants to eligible entities to
24 assist in carrying out the provisions of the legisla-
25 tion described in subsection (c).

1 (2) USE OF FUNDS.—Funds awarded under
2 this subsection may be used by an applicant to—

3 (A) enhance the capacity of law enforce-
4 ment agencies and the courts of a State, unit
5 of local government, or Indian Tribe by pro-
6 viding personnel, training, technical assistance,
7 data collection, and other resources to carry out
8 enacted legislation described in subsection (c);

9 (B) train judges, court personnel, health
10 care and legal professionals, and law enforce-
11 ment officers to more accurately identify indi-
12 viduals whose access to firearms poses a danger
13 of causing harm to themselves or others by in-
14 creasing the risk of firearms suicide or inter-
15 personal violence;

16 (C) develop and implement law enforce-
17 ment and court protocols, forms, and orders so
18 that law enforcement agencies and the courts
19 may carry out the provisions of the enacted leg-
20 islation described in subsection (c) in a safe, eq-
21 uitable, and effective manner, including through
22 the removal and storage of firearms pursuant to
23 extreme risk protection orders under the en-
24 acted legislation; and

1 (D) raise public awareness and under-
2 standing of the enacted legislation described in
3 subsection (c), including through subgrants to
4 community-based organizations for the training
5 of community members, so that extreme risk
6 protection orders may be issued in appropriate
7 situations to reduce the risk of firearms-related
8 death and injury.

9 (3) APPLICATION.—An eligible entity desiring a
10 grant under this subsection shall submit to the At-
11 torney General an application at such time, in such
12 manner, and containing or accompanied by such in-
13 formation as the Attorney General may reasonably
14 require.

15 (4) TRAINING.—

16 (A) IN GENERAL.—A recipient of a grant
17 under this subsection shall provide training to
18 law enforcement officers, including officers of
19 relevant Federal, State, local, and Tribal law
20 enforcement agencies, in the safe, impartial, ef-
21 fective, and equitable use and administration of
22 extreme risk protection orders, including train-
23 ing to address—

24 (i) bias based on race and racism, eth-
25 nicity, gender, sexual orientation, gender

1 identity, religion, language proficiency,
2 mental health condition, disability, and
3 classism in the use and administration of
4 extreme risk protection orders;

5 (ii) the appropriate use of extreme
6 risk protection orders in cases of domestic
7 violence, including the applicability of other
8 policies and protocols to address domestic
9 violence in situations that may also involve
10 extreme risk protection orders and the ne-
11 cessity of safety planning with the victim
12 before a law enforcement officer petitions
13 for and executes an extreme risk protection
14 order, if applicable;

15 (iii) interacting with persons with a
16 mental illness or emotional distress, includ-
17 ing de-escalation and crisis intervention;
18 and

19 (iv) best practices for referring per-
20 sons subject to extreme risk protection or-
21 ders and associated victims of violence to
22 social service providers that may be avail-
23 able in the jurisdiction and appropriate for
24 those individuals, including health care,
25 mental health, substance abuse, and legal

1 services, employment and vocational serv-
2 ices, housing assistance, case management,
3 and veterans and disability benefits.

4 (B) CONSULTATION WITH EXPERTS.—A
5 recipient of a grant under this subsection, in
6 developing law enforcement training required
7 under subparagraph (A), shall seek advice from
8 domestic violence service providers (including
9 culturally specific (as defined in section 40002
10 of the Violence Against Women Act of 1994 (34
11 U.S.C. 12291)) organizations), social service
12 providers, suicide prevention advocates, violence
13 intervention specialists, law enforcement agen-
14 cies, mental health disability experts, and other
15 community groups working to reduce suicides
16 and violence, including domestic violence, within
17 the State or the territory under the jurisdiction
18 of the Indian Tribe, as applicable, that enacted
19 the legislation described in subsection (c) that
20 enabled the grant recipient to be an eligible en-
21 tity.

22 (5) AUTHORIZATION OF APPROPRIATIONS.—

23 There are authorized to be appropriated such sums
24 as are necessary to carry out this section.

1 (c) ELIGIBILITY FOR EXTREME RISK PROTECTION
2 ORDER GRANT PROGRAM.—

3 (1) REQUIREMENTS.—Legislation described in
4 this subsection is legislation that establishes require-
5 ments that are substantially similar to the following:

6 (A) PETITION FOR EXTREME RISK PRO-
7 TECTION ORDER.—A petitioner, including a law
8 enforcement officer, may submit a petition to a
9 State or Tribal court, on a form designed by
10 the court or a State or Tribal agency, that—

11 (i) describes the facts and cir-
12 cumstances justifying that an extreme risk
13 protection order be issued against the
14 named individual; and

15 (ii) is signed by the applicant, under
16 oath.

17 (B) NOTICE AND DUE PROCESS.—The in-
18 dividual named in a petition for an extreme risk
19 protection order as described in subparagraph
20 (A) shall be given written notice of the petition
21 and an opportunity to be heard on the matter
22 in accordance with this paragraph.

23 (C) ISSUANCE OF EXTREME RISK PROTEC-
24 TION ORDERS.—

25 (i) HEARING.—

1 (I) IN GENERAL.—Upon receipt
2 of a petition described in subpara-
3 graph (A) or request of an individual
4 named in such a petition, the court
5 shall order a hearing to be held within
6 a reasonable time, and not later than
7 30 days after the date of the petition
8 or request.

9 (II) DETERMINATION.—If the
10 court finds at the hearing ordered
11 under subclause (I), by a preponder-
12 ance of the evidence or according to a
13 higher evidentiary standard estab-
14 lished by the State or Indian Tribe,
15 that the respondent poses a danger of
16 causing harm to self or others by hav-
17 ing access to a firearm, the court may
18 issue an extreme risk protection order.

19 (ii) DURATION OF EXTREME RISK
20 PROTECTION ORDER.—An extreme risk
21 protection order shall be in effect—

22 (I) until an order terminating or
23 superseding the extreme risk protec-
24 tion order is issued; or

25 (II) for a set period of time.

1 (D) EX PARTE EXTREME RISK PROTEC-
 2 TION ORDERS.—

3 (i) IN GENERAL.—Upon receipt of a
 4 petition described in subparagraph (A), the
 5 court may issue an ex parte extreme risk
 6 protection order, if—

7 (I) the petition for an extreme
 8 risk protection order alleges that the
 9 respondent poses a danger of causing
 10 harm to self or others by having ac-
 11 cess to a firearm; and

12 (II) the court finds there is prob-
 13 able cause to believe, or makes a find-
 14 ing according to a higher evidentiary
 15 standard established by the State or
 16 Indian Tribe, that the respondent
 17 poses a danger of causing harm to self
 18 or others by having access to a fire-
 19 arm.

20 (ii) DURATION OF EX PARTE EX-
 21 TREME RISK PROTECTION ORDER.—An ex
 22 parte extreme risk protection order shall
 23 remain in effect only until the hearing re-
 24 quired under subparagraph (C)(i).

25 (E) STORAGE OF REMOVED FIREARMS.—

1 (i) AVAILABILITY FOR RETURN.—All
 2 firearms removed or surrendered pursuant
 3 to an extreme risk protection order shall
 4 only be available for return to the named
 5 individual when the individual has regained
 6 eligibility under Federal and State law,
 7 and, where applicable, Tribal law to pos-
 8 sess firearms.

9 (ii) CONSENT REQUIRED FOR DIS-
 10 POSAL OR DESTRUCTION.—Firearms
 11 owned by a named individual may not be
 12 disposed of or destroyed during the period
 13 of the extreme risk protection order with-
 14 out the consent of the named individual.

15 (F) NOTIFICATION.—

16 (i) IN GENERAL.—

17 (I) REQUIREMENT.—A State or
 18 Tribal court that issues an extreme
 19 risk protection order shall notify the
 20 Attorney General or the comparable
 21 State or Tribal agency, as applicable,
 22 of the order as soon as practicable or
 23 within a designated period of time.

24 (II) FORM AND MANNER.—A
 25 State or Tribal court shall submit a

1 notification under subclause (I) in an
2 electronic format, in a manner pre-
3 scribed by the Attorney General or the
4 comparable State or Tribal agency.

5 (ii) UPDATE OF DATABASES.—As
6 soon as practicable or within the time pe-
7 riod designated by State or Tribal law
8 after receiving a notification under clause
9 (i), the Attorney General or the com-
10 parable State or Tribal agency shall ensure
11 that the extreme risk protection order is
12 reflected in the National Instant Criminal
13 Background Check System.

14 (2) ADDITIONAL PROVISIONS.—Legislation de-
15 scribed in this subsection may—

16 (A) provide procedures for the termination
17 of an extreme risk protection order;

18 (B) provide procedures for the renewal of
19 an extreme risk protection order;

20 (C) establish burdens and standards of
21 proof for issuance of orders described in para-
22 graph (1) that are substantially similar to or
23 higher than the burdens and standards of proof
24 set forth in that paragraph;

1 (D) limit the individuals who may submit
 2 a petition described in paragraph (1), provided
 3 that, at a minimum, 1 or more law enforcement
 4 officers are authorized to do so; and

5 (E) include any other authorizations or re-
 6 quirements that the State or Tribal authorities
 7 determine appropriate.

8 (3) ANNUAL REPORT.—Not later than 1 year
 9 after the date on which an eligible entity receives a
 10 grant under subsection (b), and annually thereafter
 11 for the duration of the grant period, the entity shall
 12 submit to the Attorney General a report that in-
 13 cludes, with respect to the preceding year—

14 (A) the number of petitions for ex parte
 15 extreme risk protection orders filed, as well as
 16 the number of such orders issued and the num-
 17 ber denied, disaggregated by—

18 (i) the jurisdiction;

19 (ii) the individual authorized under
 20 State or Tribal law to petition for an ex-
 21 treme risk protection order, including the
 22 relationship of the individual to the re-
 23 spondent; and

24 (iii) the alleged danger posed by the
 25 respondent, including whether the danger

1 involved a risk of suicide, unintentional in-
2 jury, domestic violence, or other inter-
3 personal violence;

4 (B) the number of petitions for extreme
5 risk protection orders filed, as well as the num-
6 ber of such orders issued and the number de-
7 nied, disaggregated by—

8 (i) the jurisdiction;

9 (ii) the individual authorized under
10 State or Tribal law to petition for an ex-
11 treme risk protection order, including the
12 relationship of the individual to the re-
13 spondent; and

14 (iii) the alleged danger posed by the
15 respondent, including whether the danger
16 involved a risk of suicide, unintentional in-
17 jury, domestic violence, or other inter-
18 personal violence;

19 (C) the number of petitions for renewals of
20 extreme risk protection orders filed, as well as
21 the number of such orders issued and the num-
22 ber denied;

23 (D) the number of cases in which a court
24 imposed a penalty for false reporting or frivo-
25 lous petitions;

1 (E) demographic data of petitioners, in-
 2 cluding race, ethnicity, national origin, sex, gen-
 3 der, age, disability, and English language pro-
 4 ficiency, if available;

5 (F) demographic data of respondents, in-
 6 cluding race, ethnicity, national origin, sex, gen-
 7 der, age, disability, and English language pro-
 8 ficiency, if available; and

9 (G) the number of firearms removed, if
 10 available.

11 **SEC. 3. FEDERAL FIREARMS PROHIBITION.**

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

14 (1) in subsection (d)—

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

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

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

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

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

1 “(B) prevents such person from possessing
2 or receiving firearms; and

3 “(C) includes a finding that such person
4 poses a danger of harm to self or others.”; and
5 (2) in subsection (g)—

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

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

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

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

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

16 “(B) prevents such person from possessing
17 or receiving firearms; and

18 “(C) includes a finding that such person
19 poses a danger of harm to self or others.”.

20 **SEC. 4. IDENTIFICATION RECORDS.**

21 Section 534 of title 28, United States Code, is
22 amended—

23 (1) in subsection (a)—

24 (A) in paragraph (3), by striking “and” at
25 the end;

1 (B) by redesignating paragraph (4) as
2 paragraph (5); and

3 (C) by inserting after paragraph (3) the
4 following:

5 “(4) acquire, collect, classify, and preserve
6 records from Federal, Tribal, and State courts and
7 other agencies identifying individuals subject to ex-
8 treme risk protection orders, as defined in section
9 2(a) of the Extreme Risk Protection Order Act of
10 2021; and”;

11 (2) in subsection (b), by striking “(a)(4)” and
12 inserting “(a)(5)”; and

13 (3) by adding at the end the following:

14 “(g) EXTREME RISK PROTECTION ORDERS IN NA-
15 TIONAL CRIME INFORMATION DATABASES.—A Federal,
16 Tribal, or State criminal justice agency or criminal or civil
17 court may—

18 “(1) include extreme risk protection orders, as
19 defined in section 2 of the Extreme Risk Protection
20 Order Act of 2021, in national crime information
21 databases, as that term is defined in subsection
22 (f)(3) of this section; and

23 “(2) have access to information regarding ex-
24 treme risk protection orders through the national
25 crime information databases.”.

1 **SEC. 5. CONFORMING AMENDMENT.**

2 Section 3(1) of the NICS Improvement Amendments
3 Act of 2007 (34 U.S.C. 40903(1)) is amended by striking
4 “section 922(g)(8)” and inserting “paragraph (8) or (10)
5 of section 922(g)”.

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

7 (a) DEFINITIONS.—In this section, the terms “ex-
8 treme risk protection order”, “Indian Tribe”, and “State”
9 have the meanings given those terms in section 2(a).

10 (b) FULL FAITH AND CREDIT REQUIRED.—Any ex-
11 treme risk protection order issued under a State or Tribal
12 law enacted in accordance with this Act shall be accorded
13 the same full faith and credit by the court of another State
14 or Indian Tribe (referred to in this subsection as the “en-
15 forcing State or Indian Tribe”) and enforced by the court
16 and law enforcement personnel of the other State or Tribal
17 government as if it were the order of the enforcing State
18 or Indian Tribe.

19 (c) APPLICABILITY TO EXTREME RISK PROTECTION
20 ORDERS.—

21 (1) IN GENERAL.—Subsection (b) shall apply to
22 an extreme risk protection order issued by a State
23 or Tribal court if—

24 (A) the court has jurisdiction over the par-
25 ties and matter under the law of the State or
26 Indian Tribe; and

1 (B) reasonable notice and opportunity to
2 be heard is given to the person against whom
3 the order is sought sufficient to protect that
4 person's right to due process.

5 (2) EX PARTE EXTREME RISK PROTECTION OR-
6 DERS.—For purposes of paragraph (1)(B), in the
7 case of an ex parte extreme risk protection order,
8 notice and opportunity to be heard shall be provided
9 within the time required by State or Tribal law, and
10 in any event within a reasonable time after the order
11 is issued, sufficient to protect the due process rights
12 of the respondent.

13 (d) TRIBAL COURT JURISDICTION.—For purposes of
14 this section, a court of an Indian Tribe shall have full civil
15 jurisdiction to issue and enforce an extreme risk protection
16 order involving any person, including the authority to en-
17 force any order through civil contempt proceedings, to ex-
18 clude violators from Indian land, and to use other appro-
19 priate mechanisms, in matters arising anywhere in the In-
20 dian country (as defined in section 1151 of title 18,
21 United States Code) of the Indian Tribe or otherwise with-
22 in the authority of the Indian Tribe.

23 **SEC. 7. SEVERABILITY.**

24 If any provision of this Act, or an amendment made
25 by this Act, or the application of such provision to any

1 person or circumstance, is held to be invalid, the remain-
2 der of this Act, or an amendment made by this Act, or
3 the application of such provision to other persons or cir-
4 cumstances, shall not be affected.

5 **SEC. 8. EFFECTIVE DATE.**

6 This Act and the amendments made by this Act shall
7 take effect on the date that is 180 days after the date
8 of enactment of this Act.

○