

# Senate Bill 868

Sponsored by Senators BOQUIST, BURDICK

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates process for obtaining extreme risk protection order prohibiting person from possessing firearms when court finds that person presents imminent risk, or risk in foreseeable future, of suicide or causing injury to other persons. Establishes procedures for peace officer or family or household member of person to apply for order. Establishes procedures for respondent to request hearing, and for continuance of extreme risk protection order after hearing or if hearing is not requested. Establishes procedures for termination and renewal of order.

Requires court to order respondent to surrender firearms, ammunition and concealed handgun license upon issuance of order. Provides for law enforcement officer serving order to request immediate surrender of firearms and to carry out lawful search and seizure of firearms.

Punishes violation of order, or false application for order, by maximum of one year's imprisonment, \$6,250 fine, or both.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to extreme risk protection orders; and prescribing an effective date.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1 to 8 of this 2017 Act:**

5 (1) "Family or household members" has the meaning given that term in ORS 135.230.

6 (2) "Law enforcement agency" means an agency or department of the State of Oregon  
7 or of a political subdivision of the State of Oregon whose principal function is the apprehension of criminal offenders.

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9 (3) "Peace officer" has the meaning given that term in ORS 133.005.

10 (4) "Petitioner" means a person who petitions for an order under sections 1 to 8 of this  
11 2017 Act.

12 (5) "Respondent" means a person against whom an order is filed under sections 1 to 8  
13 of this 2017 Act.

14 **SECTION 2. (1) A peace officer or a family or household member of a person may file a**  
15 **petition requesting that the court issue an extreme risk protection order enjoining the per-**  
16 **son from having in the person's custody or control, owning, purchasing, possessing or re-**  
17 **ceiving, or attempting to purchase or receive, a firearm or ammunition.**

18 (2) An extreme risk protection order petition shall be heard by the court and issued or  
19 denied on the same day the petition is submitted to the court or on the judicial business day  
20 immediately following the day the petition is filed.

21 (3) The petition for an extreme risk protection order must be supported by a written af-  
22 fidavit signed by the petitioner under oath, or an oral statement taken under oath by the  
23 petitioner or any other witness the petitioner may produce.

24 (4) In determining whether to issue an extreme risk protection order, the court shall  
25 consider the following:

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (a) A history of suicide threats or attempts or acts of violence by the respondent directed  
2 against another person;

3 (b) A history of use, attempted use or threatened use of physical force by the respondent  
4 against another person;

5 (c) A previous conviction for:

6 (A) A misdemeanor involving violence as defined in ORS 166.470;

7 (B) A stalking offense under ORS 163.732 or 163.750, or a similar offense in another ju-  
8 risdiction;

9 (C) An offense committed against a family or household member; or

10 (D) An offense involving cruelty or abuse of animals;

11 (d) Evidence of controlled substance or alcohol abuse;

12 (e) Previous unlawful and reckless use, display or brandishing of a firearm by the re-  
13 spondent;

14 (f) A previous violation by the respondent of a court order issued pursuant to ORS 107.716  
15 or 107.718;

16 (g) Evidence of an acquisition or attempted acquisition within the previous 180 days by  
17 the respondent of a firearm, ammunition of another deadly weapon as defined in ORS 161.015;  
18 and

19 (h) Any additional information the court finds to be reliable.

20 (5)(a) The petitioner has the burden of proof at the ex parte hearing.

21 (b) The petitioner may appear in person or by electronic video transmission.

22 (c) The court may continue a hearing under this section upon a showing of good cause.

23 (6)(a) The court may issue an extreme risk protection order if the court finds by a pre-  
24 ponderance of evidence, based on the petition and supporting documentation, that the re-  
25 spondent presents an imminent risk, or risk in the foreseeable future, of suicide or causing  
26 personal injury to another person.

27 (b) Upon making the findings described in paragraph (a) of this subsection, the court  
28 shall issue an extreme risk protection order prohibiting the respondent from having in the  
29 respondent's custody or control, owning, purchasing, possessing or receiving, or attempting  
30 to purchase or receive, a firearm or ammunition.

31 (7) An extreme risk protection order issued under this section must include:

32 (a) A statement of the evidence and the court's findings supporting issuance of the order;

33 (b) The date and time the order was issued;

34 (c) A description of the manner in which the respondent may request a hearing described  
35 in subsection (9) of this section;

36 (d) The address of the court to which a request for a hearing must be sent;

37 (e) A description of the requirements for surrender of firearms and ammunition in the  
38 respondent's possession; and

39 (f) The following statement:  
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41  
42 To the subject of this protection order: An extreme risk protection order has been issued  
43 by the court and is now in effect. You are required to surrender all firearms in your custody,  
44 control or possession. You may not have in your custody or control, purchase, possess, re-  
45 ceive, or attempt to purchase or receive, a firearm while this order is in effect. You must

1 immediately surrender to the (insert name of local law enforcement agency) all firearms in  
2 your custody, control or possession and any concealed handgun license issued to you. You  
3 may request a hearing to contest this order. If you do not request a hearing, the extreme  
4 risk protection order against you will be in effect for one year unless terminated by the  
5 court. You have the right to request one hearing to terminate this order during the 12  
6 months that this order is in effect starting from the date of this order. You may seek the  
7 advice of an attorney as to any matter connected with this order.

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10 (8)(a) The respondent shall be personally served with both a copy of the extreme risk  
11 protection order and a hearing request form described in subsection (9) of this section.

12 (b) Whenever an extreme risk protective order is served on a respondent, the person  
13 serving the order shall immediately deliver to the county sheriff a true copy of proof of  
14 service, on which it is stated that personal service of the order was made on the respondent,  
15 and a copy of the order. Proof of service may be made by affidavit or by declaration under  
16 penalty of perjury in the form required by ORCP 1 E.

17 (c) If the person serving the order cannot complete service within 10 days, the person  
18 shall notify the petitioner, at the address provided by the petitioner, that the documents  
19 have not been served. If the petitioner does not respond within 10 days, the person shall hold  
20 the order and petition for future service and file a return to the clerk of the court showing  
21 that service was not completed.

22 (d) Upon receipt of a copy of the order and notice of completion of service by a member  
23 of a law enforcement agency, the county sheriff shall immediately enter the order into the  
24 Law Enforcement Data System maintained by the Department of State Police and into the  
25 databases of the National Crime Information Center of the United States Department of  
26 Justice. If the order was served on the respondent by a person other than a member of a law  
27 enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data  
28 System and databases of the National Crime Information Center upon receipt of a true copy  
29 of proof of service. The sheriff shall provide the petitioner with a true copy of the proof of  
30 service. Entry into the Law Enforcement Data System constitutes notice to all law enforce-  
31 ment agencies of the existence of the order. Law enforcement agencies shall establish pro-  
32 cedures adequate to ensure that an officer at the scene of an alleged violation of the order  
33 may be informed of the existence and terms of the order. The order is fully enforceable in  
34 any county in this state.

35 (9)(a) Within 30 days after an extreme risk protection order is served on the respondent  
36 under this section, the respondent may request a court hearing using a form prescribed by  
37 the State Court Administrator.

38 (b) If the respondent requests a hearing under paragraph (a) of this subsection, the clerk  
39 of the court shall notify the petitioner of the date and time of the hearing and shall supply  
40 the petitioner with a copy of the respondent's request for a hearing. The petitioner shall give  
41 to the clerk of the court information sufficient to allow such notification.

42 (c) The hearing shall occur within 21 days of the date of the respondent's request for a  
43 hearing.

44 (10) If the respondent fails to request a hearing within 30 days after an extreme risk  
45 protection order is served, the protection order is confirmed by operation of law and is ef-

fective for a period of one year or until the order is terminated, whichever is sooner.

(11) A filing fee, service fee or hearing fee may not be charged for proceedings under this section or section 3 or 4 of this 2017 Act.

(12) If the court declines to issue an extreme risk protection order under this section, the court shall state with particularity the reasons for the denial on the record.

**SECTION 3.** (1) At a hearing on an extreme risk protection order requested by the respondent under section 2 (9) of this 2017 Act, the court may:

(a) Examine under oath the petitioner, the respondent and any witness either party may produce or, in lieu of examination, consider sworn affidavits of the petitioner, the respondent or a witness of either party; and

(b) Ensure that a reasonable search has been conducted for criminal history records related to the respondent.

(2)(a) The Oregon Evidence Code shall apply in a hearing under this section.

(b) The court may continue a hearing under this section upon a showing of good cause. If the court continues a hearing under this paragraph, the extreme risk protection order shall remain in effect until the next hearing date.

(3)(a) At the hearing, the court shall determine:

(A) Whether to terminate the extreme risk protection order or continue the order for a duration of one year; and

(B) Whether any firearms surrendered to a law enforcement agency pursuant to section 6 of this 2017 Act shall be returned to the respondent or retained by the law enforcement agency.

(b) The petitioner has the burden of proving, by a preponderance of the evidence, that the respondent presents an imminent risk, or a risk in the foreseeable future, of suicide or causing personal injury to another person.

(c) If the court finds that the petitioner has met the burden of proof, the court shall:

(A) Order that the extreme risk protection order continue for the duration of one year.

(B) Order that any firearms surrendered to a law enforcement agency pursuant to section 6 of this 2017 Act remain in the custody of the law enforcement agency while the order is in effect.

(4) An extreme risk protection order continued under this section must include:

(a) A statement of the evidence and the court's findings supporting issuance of the order;

(b) The date and time the order was issued;

(c) The date and time of the expiration of the order;

(d) A description of the requirements for surrender of firearms in the respondent's possession under section 6 of this 2017 Act; and

(e) The following statement:

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To the subject of this protection order: This order is valid until the date and time noted above. If you have not done so already, you are required to surrender all firearms in your custody. You must immediately surrender to the (insert name of local law enforcement agency) all firearms in your custody, control or possession and any concealed handgun license issued to you. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, a firearm while this order is in effect. You have the

1 right to request one hearing to terminate this order during the 12 months that this order is  
2 in effect starting from the date of this order. You may seek the advice of an attorney as to  
3 any matter connected with this order.

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6 (5) When the court continues an extreme risk protection order under this section, the  
7 court shall inform the respondent that the respondent is entitled to request termination of  
8 the order in the manner described in section 4 of this 2017 Act. The court shall provide the  
9 respondent with a form with which to request a termination hearing.

10 (6) The respondent need not be served if an order of the court indicates that the re-  
11 spondent appeared in person before the court.

12 (7) If the court terminates an extreme risk protection order after a hearing under this  
13 section:

14 (a) The court shall state with particularity the reasons for the termination on the record.

15 (b) The clerk of the court shall immediately deliver a copy of the termination order to  
16 the county sheriff with whom the original order was filed. Upon receipt of the termination  
17 order, the county sheriff shall promptly remove the original order from the Law Enforce-  
18 ment Data System and the databases of the National Crime Information Center of the United  
19 States Department of Justice.

20 **SECTION 4.** (1) The petitioner or the respondent of an extreme risk protection order is-  
21 sued or continued under section 2 or 3 of this 2017 Act may each submit a written request  
22 once during the 12-month effective period of the order, and once during any 12-month effec-  
23 tive period of an order renewed under section 5 of this 2017 Act, for a hearing to terminate  
24 the order.

25 (2) Upon receipt of a request described in subsection (1) of this section, the court shall  
26 schedule a termination hearing and provide notice of the hearing to both parties at least five  
27 days before the hearing.

28 (3)(a) The person filing the termination request has the burden of proving, by a prepon-  
29 derance of the evidence, that the respondent no longer presents an imminent risk, or risk  
30 in the foreseeable future, of suicide or causing personal injury to another person.

31 (b) The Oregon Evidence Code shall apply in a hearing under this section.

32 (c) The court may continue a hearing under this section upon a showing of good cause.  
33 If the court continues a hearing under this paragraph, the extreme risk protection order  
34 shall remain in effect until the next hearing date.

35 (4) If the court finds that the petitioner has met the burden of proof as described in  
36 subsection (3) of this section, the court shall terminate the extreme risk protection order.

37 (5) When an extreme risk protection order is terminated by order of the court, the clerk  
38 of the court shall immediately deliver a copy of the termination order to the county sheriff  
39 with whom the original order was filed. Upon receipt of the termination order, the county  
40 sheriff shall promptly remove the original order from the Law Enforcement Data System and  
41 the databases of the National Crime Information Center of the United States Department  
42 of Justice.

43 **SECTION 5.** (1) A peace officer or a family or household member of a respondent, in-  
44 cluding but not limited to the peace officer or family or household member who petitioned  
45 the court for the original extreme risk protection order issued under section 2 of this 2017

1 Act, may request a renewal of the order within 90 days before the expiration date of the  
2 order by filing a written request with the court.

3 (2) Upon receipt of the request for renewal described in subsection (1) of this section, the  
4 court shall schedule a hearing and provide notice of the hearing to both parties at least 14  
5 days before the hearing.

6 (3) At a hearing to determine whether to renew an extreme risk protection order under  
7 this section, the court may:

8 (a) Examine under oath the petitioner, the respondent and any witness either party may  
9 produce or, in lieu of examination, consider sworn affidavits of the petitioner, the respondent  
10 or a witness of either party; and

11 (b) Ensure that a reasonable search has been conducted for criminal history records re-  
12 lated to the respondent.

13 (4) The person requesting the renewal of the extreme risk protection order has the bur-  
14 den of proving, by a preponderance of the evidence, that the respondent continues to present  
15 an imminent risk, or a risk in the foreseeable future, of suicide or causing personal injury  
16 to another person.

17 (5)(a) The Oregon Evidence Code shall apply in a hearing under this section.

18 (b) The court may continue a hearing under this section upon a showing of good cause.  
19 If the court continues a hearing under this paragraph, the original extreme risk protection  
20 order shall remain in effect until the next hearing date.

21 (c) The petitioner may appear in person or by electronic video transmission.

22 (6) If the court finds that the petitioner has met the burden of proof, the court may re-  
23 new the extreme risk protection order for a duration of up to one year.

24 (7) An extreme risk protection order renewed under this section must include:

25 (a) A statement of the evidence and the court's findings supporting issuance of the order;

26 (b) The date and time the order was issued;

27 (c) The date and time of the expiration of the order;

28 (d) A description of the requirements for surrender of firearms and ammunition in the  
29 respondent's possession; and

30 (e) The following statement:

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33 To the subject of this protection order: This renewed order is valid until the date and  
34 time noted above. If you have not done so already, you are required to surrender all firearms  
35 in your custody. You must immediately surrender to the (insert name of local law enforce-  
36 ment agency) all firearms in your custody, control or possession and any concealed handgun  
37 license issued to you. You may not have in your custody or control, purchase, possess, re-  
38 ceive, or attempt to purchase or receive, a firearm while this order is in effect. You have the  
39 right to request one hearing to terminate this renewed order every 12 months that this order  
40 is in effect, starting from the date of this order. You may seek the advice of an attorney as  
41 to any matter connected with this order.  
42 \_\_\_\_\_

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44 (8) When the court renews an extreme risk protection order, the court shall inform the  
45 respondent that the respondent is entitled to request termination of the renewed order in

1 the manner described in section 4 of this 2017 Act. The court shall provide the respondent  
2 with a form with which to request a termination hearing.

3 (9)(a) Service of a renewed extreme risk protective order shall be made by personal de-  
4 livery of a copy of the order to the respondent. The respondent need not be served if an order  
5 of the court indicates that the respondent appeared in person before the court.

6 (b) Whenever a renewed extreme risk protective order is served on a respondent, the  
7 person serving the order shall immediately deliver to the county sheriff a true copy of proof  
8 of service, on which it is stated that personal service of the order was made on the re-  
9 spondent, and a copy of the order. Proof of service may be made by affidavit or by declara-  
10 tion under penalty of perjury in the form required by ORCP 1 E.

11 (c) If service of the order is not required under paragraph (a) of this subsection, a copy  
12 of the order must be delivered to the sheriff by the court.

13 (d) Upon receipt of a copy of the order and notice of completion of any required service  
14 by a member of a law enforcement agency, the county sheriff shall immediately enter the  
15 order into the Law Enforcement Data System maintained by the Department of State Police  
16 and into the databases of the National Crime Information Center of the United States De-  
17 partment of Justice. If the order was served on the respondent by a person other than a  
18 member of a law enforcement agency, the county sheriff shall enter the order into the Law  
19 Enforcement Data System and databases of the National Crime Information Center upon  
20 receipt of a true copy of proof of service. The sheriff shall provide the petitioner with a true  
21 copy of any required proof of service. Entry into the Law Enforcement Data System consti-  
22 tutes notice to all law enforcement agencies of the existence of the order. Law enforcement  
23 agencies shall establish procedures adequate to ensure that an officer at the scene of an al-  
24 leged violation of the order may be informed of the existence and terms of the order. The  
25 order is fully enforceable in any county in this state.

26 (10) If the court declines to renew an extreme risk protection order, the court shall state  
27 with particularity the reasons for the denial on the record.

28 (11) A renewed extreme risk protection order may be further renewed as described in this  
29 section.

30 **SECTION 6.** (1) Upon issuance or renewal of any extreme risk protection order under  
31 sections 1 to 8 of this 2017 Act, the court shall further order that the respondent surrender  
32 to a law enforcement agency all firearms and ammunition in the respondent's custody, con-  
33 trol or possession and any concealed handgun license issued to the respondent under ORS  
34 166.291 and 166.292.

35 (2) A peace officer serving any extreme risk protection order under sections 1 to 8 of this  
36 2017 Act shall request that the respondent immediately surrender all firearms and ammuni-  
37 tion in the respondent's custody, control or possession and any concealed handgun license  
38 issued to the respondent under ORS 166.291 and 166.292. The peace officer may conduct any  
39 search permitted by law for firearms and ammunition in the custody, control or possession  
40 of the respondent and shall take possession of all firearms and ammunition appearing to be  
41 in the custody, control or possession of the respondent that are surrendered, in plain sight  
42 or discovered pursuant to a lawful search.

43 (3) At the time of the surrender of any firearms, ammunition or concealed handgun li-  
44 censes under subsection (2) of this section, the peace officer taking possession shall issue a  
45 receipt identifying all surrendered items and provide a copy of the receipt to the respondent.

1 Within 72 hours after service of the order, the peace officer serving the order shall file the  
 2 original receipt with the court and shall ensure that the law enforcement agency employing  
 3 the peace officer retains a copy of the receipt.

4 (4) If a third party claims lawful ownership or right of possession of a firearm surren-  
 5 dered pursuant to this section, the law enforcement agency may return the firearm to the  
 6 third party if the third party provides proof of lawful ownership or right of possession of the  
 7 firearm and, in a sworn affidavit, affirms that:

8 (a) The third party may lawfully possess firearms;

9 (b) The third party did not consent to the prior possession of the firearm by the re-  
 10 spondent; and

11 (c) The third party will prevent the respondent from accessing or possessing the firearm  
 12 in the future.

13 **SECTION 7.** (1) If an extreme risk protection order is terminated or expires without re-  
 14 newal, a law enforcement agency holding any firearm, ammunition or concealed handgun li-  
 15 cense that has been surrendered pursuant to the order shall return the surrendered items  
 16 as requested by the respondent of the order only after confirming:

17 (a) Through a criminal background check, that the respondent is legally eligible to own  
 18 or possess firearms under state and federal law; and

19 (b) That the extreme risk protection order is no longer in effect.

20 (2) The owner of a firearm or ammunition in the custody of a law enforcement agency  
 21 pursuant to section 6 of this 2017 Act who does not wish to have the firearm or ammunition  
 22 returned is entitled to sell or transfer title of any firearm or ammunition to a licensed gun  
 23 dealer as defined in ORS 166.412, provided that the firearm or ammunition is lawful to own  
 24 or possess and the person has a legal right to transfer title of the firearm or ammunition.

25 (3) A firearm surrendered by a person pursuant to section 6 of this 2017 Act that remains  
 26 unclaimed by the owner shall be disposed of in accordance with the law enforcement agency's  
 27 policies and procedures for the disposal of firearms in the agency's custody.

28 **SECTION 8.** (1) A person who possesses a firearm or ammunition, knowing that the  
 29 possession is prohibited by an extreme risk protection order issued after notice and a hear-  
 30 ing, or the opportunity to request a hearing, is guilty of a Class A misdemeanor. A person  
 31 convicted under this subsection shall be prohibited from having in the person's custody or  
 32 control, owning, purchasing, possessing or receiving, or attempting to purchase or receive,  
 33 a firearm or ammunition for a five-year period beginning when the extreme risk protection  
 34 order expires or is terminated, or the judgment of conviction is entered, whichever occurs  
 35 later.

36 (2) A person who files a petition for any extreme risk protection order under sections 1  
 37 to 8 of this 2017 Act with the intent to harass the respondent, or knowing that the infor-  
 38 mation in the petition is false, is guilty of a Class A misdemeanor.

39 **SECTION 9.** This 2017 Act takes effect on the 91st day after the date on which the 2017  
 40 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.