



## 2023 South Dakota Legislature

# House Bill 1227

Introduced by: **Representative Duba**

1 **An Act to authorize the issuance of extreme risk protection orders.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That a NEW SECTION be added to title 27A:**

4 A person may petition the circuit court of the county in which the respondent  
 5 resides for an extreme risk protection order, provided the person petitioning for the order  
 6 is a law enforcement officer in this state or the spouse, intimate partner, parent, or adult  
 7 child of a respondent. The petition must:

8 (1) Allege there is reasonable cause to believe that the respondent will cause injury or  
 9 death to the respondent or others, by having access to a firearm, as defined in  
 10 § 22-1-2, and compatible ammunition;

11 (2) Include a description of:

12 (a) Acts or threats of violence by the respondent;

13 (b) The respondent's mental health history;

14 (c) The respondent's criminal history; and

15 (d) Any domestic violence incidents or stalking allegations involving the  
 16 respondent;

17 (3) Identify the type, number, and location of all firearms that are believed to be in  
 18 the possession, custody, or control of the respondent;

19 (4) Identify the type, quantity, and location of all ammunition that is:

20 (a) Believed to be in the possession, custody, or control of the respondent; and

21 (b) Compatible with the firearms identified in this section;

22 (5) Indicate whether there is any pending legal action involving the respondent; and

23 (6) Indicate whether the respondent is the subject of a domestic abuse protection  
 24 order issued by a court within or outside of this state.

25 **Section 2. That a NEW SECTION be added to title 27A:**

1           Any person who petitions the court for an extreme risk protection order shall make  
2           a good faith effort to notify each adult member of the respondent's family and household,  
3           and any known third party who may be at risk of violence by the respondent, that a  
4           petition has been filed. If the petitioner is a law enforcement officer, a notice under this  
5           section must include referrals to appropriate resources, including mental health, domestic  
6           violence, and counseling resources.

7           **Section 3. That a NEW SECTION be added to title 27A:**

8           Upon receiving a petition for the issuance of an extreme risk protection order, a  
9           court shall schedule a hearing, to be held no later than ten days after the date on which  
10          the petition is received, and shall forward a copy of the notice of hearing to the appropriate  
11          law enforcement agency for service upon the respondent. If the court determines that  
12          there is reasonable cause to believe that the risk of imminent injury or death is  
13          significantly increased because the respondent has possession, control, or access to  
14          firearms and compatible ammunition, the court must expedite the hearing.

15          **Section 4. That a NEW SECTION be added to title 27A:**

16                 At the hearing, the court shall consider:

- 17                 (1) Whether the respondent has engaged in or threatened an act of violence or self-  
18                 harm, and whether the act or threatened act involved a firearm or other dangerous  
19                 weapon, as defined in § 22-1-2;  
20                 (2) The respondent's mental health history;  
21                 (3) Any prior issuance of a protection order;  
22                 (4) Whether the respondent has violated a protection order;  
23                 (5) Whether the respondent has been convicted of or pled nolo contendere to any  
24                 crime that involved violence;  
25                 (6) Whether the respondent uses alcohol or controlled substances;  
26                 (7) Whether the respondent recently acquired a firearm or ammunition; and  
27                 (8) Any other relevant information from family members, household members, or  
28                 acquaintances.

29                 If, at the conclusion of the hearing, the court determines there is a significant risk  
30                 that the respondent is likely to cause injury or death to the respondent or others, by  
31                 having a firearm and compatible ammunition in the respondent's possession, custody, or  
32                 control, the court ~~shall~~ must issue an extreme risk protection order for a specified period,

1 not in excess of twelve months, and ~~shall~~ must order the respondent to undergo a mental  
2 health evaluation.

3 Any person who, while under oath, makes a statement that the person does not  
4 believe is true, regarding any material matter, is guilty of a Class 1 misdemeanor.

5 **Section 5. That a NEW SECTION be added to title 27A:**

6 An extreme risk protection order issued under section 4 of this Act must contain:

7 (1) A statement of the grounds supporting the issuance of the order;

8 (2) The date and time the order was issued;

9 (3) The date and time the order terminates;

10 (4) The directions for obtaining a mental health evaluation; and

11 (5) A directive that the respondent:

12 (a) Surrender to the court all firearms and compatible ammunition in the  
13 respondent's possession, custody, or control; and

14 (b) Not possess, receive, purchase, or attempt to purchase any firearm or  
15 ammunition during the period that the order is in effect.

16 A law enforcement officer may request a warrant to conduct a search for firearms  
17 and compatible ammunition owned by the respondent, if the officer has probable cause to  
18 believe that such firearms and ammunition are in the respondent's possession, custody,  
19 or control and have not been surrendered.

20 If the court denies the petitioner's request for an extreme risk protection order,  
21 the court shall state the reasons for the denial.

22 **Section 6. That a NEW SECTION be added to title 27A:**

23 A petitioner may, without notice to the respondent, request that the court issue a  
24 temporary ex parte risk protection order, before a risk protection order hearing, by  
25 including in the petition detailed allegations, based on personal knowledge, that the  
26 respondent poses a significant danger of causing injury to the respondent, or others, in  
27 the near future, by purchasing, possessing, or receiving, a firearm or ammunition.

28 In considering whether to issue a temporary ex parte risk protection order under  
29 this section, the court shall consider all relevant evidence.

30 If a court finds there is reasonable cause to believe that the respondent poses a  
31 significant danger of causing personal injury to the respondent or others, in the near  
32 future, by purchasing, possessing, or receiving, a firearm or ammunition, the court must

1 issue a temporary ex parte risk protection order. This temporary order remains in effect  
2 until the hearing for the extreme risk protection order.

3 A temporary ex parte risk protection order must include:

4 (1) A statement of the grounds asserted for the order;

5 (2) The date the order was issued;

6 (3) The address of the court in which any responsive pleading may be filed;

7 (4) The date and time of the scheduled hearing;

8 (5) A description of the requirements for the surrender of all firearms and ammunition  
9 that the respondent owns; and

10 (6) The following statement:

11 "To the subject of this protection order: This order is valid until the date noted  
12 above. You are required to surrender all firearms and ammunition that you have in your  
13 custody, control, or possession. You may not have in your custody or control, or purchase,  
14 possess, receive, or attempt to purchase or receive, a firearm or ammunition while this  
15 order is in effect. You must surrender immediately to the local law enforcement agency  
16 all firearms and ammunition in your custody, control, or possession and any license to  
17 carry a concealed weapon issued to you. A hearing will be held on the date and at the  
18 time noted above to determine if a risk protection order should be issued. Failure to appear  
19 at that hearing may result in a court issuing an order against you, which is valid for one  
20 year. You may seek the advice of an attorney as to any matter connected with this order."

21 A law enforcement officer shall serve a temporary ex parte risk protection order in  
22 the same manner as an extreme risk protection order.

23 A temporary ex parte risk protection order ends at the time of the hearing on the  
24 risk protection order.

25 If the court denies the petitioner's request for a temporary ex parte risk protection  
26 order, the court must state the reasons for the denial.

27 **Section 7. That a NEW SECTION be added to title 27A:**

28 Within twenty-four hours after issuance, the clerk of court shall forward a copy of  
29 the order to the law enforcement agency specified in the order. Upon receipt of the order,  
30 the law enforcement agency shall enter the order into the National Crime Information  
31 Center. The order must remain in the system for the period stated in the order, and the  
32 law enforcement agency may only remove an order from the system after the order has  
33 ended or been vacated. Entry of the order into National Crime Information Center

1 constitutes notice to all law enforcement agencies of the existence of the order. The order  
2 is fully enforceable in any county in this state.

3 The issuing court shall, within three business days after issuance of a risk  
4 protection order or a temporary ex parte risk protection order, forward all available  
5 identifying information concerning the respondent, along with the date on which the order  
6 was issued, to the sheriff of the county in which the respondent resides. The sheriff shall  
7 determine if the respondent has a license to carry a concealed weapon or firearm. If the  
8 respondent has a license to carry a concealed weapon or firearm, the license must be  
9 immediately suspended.

10 **Section 8. That a NEW SECTION be added to title 27A:**

11 The law enforcement officer serving a risk protection order, including a temporary  
12 ex parte risk protection order, shall request that the respondent immediately surrender  
13 all firearms and ammunition owned by the respondent or in the respondent's custody,  
14 control, or possession, and any license to carry a concealed weapon or firearm.

15 The law enforcement officer shall take possession of all firearms and ammunition  
16 owned by the respondent and any license to carry a concealed weapon or firearm held by  
17 the respondent, which are surrendered.

18 Alternatively, if personal service by a law enforcement officer is not possible or is  
19 not required because the respondent was present at the risk protection order hearing, the  
20 respondent must surrender any firearms and ammunition owned by the respondent and  
21 any license to carry a concealed weapon or firearm held by the respondent, in a safe  
22 manner to the control of the local law enforcement agency immediately after being served  
23 with the order or immediately after the hearing at which the respondent was present.

24 A law enforcement officer may seek a search warrant from a court of competent  
25 jurisdiction to conduct a search for firearms or ammunition owned by the respondent, if  
26 the officer has probable cause to believe there are firearms or ammunition that are owned  
27 by the respondent or in the respondent's custody, control, or possession, which have not  
28 been surrendered.

29 **Section 9. That a NEW SECTION be added to title 27A:**

30 A respondent who surrenders any firearms and ammunition, as required by an  
31 order of the court, is entitled to a receipt that:

32 (1) Identifies each firearm by make, model, and serial number; and

33 (2) Identifies any ammunition by quantity, type, and brand.

1 **Section 10. That a NEW SECTION be added to title 27A:**

2 If the court issues an extreme risk protection order, the court ~~shall~~ must inform  
3 the respondent of the right to petition the court for a hearing to vacate the order. The  
4 respondent may submit one written request for a hearing to vacate a risk protection order  
5 issued under this section, starting after the date of the issuance of the order, and may  
6 request another hearing after any extension of the order.

7 **Section 11. That a NEW SECTION be added to title 27A:**

8 Upon receiving a petition to vacate an extreme risk protection order, the court shall  
9 set a date for the hearing and provide due notice of the hearing to all interested parties.  
10 The hearing must occur no sooner than seven days nor later than fifteen days after the  
11 date the petition is filed with the court.

12 The person filing the petition to vacate the order has the burden of proving, by  
13 clear and convincing evidence, that the person does not pose a significant risk of causing  
14 personal injury to the person or others, by having a firearm and compatible ammunition  
15 in the person's possession, custody, or control. The court may consider any relevant  
16 evidence, including evidence of the factors listed in section 4 of this Act.

17 If the court finds that the person who filed the petition to vacate the extreme risk  
18 protection order has met the burden of proof, the court ~~shall~~ must vacate the order and  
19 require that any firearms and ammunition, which had been surrendered by the person, be  
20 returned to the person within twenty-four hours.

21 **Section 12. That a NEW SECTION be added to title 27A:**

22 During the fifteen-day period immediately preceding the date on which an extreme  
23 risk protection order issued in accordance with section 4 of this Act is to expire, a person  
24 may file a petition seeking to extend the order for one additional twelve-month period, or  
25 a lesser time as a court deems appropriate, provided the person is a law enforcement  
26 officer in this state or the spouse, intimate partner, parent, or adult child of the  
27 respondent.

28 A petition under this section must be considered in accordance with the terms and  
29 conditions set forth in the initial extreme risk protection order, together with any other  
30 relevant evidence, including whether the respondent qualifies for involuntary commitment  
31 in accordance with chapter 27A-10.

1           An order to extend the extreme risk protection order under this section is also  
2           subject to an order to vacate, as provided for any initial order, in sections 7 and 8 of this  
3           Act.

4           **Section 13. That a NEW SECTION be added to title 27A:**

5           If a law enforcement officer has probable cause to believe that a respondent has  
6           not fully complied with an order to surrender all firearms and compatible ammunition in  
7           the respondent's possession, custody, or control, the law enforcement officer may request  
8           a search warrant from a court. If the court determines that probable cause exists, the  
9           court shall issue a warrant that:

- 10           (1) Describes the firearms and ammunition;  
11           (2) Authorizes a search of the locations in which the firearms and ammunition are  
12           reasonably believed to be located; and  
13           (3) Authorizes the seizure of the firearms and ammunition.

14           **Section 14. That a NEW SECTION be added to title 27A:**

15           If a person other than the respondent claims title to any firearms or ammunition  
16           surrendered pursuant to sections 4 and 5 of this Act or seized pursuant to section 10 of  
17           this Act, the person may petition the court for a return of the firearms or ammunition. The  
18           person shall demonstrate to the court that:

- 19           (1) The person is the lawful owner of the firearms or ammunition;  
20           (2) The person is not otherwise prohibited from lawfully possessing the firearms or  
21           ammunition; and  
22           (3) The person intends to store the firearms or ammunition at a location and in such  
23           a manner that the respondent does not have access.

24           **Section 15. That a NEW SECTION be added to title 27A:**

25           Upon termination of an extreme risk protection order, all firearms and ammunition  
26           surrendered in accordance with the order must be returned to the respondent within  
27           twenty-four hours, provided the respondent is eligible to own or possess firearms and  
28           ammunition in accordance with federal and state law. The law enforcement agency holding  
29           the respondent's firearms and ammunition shall conduct a background check to verify the  
30           respondent's eligibility, as set forth in this section.

1           Any firearm or ammunition surrendered by a respondent pursuant to this chapter  
2           and remaining unclaimed for one year after termination of an extreme risk protection  
3           order must be disposed of in accordance with chapter 23A-37.

4           **Section 16. That a NEW SECTION be added to title 27A:**

5           If a person violates the provisions of an extreme risk protection order, issued in  
6           accordance with section 4 of this Act, the person is guilty of a Class 1 misdemeanor.

7           **Section 17. That a NEW SECTION be added to title 27A:**

8           Nothing in sections 1 to 16, inclusive, of this Act affects the ability of a law  
9           enforcement officer to remove a firearm or ammunition from any person or to conduct  
10          any search for and seizure of firearms or ammunition, pursuant to other lawful authority.

11          **Section 18. That a NEW SECTION be added to title 27A:**

12          The ~~Uniform~~ Unified Judicial System shall collect, compile, and publish on its  
13          website information regarding the number of extreme risk protection orders issued each  
14          year. Within twenty-four hours after issuance, the clerk of court shall enter any risk  
15          protection order or temporary ex parte risk protection order issued under this Act into the  
16          uniform case reporting system.

17          **Section 19. That a NEW SECTION be added to title 27A:**

18          The Unified Judicial System and local law enforcement agencies shall work  
19          cooperatively to develop new processes to support the issuance of extreme risk protection  
20          orders, in accordance with sections 1 to 18, inclusive, of this Act, and to train personnel,  
21          as appropriate.

22          **Section 20. That a NEW SECTION be added to title 27A:**

23          Sections 1 to 18, inclusive, of this Act are effective on July 1, 2025.

24          **Section 21.** There is hereby appropriated to the Uniform Judicial System the sum of \$763,087  
25          in federal fund expenditure authority from the Bipartisan Safer Communities Act of 2022, for  
26          the purposes authorized in this Act.