

HOUSE BILL No. 2375

By Committee on Appropriations

2-18

1 AN ACT enacting the gun violence restraining order act.

2

3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. (a) Sections 1 through 8, and amendments thereto, shall be
5 known and may be cited as the "gun violence restraining order act."

6

(b) As used in the gun violence restraining order act:

7

(1) "Dating relationship" means a relationship that consists of
8 frequent, intimate associations primarily characterized by the expectation
9 of affectional involvement. "Dating relationship" does not include a casual
10 relationship or an ordinary fraternization between two individuals in a
11 business or social context.

12

(2) "Defendant" means the person against whom a gun violence
13 restraining order is requested in an action under section 2, and
14 amendments thereto.

15

(3) "Family member" means an individual who is related to the
16 defendant as any of the following: A parent, son or daughter, sibling,
17 grandparent, grandchild, uncle, aunt or first cousin.

18

(4) "Federal law enforcement officer" means an officer or agent
19 employed by a law enforcement agency of the United States government
20 whose primary responsibility is the enforcement of laws of the United
21 States.

22

(5) "Gun violence restraining order" means an order issued by a court
23 under section 4, and amendments thereto.

24

(6) "Plaintiff" means the individual who requests a gun violence
25 restraining order in an action under section 2, and amendments thereto.

26

(7) "Restrained individual" means the individual against whom a gun
27 restraining order has been issued and is in effect.

28

Sec. 2. (a) Any of the following individuals may file an action with
29 the district court requesting the court to enter a gun violence restraining
30 order pursuant to the gun violence restraining order act:

31

(1) The spouse of the defendant.

32

(2) A former spouse of the defendant.

33

(3) An individual who has a child in common with the defendant.

34

(4) An individual who has or has had a dating relationship with the
35 defendant.

36

(5) An individual who resides or has resided in the same household

1 with the individual.

2 (6) A family member.

3 (7) Another individual who has a close relationship with the
 4 defendant. If the plaintiff files a complaint under this paragraph, the
 5 plaintiff shall state in the complaint sufficient facts to allow the court to
 6 determine whether the individual has a close relationship with the
 7 defendant.

8 (b) An individual who files an action under this section shall do so by
 9 filing a summons and complaint on forms approved by the judicial
 10 council. The complaint shall state facts that demonstrate that the issuance
 11 of a gun violence restraining order is necessary because the defendant
 12 poses a significant risk of personal injury to self or others by possessing a
 13 firearm.

14 (c) If the plaintiff knows that the defendant is issued a license to carry
 15 a concealed weapon and is required to carry a weapon as a condition of
 16 such plaintiff's employment, the plaintiff shall state such condition of
 17 employment in the complaint.

18 (d) If the plaintiff requests the court to issue an order seizing firearms
 19 owned by the defendant, the plaintiff shall identify the firearms that the
 20 plaintiff knows are in the possession of the defendant.

21 Sec. 3. (a) In an action under section 2, and amendments thereto, the
 22 court may issue a gun violence restraining order if the court determines
 23 that there is reasonable cause to believe that the defendant poses a
 24 significant risk of personal injury to self or others by possessing a firearm.
 25 In determining whether reasonable cause exists, the court shall consider all
 26 of the following:

27 (1) Testimony, documents, or other evidence offered in support of the
 28 request for the gun violence restraining order;

29 (2) whether the defendant has previously inflicted or threatened to
 30 inflict personal injury on self or others; and

31 (3) any other facts that the court believes are relevant.

32 (b) If the plaintiff in an action filed under section 2, and amendments
 33 thereto, is not an individual described in section (2)(a)(1) through (6), and
 34 amendments thereto, the court shall not issue the gun violence restraining
 35 order unless the court determines that the plaintiff has a close enough
 36 relationship with the defendant to justify the issuance of the order.

37 (c) The court in an action under section 2, and amendments thereto,
 38 may issue a gun violence restraining order without written or oral notice to
 39 the defendant if the court determines that clear and convincing evidence
 40 has been submitted under oath or affirmation that irreparable injury will
 41 result from the delay required to effectuate notice or that the notice will
 42 itself precipitate adverse action before a gun violence restraining order can
 43 be issued.

1 (d) A restrained individual under an order issued under subsection (c)
2 may file a motion to modify or rescind the order and request a hearing.
3 The motion to modify or rescind the order must be filed within 14 days
4 after the order is served on the restrained individual or after the restrained
5 individual receives actual notice of the order, unless good cause is shown
6 for filing the motion after the 14 days have elapsed.

7 (e) The court shall conduct a hearing on a motion under subsection
8 (d) within 14 days after the motion is filed. If the restrained individual is
9 an individual described in section 2(d), and amendments thereto, the court
10 shall conduct a hearing on a motion under subsection (d) within five days
11 after the motion is filed.

12 Sec. 4. (a) If the court determines under section 3, and amendments
13 thereto, that a gun violence restraining order is to be issued, the court shall
14 include all of the following provisions in the order:

15 (1) That the restrained individual shall not purchase or possess a
16 firearm.

17 (2) A statement that the restrained individual may file a motion to
18 modify or rescind the order and request a hearing within 14 days after the
19 restrained individual is served with or receives actual notice of the order
20 and that motion forms and filing instructions are available from the clerk
21 of the court, if such order is issued under section 3, and amendments
22 thereto.

23 (3) A statement that violation of the order will subject the restrained
24 individual to immediate arrest and the civil and criminal contempt powers
25 of the court.

26 (4) An expiration date that is not more than one year from the date of
27 issuance.

28 (b) In the discretion of the court, a gun violence restraining order may
29 include an order to a law enforcement agency to seize firearms in the
30 possession of the restrained individual. An order issued under this
31 subsection shall specifically describe the firearms to be seized. The court
32 may also order that a law enforcement agency seizing firearms under this
33 subsection may seize any other firearms discovered that belong to or are in
34 the possession of the restrained individual.

35 (c) A gun violence restraining order is effective and enforceable
36 immediately after it is served on the restrained individual or after the
37 restrained individual receives actual notice of the order. The order may be
38 enforced anywhere in this state by a law enforcement agency that receives
39 a true copy of the order, is shown a copy of it or has verified its existence.

40 Sec. 5. A court that issues a gun violence restraining order shall do all
41 of the following immediately after issuance and without requiring a proof
42 of service on the restrained individual:

43 (a) Provide a true copy of the order to the law enforcement agency

1 designated under section 4, and amendments thereto; and

2 (b) provide the plaintiff with at least two true copies of the order.

3 (c) If the restrained individual is identified in the complaint as an
4 individual described in section 2, and amendments thereto, notify the
5 individual's employer, if known, of the existence of the order.

6 Sec. 6. (a) A gun violence restraining order shall be served on the
7 restrained individual by any method. If the restrained individual has not
8 been served, a law enforcement officer or clerk of the court who knows
9 that the order exists may, at any time, serve the restrained individual with a
10 true copy of the order or advise the restrained individual of the existence
11 of the order, the specific conduct enjoined, the penalties for violating the
12 order and where the restrained individual may obtain a copy of the order.

13 (b) The person who serves a gun violence restraining order or gives
14 oral notice of the order shall file proof of service or proof of oral notice
15 with the clerk of the court that issued the order.

16 (c) The clerk of the court shall immediately notify the law
17 enforcement agency designated under section 4, and amendments thereto,
18 if either of the following occurs:

19 (1) The clerk of the court receives proof that the restrained individual
20 has been served; or

21 (2) the order is rescinded, modified or extended.

22 Sec. 7. (a) If a gun violence restraining order has not been served
23 on the restrained individual, a law enforcement agency or officer
24 responding to a call alleging a violation of the order shall serve the
25 restrained individual with a true copy of the order or advise the restrained
26 individual of the existence of the order, the specific conduct enjoined, the
27 penalties for violating the order and where the restrained individual may
28 obtain a copy of the order.

29 (b) Except as provided in subsection (c), the law enforcement officer
30 shall enforce the order and immediately enter or cause to be entered into
31 the law enforcement information network that the restrained individual has
32 actual notice of the order. The law enforcement officer also shall comply
33 with section 6, and amendments thereto.

34 (c) The law enforcement officer shall give the restrained individual an
35 opportunity to comply with the gun violence restraining order before the
36 law enforcement officer makes a custodial arrest for violation of the order.
37 The failure by the restrained individual to immediately comply with the
38 order is grounds for an immediate custodial arrest.

39 (d) The law enforcement agency ordered to seize a firearm under
40 section 4, and amendments thereto, may seize any firearm identified in the
41 order from any place or from any individual who has possession of such
42 firearms.

43 (e) The law enforcement agency may also seize any other firearms

1 discovered that are owned by or in the possession of the restrained
2 individual if so provided in the gun violence restraining order, or if
3 allowed under other applicable law.

4 (f) A law enforcement officer who seizes any firearm under this
5 section shall give a receipt for the firearm to the individual from whom it
6 was taken, specifying the firearm in detail. If no individual is present at the
7 time of seizure, the officer shall leave the receipt in the place where such
8 officer found such firearms.

9 (g) The law enforcement agency that seizes a firearm under this
10 section shall retain the firearm subject to an order of the court that issued
11 the gun violence restraining order under which the firearm was seized. In
12 addition to any other order that the court determines is appropriate, the
13 court shall order that the firearm be returned to the restrained individual
14 when the restrained individual is no longer prohibited from owning a
15 firearm or that the firearm be transferred to a federally licensed firearm
16 dealer if the restrained individual sells or transfers ownership of the
17 firearm to such dealer.

18 (h) If the location to be searched during the seizure of a firearm under
19 this section is jointly occupied by multiple individuals, and a firearm is
20 located during the search, and it is determined that the firearm is owned by
21 an individual other than the restrained individual, the law enforcement
22 agency shall not seize the firearm if all of the following conditions are
23 satisfied:

24 (1) The firearm is stored so that the restrained individual does not
25 have access to or control of the firearm; and

26 (2) there is no evidence of unlawful possession of the firearm by the
27 owner.

28 (i) If the location to be searched during the seizure of a firearm under
29 this section is jointly occupied by multiple individuals, and a gun safe is
30 located at the location, and it is determined that the gun safe is owned by
31 an individual other than the restrained individual and a valid search
32 warrant has not been obtained, the law enforcement agency shall not
33 search the gun safe except in the owner's presence or with the owner's
34 consent.

35 (j) If any individual other than the restrained individual claims title to
36 a firearm seized under this section, the firearm shall be returned to the
37 claimant if the court determines that the claimant is the lawful owner.

38 Sec. 8. (a) The plaintiff may move the court to issue, or the court on
39 its own motion may issue, one or more extended gun violence restraining
40 orders, each effective for up to one year after the expiration of the
41 preceding order. The court shall only issue an extended order if there is
42 probable cause to believe that the restrained individual continues to pose a
43 significant risk of personal injury to self or others by possessing a firearm.

1 The plaintiff or the court, as applicable, shall give the restrained individual
2 written notice of a hearing on a motion to extend the order.

3 (b) An individual who refuses or fails to comply with a gun violence
4 restraining order is subject to the criminal contempt powers of the court. A
5 plaintiff who knowingly makes a false statement to the court in the
6 complaint or in support of the complaint is subject to the contempt powers
7 of the court.

8 Sec. 9. This act shall take effect and be in force from and after its
9 publication in the statute book.