



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5849

by Rep. David McSweeney and Margo McDermed

SYNOPSIS AS INTRODUCED:

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Creates the Gun Violence Protection Order Act. Provides that a circuit court may issue a warrant to search for and seize a firearm in the possession of a person who is believed to pose a clear and present danger to himself, herself, or to others if: (1) a law enforcement officer provides the court a sworn affidavit; (2) the affidavit specifically describes the location of the firearm; and (3) the circuit court determines that probable cause exists to believe that the person poses a clear and present danger to himself, herself, or others and is in possession of a firearm. Provides that if a law enforcement officer seizes a firearm from a person whom the law enforcement officer believes to pose a clear and present danger to himself, herself, or to others without obtaining a warrant, the law enforcement officer shall submit to the circuit court having jurisdiction over the person believed to pose a clear and present danger to himself, herself, or to others, a written statement under oath or affirmation describing the basis for the law enforcement officer's belief that the person poses a clear and present danger to himself, herself, or to others. Provides that not later than 14 days after a return is filed or a written statement is submitted, the court shall conduct a hearing to determine whether the seized firearm should be: (1) returned to the person from whom the firearm was seized; or (2) retained by the law enforcement agency having custody of the firearm. Repeals the Firearm Seizure Act on January 1, 2019. Makes other changes. Effective January 1, 2019.

LRB100 21318 SLF 37649 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Gun
5 Violence Protection Order Act.

6 Section 5. Definitions. In this Act:

7 "Clear and present danger" has the same meaning ascribed to
8 the term in Section 1.1 of the Firearm Owners Identification
9 Card Act.

10 "Clinical psychologist" means a person licensed by the
11 Department of Financial and Professional Regulation under the
12 Clinical Psychologist Licensing Act.

13 "Determined to pose a clear and present danger to himself,
14 herself, or to others by the qualified examiner, psychiatrist,
15 or clinical psychologist" means in the professional opinion of
16 the qualified examiner, psychiatrist, or clinical psychologist
17 a person poses a clear and present danger.

18 "Firearm" has the same meaning ascribed to the term in
19 Section 1.1 of the Firearm Owners Identification Card Act.

20 "Qualified examiner" has the same meaning ascribed to the
21 term in Section 1-122 of the Mental Health and Developmental
22 Disabilities Code.

23 "Psychiatrist" means any person licensed by the State to

1 practice medicine who has successfully completed a residency
2 program in psychiatry accredited by either the Accreditation
3 Council for Graduate Medical Education or the American
4 Osteopathic Association.

5 Section 10. Issuance of warrant. A circuit court may issue
6 a warrant to search for and seize a firearm in the possession
7 of a person who is believed to pose a clear and present danger
8 to himself, herself, or to others if:

9 (1) a law enforcement officer provides the court a sworn
10 affidavit that:

11 (A) states why the law enforcement officer believes
12 that the person poses a clear and present danger to
13 himself, herself, or to others and is in possession of a
14 firearm; and

15 (B) describes the law enforcement officer's
16 interactions and conversations with:

17 (i) the person who is alleged to pose a clear and
18 present danger to himself, herself, or to others; or

19 (ii) another person, if the law enforcement
20 officer believes that information obtained from that
21 person is credible and reliable;

22 that have led the law enforcement officer to
23 believe that the person poses a clear and present
24 danger to himself, herself, or to others and is in
25 possession of a firearm;

1 (2) the affidavit specifically describes the location of
2 the firearm; and

3 (3) the circuit court determines that probable cause exists
4 to believe that the person poses a clear and present danger to
5 himself, herself, or to others and is in possession of a
6 firearm.

7 Section 15. Seizure without warrant.

8 (a) If a law enforcement officer seizes a firearm from a
9 person whom the law enforcement officer believes to pose a
10 clear and present danger to himself, herself, or to others
11 without obtaining a warrant, the law enforcement officer shall
12 submit to the circuit court having jurisdiction over the person
13 believed to pose a clear and present danger to himself,
14 herself, or to others, a written statement under oath or
15 affirmation describing the basis for the law enforcement
16 officer's belief that the person poses a clear and present
17 danger to himself, herself, or to others.

18 (b) The court shall review the written statement submitted
19 under subsection (a) of this Section. The court may order a
20 mental health evaluation by a qualified examiner,
21 psychiatrist, or clinical psychologist. If required, a
22 certificate prepared by the qualified examiner, psychiatrist,
23 or clinical psychologist shall indicate that the qualified
24 examiner, psychiatrist, or clinical psychologist personally
25 examined the person and contain the qualified examiner's,

1 psychiatrist's, or clinical psychologist's clinical
2 observations; other factual information relied upon in
3 reaching a diagnosis; and a statement indicating whether the
4 person has been determined to pose a clear and present danger
5 to himself, herself, or to others by the qualified examiner,
6 psychiatrist, clinical psychologist. If the court finds that
7 probable cause exists to believe that the person poses a clear
8 and present danger to himself, herself, or to others, the court
9 shall order the law enforcement agency having custody of the
10 firearm to retain the firearm. If the court finds that there is
11 no probable cause to believe that the person poses a clear and
12 present danger to himself, herself, or to others, the court
13 shall order the law enforcement agency having custody of the
14 firearm to return the firearm to the person.

15 (c) This Section does not authorize a law enforcement
16 officer to perform a warrantless search or seizure if a warrant
17 would otherwise be required.

18 Section 20. Service of warrant; filing of return. If a
19 court issued a warrant to seize a firearm under this Act, the
20 law enforcement officer who served the warrant shall, not later
21 than 48 hours after the warrant was served, file a return with
22 the court that:

23 (1) states that the warrant was served; and

24 (2) sets forth the time and date on which the warrant was
25 served, the name and address of the person named in the

1 warrant, and the quantity and identity of any firearms seized
2 by the law enforcement officer.

3 Section 25. Hearing to determine whether firearm should be
4 returned or retained.

5 (a) Not later than 14 days after a return is filed under
6 Section 20 of this Act or a written statement is submitted
7 under Section 10 of this Act, the court shall conduct a hearing
8 to determine whether the seized firearm should be:

9 (1) returned to the person from whom the firearm was
10 seized; or

11 (2) retained by the law enforcement agency having
12 custody of the firearm.

13 (b) The court shall set the hearing date as soon as
14 possible after the return is filed under Section 20 of this
15 Act. The court shall inform the prosecuting attorney and the
16 person from whom the firearm was seized of the date, time, and
17 location of the hearing. The court may conduct the hearing at a
18 facility or other suitable place not likely to have a harmful
19 effect upon the person's health or well-being.

20 Section 30. Burden of proof; determination.

21 (a) In a hearing conducted under Section 25 of this Act,
22 the State has the burden of proving all material facts by clear
23 and convincing evidence. The court may order a mental health
24 evaluation by a qualified examiner, psychiatrist, or clinical

1 psychologist. If required, a certificate prepared by the
2 qualified examiner, psychiatrist, or clinical psychologist
3 shall indicate that the qualified examiner, psychiatrist, or
4 clinical psychologist personally examined the person and
5 contain the qualified examiner's, psychiatrist's, or clinical
6 psychologist's clinical observations; other factual
7 information relied upon in reaching a diagnosis; and a
8 statement indicating whether the person has been determined to
9 pose a clear and present danger to himself, herself, or to
10 others by the qualified examiner, psychiatrist, clinical
11 psychologist.

12 (b) If the court, in a hearing under Section 25 of this
13 Act, determines that the State has proved by clear and
14 convincing evidence that the person poses a clear and present
15 danger to himself, herself, or to others, the court shall order
16 that the law enforcement agency having custody of the seized
17 firearm retain the firearm. If the court determines that the
18 State has failed to prove that the person poses a clear and
19 present danger to himself, herself, or to others, the court
20 shall order the law enforcement agency having custody of the
21 firearm to return the firearm to the person from whom it was
22 seized. If the person has a Firearm Owner's Identification
23 Card, the court shall revoke the Card upon the finding that the
24 person poses a clear and present danger to himself, herself, or
25 to others.

26 (c) If the court, in a hearing under Section 25 of this

1 Act, orders a law enforcement agency to retain a firearm, the
2 law enforcement agency shall retain the firearm until the court
3 orders the firearm returned or otherwise disposed of.

4 Section 35. Return of firearm to another owner. If the
5 court, in a hearing conducted under Section 25 of this Act,
6 determines that: (1) the person from whom a firearm was seized
7 poses a clear and present danger to himself, herself, or to
8 others; and (2) the firearm seized from the person is owned by
9 another person; the court may order the law enforcement agency
10 having custody of the firearm to return the firearm to the
11 owner of the firearm.

12 Section 40. Petition for return of firearm.

13 (a) At least 180 days after the date on which a court
14 orders a law enforcement agency to retain a person's firearm
15 under subsection (b) of Section 30 of this Act, the person may
16 petition the court for return of the firearm. Upon receipt of a
17 petition, the court shall: (1) enter an order setting a date
18 for a hearing on the petition; and (2) inform the prosecuting
19 attorney of the date, time, and location of the hearing. The
20 prosecuting attorney shall represent the State at the hearing
21 on a petition under this Section.

22 (b) In a hearing on a petition under this Section, the
23 person: (1) may be represented by an attorney; and (2) must
24 prove by a preponderance of the evidence that the person does

1 not pose a clear and present danger to himself, herself, or to
2 others. If the person is determined not determined to pose a
3 clear and present danger to himself, herself, or to others, the
4 court may reinstate the person's Firearm Owner's
5 Identification Card and order the law enforcement agency having
6 custody of the firearm to return the firearm to the person.

7 (c) If the court denies a person's petition under this
8 Section, the person may not file a subsequent petition until at
9 least 180 days after the date on which the court denied the
10 petition.

11 Section 45. Destruction or disposal of firearm. If at least
12 5 years have passed since a court conducted the first hearing
13 to retain a firearm under this Act, the court, after giving
14 notice to the parties and conducting a hearing, may order the
15 law enforcement agency having custody of the firearm to dispose
16 of the firearm.

17 Section 50. Request for firearm to be auctioned.

18 (a) If a court has ordered a law enforcement agency to
19 retain a person's firearm under Section 30 of this Act, the
20 person may request the court to order the law enforcement
21 agency to sell the firearm at auction and return the proceeds
22 to the person.

23 (b) A person may make the request described in subsection
24 (a) of this Section: (1) at the retention hearing described in

1 Section 45 of this Act; or (2) at any time before the retention
2 hearing described in Section 45 of this Act is held.

3 (c) If a person timely requests a sale of a firearm under
4 subsection (a) of this Section, the court shall order the law
5 enforcement agency having custody of the firearm to sell the
6 firearm at auction, unless the serial number of the firearm has
7 been obliterated.

8 (d) If the court issues an order under subsection (c) of
9 this Section, the court's order shall require: (1) that the
10 firearm be sold not more than one year after receipt of the
11 order; and (2) that the proceeds of the sale be returned to the
12 person who owns the firearm. However, the law enforcement
13 agency may retain not more than 8% of the sale price to pay the
14 costs of the sale, including administrative costs and the
15 auctioneer's fee.

16 Section 905. The Firearm Seizure Act is amended by adding
17 Section 95 as follows:

18 (725 ILCS 165/95 new)

19 Sec. 95. Repeal. This Act is repealed on January 1, 2019.

20 Section 999. Effective date. This Act takes effect January
21 1, 2019.

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Statutes amended in order of appearance

3

New Act

4

725 ILCS 165/95 new