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(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

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 HOUSE OF REPRESENTATIVES

Mr. CARBAJAL introduced the following bill; which was referred to the Committee on _____

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 2019”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1 (1) the term “eligible entity” means—

2 (A) a State or Indian Tribe—

3 (i) that enacts legislation described in
4 section 4;

5 (ii) with respect to which the Attorney
6 General determines that the legislation de-
7 scribed in clause (i) complies with the re-
8 quirements of section 4; and

9 (iii) that certifies to the Attorney
10 General that the State or Indian Tribe
11 shall—

12 (I) use the grant for the purposes
13 described in section 3(b); and

14 (II) allocate not less than 25 per-
15 cent of the amount received under a
16 grant under section 3 for training for
17 law enforcement; or

18 (B) a unit of local government or other
19 public or private entity that—

20 (i) is located in a State or in the terri-
21 tory under the jurisdiction of an Indian
22 Tribe that meets the requirements de-
23 scribed in clauses (i), (ii), (iii) of subpara-
24 graph (A); and

1 (ii) certifies to the Attorney General
2 that the unit of local government or entity
3 shall—

4 (I) use the grant for the purposes
5 described in section 3(b); and

6 (II) allocate not less than 25 per-
7 cent of the amount received under a
8 grant under section 3 for training for
9 law enforcement;

10 (2) the term “extreme risk protection order”
11 means a written order or warrant, issued by a State
12 or Tribal court or signed by a magistrate (or other
13 comparable judicial officer), the primary purpose of
14 which is to reduce the risk of firearm-related death
15 or injury by—

16 (A) prohibiting a named individual from
17 having under the custody or control of the indi-
18 vidual, owning, purchasing, possessing, or re-
19 ceiving a firearm; or

20 (B) having a firearm removed or requiring
21 the surrender of firearms from a named indi-
22 vidual;

23 (3) the term “firearm” has the meaning given
24 the term in section 921 of title 18, United States
25 Code;

1 (4) the term “Indian Tribe” has the meaning
2 given the term “Indian tribe” in section 1709 of the
3 Public Safety and Community Policing Act of 1994
4 (34 U.S.C. 10389);

5 (5) the term “law enforcement officer” means
6 a public servant authorized by State, local, or Tribal
7 law or by a State, local, or Tribal government agen-
8 cy to—

9 (A) engage in or supervise the prevention,
10 detection, investigation, or prosecution of an of-
11 fense; or

12 (B) supervise sentenced criminal offenders;

13 (6) the term “petitioner” means an individual
14 authorized under State or Tribal law to petition for
15 an extreme risk protection order;

16 (7) the term “State” means—

17 (A) a State;

18 (B) the District of Columbia;

19 (C) the Commonwealth of Puerto Rico;

20 and

21 (D) any other territory or possession of the
22 United States; and

23 (8) the term “unit of local government” has the
24 meaning given the term in section 901 of the Omni-

1 bus Crime Control and Safe Streets Act of 1968 (34
2 U.S.C. 10251).

3 **SEC. 3. EXTREME RISK PROTECTION GRANT PROGRAM.**

4 (a) IN GENERAL.—The Director of the Office of
5 Community Oriented Policing Services of the Department
6 of Justice shall establish a program under which, from
7 amounts made available to carry out this section, the Di-
8 rector may make grants to eligible entities to assist in car-
9 rying out the provisions of the legislation described in sec-
10 tion 4.

11 (b) USE OF FUNDS.—Funds awarded under this sec-
12 tion may be used by an applicant to—

13 (1) enhance the capacity of law enforcement
14 agencies and the courts of a State, unit of local gov-
15 ernment, or Indian Tribe by providing personnel,
16 training, technical assistance, data collection, and
17 other resources to carry out legislation described in
18 section 4;

19 (2) train judges, court personnel, and law en-
20 forcement officers to more accurately identify indi-
21 viduals whose access to firearms poses a danger of
22 causing harm to themselves or others by increasing
23 the risk of firearms suicide or interpersonal violence;

24 (3) develop and implement law enforcement and
25 court protocols, forms, and orders so that law en-

1 enforcement agencies and the courts may carry out the
2 provisions of the legislation described in section 4 in
3 a safe and effective manner, including through the
4 removal and storage of firearms pursuant to extreme
5 risk protection orders under the legislation; and

6 (4) raise public awareness and understanding of
7 the legislation described in section 4 so that extreme
8 risk protection orders may be issued in appropriate
9 situations to reduce the risk of firearms-related
10 death and injury.

11 (c) APPLICATION.—An eligible entity desiring a grant
12 under this section shall submit to the Attorney General
13 an application at such time, in such manner, and con-
14 taining or accompanied by such information as the Attor-
15 ney General may reasonably require.

16 (d) INCENTIVES.—For each of fiscal years 2020
17 through 2024, the Attorney General shall give affirmative
18 preference in awarding any discretionary grant awarded
19 by the Bureau of Justice Assistance to a State or Indian
20 Tribe that has enacted legislation described in section 4.

21 (e) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated such sums as are nec-
23 essary to carry out this section.

1 **SEC. 4. NATIONAL EXTREME RISK PROTECTION ORDER**
2 **LAW.**

3 (a) **REQUIREMENTS.**—Legislation described in this
4 section is legislation that establishes requirements that are
5 substantially similar to the following:

6 (1) **APPLICATION FOR EXTREME RISK PROTEC-**
7 **TION ORDER.**—A petitioner, including a law enforce-
8 ment officer, may submit an application to a State
9 or Tribal court, on a form designed by the court or
10 a State or Tribal agency, that—

11 (A) describes the facts and circumstances
12 justifying that an extreme risk protection order
13 be issued against the named individual; and

14 (B) is signed by the applicant, under oath.

15 (2) **NOTICE.**—The individual named in an ap-
16 plication for an extreme risk protection order as de-
17 scribed in paragraph (1) shall be given written no-
18 tice of the application and an opportunity to be
19 heard on the matter in accordance with this section.

20 (3) **ISSUANCE OF EXTREME RISK PROTECTION**
21 **ORDERS.**—

22 (A) **HEARING.**—

23 (i) **IN GENERAL.**—Upon receipt of an
24 application described in paragraph (1), the
25 court shall order a hearing to be held not

1 later than 30 days after the date of such
2 application.

3 (ii) DETERMINATION.—If the court
4 finds by a preponderance of the evidence
5 that the respondent poses a danger of
6 causing harm to himself, herself, or others
7 by having access to a firearm, the court
8 may issue an extreme risk protection
9 order.

10 (B) LENGTH OF EXTREME RISK PROTEC-
11 TION ORDER.—An extreme risk protection order
12 shall be in effect for a period not to exceed 1
13 year, unless renewed.

14 (4) EX PARTE EXTREME RISK PROTECTION OR-
15 DERS.—

16 (A) IN GENERAL.—Upon receipt of an ap-
17 plication described in paragraph (1), the court
18 may issue an ex parte extreme risk protection
19 order before conducting the hearing required
20 under paragraph (3), if—

21 (i) the application for an extreme risk
22 protection order alleges that the respon-
23 dent poses a danger of causing harm to
24 himself, herself, or others in the near fu-
25 ture by having access to a firearm; and

1 (ii) the court finds there is reasonable
2 cause to believe that the respondent poses
3 a danger of causing harm to himself, her-
4 self, or others in the near future by having
5 access to a firearm.

6 (B) LENGTH OF EX PARTE EXTREME RISK
7 PROTECTION ORDER.—An ex parte extreme risk
8 protection order shall be in effect for a period
9 not to exceed 30 days, unless continued for
10 good cause.

11 (5) STORAGE OF REMOVED FIREARMS.—All
12 firearms removed or surrendered pursuant to an ex-
13 treme risk protection order shall be retained by a
14 law enforcement officer or a law enforcement agency
15 until the named individual regains his or her eligi-
16 bility to possess firearms, except that the legislation
17 may authorize a law enforcement agency to—

18 (A) contract with a manufacturer, dealer,
19 or importer licensed under chapter 44 of title
20 18, United States Code, for the secure storage
21 of firearms; and

22 (B) transfer the firearm upon proof that
23 the named individual will no longer have access
24 to the firearm.

25 (6) NOTIFICATION.—

1 (A) IN GENERAL.—A State or tribal court
2 that issues an extreme risk protection order
3 shall notify the Department of Justice or the
4 comparable State or Tribal agency, as applica-
5 ble, of the order as soon as practicable. Such
6 notice shall be submitted in an electronic for-
7 mat, in a manner prescribed by the Department
8 of Justice or the comparable State or Tribal
9 agency.

10 (B) UPDATE OF DATABASES.—As soon as
11 practicable after receiving a notification under
12 subparagraph (A), the Department of Justice
13 or the comparable State or Tribal agency shall
14 ensure the extreme risk protection order is re-
15 flected in the National Instant Criminal Back-
16 ground Check System.

17 (7) CONFIDENTIALITY PROTECTIONS.—All per-
18 sonally identifiable information provided to the
19 court, the Department of Justice, and comparable
20 State or Tribal agencies shall be kept confidential,
21 except as necessary to carry out the legislation.

22 (b) ADDITIONAL AUTHORITIES.—Legislation de-
23 scribed in this section may—

24 (1) provide procedures for the termination of an
25 extreme risk protection order;

1 (2) provide procedures for the renewal of an ex-
2 treme risk protection order;

3 (3) establish burdens of proof for issuance of
4 orders described in paragraphs (3) and (4) of sub-
5 section (a) that are higher than the burdens of proof
6 required under those paragraphs; and

7 (4) limit the individuals who may submit an ap-
8 plication described in subsection (a)(1), provided
9 that, at a minimum, law enforcement officers are
10 authorized to do so.

11 **SEC. 5. 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 prohibits
22 such person from having under his or her custody or
23 control, owning, purchasing, possessing, or receiving
24 any firearms, or requires the surrender or removal

1 of firearms from the person, provided that the
2 order—

3 “(A) is issued in a manner consistent with
4 the due process rights of the person; and

5 “(B) is based on a finding that the person
6 poses a danger of causing harm to himself, her-
7 self, or others by having access to a firearm.”;
8 and

9 (2) in subsection (g)—

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

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

14 (C) by inserting after paragraph (9) the
15 following:

16 “(10) is subject to a court order that prohibits
17 such person from having under his or her custody or
18 control, owning, purchasing, possessing, or receiving
19 any firearms, or requires the surrender or removal
20 of firearms from the person, provided that the
21 order—

22 “(A) is issued in a manner consistent with
23 the due process rights of the person; and

1 “(B) is based on a finding that the person
2 poses a danger of causing harm to himself, her-
3 self, or others by having access to a firearm,”.

4 **SEC. 6. CONFORMING AMENDMENT.**

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

9 **SEC. 7. FULL FAITH AND CREDIT.**

10 Any extreme risk protection order issued under a
11 State or Tribal law enacted in accordance with this Act
12 shall be accorded the same full faith and credit by the
13 court of another State or Indian Tribe (the enforcing
14 State or Indian Tribe) and enforced by the court and law
15 enforcement personnel of the other State or Tribal govern-
16 ment as if it were the order of the enforcing State or
17 Tribe.

18 **SEC. 8. SEVERABILITY.**

19 If any provision of this Act, or an amendment made
20 by this Act, or the application of such provision to any
21 person or circumstance, is held to be invalid, the remain-
22 der of this Act, or an amendment made by this Act, or
23 the application of such provision to other persons or cir-
24 cumstances, shall not be affected.