

.....  
(Original Signature of Member)

117TH 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 2021”.

1 **SEC. 2. EXTREME RISK PROTECTION ORDER GRANT PRO-**  
2 **GRAM.**

3 (a) DEFINITIONS.—In this section:

4 (1) ELIGIBLE ENTITY.—The term “eligible enti-  
5 ty” means—

6 (A) a State or Indian Tribe—

7 (i) that enacts legislation described in  
8 this section;

9 (ii) with respect to which the Attorney  
10 General determines that the legislation de-  
11 scribed in subsection (c) complies with the  
12 requirements of this section; and

13 (iii) that certifies to the Attorney  
14 General that the State or Indian Tribe  
15 shall—

16 (I) use the grant for the purposes  
17 described in this section; and

18 (II) allocate not less than 25 per-  
19 cent and no more than 70 percent of  
20 the amount received under a grant  
21 under this section for the development  
22 and dissemination of training for law  
23 enforcement in accordance with sub-  
24 section (b)(4) of this section; or

25 (B) a unit of local government or other  
26 public or private entity that—

1 (i) is located in a State or in the terri-  
2 tory under the jurisdiction of an Indian  
3 Tribe that meets the requirements of sub-  
4 paragraph (A)(i) and (ii); and

5 (ii) certifies to the Attorney General  
6 that the unit of local government or entity  
7 shall—

8 (I) use the grant for the purposes  
9 described in this section; and

10 (II) allocate not less than 25 per-  
11 cent and no more than 70 percent of  
12 the amount received under a grant  
13 under this section for the development  
14 and dissemination of training for law  
15 enforcement in accordance with sub-  
16 section (b)(4) of this section.

17 (2) EXTREME RISK PROTECTION ORDER.—The  
18 term “extreme risk protection order” means a writ-  
19 ten order or warrant, issued by a State or Tribal  
20 court or signed by a magistrate (or other com-  
21 parable judicial officer), the primary purpose of  
22 which is to reduce the risk of firearm-related death  
23 or injury by doing one or more of the following:

24 (A) Prohibiting a named individual from  
25 having under the custody or control of the indi-

1           vidual, owning, purchasing, possessing, or re-  
2           ceiving a firearm.

3           (B) Having a firearm removed or requiring  
4           the surrender of firearms from a named indi-  
5           vidual.

6           (3) FIREARM.—The term “firearm” has the  
7           meaning given the term in section 921 of title 18,  
8           United States Code.

9           (4) INDIAN TRIBE.—The term “Indian Tribe”  
10          has the meaning given the term “Indian tribe” in  
11          section 1709 of the Public Safety and Community  
12          Policing Act of 1994 (34 U.S.C. 10389).

13          (5) LAW ENFORCEMENT OFFICER.—The term  
14          “law enforcement officer” means a public servant  
15          authorized by federal, State, local, or Tribal law or  
16          by a Federal, State, local, or Tribal government  
17          agency to—

18                 (A) engage in or supervise the prevention,  
19                 detection, investigation, or prosecution of an of-  
20                 fense; or

21                 (B) supervise sentenced criminal offenders.

22          (6) PETITIONER.—The term “petitioner”  
23          means an individual authorized under State or Trib-  
24          al law to petition for an extreme risk protection  
25          order.

1           (7) RESPONDENT.—The term “respondent”  
2 means an individual named in the petition for an ex-  
3 treme risk protection order or subject to the extreme  
4 risk protection order.

5           (8) STATE.—The term “State” means—

6                   (A) a State;

7                   (B) the District of Columbia;

8                   (C) the Commonwealth of Puerto Rico;

9           and

10                   (D) any other territory or possession of the  
11 United States.

12           (9) UNIT OF LOCAL GOVERNMENT.—The term  
13 “unit of local government” has the meaning given  
14 the term in section 901 of the Omnibus Crime Con-  
15 trol and Safe Streets Act of 1968 (34 U.S.C.  
16 10251).

17           (b) GRANT PROGRAM ESTABLISHED.—

18                   (1) IN GENERAL.—The Director of the Office of  
19 Community Oriented Policing Services of the De-  
20 partment of Justice shall establish a program under  
21 which, from amounts made available to carry out  
22 this section, the Director may make grants to eligi-  
23 ble entities to assist in carrying out the provisions  
24 of the legislation described in this section.

1           (2) USE OF FUNDS.—Funds awarded under  
2 this section may be used by an applicant to—

3           (A) enhance the capacity of law enforce-  
4 ment agencies and the courts of a State, unit  
5 of local government, or Indian Tribe by pro-  
6 viding personnel, training, technical assistance,  
7 data collection, and other resources to carry out  
8 enacted legislation described in this section;

9           (B) train judges, court personnel, health  
10 care and legal professionals, and law enforce-  
11 ment officers to more accurately identify indi-  
12 viduals whose access to firearms poses a danger  
13 of causing harm to themselves or others by in-  
14 creasing the risk of firearms suicide or inter-  
15 personal violence;

16           (C) develop and implement law enforce-  
17 ment and court protocols, forms, and orders so  
18 that law enforcement agencies and the courts  
19 may carry out the provisions of the legislation  
20 described in this section in a safe, equitable,  
21 and effective manner, including through the re-  
22 moval and storage of firearms pursuant to ex-  
23 treme risk protection orders under the enacted  
24 legislation; and

1           (D) raise public awareness and under-  
2           standing of the enacted legislation described in  
3           this section, including through subgrants to  
4           community-based organizations for the training  
5           of community members, so that extreme risk  
6           protection orders may be issued in appropriate  
7           situations to reduce the risk of firearms-related  
8           death and injury.

9           (3) APPLICATION.—An eligible entity desiring a  
10          grant under this section shall submit to the Attorney  
11          General an application at such time, in such man-  
12          ner, and containing or accompanied by such infor-  
13          mation as the Attorney General may reasonably re-  
14          quire.

15          (4) TRAINING.—

16                (A) A grantee shall provide training to law  
17                enforcement, including agents of relevant fed-  
18                eral, State, local, and Tribal law enforcement  
19                agencies, in the safe, impartial, effective, and  
20                equitable use and administration of extreme  
21                risk protection orders, including, but not limited  
22                to, training to address—

23                        (i) bias based on race and racism, eth-  
24                        nicity, gender, sexual orientation, gender  
25                        identity, religion, language proficiency, and

1 classism in the use and administration of  
2 extreme risk protection orders;

3 (ii) the appropriate use of extreme  
4 risk protection orders in cases of domestic  
5 violence, including the applicability of other  
6 policies and protocols to address domestic  
7 violence in situations that may also involve  
8 extreme risk protection orders and the ne-  
9 cessity of safety planning with the victim  
10 before law enforcement petitions for and  
11 executes an extreme risk protection order,  
12 if applicable;

13 (iii) interacting with persons with a  
14 mental illness or emotional distress, includ-  
15 ing de-escalation and crisis intervention;  
16 and

17 (iv) best practices for referring per-  
18 sons subject to extreme risk protection or-  
19 ders and associated victims of violence to  
20 social service providers that may be avail-  
21 able in the jurisdiction and appropriate for  
22 those individuals, including but not limited  
23 to, health care, mental health, substance  
24 abuse, and legal services, employment and  
25 vocational services, housing assistance,



1 case management, and veterans and dis-  
2 ability benefits.

3 (B) A grantee developing law enforcement  
4 training required under this section shall seek  
5 advice from domestic violence service providers  
6 (including culturally specific organizations as  
7 defined in section 40002 of the Violence  
8 Against Women Act of 1994), social service  
9 providers, suicide prevention advocates, violence  
10 intervention specialists, and other community  
11 groups working to reduce suicides and violence,  
12 including domestic violence, within the state.

13 (5) INCENTIVES.—For each of fiscal years 2022  
14 through 2026, the Attorney General shall give af-  
15 firmative preference in awarding any discretionary  
16 grant awarded by the Office of Community Oriented  
17 Policing Services to a State or Indian Tribe that has  
18 enacted legislation described in this section.

19 (6) AUTHORIZATION OF APPROPRIATIONS.—  
20 There are authorized to be appropriated such sums  
21 as are necessary to carry out this section.

22 (c) ELIGIBILITY FOR EXTREME RISK PROTECTION  
23 ORDER GRANT PROGRAM.—

1           (1) REQUIREMENTS.—Legislation described in  
2 this section is legislation that establishes require-  
3 ments that are substantially similar to the following:

4           (A) APPLICATION FOR EXTREME RISK  
5 PROTECTION ORDER.—A petitioner, including a  
6 law enforcement officer, may submit an applica-  
7 tion to a State or Tribal court, on a form de-  
8 signed by the court or a State or Tribal agency,  
9 that—

10           (i) describes the facts and cir-  
11 cumstances justifying that an extreme risk  
12 protection order be issued against the  
13 named individual; and

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

16           (B) NOTICE AND DUE PROCESS.—The in-  
17 dividual named in an application for an extreme  
18 risk protection order as described in subpara-  
19 graph (A) shall be given written notice of the  
20 application and an opportunity to be heard on  
21 the matter in accordance with this section.

22           (C) ISSUANCE OF EXTREME RISK PROTEC-  
23 TION ORDERS.—

24           (i) HEARING.—

1 (I) IN GENERAL.—Upon receipt  
2 of an application described in sub-  
3 paragraph (A) or request of an indi-  
4 vidual named in such application, the  
5 court shall order a hearing to be held  
6 within a reasonable time, no longer  
7 than 30 days after the date of such  
8 application or request.

9 (II) DETERMINATION.—If the  
10 court finds at the hearing by a pre-  
11 ponderance of the evidence or a higher  
12 evidentiary standard established by a  
13 State or Indian Tribe that the re-  
14 spondent poses a danger of causing  
15 harm to self or others by having ac-  
16 cess to a firearm, the court may issue  
17 an extreme risk protection order.

18 (ii) DURATION OF EXTREME RISK  
19 PROTECTION ORDER.—An extreme risk  
20 protection order shall be in effect—

21 (I) until an order terminating or  
22 superseding the order is issued; or

23 (II) for a set period of time.

24 (D) EX PARTE EXTREME RISK PROTEC-  
25 TION ORDERS.—

1 (i) IN GENERAL.—Upon receipt of an  
2 application described in subparagraph (A),  
3 the court may issue an ex parte extreme  
4 risk protection order, if—

5 (I) the application for an extreme  
6 risk protection order alleges that the  
7 respondent poses a danger of causing  
8 harm to self or others by having ac-  
9 cess to a firearm; and

10 (II) the court finds there is rea-  
11 sonable cause to believe, or makes a  
12 finding under such other, higher evi-  
13 dentiary standard as a State or In-  
14 dian Tribe may establish, that the re-  
15 spondent poses a danger of causing  
16 harm to self or others by having ac-  
17 cess to a firearm.

18 (ii) DURATION OF EX PARTE EX-  
19 TREME RISK PROTECTION ORDER.—An ex  
20 parte extreme risk protection order shall  
21 remain in effect only until the hearing re-  
22 quired under this section.

23 (E) STORAGE OF REMOVED FIREARMS.—  
24 All firearms removed or surrendered pursuant  
25 to an extreme risk protection order shall only

1 be available for return to the named individual  
2 when the individual has regained eligibility  
3 under Federal and State law, and, where appli-  
4 cable, Tribal law to possess firearms, and fire-  
5 arms owned by the named individual shall not  
6 be disposed of or destroyed during the period of  
7 the extreme risk protection order without the  
8 consent of the named individual.

9 (F) NOTIFICATION.—

10 (i) IN GENERAL.—A State or Tribal  
11 court that issues an extreme risk protec-  
12 tion order shall notify the Attorney Gen-  
13 eral or the comparable State or Tribal  
14 agency, as applicable, of the order as soon  
15 as practicable or within a designated pe-  
16 riod of time. The notice shall be submitted  
17 in an electronic format, in a manner pre-  
18 scribed by the Attorney General or the  
19 comparable State or Tribal agency.

20 (ii) UPDATE OF DATABASES.—As  
21 soon as practicable or within the time pe-  
22 riod designated by State or Tribal law  
23 after receiving a notification under clause  
24 (i), the Attorney General or the com-  
25 parable State or Tribal agency shall ensure

1           the extreme risk protection order is re-  
2           flected in the National Instant Criminal  
3           Background Check System.

4           (2) *ADDITIONAL PROVISIONS.*—Legislation de-  
5           scribed in this subsection may—

6                   (A) provide procedures for the termination  
7                   of an extreme risk protection order;

8                   (B) provide procedures for the renewal of  
9                   an extreme risk protection order;

10                   (C) establish burdens and standards of  
11                   proof for issuance of orders described in this  
12                   subsection that are substantially similar or  
13                   higher than the burdens and standards of proof  
14                   set forth in this subsection;

15                   (D) limit the individuals who may submit  
16                   an application described in this subsection, pro-  
17                   vided that, at a minimum, law enforcement offi-  
18                   cers are authorized to do so; and

19                   (E) include any other authorizations or re-  
20                   quirements the State or Tribal authorities deem  
21                   appropriate.

22           (3) *ANNUAL REPORT.*—Not later than 1 year  
23           after the date on which an eligible entity receives a  
24           grant under this section, and annually thereafter for  
25           the duration of the grant period, the entity shall

1 submit to the Attorney General a report that in-  
2 cludes, with respect to the preceding year—

3 (A) the number of petitions for ex parte  
4 extreme risk protection orders filed, as well as  
5 the number of such orders issued and the num-  
6 ber denied, disaggregated by the jurisdiction,  
7 the individual authorized under State or Tribal  
8 law to petition for an extreme risk protection  
9 order, including the individual's relationship  
10 with the respondent, and the alleged danger  
11 posed by respondent, including whether the  
12 danger involved a risk of suicide, unintentional  
13 injury, domestic violence, or other interpersonal  
14 violence;

15 (B) the number of petitions for extreme  
16 risk protection orders filed, as well as the num-  
17 ber of such orders issued and the number de-  
18 nied, disaggregated by the jurisdiction, the indi-  
19 vidual authorized under State or Tribal law to  
20 petition for an extreme risk protection order,  
21 including the individual's relationship with the  
22 respondent, and the alleged danger posed by re-  
23 spondent, including whether the danger involved  
24 a risk of suicide, unintentional injury, domestic  
25 violence, or other interpersonal violence;

1 (C) the number of petitions for renewals of  
2 extreme risk protection orders filed, as well as  
3 the number of such orders issued and the num-  
4 ber denied;

5 (D) the number of cases in which a court  
6 has issued a penalty for false reporting or frivo-  
7 lous petitions;

8 (E) demographic data of petitioners, in-  
9 cluding race, ethnicity, national origin, sex, gen-  
10 der, age, disability, English language pro-  
11 ficiency, if available;

12 (F) demographic data of respondents, in-  
13 cluding race, ethnicity, national origin, sex, gen-  
14 der, age, disability, English language pro-  
15 ficiency, if available; and

16 (G) the number of firearms removed, if  
17 this data is available.

18 **SEC. 3. FEDERAL FIREARMS PROHIBITION.**

19 Section 922 of title 18, United States Code, is  
20 amended—

21 (1) in subsection (d)—

22 (A) in paragraph (8)(B)(ii), by striking  
23 “or” at the end;

24 (B) in paragraph (9), by striking the pe-  
25 riod at the end and inserting “; or”; and



1 (C) by inserting after paragraph (9) the  
2 following:

3 “(10) is subject to a court order, the primary  
4 purpose of which is to reduce the risk of firearm-re-  
5 lated death or injury, by prohibiting such person  
6 from having under their custody or control, owning,  
7 purchasing, possessing, or receiving any firearms,  
8 provided that the order—

9 (A) is issued in a manner consistent with  
10 the due process rights of the person; and

11 (B) is based on a finding that the person  
12 poses a danger of causing harm to self or oth-  
13 ers by having access to a firearm.”; and

14 (2) in subsection (g)—

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

17 (B) in paragraph (9), by striking the  
18 comma 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, the primary  
22 purpose of which is to reduce the risk of firearm-re-  
23 lated death or injury, by prohibiting such person  
24 from having under their custody or control, owning,

1 purchasing, possessing, or receiving any firearms,  
2 provided that the 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 self or oth-  
7 ers by having access to a firearm.”.

8 **SEC. 4. IDENTIFICATION RECORDS.**

9 Section 534 of title 28 of the United States Code is  
10 amended—

11 (1) in subsection (a)—

12 (A) in paragraph (3), by striking “and” at  
13 the end;

14 (B) by redesignating paragraph (4) as  
15 paragraph (5) and inserting after paragraph  
16 (3) the following:

17 “(4) acquire, collect, classify, and preserve  
18 records from Federal, Tribal, and State courts and  
19 other agencies identifying individuals subject to ex-  
20 treme risk protection orders, as defined in section 2  
21 of the Extreme Risk Protection Order Act of 2021  
22 and section 932 of title 18, provided that such  
23 records must be destroyed when those orders expire  
24 or are terminated or dissolved; and”;

1           (2) in subsection (b), by striking “(a)(4)” and  
2           inserting “(a)(5)”; and

3           (3) by inserting at the end the following:

4           “(g) Federal, Tribal, and State criminal justice agen-  
5           cies and criminal and civil courts may—

6           “(1) include extreme risk protection orders, as  
7           defined in section 2 of the Extreme Risk Protection  
8           Order Act of 2021 and section 932 of title 18, in na-  
9           tional crime information databases, as that term is  
10          defined in subsection (f)(3) of this section; and

11          “(2) have access to information regarding ex-  
12          treme risk protection orders through the national  
13          crime information databases.”.

14   **SEC. 5. CONFORMING AMENDMENT.**

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

19   **SEC. 6. FULL FAITH AND CREDIT.**

20          (a) IN GENERAL.—Any extreme risk protection order  
21          issued under a State or Tribal law enacted in accordance  
22          with this Act shall be accorded the same full faith and  
23          credit by the court of another State or Indian Tribe (the  
24          enforcing State or Indian Tribe) and enforced by the court  
25          and law enforcement personnel of the other State or Tribal

1 government as if it were the order of the enforcing State  
2 or Indian Tribe.

3 (b) PROTECTION ORDER.—A protection order issued  
4 by a State or Tribal court is consistent with this sub-  
5 section if—

6 (1) such court has jurisdiction over the parties  
7 and matter under the law of such State or Indian  
8 Tribe; and

9 (2) reasonable notice and opportunity to be  
10 heard is given to the person against whom the order  
11 is sought sufficient to protect that person's right to  
12 due process. In the case of ex parte orders, notice  
13 and opportunity to be heard must be provided within  
14 the time required by State or Tribal law, and in any  
15 event within a reasonable time after the order is  
16 issued, sufficient to protect the respondent's due  
17 process rights.

18 (c) TRIBAL COURT JURISDICTION.—For purposes of  
19 this section, a court of an Indian Tribe shall have full civil  
20 jurisdiction to issue and enforce protection orders involv-  
21 ing any person, including the authority to enforce any or-  
22 ders through civil contempt proceedings, to exclude viola-  
23 tors from Indian land, and to use other appropriate mech-  
24 anisms, in matters arising anywhere in the Indian country  
25 (as defined in section 1151 of title 18, United States

1 Code) of the Indian Tribe or otherwise within the author-  
2 ity of the Indian Tribe.

3 **SEC. 7. SEVERABILITY.**

4 If any provision of this Act, or an amendment made  
5 by this Act, or the application of such provision to any  
6 person or circumstance, is held to be invalid, the remain-  
7 der of this Act, or an amendment made by this Act, or  
8 the application of such provision to other persons or cir-  
9 cumstances, shall not be affected.