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(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 subsection (c);

9 (ii) with respect to which the Attorney
10 General determines that the legislation de-
11 scribed in clause (i) complies with the re-
12 quirements under subsection (c)(1); 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 subsection (b)(2); and

18 (II) allocate not less than 25 per-
19 cent and not more than 70 percent of
20 the amount received under a grant
21 under subsection (b) for the develop-
22 ment and dissemination of training
23 for law enforcement officers in accord-
24 ance with subsection (b)(4); 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 de-
4 scribed in clauses (i) and (ii) of subpara-
5 graph (A); and

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

9 (I) use the grant for the purposes
10 described in subsection (b)(2); and

11 (II) allocate not less than 25 per-
12 cent and not more than 70 percent of
13 the amount received under a grant
14 under this section for the development
15 and dissemination of training for law
16 enforcement officers in accordance
17 with subsection (b)(4).

18 (2) EXTREME RISK PROTECTION ORDER.—The
19 term “extreme risk protection order” means a writ-
20 ten order or warrant, issued by a State or Tribal
21 court or signed by a magistrate (or other com-
22 parable judicial officer), the primary purpose of
23 which is to reduce the risk of firearm-related death
24 or injury by doing 1 or more of the following:

1 (A) Prohibiting a named individual from
2 having under the custody or control of the indi-
3 vidual, owning, purchasing, possessing, or re-
4 ceiving a firearm.

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

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

11 (4) INDIAN TRIBE.—The term “Indian Tribe”
12 has the meaning given the term “Indian tribe” in
13 section 1709 of title I of the Omnibus Crime Control
14 and Safe Streets Act of 1968 (34 U.S.C. 10389).

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

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

23 (B) supervise sentenced criminal offenders.

24 (6) PETITIONER.—The term “petitioner”
25 means an individual authorized under State or Trib-

1 al law to petition for an extreme risk protection
2 order.

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

7 (8) STATE.—The term “State” means—

8 (A) a State;

9 (B) the District of Columbia;

10 (C) the Commonwealth of Puerto Rico;

11 and

12 (D) any other territory or possession of the
13 United States.

14 (9) UNIT OF LOCAL GOVERNMENT.—The term
15 “unit of local government” has the meaning given
16 the term in section 901 of title I of the Omnibus
17 Crime Control and Safe Streets Act of 1968 (34
18 U.S.C. 10251).

19 (b) GRANT PROGRAM ESTABLISHED.—

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

1 ble entities to assist in carrying out the provisions
2 of the legislation described in subsection (c).

3 (2) USE OF FUNDS.—Funds awarded under
4 this subsection may be used by an applicant to—

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

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

18 (C) develop and implement law enforce-
19 ment and court protocols, forms, and orders so
20 that law enforcement agencies and the courts
21 may carry out the provisions of the enacted leg-
22 islation described in subsection (c) in a safe, eq-
23 uitable, and effective manner, including through
24 the removal and storage of firearms pursuant to

1 extreme risk protection orders under the en-
2 acted legislation; and

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

11 (3) APPLICATION.—An eligible entity desiring a
12 grant under this subsection shall submit to the At-
13 torney General an application at such time, in such
14 manner, and containing or accompanied by such in-
15 formation as the Attorney General may reasonably
16 require.

17 (4) TRAINING.—

18 (A) IN GENERAL.—A recipient of a grant
19 under this subsection shall provide training to
20 law enforcement officers, including officers of
21 relevant Federal, State, local, and Tribal law
22 enforcement agencies, in the safe, impartial, ef-
23 fective, and equitable use and administration of
24 extreme risk protection orders, including train-
25 ing to address—

1 (i) bias based on race and racism, eth-
2 nicity, gender, sexual orientation, gender
3 identity, religion, language proficiency, and
4 classism in the use and administration of
5 extreme risk protection orders;

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

16 (iii) interacting with persons with a
17 mental illness or emotional distress, includ-
18 ing de-escalation and crisis intervention;
19 and

20 (iv) best practices for referring per-
21 sons subject to extreme risk protection or-
22 ders and associated victims of violence to
23 social service providers that may be avail-
24 able in the jurisdiction and appropriate for
25 those individuals, including health care,

1 mental health, substance abuse, and legal
2 services, employment and vocational serv-
3 ices, housing assistance, case management,
4 and veterans and disability benefits.

5 (B) CONSULTATION WITH EXPERTS.—A
6 recipient of a grant under this subsection, in
7 developing law enforcement training required
8 under subparagraph (A), shall seek advice from
9 domestic violence service providers (including
10 culturally specific (as defined in section 40002
11 of the Violence Against Women Act of 1994 (34
12 U.S.C. 12291)) organizations), social service
13 providers, suicide prevention advocates, violence
14 intervention specialists, and other community
15 groups working to reduce suicides and violence,
16 including domestic violence, within the State or
17 the territory under the jurisdiction of the In-
18 dian Tribe, as applicable, that enacted the legis-
19 lation described in subsection (c) that enabled
20 the grant recipient to be an eligible entity.

21 (5) INCENTIVES.—For each of fiscal years 2022
22 through 2026, the Attorney General shall give af-
23 firmative preference in awarding any discretionary
24 grant awarded by the Office of Community Oriented
25 Policing Services to a State or Indian Tribe that has

1 enacted legislation described in subsection (c) or to
2 a unit of local government or other public or private
3 entity located in such a State or in the territory
4 under the jurisdiction of such an Indian Tribe.

5 (6) AUTHORIZATION OF APPROPRIATIONS.—

6 There are authorized to be appropriated such sums
7 as are necessary to carry out this section.

8 (c) ELIGIBILITY FOR EXTREME RISK PROTECTION
9 ORDER GRANT PROGRAM.—

10 (1) REQUIREMENTS.—Legislation described in
11 this subsection is legislation that establishes require-
12 ments that are substantially similar to the following:

13 (A) APPLICATION FOR EXTREME RISK
14 PROTECTION ORDER.—A petitioner, including a
15 law enforcement officer, may submit an applica-
16 tion to a State or Tribal court, on a form de-
17 signed by the court or a State or Tribal agency,
18 that—

19 (i) describes the facts and cir-
20 cumstances justifying that an extreme risk
21 protection order be issued against the
22 named individual; and

23 (ii) is signed by the applicant, under
24 oath.

1 (B) NOTICE AND DUE PROCESS.—The in-
2 dividual named in an application for an extreme
3 risk protection order as described in subpara-
4 graph (A) shall be given written notice of the
5 application and an opportunity to be heard on
6 the matter in accordance with this paragraph.

7 (C) ISSUANCE OF EXTREME RISK PROTEC-
8 TION ORDERS.—

9 (i) HEARING.—

10 (I) IN GENERAL.—Upon receipt
11 of an application described in sub-
12 paragraph (A) or request of an indi-
13 vidual named in such an application,
14 the court shall order a hearing to be
15 held within a reasonable time, and not
16 later than 30 days after the date of
17 the application or request.

18 (II) DETERMINATION.—If the
19 court finds at the hearing ordered
20 under subclause (I), by a preponder-
21 ance of the evidence or according to a
22 higher evidentiary standard estab-
23 lished by the State or Indian Tribe,
24 that the respondent poses a danger of
25 causing harm to self or others by hav-

1 ing access to a firearm, the court may
2 issue an extreme risk protection order.

3 (ii) DURATION OF EXTREME RISK
4 PROTECTION ORDER.—An extreme risk
5 protection order shall be in effect—

6 (I) until an order terminating or
7 superseding the extreme risk protec-
8 tion order is issued; or

9 (II) for a set period of time.

10 (D) EX PARTE EXTREME RISK PROTEC-
11 TION ORDERS.—

12 (i) IN GENERAL.—Upon receipt of an
13 application described in subparagraph (A),
14 the court may issue an ex parte extreme
15 risk protection order, if—

16 (I) the application for an extreme
17 risk protection order alleges that the
18 respondent poses a danger of causing
19 harm to self or others by having ac-
20 cess to a firearm; and

21 (II) the court finds there is rea-
22 sonable cause to believe, or makes a
23 finding according to a higher evi-
24 dentiary standard established by the
25 State or Indian Tribe, that the re-

1 spondent poses a danger of causing
2 harm to self or others by having ac-
3 cess to a firearm.

4 (ii) DURATION OF EX PARTE EX-
5 TREME RISK PROTECTION ORDER.—An ex
6 parte extreme risk protection order shall
7 remain in effect only until the hearing re-
8 quired under subparagraph (C)(i).

9 (E) STORAGE OF REMOVED FIREARMS.—

10 (i) AVAILABILITY FOR RETURN.—All
11 firearms removed or surrendered pursuant
12 to an extreme risk protection order shall
13 only be available for return to the named
14 individual when the individual has regained
15 eligibility under Federal and State law,
16 and, where applicable, Tribal law to pos-
17 sess firearms.

18 (ii) CONSENT REQUIRED FOR DIS-
19 POSAL OR DESTRUCTION.—Firearms
20 owned by a named individual may not be
21 disposed of or destroyed during the period
22 of the extreme risk protection order with-
23 out the consent of the named individual.

24 (F) NOTIFICATION.—

25 (i) IN GENERAL.—

1 (I) REQUIREMENT.—A State or
2 Tribal court that issues an extreme
3 risk protection order shall notify the
4 Attorney General or the comparable
5 State or Tribal agency, as applicable,
6 of the order as soon as practicable or
7 within a designated period of time.

8 (II) FORM AND MANNER.—A
9 State or Tribal court shall submit a
10 notification under subclause (I) in an
11 electronic format, in a manner pre-
12 scribed by the Attorney General or the
13 comparable State or Tribal agency.

14 (ii) UPDATE OF DATABASES.—As
15 soon as practicable or within the time pe-
16 riod designated by State or Tribal law
17 after receiving a notification under clause
18 (i), the Attorney General or the com-
19 parable State or Tribal agency shall ensure
20 that the extreme risk protection order is
21 reflected in the National Instant Criminal
22 Background Check System.

23 (2) ADDITIONAL PROVISIONS.—Legislation de-
24 scribed in this subsection may—

1 (A) provide procedures for the termination
2 of an extreme risk protection order;

3 (B) provide procedures for the renewal of
4 an extreme risk protection order;

5 (C) establish burdens and standards of
6 proof for issuance of orders described in para-
7 graph (1) that are substantially similar to or
8 higher than the burdens and standards of proof
9 set forth in that paragraph;

10 (D) limit the individuals who may submit
11 an application described in paragraph (1), pro-
12 vided that, at a minimum, law enforcement offi-
13 cers are authorized to do so; and

14 (E) include any other authorizations or re-
15 quirements that the State or Tribal authorities
16 determine appropriate.

17 (3) ANNUAL REPORT.—Not later than 1 year
18 after the date on which an eligible entity receives a
19 grant under subsection (b), and annually thereafter
20 for the duration of the grant period, the entity shall
21 submit to the Attorney General a report that in-
22 cludes, with respect to the preceding year—

23 (A) the number of petitions for ex parte
24 extreme risk protection orders filed, as well as

1 the number of such orders issued and the num-
2 ber denied, disaggregated by—

3 (i) the jurisdiction;

4 (ii) the individual authorized under
5 State or Tribal law to petition for an ex-
6 treme risk protection order, including the
7 relationship of the individual to the re-
8 spondent; and

9 (iii) the alleged danger posed by the
10 respondent, including whether the danger
11 involved a risk of suicide, unintentional in-
12 jury, domestic violence, or other inter-
13 personal violence;

14 (B) the number of petitions for extreme
15 risk protection orders filed, as well as the num-
16 ber of such orders issued and the number de-
17 nied, disaggregated by—

18 (i) the jurisdiction;

19 (ii) the individual authorized under
20 State or Tribal law to petition for an ex-
21 treme risk protection order, including the
22 relationship of the individual to the re-
23 spondent; and

24 (iii) the alleged danger posed by the
25 respondent, including whether the danger

1 involved a risk of suicide, unintentional in-
2 jury, domestic violence, or other inter-
3 personal violence;

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

8 (D) the number of cases in which a court
9 imposed a penalty for false reporting or frivo-
10 lous petitions;

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

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

19 (G) the number of firearms removed, if
20 available.

21 **SEC. 3. FEDERAL FIREARMS PROHIBITION.**

22 Section 922 of title 18, United States Code, is
23 amended—

24 (1) in subsection (d)—

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

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

5 (C) by inserting after paragraph (9) the
6 following:

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

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

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

18 (2) in subsection (g)—

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

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

23 (C) by inserting after paragraph (9) the
24 following:

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

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

9 “(B) is based on a finding that the person
10 poses a danger of causing harm to self or oth-
11 ers by having access to a firearm,”.

12 **SEC. 4. IDENTIFICATION RECORDS.**

13 Section 534 of title 28, United States Code, is
14 amended—

15 (1) in subsection (a)—

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

18 (B) by redesignating paragraph (4) as
19 paragraph (5); and

20 (C) by inserting after paragraph (3) the
21 following:

22 “(4)(A) subject to subparagraph (B), acquire,
23 collect, classify, and preserve records from Federal,
24 Tribal, and State courts and other agencies identi-
25 fying individuals subject to extreme risk protection

1 orders, as defined in section 2(a) of the Extreme
2 Risk Protection Order Act of 2021; and

3 “(B) destroy each record acquired or collected
4 under subparagraph (A) when the applicable ex-
5 treme risk protection order expires or is terminated
6 or dissolved; and”;

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

9 (3) by adding at the end the following:

10 “(g) EXTREME RISK PROTECTION ORDERS IN NA-
11 TIONAL CRIME INFORMATION DATABASES.—A Federal,
12 Tribal, or State criminal justice agency or criminal or civil
13 court may—

14 “(1) include extreme risk protection orders, as
15 defined in section 2 of the Extreme Risk Protection
16 Order Act of 2021, in national crime information
17 databases, as that term is defined in subsection
18 (f)(3) of this section; and

19 “(2) have access to information regarding ex-
20 treme risk protection orders through the national
21 crime information databases.”.

22 **SEC. 5. CONFORMING AMENDMENT.**

23 Section 3(1) of the NICS Improvement Amendments
24 Act of 2007 (34 U.S.C. 40903(1)) is amended by striking

1 “section 922(g)(8)” and inserting “paragraph (8) or (10)
2 of section 922(g)”.

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

4 (a) DEFINITIONS.—In this section, the terms “ex-
5 tremе risk protection order”, “Indian Tribe”, and “State”
6 have the meanings given those terms in section 2(a).

7 (b) FULL FAITH AND CREDIT REQUIRED.—Any ex-
8 tremе risk protection order issued under a State or Tribal
9 law enacted in accordance with this Act shall be accorded
10 the same full faith and credit by the court of another State
11 or Indian Tribe (referred to in this subsection as the “en-
12 forcing State or Indian Tribe”) and enforced by the court
13 and law enforcement personnel of the other State or Tribal
14 government as if it were the order of the enforcing State
15 or Indian Tribe.

16 (c) APPLICABILITY TO PROTECTION ORDERS.—

17 (1) IN GENERAL.—Subsection (b) shall apply to
18 a protection order issued by a State or Tribal court
19 if—

20 (A) the court has jurisdiction over the par-
21 ties and matter under the law of the State or
22 Indian Tribe; and

23 (B) reasonable notice and opportunity to
24 be heard is given to the person against whom

1 the order is sought sufficient to protect that
2 person's right to due process.

3 (2) **EX PARTE PROTECTION ORDERS.**—For pur-
4 poses of paragraph (1)(B), in the case of an ex parte
5 protection order, notice and opportunity to be heard
6 shall be provided within the time required by State
7 or Tribal law, and in any event within a reasonable
8 time after the order is issued, sufficient to protect
9 the due process rights of the respondent.

10 (d) **TRIBAL COURT JURISDICTION.**—For purposes of
11 this section, a court of an Indian Tribe shall have full civil
12 jurisdiction to issue and enforce a protection order involv-
13 ing any person, including the authority to enforce any
14 order through civil contempt proceedings, to exclude viola-
15 tors from Indian land, and to use other appropriate mech-
16 anisms, in matters arising anywhere in the Indian country
17 (as defined in section 1151 of title 18, United States
18 Code) of the Indian Tribe or otherwise within the author-
19 ity of the Indian Tribe.

20 **SEC. 7. SEVERABILITY.**

21 If any provision of this Act, or an amendment made
22 by this Act, or the application of such provision to any
23 person or circumstance, is held to be invalid, the remain-
24 der of this Act, or an amendment made by this Act, or

- 1 the application of such provision to other persons or cir-
- 2 cumstances, shall not be affected.