

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 2379

(SENATE AUTHORS: LITTLE)

DATE
03/13/2019

D-PG
856

OFFICIAL STATUS
Introduction and first reading
Referred to Judiciary and Public Safety Finance and Policy

1.1 A bill for an act
 1.2 relating to public safety; enabling law enforcement to petition a court to prohibit
 1.3 people from possessing firearms if they pose a significant danger to themselves
 1.4 or others by possessing a firearm; amending Minnesota Statutes 2018, section
 1.5 624.713, subdivision 1; proposing coding for new law in Minnesota Statutes,
 1.6 chapter 624.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2018, section 624.713, subdivision 1, is amended to read:

1.9 Subdivision 1. **Ineligible persons.** The following persons shall not be entitled to possess
 1.10 ammunition or a pistol or semiautomatic military-style assault weapon or, except for clause
 1.11 (1), any other firearm:

1.12 (1) a person under the age of 18 years except that a person under 18 may possess
 1.13 ammunition designed for use in a firearm that the person may lawfully possess and may
 1.14 carry or possess a pistol or semiautomatic military-style assault weapon (i) in the actual
 1.15 presence or under the direct supervision of the person's parent or guardian, (ii) for the
 1.16 purpose of military drill under the auspices of a legally recognized military organization
 1.17 and under competent supervision, (iii) for the purpose of instruction, competition, or target
 1.18 practice on a firing range approved by the chief of police or county sheriff in whose
 1.19 jurisdiction the range is located and under direct supervision; or (iv) if the person has
 1.20 successfully completed a course designed to teach marksmanship and safety with a pistol
 1.21 or semiautomatic military-style assault weapon and approved by the commissioner of natural
 1.22 resources;

1.23 (2) except as otherwise provided in clause (9), a person who has been convicted of, or
 1.24 adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, in

2.1 this state or elsewhere, a crime of violence. For purposes of this section, crime of violence
2.2 includes crimes in other states or jurisdictions which would have been crimes of violence
2.3 as herein defined if they had been committed in this state;

2.4 (3) a person who is or has ever been committed in Minnesota or elsewhere by a judicial
2.5 determination that the person is mentally ill, developmentally disabled, or mentally ill and
2.6 dangerous to the public, as defined in section 253B.02, to a treatment facility, or who has
2.7 ever been found incompetent to stand trial or not guilty by reason of mental illness, unless
2.8 the person's ability to possess a firearm and ammunition has been restored under subdivision
2.9 4;

2.10 (4) a person who has been convicted in Minnesota or elsewhere of a misdemeanor or
2.11 gross misdemeanor violation of chapter 152, unless three years have elapsed since the date
2.12 of conviction and, during that time, the person has not been convicted of any other such
2.13 violation of chapter 152 or a similar law of another state; or a person who is or has ever
2.14 been committed by a judicial determination for treatment for the habitual use of a controlled
2.15 substance or marijuana, as defined in sections 152.01 and 152.02, unless the person's ability
2.16 to possess a firearm and ammunition has been restored under subdivision 4;

2.17 (5) a person who has been committed to a treatment facility in Minnesota or elsewhere
2.18 by a judicial determination that the person is chemically dependent as defined in section
2.19 253B.02, unless the person has completed treatment or the person's ability to possess a
2.20 firearm and ammunition has been restored under subdivision 4. Property rights may not be
2.21 abated but access may be restricted by the courts;

2.22 (6) a peace officer who is informally admitted to a treatment facility pursuant to section
2.23 253B.04 for chemical dependency, unless the officer possesses a certificate from the head
2.24 of the treatment facility discharging or provisionally discharging the officer from the
2.25 treatment facility. Property rights may not be abated but access may be restricted by the
2.26 courts;

2.27 (7) a person, including a person under the jurisdiction of the juvenile court, who has
2.28 been charged with committing a crime of violence and has been placed in a pretrial diversion
2.29 program by the court before disposition, until the person has completed the diversion program
2.30 and the charge of committing the crime of violence has been dismissed;

2.31 (8) except as otherwise provided in clause (9), a person who has been convicted in
2.32 another state of committing an offense similar to the offense described in section 609.224,
2.33 subdivision 3, against a family or household member or section 609.2242, subdivision 3,
2.34 unless three years have elapsed since the date of conviction and, during that time, the person

3.1 has not been convicted of any other violation of section 609.224, subdivision 3, or 609.2242,
3.2 subdivision 3, or a similar law of another state;

3.3 (9) a person who has been convicted in this state or elsewhere of assaulting a family or
3.4 household member and who was found by the court to have used a firearm in any way
3.5 during commission of the assault is prohibited from possessing any type of firearm or
3.6 ammunition for the period determined by the sentencing court;

3.7 (10) a person who:

3.8 (i) has been convicted in any court of a crime punishable by imprisonment for a term
3.9 exceeding one year;

3.10 (ii) is a fugitive from justice as a result of having fled from any state to avoid prosecution
3.11 for a crime or to avoid giving testimony in any criminal proceeding;

3.12 (iii) is an unlawful user of any controlled substance as defined in chapter 152;

3.13 (iv) has been judicially committed to a treatment facility in Minnesota or elsewhere as
3.14 a person who is mentally ill, developmentally disabled, or mentally ill and dangerous to the
3.15 public, as defined in section 253B.02;

3.16 (v) is an alien who is illegally or unlawfully in the United States;

3.17 (vi) has been discharged from the armed forces of the United States under dishonorable
3.18 conditions;

3.19 (vii) has renounced the person's citizenship having been a citizen of the United States;

3.20 or

3.21 (viii) is disqualified from possessing a firearm under United States Code, title 18, section
3.22 922(g)(8) or (9), as amended through March 1, 2014;

3.23 (11) a person who has been convicted of the following offenses at the gross misdemeanor
3.24 level, unless three years have elapsed since the date of conviction and, during that time, the
3.25 person has not been convicted of any other violation of these sections: section 609.229
3.26 (crimes committed for the benefit of a gang); 609.2231, subdivision 4 (assaults motivated
3.27 by bias); 609.255 (false imprisonment); 609.378 (neglect or endangerment of a child);
3.28 609.582, subdivision 4 (burglary in the fourth degree); 609.665 (setting a spring gun); 609.71
3.29 (riot); or 609.749 (stalking). For purposes of this paragraph, the specified gross misdemeanor
3.30 convictions include crimes committed in other states or jurisdictions which would have
3.31 been gross misdemeanors if conviction occurred in this state;

(12) a person who has been convicted of a violation of section 609.224 if the court determined that the assault was against a family or household member in accordance with section 609.2242, subdivision 3 (domestic assault), unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of another violation of section 609.224 or a violation of a section listed in clause (11); ~~or~~

(13) a person who is subject to an order for protection as described in section 260C.201, subdivision 3, paragraph (d), or 518B.01, subdivision 6, paragraph (g); or

(14) a person who is subject to an extreme risk protection order as described in section 624.7164.

A person who issues a certificate pursuant to this section in good faith is not liable for damages resulting or arising from the actions or misconduct with a firearm or ammunition committed by the individual who is the subject of the certificate.

The prohibition in this subdivision relating to the possession of firearms other than pistols and semiautomatic military-style assault weapons does not apply retroactively to persons who are prohibited from possessing a pistol or semiautomatic military-style assault weapon under this subdivision before August 1, 1994.

The lifetime prohibition on possessing, receiving, shipping, or transporting firearms and ammunition for persons convicted or adjudicated delinquent of a crime of violence in clause (2), applies only to offenders who are discharged from sentence or court supervision for a crime of violence on or after August 1, 1993.

For purposes of this section, "judicial determination" means a court proceeding pursuant to sections 253B.07 to 253B.09 or a comparable law from another state.

Sec. 2. [624.7163] EXTREME RISK PROTECTION ORDERS.

Subdivision 1. **Definition.** "Chief law enforcement officer" means the chief of police of an organized full-time police department of the municipality in which the person resides or the county sheriff if there is no local chief of police.

Subd. 2. **Court jurisdiction.** An application for relief under this section may be filed in the county of the respondent's residence. Actions under this section shall be given docket priorities by the court.

Subd. 3. **Generally.** (a) There shall exist an action known as a petition for an extreme risk protection order for protection from firearm violence that shall enjoin and prohibit the respondent from possessing firearms for a fixed period.

5.1 (b) A petition for relief under sections 624.7163 to 624.7169 may be made by the chief
5.2 law enforcement officer or the chief's designee.

5.3 (c) A petition for relief shall allege that the respondent poses a significant danger of
5.4 bodily harm to self or to other persons by possessing a firearm. The petition shall be
5.5 accompanied by an affidavit made under oath stating specific facts and circumstances
5.6 forming a basis to allege that an extreme risk protection order should be granted.

5.7 (d) A petition for relief must state whether there is an existing order in effect under
5.8 sections 624.7163 to 624.7169 or chapter 260C or 518B governing the respondent and
5.9 whether there is a pending lawsuit, complaint, petition, or other action involving the
5.10 respondent under sections 624.7163 to 624.7169 or chapter 257, 518, 518A, 518B, or 518C.
5.11 The court administrator shall verify the terms of an existing order or action. The court may
5.12 not delay granting relief because of the existence of a pending action involving the respondent
5.13 or the necessity of verifying the terms of an existing order. A petition for relief may be
5.14 granted whether or not there is a pending action involving the respondent.

5.15 (e) A petition for relief must describe, to the best of the petitioner's knowledge, the types
5.16 and location of any firearms believed by the petitioner to be possessed by the respondent.

5.17 (f) The court shall provide simplified forms and clerical assistance to help with writing
5.18 and filing a petition under this section.

5.19 (g) The state court administrator shall create all forms necessary under sections 624.7163
5.20 to 624.7169.

5.21 (h) The filing fees for an extreme risk protection order under this section are waived for
5.22 the petitioner and respondent.

5.23 (i) The court shall advise the petitioner of the right to serve the respondent by alternate
5.24 notice under section 624.7164, subdivision 1, paragraph (d), if the respondent is avoiding
5.25 personal service by concealment or otherwise, and shall assist in writing and filing the
5.26 affidavit.

5.27 (j) The court shall schedule and hold a hearing on the petition unless the respondent
5.28 waives the respondent's right to contest and consents to imposition of an extreme risk
5.29 protection order. If a hearing is scheduled under this paragraph, the court shall provide
5.30 notice of the hearing date and time to the petitioner and the respondent by mail at least five
5.31 days before the hearing.

5.32 (k) An extreme risk protection order issued under sections 624.7163 to 624.7169 applies
5.33 throughout the state.

6.1 (l) Any proceeding under sections 624.7163 to 624.7169 shall be in addition to other
6.2 civil or criminal remedies.

6.3 (m) All health records and other health information provided in a petition or considered
6.4 as evidence in a proceeding under sections 624.7163 to 624.7169 shall be protected from
6.5 public disclosure but may be provided to law enforcement agencies as described in this
6.6 section.

6.7 (n) Any extreme risk protection order or subsequent extension issued under sections
6.8 624.7163 to 624.7169 shall be forwarded by the court administrator within 24 hours to the
6.9 local law enforcement agency with jurisdiction over the residence of the respondent. Each
6.10 appropriate law enforcement agency shall make available to other law enforcement officers,
6.11 through a system for verification, information as to the existence and status of any extreme
6.12 risk protection order issued under sections 624.7163 to 624.7169.

6.13 **Sec. 3. [624.7164] EXTREME RISK PROTECTION ORDERS ISSUED AFTER**
6.14 **HEARING.**

6.15 Subdivision 1. **Hearing.** (a) Upon receipt of the petition for an order after a hearing, the
6.16 court shall order a hearing that shall be held no later than 14 days from the date of the order
6.17 for hearing.

6.18 (b) The petitioning law enforcement agency shall be responsible for service of an extreme
6.19 risk protection order issued by the court and shall further be the agency responsible for the
6.20 execution of any legal process required for the seizure and storage of firearms subject to
6.21 the order. Nothing in this provision limits the ability of the law enforcement agency of
6.22 record cooperating with other law enforcement entities.

6.23 (c) Personal service of notice for the hearing may be made upon the respondent at any
6.24 time up to 12 hours prior to the time set for the hearing, provided that the respondent at the
6.25 hearing may request a continuance of up to five days if the respondent is served less than
6.26 five days prior to the hearing. The continuance shall be granted unless there are compelling
6.27 reasons not to do so.

6.28 (d) If personal service cannot be made, the court may order service of the petition and
6.29 any order issued under this section by alternate means. The application for alternate service
6.30 must include the last known location of the respondent; the petitioner's most recent contacts
6.31 with the respondent; the last known location of the respondent's employment; the names
6.32 and locations of the respondent's parents, siblings, children, and other close relatives; the
6.33 names and locations of other persons who are likely to know the respondent's whereabouts;

and a description of efforts to locate those persons. The court shall consider the length of time the respondent's location has been unknown, the likelihood that the respondent's location will become known, the nature of the relief sought, and the nature of efforts made to locate the respondent. The court shall order service by first-class mail, forwarding address requested, to any addresses where there is a reasonable possibility that mail or information will be forwarded or communicated to the respondent. The court may also order publication, within or outside of the state, but only if it might reasonably succeed in notifying the respondent of the proceeding. Service shall be deemed complete 14 days after mailing or 14 days after court-ordered publication.

Subd. 2. **Relief by court.** (a) At the hearing, the petitioner must prove by clear and convincing evidence that the respondent poses a significant danger of bodily injury to self or other persons by possessing a firearm.

(b) In determining whether to grant the order after a hearing, the court shall consider evidence of the following, whether or not the petitioner has provided evidence of the same:

(1) a history of threats or acts of violence by the respondent directed toward the respondent's self or another person;

(2) the history of use, attempted use, or threatened use of physical force by the respondent against another person;

(3) a violation of any court order including but not limited to orders issued under sections 624.7163 to 624.7169 or chapter 260C or 518B;

(4) a prior arrest for a felony offense;

(5) a conviction or prior arrest for a violent misdemeanor offense, for a stalking offense under section 609.749, or for domestic assault under section 609.2242;

(6) a conviction for an offense of cruelty to animals under chapter 343;

(7) the unlawful and reckless use, display, or brandishing of a firearm by the respondent; and

(8) evidence of controlled substances or alcohol abuse factored against countervailing evidence of recovery from abuse of controlled substances or alcohol.

(c) In determining whether to grant the order after a hearing, the court may consider any other evidence that bears on whether the respondent poses a danger to the respondent's self or others.

(d) If the court finds there is clear and convincing evidence to issue an extreme risk protection order, the court shall issue the order prohibiting the person from possessing a firearm for the duration of the order. The court shall inform the respondent that the respondent is prohibited from possessing firearms and shall issue a transfer order under section 624.7166. The court shall also give notice to the county attorney's office, which may take action as it deems appropriate.

(e) The order shall have a fixed period, to be determined by the court, of not less than six months and not more than two years, subject to renewal or extension under section 624.7165.

(f) At the time an order is granted under this section, the court shall determine by clear and convincing evidence whether the respondent presents an immediate and present danger of bodily injury. If the court so determines, the transfer order shall include the provisions described in section 624.7166, paragraph (c).

(g) A respondent may waive the respondent's right to contest the hearing and consent to the court's imposition of an extreme risk protection order. The court shall seal the petition filed under this section if a respondent who consents to imposition of an extreme risk protection order requests that the petition be sealed, unless the court finds that there is clear and convincing evidence that the interests of the public and public safety outweigh the disadvantages to the respondent of not sealing the petition. All extreme risk protection orders shall remain public.

Sec. 4. **[624.7165] SUBSEQUENT EXTENSIONS AND TERMINATION.**

(a) Upon application by the chief law enforcement officer, and after notice to the respondent and a hearing, the court may extend the relief granted in an existing order granted after a hearing under section 624.7164. Application for an extension may be made any time within the three months before the expiration of the existing order. The order may be extended for a fixed period of at least six months and not to exceed two years if the court makes the same findings by clear and convincing evidence as required for granting of an initial order under section 624.7164, subdivision 2, paragraph (d). The court shall consider the same types of evidence as required for the initial order under section 624.7164, subdivision 2, paragraphs (b) and (c).

(b) Upon application by the respondent to an order issued under section 624.7164, the court may terminate an order after a hearing at which the respondent shall bear the burden of proving by a preponderance of the evidence that the respondent does not pose a significant danger of bodily injury to the respondent's self or to other persons by possessing a firearm.

9.1 Application may be made for termination one time for each year an order is in effect. If an
9.2 order has been issued for a period of six months, the respondent may apply for termination
9.3 one time.

9.4 Sec. 5. **[624.7166] TRANSFER OF FIREARMS.**

9.5 (a) Upon issuance of an extreme risk protection order, the court shall direct the respondent
9.6 to transfer any firearms the person possesses as soon as reasonably practicable, but in no
9.7 case later than 24 hours, to a federally licensed firearms dealer or a law enforcement agency.
9.8 If the respondent elects to transfer the respondent's firearms to a law enforcement agency,
9.9 the agency must accept the transfer. The transfer may be permanent or temporary. A
9.10 temporary firearm transfer only entitles the receiving party to possess the firearm and does
9.11 not transfer ownership or title. If the respondent makes a temporary transfer, a federally
9.12 licensed firearms dealer or law enforcement agency may charge the respondent a reasonable
9.13 fee to store the firearms and may establish policies for disposal of abandoned firearms,
9.14 provided these policies require that the respondent be notified prior to disposal of abandoned
9.15 firearms. If a respondent permanently transfers the respondent's firearms to a law enforcement
9.16 agency, the agency is not required to compensate the respondent and may charge the
9.17 respondent a reasonable processing fee.

9.18 (b) The respondent must file proof of transfer as provided in this paragraph.

9.19 (1) A law enforcement agency or federally licensed firearms dealer accepting transfer
9.20 of a firearm pursuant to this section shall provide proof of transfer to the respondent. The
9.21 proof of transfer must specify whether the firearms were permanently or temporarily
9.22 transferred and must include the name of the respondent, the date of transfer, and the serial
9.23 number, manufacturer, and model of the transferred firearms. If transfer is made to a federally
9.24 licensed firearms dealer, the respondent shall, within two business days after being served
9.25 with the order, file a copy of proof of transfer with the law enforcement agency and attest
9.26 that all firearms owned or possessed at the time of the order have been transferred in
9.27 accordance with this section and that the respondent currently does not possess any firearms.
9.28 If the respondent claims not to own or possess firearms, the respondent shall file a declaration
9.29 of nonpossession with the law enforcement agency attesting that, at the time of the order,
9.30 the respondent neither owned nor possessed any firearms, and that the respondent currently
9.31 neither owns nor possesses any firearms; and

9.32 (2) The court shall seal affidavits, proofs of transfer, and declarations of nonpossession
9.33 filed pursuant to this paragraph.

(c) If a court makes a finding of immediate and present danger under section 624.7164, subdivision 2, paragraph (f), and there is probable cause to believe the respondent possesses firearms, the court shall issue a search warrant to the local law enforcement agency to take possession of all firearms in the respondent's possession as soon as practicable. The local law enforcement agency shall, upon written notice from the respondent, transfer the firearms to a federally licensed firearms dealer. Before a local law enforcement agency transfers a firearm under this paragraph, the agency shall require the federally licensed firearms dealer receiving the firearm to submit a proof of transfer that complies with the requirements for proofs of transfer established in paragraph (b). The agency shall file all proofs of transfer received by the court within two business days of the transfer. A federally licensed firearms dealer who accepts a firearm transfer pursuant to this paragraph shall comply with paragraphs (a) and (b) as if accepting transfer directly from the respondent. If the law enforcement agency does not receive written notice from the respondent within three business days, the agency may charge a reasonable fee to store the respondent's firearms. A law enforcement agency may establish policies for disposal of abandoned firearms, provided these policies require that the respondent be notified prior to disposal of abandoned firearms.

Sec. 6. **[624.7167] RETURN OF FIREARMS.**

Subdivision 1. **Law enforcement.** A local law enforcement agency that accepted temporary transfer of firearms under section 624.7166 shall return the firearms to the respondent upon request after the expiration of the order, provided the respondent is not otherwise prohibited from possessing firearms under state or federal law.

Subd. 2. **Firearms dealer.** A federally licensed firearms dealer that accepted temporary transfer of firearms under section 624.7166 shall return the firearms to the respondent upon request after the expiration of the order, provided the respondent is not otherwise prohibited from possessing firearms under state or federal law. A federally licensed firearms dealer returning firearms shall comply with state and federal law as though transferring a firearm from the dealer's own inventory.

Sec. 7. **[624.7168] OFFENSES.**

Subdivision 1. **False information or harassment.** A person who petitions for an extreme risk protection order under section 624.7163, knowing any information in the petition to be materially false or with the intent to harass, abuse, or threaten, is guilty of a misdemeanor.

Subd. 2. **Violation of order.** A person who possesses a firearm and knows or should have known that the person is prohibited from doing so by an extreme risk protection order

11.1 under section 624.7163, or by an order of protection granted by a judge or referee pursuant
11.2 to a substantially similar law of another state, is guilty of a misdemeanor and shall be
11.3 prohibited from possessing firearms for a period of five years. Each extreme risk protection
11.4 order granted under this chapter must contain a conspicuous notice to the respondent
11.5 regarding the penalty for violation of the order.

11.6 Sec. 8. **[624.7169] LIABILITY PROTECTION.**

11.7 Subdivision 1. **Liability protection for petition.** A chief law enforcement officer or a
11.8 designee who in good faith decides not to petition for an extreme risk protection order shall
11.9 be immune from criminal or civil liability.

11.10 Subd. 2. **Liability protection for storage of firearms.** A law enforcement agency shall
11.11 be immune from civil or criminal liability for any damage or deterioration of firearms,
11.12 ammunition, or weapons stored or transported pursuant to section 624.7166. This subdivision
11.13 shall not apply if the damage or deterioration occurred as a result of recklessness, gross
11.14 negligence, or intentional misconduct by the law enforcement agency.

11.15 Sec. 9. **EFFECTIVE DATE.**

11.16 Sections 1 to 8 are effective January 1, 2020. Sections 1 and 7 apply to crimes committed
11.17 on or after that date.