

## ACT 150

S.B. NO. 1466

A Bill for an Act Relating to Gun Violence Protective Orders.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the State has some of the strongest gun safety laws in the nation and in 2016 received an A-minus rating from the Law Center to Prevent Gun Violence. According to the Centers for Disease Control and Prevention, Hawaii had the second-lowest number of gun deaths per capita among the states in 2015.

However, the legislature also finds that an area in which the State can improve its gun safety laws is gun violence protective orders. Nationwide, active shooters have inflicted great harm by killing and injuring innocent persons, sometimes in tragic mass shootings such as the 2016 Orlando nightclub shooting and the 2017 Las Vegas and Sutherland Springs church shootings. In such cases, law enforcement or a member of the shooter's family or household may have observed warning signs before the shooting, but depending on the jurisdiction, they may not have had the ability to petition a court to confiscate the shooter's firearms and ammunition.

The legislature also finds that California, Oregon, Washington, and numerous other states have already implemented gun violence protection laws, allowing for a family or household member to file a petition for the temporary removal of guns from an individual who shows clear and convincing signs of planning to use these guns to commit violent acts.

The legislature further finds that section 134-7(f), Hawaii Revised Statutes, already authorizes police to take custody of a person's firearms and ammunition upon issuance of a restraining order or order of protection by any court if the court finds the person may use a firearm to threaten, injure, or abuse any person. However, the statute does not address preventative actions that may be taken by law enforcement or a family or household member of an individual who shows articulable signs of planning to use these guns to commit violent acts. Accordingly, the legislature believes that a more comprehensive law is needed.

The purpose of this Act is to reduce gun deaths and injuries in the State by establishing a detailed process that allows a law enforcement officer, family or household member, medical professional, educator, or colleague to obtain a court order to prevent a person from accessing firearms and ammunition if the person poses a danger of causing bodily injury to the person or another.

SECTION 2. Chapter 134, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . GUN VIOLENCE PROTECTIVE ORDERS**

**§134-A Definitions.** For the purposes of this part:

“Bodily injury” has the same meaning as in section 707-700.

“Business day” has the same meaning as in section 709-906.

“Colleague” means a person employed or working at the same place of business or employment as the respondent.

“Educator” means a person employed at an institution of learning at which the respondent may have a connection.

“Ex parte gun violence protective order” means an order issued by the family court, pursuant to section 134-D, prohibiting the respondent from owning, purchasing, possessing, receiving, or having in the respondent’s custody or control any firearm or ammunition until the court-scheduled hearing for a one-year gun violence protective order.

“Family or household member” means any spouse or reciprocal beneficiary, former spouse or former reciprocal beneficiary, person with whom the respondent has a child in common, parent, child, person related by consanguinity, person related by adoption, person jointly residing or who formerly jointly resided with a respondent in the same dwelling unit as the respondent, person who has or has had a dating relationship, or person who is or has acted as the respondent’s legal guardian. “Family or household member” includes a person who is an adult roommate or a co-habitant of a respondent.

“Medical professional” means a licensed physician, advanced practice registered nurse, psychologist, or psychiatrist who has examined the respondent.

“One-year gun violence protective order” means an order issued by the family court, pursuant to section 134-E, prohibiting the respondent from owning, purchasing, possessing, receiving, or having in the respondent’s custody or control any firearm or ammunition for a period of one year.

“Petitioner” means a law enforcement officer, family or household member of the respondent, medical professional, educator, or colleague, who files a petition pursuant to section 134-D or section 134-E.

“Respondent” means the person identified in the petition filed pursuant to section 134-D or section 134-E.

**§134-B Court jurisdiction.** A petition for relief under this part may be filed in any family court in the circuit in which the petitioner resides. A petition under this part shall be given docket priority by the court.

**§134-C Commencement of action; forms.** (a) In order to seek an ex parte gun violence protective order or a one-year gun violence protective order, the petitioner shall file a written petition for relief on forms provided by the court. The court shall designate an employee or appropriate non-judicial agency to assist the petitioner in completing the petition.

(b) The petition shall allege, under penalty of perjury, the grounds for issuance of the order and shall be accompanied by an affidavit made under oath or a statement made under penalty of perjury containing detailed allegations based on personal knowledge that the respondent poses a danger of causing bodily injury to the respondent’s self or another person by owning, purchasing, possessing, receiving, or having in the respondent’s custody or control any firearm or ammunition, and specific facts and circumstances in support thereof, as well as the number, types, and locations of any firearms or ammunition presently believed by the petitioner to be possessed or controlled by the respondent. The petition shall also state, if known to the petitioner, whether there is an existing restraining order or protective order in effect governing the respondent and

whether there is any pending lawsuit, complaint, petition, or other action between the parties under the laws of this State. The judiciary shall verify the terms of any existing order governing the parties. The court shall not delay granting relief because of the existence of a pending action between the parties or the necessity of verifying the terms of an existing order. A petition for an ex parte gun violence protective order or a one-year gun violence protective order may be granted regardless of whether there is a pending action between the parties.

(c) All health records and other health information provided in a petition or considered as evidence in a proceeding under this part shall be sealed by the court, except that the identities of the petitioner and respondent may be provided to law enforcement agencies as set forth in section 134-I. Aggregate statistical data about the numbers of ex parte gun violence protective orders and one-year gun violence protective orders issued, renewed, denied, dissolved, or terminated shall be made available to the public upon request.

(d) Upon receipt of the petition, the court shall set a date for hearing on the petition within fourteen days, regardless of whether the court issues an ex parte gun violence protective order pursuant to section 134-D. If the court issues an ex parte gun violence protective order pursuant to section 134-D, notice of the hearing shall be served on the respondent with the ex parte order. Notice of the hearing shall be personally served on the respondent by an officer of the appropriate county police department.

**§134-D Ex parte gun violence protective order.** (a) A petitioner may request that an ex parte gun violence protective order be issued before a hearing for a one-year gun violence protective order, without notice to the respondent.

(b) The court shall issue or deny an ex parte gun violence protective order on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective adjudication, in which case the order shall be issued or denied on the next business day.

(c) Before issuing an ex parte gun violence protective order, the court may examine under oath the petitioner and any witnesses the petitioner may produce.

(d) In determining whether sufficient grounds for an ex parte gun violence protective order exist, the court shall consider all relevant evidence presented by the petitioner, and may also consider other relevant evidence, including evidence of facts relating to the respondent's:

- (1) Unlawful, reckless, or negligent use, display, storage, possession, or brandishing of a firearm;
- (2) Act or threat of violence against the respondent's self or another person, regardless of whether the violence involves a firearm;
- (3) Violation of a protective order or restraining order issued pursuant to chapter 586 or section 604-10.5, or a similar law in another state;
- (4) Abuse of controlled substances or alcohol or commission of any criminal offense that involves controlled substances or alcohol; and
- (5) Recent acquisition of any firearms, ammunition, or other deadly weapons.

(e) The court shall also consider the time that has elapsed since the events described in subsection (d).

(f) If the court finds probable cause to believe that the respondent poses an imminent danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition, the court shall issue an ex parte gun violence protective order.

(g) An ex parte gun violence protective order issued pursuant to this section shall include:

- (1) A statement that the respondent shall not own, purchase, possess, receive, transfer ownership of, or have in the respondent's custody or control, or attempt to purchase, receive, or transfer ownership of, any firearm or ammunition while the order is in effect;
- (2) A description of the requirements for relinquishment of firearms and ammunition under section 134-G;
- (3) A statement of the grounds asserted for the order;
- (4) A notice of the hearing under section 134-C(d) to determine whether to issue a one-year gun violence protective order, including the address of the court and the date and time when the hearing is scheduled;
- (5) A statement that at the hearing, the court may extend the order for one year; and
- (6) A statement that the respondent may seek the advice of an attorney as to any matter connected with the order, and that the attorney should be consulted promptly so that the attorney may assist the respondent in any matter connected with the order.

(h) An ex parte gun violence protective order issued pursuant to this section shall be personally served on the respondent by an officer of the appropriate county police department. The officer shall file the proof of service with the court within one business day of service.

(i) In accordance with section 134-C(d), the court shall schedule a hearing within fourteen days of the granting of the petition for an ex parte gun violence protective order to determine if a one-year gun violence protective order shall be issued. A respondent may seek an extension of time before the hearing. The court shall dissolve any ex parte gun violence protective order in effect against the respondent if the court subsequently holds the hearing and issues or denies a one-year gun violence protective order.

**§134-E One-year gun violence protective order issued after notice and hearing.** (a) A petitioner requesting a one-year gun violence protective order shall include in the petition detailed allegations based on personal knowledge that the respondent poses a significant danger of causing a self-inflicted bodily injury or an injury to another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition.

(b) In determining whether to issue a one-year gun violence protective order under this section, the court shall consider all relevant evidence presented by the petitioner and the respondent, and may also consider other relevant evidence, including but not limited to evidence of the facts identified in section 134-D(d).

(c) If the court finds by a preponderance of the evidence at the hearing that the respondent poses a significant danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition, the court shall issue a one-year gun violence protective order.

(d) A one-year gun violence protective order issued pursuant to this section shall include all of the following:

- (1) A statement that the respondent shall not own, purchase, possess, receive, transfer ownership of, or have in the respondent's custody or control, or attempt to purchase, receive, or transfer ownership of, any firearm or ammunition while the order is in effect;

- (2) A description of the requirements for relinquishment of firearms and ammunition under section 134-G;
  - (3) A statement of the grounds supporting the issuance of the order;
  - (4) The date and time the order expires;
  - (5) The address of the court that issued the order;
  - (6) A statement that the respondent may request a hearing to terminate the order at any time during its effective period;
  - (7) A statement that the respondent may seek the advice of an attorney as to any matter connected to the order;
  - (8) A statement of whether the respondent was present in court to be advised of the contents of the order or whether the respondent failed to appear; and
  - (9) A statement that if the respondent was present in court, the respondent's presence shall constitute proof of service of notice of the terms of the order.
- (e) If the respondent fails to appear at the hearing, a one-year gun violence protective order issued pursuant to this section shall be personally served on the respondent by an officer of the appropriate county police department. The officer shall file the proof of service with the court within one business day of service.

**§134-F Termination and renewal.** (a) The respondent named in a one-year gun violence protective order issued under section 134-E may submit a written request at any time during the effective period of the order for a hearing to terminate the order. Upon receipt of the written request for termination:

- (1) The court shall set a date for a hearing. Notice of the request shall be personally served on the petitioner by any person authorized by section 634-21. The hearing shall occur no sooner than fourteen days from the date of service of the request upon the petitioner; and
- (2) The respondent seeking termination of the order shall have the burden of proving by a preponderance of the evidence that the respondent does not pose a significant danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition.

If the court finds after the hearing that the respondent has met the respondent's burden, the court shall terminate the order.

(b) A petitioner may submit a written request for a renewal of a one-year gun violence protective order within three months prior to the expiration of the order. Upon receipt of the written request for renewal, the court:

- (1) In determining whether to renew a one-year gun violence protective order, after notice to the respondent, shall consider all relevant evidence presented by the petitioner and the respondent and may also consider other relevant evidence, including evidence of the facts identified in section 134-D(d); and
- (2) May renew a one-year gun violence protective order if the court finds by a preponderance of the evidence that the respondent continues to pose a significant danger of causing bodily injury to the respondent's self or another person by owning, purchasing, possessing, receiving, or having in the respondent's custody or control any firearm or ammunition.

A one-year gun violence protective order renewed pursuant to this section shall expire after one year, subject to termination by further order of the court at a

hearing held pursuant to subsection (a) and further renewal by order of the court pursuant to this subsection.

**§134-G Relinquishment of firearms and ammunition.** (a) Upon issuance of an ex parte gun violence protective order, a one-year gun violence protective order, or a domestic abuse protective order, the court shall order the respondent to voluntarily surrender or dispose of all firearms and ammunition that the respondent owns or possesses, or has in the respondent's custody or control, in accordance with section 134-7.3(b).

(b) At the time of serving notice of a petition, an ex parte gun violence protective order, a one-year gun violence protective order, or a domestic abuse protective order, a police officer shall take custody of any and all firearms and ammunition in accordance with the procedure described in section 134-7(f). Alternatively, if personal service by a police officer is not possible, the respondent shall surrender the firearms and ammunition in a safe manner to the control of the chief of police where the respondent resides within forty-eight hours of being served with the order.

(c) At the time of surrender or removal, a police officer taking possession of a firearm or ammunition pursuant to an ex parte gun violence protective order, a one-year gun violence protective order, or domestic abuse protective order shall issue a receipt identifying all firearms and ammunition that have been surrendered or removed and provide a copy of the receipt to the respondent. Within seventy-two hours after being served with the order, the officer serving the order shall file the original receipt with the court that issued the ex parte gun violence protective order or one-year gun violence protective order, and shall ensure that the appropriate county police department retains a copy of the receipt.

(d) A court that has probable cause to believe a respondent to a protective order owns, possesses, or has in the respondent's custody or control any firearms or ammunition that the respondent has failed to surrender pursuant to this section, or has received or purchased a firearm or ammunition while subject to the order, shall issue a warrant describing the firearm or ammunition and authorizing a search of any location where the firearm or ammunition is reasonably believed to be and the seizure of any firearm or ammunition discovered pursuant to the search.

(e) The appropriate county police department may charge the respondent a fee not to exceed the reasonable and actual costs incurred by the department for storing a firearm or ammunition surrendered or removed pursuant to this section for the duration of the ex parte gun violence protective order, one-year gun violence protective order, or domestic abuse protective order and any additional periods necessary under section 134-H.

**§134-H Return and disposal of firearms or ammunition.** (a) A county police department shall return any surrendered or removed firearm or ammunition requested by a respondent only after confirming, through a criminal history background check, that the respondent is currently eligible to own or possess firearms and ammunition.

(b) A respondent who has surrendered or had removed any firearm or ammunition to or by a county police department pursuant to section 134-G and who does not wish to have the firearm or ammunition returned, or who is no longer eligible to own or possess firearms or ammunition, may sell or transfer title of the firearm or ammunition to a firearms dealer licensed under section 134-31. The department shall transfer possession of the firearm or ammunition to a firearms dealer licensed under section 134-31 only after the dealer has provided



written proof of transfer of the firearm or ammunition from the respondent to the dealer and the department has verified the transfer with the respondent.

(c) If a person other than the respondent claims title to any firearm or ammunition surrendered or removed pursuant to section 134-G, and that person is determined by the appropriate county police department to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to the lawful owner.

(d) A county police department holding any firearm or ammunition that was surrendered by or removed from a respondent pursuant to section 134-G may dispose of the firearm or ammunition only after six months from the date of proper notice to the respondent of the department's intent to dispose of the firearm or ammunition, unless the firearm or ammunition has been claimed by the lawful owner. If the firearm or ammunition remain unclaimed after six months from the date of notice, then no party shall thereafter have the right to assert ownership thereof and the department may dispose of the firearm or ammunition.

(e) For the purposes of this section, "dispose" means selling the firearm or ammunition to a firearms dealer licensed under section 134-31, or destroying the firearm or ammunition.

**§134-I Reporting of order to Hawaii criminal justice data center.**

(a) The court shall notify the Hawaii criminal justice data center no later than one business day after issuing, serving, renewing, dissolving, or terminating an ex parte gun violence protective order or a one-year gun violence protective order under this part and after receiving notice of such an order.

(b) The information required to be submitted to the Hawaii criminal justice data center pursuant to this section shall include identifying information about the petitioner and respondent and the date the order was issued, served, renewed, dissolved, or terminated. In the case of a one-year gun violence protective order, the court shall include the date the order is set to expire.

(c) The Hawaii criminal justice data center shall maintain a searchable database of the information it receives under this section and make the information available to law enforcement agencies upon request.

(d) The Hawaii criminal justice data center shall within one business day make information about an ex parte gun violence protective order or a one-year gun violence protective order issued, served, renewed, dissolved, or terminated pursuant to this part available to the National Instant Criminal Background Check System for the purposes of firearm purchaser background checks.

**§134-J Penalties.**

A person who files a petition for an ex parte gun violence protective order or a one-year gun violence protective order under this part, knowing the information in the petition to be materially false or with an intent to harass the respondent, is guilty of a misdemeanor.

**§134-K Law enforcement to retain other authority.**

The provisions of this part shall not affect the ability of a law enforcement officer to remove firearms or ammunition from any person pursuant to other lawful authority.

**§134-L Lack of liability for failure to seek order.**

This part shall not be construed to impose criminal or civil liability on any person who chooses not to seek an ex parte gun violence protective order or a one-year gun violence protective order pursuant to this part."

SECTION 3. Section 134-7, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) No person who has been restrained pursuant to an order of any court, including ~~[an ex parte order as provided in this subsection;]~~ a gun violence protective order issued pursuant to part ~~\_,~~ from contacting, threatening, or physically abusing any person, shall possess, control, or transfer ownership of any firearm or ammunition therefor, so long as the protective order, restraining order, or any extension is in effect, unless the order, for good cause shown, specifically permits the possession of a firearm and ammunition. ~~The protective order or restraining order [or order of protection]~~ shall specifically include a statement that possession, control, or transfer of ownership of a firearm or ammunition by the person named in the order is prohibited. ~~[Such]~~ The person shall relinquish possession and control of any firearm and ammunition owned by that person to the police department of the appropriate county for safekeeping for the duration of the order or extension thereof. ~~[In the case of an ex parte order, the affidavit or statement under oath that forms the basis for the order shall contain a statement of the facts that support a finding that the person to be restrained owns, intends to obtain or to transfer ownership of, or possesses a firearm, and that the firearm may be used to threaten, injure, or abuse any person. The ex parte order shall be effective upon service pursuant to section 586-6.]~~ At the time of service of a protective order or restraining order involving firearms and ammunition issued by any court, ~~[the]~~ a police officer may take custody of any and all firearms and ammunition in plain sight, those discovered pursuant to a consensual search, and those firearms surrendered by the person restrained. If the person restrained is the registered owner of a firearm and knows the location of the firearm, but refuses to surrender the firearm or refuses to disclose the location of the firearm, the person restrained shall be guilty of a misdemeanor. In any case, when a police officer is unable to locate the firearms and ammunition either registered under this chapter or known to the person granted protection by the court, the police officer shall apply to the court for a search warrant pursuant to chapter 803 for the limited purpose of seizing the firearm and ammunition.

For the purposes of this subsection, good cause shall not be based solely upon the consideration that the person subject to restraint pursuant to an order of any court~~[, including an ex parte order as provided in this subsection;]~~ is required to possess or carry firearms or ammunition during the course of the person’s employment. Good cause consideration may include but not be limited to the protection and safety of the person to whom a restraining order is granted.”

SECTION 4. Section 134-7.3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) Any person disqualified from ownership, possession, or control of firearms and ammunition under section 134-7[;] or part ~~\_,~~ within ~~[seven days]~~ forty-eight hours of disqualification, shall voluntarily surrender all firearms and ammunition to the chief of police where the person resides or dispose of all firearms and ammunition. If any person fails to voluntarily surrender or dispose of all firearms and ammunition within ~~[seven days]~~ forty-eight hours from the date of disqualification, the chief of police may seize all firearms and ammunition.”

2. By amending subsection (d) to read:

“(d) For the purposes of this section, “dispose” means selling the firearms to a gun dealer licensed under section 134-31, transferring ownership of the firearms to any person who meets the requirements of section 134-2, or surrendering all firearms to the chief of police where the person resides for storage



or disposal; provided[;] that, for a person subject to section 134-7(f)[;] or part .  
 “dispose” shall not include transferring ownership of the firearms to any person  
 who meets the requirements of section 134-2.”

SECTION 5. The judiciary shall adopt any rules of court necessary to implement this Act.

SECTION 6. The department of the attorney general shall adopt any rules, pursuant to chapter 91, Hawaii Revised Statutes, necessary to implement this Act.

SECTION 7. The chief of police of the respective counties shall adopt any procedures necessary to implement this Act.

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 9. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on January 1, 2020.

(Approved June 26, 2019.)