

COMMITTEE ON HEALTH, HOSPITALS AND HUMAN
SERVICES

12/06/2023-HELD IN COMMITTEE

BILL NO. 35-0187

Thirty-Fifth Legislature of the Virgin Islands

October 27, 2023

An Act amending title 19, part V, chapter 45, by adding subchapter XI, titled Extreme Risk Protection Orders, to allow a family or household member, law enforcement officer, healthcare worker, educator or co-worker to intervene and file a court petition to temporarily confiscate and ban a person's access to guns for one year if that person is deemed to be a risk to themselves or others

PROPOSED BY: Senator Diane T. Capehart

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 19, part V, chapter 45, is amended by adding subchapter XI to read as follows:

“Subchapter XI. Extreme Risk Protection Orders

§ 1101. Definitions

As used in this subchapter, the following terms have the following meanings:

(a) “Bodily injury” means any act, except one done in self-defense, that results in physical injury or sexual abuse.

(b) “Community member” means a licensed health-care professional or mental health professional who, through a direct professional relationship, provided care to the respondent

1 or the respondent's child within six months before requesting the protection order or an
2 educator who, through a direct professional relationship, interacted with the respondent or the
3 respondent's child within six months before requesting the protection order.

4 (c) "Educator" means a teacher employed to instruct students or a school
5 administrator in a school district, private school, charter school institute, or an individual
6 charter school, or a faculty member at an institution of higher education.

7 (d) "Extreme Risk Protection Order" means a final order issued by the Superior
8 Court, prohibiting the respondent from owning, purchasing, possessing, receiving, or having
9 in the respondent's custody or control any firearm or ammunition pursuant to this subchapter.

10 (e) "Family or household member" means, with respect to a respondent, any:

11 (1) Person related by blood, marriage, or adoption to the respondent;

12 (2) Person who has a child in common with the respondent, regardless of
13 whether the person has been married to the respondent or has lived together with the
14 respondent at any time.

15 (3) Person who regularly resides or regularly resided with the respondent within
16 the last six months;

17 (4) Domestic partner of the respondent;

18 (5) Person who has a biological or legal parent-child relationship with the
19 respondent, including stepparents and stepchildren and grandparents and grandchildren;
20 and

21 (6) Person who is acting or has acted as the respondent's legal guardian.

22 (f) "Law enforcement officer" means a peace officer as defined in 5 V.I.C. 3561,
23 police officer, probation officer, parole officer, correction officer, warden, prison guard, or
24 marshal.

(g) “Licensed health-care professional” means a school nurse who holds a current nursing license, or a physician, physician assistant, or licensed nurse practitioner who is a primary provider of health services to a respondent; a psychiatrist; or a licensed emergency room medical care provider.

(h) “Mental health professional” means a psychiatrist, psychologist, licensed professional social worker, marriage and family therapist, licensed professional counselor, or addiction counselor.

(i) “Petitioner” means the person who petitions for an extreme risk protection order pursuant to this subchapter.

(j) “Respondent” means the individual who is identified as the respondent in a petition filed under this subchapter.

(k) “Temporary Extreme Risk Protection Order” means a temporary order issued by the Superior Court, prohibiting the respondent from owning, purchasing, possessing, receiving, or having in the respondent’s custody or control any firearm or ammunition pursuant to this subchapter.

§ 1102. Petition for temporary extreme risk protection order

(a) A family or household member of the respondent, a community member, licensed healthcare professional, mental health professional, or a law enforcement officer or agency may request a temporary extreme risk protection order without notice to the respondent by including in the petition, an affidavit, signed under oath and penalty of perjury, that sets forth detailed allegations based on personal knowledge that the respondent poses a significant danger of causing personal injury to himself, herself, or others, in the near future by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition. If the petitioner is a law enforcement officer or law enforcement agency, the law

1 enforcement officer or law enforcement agency shall concurrently file an affidavit for a search
2 warrant to search for any firearms in the possession or control of the respondent at a location
3 or locations to be named in the warrant.

4 (b) Notwithstanding any law to the contrary, a licensed health-care professional or
5 mental health professional authorized to file a petition for an extreme risk protection order,
6 upon filing the petition for an extreme risk protection order, may disclose protected health
7 information of the respondent as necessary for the full investigation and disposition of the
8 petition for an extreme risk protection order. When disclosing protected health information,
9 the licensed health-care professional or mental health professional shall make reasonable
10 efforts to limit protected health information to the minimum necessary to accomplish the
11 filing of the request. Upon receipt of a petition by a licensed health-care professional, or
12 mental health professional, and for good cause shown, the court may issue orders to obtain
13 any records or documents relating to diagnosis, prognosis, or treatment, and clinical records,
14 of the respondent as necessary for the full investigation and disposition of the petition for an
15 extreme risk protection order. When protected health information is disclosed or when the
16 court receives any records or documents related to diagnosis, prognosis, or treatment or
17 clinical records, the court shall order that the parties are prohibited from using or disclosing
18 the protected health information for any purpose other than the proceedings for a petition for
19 an extreme risk protection order and shall order the return to the covered entity or destroy the
20 protected health information, including all copies made, at the end of the litigation or
21 proceeding. The court shall seal all records and other health information received that contain
22 protected health information. The decision of a licensed health-care professional or mental
23 health professional to disclose or not to disclose records or documents relating to the
24 diagnosis, prognosis, or treatment, and clinical records of a respondent, when made

1 reasonably and in good faith, may not be the basis for any civil, administrative, or criminal
2 liability with respect to the licensed health-care professional or mental health professional.

3 (c) In considering whether to issue a temporary extreme risk protection order under
4 this section, the court shall consider all relevant evidence, including the evidence described in
5 section 1004(f).

6 (d) The court shall issue a temporary extreme risk protection order if the court finds
7 by a preponderance of the evidence presented pursuant to section 1004(f), the respondent
8 poses a significant risk of causing personal injury to self or others in the near future by having
9 in the respondent's custody or control a firearm or by purchasing, possessing, or receiving a
10 firearm.

11 (e) The court shall hold a temporary extreme risk protection order hearing in person
12 or by telephone on the day the petition is filed or on the court day immediately following the
13 day the petition is filed. The court may schedule a hearing by telephone pursuant to local
14 court rule to reasonably accommodate a disability or, in exceptional circumstances, to protect
15 a petitioner from potential harm. The court shall require assurances of the petitioner's identity
16 before conducting a telephonic hearing. A copy of the telephonic hearing must be provided to
17 the respondent prior to the hearing for an extreme risk protection order.

18 (f) In accordance with section 1003, the court shall schedule a hearing within
19 fourteen days after the issuance of a temporary extreme risk protection order to determine if a
20 12-month extreme risk protection order should be issued pursuant to this subchapter. Notice
21 of that hearing date must be included with the temporary extreme risk protection order that is
22 served on the respondent. The court shall provide notice of the hearing date to the petitioner.

23 (g) Any temporary extreme risk protection order issued expires on the date and time
24 of the hearing on the extreme risk protection order petition or the withdrawal of the petition.

1 (h) A temporary extreme risk protection order must include:

2 (1) A statement of the grounds asserted for the order;

3 (2) The date the order was issued;

4 (3) The address of the court in which any responsive pleading may be filed;

5 (4) The date and time of the scheduled hearing; and

6 (5) A description of the requirements for the surrender of all firearms and
7 ammunition that the respondent owns; and

8 (6) The following statement:

9 To the subject of this temporary extreme risk protection order: this order is valid
10 until the date and time noted above. You may not have in your custody or control a
11 firearm or purchase, possess, receive, or attempt to purchase or receive a firearm while
12 this order is in effect. You must immediately surrender to the (insert name of law
13 enforcement agency in the jurisdiction where the respondent resides) all firearms in
14 your custody or possession, and any concealed carry permit issued to you. A hearing
15 will be held on the date and at the time noted above to determine if an extreme risk
16 protection order should be issued. Failure to appear at that hearing may result in a court
17 entering an order against you that is valid for 12 months. An attorney will be appointed
18 to represent you, or you may seek the advice of your own attorney at your own expense
19 as to any matter connected with this order.

20 (i) A law enforcement officer shall serve a temporary extreme risk protection order
21 concurrently with the notice of hearing and petition for an extreme risk protection order, with
22 a notice that includes referrals to appropriate resources, including domestic violence,
23 behavioral health, and counseling resources, upon the Respondent personally in the same
24 manner as provided for in section 1105 where the respondent resides.

(j) If the court issues a temporary extreme risk protection order, the court shall state the particular reasons for the court's issuance. If the court declines to issue a temporary extreme risk protection order, the court shall state the particular reasons for the court's denial.

§ 1103. Petition for an extreme risk protection order

(a) A family or household member of the respondent, a community member, licensed healthcare professional, mental health professional, or a law enforcement officer, or agency may file a petition for an extreme risk protection order that sets forth detailed allegations based on personal knowledge that the respondent poses a significant danger of causing personal injury to himself or herself or others in the near future by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition. If the petition is filed by a law enforcement officer or agency, the Department of Justice shall represent the officer or agency in any judicial proceeding upon request. If the petition is filed by a family or household member or community member, the petitioner, to the best of the petitioner's ability, shall notify the law enforcement agency in the jurisdiction where the respondent resides of the petition and the hearing date with enough advance notice to allow for participation or attendance. Upon the filing of a petition, the court shall appoint an attorney to represent the respondent, and the court shall include the appointment in the notice of hearing provided to the respondent pursuant to § 1104. The respondent may replace the attorney with an attorney of the respondent's own selection at any time at the respondent's own expense. The court shall pay the attorney fees for an attorney appointed for the respondent.

(b) Notwithstanding any law to the contrary, a licensed health-care professional or mental health professional authorized to file a petition for an extreme risk protection order, upon filing the petition for an extreme risk protection order, may disclose protected health

information, of the respondent as necessary for the full investigation and disposition of the petition for an extreme risk protection order. When disclosing protected health information, the licensed health-care professional or mental health professional shall make reasonable efforts to limit protected health information to the minimum necessary to accomplish the filing of the request. Upon receipt of a petition by a licensed health-care professional or mental health professional and for good cause shown, the court may issue orders to obtain any records or documents relating to diagnosis, prognosis, or treatment, and clinical records, of the respondent as necessary for the full investigation and disposition of the petition for an extreme risk protection order. When protected health information is disclosed or when the court receives any records or documents related to diagnosis, prognosis, or treatment or clinical records, the court shall order that the parties are prohibited from using or disclosing the protected health information for any purpose other than the proceedings for a petition for an extreme risk protection order and shall order the return to the covered entity or destroy the protected health information, including all copies made, at the end of the litigation or proceeding. The court shall seal all records and other health information received that contain protected health information. The decision of a licensed health-care professional or mental health professional to disclose or not to disclose records or documents relating to the diagnosis, prognosis, or treatment, and clinical records of a respondent, when made reasonably and in good faith, may not be the basis for any civil, administrative, or criminal liability with respect to the licensed health-care professional or mental health professional.

(c) An action under this subchapter must be filed in the division where the petitioner's law enforcement office is located or the division where the respondent resides.

(d) The petition must:

1 (1) allege that the respondent poses a significant danger of causing personal
2 injury to himself or herself or others by having a firearm or any ammunition in his or
3 her custody or control or by purchasing, possessing, or receiving a firearm or any
4 ammunition, and must be accompanied by an affidavit made under oath stating the
5 specific statements, actions, or facts that give rise to a reasonable fear of significant
6 dangerous acts by the respondent;

7 (2) identify the quantities, types, and locations of all firearms and ammunition
8 the petitioner believes to be in the respondent's current ownership, possession, custody,
9 or control;

10 (3) Identify whether the respondent is required to possess, carry, or use a
11 firearm as a condition of the respondent's current employment;

12 (4) Identify whether there is a known existing domestic abuse protection order
13 or emergency protection order governing the petitioner or respondent;

14 (5) Identify whether there is a pending lawsuit, complaint, petition, or other
15 action between the parties to the petition; and

16 (6) If the petitioner is not a law enforcement agency, identify whether the
17 petitioner informed a local law enforcement agency regarding the respondent.

18 (e) The petitioner shall make a good faith effort to provide notice to a family or
19 household member of the respondent and to any known third party who may be at risk of
20 violence. The notice must state that the petitioner intends to petition the court for an extreme
21 risk protection order or has already done so and must include referrals to appropriate
22 resources, including mental health, domestic violence, and counseling resources. The
23 petitioner shall attest in the petition to having provided such notice or shall attest to the steps
24 that will be taken to provide the notice.

(f) The petitioner shall list the address of record on the petition as being where the appropriate law enforcement agency is located.

(g) A court or a public agency may not charge fees for filing or for service of process to a petitioner seeking relief under this subchapter and shall provide the necessary number of certified copies, forms, and instructional brochures free of charge.

(h) A person is not required to post a bond to obtain relief in any proceeding under this subchapter.

(i) The Superior Court of the Virgin Islands has jurisdiction over proceedings under this subchapter.

§ 1104. Risk protection order hearings and issuance

(a) Upon receipt of a petition, the court shall order a hearing to be held no later than 14 days after the date of the order and shall issue a notice of hearing to the respondent for the same. The court shall provide the notice of the hearing no later than one court day after the date of the extreme risk protection order petition. The court may schedule a hearing by telephone pursuant to local court rule to reasonably accommodate a disability or, in exceptional circumstances, to protect a petitioner from potential harm. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing.

(b) Before the next court day, the court clerk shall forward a copy of the notice of hearing and petition to the law enforcement agency in the jurisdiction where the respondent resides for service upon the respondent.

(c) A copy of the notice of hearing and petition must be served upon the respondent in accordance with the rules for service of process as provided in rule 4 of the Virgin Islands Rules of Civil Procedure. Service issued pursuant to this section takes precedence over the service of other documents unless the other documents are of a similar emergency nature.

1 (d) The court may, as provided in section 1002, issue a temporary extreme risk
2 protection order pending the hearing ordered under this section. Such temporary order must
3 be served concurrently with the notice of hearing and petition as provided in section 1005.

4 (e) Upon notice and a hearing on the matter, if the court finds by clear and convincing
5 evidence that the respondent poses a significant danger of causing personal injury to himself
6 or herself or others by having in his or her custody or control, or by purchasing, possessing, or
7 receiving, a firearm or any ammunition, the court must issue an extreme risk protection order
8 for a period that is considered appropriate, up to and including but not exceeding 12 months.

9 (f) In determining whether grounds for an extreme risk protection order exist, the
10 court may consider any relevant evidence, including:

11 (1) A recent act or credible threat of violence by the respondent against self or
12 others, whether or not such violence or credible threat of violence involves a firearm;

13 (2) A pattern of acts or credible threats of violence by the respondent within the
14 past year, including but not limited to acts or credible threats of violence by the
15 respondent against self or others;

16 (3) A violation by the respondent of a Harassment Prevention Order issued
17 pursuant to 14 V.I.C. 113.

18 (4) A previous or existing extreme risk protection order issued against the
19 respondent and a violation of a previous or existing extreme risk protection order;

20 (5) A conviction of the respondent for a crime that included an underlying
21 factual basis of domestic violence as defined in 16 V.I.C. 91, or a violation by the
22 respondent of a restraining order issued pursuant to 16 V.I.C. 97.

23 (6) The respondent's ownership, access to, or intent to possess a firearm;

1 (7) A credible threat of or the unlawful or reckless use of a firearm by the
2 respondent;

3 (8) The history of use, attempted use, or threatened use of unlawful physical
4 force by the respondent against another person, or the respondent's history of stalking
5 another person;

6 (9) Any prior arrest of the respondent for a crime involving a weapon or a crime
7 against another person;

8 (10) Evidence of the respondent's abuse of controlled substances or alcohol;

9 (11) Whether the respondent is required to possess, carry, or use a firearm as a
10 condition of the respondent's current employment;

11 (12) Evidence of recent acquisition of a firearm or ammunition by the
12 respondent;

13 (13) Any relevant information from family and household members concerning
14 the respondent; and

15 (14) Witness testimony, taken while the witness is under oath, relating to the
16 matter before the court.

17 (g) A person, including an officer of the court, who offers evidence or
18 recommendations relating to the cause of action either shall present the evidence or
19 recommendations in writing to the court with copies to each party and his or her attorney, if
20 one is retained, or must present the evidence under oath at a hearing at which all parties are
21 present.

22 (h) In a hearing under this section, the rules of evidence apply to the same extent as in
23 a domestic violence restraining order proceeding under title 16 of the Virgin Islands Code.

1 (i) During the hearing, the court must consider whether a mental health evaluation,
2 chemical dependency evaluation or emergency commitment is appropriate and, if such
3 determination is made, may order such evaluations, as appropriate.

4 (j) An extreme risk protection order must include:

5 (1) A statement of the grounds supporting the issuance of the order;

6 (2) The date the order was issued;

7 (3) The date the order expires;

8 (4) Whether a mental health evaluation, chemical dependency evaluation or
9 emergency commitment of the respondent is required;

10 (5) The address of the court in which any responsive pleading should be filed;

11 (6) A description of the requirements for the surrender of all firearms and
12 ammunition that the respondent owns, under § 120(f); and

13 (7) The following statement:

14 “To the subject of this protection order: This order will last until the date noted
15 above. If you have not done so already, you must surrender immediately to the (Virgin
16 Islands Police Department) all firearms and ammunition that you own in your custody,
17 control, or possession and any license to carry a concealed weapon or firearm issued to
18 you under the Virgin Islands Code. You may not have in your custody or control, or
19 purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition
20 while this order is in effect. You shall request one hearing to vacate this order, starting
21 after the date of the issuance of this order, and to request another hearing after every
22 extension of the order, if any, and may seek the advice of an attorney as to any matter
23 connected with this order.”

(k) If the court issues an extreme risk protection order, the court must inform the respondent that he or she is entitled to request a hearing to vacate the order in the manner provided by section 1006. The court shall provide the respondent with a form to request a hearing to vacate.

(l) If the court denies the petitioner's request for an extreme risk protection order, the court must state the particular reasons for the denial.

(m) If the court denies the issuance of an extreme risk protection order but ordered a temporary extreme risk protection order and a law enforcement agency took custody of the respondent's concealed carry permit or the respondent surrendered the respondent's concealed carry permit as a result of the temporary extreme risk protection order, the officer who issued the concealed carry permit shall reissue the concealed carry permit to the respondent within three days, at no charge to the respondent.

(n) If the court issues an extreme risk protection order and the petitioner is a law enforcement officer or agency or community member, the petitioner shall make a good-faith effort to provide notice of the order to a family or household member of the respondent and to any known third party who may be at direct risk of violence. The notice must include referrals to appropriate resources, including domestic violence, behavioral health, and counseling resources.

§ 1105. Service

(a) An extreme risk protection order issued pursuant to section 1004 must be served personally upon the respondent.

(b) The law enforcement agency in the district where the respondent resides shall serve the respondent personally.

(c) On or before the next court day, the clerk of court shall forward a copy of the extreme risk protection order, issued pursuant to 1004, to the law enforcement agency specified in the order for service. Service of an order issued pursuant to this subchapter takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.

(d) If the law enforcement agency cannot complete service upon the respondent within five days, the law enforcement agency shall notify the petitioner. The petitioner shall then provide any additional information regarding the respondent's whereabouts to the law enforcement agency to effect service. The law enforcement agency may request additional time to allow for the proper and safe planning and execution of the court order.

(e) If an extreme risk protection order entered by the court states that the respondent appeared in person before the court, the necessity for further service is waived, and proof of service of that order is not necessary.

(f) Returns of service pursuant to this subchapter must be made in accordance with the applicable court rules.

(g) If the respondent is a veteran and there are any criminal charges against the respondent that result from the service or enforcement of the extreme risk protection order, the judge shall refer the case to a veterans court if the jurisdiction has a veterans court and the charges are veterans court eligible.

§ 1106. Termination and extension of orders

(a) The respondent may submit one written request for a hearing to vacate an extreme risk protection order issued under this subchapter, starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any.

1 (b) Upon receipt of the request for a hearing to vacate an extreme risk protection
2 order, the court shall set a date for a hearing. Notice of the request must be served on the
3 petitioner. The hearing must occur no sooner than 14 days and no later than 30 days after the
4 date of service of the request upon the petitioner.

5 (c) The respondent shall have the burden of proving by clear and convincing evidence
6 that the respondent does not pose a significant danger of causing personal injury to himself o
7 herself or others by having in his or her custody or control, purchasing, possessing, or
8 receiving a firearm or ammunition. The court may consider any relevant evidence, including
9 evidence of the considerations listed in section 1004 (f).

10 (d) If the court finds after the hearing that the respondent has met his or her burden of
11 proof, the court must vacate the order.

12 (e) The law enforcement agency holding any firearm or ammunition or license to
13 carry a concealed weapon or firearm that has been surrendered pursuant section 1007, shall be
14 notified of the court order to vacate the risk protection order.

15 (f) The court shall notify the petitioner of the impending end of an extreme risk
16 protection order. Notice must be received by the petitioner at least 30 days before the date the
17 order ends.

18 (g) The petitioner may, by motion, request an extension of an extreme risk protection
19 order at any time within 30 days before the end of the order.

20 (h) Upon receipt of the motion to extend, the court shall order that a hearing be held
21 no later than 14 days after the date the order is issued and shall schedule a hearing. The court
22 may schedule a hearing by telephone in the manner provided by section 1002(e). The
23 respondent must be personally serviced in the same manner provided by section 1005.

(i) In determining whether to extend an extreme risk protection order issued under this subchapter, the court may consider all relevant evidence, including evidence of the considerations listed in section 1004(f).

(j) If the court finds by clear and convincing evidence that the requirements for issuance of an extreme risk protection order as provided in section 1004 continue to be met, the court shall extend the order. However, if, after notice, the motion for extension is uncontested and no modification of the order is sought, the order may be extended on the basis of a motion or affidavit stating that there has been no material change in relevant circumstances since the entry of the order and stating the reason for the requested extension.

(k) The court may extend an extreme risk protection order for a period that it considers appropriate, up to and including but not exceeding 12 months, subject to an order to vacate as provided in section 1006, or to another extension order by the court.

§ 1107. Surrender of firearms and ammunition

(a) Upon issuance of an extreme risk protection order under this subchapter, including a temporary extreme risk protection order, the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition owned by the respondent in the respondent's custody, control, or possession except as provided in section 1008, and any license to carry a concealed weapon or firearm issued under Virgin Islands law, held by the respondent.

(b) The law enforcement officer serving an extreme risk protection order under this subchapter, including a temporary extreme risk protection order, shall request that the respondent immediately surrender all firearms and ammunition owned by the respondent in the respondent's custody, control, or possession and any license to carry a concealed weapon or firearm issued under Virgin Islands law, held by the respondent. The law enforcement

1 officer shall take possession of all firearms and ammunition owned by the respondent, and
2 any licenses to carry concealed weapons or firearms held by the respondent, alternatively, if
3 personal service by a law enforcement officer is not possible or is not required because the
4 respondent was present at the risk protection order hearing, the respondent shall surrender any
5 firearms and ammunition owned by the respondent and any licenses to carry concealed
6 weapons or firearms issued under Virgin Islands law held by the respondent, in a safe manner
7 to the control of the local law enforcement agency immediately after being served with the
8 order by service or immediately after the hearing at which the respondent was present.
9 Notwithstanding any law, a law enforcement officer may seek a search warrant from a court
10 of competent jurisdiction to conduct a search for firearms or ammunition owned by the
11 respondent if the officer has probable cause to believe that there are firearms or ammunition
12 owned by the respondent in the respondent's custody, control, or possession which have not
13 been surrendered.

14 (c) At the time of surrender, a law enforcement officer taking possession of any
15 firearm or ammunition owned by the respondent, or a license to carry a concealed weapon or
16 firearm issued under Virgin Islands law, held by the respondent shall issue a receipt
17 identifying all firearms and the quantity and type of ammunition that have been surrendered,
18 and any license surrendered and shall provide a copy of the receipt to the respondent. Within
19 72 hours after service of the order, the law enforcement officer serving the order shall file the
20 original receipt with the court and shall ensure that his or her law enforcement agency retains
21 a copy of the receipt.

22 (d) Upon the sworn statement or testimony of any person alleging that the respondent
23 has failed to comply with the surrender of firearms or ammunition owned by the respondent,
24 as required by an order issued under this subchapter, the court shall determine whether

1 probable cause exists to believe that the respondent has failed to surrender all firearms or
2 ammunition owned by the respondent in the respondent's custody, control, or possession. If
3 the court finds that probable cause exists, the court must issue a warrant describing the
4 firearms or ammunition owned by the respondent and authorizing a search of the locations
5 where the firearms or ammunition owned by the respondent are reasonably believed to be
6 found and the seizure of any firearms or ammunition owned by the respondent discovered
7 pursuant to such search.

8 (e) If a person other than the respondent claims title to any firearms or ammunition
9 surrendered pursuant to this subchapter and he or she is determined by the law enforcement
10 agency to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall
11 be returned to him or her, if:

12 (1) The lawful owner agrees to store the firearm or ammunition in a manner
13 such that the respondent does not have access to or control of the firearm or
14 ammunition; and

15 (2) The firearm or ammunition is not otherwise unlawfully possessed by the
16 owner.

17 (f) Upon the issuance of an extreme risk protection order, the court shall order a new
18 hearing date and require the respondent to appear no later than 3 business days after the
19 issuance of the order. The court shall require proof that the respondent has surrendered any
20 firearms or ammunition owned by the respondent in the respondent's custody, control, or
21 possession. The court may cancel the hearing upon a satisfactory showing that the respondent
22 is in compliance with the order.

(g) All law enforcement agencies must develop policies and procedures regarding the acceptance, storage, and return of firearms, ammunition, or licenses required to be surrendered under this subchapter.

§ 1108. Transfer of firearms and ammunition

(a) A respondent may elect to transfer all firearms and ammunition owned by the respondent that have been surrendered to or seized by a local law enforcement agency pursuant to section 1007 to another person who is willing to receive the respondent's firearms and ammunition. The law enforcement agency must allow such a transfer only if it is determined that the chosen recipient:

(1) Currently is eligible to own or possess a firearm and ammunition under federal and Virgin Islands law after confirmation through a background check;

(2) Attests to storing the firearms and ammunition in a manner such that the respondent does not have access to or control of the firearms and ammunition until the risk protection order against the respondent is vacated or ends without extension; and

(3) Attests not to transfer the firearms or ammunition back to the respondent until the risk protection order against the respondent is vacated or ends without extension.

§ 1109. Return and disposal of firearms and ammunition

(a) If an extreme risk protection order is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition owned by the respondent or a license to carry a concealed weapon or firearm issued under Virgin Islands law held by the respondent, that has been surrendered or seized pursuant to this subchapter must return such surrendered firearm, ammunition, or license to carry a concealed weapon or firearm as requested by a respondent only after confirming through a background check that the

1 respondent is currently eligible to own or possess firearms and ammunition and after
2 confirming with the court that the risk protection order has been vacated or has ended without
3 extension.

4 (b) A law enforcement agency must provide notice to any family or household
5 members of the respondent before the return of any surrendered firearm and ammunition
6 owned by the respondent.

7 (c) Any firearm and ammunition surrendered by a respondent pursuant to section
8 1007, which remains unclaimed for 1 year by the lawful owner after the issuance of an order
9 to vacate the risk protection order, shall be disposed of in accordance with the law
10 enforcement agency's policies and procedures for the disposal of firearms in police custody.

11 **§ 1110. Reporting of orders**

12 (a) Within 24 hours after issuance, the clerk of the court shall enter any extreme risk
13 protection order or temporary extreme risk protection order issued under this subchapter into
14 the uniform case reporting system.

15 (b) Within 24 hours after issuance, the clerk of the court shall forward a copy of an
16 order issued under this subchapter to the appropriate law enforcement agency specified in the
17 order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order
18 into the National Crime Information Center. The order must remain in each system for the
19 period stated in the order, and the law enforcement agency may only remove an order from
20 the systems that has ended or been vacated. Entry of the order into the National Crime
21 Information Center constitutes notice to all law enforcement agencies of the existence of the
22 order. The order is fully enforceable in the entire Territory of the United States Virgin
23 Islands.

(c) The issuing court shall, within 3 business days after issuance of an extreme risk protection order or temporary extreme risk protection order, forward all available identifying information concerning the respondent, along with the date of order issuance, to the Virgin Islands Police Department. Upon receipt of the information, the department shall determine if the respondent has a license to carry a concealed weapon or firearm. If the respondent does have a license to carry a concealed weapon or firearm, the department must immediately suspend the license.

(d) If an extreme risk protection order is vacated before its end date, the clerk of the court shall, on the day of the order to vacate, forward a copy to the Virgin Islands Police Department specified in the order to vacate. Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered.

§ 1111. Penalties

(a) A person who makes a false statement, which the person does not believe to be true, under oath in a hearing under this subchapter, with regard to any material matter, commits a felony pursuant to 14 V.I.C § 1541.

(b) A person who has in his or her custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition with knowledge that he or she is prohibited from doing so by an order issued under this subchapter, commits a felony pursuant to 23 V.I.C. § 456a and will be penalized pursuant to 23 V.I.C. §484.

§ 1112. Law enforcement retains other authority

This subchapter does not affect the ability of a law enforcement officer to remove a firearm or ammunition or license to carry a concealed weapon or concealed firearm from any

person or to conduct any search and seizure for firearms or ammunition pursuant to other lawful authority.

§ 1113. Liability

Except as provided in section 1011, this subchapter does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining an extreme risk protection order or temporary extreme risk protection order, including, but not limited to, providing notice to the petitioner, a family or household member of the respondent, and any known third party who may be at risk of violence or failure to provide such notice, or reporting, declining to report, investigating, declining to investigate, filing, or declining to file, a petition under this subchapter.

§ 1114. Instructional and informational material

(a) The Office of the Administrator of Courts shall develop and prepare instructions and informational brochures, standard petitions and risk protection order forms, and a court staff handbook on the extreme risk protection order process. The standard petition and order forms must be used after January 1, 2024, for all petitions filed and orders issued pursuant to this subchapter. The office shall determine the significant non-English-speaking or limited English-speaking populations and prepare the instructions and informational brochures and standard petitions and risk protection order forms in such languages. The instructions, brochures, forms, and handbook must be prepared in consultation with interested persons, including representatives of gun violence prevention groups, judges, and law enforcement personnel. Materials must be based on best practices and must be available online to the public.

(b) The instructions must be designed to assist petitioners in completing the petition and must include a sample of a standard petition and order for protection forms.

1 (c) The instructions and standard petition must include a means for the petitioner to
2 identify, with only layman's knowledge, the firearms or ammunition the respondent may
3 own, possess, receive, or have in his or her custody or control. The instructions must provide
4 pictures of types of firearms and ammunition that the petitioner may choose from to identify
5 the relevant firearms or ammunition or must provide an equivalent means to allow petitioners
6 to identify firearms or ammunition without requiring specific or technical knowledge
7 regarding the firearms or ammunition.

8 (d) The informational brochure must describe the use of and the process for
9 obtaining, extending, and vacating an extreme risk protection order under this subchapter and
10 must provide relevant forms.

11 (e) The risk protection order form must include, in a conspicuous location, notice of
12 the criminal penalties resulting from a violation of the order and the following statement:
13 "You have the sole responsibility to avoid or refrain from violating this order's provisions.
14 Only the court can change the order and only upon written request."

15 (f) The court staff handbook must allow for the addition of a community resource list
16 by the clerk of the court.

17 (g) Any clerk of court may create a community resource list of crisis intervention,
18 mental health, substance abuse, interpreter, counseling, and other relevant resources serving
19 the county in which the court is located. The court may make the community resource list
20 available as part of or in addition to the informational brochures described in subsection (a).

21 (h) The Office of the Administrator of Courts shall distribute a master copy of the
22 petition and order forms, instructions, and informational brochures to the clerks of court.
23 Distribution of all documents shall, at a minimum, be in an electronic format or formats
24 accessible to all courts and clerks of court in the Territory.

(i) Within 90 days after receipt of the master copy from the Office of the Administrator of Courts, the clerk of the court shall make available the standardized forms, instructions, and informational brochures required by this subsection.

(j) The Office of the Administrator of Courts shall update the instructions, brochures, standard petition and risk protection order forms, and court staff handbook as necessary, including when changes in the law make an update necessary.

BILL SUMMARY

The new subchapter is divided into twelve sections. Section 1101 sets out the relevant definitions, section 1102 describes the process for filing a petition for a temporary extreme risk protection order, and section 1103 describes the process for filing a petition for an extreme risk protection order. Section 1104 lays out the format for extreme risk protection order hearings and issuance, section 1105 describes service of process requirements, and section 1106 sets out the process for termination and extension of extreme risk protection orders. Section 1107 describes the process for surrendering firearms and ammunition and Section 1108 identifies a process for firearms and ammunition to be transferred to another person instead of surrendered to the police. Section 1109 describes the requirements for the return and disposal of firearms and ammunition, section 1110 addresses how extreme risk protection orders are reported locally and nationally, section 1111 lays out the penalties for a violation of the process or the extreme risk protection order, and section 1112 acknowledges the retention of law enforcement authority. Section 1113 limits the liability for petitioners and section 1114 requires the Administrator of Courts to create and disseminate instructional and informational material.

BR23-0732/October 17, 2023/HLF