

House Bill 553

By: Representatives Scott of the 76<sup>th</sup>, Davis of the 87<sup>th</sup>, Hutchinson of the 106<sup>th</sup>, and Schofield of the 63<sup>rd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated,  
2 relating to dangerous instrumentalities and practices, so as to provide for issuance of  
3 temporary ex parte risk protection orders and risk protection orders restricting the possession  
4 of firearms, ammunition, and weapons carry licenses; to provide for the termination and  
5 extension of such orders; to provide for notice and hearing; to provide for surrender of  
6 firearms, ammunition, and weapons carry licenses; to provide for definitions; to provide for  
7 construction; to provide for related matters; to repeal conflicting laws; and for other  
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to  
12 dangerous instrumentalities and practices, is amended by adding a new part to read as  
13 follows:

H. B. 553

14 "Part 3A15 16-11-140.16 As used in this part, the term:17 (1) 'Colleague' means a person employed by or working at the same place of business or  
18 employment as the respondent.19 (2) 'Educator' means a person employed by or volunteering at a school with which the  
20 respondent may have a connection.21 (3) 'Family or household member' means past or present spouses, persons who are  
22 parents of the same child, or other persons living or formerly living in the same  
23 household.24 (4) 'Firearm' means any weapon that is designed to or may readily be converted or  
25 assembled to expel a projectile by the action of an explosive.26 (5) 'Law enforcement agency' means any unit, organ, or department of this state, or a  
27 subdivision or municipality thereof, whose primary functions include the enforcement of  
28 criminal or traffic laws, the preservation of public order, the protection of life and  
29 property, or the prevention, detection, or investigation of crime.30 (6) 'Law enforcement officer' means any peace officer employed by a law enforcement  
31 agency.32 (7) 'Medical professional' means any person licensed or certified to provide healthcare  
33 services to natural persons.34 (8) 'Petitioner' means a person authorized pursuant to Code Section 16-11-141 to seek  
35 issuance of an order issued under this part.36 (9) 'Respondent' means the individual against whom a proceeding has been commenced  
37 for issuance of an order issued under this part.38 (10) 'School' means any educational institution, public or private, providing education  
39 to children at any level, and including extracurricular programs of such institution.

40 (11) 'Service organization personnel' means any person employed by or volunteering at  
41 a business or organization that provides care, religious services, training, treatment, or  
42 shelter to natural persons.

43 16-11-141.

44 (a) The superior court of the county where the respondent resides shall have jurisdiction  
45 over all proceedings under this part.

46 (b) A protective order issued pursuant to this part may be sought by any law enforcement  
47 officer, medical professional who has examined the respondent, family or household  
48 member of the respondent, or any colleague, educator, or service organization personnel  
49 who has had substantial interactions with the respondent.

50 16-11-142.

51 (a) Upon the filing of a verified petition in which the petitioner alleges, with specific facts,  
52 that reasonable cause exists to establish that the respondent poses a significant risk of  
53 causing personal injury to himself or herself or others by possessing or acquiring a firearm  
54 or any ammunition, the court may order such temporary relief ex parte as it deems  
55 necessary to protect the respondent or others from such risk. Upon or prior to the filing of  
56 a petition under this part, the petitioner shall make a good faith effort to notify any known  
57 family or household member of the respondent or any third party who may be at risk due  
58 to the respondent's possession or potential acquisition of a firearm or any ammunition of  
59 the filing of such petition. If the court issues an ex parte risk protection order, a copy of  
60 the order shall be immediately furnished to the petitioner, the respondent, and to the law  
61 enforcement agency with jurisdiction to enforce such order. Such temporary ex parte risk  
62 protection order shall remain in effect until the earlier of the issuance of a court order  
63 dismissing such order or the holding of a hearing in accordance with subsection (b) of this  
64 Code section.

65 (b) Within ten days of the filing of the petition under this part or as soon as practical  
66 thereafter, but not later than 30 days after the filing of the petition, a hearing shall be held  
67 at which the petitioner must prove the allegations of the petition by a preponderance of the  
68 evidence as in other civil cases. In the event a hearing cannot be scheduled within the  
69 county where the case is pending within the 30 day period, the same shall be scheduled and  
70 heard within any other county of that circuit. If a hearing is not held within 30 days of the  
71 filing of the petition, such petition shall stand dismissed unless the parties otherwise agree.

72 (c) Social service agency staff members designated by the court shall be authorized to  
73 explain to all petitioners not represented by counsel the procedures for filling out and filing  
74 all forms and pleadings necessary for the presentation of their petition to the court. The  
75 clerk of the court shall be authorized to provide forms for petitions and pleadings to  
76 petitioners and to any other person designated by the court pursuant to this Code section  
77 as authorized to advise petitioners on the completion and filing of such petitions and  
78 pleadings. The clerk shall not be required to provide assistance to persons in completing  
79 such forms or in presenting their case to the court. Any assistance provided pursuant to this  
80 Code section shall be performed without cost to the petitioners. The performance of such  
81 assistance shall not constitute the practice of law as defined in Code Section 15-19-51.

82 (d) If the court finds that a party is avoiding service to delay a hearing, the court shall be  
83 authorized to delay dismissal of the petition for an additional 30 days.

84 16-11-143.

85 (a) In order to determine if a risk protection order shall be granted, the court shall be  
86 authorized to consider any relevant evidence, including, but not limited to, any of the  
87 following:

88 (1) An act or threat of violence by the respondent within the past 12 months, including,  
89 but not limited to, acts or threats of violence by the respondent against himself or herself  
90 or others regardless as to whether or not such violence or threat involved a firearm;

- 91 (2) Evidence of the respondent being afflicted with a disorder of thought or mood which  
92 significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope  
93 with the ordinary demands of life;
- 94 (3) A violation by the respondent of an order issued pursuant to Code Section 16-5-94  
95 or 19-13-4 or any similar such order issued by any other state;
- 96 (4) A previous or existing risk protection order issued against the respondent pursuant  
97 to this part or any similar such order issued by any other state;
- 98 (5) Any evidence that the respondent has violated a previous or existing risk protection  
99 order issued pursuant to this part or any similar such order issued by any other state;
- 100 (6) Whether the respondent, in this state or any other state, has been convicted of, had  
101 adjudication withheld on, or has pled nolo contendere to a crime that constitutes family  
102 violence as defined in Code Section 19-13-1;
- 103 (7) Whether the respondent has used, or threatened to use, any weapons against himself  
104 or herself or others;
- 105 (8) Any evidence of the unlawful or reckless use, display, or brandishing of a firearm by  
106 the respondent;
- 107 (9) Any evidence of recurring threats or use of physical force by the respondent against  
108 another person or conduct constituting stalking;
- 109 (10) Whether the respondent, in this state or any other state, has been arrested for, has  
110 been convicted of, had adjudication withheld on, or has pled nolo contendere to a crime  
111 involving violence or a threat of violence;
- 112 (11) Corroborated evidence of the abuse of controlled substances or alcohol by the  
113 respondent;
- 114 (12) Evidence of recent acquisition of firearms or ammunition by the respondent;
- 115 (13) Any relevant information from family and household members concerning the  
116 respondent; or
- 117 (14) Witness testimony under oath before the court relating to the matter.

118 (b) The rules of evidence shall apply in a hearing held pursuant to this part to the same  
119 extent as in a family violence proceeding under Code Section 19-13-3.

120 (c) Upon a finding by a preponderance of the evidence that a respondent poses a  
121 significant risk of causing personal injury to himself or herself or others by possessing or  
122 acquiring a firearm or any ammunition, the court shall be authorized to order a risk  
123 protection order which may:

124 (1) Order a respondent to surrender all firearms and ammunition in his or her possession  
125 or control to law enforcement;

126 (2) Order a respondent to surrender his or her weapons carry license to law enforcement;

127 (3) Direct a law enforcement agency to seize, secure, and store any firearms or  
128 ammunition known to be in possession of the respondent;

129 (4) Prohibit a respondent from the acquisition of any firearm or ammunition; or

130 (5) Order a respondent to undergo a mental health evaluation or chemical dependency  
131 evaluation or both.

132 (d) Any risk protection order issued pursuant to this part shall include the date upon which  
133 such order expires, which shall be no later than 12 months from the date of original  
134 issuance; provided, however, that any risk protection order issued pursuant to this part may  
135 be extended for a period of up to 12 months upon the motion of a petitioner, notice to the  
136 respondent, and after a hearing otherwise provided for in this part has been held.

137 (e) A copy of the risk protection order shall be issued by the clerk of the superior court to  
138 the sheriff of the county wherein such order was entered and shall be retained by the sheriff  
139 until the expiration of such order. The clerk of such court shall immediately report such  
140 order to the Georgia Crime Information Center, but in no case later than five business days  
141 after the date of such order.

142 16-11-144.

143 (a) Nothing in this part shall be construed as preventing the filing or granting of a  
144 protective order otherwise provided for under law.

145 (b) The remedies provided by this part are not exclusive but are additional to any other  
146 remedies provided by law.

147 16-11-145.

148 (a) A risk protection order issued pursuant to this part shall apply and shall be effective  
149 throughout this state.

150 (b) A violation of an order issued pursuant to this part may be punished by an action for  
151 contempt or may be criminally punished as provided in Article 7 of Chapter 5 of Title 16."

152 **SECTION 2.**

153 All laws and parts of laws in conflict with this Act are repealed.