

Amendment No. _____

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

Signature of Sponsor

AMEND <SB>

<HB>

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, Part 13, is amended by adding the following new sections:

39-17-1367.

As used in this section and §§ 39-17-1368 – 39-17-1377:

(1) "Mental illness" means a psychiatric disorder, alcohol dependence, or drug dependence, but does not include intellectual disability or other developmental disabilities;

(2) "Serious behavioral condition" means a condition in a person who currently or at any time during the past year has had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet psychiatric diagnostic criteria that results in functional impairment that substantially interferes with or limits the person's role or functioning in family, school, occupational, or community activities and includes any mental disorder, regardless of whether it is of biological etiology;

(3) "Serious emotional disturbance" means the same as defined in § 33-1-101; and

(4) "Substantial likelihood of serious harm":

(A) Means the respondent does one (1) or more of the following, as evidenced by a substantial step toward the commission of a violent or unlawful act:

(i) Threatens or attempts suicide or to inflict serious bodily harm on the respondent's self;

(ii) Threatens or attempts homicide or other violent behavior against another; or

(iii) Places another in reasonable fear of violent behavior and serious physical harm; and

(B) Shall not be found based solely on:

(i) The mere possession of firearms or ammunition that a person lawfully owns or possesses;

(ii) The commission of any act of self-defense or defense of another that is lawfully justified under § 39-11-611 or § 39-11-612; or

(iii) The fact that a person, including, but not limited to, a veteran of the United States armed forces, is receiving treatment for post-traumatic stress disorder.

39-17-1368.

(a)

(1) There is created an action known as a petition for a temporary mental health order of protection, which may only be filed by a law enforcement officer or law enforcement agency.

(2) A petition for a temporary mental health order of protection:

(A) Must be filed in the county where the respondent resides;

(B) Does not require the petitioner to be represented by an attorney or post a bond and cannot result in an award of attorney fees;

(C) Must allege that the respondent poses a substantial likelihood of serious harm by having a firearm or any ammunition in the respondent's custody or control or by purchasing, possessing, or receiving a firearm or any ammunition, and must be accompanied by a

sworn statement providing the specific statements, actions, or facts that give rise to the petition;

(D) Identify whether there is a known existing order of protection governing the respondent under title 36, chapter 3, part 6 or under any other applicable statute; and

(E) Include a physical description of the respondent and the respondent's last known location.

(3) The petitioner must make a good faith effort to provide notice of the petition to any known third party who the petitioner asserts in the petition may be at risk of violence.

(4) A court or a public agency shall not charge fees for filing or for service of process to a petitioner seeking relief under this section.

(5)

(A) Except as provided in subdivision (a)(5)(B), the general sessions courts, circuit courts, and chancery courts of this state have jurisdiction over proceedings under this section.

(B) The juvenile courts of this state have jurisdiction over proceedings brought against minors under this section.

(b)

(1) Upon receipt of a petition, the court must order:

(A) A hearing to be held at least three (3) days but no later than five (5) days after the date the petition is filed and must issue a notice of hearing to the respondent. The hearing may be held more than five (5) days after the petition is filed, only at the request of the respondent, but in no event should the hearing be held more than ten (10) days after the petition is filed;

(B)

(i) The appointment of an attorney to represent the respondent. The respondent may elect to employ an attorney of the respondent's choosing, who should file a notice of appearance with the clerk of the court. A court-appointed attorney shall be paid for services by the administrative office of the courts at the rate set in Tennessee Supreme Court Rule 13; and

(ii) If the court determines based on the petition that the respondent is not able to understand the nature of the proceedings and cannot communicate with counsel in the conduct of the case or if the respondent is a minor, then the court may appoint another person to serve as the respondent's guardian ad litem. An attorney representing the respondent shall not serve as guardian ad litem; and

(C) The respondent to undergo an assessment for suicidal or homicidal ideation by an evaluator who has been certified by the commissioner of mental health and substance abuse services, which must occur prior to the hearing. When making this determination, the evaluator and the evaluator's employer are immune from any civil liability and have an affirmative defense to any criminal liability arising from the evaluation.

(2) The clerk of the court shall cause a copy of the petition and the order setting a hearing, appointing counsel, and requiring an assessment to be forwarded on or before the next business day to the appropriate law enforcement agency for service upon the respondent as provided in § 39-17-1369.

(3) At a hearing on a petition for a temporary mental health order of protection, the court may consider any relevant evidence, subject to the Rules of Civil Procedure.

(4) If the court determines that a petition for a temporary mental health order of protection is frivolous, then the court must order the dismissal of the petition without a hearing or mental health evaluation and the expunction of all public records of the petition.

(c) Upon notice and a hearing on the matter, if the court finds the following by clear and convincing evidence, then the court shall issue a temporary mental health order of protection for a period of up to one hundred eighty (180) days:

(1) The respondent poses a current and ongoing substantial likelihood of serious harm by having in the respondent's custody or control or by purchasing, possessing, or receiving, a firearm or ammunition;

(2) The respondent has a mental illness, serious behavioral condition, or serious emotional disturbance; and

(3) No reasonable alternative is available by law.

(d)

(1) Except as provided in subdivision (d)(2), a person who offers evidence or recommendations relating to the petition shall present the evidence under oath at a hearing at which all parties are present. The respondent shall have the opportunity to present evidence and cross examine any witness at the hearing.

(2) The evaluator may testify through the use of electronic audio-visual equipment, which allows the evaluator, the court, and the respondent to view and hear each other simultaneously.

(e) A temporary mental health order of protection must include the following:

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

(2) The dates the order is issued and expires;

(3) Whether an additional mental health evaluation or substance abuse assessment is required;

(4) A requirement that the respondent attend available mental health treatment, which may include counseling programs that address violence and control issues, anger management, or substance abuse problems;

(5) The requirements for the firearms and ammunition dispossession;
and

(6) The following statement:

To the subject of this protection order: This order will last until the date noted above. If you have not done so already, you must immediately surrender to the (insert name of law enforcement agency) any license to carry a handgun issued to you under Tennessee Code Annotated, § 39-17-1351 or § 39-17-1366, and dispossess all firearms and ammunition that you own or have in your custody, control, or possession. You may not have in your custody or control, or purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. You have the right to request a hearing to vacate this order, starting after the date of the issuance of this order, and to request another hearing after every extension of this order, if any. You may seek the advice of an attorney as to any matter connected with this order.

(f) If the court denies the petitioner's request for a temporary mental health order of protection, then the court must issue a written order stating the particular reasons for the denial and ordering the expunction of all public records of the petition for a temporary mental health order of protection.

(g) The issuance of a temporary mental health order of protection is not an adjudication of the respondent as a mental defective for purposes of 18 U.S.C. § 922.

39-17-1369.

(a) The clerk of the court shall furnish a copy of the notice of the court's order and the petition and, if applicable, the temporary mental health order of protection to the sheriff of the county where the respondent resides or can be found, who shall personally serve the document upon the respondent and, if the respondent is a minor, the respondent's parent or legal guardian as soon as possible on any day of the week and at any time of the day or night. Service under this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.

(b) All orders issued, changed, continued, extended, or vacated after the original service of documents pursuant to subsection (a) must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, then the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, then the clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection (b), the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

39-17-1370.

(a) The respondent may submit one (1) written motion for a hearing to vacate a temporary mental health order of protection issued under § 39-17-1368, starting after the date of the issuance of the order, and may file a motion for another hearing after every extension of the order, if any.

(b) Upon receipt of the motion for a hearing to vacate a temporary mental health order of protection, the court shall set a date for a hearing. Notice of the motion and hearing must be served on the petitioner in accordance with § 39-17-1369. The hearing

must occur no sooner than fourteen (14) days and no later than thirty (30) days after the date of service of the motion upon the petitioner.

(c) The respondent has the burden of proving by a preponderance of the evidence that the respondent does not pose a substantial likelihood of serious harm by having in the respondent's custody or control, purchasing, possessing, or receiving a firearm or ammunition. The court may consider any relevant evidence.

(d) If the court finds after the hearing that the respondent has met the burden of proof, then the court must vacate the order.

(e) The clerk of the court shall notify the law enforcement agency holding any firearm or ammunition or handgun carry permit that has been surrendered pursuant to § 39-17-1372 of the court order to vacate the temporary mental health order of protection.
39-17-1371.

(a) The court shall notify the petitioner of the impending end of a temporary mental health order of protection issued under § 39-17-1368. Notice must be received by the petitioner at least forty-five (45) days before the date the order ends.

(b)

(1) The petitioner may, by motion, request an extension of a temporary mental health order of protection at any time within forty-five (45) days before the end of the order.

(2) Upon receipt of the motion to extend, the court shall order that a hearing be held no later than fourteen (14) days after receipt of the motion. The respondent must be personally served in the same manner provided by § 39-17-1369.

(3) In determining whether to extend a temporary mental health order of protection, the court may consider any relevant evidence, subject to the Rules of Civil Procedure.

(4) If the court finds by clear and convincing evidence that the requirements for issuance of a temporary mental health order of protection as provided in § 39-17-1368 continue to be met, then the court must extend the order. However, if, after notice to the respondent, the motion for extension is uncontested and no modification of the order is sought, then 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 entry of the order and stating the reason for the requested extension.

(5) The court may extend a temporary mental health order of protection for a period that the court deems appropriate, up to one hundred eighty (180) days.

39-17-1372.

(a) Upon issuance of a temporary mental health order of protection under § 39-17-1368, the court shall order the respondent:

(1) To terminate physical possession of all firearms and ammunition by any lawful means, such as transferring possession to a third party who is not prohibited from possessing firearms, within forty-eight (48) hours of the issuance of the order;

(2) To complete and return an affidavit of firearm dispossession form, as provided by the court, within three (3) days of issuance; and

(3) That if the respondent possesses firearms as business inventory or that are registered under the National Firearms Act (26 U.S.C. §§ 5801 et seq.), lawful dispossession may occur in the manner provided by § 36-3-625(f).

(b) When the respondent is lawfully dispossessed of firearms and ammunition as required by this section, the respondent shall complete an affidavit of firearms dispossession form and return it to the court issuing the order of protection. If the respondent fails to complete the affidavit of firearms dispossession with three (3) days of

issuance, the court shall set a hearing no later than seven (7) days after issuance of the order and require the respondent to appear. At the hearing, the court shall require proof that the respondent has dispossessed any firearms or ammunition owned by the respondent or in the respondent's custody, control, or possession. The court may cancel the hearing upon a satisfactory showing that the respondent is in compliance with the order.

39-17-1373.

(a) Within twenty-four (24) hours after issuance, the clerk of the court shall enter any temporary mental health order of protection issued pursuant to § 39-17-1368 into the case reporting system.

(b) Within twenty-four (24) hours after issuance, the clerk of the court shall forward a copy of a temporary mental health order of protection to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the national crime information center and similar state databases. The order must remain in each system for the period stated in the order, and the law enforcement agency may only remove an order from the systems which has ended or has been vacated. Entry of the order into the national crime information center and similar state databases constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in this state.

(c) The issuing court shall, within three (3) business days after issuance of a temporary mental health order of protection, forward all available identifying information concerning the respondent, along with the date of order issuance, to the department of safety. Upon receipt of the information, the department shall determine if the respondent has a handgun carry permit issued pursuant to § 39-17-1351 or § 39-17-1366. If the respondent does have a handgun carry permit, then the department must immediately suspend the permit.

(d) If a temporary mental health order of protection is vacated before its end date, the clerk of the court shall, on the day of the order to vacate, forward a copy of the order to the department of safety and the appropriate law enforcement agency specified in the order to vacate. Within one (1) business day of receipt of the order, the specified law enforcement agency shall remove the order from any computer-based system in which the order was entered pursuant to subsection (b).

39-17-1374.

(a)

(1) A person who intentionally makes a false statement or omits relevant information, with intent to deceive, when testifying under oath in a hearing under § 39-17-1368 in regard to any material matter commits aggravated perjury under § 39-16-703.

(2) A respondent may bring an action under this subdivision (a)(2) against a person who intentionally makes a false statement or omits relevant information, with intent to deceive, when testifying under oath in a hearing under § 39-17-1368 in regard to any material matter. The respondent may recover compensatory damages, punitive damages, attorney fees, and costs.

(b) A person who files a petition, pursuant to § 39-17-1368, with intent to unlawfully deny or impede the respondent's exercise or enjoyment of any right commits official oppression under § 39-16-403.

(c) A person who has in the person's custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition, knowing that the person is prohibited from doing so by a temporary mental health order of protection issued pursuant to § 39-17-1368, commits a Class E felony.

(d) A person who gives, sells, lends, or otherwise transfers a firearm to another, when the person knows that the person receiving the firearm is subject to a temporary mental health order of protection commits a Class E felony.

39-17-1375.

Sections 39-17-1367 – 39-17-1377 do not affect the ability of a law enforcement officer to remove a firearm or ammunition or handgun carry permit from any person or to conduct any search and seizure for firearms or ammunition pursuant to other lawful authority.

39-17-1376.

Except as provided in § 39-17-1374, this part does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining a temporary mental health order of protection, 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 § 39-17-1368.

39-17-1377.

(a) The administrative office of the courts shall develop and prepare standard petitions, temporary mental health order of protection forms, and affidavits of firearms dispossession. The standard petition and order forms must be used after October 1, 2023, for all petitions filed and orders issued pursuant to § 39-17-1368.

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

(c) The administrative office of the courts shall distribute a master copy of the standard petitions, temporary mental health order of protection forms, and affidavits of firearms dispossession to the clerks of court. Distribution of all documents must, at a minimum, be in an electronic format accessible to all courts and clerks of court.

SECTION 2. Tennessee Code Annotated, Section 39-17-1316(a)(1), is amended by deleting the first sentence and substituting:

Any person appropriately licensed by the federal government may stock and sell firearms to persons desiring firearms; however, sales to persons who have been convicted of the offense of stalking, as prohibited by § 39-17-315, who are addicted to alcohol, who are ineligible to receive firearms under 18 U.S.C. § 922, who have been judicially committed to a mental institution pursuant to title 33 or adjudicated as a mental defective, or who are subject to a temporary mental health order of protection issued under § 39-17-1368 are prohibited.

SECTION 3. Tennessee Code Annotated, Section 39-17-1352(a), is amended by adding the following new subdivision:

(11) Is subject to a current temporary mental health order of protection issued under § 39-17-1368.

SECTION 4. Tennessee Code Annotated, Title 33, Chapter 6, Part 7 , is amended by adding the following new section:

Before discharging a person, who was admitted under part 2, part 4, or part 5, the chief officer of the hospital to which the person was admitted shall determine if the person poses a substantial likelihood of serious harm, as defined in § 39-17-1367. If the chief officer determines that the person poses a substantial likelihood of serious harm, the chief officer shall report the determination to the law enforcement agency with jurisdiction in the person's county of residence.

SECTION 5. For the purpose of implementation, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect October 1, 2023, the public welfare requiring it.