

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4683**

BY DELEGATE DOYLE

[Introduced February 04, 2020; Referred to the  
Committee on Health and Human Resources then the  
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding there to a new article,  
2 designated §48-32-1, §48-32-2, §48-32-3, §48-32-4, §48-32-5, §48-32-6, §48-32-7, §48-  
3 32-8, §48-32-9, and §48-32-10, all related to extreme risk protection orders; establishing  
4 the “Better Safe than Sorry Act of 2020”; defining terms; establishing process for issuance  
5 of extreme risk protection order; establishing processes for issuance of ex parte extreme  
6 risk protection order; establishing requirements for issuance of extreme risk protection  
7 order; establishing notice requirements; requiring hearing on petition; setting forth the  
8 process for termination or renewal of extreme risk protection order; creating process by  
9 which firearms and ammunition are relinquished to law enforcement; providing for the  
10 return or disposal of firearms and ammunition; requiring extreme risk protection order be  
11 reported to Department of Military Affairs and Public Safety; and establishing that article  
12 does not otherwise affect law enforcement authority to remove firearm or ammunition from  
13 a person.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 32. EXTREME RISK PROTECTION ORDER.**

**§48-32-1. Short Title.**

1 This shall be known as the “Better Safe than Sorry Act of 2020”.

**§48-32-2. Definitions.**

1 In this article, unless the context otherwise requires:

2 “Ex parte extreme risk protection order” means an injunction issued by a court pursuant  
3 to §48-32-3 of this code that prohibits the respondent from owning, purchasing, possessing, or  
4 receiving or having in the respondent’s custody or control a firearm or ammunition until the court  
5 scheduled hearing for a one-year extreme risk protection order.

6 “Family or household member” means any person who:

7 (A) Is related by blood, marriage, or adoption to the respondent;

8 (B) Is the respondent’s current or former dating partner;

9 (C) Is acting or has acted as the respondent’s legal guardian; or

10 (D) Has regularly resided with the respondent within the previous year.

11 “One-year extreme risk protection order” means an injunction that is issued by the court  
12 pursuant to §48-32-5 of this code and that prohibits the respondent from owning, purchasing  
13 possessing, or receiving or having in the respondents custody or control of firearms or ammunition  
14 for a period of up to one year.

15 “Petitioner” means a person who is at least 18 years of age and who is either a law-  
16 enforcement officer, a family or household member, a school administrator or teacher, or a  
17 licensed behavioral health professional who has personal knowledge that the respondent is a  
18 danger to self or others.

19 “Respondent” means the person who is identified in the petition that was filed pursuant to  
20 §48-32-4 or §48-32-5 of this code.

**§48-32-3. Extreme risk protection order; commencing action; form.**

1 (a) A petitioner may file a verified petition in the circuit court requesting the court to issue  
2 an extreme risk protection order. Notwithstanding the location of the petitioner or respondent, any  
3 circuit court may issue or enforce an extreme risk protection order.

4 (b) The petition for an extreme risk protection order must include all of the following:

5 (1) The name of the petitioner. The petitioner shall disclose the petitioner’s address to the  
6 court for purposes of service. If the address of the petitioner is unknown to the respondent, the  
7 petitioner may request that the address be protected. On the petitioner’s request, the address  
8 shall not be listed on the petition. Whether or not the court issues an extreme risk protection order,  
9 the protected address shall be maintained in a separate document or automated database and is  
10 not subject to release or disclosure by the court or any form of public access except as ordered  
11 by the court.

12 (2) The respondent’s name and address, if known.

13 (3) A specific statement setting forth the grounds for issuing the extreme risk protection

14 order, including detailed allegations based on personal knowledge that the respondent poses a  
15 significant danger of causing physical injury to self or others by having in the respondent's custody  
16 or control or owning, purchasing, possessing or receiving a firearm or ammunition.

17 (4) The number, type and location of any firearm or ammunition that the petitioner  
18 presently believes the respondent possesses or controls.

19 (5) A description of the relationship between the parties and whether there is or has been  
20 an extreme risk protection order, a domestic violence protective order, an injunction against  
21 harassment or an injunction against workplace harassment in place between the parties or  
22 against the respondent.

23 (6) Whether there is any other pending lawsuit, complaint, petition, or other action between  
24 the parties pursuant to the laws of this state. The court administrator shall verify the terms of any  
25 existing order governing the parties. The court may not delay granting relief because of the  
26 existence of a pending action between the parties or the necessity of verifying the terms of an  
27 existing order. A petition for an extreme risk protection order may be granted whether or not there  
28 is a pending action between the parties.

29 (c) The court shall provide forms, without charge, to assist parties without counsel. The  
30 petitioner may not be charged a fee for filing a petition for an extreme risk protection order or for  
31 service of process pursuant to this article.

32 (d) All health records and other health information provided in a petition or considered as  
33 evidence in a proceeding pursuant to this article shall be protected from public disclosure to the  
34 extent that the information identifies a respondent or petitioner, except that the information may  
35 be provided to a law-enforcement agency as prescribed in §48-32-10 of this code. Aggregate  
36 statistical data regarding the number of extreme risk protection orders issued, renewed, denied,  
37 dissolved or terminated shall be available to the public on request.

38 (e) A person is not subject to civil or criminal liability for filing a petition, providing  
39 information or otherwise participating in proceedings authorized by this article unless the person

40 acts with malice or intent to harass the respondent or commits false swearing in violation of §61-  
41 5-2 of this code. A person is not subject to civil or criminal liability for choosing not to file a petition,  
42 provide information or otherwise participate in proceedings authorized by this article.

**§48-32-4. Ex parte extreme risk protection order; issuance; hearing; notice.**

1 (a) A petitioner, without notice to the respondent, may request that an ex parte extreme  
2 risk protection order be issued before a hearing for a one-year extreme risk protection order by  
3 including in the petition detailed allegations based on personal knowledge that the respondent  
4 poses an immediate and present danger of causing physical injury to self or others by having in  
5 the respondent's custody or control or owning, purchasing, possessing, or receiving a firearm or  
6 ammunition.

7 (b) The court shall review the petition, any other pleadings on file and any evidence offered  
8 by the petitioner, including any threat of harm to the petitioner or others by electronic contact or  
9 communication, to determine whether the court should issue an ex parte extreme risk protection  
10 order.

11 (c) The court shall issue or deny an ex parte extreme risk protection order on the same  
12 day that the petition is submitted to the court unless the petition is filed too late in the day to allow  
13 effective review, in which case the court shall issue or deny the order on the next day of judicial  
14 business.

15 (d) In determining whether grounds for an ex parte extreme risk protection order exist, the  
16 judge shall consider all relevant evidence presented by the petitioner and may also consider other  
17 relevant evidence, including evidence relating to the respondent's:

18 (1) Unlawful, reckless or negligent use, display, storage, possession or brandishing of a  
19 firearm.

20 (2) Acts or threats of violence to self or others, whether or not this violence involves a  
21 firearm.

22 (3) Violation of an extreme risk protection order, a domestic violence protective order, an

23 injunction against harassment or an injunction against workplace harassment or a violation of a  
24 similar order in another state.

25 (4) Abuse of a controlled substance or alcohol or any criminal offense that involves a  
26 controlled substance or alcohol.

27 (5) Recent acquisition of a firearm, ammunition or another deadly weapon.

28 (6) Cruel mistreatment of an animal.

29 (7) History of using, attempting to use or threatening to use physical force against another  
30 person or of stalking another person.

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

33 (f) If the court finds reasonable cause to believe that the respondent poses an immediate  
34 and present danger of causing physical injury to self or others by having in the respondent's  
35 custody or control or owning, purchasing, possessing or receiving a firearm or ammunition, the  
36 court shall issue an ex parte extreme risk protection order.

37 (g) An ex parte extreme risk protection order must include all of the following:

38 (1) A statement that the respondent may not have in the respondent's custody or control  
39 or own, purchase, possess or receive or attempt to purchase or receive a firearm or ammunition  
40 while the order is in effect.

41 (2) A description of the requirements for the relinquishment of a firearm and ammunition  
42 pursuant to section §48-32-7 of this code.

43 (3) A statement of the grounds asserted for the order.

44 (4) A notice of the hearing pursuant to section §48-32-5 of this code to determine whether  
45 to issue a one-year extreme risk protection order, including the address of the court and the date  
46 and time when the hearing is scheduled.

47 (5) A statement that at the hearing, the court may extend the order for up to one year.

48 (6) A statement that the respondent may seek the advice of an attorney as to any matter

49 connected with the order and that the attorney should be consulted promptly so that the attorney  
50 may assist the respondent in any matter connected with the order.

51 (7) If the court grants the petitioner's request for an ex parte extreme risk protection order,  
52 the court shall schedule a hearing within 21 days after granting the request to determine if a one-  
53 year extreme risk protection order shall be issued. A respondent may seek an extension of time  
54 before the hearing date. The court shall dissolve an ex parte extreme risk protection order in effect  
55 against the respondent when the court holds the hearing.

56 (h) The court shall ensure that notice of the hearing is served on the respondent with the  
57 ex parte extreme risk protection order as soon as practicable. Notice shall be personally served  
58 by a law-enforcement officer or, if necessary, by another person who is authorized to serve  
59 process pursuant to rule 4(d) of the West Virginia rules of civil procedure.

60 (i) If the court denies the petitioner's request for an ex parte extreme risk protection order,  
61 the court may schedule a further hearing within 10 days after the denial, with reasonable notice  
62 to the respondent, to determine whether to issue a one-year extreme risk protection order  
63 pursuant to section §48-32-5 of this code.

**§48-32-5. One-year extreme risk protection order; issuance; notice; hearing.**

1 (a) A petitioner who requests a one-year extreme risk protection order shall include in the  
2 petition detailed allegations based on personal knowledge that the respondent poses a significant  
3 danger of causing physical injury to self or others by having in the respondent's custody or control  
4 or owning, purchasing, possessing or receiving a firearm or ammunition.

5 (b) On receipt of the petition, the court shall set a date for a hearing within 10 days after  
6 the request. The court shall ensure that notice of the hearing is served on the respondent as soon  
7 as practicable. Notice shall be personally served by a law-enforcement officer or, if necessary, by  
8 another person who is authorized to serve process pursuant to Rule 4(d) of the West Virginia  
9 Rules of Civil Procedure.

10 (c) In determining whether to issue a one-year extreme risk protection order, the court

11 shall consider all relevant evidence presented by the petitioner and respondent and may also  
12 consider other relevant evidence, including evidence relating to the respondent's:

13 (1) Unlawful, reckless or negligent use, display, storage, possession or brandishing of a  
14 firearm.

15 (2) Acts or threats of violence to self or others, whether or not this violence involves a  
16 firearm.

17 (3) Violation of an extreme risk protection order, a domestic violence protective order, an  
18 injunction against harassment or an injunction against workplace harassment or a violation of a  
19 similar order in another state.

20 (4) Abuse of a controlled substance or alcohol or any criminal offense that involves a  
21 controlled substance or alcohol.

22 (5) Recent acquisition of a firearm, ammunition or another deadly weapon.

23 (6) Cruel mistreatment of an animal.

24 (7) History of using, attempting to use or threatening to use physical force against another  
25 person or of stalking another person.

26 (d) The court shall also consider the time that has elapsed since the events described in  
27 subsection (c) of this section.

28 (e) If the court finds by a preponderance of the evidence at the hearing that the respondent  
29 poses a significant danger of causing physical injury to self or others by having in the respondent's  
30 custody or control or owning, purchasing, possessing or receiving a firearm or ammunition, the  
31 court shall issue a one-year extreme risk protection order.

32 (f) A one-year extreme risk protection order must include all of the following:

33 (1) A statement that the respondent may not have in the respondent's custody or control  
34 or own, purchase, possess or receive or attempt to purchase or receive a firearm or ammunition  
35 while the order is in effect.

36 (2) A description of the requirements for the relinquishment of a firearm and ammunition



37 pursuant to §48-32-7 of this code.

38 (3) A statement of the grounds supporting the issuance of the order.

39 (4) The date and time the order expires, which is not more than one year after the date  
40 the order was granted unless the court specifies an alternate date within one year.

41 (5) The address of the court that issued the order.

42 (6) A statement that the respondent has the right to request one hearing to terminate the  
43 order at any time during the order's effective period.

44 (7) A statement that the respondent may seek the advice of an attorney regarding any  
45 matter connected with the order.

46 (g) If the respondent fails to appear at the hearing, a one-year extreme risk protection  
47 order shall be personally served on the respondent by a law-enforcement officer or, if necessary,  
48 by another person who is authorized to serve process pursuant to rule 4(d) of the West Virginia  
49 rules of civil procedure.

**§48-32-6. Termination and renewal of one-year extreme risk protection order; hearing.**

1 (a) The respondent who is subject to a one-year extreme risk protection order that is  
2 issued pursuant to §48-32-5 of this code may submit one written request at any time during the  
3 effective period of the order for a hearing to terminate the order. On receipt of the request for  
4 termination, the court shall set a date for a hearing. Notice of the request shall be served on the  
5 petitioner. The hearing shall be held at least 5 days but no more than 10 days after the date of  
6 service of the request on the petitioner. The respondent who seeks to terminate the order has the  
7 burden of proving by a preponderance of the evidence that the respondent does not pose a  
8 significant danger of causing physical injury to self or others by having in the respondent's custody  
9 or control or owning, purchasing, possessing or receiving a firearm or ammunition.

10 (b) If the court finds after the hearing that the respondent has met the burden, the court  
11 shall terminate the order.

12 (c) A petitioner may request a renewal of a one-year extreme risk protection order at any

13 time within three months before the expiration of the order.

14 (d) The court, after notice and a hearing, may renew a one-year extreme risk protection  
15 order if the court finds by a preponderance of the evidence that the respondent continues to pose  
16 a significant danger of causing physical injury to self or others by having in the respondent's  
17 custody or control or owning, purchasing, possessing or receiving a firearm or ammunition. In  
18 determining whether to renew a one-year extreme risk protection order, the court shall consider  
19 all relevant evidence presented by the petitioner and may also consider other relevant evidence,  
20 including evidence identified in §48-32-5(c) of this code.

**§48-32-7. Relinquishment of firearms and ammunition; storage fee.**

1 (a) On issuance of an ex parte extreme risk protection order or a one-year extreme risk  
2 protection order, the court shall order the respondent to relinquish to a local law- enforcement  
3 agency all firearms and ammunition in the respondent's custody or control or that the respondent  
4 possesses or owns.

5 (b) A law-enforcement officer who serves an extreme risk protection order shall request  
6 that all firearms and ammunition that belong to the respondent be immediately relinquished and  
7 shall take possession of all firearms and ammunition that belong to the respondent and that are  
8 relinquished in plain sight or that are discovered pursuant to a lawful search. Alternatively, if  
9 personal service by a law-enforcement officer is not possible, the respondent shall relinquish the  
10 firearms and ammunition in a safe manner to the control of local law-enforcement officials within  
11 24 hours after being served with the order.

12 (c) At the time of relinquishment or removal, a law-enforcement officer who takes  
13 possession of a firearm or ammunition pursuant to an extreme risk protection order shall issue a  
14 receipt that identifies all firearms and ammunition that have been relinquished or removed and  
15 provide a copy of the receipt to the respondent. Within 72 hours after being served with the order,  
16 the officer who serves the order shall file the original receipt with the court that issued the extreme  
17 risk protection order and shall ensure that the law-enforcement agency retains a copy of the

18 receipt.

19 (d) A court that has probable cause to believe that a respondent has in the respondent's  
20 custody or control or owns or possesses a firearm or ammunition that the respondent has failed  
21 to relinquish pursuant to this section or has probable cause to believe that a respondent has  
22 received or purchased a firearm or ammunition while subject to the order shall issue a search  
23 warrant describing the firearm or ammunition and authorizing a search of the location where the  
24 firearms or ammunition are reasonably believed to be and the removal of any firearms or  
25 ammunition discovered pursuant to the search.

26 (e) A local law-enforcement agency may charge the respondent a fee that does not exceed  
27 the reasonable and actual costs incurred by the local law-enforcement agency to store a firearm  
28 or ammunition that is relinquished pursuant to this section for the duration of the extreme risk  
29 protection order and any additional periods necessary pursuant to §48-32-8 of this code.

**§48-32-8. Return and disposal of relinquished firearms and ammunition.**

1 (a) At least 30 days before a one-year extreme risk protection order expires, a law-  
2 enforcement agency that is holding any firearm or ammunition that has been relinquished  
3 pursuant to the order shall notify the petitioner that the order is set to expire. The notice must  
4 advise the petitioner of the procedures to seek a renewal of the order pursuant to section §48-32-  
5 6(c) of this code.

6 (b) If an extreme risk protection order is terminated or expires and is not renewed, a law  
7 enforcement agency that is holding any firearm or ammunition that has been relinquished  
8 pursuant to this article shall notify the respondent that the respondent may request the return of  
9 the firearm or ammunition. A law-enforcement agency shall return any relinquished firearm or  
10 ammunition requested by a respondent only after confirming that the respondent is not currently  
11 prohibited from owning or possessing a firearm and ammunition.

12 (c) A respondent who has relinquished any firearm or ammunition to a local law-  
13 enforcement agency pursuant to this article and who does not wish to have the firearm or

14 ammunition returned or who is not eligible to own or possess a firearm or ammunition may sell or  
15 transfer title of the firearm or ammunition to a federally licensed firearms dealer. The local law-  
16 enforcement agency shall transfer possession of the firearm or ammunition to a federally licensed  
17 firearms dealer only after the dealer has provided written proof of transfer of the firearm or  
18 ammunition from the respondent to the dealer and the law-enforcement agency has verified the  
19 transfer with the respondent.

20 (d) The law-enforcement agency shall return the firearm or ammunition to a person other  
21 than the respondent if the other person claims title to any firearm or ammunition relinquished  
22 pursuant to this article and the law-enforcement agency determines that the person is the lawful  
23 owner of the firearm or ammunition.

**§48-32-9. False statement to the court; penalty.**

1 Any person who knowingly and willfully makes any materially false statement or  
2 representation to the court in the course of a proceeding to issue an extreme risk protection order  
3 is guilty of a misdemeanor and, upon conviction thereof, shall be required to perform 1000 hours  
4 of community service or confined in jail not less than six months nor more than twelve months. If  
5 any person commits a second such offense, he or she is guilty of a felony and, upon conviction  
6 thereof, shall be fined not more than \$1,000 or imprisoned in a state correctional facility not less  
7 than one year nor more than three years, or both fined and imprisoned.

**§48-32-10. Reporting of extreme risk protection order.**

1 (a) The court shall notify the Department of Military Affairs and Public Safety (DMAPS)  
2 within one court day after issuing, renewing, dissolving or terminating an ex parte extreme risk  
3 protection order or one-year extreme risk protection order under this article.

4 (b) The information that is submitted to DMAPS pursuant to this section includes the  
5 respondent's identifying information and the date that the order was issued, renewed, dissolved  
6 or terminated. In the case of a one-year extreme risk protection order, the court shall include the  
7 date that the order will expire.

8            (c) DMAPS shall immediately make any information about an ex parte extreme risk  
9 protection order or a one-year extreme risk protection order issued, renewed or terminated  
10 pursuant to this article available to the national instant criminal background check system for  
11 firearm purchaser background checks.

**§48-32-11. Law-enforcement officer authority to seize firearms and ammunition.**

1            This article does not affect the ability of a law-enforcement officer to remove a firearm or  
2 ammunition from any person pursuant to law.

NOTE: The purpose of this bill is to establish the Better Safe Than Sorry Act of 2020.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.