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## SENATE BILL NO. 1067

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Stuart  
on January 25, 2023)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact §§ 19.2-152.13 and 19.2-152.14 of the Code of Virginia, relating to substantial risk orders; substantial risk factors and considerations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-152.13 and 19.2-152.14 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-152.13. Emergency substantial risk order.

A. Upon the petition of an attorney for the Commonwealth or a law-enforcement officer, a judge of a circuit court, general district court, or juvenile and domestic relations district court ~~or a magistrate, upon~~ shall schedule a hearing within seven days of the filing of the petition to determine whether an emergency substantial risk order should be entered. A copy of the petition and supporting affidavit shall be given to the person who is the subject of the petition together with a notice informing the person of the date of the hearing and that he may be represented by counsel at the hearing. The court where the petition is filed shall hold such a hearing.

The attorney for the Commonwealth for the jurisdiction where the petition was filed shall represent the interests of the Commonwealth. The respondent has the right to be represented by counsel of the respondent's choice. If the respondent is not represented by counsel, the court shall appoint legal counsel upon request of the respondent if the respondent completes a statement of indigence substantially in the form provided by § 19.2-159 and a financial statement, and the court finds such person to be indigent pursuant to § 19.2-159. An attorney appointed pursuant to this section shall receive a fee of \$75 and reimbursement for necessary expenses. Such fee and necessary expenses incurred, including mileage and other expenses necessary to attend the hearing, shall be paid by the Commonwealth.

Upon a finding that there is probable cause to believe that a person poses a substantial risk of personal injury to himself or others in the near future by such person's possession or acquisition of a firearm, the judge shall issue an ~~ex parte~~ emergency substantial risk order.

Such order shall prohibit the person who is subject to the order from purchasing, possessing, or transporting a firearm for the duration of the order. In determining whether probable cause for the issuance of an order exists, the judge or magistrate shall consider any relevant evidence, including any recent act of violence, force, or threat as defined in § 19.2-152.7:1 by such person directed toward another person or toward himself. A judge or a magistrate shall also consider if the person who is the subject of the petition (i) committed any acts of violence or criminal offenses resulting in injury to himself or another person within the six months prior to the filing of the petition; (ii) made any threats or used any physical force against another person that resulted in injury within the six months prior to the filing of the petition; (iii) violated any provision of a protective order issued pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10 or was arrested for a violation of § 18.2-60.3 within the six months prior to the filing of the petition; (iv) was convicted of any offense that would prohibit such person from possessing a firearm; (v) engaged in any conduct within the year prior to the filing of the petition that demonstrated a pattern of violent acts or threats to another person, including any acts or threats made against family members, neighbors, or co-workers or toward schools or students or government buildings or employees; (vi) committed any acts of violence or criminal offenses against an animal within the six months prior to the filing of the petition; (vii) made any attempt or threat of suicide or any act, attempted act, or threat of self-harm that caused or may have caused serious bodily injury; or (viii) evidence of recent acquisition of a firearm or ammunition by the respondent. Additionally, a judge or a magistrate may consider (a) any reports of any unlawful or reckless use of a firearm; (b) any threats made or any physical force used against another person, including any acts or threats made against family members, neighbors, or co-workers or toward schools or students or government buildings or employees; (c) any prior arrests for any acts of violence or criminal offenses resulting in injury to himself or another person, or against any animals; (d) any arrests or convictions for a criminal offense involving the use of alcohol or a controlled substance within the six months prior to the filing of the petition; (e) any petitions filed or orders entered pursuant to Chapter 8 (§ 37.2-800 et seq.) of Title 37.2; or (f) evidence of recent acquisition of other deadly weapons. Such information may be alleged by the petitioner in his petition or may be offered through testimony at an ore tenus hearing.

No petition shall be filed unless an independent investigation has been conducted by law enforcement

60 that determines that grounds for the petition exist. *Such independent investigation shall also include any*  
61 *information available to law enforcement as it pertains to such factors in clauses (i) through (viii) and*  
62 *clauses (a) through (f).*

63 The order shall contain a statement ~~(i)~~ (1) informing the person who is subject to the order of the  
64 requirements and penalties under § 18.2-308.1:6, including that it is unlawful for such person to  
65 purchase, possess, or transport a firearm for the duration of the order and that such person is required to  
66 surrender his concealed handgun permit if he possesses such permit; and ~~(ii)~~ (2) advising such person to  
67 voluntarily relinquish any firearm within his custody to the law-enforcement agency that serves the  
68 order.

69 B. The petition for an emergency substantial risk order shall be made under oath and shall be  
70 supported by an affidavit.

71 C. Upon service of an emergency substantial risk order, the person who is subject to the order shall  
72 be given the opportunity to voluntarily relinquish any firearm in his possession. The law-enforcement  
73 agency that executed the emergency substantial risk order shall take custody of all firearms that are  
74 voluntarily relinquished by such person. The law-enforcement agency that takes into custody a firearm  
75 pursuant to the order shall prepare a written receipt containing the name of the person who is subject to  
76 the order and the manufacturer, model, condition, and serial number of the firearm and shall provide a  
77 copy thereof to such person. Nothing in this subsection precludes a law-enforcement officer from later  
78 obtaining a search warrant for any firearms if the law-enforcement officer has reason to believe that the  
79 person who is subject to an emergency substantial risk order has not relinquished all firearms in his  
80 possession.

81 D. An emergency substantial risk order issued pursuant to this section shall expire at 11:59 p.m. on  
82 the fourteenth day following issuance of the order. If the expiration occurs on a day that the circuit  
83 court for the jurisdiction where the order was issued is not in session, the order shall be extended until  
84 11:59 p.m. on the next day that the circuit court is in session. The person who is subject to the order  
85 may at any time file with the circuit court a motion to dissolve the order.

86 E. An emergency substantial risk order issued pursuant to this section is effective upon personal  
87 service on the person who is subject to the order. The order shall be served forthwith after issuance. A  
88 copy of the order, petition, and supporting affidavit shall be given to the person who is subject to the  
89 order together with a notice informing the person that he has a right to a hearing under § 19.2-152.14  
90 and may be represented by counsel at the hearing.

91 F. The court or magistrate shall forthwith, but in all cases no later than the end of the business day  
92 on which the emergency substantial risk order was issued, enter and transfer electronically to the  
93 Virginia Criminal Information Network (VCIN) established and maintained by the Department of State  
94 Police (Department) pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 the identifying information of  
95 the person who is subject to the order provided to the court or magistrate. A copy of an order issued  
96 pursuant to this section containing any such identifying information shall be forwarded forthwith to the  
97 primary law-enforcement agency responsible for service and entry of the order. Upon receipt of the  
98 order by the primary law-enforcement agency, the agency shall forthwith verify and enter any  
99 modification as necessary to the identifying information and other appropriate information required by  
100 the Department into the VCIN, and the order shall be served forthwith upon the person who is subject  
101 to the order. However, if the order is issued by the circuit court, the clerk of the circuit court shall  
102 forthwith forward an attested copy of the order containing the identifying information of the person who  
103 is subject to the order provided to the court to the primary law-enforcement agency providing service  
104 and entry of the order. Upon receipt of the order by the primary law-enforcement agency, the agency  
105 shall enter the name of the person subject to the order and other appropriate information required by the  
106 Department into the VCIN and the order shall be served forthwith upon the person who is subject to the  
107 order. Upon service, the agency making service shall enter the date and time of service and other  
108 appropriate information required into the VCIN and make due return to the court. If the order is later  
109 dissolved or modified, a copy of the dissolution or modification order shall also be attested and  
110 forwarded forthwith to the primary law-enforcement agency responsible for service and entry of the  
111 order. Upon receipt of the dissolution or modification order by the primary law-enforcement agency, the  
112 agency shall forthwith verify and enter any modification as necessary to the identifying information and  
113 other appropriate information required by the Department into the VCIN and the order shall be served  
114 forthwith.

115 G. The law-enforcement agency that serves the emergency substantial risk order shall make due  
116 return to the circuit court, which shall be accompanied by a written inventory of all firearms  
117 relinquished.

118 H. Proceedings in which an emergency substantial risk order is sought pursuant to this section shall  
119 be commenced where the person who is subject to the order (i) has his principal residence or (ii) has  
120 engaged in any conduct upon which the petition for the emergency substantial risk order is based.

121 I. A proceeding for a substantial risk order shall be a separate civil legal proceeding subject to the

same rules as civil proceedings.

**§ 19.2-152.14. Substantial risk order.**

A. Not later than 14 days after the issuance of an emergency substantial risk order pursuant to § 19.2-152.13, the circuit court for the jurisdiction where the order was issued shall hold a hearing to determine whether a substantial risk order should be entered. The attorney for the Commonwealth for the jurisdiction that issued the emergency substantial risk order shall represent the interests of the Commonwealth. *The respondent has the right to be represented by counsel of the respondent's choice. If the respondent is not represented by counsel, the court shall appoint legal counsel upon request of the respondent if the respondent completes a statement of indigence substantially in the form provided by § 19.2-159 and a financial statement, and the court finds such person to be indigent pursuant to § 19.2-159. An attorney appointed pursuant to this section shall receive a fee of \$75 and reimbursement for necessary expenses. Such fee and necessary expenses incurred, including mileage and other expenses necessary to attend the hearing, shall be paid by the Commonwealth.* Notice of the hearing shall be given to the person subject to the emergency substantial risk order and the attorney for the Commonwealth. Upon motion of the respondent and for good cause shown, the court may continue the hearing, provided that the order shall remain in effect until the hearing. The Commonwealth shall have the burden of proving all material facts by clear and convincing evidence. If the court finds by clear and convincing evidence that the person poses a substantial risk of personal injury to himself or to other individuals in the near future by such person's possession or acquisition of a firearm, the court shall issue a substantial risk order.

Such order shall prohibit the person who is subject to the order from purchasing, possessing, or transporting a firearm for the duration of the order. In determining whether clear and convincing evidence for the issuance of an order exists, the judge shall consider any relevant evidence including any recent act of violence, force, or threat as defined in § 19.2-152.7:1 by such person directed toward another person or toward himself *and shall consider such factors in clauses (i) through (viii) of subsection A of § 19.2-152.13 and may consider such factors in clauses (a) through (f) of subsection A of § 19.2-152.13. Such relevant evidence may be alleged by pleading or by testimony during the hearing.*

The order shall contain a statement (i) informing the person who is subject to the order of the requirements and penalties under § 18.2-308.1:6, including that it is unlawful for such person to purchase, possess, or transport a firearm for the duration of the order and that such person is required to surrender his concealed handgun permit if he possesses such permit, and (ii) advising such person to voluntarily relinquish any firearm that has not been taken into custody to the law-enforcement agency that served the emergency substantial risk order.

B. If the court issues a substantial risk order pursuant to subsection A, the court shall (i) order that any firearm that was previously relinquished pursuant to § 19.2-152.13 from the person who is subject to the substantial risk order continue to be held by the agency that has custody of the firearm for the duration of the order and (ii) advise such person that a law-enforcement officer may obtain a search warrant to search for any firearms from such person if such law-enforcement officer has reason to believe that such person has not relinquished all firearms in his possession.

If the court finds that the person does not pose a substantial risk of personal injury to himself or to other individuals in the near future, the court shall order that any firearm that was previously relinquished be returned to such person in accordance with the provisions of § 19.2-152.15.

C. The substantial risk order may be issued for a specified period of time up to a maximum of 180 days. The order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the 180-day period if no date is specified. Prior to the expiration of the order, an attorney for the Commonwealth or a law-enforcement officer may file a written motion requesting a hearing to extend the order. Proceedings to extend an order shall be given precedence on the docket of the court. The court may extend the order for a period not longer than 180 days if the court finds by clear and convincing evidence that the person continues to pose a substantial risk of personal injury to himself or to other individuals in the near future by such person's possession or acquisition of a firearm at the time the request for an extension is made. The extension of the order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the 180-day period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued. The person who is subject to the order may file a motion to dissolve the order one time during the duration of the order; however, such motion may not be filed earlier than 30 days from the date the order was issued.

D. Any person whose firearm has been voluntarily relinquished pursuant to § 19.2-152.13 or this section, or such person's legal representative, may transfer the firearm to another individual 21 years of age or older who is not otherwise prohibited by law from possessing such firearm, provided that:

1. The person subject to the order and the transferee appear at the hearing;
2. At the hearing, the attorney for the Commonwealth advises the court that a law-enforcement agency has determined that the transferee is not prohibited from possessing or transporting a firearm;

183 3. The transferee does not reside with the person subject to the order;

184 4. The court informs the transferee of the requirements and penalties under § 18.2-308.2:1; and

185 5. The court, after considering all relevant factors and any evidence or testimony from the person  
186 subject to the order, approves the transfer of the firearm subject to such restrictions as the court deems  
187 necessary.

188 The law-enforcement agency holding the firearm shall deliver the firearm to the transferee within five  
189 days of receiving a copy of the court's approval of the transfer.

190 E. The court shall forthwith, but in all cases no later than the end of the business day on which the  
191 substantial risk order was issued, enter and transfer electronically to the Virginia Criminal Information  
192 Network (VCIN) established and maintained by the Department of State Police (Department) pursuant to  
193 Chapter 2 (§ 52-12 et seq.) of Title 52 the identifying information of the person who is subject to the  
194 order provided to the court and shall forthwith forward the attested copy of the order containing any  
195 such identifying information to the primary law-enforcement agency responsible for service and entry of  
196 the order. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith  
197 verify and enter any modification as necessary to the identifying information and other appropriate  
198 information required by the Department into the VCIN and the order shall be served forthwith upon the  
199 person who is subject to the order and due return made to the court. Upon service, the agency making  
200 service shall enter the date and time of service and other appropriate information required by the  
201 Department into the VCIN and make due return to the court. If the person who is subject to an  
202 emergency substantial risk order fails to appear at the hearing conducted pursuant to this section because  
203 such person was not personally served with notice of the hearing pursuant to subsection A, or if  
204 personally served was incarcerated and not transported to the hearing, the court may extend the  
205 emergency substantial risk order for a period not to exceed 14 days. The extended emergency substantial  
206 risk order shall specify a date for a hearing to be conducted pursuant to this section and shall be served  
207 forthwith on such person and due return made to the court. If the order is later dissolved or modified, a  
208 copy of the dissolution or modification order shall also be attested and forwarded forthwith to the  
209 primary law-enforcement agency responsible for service and entry of the order. Upon receipt of the  
210 dissolution or modification order by the primary law-enforcement agency, the agency shall forthwith  
211 verify and enter any modification as necessary to the identifying information and other appropriate  
212 information required by the Department of State Police into the Virginia Criminal Information Network,  
213 and the order shall be served forthwith and due return made to the court.