

HOUSE BILL 435¹: GEORGIA RED FLAG PROTECTIVE ORDER ACT; ENACT

Amending O.C.G.A. § 16-11-4; Creating O.C.G.A. §16-11-140-149.5; and Repealing All Laws in Conflict with the Same

First Signature: Representative Matthew Wilson (80th)

Co-Sponsors: Representative Angelika Kausche (50th), Representative Betsy Holland (4th), Representative Viola Davis (87th), Representative Shelly Hutchinson (107th), and Representative Josh McLaurin (51st).

Summary: “To amend Article 4 Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to dangerous instrumentalities and practices, so as to enact the "Georgia Red Flag Protective Order Act"; to provide definitions; to provide for risk protection order hearings and issuance; to revise provisions regarding temporary ex parte risk protection orders; to provide for service of notice; to provide for the termination and extension of orders; to provide for surrender and return of firearms, ammunition, and weapons carry licenses; to provide for the reporting of orders; to provide for penalties and liability; to provide for instructional and informational materials to be produced by the Administrative Office of the Courts; to provide for related matters; to repeal conflicting laws; and for other purposes.”²

Status: House Second Readers on February 26, 2019.³

TEXT OF HOUSE BILL 435 (LC 48 0044ER)

SECTION 1.

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

“Part 3A

16-11-140.

This part shall be known and may be cited as the ‘Georgia Red Flag Protective Order Act.’

¹ H.B. 435, 155th Gen. Assemb., 1st Reg. Sess. (Ga. 2019), available at <http://www.legis.ga.gov/Legislation/20192020/182461.pdf> (last visited Nov. 09, 2019).

² *Id.*

³ 2019-2020 Regular Session-HB 435, *Georgia Red Flag Protective Order Act; enact*, GA GEN. ASSEMB. <http://www.legis.ga.gov/legislation/en-US/Display/20192020/HB/435> (last visited Nov. 09, 2019) [hereinafter H.B. 435 Status Sheet].

16-11-141.

As used in this part, the term:

- (1) 'Family or household member' means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together or who have resided together in the past, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same dwelling house.
- (2) 'Law enforcement agency' means any unit, organ, or department of this state, or a subdivision or municipality thereof, whose primary functions include the enforcement of criminal or traffic laws; the preservation of public order; the protection of life and property; or the prevention, detection, or investigation of crime.
- (3) 'Law enforcement officer' means any peace officer employed by a law enforcement agency.
- (4) 'Petitioner' means a family or household member or law enforcement officer who petitions a court for a risk protection order under this part.
- (5) 'Respondent' means the individual who is identified as the respondent in a petition filed under this part.
- (6) 'Risk protection order' means a temporary ex parte order or final order granted under this part.

16-11-142.

(a) When a petition for a risk protection order is created, the order shall:

- (1) Identify the respondent by name and last known address;
- (2) Allege that the respondent poses a significant danger of causing personal injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition;
- (3) Be accompanied by an affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent;
- (4) Identify the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the respondent's current ownership, possession, custody, or control; and
- (5) Identify whether there is a known existing protective order governing the respondent under Code Section 16-5-94 or 19-13-4 or under any other applicable law.

(b) A petition for a risk protection order may be filed by a family or household member or law enforcement officer. Such petition shall be filed in the superior court having

jurisdiction over the geographical area of the petitioner's law enforcement agency or wherein the respondent resides. Such petition for a risk protection order does not require either party to be represented by an attorney.

(c) The petitioner shall make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice shall state that the petitioner intends to petition the court for a risk protection order or has already done so and shall include referrals to appropriate resources, including, but not limited to, mental health, domestic violence, and counseling resources. The petitioner shall attest in the petition to having provided such notice or shall attest to the steps that will be taken to provide such notice.

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

(e) The court shall not charge fees for filing or for service of process to a petitioner seeking relief under this part and shall provide the necessary number of certified copies, forms, and instructional brochures free of charge.

(f) A person shall not be required to post a bond to obtain relief in any proceeding under this part.

(g) The superior courts of this state have jurisdiction over proceedings under this part.

16-11-143.

(a)(1) 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.

(2) The clerk of the court shall cause a copy of the petition and the notice of hearing to be forwarded on or before the next business day to the appropriate law enforcement agency for service upon the respondent as provided in Code Section 16-11-145.

(3) The court may, as provided in Code Section 16-11-144, issue a temporary ex parte risk protection order pending the hearing ordered under this subsection. Such temporary ex parte order shall be served concurrently with the petition and the notice of hearing as provided in Code Section 16-11-145.

(b) Upon notice and a hearing on the matter, if the court finds by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition, the court shall issue a risk protection order for a period of time that it deems appropriate, but not exceeding 12 months.

(c) In determining whether grounds for a risk protection order exist, the court may consider any relevant evidence, including, but not limited to, any of the following:

(1) A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involved a firearm;

(2) An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself

or others;

(3) Evidence of the respondent being seriously mentally ill or having recurring mental health issues;

(4) A violation by the respondent of an order issued pursuant to Code Section 16-5-94 or 19-13-4;

(5) A previous or existing risk protection order issued against the respondent;

(6) A violation of a previous or existing risk protection order issued against the respondent;

(7) Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or has pled nolo contendere to a crime that constitutes family violence as defined in Code Section 19-13-1;

(8) Whether the respondent has used, or has threatened to use, any weapons against himself or herself or others;

(9) The unlawful or reckless use, display, or brandishing of a firearm by the respondent;

(10) The recurring use of, or threat to use, physical force by the respondent against another person or the respondent's stalking of another person;

(11) Whether the respondent, in this state or any other state, has been arrested for, has been convicted of, had adjudication withheld on, or has pled nolo contendere to a crime involving violence or a threat of violence;

(12) Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;

(13) Evidence of recent acquisition of firearms or ammunition by the respondent;

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

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

(d) In a hearing under this part, the rules of evidence shall apply to the same extent as in a family violence proceeding under Code Section 19-13-3.

(e) During the hearing, the court shall consider whether a mental health evaluation or chemical dependency evaluation is appropriate and, if such determination is made, may order such evaluations, if appropriate.

(f) A risk protection order shall include all of the following:

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

(2) The date the order was issued;

(3) The date the order ends;

(4) Whether a mental health evaluation or chemical dependency evaluation of the respondent is required;

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

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

(7) The following statement:

'To the subject of this protection order: This order is valid until the date noted above. If you have not done so already, you shall surrender immediately to the (insert name of local law enforcement agency) all firearms and ammunition that you own in your custody, control, or possession and any weapons carry license or renewal license issued to you under Code Section 16-11-129. 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 one hearing to vacate this order, starting after the date of the issuance of this order, and to request another hearing after every extension of the order, if any. You may seek the advice of an attorney as to any matter connected with this order.'

(g) If the court issues a risk protection order, the court shall inform the respondent that he or she is entitled to request a hearing to vacate the order in the manner provided by Code Section 16-11-146 and the court shall provide the respondent with a form to request a hearing to vacate.

(h) If the court denies the petitioner's request for a risk protection order, the court shall state the particular reasons for the denial.

16-11-144.

(a) A petitioner may request that a temporary ex parte risk protection order be issued before a hearing for a risk protection order, without notice to the respondent, by including in the petition 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.

(b) In considering whether to issue a temporary ex parte risk protection order under this part, the court shall consider all relevant evidence, including the evidence described in subsection (c) of Code Section 16-11-143.

(c) If the court finds there is reasonable cause to believe 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, the court shall issue a temporary ex parte risk protection order.

(d) The court shall hold a hearing on the temporary ex parte risk protection order within two business days of the date the petition is filed.

(e) A temporary ex parte risk protection order shall include all of the following:

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

(2) The date the order was issued;

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

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

(5) A description of the requirements for the surrender of all firearms and ammunition

that the respondent owns or controls; and

(6) The following statement:

'To the subject of this protection order: This order is valid until the date noted above. You are required to surrender all firearms and ammunition that you own 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 shall surrender immediately to the (insert name of local law enforcement agency) all firearms and ammunition in your custody, control, or possession and any weapons carry license or renewal license issued to you under Code Section 16-11-129. A hearing will be held on the date and at the time noted above to determine if a risk protection order should be issued. Failure to appear at that hearing may result in a court issuing an order against you which is valid for one year. You may seek the advice of an attorney as to any matter connected with this order.'

(f) A temporary ex parte risk protection order ends upon the hearing on the risk protection order.

(g) A temporary ex parte risk protection order shall be served by a law enforcement officer in the same manner as provided for in Code Section 16-11-145 for service of the petition and notice of hearing and shall be served concurrently with the petition and notice of hearing.

(h) If the court denies the petitioner's request for a temporary ex parte risk protection order, the court shall state the particular reasons for the denial.

16-11-145.

(a) The clerk of the court shall provide for personal service of the petition, notice of hearing, and temporary ex parte risk protection order or risk protection order, as applicable, upon the respondent. Service under this part shall take precedence over the service of other documents, unless such documents are of a similar emergency nature.

(b) All orders issued, changed, continued, extended, or vacated after the original service of documents specified in subsection (a) of this Code section shall 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 receipt of a certified copy of an order, the clerk shall note on the original order that service was effected. If delivery at the hearing is not possible, the clerk shall mail certified copies of the order to the parties at the last known address of each party.

16-11-146.

(a)(1) The respondent may submit one written request for a hearing to vacate a risk protection order issued under this part, starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any.

(2) Upon receipt of the request for a hearing to vacate a risk protection order, the court shall set a date for a hearing. Notice of the request shall be served on the petitioner in accordance with Code Section 16-11-145. The hearing shall occur no sooner than 14 days and no later than 30 days after the date of service of the request upon the petitioner.

(3) The respondent shall have the burden of proving by clear and convincing evidence that the respondent does not pose a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control or by purchasing, possessing, or receiving a firearm or ammunition. The court may consider any relevant evidence, including evidence of the considerations as provided in subsection (c) of Code Section 16-11-143.

(4) If the court finds after the hearing that the respondent has met his or her burden of proof, the court shall vacate the order.

(5) The law enforcement agency holding any firearm, ammunition, or weapons carry license that has been surrendered pursuant to this part shall be notified of the court order to vacate the risk protection order.

(b) The court shall notify the petitioner of the impending end of a risk protection order. Notice shall be received by the petitioner at least 30 days before the date the order ends.

(c)(1) The petitioner may, by motion, request an extension of a risk protection order at any time within 30 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 14 days after the date the order is issued and shall schedule such hearing. The respondent shall be personally served in the manner provided by Code Section 16-11-145.

(3) In determining whether to extend a risk protection order issued under this part, the court may consider all relevant evidence, including evidence of the considerations as provided in subsection (c) of Code Section 16-11-143.

(4) If the court finds by clear and convincing evidence that the requirements for issuance of a risk protection order as provided in Code Section 16-11-143 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 entry of the order and stating the reason for the requested extension.

(5) The court may extend a risk protection order for a period of time that it deems appropriate, but not exceeding 12 months, subject to an order to vacate as provided in subsection (a) of this Code section or to another extension order by the court.

16-11-147.

(a) Upon issuance of a risk protection order or temporary ex parte risk protection order under this part, 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 Code Section

16-11-149, and any weapons carry license or renewal license issued under Code Section 16-11-129 held by the respondent.

(b) The law enforcement officer serving a risk protection order under this part, including a temporary ex parte risk protection order, shall request that the respondent immediately surrender all firearms and ammunition owned by the respondent in his or her custody, control, or possession and any weapons carry license or renewal license issued under Code Section 16-11-129 held by the respondent. The law enforcement officer shall take possession of such firearms, ammunition, and weapons carry license or renewal license so surrendered. If personal service by a law enforcement officer is not possible or is not required because the respondent was present at the risk protection order hearing, the respondent shall surrender any firearms and ammunition owned by the respondent, and any weapons carry license or renewal license issued under Code Section 16-11-129 held by the respondent, in a safe manner to the control of the local law enforcement agency immediately after being served with the order by service or immediately after the hearing at which the respondent was present. Notwithstanding Code Sections 17-5-20, 17-5-21, and 17-5-24, a law enforcement officer may seek a search warrant from a court of competent jurisdiction to conduct a search for firearms or ammunition owned by the respondent if the officer has probable cause to believe that there are firearms or ammunition owned by the respondent in the respondent's custody, control, or possession which have not been surrendered.

(c) At the time of surrender, a law enforcement officer taking possession of any firearm or ammunition owned by the respondent, or any weapons carry license or renewal license issued under Code Section 16-11-129 held by the respondent, shall issue a receipt identifying all firearms surrendered, the quantity and type of ammunition surrendered, and any license surrendered and shall provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and shall ensure that his or her law enforcement agency retains a copy of the receipt.

(d) Notwithstanding Code Sections 17-5-20 and 17-5-21, upon the sworn statement or testimony of any person alleging that the respondent has failed to comply with the surrender of firearms or ammunition owned by the respondent, as required by an order issued under this part, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or ammunition owned by the respondent in the respondent's custody, control, or possession. If the court finds that probable cause exists, the court shall issue a warrant describing the firearms or ammunition owned by the respondent and authorizing a search of the locations where such firearms or ammunition are reasonably believed to be found and the seizure of any firearms or ammunition owned by the respondent discovered pursuant to such search.

(e) If a person other than the respondent claims title to any firearms or ammunition surrendered pursuant to this part and he or she is determined by the law enforcement

agency to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to him or her if:

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

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

(f) Upon the issuance of a risk protection order, the court shall order a new hearing date and require the respondent to appear no later than three business days after the issuance of the order. The court shall require proof that the respondent has surrendered any firearms or ammunition owned by the respondent 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.

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

16-11-148.

(a) If a 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 weapons carry license or renewal license issued under Code Section 16-11-129 held by the respondent, that has been surrendered or seized pursuant to this part shall return such surrendered firearm, ammunition, or license as requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the risk protection order has been vacated or has ended without extension.

(b) A law enforcement agency shall provide notice to any family or household members of the respondent before the return of any surrendered firearm, ammunition, or weapons carry license owned or held by the respondent.

(c) Any firearm or ammunition surrendered by a respondent pursuant to Code Section 16-11-147 which remains unclaimed by the lawful owner for one year after an order to vacate the risk protection order shall be disposed of in accordance with Article 3 of Chapter 5 of Title 17.

16-11-149.

A respondent may elect to transfer all firearms or ammunition owned by the respondent that have been surrendered to or seized by a local law enforcement agency pursuant to Code Section 16-11-147 to another person who is willing to receive the respondent's firearms or ammunition. The law enforcement agency shall allow such a transfer only if the chosen recipient:

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

(2) Attests to storing the firearms or ammunition in a manner such that the respondent does not have access to or control of the firearms or 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.

16-11-149.1.

(a) Upon receipt of the copy of the risk protection order, the law enforcement agency shall enter the order into the records of the Georgia Crime Information Center and National Crime Information Center. The order shall remain in each system for the period stated in the order, and the law enforcement agency may only remove an order from the systems if it has ended or been vacated. Entry of the order into the records of the Georgia Crime Information Center and National Crime Information Center constitutes notice to all law enforcement agencies of the existence of the order which shall be fully enforceable in any county in this state.

(b) The issuing court shall, within three business days after issuance of a risk protection order or temporary ex parte risk protection order, forward all available identifying information concerning the respondent, along with the date of issuance of the order, to the Department of Agriculture. Upon receipt of the information, the Department of Agriculture shall

determine if the respondent has a weapons carry license or firearm. If the respondent does have a weapons carry license or firearm, the department shall immediately suspend the license.

(c) If a 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 of the order to the Department of Agriculture and the appropriate law enforcement agency 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 pursuant to subsection (a) of this Code section.

16-11-149.2.

(a) A person who makes a false statement, which he or she does not believe to be true, under oath in a hearing under this part in regard to any material matter commits a misdemeanor of a high and aggravated nature, punishable as provided in Code Section 17-10-4.

(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 part commits a misdemeanor of a high and aggravated nature, punishable as provided in Code Section 17-10-4.

16-11-149.3.

This part shall not be construed to affect the ability of a law enforcement officer to conduct

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

16-11-149.4.

Except as provided in Code Section 16-11-148 or 16-11-149.2, this part shall not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining a risk protection order or temporary ex parte risk protection order, including, but not limited to, providing notice to the respondent, a family or household member of the respondent, and any known third party who may be at risk of violence, or failing to provide such notice, or reporting, declining to report, investigating, declining to investigate, filing, or declining to file a petition under this part.

16-11-149.5.

(a)(1) The Administrative Office of the Courts shall develop and prepare instructions and informational brochures, standard petition and risk protection order forms, and a court staff handbook on the risk protection order process. The standard petition and order forms shall be used after January 1, 2020, for all petitions filed and orders issued pursuant to this part. The office shall determine the significant non-English-speaking or limited English-speaking populations in the state and prepare the instructions and informational brochures and standard petition and risk protection order forms in such languages. The instructions, brochures, forms, and handbook shall be prepared in consultation with interested persons, including representatives

of gun violence prevention groups, judges, and law enforcement personnel. Materials shall be based on best practices and shall be available online to the public.

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

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

(4) The informational brochure shall describe the use of and the process for obtaining, extending, and vacating a risk protection order under this part and shall provide relevant forms.

(5) The risk protection order form shall 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.’

(6) The court staff handbook shall allow for the addition of a community resource list by the clerk of the court.

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

(c) The Administrative Office of the Courts shall distribute a master copy of the petition and order forms, instructions, and informational brochures to the clerks of court. Distribution of all documents shall, at a minimum, be in an electronic format or in formats accessible to all courts and clerks of court in this state.

(d) Within 90 days after receipt of the master copy from the Administrative Office of the Courts, the court shall make available the standardized forms, instructions, and informational brochures required by this Code section.

(e) The Administrative Office of the 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.”

SECTION 2.

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

SPONSOR’S RATIONALE

Representative Matthew Wilson sponsors House Bill 435 which allows certain individuals to petition for temporary removal of firearms or ammunition from individuals who pose a threat to themselves or others.⁴ In such cases, the court would hold a hearing and decide whether the individual does indeed pose a threat.⁵ Upon such a finding, the court may issue an order requiring the individual to surrender his or her firearms and ammunition for up to one year.⁶

In sponsoring this Bill, Representative Wilson looks to “address this epidemic of gun violence witnessed in the last several decades.”⁷ While searching for a way to make a substantial impact at the state level, Representative Wilson encountered Red Flag Laws in states controlled by both Democratic and Republican majorities.⁸ Courts have upheld these types of laws against challenges from individuals and citizens of states where Red Flag Laws have vetted the

⁴ Telephone Interview with Rep. Matthew Wilson, Georgia Representative 80th District (Oct. 11, 2019).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

implications of such laws in their day-to-day lives.⁹ Representative Wilson believes that this Bill will “balance the community’s interest in safety with the individual’s constitutional rights.”¹⁰

Representative Wilson believes that the most prevalent argument against House Bill 435 is that it would strip individuals of their right to due process.¹¹ His response to this argument is to ensure that any individual affected by this Bill would indeed be notified that a petition has been brought against them.¹² These individuals would then be given an opportunity to address the allegations brought against them in front of the court, which would then make the ultimate determination on whether the individual’s firearms and ammunition should be confiscated.¹³

House Bill 435 arrived at a stand-still for the year 2019; however, it will have an opportunity to move forward during the next legislative session.¹⁴ Representative Wilson is optimistic that if similar legislation currently making its way through Congress is passed, there will be a much larger appetite for House Bill 435 within the Georgia legislature.¹⁵ And he is hopeful that the model set by other Republican-run states, such as Connecticut, Illinois, Indiana, and Florida, will lead to the Georgia legislature taking a serious look at House Bill 435.¹⁶

OPPOSITION’S RATIONALE

Representative Matt Gurtler has expressed opposition to House Bill 435. He states that House Bill 435 “infringes upon individuals’ constitutional rights under the Second Amendment, as well as does away with the presumption of ‘innocent until proven guilty,’”¹⁷ citing a section of the bill which would allow a judge to have an individual’s firearms and ammunition confiscated prior to the hearing.¹⁸ The latter of these concerns would occur in cases where a judge, weighing all of the evidence offered in the original petition, believes that the individual poses an extreme and immediate threat to him or herself or to others.¹⁹

Gun rights activist groups, such as Georgia Carry, have also expressed concerns about House Bill 435.²⁰ Georgia Carry Executive Director, Jerry Henry, stated that the Bill would “deprive [him] of [his] constitutional right to due process before the government deprives [him] of

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Chelsea Beimfohr, *President Trump Pushing for Nationwide ‘Red Flag’ Laws, but What Are They?*, 13 WMAZ (Aug. 5, 2019), available at <https://www.13wmaz.com/article/news/local/president-trump-pushing-for-nationwide-red-flag-laws-but-what-are-they/93-f3597ad5-4483-43d8-be19-5cc2411076e0/> (last visited Jan 21, 2020).

¹⁵ Telephone Interview with Rep. Matthew Wilson, Georgia Representative 80th District (Oct. 11, 2019).

¹⁶ *Id.*

¹⁷ Telephone Interview with Rep. Matt Gurtler, Georgia Representative 8th District (Sep. 18, 2019).

¹⁸ H.B. 435 at § 1 16-11-144(a).

¹⁹ H.B. 435 at § 1 16-11-144(c).

²⁰ Maya T. Prabhu, *Trump’s Call for ‘Red Flag’ Gun Laws Puts Focus on Georgia Proposal*, THE ATLANTA JOURNAL-CONSTITUTION (Aug. 5, 2019), available at <https://www.ajc.com/news/state--regional-govt--politics/trump-call-for-red-flag-gun-law-puts-focus-georgia-proposal/wf40i30W1mXLFMNLSSW7RL/#/> (last visited Feb 25, 2020).

[his] property.”²¹ Georgia Carry’s website spotlights each firearms-related bill in the Georgia General Assembly, expressing its position on each Bill.²² In its strong opposition to HB 435, Georgia Carry expresses concerns that the Bill would violate due process rights and allow for firearms confiscation.²³ These concerns echo those raised by other Second Amendment supporters in Georgia, such as Georgia House Representative Ken Pullin, who has introduced House Bill 751, which would denounce any red flag legislation passed by the federal government and place criminal penalties on the enforcement of any red flag legislation.²⁴

IMPLICATIONS IN GEORGIA

House Bill 435 would essentially allow law enforcement officials, family members, or people who live with another individual exhibiting threatening behavior—either toward others or toward themselves—to petition a court to have that individual’s firearms and ammunition temporarily confiscated until they are no longer deemed a threat.²⁵ The judge would hold a hearing, at which the individual would be afforded an opportunity to plead his or her case.²⁶ If the family members or law enforcement officials can show by “clear and convincing evidence”²⁷ that the individual is indeed a threat, the court may enter a temporary protective order that would allow law enforcement to temporarily remove the firearms from the individual and prevent the individual from purchasing any firearms until the expiration of the order.²⁸ The individual would have an opportunity during the duration of the order to prove to the judge that he or she is no longer a threat and has taken some proactive steps to seek any necessary treatment.²⁹ At that time, the judge may vacate the order and allow the individual to come back into possession of his or her firearms.³⁰

LEGISLATIVE GENEALOGY

²¹ *Id.*

²² Georgia Carry, *Current Bills – General Assembly Session 2019-2020*, GEORGIA CARRY.ORG (2020), available at <https://www.georgiacarry.org/cms/current-bills/> (last visited Jan 23, 2020) (giving information clearinghouse for Georgia Firearms License issues and news).

²³ *Id.*

²⁴ Maya T. Prabhu, *Georgia Bill Would Block 'Red Flag' Orders that Require Surrender of Guns*, THE ATLANTA JOURNAL-CONSTITUTION (Jan. 19, 2020), available at <https://www.ajc.com/news/state--regional-govt--politics/georgia-bill-would-block-red-flag-orders-that-require-surrender-guns/RrW5EIo2Q5UxVmd0dgl7uL/> (last visited Feb 25, 2020).

²⁵ Telephone Interview with Rep. Matthew Wilson, Georgia Representative 80th District (Oct. 11, 2019).

²⁶ *Id.*

²⁷ Prabhu, *supra* note 20 .

²⁸ Telephone Interview with Rep. Matthew Wilson, Georgia Representative 80th District (Oct. 11, 2019).

²⁹ *Id.*

³⁰ *Id.*

House Bill 435 was first introduced in the House hopper on February 22, 2019.³¹ It received its first reading on February 25, 2019, and its second reading came on February 26, 2019.³²

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³¹ H.B. 435 Status Sheet, *supra* note 3.

³² *Id.*

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