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**SUBSTITUTE HOUSE BILL 1857**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Jinkins, Ormsby, Kagi, Walkinshaw, Senn, Fitzgibbon, Robinson, Pollet, Farrell, Tarleton, and Goodman)

AN ACT Relating to creating an extreme risk protective order; amending RCW 9.41.047; adding new sections to chapter 10.79 RCW; adding a new chapter to Title 26 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The public has expressed an overwhelming interest in making sure firearms and dangerous weapons are kept out of the hands of those individuals who might use them to cause great harm. The legislature finds it has a public duty to enact common sense measures ensuring that where an individual may be an extreme risk to himself, herself, or another, the situation is not further exacerbated by access to firearms and dangerous weapons. To that end, it is the legislature's intent to empower family members and members of law enforcement with the ability to seek a protection order to temporarily prevent an individual from possessing, accessing, or purchasing firearms and dangerous weapons while that individual poses a significant danger of harm.

NEW SECTION. **Sec.**  For the purposes of this chapter "family or household member" means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past year, persons sixteen years of age or older who are presently residing together or who have resided together in the past year and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

NEW SECTION. **Sec.**  (1) A family or household member of a person or a law enforcement officer may file a petition requesting that the court issue an emergency extreme risk protection order on an ex parte basis, pending a full hearing, enjoining the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or dangerous weapon.

(2) A court may issue an emergency extreme risk protection order if the petition, supported by a written affidavit signed by the petitioner under oath, or an oral statement taken under section 4 of this act, and any additional information provided to the court, shows there is a substantial likelihood that both of the following are true:

(a) The subject of the petition poses a significant danger, in the near future, of personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm or dangerous weapon as determined by considering the factors listed in section 4 of this act; and

(b) An emergency extreme risk protection order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition.

(3) An affidavit supporting a petition for an emergency extreme risk protection order must set forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist.

(4) An emergency extreme risk protection order must be issued or denied on the same day the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order must be issued or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court. The court may hold the emergency hearing in person or by telephone.

(5) When the petitioner for an emergency extreme risk protection order is a law enforcement officer, the law enforcement officer shall make a good faith effort to provide notice to a family or household member of the subject of the petition, or to a known third party, who may be at risk of violence or stalking. The notice must include that the law enforcement officer intends to petition the court for an emergency extreme risk protection order, and referral to relevant domestic violence or stalking advocacy or counseling resources, if appropriate.

(6) Every person who files a petition for an emergency extreme risk protection order, knowing the information in the petition to be false, is guilty of false swearing under RCW 9A.72.040.

(7) Every person who purchases or possesses a firearm or dangerous weapon with knowledge that he or she is prohibited from doing so by an emergency extreme risk protection order is guilty of a misdemeanor and is prohibited from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or dangerous weapon for a one-year period, to commence upon the expiration of the existing order.

NEW SECTION. **Sec.**  (1) The court, before issuing an emergency extreme risk protection order, may examine under penalty of perjury the petitioner and any witness the petitioner may produce.

(2) In lieu of examining the petitioner and any witness the petitioner may produce, the court may consider a written affidavit submitted by the petitioner and any witness, signed under penalty of perjury.

(3) In determining whether grounds for an emergency extreme risk protection order exist, the court shall consider all evidence of the following:

(a) A recent threat of violence or act of violence by the subject of the petition directed toward himself, herself, or another;

(b) A violation of a protection order or no-contact order issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, or 26.50 RCW;

(c) A pattern of violent acts or violent threats within the past twelve months including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another; and

(d) A conviction for a crime that constitutes domestic violence as defined in RCW 10.99.020.

(4) In determining whether grounds for an emergency extreme risk protection order exist, the court may consider any other evidence of an increased risk for violence including, but not limited to, evidence of any of the following:

(a) The unlawful and reckless use, display, or brandishing of a firearm by the subject of the petition;

(b) The history of use, attempted use, or threatened use of physical force by the subject of the petition against another person;

(c) Any prior arrest of the subject of the petition for a felony offense;

(d) Evidence of the abuse of controlled substances or alcohol; and

(e) Evidence of recent acquisition of firearms, ammunition, or other dangerous weapons.

(5) For purposes of this section, "recent" means within the six months prior to the date the petition was filed.

(6) If the court determines that grounds to issue an emergency extreme risk protection order exist, it shall issue an emergency extreme risk protection order prohibiting the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or dangerous weapon, expiring no later than fourteen days from the date of the order.

(7) Within fourteen days after the date of issuance of the order, before the court that issued the order or another court in the same jurisdiction, the court shall hold a hearing pursuant to section 6 of this act to determine if an extreme risk protection order should be issued under this chapter.

NEW SECTION. **Sec.**  (1) An emergency extreme risk protection order issued under this chapter must include all of the following:

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

(b) The date and time the order was issued;

(c) The date and time the order expires;

(d) The address of the superior court in which any responsive pleading should be filed;

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

(f) The following statement:

"To the subject of this protection order: This order is valid until the expiration date and time noted above. You are required to surrender all firearms and dangerous weapons that you own or possess and you may not have in your custody or control, purchase, possess, or receive, or attempt to purchase or receive, a firearm or dangerous weapon while this order is in effect. A hearing will be held on the date and at the time noted above to determine if a more permanent extreme risk protection order should be issued. Failure to appear at that hearing may result in a court making an order against you that is valid for one year. You may seek the advice of an attorney as to any matter connected with this order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with this order."

(2) An emergency extreme risk protection order must be personally served on the subject of the protection order by a law enforcement officer, or any person who is at least eighteen years of age and not a party to the action, if the subject of the protection order can reasonably be located.

(3) The clerk of the court shall enter an emergency extreme risk protection order issued under this section into a statewide judicial information system within one judicial day after issuance.

(4) If the court declines to issue an emergency extreme risk protection order, the court shall state the particular reasons for the court's denial. The court's denial of a motion for an emergency extreme risk protection order must be filed with the court.

NEW SECTION. **Sec.**  (1) A family or household member of a person or a law enforcement officer may request that a court, after notice and a hearing, issue an extreme risk protection order enjoining the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or dangerous weapon for a period of one year.

(2) In determining whether to issue an extreme risk protection order pursuant to a petition filed under subsection (1) of this section or pursuant to a hearing scheduled after the issuance of an emergency extreme risk protection order, the court must consider:

(a) A recent threat of violence or act of violence by the subject of the petition directed toward himself, herself, or another;

(b) Any violation of a protection order or no-contact order issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, or 26.50 RCW;

(c) A pattern of violent acts or violent threats within the past twelve months including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another; and

(d) A conviction for a crime that constitutes domestic violence as defined in RCW 10.99.020.

(3) The court may also consider any other evidence of an increased risk of violence including:

(a) The unlawful and reckless use, display, or brandishing of a firearm by the subject of the petition;

(b) The history of use, attempted use, or threatened use of physical force by the subject of the petition against another person;

(c) Any prior arrest of the subject of the petition for a felony offense;

(d) Evidence of the abuse of controlled substances or alcohol; and

(e) Evidence of recent acquisition of firearms, ammunition, or other dangerous weapons.

(4) For purposes of this section, "recent" means within the six months prior to the date the petition was filed.

(5) The petitioner has the burden of proving, by clear, cogent, and convincing evidence, that:

(a) The subject of the petition, or a person subject to an emergency extreme risk protection order, poses a significant danger of personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm or dangerous weapon; and

(b) An extreme risk protection order is necessary to prevent personal injury to the subject of the petition or the person subject to an emergency extreme risk protection order, or another, because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition or the person subject to an emergency extreme risk protection order.

(6) If the court finds there is clear, cogent, and convincing evidence to issue an extreme risk protection order, the court shall issue an extreme risk protection order prohibiting the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or dangerous weapon.

(7) If the court finds there is not clear, cogent, and convincing evidence to support the issuance of an extreme risk protection order, the court shall dissolve any emergency extreme risk protection order then in effect.

(8) The extreme risk protection order issued under this chapter has a duration of one year, subject to termination by further order of the court.

(9) When the petitioner for an extreme risk protection order is a law enforcement officer, the law enforcement officer shall make a good faith effort to provide notice to a family or household member of the subject of the petition, or to a known third party, who may be at risk of violence or stalking. The notice must include that the law enforcement officer intends to petition the court for an extreme risk protection order, and referral to relevant domestic violence or stalking advocacy or counseling resources, if appropriate.

(10) Every person who files a petition for an extreme risk protection order issued after notice and a hearing, knowing the information in the petition to be false, is guilty of false swearing under RCW 9A.72.040.

(11) Every person who purchases or possesses a firearm or dangerous weapon with knowledge that he or she is prohibited from doing so by an extreme risk protection order issued after notice and a hearing is guilty of a misdemeanor and is prohibited from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm or dangerous weapon for a five-year period, to commence upon expiration of the existing extreme risk protection order.

NEW SECTION. **Sec.**  (1) An extreme risk protection order must include all of the following:

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

(b) The date and time the order was issued;

(c) The date and time the order expires;

(d) The address of the superior court for the county in which the subject of the petition resides; and

(e) The following statement:

"To the subject of this protection order: This order will last until the date and time noted above. If you have not done so already, you must surrender all firearms or dangerous weapons that you own or possess. You may not have in your custody or control, purchase, possess, or receive, or attempt to purchase or receive, a firearm or dangerous weapon while this order is in effect. You have the right to request one hearing to terminate this order at any time during its effective period. You may seek the advice of an attorney as to any matter connected with this order."

(2) When the court issues an extreme risk protection order, the court shall inform the subject of the protection order that he or she is entitled to one hearing to request a termination of the order and shall provide the subject of the protection order with a form to request a hearing.

(3) If a person subject to an extreme risk protection order was not present in court at the time the order was issued or renewed, the extreme risk protection order must be personally served on the subject of the protection order by a law enforcement officer or any person who is at least eighteen years of age and not a party to the action, if the subject of the protection order can reasonably be located. The person's presence in court constitutes proof of service of notice of the terms of the order.

NEW SECTION. **Sec.**  (1) A person subject to an extreme risk protection order may submit one written request per year at any time during the effective period of the order for a hearing to terminate the order.

(2) If the court finds there is no longer clear, cogent, and convincing evidence to believe that section 6(5) of this act is true, the court must terminate the order.

NEW SECTION. **Sec.**  (1) A family or household member of a person or a law enforcement officer may request a renewal of an extreme risk protection order at any time within the three months before the expiration of the order.

(2) A court may, after notice and a hearing, renew an extreme risk protection order if the court finds there is clear, cogent, and convincing evidence that section 6(5) of this act continues to be true.

(3) In determining whether to renew an extreme risk protection order issued under this chapter, the court shall consider evidence of the facts identified in section 6 (2) through (4) of this act.

(4) If the renewal petition is supported by clear, cogent, and convincing evidence, the court shall renew the extreme risk protection order issued under this chapter.

(5) The renewal of an extreme risk protection order has a duration of one additional year, subject to termination by further order of the court under section 8 of this act and further renewal by order of the court under this section.

NEW SECTION. **Sec.**  (1) A person subject to an extreme risk protection order may not have in his or her custody or control, purchase, possess, or receive, or attempt to purchase or receive, any firearms or dangerous weapons while the order is in effect.

(2) An extreme risk protection order must:

(a) Require the person to surrender any firearm or dangerous weapon in his or her possession, custody, or control;

(b) Require the person to surrender any concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the person from obtaining or possessing a firearm or dangerous weapon; and

(d) Prohibit the person from obtaining or possessing a concealed pistol license issued under RCW 9.41.070.

(3)(a) The court may require the subject of an extreme risk protection order to surrender any firearm or dangerous weapon in his or her immediate possession or control or subject to his or her immediate possession or control to the sheriff of the county having jurisdiction of the proceeding or the chief of police of the municipality having jurisdiction.

(b) All law enforcement agencies must develop policies and procedures by January 1, 2016, regarding the acceptance, storage, and return of firearms or dangerous weapons required to be surrendered under this section.

(4)(a) A person ordered to surrender firearms, dangerous weapons, and his or her concealed pistol license under this section must file with the clerk of the court a proof of surrender and receipt form or a declaration of nonsurrender form within five judicial days of the entry of the order.

(b) By December 1, 2015, the administrative office of the courts shall develop a proof of surrender and receipt pattern form to be used to document that a respondent has complied with a requirement to surrender firearms, dangerous weapons, and his or her concealed pistol license, as ordered under this section, and a declaration of nonsurrender pattern form to document compliance when the respondent has no firearms, dangerous weapons, or concealed pistol license.

(5) If a person other than the subject of the protection order claims title to any firearms or dangerous weapons surrendered pursuant to this section, and the person is determined by the law enforcement agency to be the lawful owner of the firearm or firearms, or dangerous weapon, the firearm or firearms, or dangerous weapon shall be returned to the lawful owner, provided that the lawful owner agrees to maintain the firearm or firearms or dangerous weapon, while not in the lawful owner's direct custody or control, locked and separate from ammunition, and to ensure that the person subject to the protection order does not gain access, possession, custody, or control of the firearm or firearms, or dangerous weapon.

NEW SECTION. **Sec.**  (1) The clerk of the court shall enter an extreme risk protection order issued under this chapter into a statewide judicial information system within one judicial day after issuance.

(2) The clerk of the court shall forward a copy of an extreme risk protection order on or before the next judicial day 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 any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order must remain in the computer-based criminal intelligence information system for the period stated in the order, and the law enforcement agency shall only expunge orders from the system that are expired or terminated. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(3) If an extreme risk protection order is terminated before its expiration date, the clerk of the court shall forward on or before the next judicial day a copy of the termination order to the department of licensing and the appropriate law enforcement agency specified in the termination order. Upon receipt of the order, the law enforcement agency shall promptly remove the order from the computer-based criminal intelligence information system.

NEW SECTION. **Sec.**  (1) A law enforcement agency or law enforcement officer may not be held liable in any civil action for requesting, serving, or enforcing in good faith any type of extreme risk protection order or warrant, or for any other act or omission under this chapter, absent circumstances evidencing gross negligence.

(2) A law enforcement agency or law enforcement officer is not required to apply for any type of extreme risk protection order in any case including, but not limited to, a case in which the agency or officer concludes, after investigation, that the criteria for issuance of an extreme risk protection order are not satisfied.

**Sec.**  RCW 9.41.047 and 2011 c 193 s 2 are each amended to read as follows:

(1)(a) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW for mental health treatment, or at the time the court enters any type of extreme risk protection order under chapter 26.--- RCW (the new chapter created in section 16 of this act), the convicting ((~~or~~)), committing, or issuing court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

(b) The convicting ((~~or~~)), committing, or issuing court shall forward within three judicial days after conviction ((~~or~~)), entry of the commitment order, or issuance of any type of extreme risk protection order a copy of the person's driver's license or identicard, or comparable information, along with the date of conviction ((~~or~~)), commitment, or issuance, to the department of licensing. When a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW, for mental health treatment, the committing court also shall forward, within three judicial days after entry of the commitment order, a copy of the person's driver's license, or comparable information, along with the date of commitment, to the national instant criminal background check system index, denied persons file, created by the federal Brady handgun violence prevention act (P.L. 103-159).

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person, or person subject to any type of extreme risk protection order, has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition the superior court to have his or her right to possess a firearm restored.

(b) The petition must be brought in the superior court that ordered the involuntary commitment or the superior court of the county in which the petitioner resides.

(c) Except as provided in (d) of this subsection, the court shall restore the petitioner's right to possess a firearm if the petitioner proves by a preponderance of the evidence that:

(i) The petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment;

(ii) The petitioner has successfully managed the condition related to the commitment;

(iii) The petitioner no longer presents a substantial danger to himself or herself, or the public; and

(iv) The symptoms related to the commitment are not reasonably likely to recur.

(d) If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(e) When a person's right to possess a firearm has been restored under this subsection, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the department of licensing, the department of social and health services, and the national instant criminal background check system index, denied persons file.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under RCW 9.41.040(4).

NEW SECTION. **Sec.**  A new section is added to chapter 10.79 RCW to read as follows:

A court may issue a warrant to search for and seize firearms or dangerous weapons that are owned by, in the possession of, or in the custody or control of a person subject to any type of extreme risk protection order as provided in chapter 26.--- RCW (the new chapter created in section 16 of this act), if:

(1) The subject of the protection order has been served with the order; and

(2) The subject of the protection order has failed to surrender any firearm or dangerous weapon subject to the order as required under chapter 26.--- RCW (the new chapter created in section 16 of this act).

NEW SECTION. **Sec.**  A new section is added to chapter 10.79 RCW to read as follows:

(1) A law enforcement officer conducting a search and seizure pursuant to section 14 of this act must take custody of any firearm or dangerous weapon that is in the custody, control, or possession of a person who is subject to any type of extreme risk protection order or that is owned by the subject of the protection order.

(2) Any firearm or dangerous weapon found at a location subject to a search and seizure warrant issued pursuant to section 14 of this act that is owned by a person other than the subject of the protection order may not be seized if:

(a) The firearm or dangerous weapon is removed from the subject of the protection order's custody, control, or possession and stored in a manner such that the subject of the protection order does not have access to or control of the firearm or dangerous weapon; and

(b) The firearm or dangerous weapon is not otherwise unlawfully possessed by the owner.

(3) A locked firearm storage safe or case that is owned by a person other than the subject of the protection order may not be searched except in the owner's presence and with his or her consent or with a separately obtained search warrant.

NEW SECTION. **Sec.**  Sections 1 through 12 of this act constitute a new chapter in Title 26 RCW.

**--- END ---**