
Judiciary Committee

HB 1857

Title: An act relating to creating an extreme risk protective order.

Brief Description: Concerning extreme risk protective orders.

Sponsors: Representatives Jinkins, Ormsby, Kagi, Walkinshaw, Senn, Fitzgibbon, Robinson, Pollet, Farrell, Tarleton and Goodman.

Brief Summary of Bill

- Creates a civil extreme risk protective order that allows a law enforcement officer or a family or household member of a person to petition for a court order to enjoin the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving a firearm.
- Establishes procedures for the petition process and standards for entry and enforcement of both emergency and final extreme risk protective orders, and provides criminal penalties for a violation of an order.
- Requires law enforcement agencies to develop procedures for accepting, storing, and returning surrendered firearms, and authorizes courts to issue a warrant to seize firearms from the subject of an extreme risk protective order who has failed to surrender a firearm subject to the order.
- Requires notice of the entry or termination of an extreme risk protective order to be forwarded to the Department of Licensing and Washington State Patrol, and entered into the Judicial Information System.

Hearing Date: 2/11/15

Staff: Edie Adams (786-7180).

Background:

Protection Orders, Restraining Orders, and No-Contact Orders.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

There are a number of civil protection orders that allow a court to restrain a person from having contact with or threatening another person or that exclude the person from certain locations or coming within a specified distance of certain locations. Protection orders are available for victims of domestic violence, stalking, harassment, sexual assault, and vulnerable adult abuse. A court may enter a short-term ex parte temporary protection order and, after a full hearing, a final order that lasts for a fixed term.

Domestic violence protection orders are available to persons who have suffered physical harm, assault, sexual assault, stalking or the infliction of fear of physical harm by a family or household member. "Family or household member" means current or former spouses and domestic partners, persons who have a child in common, adults related by blood or marriage, adults who are residing together or who have resided together in the past, persons 16 years of age or older who are residing together or who have resided together in the past and who have or have had a dating relationship, and persons who have a biological or legal parent-child relationship.

In addition to protection orders, a court may enter a civil restraining order in family law proceedings that may include provisions restraining a person from contacting another or excluding the person from certain locations. In the context of criminal proceedings, a court may issue a no-contact order to protect the victim of the crime during the pendency of the criminal proceedings or as a condition of the sentence.

Surrender of Firearms and Dangerous Weapons.

A person who is subject to a protection order, restraining order, or no-contact order may be required to surrender his or her firearms, dangerous weapons, and concealed pistol license while the order is in place. Circumstances under which a court may order the surrender include:

- The person has used, displayed, or threatened to use a firearm or dangerous weapon in a felony or has previously committed an offense making the person ineligible to possess a firearm.
- The person's possession of a firearm or dangerous weapon presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.
- The person is subject to a qualifying order that makes the person ineligible to possess a firearm. Qualifying orders are those that are issued after notice and an opportunity to be heard and that meet other requirements, including that the order finds that the restrained person is a credible threat to the physical safety of an intimate partner or the child of an intimate partner and explicitly prohibits the person from using or threatening physical force against an intimate partner or child.

In addition, during the pendency of the petition, the court may order the temporary surrender of firearms and dangerous weapons without notice to the subject if the court finds irreparable injury could result before the time for response has elapsed.

The court may require the person to surrender his or her firearm or dangerous weapon to the local law enforcement agency, the persons' counsel, or another person designated by the court. Law enforcement agencies are required to have policies and procedures regarding the acceptance, storage, and return of surrendered firearms and weapons.

Summary of Bill:

Extreme risk protective orders are created. A law enforcement officer or a family or household member of a person may petition for an extreme risk protective order to enjoin the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving a firearm. "Family or household member" has the same meaning as under the laws governing domestic violence protection orders.

In cases where a law enforcement officer petitions for an extreme risk protective order, the officer must make a good faith effort to provide notice to a family or household member of the subject of the petition who may be at risk of domestic violence or stalking.

Emergency Extreme Risk Protective Order. A petition for an emergency extreme risk protective order (emergency order) must be supported by a sworn affidavit or sworn testimony of the petitioner. The court may issue an emergency order if the court finds there is a substantial likelihood that:

- the subject of the petition poses a significant danger in the near future of personal injury to himself, herself, or another by having a firearm considering specific factors; and
- the order is necessary because less restrictive alternatives have been tried and found ineffective or are inadequate or inappropriate for the subject's circumstances.

A hearing on a petition for an emergency order may be held in person or by telephone. The court must issue or deny the order on the same day the petition is filed unless it is filed too late in the day for effective review, in which case it must be issued or denied on the next judicial day. An emergency order must be personally served on the subject of the petition if he or she can reasonably be located. An emergency order is effective for 14 days and, within 14 days of the issuance of an emergency order, the court must hold a hearing to determine whether a final extreme risk protective order should be entered.

Final Extreme Risk Protective Order. A court may issue a final extreme risk protective order (final order) if the court finds by clear, cogent, and convincing evidence that:

- the subject of the petition poses a significant danger of personal injury to himself, herself, or another by having a firearm considering specific factors; and
- the order is necessary because less restrictive alternatives have been tried and found ineffective or are inadequate or inappropriate for the subject's circumstances.

A final order must be personally served on the subject of the petition if he or she was not present in court when the order was entered. The subject's presence in court is proof of service of the terms of the order.

A final order is effective for one year and may be renewed for an additional one-year period at any time within three months prior to the expiration of the order. The subject of a final order may petition for termination of the order one time per year during the time the person is subject to the order. The court must terminate the final order if it finds there is no longer clear, cogent, and convincing evidence to believe the grounds for issuing the order are true.

Factors Considered by the Court. A number of factors are provided that the court either must or may consider in determining whether to issue an emergency order or a final order. The court must consider:

- a recent threat of violence or act of violence by the subject of the petition directed toward himself, herself, or another;
- a violation of an anti-harassment protection order or no-contact order;
- a pattern of violent acts or violent threats within the past twelve months; and
- a conviction for a crime that constitutes domestic violence.

The court may consider any other evidence of an increased risk for violence including:

- the unlawful and reckless use, display, or brandishing of a firearm by the subject of the petition;
- the history of use, attempted use, or threatened use of physical force by the subject of the petition against another person;
- any prior arrest of the subject of the petition for a felony offense;
- any history of a violation by the subject of the petition of an anti-harassment protection order or no-contact order;
- evidence of the abuse of controlled substances or alcohol; and
- evidence of recent acquisition of firearms, ammunition, or other deadly weapons.

"Recent" means within six months preceding the filing of the petition.

Contents and Effect of the Order. An emergency order and a final order must contain certain information, including the grounds supporting issuance of the order, the date and time of issuance and expiration of the order, and a statement informing the subject that he or she must surrender all firearms owned or possessed. An emergency order also must include notice of the date and time of the hearing to determine whether a final order valid for one year will be entered against the person. A final order also must include a statement that the subject has the right to request one hearing to terminate the order during its effective period.

A person subject to a final order may not have in his or her custody of control, purchase, possess, or receive any firearms while the order is in effect. A final order must require the person to surrender any firearm in the person's possession, custody, or control, require the person to surrender any concealed pistol license, and prohibit the person from obtaining or possessing a firearm or concealed pistol license.

The court may require the subject of a final order to surrender any firearm in his or her immediate possession or control to the county sheriff or chief of police of the jurisdiction. The person must file with the clerk of the court a proof of surrender and receipt form or a declaration of non-surrender form within five judicial days of the entry of the order.

Criminal Penalties. A person who files a petition for an emergency order or a final order knowing the information in the petition is false is guilty of a misdemeanor.

A person who purchases or possesses a firearm knowing that he or she is prohibited from doing so by an emergency or final order is guilty of a misdemeanor. The person also is prohibited from having in his or her custody or control, purchasing, or possessing a firearm for one year if the violation was of an emergency order, or for five years if the violation was of a final order, running from the expiration date of the existing order.

A person who owns or possess a firearm during any period in which the person is subject to an emergency order or final order is guilty of the class C felony crime of Unlawful Possession of a Firearm in the second degree.

A court may issue a warrant to search for and seize firearms owned by, in the possession of, or in the custody or control of a person subject to any type of extreme risk protective order if the subject has been served with the order and has failed to surrender any firearm subject to the order. A firearm may not be seized if it is lawfully owned by a person other than the subject of the order, and the firearm is removed from the subject's custody, control, or possession and stored in a manner that prevents the subject from having access to or control of the firearm.

Other Provisions. Law enforcement agencies must develop policies and procedures by January 1, 2016, regarding the acceptance, storage, and return of surrendered firearms. Surrendered firearms that are determined to lawfully belong to another person who is not the subject of a final order may be returned to the lawful owner if the owner agrees to maintain the firearm, while not in the owner's direct custody or control, locked and separate from ammunition, and to ensure that the subject of the final order does not gain access, possession, custody, or control of the firearm.

A law enforcement agency or officer is not liable for requesting, serving, or enforcing in good faith an emergency order or final order, or for other acts or omissions under the act, except in cases of gross negligence. A law enforcement agency or officer is not required to apply for an emergency or final order in any case.

A court issuing an emergency order or final order must forward written notice to the Department of Licensing and the Washington State Patrol when an extreme risk protective order is entered or terminated. The Washington State Patrol must update its electronic database within seven days of notification.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.