

# HOUSE BILL REPORT

## HB 1857

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**As Reported by House Committee On:**  
Judiciary

**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 History:**

**Committee Activity:**

Judiciary: 2/11/15, 2/19/15 [DPS].

**Brief Summary of Substitute Bill**

- Creates a civil extreme risk protection 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 person from having in his or her custody or control, purchasing, possessing, or receiving a firearm or dangerous weapon.
- Establishes procedures for the petition process and standards for entry and enforcement of both emergency and final extreme risk protection 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 dangerous weapons, and authorizes courts to issue a warrant to seize firearms and dangerous weapons from the subject of an extreme risk protection order who has failed to surrender a firearm or dangerous weapon subject to the order.
- Requires orders to be entered into the Judicial Information System, and notice of the entry or termination of an extreme risk protection order to be forwarded to the Department of Licensing and the local law enforcement agency for entry into a state-wide database.

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### HOUSE COMMITTEE ON JUDICIARY

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*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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Goodman, Hansen, Kirby, Orwall and Walkinshaw.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Haler, Klippert and Stokesbary.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Muri.

**Staff:** Edie Adams (786-7180).

### **Background:**

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

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.

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.

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### **Summary of Substitute Bill:**

Extreme risk protection orders are created. A law enforcement officer or a family or household member of a person may petition for an extreme risk protection order to enjoin the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving a firearm or dangerous weapon. "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 year, persons 16 years of age or older who are residing together or who have resided together in the past year and who have or have had a dating relationship, and persons who have a biological or legal parent-child relationship.

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

Emergency Extreme Risk Protection Order. A petition for an emergency extreme risk protection 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 or dangerous weapon 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 Protection Order. A court may issue a final extreme risk protection 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 or dangerous weapon 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 a domestic violence, anti-harassment, stalking, or sexual assault protection order or no-contact order;
- a pattern of violent acts or violent threats within the past 12 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;
- 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 and dangerous weapons owned or possessed. An emergency order also must include notice of the date and time of the hearing to determine whether a final order will be entered. 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 or dangerous weapons while the order is in effect. A final order must require the person to surrender any firearm or dangerous weapon 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, dangerous weapon, or concealed pistol license.

The court may require the subject of a final order to surrender any firearm or dangerous weapon 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 court a proof of surrender and receipt form or a declaration of non-surrender form within five judicial days of entry of the order.

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

A person who purchases or possesses a firearm or dangerous weapon 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 or dangerous weapon for an additional year if the violation was of an emergency order, or an additional five years if the violation was of a final order.

A court may issue a warrant to search for and seize firearms and dangerous weapons 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 was served with the order and has failed to surrender any firearm or dangerous weapons subject to the order. A firearm or dangerous weapon may not be seized if it is lawfully owned by a person other than the subject of the order, and the firearm or dangerous weapon 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 or dangerous weapon.

Other Provisions. Law enforcement agencies must develop policies and procedures by January 1, 2016, regarding the acceptance, storage, and return of surrendered firearms and dangerous weapons. Surrendered firearms and dangerous weapons 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 or dangerous weapon, 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 or dangerous weapon.

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.

The clerk of court must enter an extreme risk protection order into the Judicial Information System, and forward any final order or termination of an order to the local law enforcement agency within one judicial day. The local law enforcement agency must enter the extreme risk protection order into, or remove a terminated order from, the state-wide database used for listing outstanding warrants. The court issuing an emergency final order must forward within three judicial days a written notice of the entry of the order to the Department of Licensing (DOL). If the DOL determines the subject of the order has a concealed pistol

license, the DOL must immediately notify the license-issuing law enforcement agency, which must immediately revoke the license.

**Substitute Bill Compared to Original Bill:**

The order is renamed a protection order rather than a protective order and the order is made applicable to dangerous weapons in addition to firearms. The definition of "family or household member" is revised so that non-related persons who have lived together in the past are included only if they resided together in the past year. Factors that a court must consider include violations of domestic violence, stalking, or sexual assault protection orders or no-contact orders. A petitioning law enforcement officer must notify any known third party who may be a victim of violence or stalking. Notice of orders entered or terminated must be provided to the local law enforcement agency, rather than the Washington State Patrol, for entry into a state database. The class C felony for violation of the order is removed, and the misdemeanor crime for filing a false petition is made a gross misdemeanor.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) We know people who have family members who are deceased due to the mix of serious mental illness and firearms. They might have been here today if a family member could have gotten a protection order during the time they were in deep crisis. This bill achieves the right balance and fits squarely within mental health legislation we are considering this session. The mental health system is underfunded and overburdened and doesn't have capacity to handle the needs of mentally ill persons in our community.

Many lives have been shattered because a mentally ill person was allowed to possess guns. In both the Jewish Federation shooting and the Santa Barbara shooting, the parents or other family members saw the warning signs and took steps to intervene but they were unable to prevent the tragedies. A mother with a mentally ill daughter tried everything to prevent her daughter's suicide to no avail. There are families with broken hearts as a result of gun violence, and other people should not have to go through this. Family members in these tragedies did not have the legal tools they needed to prevent the shooters from owning guns. This bill provides a way to temporarily remove guns from those who are dangerous. The bill is modeled on California law and existing protection orders.

This is a measure to take an ethical and just path to maintain a safe and secure environment for families and communities. The due process rights of one must be balanced against the rights of others. When we know a person presents a risk, we have a moral obligation to do

something to minimize the risk to others and the community. Families are asking you to step in and help them protect their loved ones and others from gun violence.

(Opposed) We have been hearing for two years that the gun control groups do not want to take away guns but that is the sole purpose of this bill. There are already extensive firearms surrender laws. This bill is of questionable benefit since it takes the gun but it does not address the person. We need to deal with these people through the mental health system. The bill fails to truly protect the mentally ill and creates a false sense of security.

The bill is full of good intentions, and we understand the need to protect mentally ill from harm to self or others, but the bill goes too far. There is nothing in this bill that indicates it is a mental health bill. Guns should be taken away from people who are dangerous, but that is already allowed under domestic violence protection orders.

There are due process and many other concerns with this legislation. Ex parte orders are allowed without notice and based only on an affidavit, and the evidentiary bar is low and hazy. This affects a civil liberty interest so the subject should be afforded counsel and notice of the hearing. It is not reasonable for someone to come in six months after a threat asking for an emergency order without notice. The list of possible petitioners is endless and could include an old college roommate. The bill allows for only one court hearing for termination regardless of the current circumstances of the person. The gun search and seizure warrant will allow law enforcement to come into a person's home with no showing that the person has a firearm or has failed to comply with the order. A violation is a felony, which means the person will lose their firearm rights forever. Police are required to notify potential family member victims but not other victims.

(Other) The section governing entry of these orders into the state-wide database should be consistent with current practice for other orders, which are maintained by local law enforcement agencies.

**Persons Testifying:** (In support) Representative Jinkins, prime sponsor; Cheryl Stumbo; Jane Weiss; Leanne Kennedy; Seth Goldstein; Sarah Whitford; Jon Rosenburg; Zoe Moore; and Sandy Brown.

(Opposed) Brian Judy, National Rifle Association; Adina Hicks, Protect Our Gun Rights Washington; and Rick Bartholomew, Washington State Bar Association.

(Other) Rob Huss, Washington State Patrol.

**Persons Signed In To Testify But Not Testifying:** None.