

---

## Judiciary Committee

---

### HB 2461

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

**Brief Description:** Concerning extreme risk protection orders.

**Sponsors:** Representatives Jinkins, Appleton, Kagi, Moscoso, Robinson, Reykdal, Walkinshaw, Tharinger, Tarleton, Senn, Fitzgibbon, Cody, Frame, Moeller, Fey, Stanford, Farrell, Sawyer, McBride, Ormsby, Pollet and S. Hunt.

#### Brief Summary of Bill

- Creates a civil extreme risk protection order that allows a law enforcement officer, child welfare agency, or 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 protection orders, and provides criminal penalties for 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 protection order who has failed to surrender a firearm 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.

**Hearing Date:** 1/21/16

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

**Background:**

---

*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.*

### 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 child of an intimate partner and explicitly prohibits the person from using or threatening physical force against an intimate partner or child.

The temporary surrender of firearms and dangerous weapons may be ordered during the pendency of the petition 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 weapons 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 protection orders are created. A law enforcement officer, child welfare agency, or 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. "Child welfare agency" means Child Protective Services and children's advocacy centers. "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.

Any person may report to law enforcement an individual the reporting person has reason to believe poses a significant danger in the near future of personal injury to self or others by having a firearm. Law enforcement has discretion to determine whether or not to investigate the individual and petition for an extreme risk protection order. When a law enforcement officer petitions for an extreme risk protection order, an officer must make a good faith effort to provide notice to a family or household member, or 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 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 its issuance, 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 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.

During the hearing on the final order, the court must consider whether a chemical dependency or mental health evaluation of the subject of the petition is appropriate. If the petitioner or law enforcement officer alleges in the hearing that the subject of the petition has failed to surrender firearms under an emergency order, the court must determine whether probable cause exists to believe the subject of the petition has failed to surrender firearms and must issue a warrant for the search and seizure of the firearms if such a determination is made.

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 to five years at the discretion of the court and may be renewed for an additional one to five-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;
- a previous or existing extreme risk protection order and any violation of an extreme risk protection order; and
- a conviction for a crime that constitutes domestic violence.

The court may consider any other relevant 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;
- corroborated evidence of the abuse of controlled substances or alcohol; and
- evidence of recent acquisition of firearms or ammunition.

"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 in the person's possession, custody, or control. An emergency order must include notice of the date and time of the hearing to determine whether a final order will be entered. A final order must include a statement that the subject has the right to request one hearing per year during its effective period to terminate the order.

A person subject to an emergency order may not have in his or her custody or control, purchase, possess, or receive any firearms while the order is in effect. At the time of service of the emergency order, the law enforcement officer must request surrender of the subject's firearms, and if the subject refuses to surrender the firearms, a law enforcement officer must make a good faith effort to notify a family or household member or a third party who may be at risk of violence. A subject who declines to surrender firearms at the time of service of the order must surrender or sell the firearms within 48 hours of the date of service and file a proof of surrender form, declaration of non-surrender form, or proof of sale form by the date and time set for the final order hearing.

A person subject to a final order may not have in his or her custody or control, purchase, possess, or receive any firearms while the order is in effect. A final order must require the person to surrender or sell 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 person must file with the court a proof of surrender and receipt form, a declaration of non-surrender, or a proof of sale form within five judicial days of entry of the final 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 knowing that he or she is prohibited from doing so by a 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 an additional five years commencing on the expiration of the existing order. Upon a second conviction for a violation of a final order, the firearms prohibition is extended to a ten-year period commencing on the expiration of the existing order.

It is a class C felony for a person to purchase or possess a firearm in violation of a final order if the person has two or more previous convictions for violating a final order.

A court may issue a warrant to search for and seize firearms in the possession, 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 or sell 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, 2017, 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.

The clerk of court must enter an extreme risk protection order into the Judicial Information System on the same day as issuance, and must 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 or 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.

The act shall not be construed to impose any civil or criminal liability on any person or entity for acts or omissions related to reporting, investigating, or filing an emergency or final extreme risk protection order.

**Appropriation:** None.

**Fiscal Note:** Available.

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