
Civil Rights & Judiciary Committee

HB 1786

Brief Description: Improving procedures and strengthening laws relating to protection orders, no-contact orders, and restraining orders.

Sponsors: Representatives Jinkins, Wylie, Goodman, Macri, Bergquist, Cody, Ormsby, Valdez, Frame, Peterson, Tarleton, Davis, Robinson, Fey, Appleton, Santos, Kilduff, Lovick, Walen, Senn and Pellicciotti.

Brief Summary of Bill

- Revises standards and procedures governing protection orders, no-contact orders, and restraining orders, including standards for when an order may require surrender of firearms, dangerous weapons, and a concealed pistol license (CPL).
- Requires any protection order, no-contact order, or restraining order that includes an order to surrender firearms, dangerous weapons, and a CPL to be served by a law enforcement officer.
- Establishes a procedure for surrender of firearms, dangerous weapons, and any CPL to law enforcement and authorizes courts to issue a warrant to seize firearms and dangerous weapons where there is probable cause to believe the respondent has failed to comply with the order.
- Makes it Unlawful Possession of a Firearm when a respondent possesses a firearm in violation of a qualifying order that meets certain criteria, regardless of whether the order involves intimate partners.

Hearing Date: 2/8/19

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 protective 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, or in some cases is permanent.

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.

Generally a violation of a protective order is a gross misdemeanor offense. A violation of some orders is a class C felony if the person violating the order has two prior convictions for violations of a similar order or if the violation involved an assault or reckless endangerment.

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 (CPL) while the order is in place. In entering most orders, if the person to be restrained has used or threatened to use a firearm in the commission of a felony, or is otherwise disqualified from having a firearm, the court either may or must require the person to surrender their firearms, dangerous weapons, and CPL, depending on the evidence presented. In addition, the court may order surrender where 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 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.

A court is required to order the surrender of firearms, dangerous weapons, and any CPL when entering certain qualifying orders involving intimate partners. A qualifying order must meet the following requirements:

- The order was entered after notice and an opportunity to respond.
- The order restrains the person from harassing, stalking, or threatening an intimate partner or the person's or intimate partner's child.
- The order must include either: a finding that the restrained person is a credible threat to the physical safety of an intimate partner or child; or terms restraining the person from using or threatening physical force against an intimate partner or child.

A person who possesses a firearm in violation of a qualifying order involving intimate partners is guilty of the crime of Unlawful Possession of a Firearm in the second degree, a class C felony.

Surrender Procedures.

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. Within five days of the entry of the order, the respondent must file with the court a proof of

surrender and receipt form, or a declaration of nonsurrender form if the respondent has no firearms, dangerous weapons, or CPL. Law enforcement agencies are required to have policies and procedures regarding the acceptance, storage, and return of surrendered firearms and weapons.

Law Enforcement Return of Firearms.

Legislation enacted in 2015 established a process relating to the return of privately-owned firearms in the custody of a law enforcement agency. Law enforcement agencies must establish a notification protocol to allow a family or household member to request notification before the return of a privately-owned firearm. A law enforcement agency may not return a private firearm until the agency determines the person is eligible to possess a firearm and at least 24 hours have elapsed from the time the firearm was obtained. If a family or household member has requested notification, the agency must hold the firearm in custody for 72 hours from the time the notification is provided.

Summary of Bill:

Standards and procedures governing protection orders, no-contact orders, and restraining orders, are revised, including standards for any required surrender of firearms, dangerous weapons, and concealed pistol licenses under these orders.

Firearms and Dangerous Weapons Surrender.

Changes are made to the statute governing the standards for a court to order surrender of firearms, dangerous weapons, and a concealed pistol license (CPL) when issuing a protection order, restraining order, or no-contact order.

The firearms surrender requirement for qualifying orders involving intimate partners that meet specified criteria is expanded to cover any protection, restraining, or no-contact order that meets the criteria, not just those involving intimate partners. The crime of Unlawful Possession of a Firearm based on possession of a firearm in violation of a qualifying order applies to all qualifying orders that meet the specified criteria, not just those involving intimate partners.

A protective order that includes an order to surrender firearms, dangerous weapons, and any CPL must require immediate surrender and prohibit the respondent from accessing firearms. A temporary order may include an order to surrender a CPL in addition to firearms and dangerous weapons. Any protective order that includes an order to surrender firearms, dangerous weapons, and any CPL must be served by a law enforcement officer and the surrender must be to law enforcement.

Surrender Process.

A law enforcement officer serving a protective order that includes an order to surrender must request the respondent to immediately surrender all firearms and dangerous weapons in his or her custody, control, or possession, and any CPL. If a law enforcement officer does not serve the order, the respondent must surrender the firearms, dangerous weapons, and any CPL to law enforcement within 48 hours of being served by alternate service or within 48 hours of the hearing at which the respondent was present. The law enforcement officer must issue a receipt for all surrendered firearms, dangerous weapons, and any CPL, provide a copy of the receipt to the respondent, and file the receipt with the court within 72 hours.

At the time of issuance of a protective order that includes an order to surrender firearms, dangerous weapons, and any CPL, the court must set a hearing date within three days and require the respondent to appear and show proof of the surrender of all firearms and dangerous weapons in his or her custody, control, or possession, and any CPL, to a law enforcement agency. The court may issue a warrant for the search and seizure of firearms and dangerous weapons if it determines based on the sworn testimony of the petitioner or a law enforcement officer that probable cause exists to believe the respondent has failed to surrender all firearms and dangerous weapons in his or her custody, control, or possession.

A surrendered firearm that is lawfully owned by a person other than the respondent must be returned to the owner if the owner removes the firearm from the respondent's access, custody, control, or possession and stores the firearm in a manner that prevents the respondent from having access to or control of the firearm.

Law enforcement agencies must have policies and procedures for the acceptance, storage, and return of surrendered firearms. A law enforcement agency must comply with state law requirements for return of private firearms before returning a firearm or CPL to the owner or person from whom it was obtained.

Other Provisions.

Statutes governing domestic violence protection orders, stalking protection orders, and anti-harassment protection orders are revised to provide that a respondent may file a motion to terminate or modify an order no more than once in every 12-month period that the order is in effect.

If the court declines to issue an ex parte temporary anti-harassment protection order, the court must state the particular reasons for the court's denial. The court's denial of a motion for an ex parte temporary order shall be filed with the court.

When issuing a sexual assault protection order or stalking protection order, a court must consider the provisions of the statute governing orders to surrender firearms and dangerous weapons and enter such an order as required by that statute. Similar provisions in other protection order and restraining order statutes are revised to use consistent language.

The clerk's transmittal of a sexual assault protection order or stalking protection order to the appropriate law enforcement agency must be done electronically.

Appropriation: None.

Fiscal Note: Requested on January 30, 2019.

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