

# HOUSE BILL REPORT

## SHB 1786

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### As Amended by the Senate

**Title:** An act relating to improving procedures and strengthening laws relating to protection orders, no-contact orders, and restraining orders.

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

**Sponsors:** House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Jinkins, Wylie, Goodman, Macri, Bergquist, Cody, Ormsby, Valdez, Frame, Peterson, Tarleton, Davis, Robinson, Fey, Appleton, Santos, Kilduff, Lovick, Walen, Senn and Pellicciotti).

### Brief History:

#### Committee Activity:

Civil Rights & Judiciary: 2/8/19, 2/20/19 [DPS].

#### Floor Activity:

Passed House: 3/5/19, 56-42.

Senate Amended.

Passed Senate: 4/13/19, 25-20.

### Brief Summary of Substitute Bill

- Revises standards and procedures governing protection orders, no-contact orders, and restraining orders, including standards governing the surrender of firearms, dangerous weapons, and any concealed pistol license (CPL) under these orders.
- 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 and that

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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.*

includes an order to surrender firearms and a prohibition on possessing firearms.

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## HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Jinkins, Chair; Thai, Vice Chair; Goodman, Hansen, Kilduff, Kirby, Orwall, Valdez and Walen.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Graham, Shea and Ybarra.

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

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

### **Background:**

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

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: a finding that the restrained person is a credible threat to the physical safety of an intimate partner or child; and 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 Substitute Bill:**

Standards and procedures governing protection orders, no-contact orders, and restraining orders, are revised, including standards governing the surrender of firearms, dangerous weapons, and any concealed pistol license (CPL) 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.

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 firearms must be surrendered to the custody of a law enforcement agency. A court may or must order surrender, depending on the evidence presented, when the person meets any of the disqualifying factors under the crime of Unlawful Possession of a Firearm.

A person is guilty of Unlawful Possession of a Firearm in the second degree if the person possesses a firearm during any period of time the person is subject to a protection order, restraining order, or no-contact order that:

- was entered after notice and an opportunity to respond;
- restrains the person from harassing, stalking, or threatening the protected person or the person's or protected person's child; and
- includes an order requiring the person to surrender all firearms and prohibiting the person from accessing, obtaining, or possessing firearms.

#### 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 and provide a copy of the receipt to the respondent. The law enforcement agency must 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. 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 stalking, sexual assault, or domestic violence protection order to the appropriate law enforcement agency must be done electronically.

#### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment makes the following changes:

- adds language emphasizing the need for swift and certain compliance with court orders prohibiting access to and possession of firearms due to the heightened risk of lethality to petitioners when respondents under protection orders become aware of court involvement and continue to have access to firearms, and due to the frequency of noncompliance with court orders prohibiting access to and possession of firearms;
- requires a respondent, if present at the hearing at which an order to surrender firearms, dangerous weapons, and any concealed pistol license (OTSW) is entered, to immediately surrender all firearms, dangerous weapons, and any concealed pistol license (CPL) to a law enforcement agency on the day of the hearing (rather than within 48 hours of the hearing).
- requires a law enforcement agency that takes custody of surrendered firearms, dangerous weapons, and any CPL to file the original receipt with the court within 24 hours (rather than 72 hours) using electronic filing, if available;
- when a surrendered firearm is returned to a lawful owner who is not the respondent, provides that the owner's agreement to store the firearm in a manner that the respondent does not have access to the firearm must be in a written document signed under penalty of perjury, and requires law enforcement to comply with current law requirements under RCW 9.41.345 before return of a firearm to the owner;
- revises the procedures for the court hearing to verify compliance with an OTSW. Provides that courts must develop procedures to verify timely and complete compliance with OTSWs, including compliance review hearings to be held as soon as possible after service of the order and at which the respondent must be present and

- provide testimony under oath verifying compliance with the OTSW. Provides that a review hearing is not required if the court finds the proof of surrender or declaration of non-surrender attested to by the respondent, along with verification from law enforcement and other relevant evidence, shows that the respondent is in compliance with the OTSW;
- requires the Administrative Office of the Courts (AOC) to create a statewide pattern form to assist the courts in ensuring timely and complete compliance with OTSWs. Requires the AOC to report annually on the number of OTSWs issued by each court, the degree of compliance, and the number of firearms obtained, and authorizes the AOC to make recommendations regarding additional procedures to enhance compliance and victim safety; and
  - removes the repeal of a section governing proof of surrender forms and declaration of non-surrender forms and a section governing default penalties under chapter 9.41, and makes a number of wording changes throughout the bill.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) There are many protection order statutes and they all have different requirements, which makes things confusing for law enforcement agencies, prosecutors, and courts. The bill is an effort to bring consistency across all protection orders so that there are standard expectations for everyone involved in the process. The bill applies the same procedures and standards for surrender of firearms under extreme risk protection orders (ERPOs) to the surrender process for other types of protection orders.

The bill will improve protections for domestic violence victims and provide greater protections for stalking, harassment, and sexual assault victims. Under current law, the crime of Unlawful Possession of a Firearm only applies when a respondent violates a domestic violence protection order involving an intimate partner. Petitioners who are victims of sexual assault, stalking, or harassment who obtain a protection order that includes an order to surrender weapons do not have this same protection. The proposed changes close that gap by holding accountable any respondent who violates a firearms prohibition order.

A woman is battered every nine seconds in this country. Perpetrators often have a long history of domestic violence, and the abuse passes into the next generation. A conviction for a felony domestic violence offense is the single greatest predictor of future violent crime. That is why it is so important to disarm abusers. The bill will streamline the procedures for firearms surrender in the protection order statutes to match the strong standards adopted by the voters under the ERPO statute.

Respondents ordered to surrender weapons do not always comply. Having an automatic mechanism regarding firearms surrender will help ensure that this happens. There are a

couple of amendments that would improve the bill. The term "dangerous weapon" should be defined so it is clear what is subject to surrender. Any officer should be able to file the receipt with the court, not just the officer taking possession of the weapons.

Protection orders save lives. If a court orders someone to turn in firearms, that person should be held accountable for failing to comply. The bill will improve accountability and provide clarifications to the protection order process.

(Opposed) None.

**Persons Testifying:** Representative Jenkins, prime sponsor; Michelle Larson, King County Prosecuting Attorney's Office; Catherine Person; James McMahan, Washington Association of Sheriffs and Police Chiefs; Logan Rysemus; and Sandra Shanahan.

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