

HOUSE BILL REPORT

HB 2305

As Passed House:
February 14, 2020

Title: An act relating to firearms laws concerning persons subject to vulnerable adult protection orders.

Brief Description: Concerning firearms laws concerning persons subject to vulnerable adult protection orders.

Sponsors: Representatives Doglio, Pollet and Appleton.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/29/20, 2/5/20 [DP].

Floor Activity:

Passed House: 2/14/20, 55-42.

Brief Summary of Bill

- Authorizes a court when issuing a vulnerable adult protection order to order the respondent to surrender firearms, dangerous weapons, and any concealed pistol license under certain circumstances.
- Provides that a person who possesses a firearm while subject to a vulnerable adult protection order that meets specified qualifying factors is guilty of Unlawful Possession of a Firearm in the second degree.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Kilduff, Chair; Thai, Vice Chair; Goodman, Graham, Hansen, Kirby, Orwall, Peterson, Valdez and Walen.

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

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.

Order to Surrender Weapons.

A person who is subject to a protection order, restraining order, or no-contact order may be required to surrender the person's firearms, dangerous weapons, and concealed pistol license (CPL) while the order is in place. This applies to the following types of protective orders:

- domestic violence protection orders or no-contact orders,
- sexual assault protection orders;
- stalking protection orders and no-contact orders;
- anti-harassment protection orders or no-contact orders; and
- restraining orders entered in family law or parentage proceedings.

In entering a protective order, 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 the person's firearms, dangerous weapons, and any CPL, depending on the evidence presented. A court must order the surrender of firearms, dangerous weapons, and any CPL when entering a protective order involving intimate partners that meets certain qualifying criteria. 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.

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 qualifying protection order, restraining order, or no-contact order. A qualifying order is one that was entered after notice and an opportunity to respond, that restrains the person from harassing, stalking, or threatening the protected person or the person's or protected person's child, and that includes either:

- a finding that the restrained person is a credible threat to the physical safety of the protected person or child; and terms restraining the person from using or threatening physical force against the protected person or child; or
- an order requiring the person to surrender all firearms and prohibiting the person from accessing, obtaining, or possessing firearms.

Vulnerable Adult Protection Orders.

Vulnerable adults are people 60 years of age or older who cannot care for themselves, and persons who are legally incapacitated, have developmental disabilities, are admitted to facilities, or are receiving services from certain care agencies.

A vulnerable adult who is suffering from abandonment, abuse, financial exploitation, or neglect may petition the superior court for an order for protection. An interested person acting on behalf of the vulnerable adult may also seek a protection order for the vulnerable adult. A petition must allege that the person is a vulnerable adult who has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect. The petition must be accompanied by affidavit stating the specific facts and circumstances that demonstrate the need for relief.

The court may issue a vulnerable adult protection order for a specified period of time that may not exceed one year. The court may order any relief it deems necessary to protect the vulnerable adult, including:

- restraining the respondent from committing acts of abuse, abandonment, exploitation, or neglect;
- prohibiting contact by the respondent;
- prohibiting the respondent from coming within a certain distance of particular locations;
- requiring the respondent to provide an accounting of the disposition of the vulnerable adult's income or resources; and
- restraining the sale of property for a specified time period.

Summary of Bill:

When issuing a vulnerable adult protection order, a court must consider whether the respondent should be ordered to surrender firearms, weapons, and any concealed pistol license. The court either may or must order the respondent under a vulnerable adult protection order to surrender firearms, weapons, and any concealed pistol license according to the standards that apply for the surrender of firearms and weapons when entering other protective orders.

A person is guilty of Unlawful Possession of a Firearm in the second degree if the person possesses a firearm while subject to a qualifying vulnerable adult protection order that meets the same criteria that apply with respect to other qualifying protective orders covered under the crime of Unlawful Possession of a Firearm.

Appropriation: None.

Fiscal Note: Not requested.

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) Ensuring that individuals subject to protection orders temporarily surrender their firearms is essential to preventing gun deaths and injuries. Currently, a judge can order firearms surrender for all protection orders except vulnerable adult protection orders. The bill gives judges issuing vulnerable adult protection orders the same tools they have under other protection orders if there is evidence that the subject of the order has used or threatened to use a firearm or is already prohibited from firearm possession. Firearms in a crisis situation can be the difference between life and death. Closing this loophole and aligning protections for vulnerable adults with all other orders just makes sense.

In many cases involving vulnerable adult abuse, firearms are involved or they are in the home, and there is no mechanism to request immediate surrender. Adult protection orders are designed to protect individuals in case of abandonment, abuse, and neglect. There is no reason a judge should not have access to the same tools available for other protection orders. If a respondent has a previous history of using firearms that is not directed at the vulnerable adult, then firearms surrendered under other protection orders would not be available.

Civil protection orders are a critical tool that increase access to protection. An essential part of community safety is requiring temporary surrender of weapons for persons subject to orders. Currently with a vulnerable adult protection order, there is no authority to surrender weapons, even if there is evidence the respondent has used or threatened to use a firearm.

(Opposed) This bill is problematic because of the lack of due process, the potential for unintended consequences, and the potential for it to be used maliciously against vulnerable populations. It denies Second Amendment rights to people who have not been convicted or even charged of any crime. There is a history of misuse of such measures against marginalized groups.

If a person is prohibited from possessing firearms, they should be arrested for that violation. If an alleged felony has been committed, then the person should be arrested and charged. If there is evidence of a real threat, there already exist several other orders that could be used to cover this, especially if a weapon was used.

Firearms rights could be taken away for five years under these orders without a criminal charge or conviction. Existing law already allows a judge to order firearms surrender when appropriate. This bill removes discretion from the judge and requires surrender of firearms. Many vulnerable adult protection orders are issued for financial exploitation, and there is no nexus between that and firearms.

Persons Testifying: (In support) Representative Doglio, prime sponsor; Zoe Moore; Jeannie Shu; Sandra Shanahan; and Dorothy Kim.

(Opposed) Matthew Aimonetti, Pink Pistols of Seattle; Phil Watson, Firearms Policy Coalition; and Tom Kwieciak, National Rifle Association.

Persons Signed In To Testify But Not Testifying: Shanda Taylor Boyd.