
Public Safety Committee

HB 2569

Brief Description: Authorizing pretrial detention for certain offenses involving firearms.

Sponsors: Representatives Wylie, Cody, Gregerson, Pollet, Tarleton, Senn, Irwin and Davis.

Brief Summary of Bill

- Requires the court to detain a defendant pending trial when the offense involves the possession or attempted possession of a firearm in violation of a court order prohibiting the person from accessing, obtaining, or possessing firearms, and no condition or combination of conditions will reasonably assure the safety of any other person and the community.
- Requires an individualized judicial determination of bail for the release of a person arrested and detained for the possession or attempted possession of a firearm in violation of a qualifying court order.

Hearing Date: 2/4/20

Staff: Omeara Harrington (786-7136).

Background:

Pretrial Release.

Pretrial release is the release of an accused person from detention pending trial. In most cases, the state Constitution guarantees the right to release on bail. Governing court rules establish a presumption that an accused person will be released on personal recognizance unless the court determines that either: (1) the release on recognizance will not reasonably assure that the accused will appear; or (2) there is a likely danger that the accused will commit a violent crime or unlawfully interfere with the administration of justice. Under these circumstances, the court may impose monetary bail or other conditions of release that the person must abide by while in the community awaiting trial.

Limitations on Pretrial Release.

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.

The state Constitution identifies a narrow set of circumstances in which there is no right to release on bail, and the accused person may be detained pending trial. Bail may be denied in capital cases where proof of the accused's guilt is evident or the presumption of the accused's guilt is great. Bail may also be denied for persons charged with an offense punishable by life in prison upon a showing by clear and convincing evidence that the person has a propensity for violence that creates a substantial likelihood of danger to the community or any person. Offenses for which the maximum sentence is the possibility of life in prison include class A felonies, third strike offenses for persistent offenders, and second strike offenses for persistent sex offenders.

There is a statutory process that must be followed in order for a judge to order pretrial detention, including a hearing in which the accused person has a right to an attorney, to testify, to present and cross-examine witnesses, and to present evidence. A detention order must include written findings of fact and the reasons for the detention, taking into account a number of factors, including the nature and circumstances of the offense, the weight of the evidence, and the person's history and characteristics.

Booking Bail.

Some jurisdictions allow a process called "booking bail," in which a person who has been arrested may post bail without a judicial officer's determination. In counties that allow booking bail, a law enforcement officer or prosecutor may set bail according to a bail schedule in local court rules that specifies the availability and amount of bail for particular offenses.

Bail for the release of a person arrested and detained for a class A or B felony offense must be determined on an individualized basis by a judicial officer, which has the effect of preventing the use of booking bail for these offenses.

Court Orders Prohibiting a Person From Accessing, Obtaining, or Possessing Firearms.

There are a number of 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. Civil protection orders are available for victims of domestic violence, stalking, harassment, sexual assault, and vulnerable adult abuse. A civil restraining order may be issued in family law proceedings. 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 proceedings or as a condition of the sentence.

A person who is subject to a protection order, restraining order, or no-contact order may be required to immediately surrender his or her firearms, and be prohibited from accessing, obtaining, or possessing firearms, 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, and prohibit possession of firearms, depending on the evidence presented. In addition, the court may order surrender and prohibit possession of firearms when the person's possession of a firearm presents a serious and imminent threat to public health or safety, or to the health or safety of any individual. A court is also required to order the surrender of firearms, and prohibit possession of firearms, when entering certain qualifying orders involving intimate partners.

A person is guilty of Unlawful Possession of a Firearm in the second degree, a class C felony, 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
- either (1) includes a finding that the person poses a credible threat to the protected person or his or her child and enjoins the use or threat of physical force; or (2) includes an order requiring the person to surrender all firearms and prohibiting the person from accessing, obtaining, or possessing firearms.

An extreme risk protection order (ERPO) is a civil court order that prohibits a person from possessing, purchasing, receiving, or having in his or her custody or control a firearm when, by possessing a firearm, the person poses a significant danger of causing personal injury to themselves or others in the near future. A person who has in his or her custody or control, or purchases, possesses, or receives a firearm knowing that he or she is prohibited from doing so by an ERPO is guilty of a gross misdemeanor, or a class C felony if the person has two or more prior convictions for a violation of an ERPO.

Summary of Bill:

Following a detention hearing, a judge must order the pretrial detention of a person upon determining that: (1) the offense involves the possession or attempted possession of a firearm in violation of a protection order, no contact order, restraining order, or other court order, that includes an order prohibiting the person from accessing, obtaining, or possessing firearms; and (2) no condition or combination of conditions will reasonably assure the safety of any other person and the community.

A judicial determination is required in order to release a defendant on bail in cases in which the offense involves possession or attempted possession of a firearm in violation of a protection order, no contact order, restraining order, or other court order, that prohibits the person from accessing, obtaining, or possessing firearms.

Appropriation: None.

Fiscal Note: Requested on February 1, 2020.

Effective Date: The bill takes effect January 1, 2021, only if the people ratify House Joint Resolution 4210 in the next general election. The bill is null and void unless House Joint Resolution 4210 is ratified by the people.