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## Public Safety Committee

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### HJR 4210

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

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

#### Brief Summary of Bill

- Proposes an amendment to the state Constitution to authorize the court to deny bail in cases involving the possession or attempted possession of a firearm in violation of a court order prohibiting a person from accessing, obtaining, or possessing firearms.

**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 pretrial release on bail. However, the state Constitution identifies a narrow set of circumstances in which there is no right to bail, and the accused person may be detained pending trial. Specifically, release on 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. The denial of bail under these circumstances is subject to limitations determined by the Legislature.

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.

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

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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.*

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:**

The state Constitution is amended to authorize the court to deny bail in cases involving the possession or attempted possession of a firearm in violation of a court order prohibiting a person from accessing, obtaining, or possessing firearms. The denial of bail under these circumstances is subject to limitations determined by the Legislature.

**Appropriation:** None.

**Fiscal Note:** Not requested.