

HOUSE BILL REPORT

ESSB 5027

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to extreme risk protection orders.

Brief Description: Concerning extreme risk protection orders.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Frockt, Carlyle, Palumbo, Wellman, Pedersen, Keiser, Saldaña, Mullet and O'Ban).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/26/19, 3/28/19 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Allows an extreme risk protection order (ERPO) petition to be brought against a person under age 18, and allows the juvenile court to hear such a petition.
- Requires an ERPO issued against a minor to be served on the parents or guardian and include a written notice advising the parents or guardian of the legal requirement to secure firearms located on the premises.
- Requires the court to give law enforcement priority at any ERPO calendar and allows law enforcement to petition for an ERPO after-hours.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. 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 3 members: Representatives Irwin, Ranking Minority Member; Klippert and Shea.

Staff: Ingrid Lewis (786-7289).

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.

Background:

An extreme risk protection order (ERPO) is a civil court order that allows a family member or law enforcement officer or agency to petition a court to temporarily enjoin a person from possessing, purchasing, receiving, or having in his or her custody or control a firearm.

An ERPO petition must allege that the person poses a significant danger of causing personal injury to themselves or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm. The petition must be supported by a sworn affidavit stating specific information that give rise to a reasonable fear of future dangerous acts by the respondent.

A law enforcement officer or agency that petitions for an ERPO must make a good faith effort to provide notice of the petition to a family or household member and to any known third party who may be at risk of violence.

The superior courts have jurisdiction over ERPOs. District and municipal courts have limited jurisdiction over issuance and enforcement of ex parte ERPOs, but the case must be transferred to superior court for the full hearing on the petition.

Upon receipt of a petition, the court must set a hearing within 14 days. The notice of hearing and petition must be personally served upon the respondent by a law enforcement officer at least five court days before the hearing. The court may issue an ex parte ERPO pending the hearing, which must be served with the notice of hearing and petition. At the hearing, if the court finds by a preponderance of the evidence the respondent poses a significant danger of causing personal injury to themselves or others due to the person's access to firearms, the court will issue an ERPO for a period of one year. In determining whether to issue an ERPO, the court may consider all relevant evidence, including, but not limited to:

- a recent act or threat of violence, or a pattern of acts or threats of violence within the past 12 months;
- any dangerous mental health issues of the respondent;
- a previous or existing ERPO;
- a violation of a protection order or no-contact order;
- a conviction for a crime that constitutes domestic violence;
- the respondent's ownership, access to, or intent to possess firearms;
- the respondent's history of use or threatened use of physical force;
- any prior arrest for a felony offense or violent crime; and
- corroborated evidence of alcohol or other controlled substance abuse.

A respondent is required to surrender all firearms in the person's custody or control, along with any concealed permit license the person may have. If the respondent fails to surrender their firearms, the court may issue a warrant authorizing a search of locations where the firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to the search. After issuance, law enforcement must enter an ERPO into the National Instant Criminal Background Check System. 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 and is prohibited from having in his or her custody or control, or purchasing, possessing, receiving, or attempting to purchase or receive

a firearm for an additional five years from the date the existing order expires. A violation of an ERPO is an unranked class C felony if the person has two or more prior convictions for a violation of an ERPO.

Summary of Amended Bill:

A petition for an extreme risk protection order (ERPO) may be brought against a respondent who is under the age of 18. The appointment of a guardian or guardian ad litem is not required if the respondent is 16 years of age or older.

In addition to the restriction on possessing, purchasing, receiving, or having in his or her custody or control a firearm, an ERPO prohibits a respondent from accessing a firearm.

Juvenile courts may hear a petition for an ERPO if the respondent is under the age of 18. When an ERPO is issued against a person under the age of 18, a copy of the order must be served at any address where the minor resides, to the parent or guardian, or if the minor is the subject of a dependency proceeding or in a court-approved out of home placement, the Department of Children, Youth, and Families (DCYF). The court must advise the parent or guardian in writing of the legal obligation to safely secure any firearm on the premises and the potential for criminal prosecution if a prohibited person were to obtain access to the firearm. Notice may be provided at the time the parent or guardian appears in court or may be served along with a copy of the order.

An ERPO entered against a person under the age of 18 must be entered into and maintained in computer-based systems as required for any other ERPO. The respondent may petition the court to seal the court records relating to an ERPO proceeding at the time the order is entered or anytime thereafter. The court must seal the records from public view if there are no other protection orders against the respondent, no pending violations of the order, and the respondent has relinquished any firearms as required by the order.

The Administrative Office of the Courts must develop a standard petition and form for an ERPO sought against a respondent under the age of 18, pattern forms to assist a person in sealing records related to an ERPO sought against a respondent under the age of 18, and an informational brochure related to such an order.

In order to expedite the temporary removal of firearms in situations of extreme risk, the court must give law enforcement priority at an extreme risk protection proceeding and must allow for law enforcement to petition for an ERPO after hours. The court may allow law enforcement to participate in proceedings telephonically or allow another representative from the law enforcement agency or prosecutor's office to present information to the court. A police officer may arrest a person without a warrant when the officer has probable cause to believe the person has violated an ERPO.

Language referencing mental health and chemical dependency is replaced with behavioral health. Terminology referencing dangerous mental health crisis evidence of a person posing

a significant danger is removed and replaced with language pertaining to behaviors that are threatening or presenting an imminent threat of harm to self or others.

Amended Bill Compared to Engrossed Substitute Bill:

A court may consider a conviction for a crime committed under the malicious harassment statute as a factor when determining whether grounds for an extreme risk protection order (ERPO) exist. Law enforcement is the entity that serves notice of an ERPO issued against a minor to the parents or guardians of the minor, not the court. When a minor is the subject of a dependency or an out-of-home placement, notice is provided to the Department of Children, Youth, and Families.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Many of these instances stem from school settings where a student threatens to bring a gun to school to shoot a fellow student who the student perceives has done harm to them. Parents are terrified for their children's safety. Minors are prohibited from owning guns, but they have access to guns through other means. Clarifying that the law is applicable to minors is a vital change that will help keep guns out of the hands of young people who are at risk to harm themselves or others.

Family members can hurt each other causing lasting permanent pain and disability. There is shame associated with surviving family violence. Teen suicide has become epidemic. Sixteen people under the age of 18 died by firearm suicide in King County between 2012-2016. Research says that at least 70 percent of young people who die by firearm suicide use a gun belonging to a family member. Requiring safe storage will help families protect their children, and the sealing of records protects the privacy of the youth. Families can now use extreme risk protection orders (ERPOs), but there are limits. This bill would allow guns to be kept out of the hands of young people who are a threat.

Streamlining the process for officers makes it easier for law enforcement to act more quickly and effectively.

Many of the provisions are consistent with recommendations from the Mass Shooting Work Group.

(Opposed) None.

(Other) It needs to be clear that law enforcement is the organization who is advising the parents of their obligations rather than the court. Many children who would be involved in ERPO proceedings are in the custody of the Department of Children, Youth, and Families. The bill needs to make clear who has the responsibility when the child is not with a parent or guardian.

Persons Testifying: (In support) Lorinda Tsai, King County Prosecuting Attorney's Office; Liz Hjelmseth; Karyn Brownson, King County Public Health; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Stephen Warning, Superior Court Judges Association.

Persons Signed In To Testify But Not Testifying: None.