

SENATE BILL REPORT

SHB 1786

As Reported by Senate Committee On:
Law & Justice, March 28, 2019

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: Passed House: 3/05/19, 56-42.

Committee Activity: Law & Justice: 3/25/19, 3/28/19 [DPA, DNP].

Brief Summary of Amended Bill

- Revises procedures for protection, restraining, and no-contact orders including immediate surrender of firearms, dangerous weapons, and concealed pistol licenses (CPL).
- Requires a law enforcement officer to serve the respondent with a protection or restraining order that involves surrender of firearms, dangerous weapons, or CPLs, and confiscate all firearms found during a lawful search or in plain sight at the time of service.
- Requires law enforcement agencies to implement procedures for accepting, storing, and returning firearms and dangerous weapons surrendered under court order.
- Authorizes a court to issue a warrant to search for and seize firearms and dangerous weapons when there is probable cause to believe a respondent failed to comply with a surrender order.
- Adds failure to comply with an order prohibiting firearm possession or requiring firearm surrender to the crimes chargeable as second-degree unlawful possession of a firearm for qualifying orders.

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.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; Holy.

Staff: Melissa Burke-Cain (786-7755)

Background: Protection, Restraining, and No-Contact Orders. Courts issue civil protection, restraining, and no-contact orders safeguarding persons who face stalking, domestic violence, sexual assault, harassment, or other serious threats. A court may issue a time-limited temporary order without notice to the respondent. After notice and a hearing, the court may impose a protective or restraining order for a fixed term or, in some circumstances, a permanent order. The court's order may limit respondent's contacts with the petitioner, exclude the respondent from the petitioner's home or workplace, or provide other relief needed for the petitioner's protection.

Court-Ordered Surrender of Firearms, Dangerous Weapons, and Concealed Pistol Licenses. A person subject to a protection order, restraining order, or no-contact order may be required to surrender firearms, dangerous weapons, and their CPL for the order's duration. In most cases, a respondent who has used or threatened to use a firearm while committing a felony must surrender firearms, weapons, and CPL. In other circumstances, a court may find the respondent disqualified from possessing a firearm and require surrender of firearms, dangerous weapons, and CPL. The court may order a temporary surrender of firearms and dangerous weapons before the hearing on a petition for a protection or restraining order if irreparable injury could result before the time for response elapses.

A court must order the surrender of firearms, dangerous weapons, and a CPL when entering certain qualifying orders involving intimate partners. A qualifying order must meet the following requirements:

- the court entered the order after notice to the respondent 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; and
- the order must find the restrained person is a credible threat to the physical safety of an intimate partner or child, and the order's terms restrain the respondent 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 respondent to surrender their firearm or dangerous weapons to the local law enforcement agency, their attorney, or another person designated by the court. Within five days of the entry of the order, the respondent must file a proof of surrender and receipt form with the court, or a declaration of non-surrender form if

the respondent has no firearms, dangerous weapons, or CPL. Law enforcement agencies are required to have policies and procedures regarding accepting, storing, and returning surrendered firearms and weapons.

Summary of Amended Bill: Firearms and Dangerous Weapons Surrender. When a protective order requires surrender of firearms, dangerous weapons, and any CPL, the surrender must be immediate. A temporary order may include an order to surrender a CPL in addition to firearms and dangerous weapons. A law enforcement officer must serve any protective order requiring surrender of firearms, dangerous weapons, and CPL. 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 commits the crime 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:

- the court entered after notice and an opportunity to respond;
- restrains the person from harassing, stalking, or threatening the protected person or the person's or the 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 Procedure. When a law enforcement officer serves a protective order requiring surrender of firearms, dangerous weapons, and CPL, the respondent must immediately surrender all such items in their custody, control, or possession, and any CPL and any other firearms or dangerous weapons in plain sight or discovered during a lawful search. If a law enforcement officer does not serve the order, the respondent must surrender the firearms, dangerous weapons, and any CPL to a law enforcement agency within 48 hours of service. If the respondent was present at the hearing, they must surrender all firearms to law enforcement on the day of the hearing. The law enforcement officer accepting the surrender must issue a receipt for all surrendered firearms, dangerous weapons, and any CPL. The officer must provide a copy of the receipt to the respondent, retain a copy for the law enforcement agency, and file the original receipt with the court within 24 hours using electronic filing when available.

If the petitioner or a law enforcement officer testifies or provides a sworn statement alleging the respondent did not comply with the order to surrender, the court determines if there is probable cause to believe the respondent failed to surrender all firearms and dangerous weapons in their custody, control or possession. If so, the court may issue a warrant for the search and seizure of firearms and dangerous weapons.

If a person other than the respondent owns a surrendered firearm or weapon, the law enforcement agency must return it as long as the owner removes the firearm from the respondent's access, custody, control, or possession. The owner must store the firearm in a manner that prevents the respondent from gaining access or control of the firearm and the owner's possession is otherwise lawful. 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 who surrendered the firearm or weapon.

Other Provisions. If a court refuses to grant a motion for a temporary anti-harassment protection order, it must state the particular reasons for the decision. The court must file its decision denying the motion for a temporary protection order in the court record. The court clerk must transmit a stalking, sexual assault, or domestic violence protection order to the appropriate law enforcement agency electronically. A respondent may only file a motion to terminate or modify orders for domestic violence protection, stalking protection, and anti-harassment protection one time in every 12-month period that the order is in effect.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Requires a respondent present at the protective order hearing to surrender all firearms to law enforcement on the day of the hearing.
- Requires law enforcement to file the original surrender receipt with the court within 24 hours of surrender using electronic filing if available.
- Revises court processes for scheduling and hearing matters verifying surrender of firearms and adds language emphasizing the need for swift and certain compliance with orders to surrender firearms, dangerous weapons, and CPLs.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The motivation for the bill is that there are different standards in the law for removing firearms, and there should be one unified standard. The ERPO standard is the model for the bill. The purpose is to standardize the procedures for surrender of firearms, dangerous weapons, and CPLs. There is a need to expand the qualifying orders to other relationships and not just limit them to intimate partners. A conviction for a felony DV offense is the single greatest predictor of future violence. Those persons with a history of violent behavior should not be allowed to possess or access firearms. A protective order that includes firearms surrender gives an important psychological sense of safety. This year in the firearms recovery unit of the SPD, 137 firearms were surrendered. The most dangerous times for deadly violence are when a threatened person is trying to leave a relationship or just after a DV arrest. This bill establishes uniform processes that protect law enforcement officers and victims. Right now, it is hard to know, or verify, that firearms and dangerous weapons have been surrendered. A felony charge for noncompliance with a surrender order is a positive in the bill. It comforts moms to know that the laws are being strengthened to remove firearms from the hands of those who are mentally ill and may harm themselves or others. It is important to add the provision in the bill that a person must not have access to firearms, not only surrender the firearms they own. It does no good to take a gun away if the person is able to access another firearm.

CON: This bill opens the door to abuse of the restraining order process. The standard of evidence is reduced from clear and convincing evidence to a preponderance of evidence in Sec. 1(2). I am concerned about due process based on an ex parte order to immediately surrender firearms upon service of the order and the immediate search and seizure of firearms.

OTHER: The courts are concerned about scheduling hearings and the time frames required to hold hearings. The judges recommend an amendment to paragraph 5 (2) that requires hearings be set within three judicial days of service. Some smaller courts do not meet every day. Additionally, it may take longer than the allotted time to serve the respondent. The time line creates a workload impact for the larger courts because of the potential increased volume of hearings and the courts' capacity to hear them.

Persons Testifying: PRO: Representative Laurie Jenkins, Prime Sponsor; Michelle Larson, Sr. Deputy Prosecuting Attorney, King County Prosecuting Attorney's Office; Catherine Person, citizen; Logan Rysemus, citizen; Becky Houghton, citizen; Dorothy Kim, Seattle Police Department; Trese Todd, citizen; Zoe Moore, citizen; James McMahan, Washington Association of Sheriffs & Police Chiefs.

CON: Radona Devereaux, Silent No More, Founder and CEO.

OTHER: Sam Meyer, District and Municipal Court Judges Association.

Persons Signed In To Testify But Not Testifying: No one.