

SENATE BILL REPORT

SHB 2622

As Passed Senate - Amended, March 6, 2020

Title: An act relating to procedures for ensuring compliance with court orders requiring surrender of firearms, weapons, and concealed pistol licenses.

Brief Description: Concerning procedures for ensuring compliance with court orders requiring surrender of firearms, weapons, and concealed pistol licenses.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Kilduff, Walen, Senn, Pollet and Davis).

Brief History: Passed House: 2/13/20, 56-42.

Committee Activity: Law & Justice: 2/24/20, 2/27/20 [DPA, w/oRec].

Floor Activity:

Passed Senate - Amended: 3/06/20, 29-19.

Brief Summary of Amended Bill

- Establishes compliance hearing processes with contempt of court procedures for orders to surrender and extreme risk protection orders.
- Authorizes personal service of orders to surrender weapons on a respondent or defendant in open court if the respondent or defendant is present at the court for the hearing.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

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

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

Staff: Melissa Burke-Cain (786-7755)

Background: Order to Surrender Weapons. Order to surrender weapons (OTSW)—As part of a protection order, no-contact order, or restraining order, courts may order a person to

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.

surrender all firearms, dangerous weapons, and concealed pistol license to law enforcement if clear and convincing evidence shows that the respondent

- used, displayed, or threatened to use a firearm or other dangerous weapon in a felony;
or
- is ineligible to possess a firearm.

An OTSW is effective immediately when a law enforcement officer serves it. The officer must take possession of all firearms belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. If personal service of the OTSW is not required because the respondent was present at the hearing at which the order was entered, the respondent must immediately surrender all firearms, dangerous weapons, and any concealed pistol license to a law enforcement agency on the day of the hearing.

A law enforcement officer issues a receipt for all surrendered firearms, dangerous weapons, and concealed pistol license, providing the respondent with a copy. The agency files the original receipt with the court within 24 hours retaining a copy of the receipt. The court may hold a compliance review hearing, but the hearing is not required if respondent shows they surrendered all of their firearms, dangerous weapons, and concealed pistol license. The Administrative Office of the Courts must annually report the number of OTSWs each court issues, the degree of compliance, and the number of firearms surrendered.

Extreme Risk Protection Orders. Extreme risk protection orders (ERPOs) are court orders limiting a person's access to firearms when the person poses a significant danger of harming themselves or others. The court may issue a temporary ERPO if there is reasonable cause to believe the respondent poses a significant danger.

A family or household member, law enforcement officer or agency may file an ERPO petition. The petition must:

- contain an allegation that the respondent poses a significant danger of causing personal injury to self or others by having in their custody or control, purchasing, possessing, accessing, or receiving a firearm, and be accompanied by an affidavit stating the specific statements, actions, or facts that give rise to a reasonable fear of future dangerous acts by the respondent; and
- identify the number, types, and locations of any firearms the petitioner believes the respondent owns, possesses, has access to, or has under their custody, access, or control.

The court must set a hearing within 14 days. At the hearing, the court may issue an ERPO for one year if it finds by a preponderance of the evidence that the respondent poses a significant danger of causing personal injury to self or others by having custody or control, or by purchasing, possessing, or receiving a firearm.

When the court issues an ERPO, it must order the respondent to surrender all their firearms and their concealed pistol license, if any, to local law enforcement. The order is immediately effective when a law enforcement officer serves the respondent with the order. The officer must take possession of all firearms belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. If personal service of the ERPO by a law enforcement officer is not required because the respondent was present at the hearing at

which the order was entered, or the respondent was served by alternate service, the respondent must surrender all firearms to a law enforcement agency within 48 hours of the hearing.

A law enforcement officer issues a receipt for all surrendered firearms and any concealed pistol license, providing the respondent with a copy. The agency must also file the original receipt with the court within 72 hours after service of the order and retain a copy of the receipt.

When the court issues a one-year ERPO, it must set a new hearing date and require the respondent to appear not later than three judicial days from the date of the order to show that the respondent has surrendered any firearm in their custody, control, or possession. The court may dismiss the hearing upon a satisfactory showing that the respondent complied with the OTSW.

Contempt of Court. A court may hold a person in contempt of court if it finds the person fails or refuses to perform an act that they are able to perform. The court may use remedial sanctions to compel the person to obey a prior court order. The sanctions under the court's contempt power include taking the person into custody until they comply, a forfeiture up to \$2,000 per day for each day the contempt of court continues, structure an order designed to ensure compliance with the court's prior order, or issue another type of court order if the court finds the other remedial sanctions would not be effective to compel compliance.

Summary of Amended Bill: A court may order a person to surrender all firearms, dangerous weapons, and concealed pistol license to law enforcement as part of a protection order, no-contact order, or restraining order if clear and convincing evidence shows that the respondent used, displayed, or threatened to use a firearm or other dangerous weapon in a felony; is ineligible to possess a firearm; or as part of an ERPO if the court finds by a preponderance of the evidence that the respondent poses a significant danger of causing personal injury to self or others by having custody or control, or by purchasing, possessing, or receiving a firearm. The person subject to the order may be personally served with the order if they are present in the courtroom for the hearing. A court may order a compliance hearing for an OTSW or an ERPO. If a respondent fails to comply with an OTSW or ERPO, the court may initiate a proceeding for contempt of court.

A contempt proceeding occurs when:

- there is probable cause to believe that a respondent was aware of an OTSW, ERPO, or other order, and failed to fully comply with the order, during an OTSW or ERPO compliance review hearing, or any other hearing addressing compliance with an order to surrender weapons;
- the respondent fails to appear at a review hearing; or
- the respondent violated the underlying order after the court entered findings of compliance.

The court may start the contempt proceeding on its own motion or on the motion of the prosecutor, city attorney, or the petitioner's counsel. After the contempt proceedings begin, the court clerk must issue an order to show cause order and send the order electronically to

the law enforcement agency where the respondent resides. The law enforcement agency must serve the order on the respondent.

The order requires the respondent to appear in court and show cause why the respondent should not be held in contempt of court. The order must:

- state the date, time, and location of the hearing;
- warn the respondent that failure to comply with the terms of the original order to surrender firearms will lead to the respondent being held in contempt of court; and
- inform the respondent that the court may issue an arrest warrant for failing to appear at the show cause hearing.

At the show cause hearing, the respondent must be present in court, must provide proof of compliance with the underlying order, and demonstrate why the court should not grant the relief requested. The court must provide law enforcement with sufficient notice of any show cause hearing so that law enforcement can provide the court with a list of all firearms and weapons the respondent has surrendered and verify that the concealed pistol license, if any, has been surrendered and revoked.

If the law enforcement agency has a reasonable suspicion that the respondent is not in full compliance with the terms of the order, the agency must submit the basis for its belief at the show cause hearing or by filing of an affidavit with the court.

If the court finds the respondent in contempt of the OTSW or the ERPO, or other order requiring weapons surrender it may use its contempt powers to impose remedial sanctions designed to ensure swift compliance with the order. The court may also order the respondent to pay for any losses incurred by a party due to the contempt proceeding including costs and reasonable attorneys' fees. The petitioner is not responsible for the costs of the show cause hearing.

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: Many persons subject to an OTSW or ERPO do not surrender their firearms. This bill provides an effective tool to let law enforcement enforce the law. Dangerous firearms are kept from those who are a danger to themselves, domestic abuses and those who may be at threat of suicide. Law enforcement must have the ability to enforce the order requiring weapons surrender. These are necessary corrections to the laws to make the law effective as intended and remove firearms from those who should not have them. My wife was shot by an automatic weapon in a drive by shooting outside an all-ages event. Surrender orders are an important tool. These are civil orders and ordinarily prosecutors do not have standing to appear in proceedings to enforce an order, but this bill gives prosecutors standing to appear. Lives will

be saved in the long run. An expedient hearing will protect domestic violence victims and potential suicide victims. This is an important bill for veterans because of the high suicide rates among veterans. I was in my high school cafeteria on the day of a mass shooting event just feet away from persons who were shot. I had never heard of a school shooting and never considered it but now students face the potential for a mass shooting every day. OTSWs are effective tools to prevent violence. Persons intending to harm others will not have access to firearms.

CON: ERPOs are not workable. There are marginalized persons who are fighting ERPOs initiated by their domestic abusers. Abusers are using the court system to further harass their victims. Suicide is not a violence issue; it is a mental health issue. ERPOs violate due process because they are granted before an individual has an opportunity to be heard. There have been numerous false claims supporting issuance of ERPOs. High functioning psychopaths are using them to damage their victims. These orders are actions taken without due process and violate constitutional rights; violate second amendment rights. Once a firearm is taken it is difficult to get a firearm recovered from the police. In some cases the cost of recovering a firearm from the police costs more than the firearm itself. It is cheaper to just get a new firearm. This bill creates lots of extra bureaucracy. ERPOs should not be granted ex parte, without a right to counsel, and with the lowest evidentiary standard. Many ERPOs orders are granted based on false pretenses and false evidence because of the low preponderance of the evidence standard. Surrender orders are being singled for requiring personal appearance; at other contempt hearings a respondent may appear through counsel. This bill is an effort to override the laws on contempt hearings. ERPOs are readily granted. There needs to be more attention to the front end of the process, that is the initial decision to grant an ERPO. This bill puts all the attention to follow up on the back end after an order has already been granted. We need to reduce the use of ERPOs as a revenge measure, that is an abuse of the judicial process.

Persons Testifying: PRO: Representative Christine Kilduff, Prime Sponsor; Chris Anderson, Regional Domestic Violence Firearms Enforcement Unit; David Hackney, citizen; Colin English, citizen; Jordan Waits, citizen; Makenzie Zuern, citizen.

CON: Curtis Bingham, Adventure Protection; Sharyn Hinchcliffe, Pink Pistols Seattle/Tacoma; Ira Moser, citizen; Phil Watson, Firearms Policy Coalition.

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