
SUBSTITUTE SENATE BILL 5745

State of Washington

66th Legislature

2019 Regular Session

By Senate Law & Justice (originally sponsored by Senators Lias, Darneille, Dhingra, Hunt, Keiser, Palumbo, Pedersen, Salomon, and Takko)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to extreme risk protection orders; and amending
2 RCW 7.94.040.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 7.94.040 and 2017 c 3 s 5 are each amended to read
5 as follows:

6 (1) Upon receipt of the petition, the court shall order a hearing
7 to be held not later than fourteen days from the date of the order
8 and issue a notice of hearing to the respondent for the same.

9 (a) The court may schedule a hearing by telephone pursuant to
10 local court rule, to reasonably accommodate a disability, or in
11 exceptional circumstances to protect a petitioner from potential
12 harm. The court shall require assurances of the petitioner's identity
13 before conducting a telephonic hearing.

14 (b) The court clerk shall cause a copy of the notice of hearing
15 and petition to be forwarded on or before the next judicial day to
16 the appropriate law enforcement agency for service upon the
17 respondent.

18 (c) Personal service of the notice of hearing and petition shall
19 be made upon the respondent by a law enforcement officer not less
20 than five court days prior to the hearing. Service issued under this
21 section takes precedence over the service of other documents, unless

1 the other documents are of a similar emergency nature. If timely
2 personal service cannot be made, the court shall set a new hearing
3 date and shall either require additional attempts at obtaining
4 personal service or permit service by publication or mail as provided
5 in RCW 7.94.070. The court shall not require more than two attempts
6 at obtaining personal service and shall permit service by publication
7 or mail after two attempts at obtaining personal service unless the
8 petitioner requests additional time to attempt personal service. If
9 the court issues an order permitting service by publication or mail,
10 the court shall set the hearing date not later than twenty-four days
11 from the date the order issues.

12 (d) The court may, as provided in RCW 7.94.050, issue an ex parte
13 extreme risk protection order pending the hearing ordered under this
14 subsection (1). Such ex parte order must be served concurrently with
15 the notice of hearing and petition.

16 (2) Upon hearing the matter, if the court finds by a
17 preponderance of the evidence that the respondent poses a significant
18 danger of causing personal injury to self or others by having in his
19 or her custody or control, purchasing, possessing, or receiving a
20 firearm, the court shall issue an extreme risk protection order for a
21 period of one year.

22 (3) In determining whether grounds for an extreme risk protection
23 order exist, the court may consider any relevant evidence including,
24 but not limited to, any of the following:

25 (a) A recent act or threat of violence by the respondent against
26 self or others, whether or not such violence or threat of violence
27 involves a firearm;

28 (b) A pattern of acts or threats of violence by the respondent
29 within the past twelve months including, but not limited to, acts or
30 threats of violence by the respondent against self or others;

31 (c) Any ~~((dangerous mental health issues of the respondent))~~
32 behaviors that present an imminent threat of harm to self or others;

33 (d) A violation by the respondent of a protection order or a no-
34 contact order issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99,
35 26.50, or 26.52 RCW;

36 (e) A previous or existing extreme risk protection order issued
37 against the respondent;

38 (f) A violation of a previous or existing extreme risk protection
39 order issued against the respondent;

1 (g) A conviction of the respondent for a crime that constitutes
2 domestic violence as defined in RCW 10.99.020;

3 (h) The respondent's ownership, access to, or intent to possess
4 firearms;

5 (i) The unlawful or reckless use, display, or brandishing of a
6 firearm by the respondent;

7 (j) The history of use, attempted use, or threatened use of
8 physical force by the respondent against another person, or the
9 respondent's history of stalking another person;

10 (k) Any prior arrest of the respondent for a felony offense or
11 violent crime;

12 (l) Corroborated evidence of the abuse of controlled substances
13 or alcohol by the respondent; (~~and~~)

14 (m) Evidence of recent acquisition of firearms by the respondent;
15 and

16 (n) Any threat of harm to a person or group of persons because of
17 the respondent's perception of the race, color, religion, ancestry,
18 national origin, gender, sexual orientation, or mental, physical, or
19 sensory handicap of the person or persons.

20 (4) The court may:

21 (a) Examine under oath the petitioner, the respondent, and any
22 witnesses they may produce, or, in lieu of examination, consider
23 sworn affidavits of the petitioner, the respondent, and any witnesses
24 they may produce; and

25 (b) Ensure that a reasonable search has been conducted for
26 criminal history records related to the respondent.

27 (5) In a hearing under this chapter, the rules of evidence apply
28 to the same extent as in a domestic violence protection order
29 proceeding under chapter 26.50 RCW.

30 (6) During the hearing, the court shall consider whether a mental
31 health evaluation or chemical dependency evaluation is appropriate,
32 and may order such evaluation if appropriate.

33 (7) An extreme risk protection order must include:

34 (a) A statement of the grounds supporting the issuance of the
35 order;

36 (b) The date and time the order was issued;

37 (c) The date and time the order expires;

38 (d) Whether a mental health evaluation or chemical dependency
39 evaluation of the respondent is required;

1 (e) The address of the court in which any responsive pleading
2 should be filed;

3 (f) A description of the requirements for relinquishment of
4 firearms under RCW 7.94.090; and

5 (g) The following statement: "To the subject of this protection
6 order: This order will last until the date and time noted above. If
7 you have not done so already, you must surrender to the (insert name
8 of local law enforcement agency) all firearms in your custody,
9 control, or possession and any concealed pistol license issued to you
10 under RCW 9.41.070 immediately. You may not have in your custody or
11 control, purchase, possess, receive, or attempt to purchase or
12 receive, a firearm while this order is in effect. You have the right
13 to request one hearing to terminate this order every twelve-month
14 period that this order is in effect, starting from the date of this
15 order and continuing through any renewals. You may seek the advice of
16 an attorney as to any matter connected with this order."

17 (8) When the court issues an extreme risk protection order, the
18 court shall inform the respondent that he or she is entitled to
19 request termination of the order in the manner prescribed by RCW
20 7.94.080. The court shall provide the respondent with a form to
21 request a termination hearing.

22 (9) If the court declines to issue an extreme risk protection
23 order, the court shall state the particular reasons for the court's
24 denial.

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