

HOUSE BILL REPORT

ESSB 5231

As Passed House - Amended:

April 10, 2023

Title: An act relating to the issuance of emergency domestic violence no-contact orders.

Brief Description: Concerning the issuance of emergency domestic violence no-contact orders.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Salomon, Dhingra, Hasegawa, Hunt, Nobles, Pedersen, Valdez and Wilson, C.).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/22/23, 3/28/23 [DPA].

Floor Activity:

Passed House: 4/10/23, 63-33.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Addresses requirements for courts and peace officers in domestic violence cases relating to issuance of pretrial no-contact orders.
- Expands the relief a court may include in a pretrial no-contact order and requires the court to consider whether to issue an extreme risk protection order against the defendant.
- Allows a peace officer to request an emergency no-contact order, order to surrender and prohibit weapons, or extreme risk protection order on behalf of a victim, and establishes standards for issuance and service of emergency orders.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Hansen,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Thai and Walen.

Minority Report: Do not pass. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Rude.

Minority Report: Without recommendation. Signed by 1 member: Representative Cheney.

Staff: Edie Adams (786-7180).

Background:

Law Enforcement Duties in Domestic Violence Cases.

Laws governing domestic violence offenses establish a number of requirements for peace officers when they respond to a domestic violence call. Generally, a peace officer must arrest a person 18 years of age or older if the officer has probable cause to believe that the person has assaulted a family or household member or intimate partner within the four hours preceding arrest. The officer is required to arrest the person whom the officer believes is the primary physical aggressor. The officer must take a complete offense report, including the officer's disposition of the case.

A peace officer responding to a domestic violence call must separate the parties and inquire of the victim if there are firearms or ammunition in the home, if the alleged abuser has access to any other firearms located off-site, and whether the alleged abuser has a concealed pistol license (CPL). The officer's inquiry must also cover other circumstances involving a firearm, such as whether the alleged abuser has kept a firearm in plain sight in a coercive manner or has threatened use of a firearm in the past. The peace officer must document all information about firearms and any CPL in the incident report.

A peace officer who responds to a domestic violence incident and has probable cause to believe a crime was committed must remove all firearms and ammunition the officer has reasonable grounds to believe were used or threatened to be used in the commission of the offense and all firearms that are in plain sight or discovered pursuant to a lawful search. In addition, the peace officer must request consent to remove all firearms to which the alleged abuser has access until a judicial officer has heard the matter.

Pretrial Domestic Violence No-Contact Orders.

A person arrested for an offense involving domestic violence must appear in front of a magistrate within one judicial day after arrest. If the defendant is released before arraignment or trial, the court may prohibit the defendant from having any contact with the victim, or from knowingly coming within, or knowingly remaining within, a specified distance of a location. In issuing the order, the court must consider whether to issue an order to surrender and prohibit weapons (OTSW) requiring the person to surrender, and prohibiting the person from possessing, all firearms, dangerous weapons, or any CPL.

At arraignment, the court must determine whether a no-contact order should be issued or extended and whether other conditions of pretrial release should be imposed. The prosecutor must provide that court with the defendant's criminal history, individual order history, and firearms purchase and CPL history. In issuing the order, the court must consider all information documented in the incident report concerning the person's possession of and access to firearms and whether firearms were removed at the time of the incident. The court may as a condition of release prohibit the defendant from possessing or accessing firearms and order the defendant to surrender all firearms and any CPL to a law enforcement agency upon release.

A no-contact order issued prior to charging expires at arraignment or within 72 hours if charges are not filed. A no-contact order terminates if the defendant is acquitted or the charges are dismissed.

Order to Surrender and Prohibit Weapons.

When a court enters a protection order, no-contact order, or restraining order, the court must enter an order requiring a party to surrender, and prohibit the party from possessing, firearms, dangerous weapons, and any CPL if the court finds by a preponderance of the evidence that a party has used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or that the party is ineligible to possess firearms. An OTSW must also be entered when entering certain qualifying orders that restrain the person from harassing, stalking, or threatening persons protected in the order and that meet other criteria. An OTSW must be served by a law enforcement officer. An officer serving an OTSW must take possession of all firearms, dangerous weapons, and any CPL belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search.

Extreme Risk Protection Orders.

An extreme risk protection order (ERPO) allows a court to prohibit a person from possessing, purchasing, accessing, or receiving a firearm if the person poses a significant risk of harm to self or others by having possession of or access to firearms. A petition for an ERPO may be filed by an intimate partner or family or household member of the respondent or a law enforcement agency. A court may issue a temporary ERPO if the court finds a significant danger of personal injury to self or others in the near future. After a hearing, a court may issue a full ERPO that is effective for a period of one year. An ERPO must be served by a law enforcement officer, and at the time of service the officer must take possession of all firearms, dangerous weapons, and any CPL belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search.

Summary of Amended Bill:

Pretrial Domestic Violence No-Contact Orders.

A court must not deny issuance of a no-contact order in a domestic violence proceeding based on the existence of a civil protection order prohibiting the defendant from contacting the victim. When issuing a no-contact order, the court must attempt to determine whether

there are any other active no-contact orders, protection orders, or restraining orders involving the defendant so that any order the court enters does not lessen protections imposed under other orders.

A pretrial no-contact order may prohibit the defendant from making any attempt to contact, including nonphysical contact, the victim or the victim's family or household members, either directly, indirectly, or through a third party. Additional relief that may be ordered includes: excluding the defendant from a residence shared with the victim, workplace, school, or childcare; prohibiting the defendant from knowingly coming within, or remaining within, a specified distance of a vehicle; and other related prohibitions to reduce risk of harm.

The court must verify that law enforcement complied with their duties when responding to the domestic violence call. A peace officer must submit a sworn statement to the court documenting that the responding peace officers separated the parties and asked the victim or victims at the scene about firearms, dangerous weapons, and ammunition that the defendant owns or has access to, and whether the defendant has a CPL. If the sworn statement or other information indicates there may be a risk of harm if the defendant has access to firearms, dangerous weapons, or a CPL, the court must verify that peace officers have temporarily removed and secured all firearms, dangerous weapons, and any CPL. The court must then determine whether an OTSW or ERPO should be issued. The court may make these determinations on or off the record, with a written explanation when declining to impose restrictions.

At the time of arraignment, the court must review the defendant's firearms purchase history, and any other firearms information provided by law enforcement or court or jail staff, and must determine whether a no-contact order, an OTSW, or ERPO should be issued or extended. The court must advise the defendant of the ongoing requirements of any other known no-contact, restraining, or protection order that remains in effect.

Emergency Domestic Violence No-Contact Orders.

"Emergency no-contact order" is defined as a no-contact order issued by a court before criminal charges have been filed or a petition for a protection order or ERPO has been filed. A peace officer may request, on an ex parte basis before criminal charges or a petition for a protection order or ERPO is filed, an emergency no-contact order, OTSW, or ERPO on behalf of and with the consent of the victim. If the victim is incapacitated as a result of the alleged act of domestic violence, a peace officer may request the emergency order on the victim's behalf. The request may be made in person, by telephone, or by electronic means, and must be based upon the sworn statement of a peace officer.

If the court finds probable cause to believe the victim is in imminent danger of domestic violence based on an allegation of the recent commission of an act involving domestic violence, the court must issue an emergency no-contact order and an OTSW or ERPO as required by law. An emergency no-contact order remains in effect until either the court

terminates the order, the court finds probable cause for a referred crime, or an ex parte hearing is held on a petition for a protection order or ERPO.

Any order issued by the court must be personally served by a peace officer if the court enters an OTSW or an ERPO and the court has not verified that peace officers have removed all firearms, dangerous weapons, and any CPL. The peace officer serving the order must take possession of all firearms, dangerous weapons, and any CPL belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search.

An order issued by the court may be served electronically if the court did not issue an OTSW or ERPO or the court has verified that firearms, dangerous weapons, and any CPL have been temporarily removed. Electronic service must be effected by a law enforcement agency by transmitting the petition and other required information to the defendant's electronic address or the defendant's electronic account associated with email, text messaging, social media applications, or other technologies. Verification of notice may be accomplished through read-receipt mechanisms, a response, or other specified methods. Sworn proof of service must be filed with the court by the person who effected service.

A no-contact order, OTSW, or ERPO authorized by telephonic or electronic means must be issued in writing as soon as possible and may be extended at the arraignment hearing.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The bill streamlines the process when a police officer goes to a scene of domestic violence. It allows an officer to call a judge to get an emergency no-contact order and removal of weapons order which may be served right then and there. This is important because the perpetrator may not go to arraignment until days later, or may be released on bail and have access to weapons before the arraignment. If firearms are not surrendered at the scene, an officer would have to go back a second time to remove the weapons, which is dangerous. Allowing removal up front creates safety for the officers and assurance for the victim that the perpetrator does not have access to guns.

Nearly 60 percent of all domestic violence homicides are committed with firearms. Washington has enacted laws that attempt to keep guns out of the hands of abusive partners. Laws that prohibit firearm possession do not work on the honor system. Fatality reviews have repeatedly shown that laws prohibiting firearms are effective only when they

have specific mechanisms for accountability.

(Opposed) None.

Persons Testifying: Senator Jesse Salomon, prime sponsor; and Emily Stone, Washington State Coalition Against Domestic Violence.

Persons Signed In To Testify But Not Testifying: None.