

# SENATE BILL REPORT

## ESSB 5231

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As Amended by House, 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:** Law & Justice: 1/24/23, 1/26/23 [DPS, w/oRec].

**Floor Activity:** Passed Senate: 2/15/23, 36-12.

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

**Brief Summary of Engrossed First Substitute Bill**

- Clarifies the court's authority in issuing pretrial no-contact orders.
- Establishes the process for issuance of an emergency domestic violence no-contact order.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5231 be substituted therefor, and the substitute bill do pass.

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

**Minority Report:** That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; McCune, Torres, Wagoner and Wilson, L..

**Staff:** Joe McKittrick (786-7287)

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*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.*

**Background:** Several civil protection orders allow a person to petition a court seeking protection from harmful or threatening behavior. Protection orders are available for individuals subjected to domestic violence, sexual assault, stalking, harassment, and vulnerable adult abuse. A court may grant broad relief to protect the petitioner, including entering relief to restrain a person from having contact with or coming within a specified distance of certain locations. Courts may also issue no-contact orders in relation to criminal domestic violence charges.

A person who is subject to a domestic violence, sexual assault, stalking, vulnerable adult, or anti-harassment protection order may be required to surrender their firearms, dangerous weapons, and concealed pistol license (CPL) if the person has used or threatened to use a firearm in the commission of a felony or is otherwise disqualified from possessing a firearm.

Courts are required to order the surrender of firearms, dangerous weapons, and any CPL when entering certain qualifying orders involving intimate partners. An order to surrender weapons is effective immediately upon service by a law enforcement officer, and the officer must take possession of all firearms, weapons, and any concealed pistol license belonging to the restrained person that are surrendered, in plain sight, or discovered pursuant to a lawful search.

Courts may also issue extreme risk protection orders (ERPO) which allow a court to prohibit a person from possessing, purchasing, accessing, or receiving a firearm if the person poses a significant risk of harm to themselves or others by having access to firearms.

**Summary of Engrossed First Substitute Bill:** Pretrial No-Contact Orders. The court's authority to prohibit a person charged with or arrested for a crime involving domestic violence from having any contact with the victim includes prohibiting the person charged or arrested from the following:

- making any attempt to contact the victim or the victim's family or household members, either directly, indirectly, or through a third party;
- excluding the defendant from a residence shared with the victim, a workplace, school, or childcare facility;
- prohibiting the defendant from knowingly coming within, or knowingly remaining within, a specified distance of a location or vehicle; and
- other related prohibitions to reduce risks of harm.

In issuing the order, the court must verify that the statutory duties of peace officers when responding to domestic violence calls have been satisfied. If the information provided to the court indicates there may be a risk of harm if the defendant has access to firearms or dangerous weapons, 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 order to surrender and prohibit weapons, or an ERPO should be issued.

At arraignment, the court must attempt to determine whether there are any other active orders restraining the defendant, and, to the extent the court is aware, advise the defendant of the ongoing requirements of those orders.

Emergency No-contact Orders. A peace officer may request an emergency no-contact order, and an order to surrender and prohibit weapons or ERPO on behalf of and with the consent of the victim of an alleged act involving domestic violence. If the victim is incapacitated because of the alleged act of domestic violence, the officer may request the emergency order on their behalf. The request may be made in person, by telephone, or by electronic means.

If the court finds probable cause to believe the victim is in imminent danger of domestic violence based on the allegations, the court must grant the emergency no-contact order and may issue an order to surrender and prohibit weapons or an ERPO as required by law.

In issuing an emergency no-contact order, if the court issues an order to surrender and prohibit weapons or an ERPO, and has not verified that peace officers have temporarily removed and secured all firearms, dangerous weapons, and any CPL, all orders issued by the court must be personally served by a peace officer, and the peace officer must take possession of all firearms, dangerous weapons, and any concealed pistol license belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search.

If the court does not issue an order to surrender and prohibit weapons or an ERPO, or has verified all firearms, dangerous weapons, and any concealed pistol license have been temporarily removed by law enforcement, service of the court's orders may be effected electronically. Any order issued electronically must also be issued in writing as soon as possible.

**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 First Substitute:** PRO: This bill ensures that someone charged with domestic violence does not possess guns at any point after the incident. A defendant at the arraignment can simply swear they do not possess any guns and there is no check by police of the residence to see if that is true. There have been some changes in the last few years so guns are removed from the home at the point of incident more often. There is still work to be done to ensure that happens. This bill requires that a judge verify that the removal happened. It allows, at the request of a victim, the police call a

judge immediately at the scene of a crime to get a no-contact order, an order to surrender weapons, and a search warrant if necessary to ensure no weapons are left at the scene. This has been requested by law enforcement. This bill clarifies that police have the ability to get these emergency no-contact orders. In Washington, nearly 60 percent of all domestic violence homicides are committed with firearms. Between 2020 and 2022, 94 people in Washington were killed with firearms in intimate partner violence related deaths. Focus on implementation and enforcement is critical. Laws prohibiting firearms for abusers are not effective without clear, specific procedures and mechanisms for accountability.

**Persons Testifying:** PRO: Senator Jesse Salomon, Prime Sponsor; Emily Stone, WA State Coalition Against Domestic Violence.

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

#### **EFFECT OF HOUSE AMENDMENT(S):**

- Provides that a court must not deny issuance of a no-contact order based on the existence of a civil protection order prohibiting the defendant from contacting the victim.
- Allows the court, when verifying that officers have complied with their duties and that firearms were removed, to make these determinations on or off the record, with a written explanation when declining to impose no-contact order restrictions.
- Defines "emergency no-contact order" as a no-contact order issued by a court before criminal charges have been filed or a petition for a protection order or extreme risk protection order has been filed. Provides that an emergency no-contact order will remain in effect until either the court terminates the emergency no-contact 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 extreme risk protection order.
- Provides that at arraignment the court must consider whether to extend any previously issued no-contact order, not just those issued on an emergency basis.
- Adds a severability clause, reorganizes language for clarity, and makes technical corrections.