

# HOUSE BILL REPORT

## ESHB 1840

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### As Passed Legislature

**Title:** An act relating to firearms laws concerning persons subject to no-contact orders, protection orders, and restraining orders.

**Brief Description:** Concerning firearms laws for persons subject to no-contact orders, protection orders, and restraining orders.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Goodman, Hope, Hunter, Pedersen, Bergquist, Habib, Fey, Ryu, Jinkins, Pollet and Tharinger).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 2/20/13, 2/21/13 [DPS].

##### **Floor Activity:**

Passed House: 3/12/13, 61-37.

Passed House: 2/12/14, 97-0.

Passed Senate: 3/6/14, 49-0.

Passed Legislature.

#### **Brief Summary of Engrossed Substitute Bill**

- Prohibits possession of a firearm by a person subject to certain protection, no-contact, and restraining orders, and requires the person to surrender firearms, dangerous weapons, and the person's concealed pistol license while the order is in place.
- Includes sexual assault protection orders on the list of orders qualifying for weapons surrender under current law.
- Requires law enforcement agencies to develop policies and procedures for handling surrendered weapons.
- Requires development and use of a pattern form to document compliance with court ordered weapons and concealed pistol license surrender.

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### HOUSE COMMITTEE ON JUDICIARY

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Jinkins, Chair; Pedersen, Chair; Hansen, Vice Chair; Nealey, Assistant Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Kirby, Orwall and Roberts.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Rodne, Ranking Minority Member; Klippert and Shea.

**Staff:** Omeara Harrington (786-7136).

**Background:**

Protection Orders, No-Contact Orders, and Restraining Orders.

There are a number of civil protection orders a court may impose to restrict a person's ability to have contact with another person. A court may enter an ex parte temporary protection order and, upon a full hearing, a final order that lasts for a fixed term or, in some cases, is permanent. Additionally, courts may issue no-contact orders to protect victims during the pendency of criminal proceedings, and these orders may also be imposed or extended as a condition of release or sentence. A court may impose a restraining order in a variety of contexts, but they are commonly entered in family law proceedings to keep the parties from coming into contact with one another or to prevent removal of or injury to a child.

Sexual assault protection orders are available to victims of nonconsensual sexual conduct or penetration that gives rise to a reasonable fear of future dangerous acts. These orders provide a remedy for victims of sexual assault who do not qualify for a domestic violence protection order.

Unlawful Possession of a Firearm.

*State Law.*

A person is guilty of Unlawful Possession of a Firearm in the first degree if the person owns, possesses, or has in his or her control, any firearm after having previously been convicted of a serious offense. A "serious offense" includes, among other things, any crime of violence, various class B felonies, any felony with a deadly weapon verdict, and certain vehicular related crimes when committed while under the influence of alcohol or drugs or while driving recklessly. Unlawful Possession of a Firearm in the first degree is a class B felony.

A person is guilty of Unlawful Possession of a Firearm in the second degree, a class C felony, if the person owns, possesses, or has in his or her control any firearm and the person:

- has previously been convicted of any felony (other than a serious offense);
- has previously been convicted of certain specified gross misdemeanors committed by one family or household member against another;
- has previously been involuntarily committed for mental health treatment;
- is under the age of 18 (with some exceptions); or
- is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense.

*Federal Law.*

Certain categories of people are disqualified from possessing firearms under federal law, including persons who have been convicted of a domestic violence offense, and persons subject to certain restraining orders. The order must have been issued after notice and an opportunity for the person to participate, restrain the person from harassing, stalking, or threatening an intimate partner or the person's or intimate partner's child, and include either: (1) a finding that the restrained person is a credible threat to the physical safety of an intimate partner or child; or (2) terms restraining the person from using or threatening physical force against an intimate partner or child. The term "intimate partner" includes a person's spouse or former spouse, a parent of the person's child, and a person's current or former cohabitant.

#### Surrender of Firearms and Dangerous Weapons.

A person subject to a protection order, no-contact order, or restraining order may, under some circumstances, be required to surrender their firearms, dangerous weapons, and concealed pistol license while the order is in place. In entering most orders, if the person to be restrained has used or threatened to use a firearm in the commission of a felony, or is otherwise disqualified from having a firearm, the court either may or must require the person to surrender their firearms, dangerous weapons, and concealed pistol license, depending on the evidence presented.

#### **Summary of Engrossed Substitute Bill:**

Additional restrictions on the ability to possess a firearm, dangerous weapon, or concealed pistol license are placed on persons subject to certain listed protection, no-contact, and restraining orders. The restrictions only apply when the order was issued after notice and an opportunity of the person to participate. Additionally, the order must include a finding that the restrained person is a credible threat to the physical safety of an intimate partner or the child of an intimate partner or the person and, by its terms, restrain the person from using or threatening physical force against an intimate partner or child. An intimate partner includes a current or former spouse or domestic partner, a person with whom the restrained person has a child in common, or a person with whom the restrained person has cohabitated or is cohabitating as part of a dating relationship.

Possession of a firearm while subject to a qualifying protection, no-contact, or restraining order constitutes Unlawful Possession of a Firearm in the second degree. When entering a qualifying order the court must:

- require the respondent to surrender any firearm or other dangerous weapon;
- prohibit the respondent from obtaining or possessing a firearm or other dangerous weapon;
- require the party to surrender their concealed pistol license; and
- prohibit the party from obtaining or possessing a concealed pistol license.

The Administrative Office of the Courts is required to develop pattern forms for use in documenting a restrained person's compliance with an order to surrender firearms, dangerous weapons, and the person's concealed pistol license. When surrender of these items is ordered, the restrained person must file the appropriate form with the court within five judicial days.

Sexual assault protection orders are included in the provisions of current law that require firearms, dangerous weapons, and concealed pistol licenses to be surrendered by parties restrained under certain orders.

All law enforcement agencies must develop policies and procedures regarding acceptance, storage, and return of weapons required to be surrendered.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 5 relating to filing of forms documenting compliance with an order, which takes effect December 1, 2014.

**Staff Summary of Public Testimony:**

(In support) This is a domestic violence bill, not a firearm bill. We need to do better as a state in removing firearms from domestic violence abusers. Murder is often committed by current or former intimate partners and these murders are happening with firearms. Abusers use firearms to intimidate and coerce their victims. This small step will go a long way in giving people who are protected under orders peace of mind. A provision should be added to give protected parties notice that an order to surrender firearms has been complied with.

State law enforcement should be given the authority to enforce the laws already in place at a federal level. It is against federal law to possess a firearm while subject to a protection order based on a finding that the restrained person is a credible threat. This bill is similar to federal law, but it is narrower in order to adhere to a more strongly secured right to bear arms under the state constitution. These restrictions will not be imposed in the context of ex parte hearings in which the restrained person does not have a chance to participate. Additional changes to the bill are planned, including amending the reference to cohabitation to assure that the bill covers intimate partners and not roommates.

A grant program has developed protocols on how law enforcement should handle firearms surrender. Law enforcement procedures can help close the loop between the court, the prosecutor, the victim, and the law enforcement agency when weapons are to be surrendered. They can also help facilitate orderly return or disposal of weapons no longer subject to surrender.

(Opposed) None.

**Persons Testifying:** Representative Goodman, prime sponsor; Grace Huang, Washington State Coalition Against Domestic Violence; Courtney Weaver; Mark Hanna, King County Sheriff's Office; and David Ward, Legal Voice.

**Persons Signed In To Testify But Not Testifying:** None.