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**HOUSE BILL 1774**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Jinkins, Fey, Kilduff, and Ormsby

AN ACT Relating to extreme risk protection orders; and amending RCW 7.94.120, 7.94.030, 7.94.040, and 7.94.060.

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

**Sec.**  RCW 7.94.120 and 2017 c 3 s 13 are each amended to read as follows:

(1) Any person who files a petition under this chapter knowing the information in such petition to be materially false, or with intent to harass the respondent, is guilty of a gross misdemeanor.

(2) Any person who has in his or her custody or control, purchases, possesses, ((~~or~~)) receives, or attempts to purchase or receive, a firearm with knowledge that he or she is prohibited from doing so by an order issued under this chapter is guilty of a gross misdemeanor, and further is prohibited from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm for a period of five years from the date the existing order expires. However, such person is guilty of a class C felony if the person has ((~~two~~)) one or more previous convictions for violating an order issued under this chapter.

**Sec.**  RCW 7.94.030 and 2017 c 3 s 4 are each amended to read as follows:

There shall exist an action known as a petition for an extreme risk protection order.

(1) A petition for an extreme risk protection order may be filed by (a) a family or household member of the respondent or (b) a law enforcement officer or agency.

(2) A petition for an extreme risk protection order may be brought against a respondent under the age of eighteen years. No guardian or guardian ad litem need be appointed on behalf of a respondent to an action under this chapter if such respondent is sixteen years of age or older. If a guardian ad litem is appointed for the petitioner or respondent, the petitioner must not be required to pay any fee associated with such appointment.

(3) An action under this chapter must be filed in the county where the petitioner resides or the county where the respondent resides.

((~~(3)~~)) (4) A petition must:

(a) Allege that the respondent poses a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, accessing, or receiving a firearm, and be accompanied by an affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of future dangerous acts by the respondent;

(b) Identify the number, types, and locations of any firearms the petitioner believes to be in the respondent's current ownership, possession, custody, access, or control;

(c) Identify whether there is a known existing protection order governing the respondent, under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, 26.50, or 26.52 RCW or under any other applicable statute; and

(d) Identify whether there is a pending lawsuit, complaint, petition, or other action between the parties to the petition under the laws of Washington.

((~~(4)~~)) (5) The court administrator shall verify the terms of any existing order governing the parties. The court may not delay granting relief because of the existence of a pending action between the parties or the necessity of verifying the terms of an existing order. A petition for an extreme risk protection order may be granted whether or not there is a pending action between the parties. Relief under this chapter must not be denied or delayed on the grounds that relief is available in another action.

((~~(5)~~)) (6) If the petitioner is a law enforcement officer or agency, the petitioner shall make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for an extreme risk protection order or has already done so, and include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice, or attest to the steps that will be taken to provide such notice.

((~~(6)~~)) (7) If the petition states that disclosure of the petitioner's address would risk harm to the petitioner or any member of the petitioner's family or household, the petitioner's address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address under this subsection, the petitioner must designate an alternative address at which the respondent may serve notice of any motions. If the petitioner is a law enforcement officer or agency, the address of record must be that of the law enforcement agency.

((~~(7)~~)) (8) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by RCW 7.94.150. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

((~~(8)~~)) (9) No fees for filing or service of process may be charged by a court or any public agency to petitioners seeking relief under this chapter. Petitioners shall be provided the necessary number of certified copies, forms, and instructional brochures free of charge.

((~~(9)~~)) (10) A person is not required to post a bond to obtain relief in any proceeding under this section.

((~~(10)~~)) (11) The superior courts of the state of Washington have jurisdiction over proceedings under this chapter. The juvenile court may hear a proceeding under this chapter if the respondent is under the age of eighteen years. Additionally, district and municipal courts have limited jurisdiction over issuance and enforcement of ex parte extreme risk protection orders issued under RCW 7.94.050. The district or municipal court shall set the full hearing provided for in RCW 7.94.040 in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court has concurrent jurisdiction with the superior court to extend the ex parte extreme risk protection order.

(12) When a respondent is under the age of eighteen years at the time any extreme risk protection order or ex parte extreme risk protection order is entered:

(a) The order must be entered into and maintained in computer-based systems as required in RCW 7.94.110;

(b) The court records related to the proceedings must remain confidential as required by chapter 13.50 RCW; and

(c) The court records must be administratively sealed after the latest of (i) the respondent's eighteenth birthday; or (ii) the termination of the extreme risk protection order.

(13) The court shall give law enforcement priority at any extreme risk protection order calendar because of the importance of immediate temporary removal of firearms in situations of extreme risk and the goal of minimizing the time law enforcement must otherwise wait for a particular case to be called, which can hinder their other patrol and supervisory duties. In the alternative, the court may allow a law enforcement petitioner to participate telephonically, or allow another representative from that law enforcement agency or the prosecutor's office to present the information to the court if personal presence of the petitioning officer is not required for testimonial purposes.

(14) Recognizing that an extreme risk protection order may need to be issued outside of normal business hours, courts shall allow law enforcement petitioners to petition after-hours for an ex parte extreme risk protection order using an on-call, after-hours judge, as is done for approval of after-hours search warrants.

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

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

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

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

(c) Personal service of the notice of hearing and petition shall be made upon the respondent by a law enforcement officer not less than five court days prior to the hearing. Service issued under this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication or mail as provided in RCW 7.94.070. The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or mail after two attempts at obtaining personal service unless the petitioner requests additional time to attempt personal service. If the court issues an order permitting service by publication or mail, the court shall set the hearing date not later than twenty-four days from the date the order issues.

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

(2) Upon hearing the matter, 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 in his or her custody or control, purchasing, possessing, or receiving a firearm, the court shall issue an extreme risk protection order for a period of one year.

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

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

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

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

(d) Any threat of harm to a person or group of persons because of the respondent's perception of the race, color, religion, ancestry, national origin, generation, sexual orientation, or mental, physical, or sensory handicap of the person or persons;

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

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

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

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

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

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

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

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

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

((~~(m)~~)) (n) Evidence of recent acquisition of firearms by the respondent.

(4) The court may:

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

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

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

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

(7) An extreme risk protection order must include:

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

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

(c) The date and time the order expires;

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

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

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

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

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

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

**Sec.**  RCW 7.94.060 and 2017 c 3 s 7 are each amended to read as follows:

(1) An extreme risk protection order issued under RCW 7.94.040 must be personally served upon the respondent, except as otherwise provided in this chapter.

(2) The law enforcement agency with jurisdiction in the area in which the respondent resides shall serve the respondent personally, unless the petitioner elects to have the respondent served by a private party.

(3) If service by a law enforcement agency is to be used, the clerk of the court shall cause a copy of the order issued under this chapter to be forwarded on or before the next judicial day to the law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.

(4) If the law enforcement agency cannot complete service upon the respondent within ten days, the law enforcement agency shall notify the petitioner. The petitioner shall provide information sufficient to permit such notification.

(5) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.

(6) If the court previously entered an order allowing service of the notice of hearing and petition, or an ex parte extreme risk protection order, by publication or mail under RCW 7.94.070, or if the court finds there are now grounds to allow such alternate service, the court may permit service by publication or mail of the extreme risk protection order issued under this chapter as provided in RCW 7.94.070. The court order must state whether the court permitted service by publication or service by mail.

(7)(a) When an extreme risk protection order is issued against a minor under the age of eighteen, a copy of the order must be served on the parent or guardian of the minor at any address where the minor resides.

(b) The court shall advise the parent or guardian in writing of the legal obligation to safely secure any firearm on the premises and the potential for criminal prosecution if a prohibited person were to obtain access to the firearm. Notice may be provided at the time the parent or guardian of the respondent appears in court or may be served along with a copy of the order.

(8) Returns of service under this chapter must be made in accordance with the applicable court rules.

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