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**HOUSE BILL 2622**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Kilduff, Walen, Senn, Pollet, and Davis

AN ACT Relating to procedures for ensuring compliance with court orders requiring surrender of firearms, weapons, and concealed pistol licenses; and amending RCW 9.41.801 and 7.94.090.

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

**Sec.**  RCW 9.41.801 and 2019 c 245 s 2 are each amended to read as follows:

(1) Because of the heightened risk of lethality to petitioners when respondents to protection orders become aware of court involvement and continue to have access to firearms, and the frequency of noncompliance with court orders prohibiting possession of firearms, law enforcement and judicial processes must emphasize swift and certain compliance with court orders prohibiting access, possession, and ownership of firearms.

(2) A law enforcement officer serving a protection order, no-contact order, or restraining order that includes an order to surrender all firearms, dangerous weapons, and a concealed pistol license under RCW 9.41.800 shall inform the respondent that the order is effective upon service and the respondent must immediately surrender all firearms and dangerous weapons in his or her custody, control, or possession and any concealed pistol license issued under RCW 9.41.070, and conduct any search permitted by law for such firearms, dangerous weapons, and concealed pistol license. The law enforcement officer shall 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. Alternatively, if personal service is not required because the respondent was present at the hearing at which the order was entered, the respondent must immediately surrender all firearms, dangerous weapons, and any concealed pistol license in a safe manner to the control of the local law enforcement agency on the day of the hearing at which the respondent was present.

(3) At the time of surrender, a law enforcement officer taking possession of firearms, dangerous weapons, and any concealed pistol license shall issue a receipt identifying all firearms, dangerous weapons, and any concealed pistol license that have been surrendered and provide a copy of the receipt to the respondent. The law enforcement agency shall file the original receipt with the court within twenty-four hours after service of the order and retain a copy of the receipt, electronically whenever electronic filing is available.

(4) Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that the respondent has failed to comply with the surrender of firearms or dangerous weapons as required by an order issued under RCW 9.41.800, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms and dangerous weapons in their possession, custody, or control. If probable cause exists, the court shall issue a warrant describing the firearms or dangerous weapons and authorizing a search of the locations where the firearms and dangerous weapons are reasonably believed to be and the seizure of all firearms and dangerous weapons discovered pursuant to such search.

(5) If a person other than the respondent claims title to any firearms or dangerous weapons surrendered pursuant to this section, and the person is determined by the law enforcement agency to be the lawful owner of the firearm or dangerous weapon, the firearm or dangerous weapon shall be returned to the lawful owner, provided that:

(a) The firearm or dangerous weapon is removed from the respondent's access, custody, control, or possession and the lawful owner agrees by written document signed under penalty of perjury to store the firearm or dangerous weapon in a manner such that the respondent does not have access to or control of the firearm or dangerous weapon;

(b) The firearm or dangerous weapon is not otherwise unlawfully possessed by the owner; and

(c) The requirements of RCW 9.41.345 are met.

(6) Courts shall develop procedures to verify timely and complete compliance with orders to surrender weapons under RCW 9.41.800, including compliance review hearings to be held as soon as possible upon receipt from law enforcement of proof of service. A compliance review hearing is not required if the court can otherwise enter findings on the record or enter written findings that the proof of surrender or declaration of nonsurrender attested to by the person subject to the order, along with verification from law enforcement and any other relevant evidence, makes a sufficient showing that the person has timely and completely surrendered all firearms and dangerous weapons in their custody, control, or possession, and any concealed pistol license issued under RCW 9.41.070, to a law enforcement agency. If the court does not have a sufficient record before it on which to make such a finding, the court must set a review hearing to occur as soon as possible at which the respondent must be present and provide testimony to the court under oath verifying compliance with the court's order.

(7)(a) If a court finds at the compliance review hearing, or any other hearing where compliance with the order to surrender weapons is addressed, that there is probable cause to believe the respondent was aware of, and failed to fully comply with, an order to surrender weapons issued against the respondent, or if the respondent failed to appear at the compliance review hearing, or if the respondent violated the underlying order after the court entered findings of compliance, the court shall initiate a contempt proceeding to impose remedial sanctions on its own motion or the motion of the prosecutor, city attorney, or the petitioner's counsel, and issue an order requiring the respondent to appear and show cause why the respondent should not be held in contempt of court pursuant to chapter 7.21 RCW.

(b) If the respondent is not present in court at the compliance review hearing or if the court issues an order to appear and show cause after a compliance review hearing, service of the order to show cause shall be by personal service or in the manner provided in the civil rules of superior court or applicable statute.

(c) The order to show cause served upon the respondent shall state the date, time, and location of the hearing and shall include a warning that the respondent may be held in contempt of court if the respondent fails to promptly comply with the terms of the order to surrender weapons and a warning that an arrest warrant could be issued if the respondent fails to appear on the date and time provided in the order.

(d) At the show cause hearing, the respondent must be present and provide testimony to the court under oath and any other relevant evidence regarding compliance with the underlying court order to surrender weapons. The court shall also require verification from a law enforcement agency that all weapons have been surrendered and the concealed pistol license has been surrendered and revoked.

(e) If the court finds the respondent in contempt, the court may impose remedial sanctions designed to ensure swift compliance with the order to surrender weapons.

(f) The court may order a respondent found in contempt of the order to surrender weapons to pay for any losses incurred by a party in connection with the contempt proceeding, including costs and reasonable attorneys' fees.

(8) All law enforcement agencies must have policies and procedures to provide for the acceptance, storage, and return of firearms, dangerous weapons, and concealed pistol licenses that a court requires must be surrendered under RCW 9.41.800. A law enforcement agency holding any firearm or concealed pistol license that has been surrendered under RCW 9.41.800 shall comply with the provisions of RCW 9.41.340 and 9.41.345 before the return of the firearm or concealed pistol license to the owner or individual from whom it was obtained.

((~~(8)~~)) (9) The administrative office of the courts shall create a statewide pattern form to assist the courts in ensuring timely and complete compliance in a consistent manner with orders issued under this chapter. The administrative office of the courts shall report annually on the number of orders issued under this chapter by each court, the degree of compliance, and the number of firearms obtained, and may make recommendations regarding additional procedures to enhance compliance and victim safety.

**Sec.**  RCW 7.94.090 and 2017 c 3 s 10 (Initiative Measure No. 1491) are each amended to read as follows:

(1) Upon issuance of any extreme risk protection order under this chapter, including an ex parte extreme risk protection order, the court shall order the respondent to surrender to the local law enforcement agency all firearms in the respondent's custody, control, or possession and any concealed pistol license issued under RCW 9.41.070.

(2) The law enforcement officer serving any extreme risk protection order under this chapter, including an ex parte extreme risk protection order, shall request that the respondent immediately surrender all firearms in his or her custody, control, or possession and any concealed pistol license issued under RCW 9.41.070, and conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. Alternatively, if personal service by a law enforcement officer is not possible, or not required because the respondent was present at the extreme risk protection order hearing, the respondent shall surrender the firearms in a safe manner to the control of the local law enforcement agency within forty-eight hours of being served with the order by alternate service or within forty-eight hours of the hearing at which the respondent was present.

(3) At the time of surrender, a law enforcement officer taking possession of a firearm or concealed pistol license shall issue a receipt identifying all firearms that have been surrendered and provide a copy of the receipt to the respondent. Within seventy-two hours after service of the order, the officer serving the order shall file the original receipt with the court and shall ensure that his or her law enforcement agency retains a copy of the receipt.

(4) Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that the respondent has failed to comply with the surrender of firearms as required by an order issued under this chapter, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms in his or her possession, custody, or control. If probable cause exists, the court shall issue a warrant describing the firearms and authorizing a search of the locations where the firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to such search.

(5) If a person other than the respondent claims title to any firearms surrendered pursuant to this section, and he or she is determined by the law enforcement agency to be the lawful owner of the firearm, the firearm shall be returned to him or her, provided that:

(a) The firearm is removed from the respondent's custody, control, or possession and the lawful owner agrees to store the firearm in a manner such that the respondent does not have access to or control of the firearm; and

(b) The firearm is not otherwise unlawfully possessed by the owner.

(6) Upon the issuance of a one-year extreme risk protection order, the court shall order a new compliance review hearing date and require the respondent to appear not later than three judicial days from the issuance of the order. The court shall require a showing that the ((~~person subject to the order~~)) respondent has surrendered any firearms in ((~~his or her~~)) the respondent's custody, control, or possession, and any concealed pistol license issued under RCW 9.41.070 to a law enforcement agency. The court may dismiss the hearing upon a satisfactory showing that the respondent has timely and completely surrendered all firearms in the respondent's custody, control, or possession and any concealed pistol license issued under RCW 9.41.070 to a law enforcement agency, and is in compliance with the order. If the court does not have a sufficient record before it on which to make such a finding, the court must set a review hearing to occur as soon as possible, at which the respondent must be present and provide testimony to the court under oath verifying compliance with the court's order.

(7)(a) If a court finds at the compliance review hearing, or any other hearing where compliance with the order is addressed, that there is probable cause to believe the respondent was aware of, and failed to fully comply with, the order, or if the respondent failed to appear at the compliance review hearing, or if the respondent violated the underlying order after the court entered findings of compliance, the court shall initiate a contempt proceeding on its own motion, or the motion of the prosecutor, city attorney, or the petitioner's counsel, to impose remedial sanctions, and issue an order requiring the respondent to appear and show cause why the respondent should not be held in contempt of court pursuant to chapter 7.21 RCW.

(b) If the respondent is not present in court at the compliance review hearing or if the court issues an order to appear and show cause after a compliance review hearing, service of the order to show cause shall be by personal service or in the manner provided in the civil rules of superior court or applicable statute.

(c) The order to show cause served upon the respondent shall state the date, time, and location of the hearing and shall include a warning that the respondent may be held in contempt of court if the respondent fails to promptly comply with the terms of the extreme risk protection order and a warning that an arrest warrant could be issued if the respondent fails to appear on the date and time provided in the order to show cause.

(d) At the show cause hearing, the respondent must be present and provide testimony to the court under oath and any other relevant evidence regarding compliance with the extreme risk protection order. The court shall also require verification from a law enforcement agency that all firearms have been surrendered and the concealed pistol license has been surrendered and revoked.

(e) If the court finds the respondent in contempt, the court may impose remedial sanctions designed to ensure swift compliance with the order to surrender weapons.

(f) The court may order a respondent found in contempt of the order to pay for any losses incurred by a party in connection with the contempt proceeding, including costs and reasonable attorneys' fees.

(8) All law enforcement agencies must develop policies and procedures by June 1, 2017, regarding the acceptance, storage, and return of firearms required to be surrendered under this chapter. A law enforcement agency holding any surrendered firearm or concealed pistol license shall comply with the provisions of RCW 9.41.340 and 9.41.345 before the return of the firearm or concealed pistol license to the owner or individual from whom it was obtained.

**--- END ---**