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**HOUSE BILL 1857**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Jinkins, Ormsby, Kagi, Walkinshaw, Senn, Fitzgibbon, Robinson, Pollet, Farrell, Tarleton, and Goodman

AN ACT Relating to creating an extreme risk protective order; amending RCW 9.41.040 and 9.41.047; adding new sections to chapter 10.79 RCW; adding a new chapter to Title 26 RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  The public has expressed an overwhelming interest in making sure firearms are kept out of the hands of those individuals who might use them to cause great harm. The legislature finds it has a public duty to enact common sense measures ensuring that where an individual may be an extreme risk to himself, herself, or another, the situation is not further exacerbated by access to firearms. To that end, it is the legislature's intent to empower family members and members of law enforcement with the ability to seek a protective order to temporarily prevent an individual from owning, accessing, or purchasing firearms while that individual poses a significant danger of harm.

NEW SECTION. **Sec.**  For the purposes of this chapter "family or household member" has the same meaning as in RCW 26.50.010.

NEW SECTION. **Sec.**  (1) A family or household member of a person or a law enforcement officer may file a petition requesting that the court issue an emergency extreme risk protective order on an ex parte basis, pending a full hearing, enjoining the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving a firearm.

(2) A court may issue an emergency extreme risk protective order if the petition, supported by a written affidavit signed by the petitioner under oath, or an oral statement taken under section 4 of this act, and any additional information provided to the court, shows there is a substantial likelihood that both of the following are true:

(a) The subject of the petition poses a significant danger, in the near future, of personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm as determined by considering the factors listed in section 4 of this act; and

(b) An emergency extreme risk protective order is necessary to prevent personal injury to the subject of the petition or another because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition.

(3) An affidavit supporting a petition for an emergency extreme risk protective order must set forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist.

(4) An emergency extreme risk protective order must be issued or denied on the same day the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order must be issued or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court. The court may hold the emergency hearing in person or by telephone.

(5) When the petitioner for an emergency extreme risk protective order is a law enforcement officer, the law enforcement officer shall make a good faith effort to provide notice to a family or household member of the subject of the petition who may be at risk of domestic violence or stalking. The notice must include that the law enforcement officer intends to petition the court for an emergency extreme risk protective order, and referral to relevant domestic violence or stalking advocacy or counseling resources, if appropriate.

(6) Every person who files a petition for an emergency extreme risk protective order, knowing the information in the petition to be false, is guilty of a misdemeanor.

(7) Every person who purchases or possesses a firearm with knowledge that he or she is prohibited from doing so by an emergency extreme risk protective order is guilty of a misdemeanor and 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 one-year period, to commence upon the expiration of the existing order.

NEW SECTION. **Sec.**  (1) The court, before issuing an emergency extreme risk protective order, may examine under penalty of perjury the petitioner and any witness the petitioner may produce.

(2) In lieu of examining the petitioner and any witness the petitioner may produce, the court may consider a written affidavit submitted by the petitioner and any witness, signed under penalty of perjury.

(3) In determining whether grounds for an emergency extreme risk protective order exist, the court shall consider all evidence of the following:

(a) A recent threat of violence or act of violence by the subject of the petition directed toward himself, herself, or another;

(b) A violation of an antiharassment protection order or no-contact order;

(c) A pattern of violent acts or violent threats within the past twelve months including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another; and

(d) A conviction for a crime that constitutes domestic violence as defined in RCW 10.99.020.

(4) In determining whether grounds for an emergency extreme risk protective order exist, the court may consider any other evidence of an increased risk for violence including, but not limited to, evidence of any of the following:

(a) The unlawful and reckless use, display, or brandishing of a firearm by the subject of the petition;

(b) The history of use, attempted use, or threatened use of physical force by the subject of the petition against another person;

(c) Any prior arrest of the subject of the petition for a felony offense;

(d) Any history of a violation by the subject of the petition of an antiharassment protection order or no-contact order;

(e) Evidence of the abuse of controlled substances or alcohol; and

(f) Evidence of recent acquisition of firearms, ammunition, or other deadly weapons.

(5) For purposes of this section, "recent" means within the six months prior to the date the petition was filed.

(6) If the court determines that grounds to issue an emergency extreme risk protective order exist, it shall issue an emergency extreme risk protective order prohibiting the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, expiring no later than fourteen days from the date of the order.

(7) Within fourteen days after the date on the order, before the court that issued the order or another court in the same jurisdiction, the court shall hold a hearing pursuant to section 6 of this act to determine if an extreme risk protective order should be issued under this chapter.

NEW SECTION. **Sec.**  (1) An emergency extreme risk protective order issued under this chapter must include all of the following:

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

(e) The date and time of the scheduled hearing; and

(f) The following statement:

"To the subject of this protective order: This order is valid until the expiration date and time noted above. You are required to surrender all firearms that you own or possess and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, a firearm while this order is in effect. A hearing will be held on the date and at the time noted above to determine if a more permanent extreme risk protective order should be issued. Failure to appear at that hearing may result in a court making an order against you that is valid for one year. You may seek the advice of an attorney as to any matter connected with this order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with this order."

(2) An emergency extreme risk protective order must be personally served on the subject of the protective order by a law enforcement officer, or any person who is at least eighteen years of age and not a party to the action, if the subject of the protective order can reasonably be located.

(3) The clerk of the court shall enter an emergency extreme risk protective order issued under this section into a statewide judicial information system within one judicial day after issuance.

(4) If the court declines to issue an emergency extreme risk protective order, the court shall state the particular reasons for the court's denial. The court's denial of a motion for an emergency extreme risk protective order must be filed with the court.

NEW SECTION. **Sec.**  (1) A family or household member of a person or a law enforcement officer may request that a court, after notice and a hearing, issue an extreme risk protective order enjoining the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving a firearm for a period of one year.

(2) In determining whether to issue an extreme risk protective order pursuant to a petition filed under subsection (1) of this section or pursuant to a hearing scheduled after the issuance of an emergency extreme risk protective order, the court must consider:

(a) A recent threat of violence or act of violence by the subject of the petition directed toward another;

(b) A recent threat of violence or act of violence by the subject of the petition directed toward himself or herself;

(c) A violation of an antiharassment protection order or no-contact order;

(d) A pattern of violent acts or violent threats within the past twelve months including, but not limited to, threats of violence or acts of violence by the subject of the petition directed toward himself, herself, or another; and

(e) A conviction for a crime that constitutes domestic violence as defined in RCW 10.99.020.

(3) The court may also consider any other evidence of an increased risk of violence including:

(a) The unlawful and reckless use, display, or brandishing of a firearm by the subject of the petition;

(b) The history of use, attempted use, or threatened use of physical force by the subject of the petition against another person;

(c) Any prior arrest of the subject of the petition for a felony offense;

(d) Any history of a violation by the subject of the petition of an antiharassment protection order or no-contact order;

(e) Evidence of the abuse of controlled substances or alcohol; and

(f) Evidence of recent acquisition of firearms, ammunition, or other deadly weapons.

(4) For purposes of this section, "recent" means within the six months prior to the date the petition was filed.

(5) The petitioner has the burden of proving, by clear, cogent, and convincing evidence, that:

(a) The subject of the petition, or a person subject to an emergency extreme risk protective order, poses a significant danger of personal injury to himself, herself, or another by having in his or her custody or control, purchasing, possessing, or receiving a firearm; and

(b) An extreme risk protective order is necessary to prevent personal injury to the subject of the petition or the person subject to an emergency extreme risk protective order, or another, because less restrictive alternatives either have been tried and found to be ineffective, or are inadequate or inappropriate for the circumstances of the subject of the petition or the person subject to an emergency extreme risk protective order.

(6) If the court finds there is clear, cogent, and convincing evidence to issue an extreme risk protective order, the court shall issue an extreme risk protective order prohibiting the subject of the petition from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm.

(7) If the court finds there is not clear, cogent, and convincing evidence to support the issuance of an extreme risk protective order, the court shall dissolve any emergency extreme risk protective order then in effect.

(8) The extreme risk protective order issued under this chapter has a duration of one year, subject to termination by further order of the court.

(9) When the petitioner for an extreme risk protective order is a law enforcement officer, the law enforcement officer shall make a good faith effort to provide notice to a family or household member of the subject of the petition who may be at risk of domestic violence or stalking. The notice must include that the law enforcement officer intends to petition the court for an extreme risk protective order, and referral to relevant domestic violence or stalking advocacy or counseling resources, if appropriate.

(10) Every person who files a petition for an extreme risk protective order issued after notice and a hearing, knowing the information in the petition to be false, is guilty of a misdemeanor.

(11) Every person who purchases or possesses a firearm with knowledge that he or she is prohibited from doing so by an extreme risk protective order issued after notice and a hearing is guilty of a misdemeanor and 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 five-year period, to commence upon expiration of the existing extreme risk protective order.

NEW SECTION. **Sec.**  (1) An extreme risk protective order must include all of the following:

(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) The address of the superior court for the county in which the restrained party resides; and

(e) The following statement:

"To the subject of this protective order: This order will last until the date and time noted above. If you have not done so already, you must surrender all firearms that you own or possess. You may not have in your custody or control, purchase, possess, or 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 at any time during its effective period. You may seek the advice of an attorney as to any matter connected with this order."

(2) When the court issues an extreme risk protective order, the court shall inform the subject of the protective order that he or she is entitled to one hearing to request a termination of the order and shall provide the subject of the protective order with a form to request a hearing.

(3) If a person subject to an extreme risk protective order was not present in court at the time the order was issued or renewed, the extreme risk protective order must be personally served on the subject of the protective order by a law enforcement officer or any person who is at least eighteen years of age and not a party to the action, if the subject of the protective order can reasonably be located. The person's presence in court constitutes proof of service of notice of the terms of the order.

NEW SECTION. **Sec.**  (1) A person subject to an extreme risk protective order may submit one written request per year at any time during the effective period of the order for a hearing to terminate the order.

(2) If the court finds there is no longer clear, cogent, and convincing evidence to believe that section 6(5) of this act is true, the court must terminate the order.

NEW SECTION. **Sec.**  (1) A family or household member of a person or a law enforcement officer may request a renewal of an extreme risk protective order at any time within the three months before the expiration of the order.

(2) A court may, after notice and a hearing, renew an extreme risk protective order if the court finds there is clear, cogent, and convincing evidence that section 6(5) of this act continues to be true.

(3) In determining whether to renew an extreme risk protective order issued under this chapter, the court shall consider evidence of the facts identified in section 6 (2) through (4) of this act.

(4) If the renewal petition is supported by clear, cogent, and convincing evidence, the court shall renew the extreme risk protective order issued under this chapter.

(5) The renewal of an extreme risk protective order has a duration of one additional year, subject to termination by further order of the court under section 8 of this act and further renewal by order of the court under this section.

NEW SECTION. **Sec.**  (1) A person subject to an extreme risk protective order may not have in his or her custody or control, purchase, possess, or receive any firearms while that order is in effect.

(2) An extreme risk protective order must:

(a) Require the person to surrender any firearm in his or her possession, custody, or control;

(b) Require the person to surrender any concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the person from obtaining or possessing a firearm; and

(d) Prohibit the person from obtaining or possessing a concealed pistol license issued under RCW 9.41.070.

(3)(a) The court may require the subject of an extreme risk protective order to surrender any firearm in his or her immediate possession or control or subject to his or her immediate possession or control to the sheriff of the county having jurisdiction of the proceeding or the chief of police of the municipality having jurisdiction.

(b) All law enforcement agencies must develop policies and procedures by January 1, 2016, regarding the acceptance, storage, and return of weapons required to be surrendered under this section.

(4)(a) A person ordered to surrender firearms and his or her concealed pistol license under this section must file with the clerk of the court a proof of surrender and receipt form or a declaration of nonsurrender form within five judicial days of the entry of the order.

(b) By December 1, 2015, the administrative office of the courts shall develop a proof of surrender and receipt pattern form to be used to document that a respondent has complied with a requirement to surrender firearms and his or her concealed pistol license, as ordered under this section, and a declaration of nonsurrender pattern form to document compliance when the respondent has no firearms or concealed pistol license.

(5) If a person other than the subject of the protective order claims title to any firearms surrendered pursuant to this section, and the person is determined by the law enforcement agency to be the lawful owner of the firearm or firearms, the firearm or firearms shall be returned to the lawful owner, provided that the lawful owner agrees to maintain the firearm or firearms, while not in the lawful owner's direct custody or control, locked and separate from ammunition, and to ensure that the person subject to the protective order does not gain access, possession, custody, or control of the firearm or firearms.

NEW SECTION. **Sec.**  (1) The clerk of the court shall enter an extreme risk protective order issued under this section into a statewide judicial information system within one judicial day after issuance.

(2) The court shall forward, within five judicial days, written notice to the department of licensing and the Washington state patrol when an extreme risk protective order has been entered. The Washington state patrol must update its electronic database within seven days.

(3) The court shall forward, within five judicial days, written notice to the department of licensing and the Washington state patrol when an extreme risk protective order has been dissolved or terminated. The Washington state patrol must update its electronic database within seven days.

NEW SECTION. **Sec.**  (1) A law enforcement agency or officer may not be held liable in any civil action for requesting, serving, or enforcing in good faith any type of extreme risk protective order or warrant, or for any other act or omission under this chapter, absent circumstances evidencing gross negligence.

(2) A law enforcement agency or law enforcement officer is not required to apply for any type of extreme risk protective order in any case including, but not limited to, a case in which the agency or officer concludes, after investigation, that the criteria for issuance of an extreme risk protective order are not satisfied.

**Sec.**  RCW 9.41.040 and 2014 c 111 s 1 are each amended to read as follows:

(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

(ii) During any period of time that the person is subject to a court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09, 26.10, 26.26, or 26.50 RCW that:

(A) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

(B) Restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(I) Includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child; and

(II) By its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury;

(iii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(iv) If the person is under eighteen years of age, except as provided in RCW 9.41.042; ((~~and/or~~))

(v) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010; and/or

(vi) During any period of time that the person is subject to any type of extreme risk protective order issued under chapter 26.--- RCW (the new chapter created in section 17 of this act).

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-fact-finding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4)(a) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(i) Under RCW 9.41.047; and/or

(ii)(A) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(B) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection (4) only at:

(i) The court of record that ordered the petitioner's prohibition on possession of a firearm; or

(ii) The superior court in the county in which the petitioner resides.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

(8) For purposes of this section, "intimate partner" includes: A spouse, a domestic partner, a former spouse, a former domestic partner, a person with whom the ((~~restrained person~~))subject of the protective order has a child in common, or a person with whom the ((~~restrained person~~))subject of the protective order has cohabitated or is cohabitating as part of a dating relationship.

**Sec.**  RCW 9.41.047 and 2011 c 193 s 2 are each amended to read as follows:

(1)(a) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW for mental health treatment, or at the time the court enters any type of extreme risk protective order under chapter 26.--- RCW (the new chapter created in section 17 of this act), the convicting ((~~or~~)), committing, or issuing court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

(b) The convicting ((~~or~~)), committing, or issuing court shall forward within three judicial days after conviction ((~~or~~)), entry of the commitment order, or issuance of any type of extreme risk protective order a copy of the person's driver's license or identicard, or comparable information, along with the date of conviction ((~~or~~)), commitment, or issuance, to the department of licensing. When a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW, for mental health treatment, the committing court also shall forward, within three judicial days after entry of the commitment order, a copy of the person's driver's license, or comparable information, along with the date of commitment, to the national instant criminal background check system index, denied persons file, created by the federal Brady handgun violence prevention act (P.L. 103-159).

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person, or person subject to any type of extreme risk protective order, has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition the superior court to have his or her right to possess a firearm restored.

(b) The petition must be brought in the superior court that ordered the involuntary commitment or the superior court of the county in which the petitioner resides.

(c) Except as provided in (d) of this subsection, the court shall restore the petitioner's right to possess a firearm if the petitioner proves by a preponderance of the evidence that:

(i) The petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment;

(ii) The petitioner has successfully managed the condition related to the commitment;

(iii) The petitioner no longer presents a substantial danger to himself or herself, or the public; and

(iv) The symptoms related to the commitment are not reasonably likely to recur.

(d) If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(e) When a person's right to possess a firearm has been restored under this subsection, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the department of licensing, the department of social and health services, and the national instant criminal background check system index, denied persons file.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under RCW 9.41.040(4).

NEW SECTION. **Sec.**  A new section is added to chapter 10.79 RCW to read as follows:

A court may issue a warrant to search for and seize firearms that are owned by, in the possession of, or in the custody or control of a person subject to any type of extreme risk protective order as provided in chapter 26.--- RCW (the new chapter created in section 17 of this act), if:

(1) The subject of the protective order has been served with the order; and

(2) The subject of the protective order has failed to surrender any firearm subject to the order as required under sections 5 and 6 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 10.79 RCW to read as follows:

(1) A law enforcement officer conducting a search and seizure pursuant to section 15 of this act must take custody of any firearm that is in the custody, control, or possession of a person who is subject to any type of extreme risk protective order or that is owned by the subject of the protective order.

(2) Any firearm found at a location subject to a search and seizure warrant issued pursuant to section 15 of this act that is owned by a person other than the subject of the protective order may not be seized if:

(a) The firearm is removed from the subject of the protective order's custody, control, or possession and stored in a manner such that the subject of the protective order does not have access to or control of the firearm; and

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

(3) A locked firearm storage safe or case that is owned by a person other than the subject of the protective order may not be searched except in the owner's presence and with his or her consent or with a separately obtained search warrant.

NEW SECTION. **Sec.**  Sections 1 through 12 of this act constitute a new chapter in Title 26 RCW.

**--- END ---**