

SHB 2622 - S COMM AMD

By Committee on Law & Justice

ADOPTED 03/06/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 9.41.801 and 2019 c 245 s 2 are each amended to
4 read as follows:

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

12 (2) A law enforcement officer serving a protection order, no-
13 contact order, or restraining order that includes an order to
14 surrender all firearms, dangerous weapons, and a concealed pistol
15 license under RCW 9.41.800 shall inform the respondent that the order
16 is effective upon service and the respondent must immediately
17 surrender all firearms and dangerous weapons in his or her custody,
18 control, or possession and any concealed pistol license issued under
19 RCW 9.41.070, and conduct any search permitted by law for such
20 firearms, dangerous weapons, and concealed pistol license. The law
21 enforcement officer shall take possession of all firearms, dangerous
22 weapons, and any concealed pistol license belonging to the respondent
23 that are surrendered, in plain sight, or discovered pursuant to a
24 lawful search. ~~((Alternatively, if personal service is not required
25 because the respondent was present at the hearing at which the order
26 was entered, the))~~ The order must be personally served upon the
27 respondent or defendant if the order is entered in open court in the
28 presence of the respondent or defendant. The respondent or defendant
29 shall acknowledge receipt and service. If the respondent or defendant
30 refuses service, an agent of the court may indicate on the record
31 that the respondent or defendant refused service. The court shall

1 enter the service and receipt into the record. A copy of the order
2 and service shall be transmitted immediately to law enforcement. The
3 respondent must immediately surrender all firearms, dangerous
4 weapons, and any concealed pistol license in a safe manner to the
5 control of the local law enforcement agency on the day of the hearing
6 at which the respondent was present.

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

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

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

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

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

3 (c) The requirements of RCW 9.41.345 are met.

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

21 (7)(a) If a court finds at the compliance review hearing, or any
22 other hearing where compliance with the order to surrender weapons is
23 addressed, that there is probable cause to believe the respondent was
24 aware of and failed to fully comply with the order, failed to appear
25 at the compliance review hearing, or violated the order after the
26 court entered findings of compliance, pursuant to its authority under
27 chapter 7.21 RCW, the court may initiate a contempt proceeding to
28 impose remedial sanctions on its own motion, or upon the motion of
29 the prosecutor, city attorney, or the petitioner's counsel, and issue
30 an order requiring the respondent to appear, provide proof of
31 compliance with the order, and show cause why the respondent should
32 not be held in contempt of court.

33 (b) If the respondent is not present in court at the compliance
34 review hearing or if the court issues an order to appear and show
35 cause after a compliance review hearing, the clerk of the court shall
36 electronically transmit a copy of the order to show cause to the law
37 enforcement agency where the respondent resides for personal service
38 or service in the manner provided in the civil rules of superior
39 court or applicable statute.

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

8 (d) (i) At the show cause hearing, the respondent must be present
9 and provide proof of compliance with the underlying court order to
10 surrender weapons and demonstrate why the relief requested should not
11 be granted.

12 (ii) The court shall take judicial notice of the receipt filed
13 with the court by the law enforcement agency pursuant to subsection
14 (3) of this section. The court shall also provide sufficient notice
15 to the law enforcement agency of the hearing. Upon receiving notice
16 pursuant to this subsection, a law enforcement agency must:

17 (A) Provide the court with a complete list of firearms and other
18 dangerous weapons surrendered by the respondent or otherwise
19 belonging to the respondent that are in the possession of the law
20 enforcement agency; and

21 (B) Provide the court with verification that any concealed pistol
22 license issued to the respondent has been surrendered and the agency
23 with authority to revoke the license has been notified.

24 (iii) If the law enforcement agency has a reasonable suspicion
25 that the respondent is not in full compliance with the terms of the
26 order, the law enforcement agency must submit the basis for its
27 belief to the court, and may do so through the filing of an
28 affidavit.

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

32 (f) The court may order a respondent found in contempt of the
33 order to surrender weapons to pay for any losses incurred by a party
34 in connection with the contempt proceeding, including reasonable
35 attorneys' fees, service fees, and other costs. The costs of the
36 proceeding shall not be borne by the petitioner.

37 (8) All law enforcement agencies must have policies and
38 procedures to provide for the acceptance, storage, and return of
39 firearms, dangerous weapons, and concealed pistol licenses that a
40 court requires must be surrendered under RCW 9.41.800. A law

1 enforcement agency holding any firearm or concealed pistol license
2 that has been surrendered under RCW 9.41.800 shall comply with the
3 provisions of RCW 9.41.340 and 9.41.345 before the return of the
4 firearm or concealed pistol license to the owner or individual from
5 whom it was obtained.

6 ~~((+8))~~ (9) The administrative office of the courts shall create
7 a statewide pattern form to assist the courts in ensuring timely and
8 complete compliance in a consistent manner with orders issued under
9 this chapter. The administrative office of the courts shall report
10 annually on the number of orders issued under this chapter by each
11 court, the degree of compliance, and the number of firearms obtained,
12 and may make recommendations regarding additional procedures to
13 enhance compliance and victim safety.

14 **Sec. 2.** RCW 7.94.090 and 2017 c 3 s 10 (Initiative Measure No.
15 1491) are each amended to read as follows:

16 (1) Upon issuance of any extreme risk protection order under this
17 chapter, including an ex parte extreme risk protection order, the
18 court shall order the respondent to surrender to the local law
19 enforcement agency all firearms in the respondent's custody, control,
20 or possession and any concealed pistol license issued under RCW
21 9.41.070.

22 (2) The law enforcement officer serving any extreme risk
23 protection order under this chapter, including an ex parte extreme
24 risk protection order, shall request that the respondent immediately
25 surrender all firearms in his or her custody, control, or possession
26 and any concealed pistol license issued under RCW 9.41.070, and
27 conduct any search permitted by law for such firearms. The law
28 enforcement officer shall take possession of all firearms belonging
29 to the respondent that are surrendered, in plain sight, or discovered
30 pursuant to a lawful search. The order must be personally served upon
31 the respondent or defendant if the order is entered in open court in
32 the presence of the respondent or defendant. The respondent or
33 defendant shall acknowledge receipt and service. If the respondent or
34 defendant refuses service, an agent of the court may indicate on the
35 record that the respondent or defendant refused service. The court
36 shall enter the service and receipt into the record. A copy of the
37 order and service shall be transmitted immediately to law
38 enforcement. Alternatively, if personal service by a law enforcement
39 officer is not possible, ~~((or not required because the respondent was~~

1 ~~present at the extreme risk protection order hearing,~~) the
2 respondent shall surrender the firearms in a safe manner to the
3 control of the local law enforcement agency within forty-eight hours
4 of being served with the order by alternate service (~~or within~~
5 ~~forty-eight hours of the hearing at which the respondent was~~
6 ~~present~~)).

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

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

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

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

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

35 (6) Upon the issuance of a one-year extreme risk protection
36 order, the court shall order a new compliance review hearing date and
37 require the respondent to appear not later than three judicial days
38 from the issuance of the order. The court shall require a showing
39 that the (~~person subject to the order~~) respondent has surrendered
40 any firearms in (~~his or her~~) the respondent's custody, control, or

1 possession, and any concealed pistol license issued under RCW
2 9.41.070 to a law enforcement agency. The court may dismiss the
3 hearing upon a satisfactory showing that the respondent has timely
4 and completely surrendered all firearms in the respondent's custody,
5 control, or possession and any concealed pistol license issued under
6 RCW 9.41.070 to a law enforcement agency, and is in compliance with
7 the order. If the court does not have a sufficient record before it
8 on which to make such a finding, the court must set a review hearing
9 to occur as soon as possible, at which the respondent must be present
10 and provide proof of compliance with the court's order.

11 (7)(a) If a court finds at the compliance review hearing, or any
12 other hearing where compliance with the order is addressed, that
13 there is probable cause to believe the respondent was aware of and
14 failed to fully comply with the order, failed to appear at the
15 compliance review hearing, or violated the order after the court
16 entered findings of compliance, pursuant to its authority under
17 chapter 7.21 RCW, the court may initiate a contempt proceeding on its
18 own motion, or upon the motion of the prosecutor, city attorney, or
19 the petitioner's counsel, to impose remedial sanctions, and issue an
20 order requiring the respondent to appear, provide proof of compliance
21 with the order, and show cause why the respondent should not be held
22 in contempt of court.

23 (b) If the respondent is not present in court at the compliance
24 review hearing or if the court issues an order to appear and show
25 cause after a compliance review hearing, the clerk of the court shall
26 electronically transmit a copy of the order to show cause to the law
27 enforcement agency where the respondent resides for personal service
28 or service in the manner provided in the civil rules of superior
29 court or applicable statute.

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

37 (d)(i) At the show cause hearing, the respondent must be present
38 and provide proof of compliance with the extreme risk protection
39 order and demonstrate why the relief requested should not be granted.

1 (ii) The court shall take judicial notice of the receipt filed
2 with the court by the law enforcement agency pursuant to subsection
3 (3) of this section. The court shall also provide sufficient notice
4 to the law enforcement agency of the hearing. Upon receiving notice
5 pursuant to this subsection, a law enforcement agency must:

6 (A) Provide the court with a complete list of firearms
7 surrendered by the respondent or otherwise belonging to the
8 respondent that are in the possession of the law enforcement agency;
9 and

10 (B) Provide the court with verification that any concealed pistol
11 license issued to the respondent has been surrendered and the agency
12 with authority to revoke the license has been notified.

13 (iii) If the law enforcement agency has a reasonable suspicion
14 that the respondent is not in full compliance with the terms of the
15 order, the law enforcement agency must submit the basis for its
16 belief to the court, and may do so through the filing of an
17 affidavit.

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

21 (f) The court may order a respondent found in contempt of the
22 order to pay for any losses incurred by a party in connection with
23 the contempt proceeding, including reasonable attorneys' fees,
24 service fees, and other costs. The costs of the proceeding shall not
25 be borne by the petitioner.

26 (8) All law enforcement agencies must develop policies and
27 procedures by June 1, 2017, regarding the acceptance, storage, and
28 return of firearms required to be surrendered under this chapter. A
29 law enforcement agency holding any surrendered firearm or concealed
30 pistol license shall comply with the provisions of RCW 9.41.340 and
31 9.41.345 before the return of the firearm or concealed pistol license
32 to the owner or individual from whom it was obtained."

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1 On page 1, line 3 of the title, after "licenses;" strike the
2 remainder of the title and insert "and amending RCW 9.41.801 and
3 7.94.090."

EFFECT: Allows personal service of orders to surrender weapons on
a respondent or defendant in open court.

--- END ---