

FINAL BILL REPORT

SHB 1786

C 245 L 19
Synopsis as Enacted

Brief Description: Improving procedures and strengthening laws relating to protection orders, no-contact orders, and restraining orders.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Jinkins, Wylie, Goodman, Macri, Bergquist, Cody, Ormsby, Valdez, Frame, Peterson, Tarleton, Davis, Robinson, Fey, Appleton, Santos, Kilduff, Lovick, Walen, Senn and Pellicciotti).

House Committee on Civil Rights & Judiciary
Senate Committee on Law & Justice

Background:

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

There are a number of protection orders, restraining orders, and no-contact orders (protective orders) that allow a court to restrain a person from having contact with or threatening another person or that exclude the person from certain locations or coming within a specified distance of certain locations. Protection orders are available for victims of domestic violence, stalking, harassment, sexual assault, and vulnerable adult abuse. A court may enter a short-term ex parte temporary protection order and, after a full hearing, a final order that lasts for a fixed term, or in some cases is permanent.

In addition to protection orders, a court may enter a civil restraining order in family law proceedings that may include provisions restraining a person from contacting another or excluding the person from certain locations. In the context of criminal proceedings, a court may issue a no-contact order to protect the victim of the crime during the pendency of the criminal proceedings or as a condition of the sentence.

Generally, a violation of a protective order is a gross misdemeanor offense. A violation of some orders is a class C felony if the person violating the order has two prior convictions for violations of a similar order or if the violation involved an assault or reckless endangerment.

Surrender of Firearms and Dangerous Weapons.

A person who is subject to a protective order may be required to surrender his or her firearms, dangerous weapons, and concealed pistol license (CPL) while the order is in place.

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.

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 CPL, depending on the evidence presented. In addition, the court may order surrender where the person's possession of a firearm or dangerous weapon presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

The temporary surrender of firearms and dangerous weapons may be ordered during the pendency of the petition without notice to the subject if the court finds irreparable injury could result before the time for response has elapsed.

A court must order the surrender of firearms, dangerous weapons, and any CPL when entering certain qualifying protective orders involving intimate partners. A qualifying order must meet the following requirements:

- The order was entered after notice and an opportunity to respond.
- The order restrains the person from harassing, stalking, or threatening an intimate partner or the person's or intimate partner's child.
- The order must include: a finding that the restrained person is a credible threat to the physical safety of an intimate partner or child; and terms restraining the person from using or threatening physical force against an intimate partner or child.

A person who possesses a firearm in violation of a qualifying protective order involving intimate partners is guilty of the crime of Unlawful Possession of a Firearm in the second degree, a class C felony.

Surrender Procedures.

The court may require the person to surrender his or her firearm or dangerous weapons to the local law enforcement agency, the persons' counsel, or another person designated by the court. Within five days of the entry of the order, the respondent must file with the court a proof of surrender and receipt form, or a declaration of nonsurrender form if the respondent has no firearms, dangerous weapons, or CPL. Law enforcement agencies are required to have policies and procedures regarding the acceptance, storage, and return of surrendered firearms and weapons.

Law Enforcement Return of Firearms.

Legislation enacted in 2015 established a process relating to the return of privately-owned firearms in the custody of a law enforcement agency. Law enforcement agencies must establish a notification protocol to allow a family or household member to request notification before the return of a privately-owned firearm. A law enforcement agency may not return a private firearm until the agency determines the person is eligible to possess a firearm and at least 24 hours have elapsed from the time the firearm was obtained. If a family or household member has requested notification, the agency must hold the firearm in custody for 72 hours from the time the notification is provided.

Summary:

Firearms and Dangerous Weapons Surrender.

Changes are made to the statute governing the standards for a court to order surrender of firearms, dangerous weapons, and a concealed pistol license (CPL) when issuing a protection order, restraining order, or no-contact order (protective order).

A protective order that includes an order to surrender firearms, dangerous weapons, and any CPL must require immediate surrender. A temporary order may include an order to surrender a CPL in addition to firearms and dangerous weapons. Any protective order that includes an order to surrender firearms, dangerous weapons, and any CPL must be served by a law enforcement officer and the firearms must be surrendered to the custody of a law enforcement agency. A court may or must order surrender, depending on the evidence presented, when the person meets any of the disqualifying factors under the crime of Unlawful Possession of a Firearm.

A person is guilty of Unlawful Possession of a Firearm in the second degree if the person possesses a firearm during any period of time the person is subject to a protective order that:

- was entered after notice and an opportunity to respond;
- restrains the person from harassing, stalking, or threatening the protected person or the person's or protected person's child; and
- includes an order requiring the person to surrender all firearms and prohibiting the person from accessing, obtaining, or possessing firearms.

Surrender Process.

A law enforcement officer serving a protective order that includes an order to surrender must request the respondent to immediately surrender all firearms and dangerous weapons in his or her custody, control, or possession, and any CPL. If personal service of the order 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 CPL to a law enforcement agency on the day of the hearing. A law enforcement officer must issue a receipt for all surrendered firearms, dangerous weapons, and any CPL and provide a copy of the receipt to the respondent. The law enforcement agency must file the receipt with the court within 24 hours after service of the order using electronic filing, if available.

Courts must develop procedures to verify timely and complete compliance with orders to surrender firearms and dangerous weapons, including compliance review hearings to be held as soon as possible upon receipt of proof of service of the order. A compliance review hearing is not required if the court finds the proof of surrender or declaration of non-surrender attested to by the respondent, along with verification from law enforcement and other relevant evidence, shows that the respondent is in compliance with the order.

The court may issue a warrant for the search and seizure of firearms and dangerous weapons if it determines based on the sworn testimony of the petitioner or a law enforcement officer that probable cause exists to believe the respondent has failed to surrender all firearms and dangerous weapons in his or her custody, control, or possession.

A surrendered firearm that is lawfully owned by a person other than the respondent must be returned to the owner if the owner removes the firearm from the respondent's access, custody, control, or possession and agrees, by written document signed under penalty of perjury, to

store the firearm in a manner that prevents the respondent from having access to or control of the firearm.

Law enforcement agencies must have policies and procedures for the acceptance, storage, and return of surrendered firearms. A law enforcement agency must comply with state law requirements for return of private firearms before returning a firearm or CPL to the owner or person from whom it was obtained.

Other Provisions.

The Administrative Office of the Courts (AOC) must create a statewide pattern form to assist the courts in ensuring timely and complete compliance with orders to surrender firearms, dangerous weapons, and any concealed pistol license. The AOC must report annually on the number of orders issued by each court, the degree of compliance, and the number of firearms obtained. The AOC may make recommendations regarding additional procedures to enhance compliance and victim safety.

Statutes governing domestic violence protection orders, stalking protection orders, and anti-harassment protection orders are revised to provide that a respondent may file a motion to terminate or modify an order no more than once in every 12-month period that the order is in effect.

If the court declines to issue an ex parte temporary anti-harassment protection order, the court must state the particular reasons for the court's denial. The court's denial of a motion for an ex parte temporary order shall be filed with the court.

When issuing a sexual assault protection order or stalking protection order, a court must consider the provisions of the statute governing orders to surrender firearms and dangerous weapons and enter such an order as required by that statute. Similar provisions in other protection order and restraining order statutes are revised to use consistent language.

The clerk's transmittal of a stalking, sexual assault, or domestic violence protection order to the appropriate law enforcement agency must be made electronically.

Votes on Final Passage:

House	56	42	
Senate	25	20	(Senate amended)
House	54	42	(House concurred)

Effective: July 28, 2019