

SENATE BILL REPORT

HB 2305

As of February 24, 2020

Title: An act relating to firearms laws concerning persons subject to vulnerable adult protection orders.

Brief Description: Concerning firearms laws concerning persons subject to vulnerable adult protection orders.

Sponsors: Representatives Doglio, Pollet and Appleton.

Brief History: Passed House: 2/14/20, 55-42.

Committee Activity: Law & Justice: 2/24/20.

Brief Summary of Bill

- Adds an order of protection for a vulnerable to the list of orders for which the court may restrict the respondent's firearm rights.
- Requires the court to consider the circumstances under which a person's firearm rights may be restricted when issuing an order of protection for a vulnerable adult and, when appropriate, prohibit the respondent from possessing all firearms and require the respondent to surrender any concealed pistol license and firearms in their possession.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Shani Bauer (786-7468)

Background: Protection, No-Contact, and Restraining Orders. There are several types of orders a court may grant that restrict a person's ability to have contact with another: (1) protection orders; (2) no-contact orders; and (3) restraining orders. Protection orders are issued by a court in civil proceedings and include orders such as domestic violence protection orders and antiharassment protection orders.

No-contact orders may be issued by a court in a criminal proceeding when a defendant is released from custody prior to trial or as part of the defendant's sentence. Restraining orders may be issued as part of a civil proceeding, generally in some type of domestic proceeding.

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.

For many of these orders, the court may or must prohibit a person from possessing a firearm and require the party to surrender any concealed pistol license and firearms currently in their possession. Those circumstances include when:

- the respondent has used, displayed, or threatened to use a firearm or other dangerous weapon in a felony;
- the respondent is otherwise ineligible to possess a firearm under state law;
- the court finds possession of a firearm or other dangerous weapon by the respondent presents a serious and imminent threat to public health or safety or any individual; or
- after a hearing, the court finds the person is a credible threat to the safety of an intimate partner or child and by its terms, the order explicitly prohibits the use or attempted use of physical force against the intimate partner or child.

The court may order temporary surrender of all firearms, dangerous weapons, and any concealed pistol license if it finds on the basis of the moving affidavit or evidence that irreparable injury could result. A person who possesses a firearm in violation of one of these orders is guilty of unlawful possession of a firearm in the second degree, a class C felony.

Vulnerable Adult Protection Order. A vulnerable adult or interested person on behalf of the vulnerable adult may seek a protection order from abandonment, abuse, financial exploitation, or neglect. A vulnerable adult is defined as any person 60 years or older who has the functional, mental, or physical inability to care for themselves.

The courts are authorized to issue a temporary or permanent order of protection on behalf of a vulnerable adult that prohibits the respondent from committing acts of abandonment, abuse, neglect, or financial exploitation; prohibits contact with the vulnerable adult; requires an accounting by respondent of the disposition of the vulnerable adult's income or other resources; and requires the respondent to pay attorney fees and other costs. The protection order must be for a fixed period not to exceed five years.

The statute does not authorize the court to restrict the firearm rights of a respondent to a vulnerable adult protection order.

Summary of Bill: An order of protection for a vulnerable adult is added to the list of orders for which the court may restrict the respondent's firearm rights. When issuing an order of protection for a vulnerable adult, the court must consider the circumstances under which a person's firearm rights may be restricted and, when appropriate, must prohibit the respondent from possessing all firearms and require the respondent to surrender any concealed pistol license and firearms in their possession.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Civil protection orders are a critical public safety tool that addresses a variety of situations and people facing abuse. In all orders except VAPO, the court may order the respondent to issue an order to surrender weapons. The judge should have the authority to address the potential for firearm violence when it comes up in any context. This is a loophole that should be closed to align practices across all protection orders.

This issue came up frequently in the prosecutor's office when dealing with elder crimes and we are aware of situations where vulnerable adults are living in violent situations. The prosecutor's office has no ability to petition the court to address firearms in the respondent's possession or home. This bill addresses that deficiency by allowing the court to look at whether the respondent has a firearm. The presence of a firearm exponentially increases the risk of injury or death in volatile situations.

Giving the judge the ability to work with a caregiver who is being threatened or the vulnerable themselves is a common sense measure.

CON: Protection orders do not mean a hill of beans. There is no obligation for police to act on a protection order and many women end up violently injured or killed when there is a protection order in place.

There are a few problems in this bill. The evidence standard should be clear and convincing rather than a preponderance of the evidence. There is no way for law enforcement to verify that firearms have been surrendered. This law requires removal of firearms that may lawfully belong to another family member, thereby depriving the family members of the right to defend themselves. Fighting these orders is a huge financial burden.

Persons Testifying: PRO: Representative Beth Doglio, Prime Sponsor; Dorothy Kim, Seattle Police Department; Leanne Kennedy; Theresa Phillips, Regional Domestic Violence Firearms Enforcement Unit.

CON: Curtis Bingham, Adventure Protection; Sharyn Hinchcliffe, Pink Pistols Seattle–Tacoma; Ira Moser, citizen.

Persons Signed In To Testify But Not Testifying: No one.