

SENATE BILL REPORT

SB 5745

As Reported by Senate Committee On:
Law & Justice, February 21, 2019

Title: An act relating to extreme risk protection orders.

Brief Description: Concerning extreme risk protection orders.

Sponsors: Senators Liias, Darneille, Dhingra, Hunt, Keiser, Palumbo, Pedersen, Salomon and Takko.

Brief History:

Committee Activity: Law & Justice: 2/19/19, 2/21/19 [DPS, DNP].

Brief Summary of First Substitute Bill

- Directs the court to consider relevant evidence regarding a threatened hate crime in determining whether to issue an ERPO.
- Replaces language referring to dangerous mental health issues with language addressing behaviors that present an imminent threat of harm to self or others.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5745 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

Staff: Shani Bauer (786-7468)

Background: An extreme risk protection order (ERPO) is a civil court order that temporarily prevents individuals who are at a high risk of harming themselves or others from accessing firearms and concealed pistol licenses (CPL). An ERPO may be filed by a family member of the respondent or by law enforcement. An ERPO petition must include:

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- sworn allegations that the respondent poses a significant danger of causing personal injury to self or others by having access to a firearm;
- identification of the number, types, and locations of firearms the respondent is believed to have access to;
- disclosure of any known protection order against the respondent; and
- disclosure of any pending lawsuit, complaint, petition, or other action between the parties to the petition.

If the petitioner is a law enforcement officer or agency, the agency must make a good faith effort to provide notice to a family member of the respondent or any known third party who may be at risk of violence.

Upon receipt of a petition, the court must set a hearing within 14 days. The court may issue an ex parte ERPO pending the hearing. At the hearing, if the court finds by a preponderance of the evidence the respondent poses a significant danger of causing personal injury to themselves or others due to the person's access to firearms, the court will issue an ERPO for a period of one year. In determining whether to issue an ERPO, the court may consider all relevant evidence, including, but not limited to:

- a recent act or threat of violence;
- a pattern of acts or threats of violence within the past 12 months;
- any dangerous mental health issues of the respondent;
- a violation of a protection order or no-contact order;
- a previous or existing ERPO;
- a conviction for a crime that constitutes domestic violence;
- the respondent's ownership, access to, or intent to possess firearms;
- the respondent's history of use or threatened use of physical force;
- any prior arrest for a felony offense or violent crime; and
- corroborated evidence of alcohol abuse or other controlled substance.

As part of an ERPO, the respondent is required to surrender all firearms in the person's custody or control, along with any CPL the person may have. If the respondent fails to surrender their firearms, the court may issue a warrant authorizing a search of locations where the firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to the search. After issuance, law enforcement must enter an ERPO into the National Instant Criminal Background Check System.

Any person who has a firearm in their control, with knowledge they are prohibited from doing so by an ERPO, is guilty of a misdemeanor and will then be prohibited from possessing a firearm for a period of five years from expiration of the order. A person's third conviction for violating an ERPO is a class C felony.

Summary of Bill (First Substitute): In determining whether to issue an ERPO, the court may additionally consider relevant evidence regarding any threat of harm to a person or group of persons because of the respondent's perception of the race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap of the person or persons.

Relevant evidence regarding any dangerous mental health issues of the respondent is changed to any behaviors that present an imminent threat of harm to self or others.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute): A technical correction is made to replace the term "generation" with "gender" in the list of protected classes.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The ERPO process was passed overwhelmingly by initiative of the people. This bill adds the ability to prevent hate crimes to that process. Many perpetrators of hate crime violence have given advance notice of the risk. The law has built in judicial processes to ensure that a person's constitutional freedoms are preserved. This is a meaningful step to protect vulnerable communities from acts of violence.

We should do more to keep firearms out of the hands of those who seek to commit hate based violence. There are numerous shooting instances where the ERPO process could have prevented violence. A person was killed in an anti-Semitic shooting in Santa Barbara. The perpetrator had been writing a manifesto and uploading violent rhetoric on social media. Currently there is no way to issue an ERPO against a person who commits hate based rhetoric.

CON: The ERPO process allows a person's firearm to be removed with very little in terms of allegations and due process. The existing framework does nothing to treat the individual and only focuses on the firearm. Further, the language is vague and provides no clear standard as to what considers a credible threat. There is a significant danger of using political rhetoric to remove a person's firearms. Engaging in an actual hate crime act will result in a felony conviction which is sufficient to remove a person's firearm rights.

Any threat of violence is already grounds for an ERPO. An order may be obtained ex parte on a person's accusation. Very few of these are denied. A person does not get the right to defend themselves at all before firearms are initially taken. The evidentiary standard for obtaining an ERPO is the lowest possible standard of evidence. The evidentiary standard should be clear and convincing.

Persons Testifying: PRO: Senator Marko Liias, Prime Sponsor; Jane Weiss, citizen; David Hackney, citizen; Charlene Kahn, citizen; Tallman Track, citizen.

CON: Phil Watson, Firearms Policy Coalition; Keely Hopkins, National Rifle Association.

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