
HOUSE BILL 1774

State of Washington

66th Legislature

2019 Regular Session

By Representatives Jenkins, Fey, Kilduff, and Ormsby

Read first time 01/30/19. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to extreme risk protection orders; and amending
2 RCW 7.94.120, 7.94.030, 7.94.040, and 7.94.060.

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

4 **Sec. 1.** RCW 7.94.120 and 2017 c 3 s 13 are each amended to read
5 as follows:

6 (1) Any person who files a petition under this chapter knowing
7 the information in such petition to be materially false, or with
8 intent to harass the respondent, is guilty of a gross misdemeanor.

9 (2) Any person who has in his or her custody or control,
10 purchases, possesses, ~~((or))~~ receives, or attempts to purchase or
11 receive, a firearm with knowledge that he or she is prohibited from
12 doing so by an order issued under this chapter is guilty of a gross
13 misdemeanor, and further is prohibited from having in his or her
14 custody or control, purchasing, possessing, or receiving, or
15 attempting to purchase or receive, a firearm for a period of five
16 years from the date the existing order expires. However, such person
17 is guilty of a class C felony if the person has ~~((two))~~ one or more
18 previous convictions for violating an order issued under this
19 chapter.

1 **Sec. 2.** RCW 7.94.030 and 2017 c 3 s 4 are each amended to read
2 as follows:

3 There shall exist an action known as a petition for an extreme
4 risk protection order.

5 (1) A petition for an extreme risk protection order may be filed
6 by (a) a family or household member of the respondent or (b) a law
7 enforcement officer or agency.

8 (2) A petition for an extreme risk protection order may be
9 brought against a respondent under the age of eighteen years. No
10 guardian or guardian ad litem need be appointed on behalf of a
11 respondent to an action under this chapter if such respondent is
12 sixteen years of age or older. If a guardian ad litem is appointed
13 for the petitioner or respondent, the petitioner must not be required
14 to pay any fee associated with such appointment.

15 (3) An action under this chapter must be filed in the county
16 where the petitioner resides or the county where the respondent
17 resides.

18 (~~(3)~~) (4) A petition must:

19 (a) Allege that the respondent poses a significant danger of
20 causing personal injury to self or others by having in his or her
21 custody or control, purchasing, possessing, accessing, or receiving a
22 firearm, and be accompanied by an affidavit made under oath stating
23 the specific statements, actions, or facts that give rise to a
24 reasonable fear of future dangerous acts by the respondent;

25 (b) Identify the number, types, and locations of any firearms the
26 petitioner believes to be in the respondent's current ownership,
27 possession, custody, access, or control;

28 (c) Identify whether there is a known existing protection order
29 governing the respondent, under chapter 7.90, 7.92, 10.14, 9A.46,
30 10.99, 26.50, or 26.52 RCW or under any other applicable statute; and

31 (d) Identify whether there is a pending lawsuit, complaint,
32 petition, or other action between the parties to the petition under
33 the laws of Washington.

34 (~~(4)~~) (5) The court administrator shall verify the terms of any
35 existing order governing the parties. The court may not delay
36 granting relief because of the existence of a pending action between
37 the parties or the necessity of verifying the terms of an existing
38 order. A petition for an extreme risk protection order may be granted
39 whether or not there is a pending action between the parties. Relief

1 under this chapter must not be denied or delayed on the grounds that
2 relief is available in another action.

3 ~~((+5))~~ (6) If the petitioner is a law enforcement officer or
4 agency, the petitioner shall make a good faith effort to provide
5 notice to a family or household member of the respondent and to any
6 known third party who may be at risk of violence. The notice must
7 state that the petitioner intends to petition the court for an
8 extreme risk protection order or has already done so, and include
9 referrals to appropriate resources, including mental health, domestic
10 violence, and counseling resources. The petitioner must attest in the
11 petition to having provided such notice, or attest to the steps that
12 will be taken to provide such notice.

13 ~~((+6))~~ (7) If the petition states that disclosure of the
14 petitioner's address would risk harm to the petitioner or any member
15 of the petitioner's family or household, the petitioner's address may
16 be omitted from all documents filed with the court. If the petitioner
17 has not disclosed an address under this subsection, the petitioner
18 must designate an alternative address at which the respondent may
19 serve notice of any motions. If the petitioner is a law enforcement
20 officer or agency, the address of record must be that of the law
21 enforcement agency.

22 ~~((+7))~~ (8) Within ninety days of receipt of the master copy from
23 the administrative office of the courts, all court clerk's offices
24 shall make available the standardized forms, instructions, and
25 informational brochures required by RCW 7.94.150. Any assistance or
26 information provided by clerks under this section does not constitute
27 the practice of law and clerks are not responsible for incorrect
28 information contained in a petition.

29 ~~((+8))~~ (9) No fees for filing or service of process may be
30 charged by a court or any public agency to petitioners seeking relief
31 under this chapter. Petitioners shall be provided the necessary
32 number of certified copies, forms, and instructional brochures free
33 of charge.

34 ~~((+9))~~ (10) A person is not required to post a bond to obtain
35 relief in any proceeding under this section.

36 ~~((+10))~~ (11) The superior courts of the state of Washington have
37 jurisdiction over proceedings under this chapter. The juvenile court
38 may hear a proceeding under this chapter if the respondent is under
39 the age of eighteen years. Additionally, district and municipal
40 courts have limited jurisdiction over issuance and enforcement of ex

1 parte extreme risk protection orders issued under RCW 7.94.050. The
2 district or municipal court shall set the full hearing provided for
3 in RCW 7.94.040 in superior court and transfer the case. If the
4 notice and order are not served on the respondent in time for the
5 full hearing, the issuing court has concurrent jurisdiction with the
6 superior court to extend the ex parte extreme risk protection order.

7 (12) When a respondent is under the age of eighteen years at the
8 time any extreme risk protection order or ex parte extreme risk
9 protection order is entered:

10 (a) The order must be entered into and maintained in computer-
11 based systems as required in RCW 7.94.110;

12 (b) The court records related to the proceedings must remain
13 confidential as required by chapter 13.50 RCW; and

14 (c) The court records must be administratively sealed after the
15 latest of (i) the respondent's eighteenth birthday; or (ii) the
16 termination of the extreme risk protection order.

17 (13) The court shall give law enforcement priority at any extreme
18 risk protection order calendar because of the importance of immediate
19 temporary removal of firearms in situations of extreme risk and the
20 goal of minimizing the time law enforcement must otherwise wait for a
21 particular case to be called, which can hinder their other patrol and
22 supervisory duties. In the alternative, the court may allow a law
23 enforcement petitioner to participate telephonically, or allow
24 another representative from that law enforcement agency or the
25 prosecutor's office to present the information to the court if
26 personal presence of the petitioning officer is not required for
27 testimonial purposes.

28 (14) Recognizing that an extreme risk protection order may need
29 to be issued outside of normal business hours, courts shall allow law
30 enforcement petitioners to petition after-hours for an ex parte
31 extreme risk protection order using an on-call, after-hours judge, as
32 is done for approval of after-hours search warrants.

33 **Sec. 3.** RCW 7.94.040 and 2017 c 3 s 5 are each amended to read
34 as follows:

35 (1) Upon receipt of the petition, the court shall order a hearing
36 to be held not later than fourteen days from the date of the order
37 and issue a notice of hearing to the respondent for the same.

38 (a) The court may schedule a hearing by telephone pursuant to
39 local court rule, to reasonably accommodate a disability, or in

1 exceptional circumstances to protect a petitioner from potential
2 harm. The court shall require assurances of the petitioner's identity
3 before conducting a telephonic hearing.

4 (b) The court clerk shall cause a copy of the notice of hearing
5 and petition to be forwarded on or before the next judicial day to
6 the appropriate law enforcement agency for service upon the
7 respondent.

8 (c) Personal service of the notice of hearing and petition shall
9 be made upon the respondent by a law enforcement officer not less
10 than five court days prior to the hearing. Service issued under this
11 section takes precedence over the service of other documents, unless
12 the other documents are of a similar emergency nature. If timely
13 personal service cannot be made, the court shall set a new hearing
14 date and shall either require additional attempts at obtaining
15 personal service or permit service by publication or mail as provided
16 in RCW 7.94.070. The court shall not require more than two attempts
17 at obtaining personal service and shall permit service by publication
18 or mail after two attempts at obtaining personal service unless the
19 petitioner requests additional time to attempt personal service. If
20 the court issues an order permitting service by publication or mail,
21 the court shall set the hearing date not later than twenty-four days
22 from the date the order issues.

23 (d) The court may, as provided in RCW 7.94.050, issue an ex parte
24 extreme risk protection order pending the hearing ordered under this
25 subsection (1). Such ex parte order must be served concurrently with
26 the notice of hearing and petition.

27 (2) Upon hearing the matter, if the court finds by a
28 preponderance of the evidence that the respondent poses a significant
29 danger of causing personal injury to self or others by having in his
30 or her custody or control, purchasing, possessing, or receiving a
31 firearm, the court shall issue an extreme risk protection order for a
32 period of one year.

33 (3) In determining whether grounds for an extreme risk protection
34 order exist, the court may consider any relevant evidence including,
35 but not limited to, any of the following:

36 (a) A recent act or threat of violence by the respondent against
37 self or others, whether or not such violence or threat of violence
38 involves a firearm;

1 (b) A pattern of acts or threats of violence by the respondent
2 within the past twelve months including, but not limited to, acts or
3 threats of violence by the respondent against self or others;

4 (c) Any ~~((dangerous mental health issues of the respondent))~~
5 behaviors that present an imminent threat of harm to self or others;

6 (d) Any threat of harm to a person or group of persons because of
7 the respondent's perception of the race, color, religion, ancestry,
8 national origin, generation, sexual orientation, or mental, physical,
9 or sensory handicap of the person or persons;

10 (e) A violation by the respondent of a protection order or a no-
11 contact order issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99,
12 26.50, or 26.52 RCW;

13 ~~((e))~~ (f) A previous or existing extreme risk protection order
14 issued against the respondent;

15 ~~((f))~~ (g) A violation of a previous or existing extreme risk
16 protection order issued against the respondent;

17 ~~((g))~~ (h) A conviction of the respondent for a crime that
18 constitutes domestic violence as defined in RCW 10.99.020;

19 ~~((h))~~ (i) The respondent's ownership, access to, or intent to
20 possess firearms;

21 ~~((i))~~ (j) The unlawful or reckless use, display, or brandishing
22 of a firearm by the respondent;

23 ~~((j))~~ (k) The history of use, attempted use, or threatened use
24 of physical force by the respondent against another person, or the
25 respondent's history of stalking another person;

26 ~~((k))~~ (l) Any prior arrest of the respondent for a felony
27 offense or violent crime;

28 ~~((l))~~ (m) Corroborated evidence of the abuse of controlled
29 substances or alcohol by the respondent; and

30 ~~((m))~~ (n) Evidence of recent acquisition of firearms by the
31 respondent.

32 (4) The court may:

33 (a) Examine under oath the petitioner, the respondent, and any
34 witnesses they may produce, or, in lieu of examination, consider
35 sworn affidavits of the petitioner, the respondent, and any witnesses
36 they may produce; and

37 (b) Ensure that a reasonable search has been conducted for
38 criminal history records related to the respondent.

1 (5) In a hearing under this chapter, the rules of evidence apply
2 to the same extent as in a domestic violence protection order
3 proceeding under chapter 26.50 RCW.

4 (6) During the hearing, the court shall consider whether a mental
5 health evaluation or chemical dependency evaluation is appropriate,
6 and may order such evaluation if appropriate.

7 (7) An extreme risk protection order must include:

8 (a) A statement of the grounds supporting the issuance of the
9 order;

10 (b) The date and time the order was issued;

11 (c) The date and time the order expires;

12 (d) Whether a mental health evaluation or chemical dependency
13 evaluation of the respondent is required;

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

16 (f) A description of the requirements for relinquishment of
17 firearms under RCW 7.94.090; and

18 (g) The following statement: "To the subject of this protection
19 order: This order will last until the date and time noted above. If
20 you have not done so already, you must surrender to the (insert name
21 of local law enforcement agency) all firearms in your custody,
22 control, or possession and any concealed pistol license issued to you
23 under RCW 9.41.070 immediately. You may not have in your custody or
24 control, purchase, possess, receive, or attempt to purchase or
25 receive, a firearm while this order is in effect. You have the right
26 to request one hearing to terminate this order every twelve-month
27 period that this order is in effect, starting from the date of this
28 order and continuing through any renewals. You may seek the advice of
29 an attorney as to any matter connected with this order."

30 (8) When the court issues an extreme risk protection order, the
31 court shall inform the respondent that he or she is entitled to
32 request termination of the order in the manner prescribed by RCW
33 7.94.080. The court shall provide the respondent with a form to
34 request a termination hearing.

35 (9) If the court declines to issue an extreme risk protection
36 order, the court shall state the particular reasons for the court's
37 denial.

38 **Sec. 4.** RCW 7.94.060 and 2017 c 3 s 7 are each amended to read
39 as follows:

1 (1) An extreme risk protection order issued under RCW 7.94.040
2 must be personally served upon the respondent, except as otherwise
3 provided in this chapter.

4 (2) The law enforcement agency with jurisdiction in the area in
5 which the respondent resides shall serve the respondent personally,
6 unless the petitioner elects to have the respondent served by a
7 private party.

8 (3) If service by a law enforcement agency is to be used, the
9 clerk of the court shall cause a copy of the order issued under this
10 chapter to be forwarded on or before the next judicial day to the law
11 enforcement agency specified in the order for service upon the
12 respondent. Service of an order issued under this chapter takes
13 precedence over the service of other documents, unless the other
14 documents are of a similar emergency nature.

15 (4) If the law enforcement agency cannot complete service upon
16 the respondent within ten days, the law enforcement agency shall
17 notify the petitioner. The petitioner shall provide information
18 sufficient to permit such notification.

19 (5) If an order entered by the court recites that the respondent
20 appeared in person before the court, the necessity for further
21 service is waived and proof of service of that order is not
22 necessary.

23 (6) If the court previously entered an order allowing service of
24 the notice of hearing and petition, or an ex parte extreme risk
25 protection order, by publication or mail under RCW 7.94.070, or if
26 the court finds there are now grounds to allow such alternate
27 service, the court may permit service by publication or mail of the
28 extreme risk protection order issued under this chapter as provided
29 in RCW 7.94.070. The court order must state whether the court
30 permitted service by publication or service by mail.

31 (7)(a) When an extreme risk protection order is issued against a
32 minor under the age of eighteen, a copy of the order must be served
33 on the parent or guardian of the minor at any address where the minor
34 resides.

35 (b) The court shall advise the parent or guardian in writing of
36 the legal obligation to safely secure any firearm on the premises and
37 the potential for criminal prosecution if a prohibited person were to
38 obtain access to the firearm. Notice may be provided at the time the
39 parent or guardian of the respondent appears in court or may be
40 served along with a copy of the order.

1 (8) Returns of service under this chapter must be made in
2 accordance with the applicable court rules.

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