
HOUSE BILL 2461

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2016 Regular Session

By Representatives Jinkins, Appleton, Kagi, Moscoso, Robinson, Reykdal, Walkinshaw, Tharinger, Tarleton, Senn, Fitzgibbon, Cody, Frame, Moeller, Fey, Stanford, Farrell, Sawyer, McBride, Ormsby, Pollet, and S. Hunt

Read first time 01/13/16. Referred to Committee on Judiciary.

1 AN ACT Relating to creating an extreme risk protection order;
2 amending RCW 9.41.047; adding new sections to chapter 10.79 RCW;
3 adding a new chapter to Title 26 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The public has expressed an overwhelming
6 interest in making sure firearms are kept out of the hands of those
7 individuals who might use them to cause great harm. The legislature
8 finds it has a public duty to enact common sense measures ensuring
9 that where an individual may be an extreme risk to himself, herself,
10 or another, the situation is not further exacerbated by access to
11 firearms. To that end, it is the legislature's intent to empower
12 family members, child welfare agencies, and members of law
13 enforcement with the ability to seek a protection order to
14 temporarily prevent an individual from possessing, accessing, or
15 purchasing firearms while that individual poses a significant danger
16 of harm.

17 NEW SECTION. **Sec. 2.** For the purposes of this chapter:

18 (1) "Family or household member" means spouses, domestic
19 partners, former spouses, former domestic partners, persons who have
20 a child in common regardless of whether they have been married or

1 have lived together at any time, adult persons related by blood or
2 marriage, adult persons who are presently residing together or who
3 have resided together in the past year, persons sixteen years of age
4 or older who are presently residing together or who have resided
5 together in the past year and who have or have had a dating
6 relationship, persons sixteen years of age or older with whom a
7 person sixteen years of age or older has or has had a dating
8 relationship, and persons who have a biological or legal parent-child
9 relationship, including stepparents and stepchildren and grandparents
10 and grandchildren.

11 (2) "Child welfare agency" means child protective services and
12 children's advocacy center, as those terms are defined in RCW
13 26.44.020.

14 NEW SECTION. **Sec. 3.** (1) A family or household member of a
15 person, a child welfare agency, or a law enforcement officer may file
16 a petition requesting that the court issue an emergency extreme risk
17 protection order on an ex parte basis, pending a full hearing,
18 enjoining the subject of the petition from having in his or her
19 custody or control, purchasing, possessing, or receiving, or
20 attempting to purchase or receive, a firearm.

21 (2) Any person, including but not limited to school officials,
22 may report to law enforcement an individual that the reporting person
23 has reason to believe poses a significant danger in the near future
24 of personal injury to himself, herself, or another by having in his
25 or her custody or control, purchasing, possessing, or receiving a
26 firearm. Law enforcement has the discretion to determine whether to
27 investigate and file a petition under this chapter.

28 (3) A court may issue an emergency extreme risk protection order
29 if the petition, supported by a written affidavit signed by the
30 petitioner under oath, or an oral statement taken under section 4 of
31 this act, and any additional information provided to the court, shows
32 there is a substantial likelihood that both of the following are
33 true:

34 (a) The subject of the petition poses a significant danger, in
35 the near future, of personal injury to himself, herself, or another
36 by having in his or her custody or control, purchasing, possessing,
37 or receiving a firearm as determined by considering the factors
38 listed in section 4 of this act; and

1 (b) An emergency extreme risk protection order is necessary to
2 prevent personal injury to the subject of the petition or another
3 because less restrictive alternatives either have been tried and
4 found to be ineffective, or are inadequate or inappropriate for the
5 circumstances of the subject of the petition.

6 (4) An affidavit supporting a petition for an emergency extreme
7 risk protection order must set forth the facts tending to establish
8 the grounds of the petition, or the reason for believing that they
9 exist.

10 (5) The petition must describe the number, types, and locations
11 of any firearms that the subject of the petition may have access to,
12 own, possess, or control to the best of the petitioner's knowledge.

13 (6) An emergency extreme risk protection order must be issued or
14 denied on the same day the petition is submitted to the court, unless
15 the petition is filed too late in the day to permit effective review,
16 in which case the order must be issued or denied on the next day of
17 judicial business in sufficient time for the order to be filed that
18 day with the clerk of the court. The court may hold the emergency
19 hearing in person or by telephone.

20 (7) When the petitioner for an emergency extreme risk protection
21 order is a law enforcement officer, a law enforcement officer shall
22 make a good faith effort to provide notice to a family or household
23 member of the subject of the petition, or to a known third party, who
24 may be at risk of violence or stalking. The notice must include that
25 the law enforcement officer intends to petition the court for an
26 emergency extreme risk protection order, and referral to relevant
27 domestic violence or stalking advocacy or counseling resources, if
28 appropriate.

29 (8) Every person who files a petition for an emergency extreme
30 risk protection order, knowing the information in the petition to be
31 false, is guilty of false swearing under RCW 9A.72.040.

32 (9) Every person who purchases or possesses a firearm with
33 knowledge that he or she is prohibited from doing so by an emergency
34 extreme risk protection order is guilty of a misdemeanor and is
35 prohibited from having in his or her custody or control, purchasing,
36 possessing, or receiving, or attempting to purchase or receive, a
37 firearm for a one-year period, to commence upon the expiration of the
38 existing order.

1 NEW SECTION. **Sec. 4.** (1) The court, before issuing an emergency
2 extreme risk protection order, may examine under penalty of perjury
3 the petitioner and any witness the petitioner may produce.

4 (2) In lieu of examining the petitioner and any witness the
5 petitioner may produce, the court may consider a written affidavit
6 submitted by the petitioner and any witness, signed under penalty of
7 perjury.

8 (3) In determining whether grounds for an emergency extreme risk
9 protection order exist, the court shall consider all relevant
10 evidence of the following:

11 (a) A recent threat of violence or act of violence by the subject
12 of the petition directed toward himself, herself, or another;

13 (b) A violation of a protection order or no-contact order issued
14 under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, or 26.50 RCW;

15 (c) A pattern of violent acts or violent threats within the past
16 twelve months including, but not limited to, threats of violence or
17 acts of violence by the subject of the petition directed toward
18 himself, herself, or another;

19 (d) A previous or existing extreme risk protection order;

20 (e) A violation of a previous or existing extreme risk protection
21 order; and

22 (f) A conviction for a crime that constitutes domestic violence
23 as defined in RCW 10.99.020.

24 (4) In determining whether grounds for an emergency extreme risk
25 protection order exist, the court may consider any other relevant
26 evidence of an increased risk for violence including, but not limited
27 to, evidence of any of the following:

28 (a) The unlawful and reckless use, display, or brandishing of a
29 firearm by the subject of the petition;

30 (b) The history of use, attempted use, or threatened use of
31 physical force by the subject of the petition against another person;

32 (c) Any prior arrest of the subject of the petition for a felony
33 offense;

34 (d) Corroborated evidence of the abuse of controlled substances
35 or alcohol; and

36 (e) Evidence of recent acquisition of firearms or ammunition.

37 (5) For purposes of this section, "recent" means within the six
38 months prior to the date the petition was filed.

39 (6) If the court determines that grounds to issue an emergency
40 extreme risk protection order exist, it shall issue an emergency

1 extreme risk protection order prohibiting the subject of the petition
2 from having in his or her custody or control, purchasing, possessing,
3 or receiving, or attempting to purchase or receive, a firearm,
4 expiring no later than fourteen days from the date of the order.

5 (7) Within fourteen days after the date of issuance of the order,
6 before the court that issued the order or another court in the same
7 jurisdiction, the court shall hold a hearing pursuant to section 6 of
8 this act to determine if an extreme risk protection order should be
9 issued under this chapter.

10 NEW SECTION. **Sec. 5.** (1) An emergency extreme risk protection
11 order issued under this chapter must include all of the following:

12 (a) A statement of the grounds supporting the issuance of the
13 order;

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

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

16 (d) The address of the superior court in which any responsive
17 pleading should be filed;

18 (e) The date and time of the scheduled hearing; and

19 (f) The following statement:

20 "To the subject of this protection order: This order is valid
21 until the expiration date and time noted above. You are required to
22 surrender or sell all firearms that you possess or have in your
23 custody or control, and you may not have in your custody or control,
24 purchase, possess, or receive, or attempt to purchase or receive, a
25 firearm while this order is in effect. A hearing will be held on the
26 date and at the time noted above to determine if a more permanent
27 extreme risk protection order should be issued. Failure to appear at
28 that hearing may result in a court making an order against you that
29 is valid for a minimum of one year and a maximum of five years. You
30 may seek the advice of an attorney as to any matter connected with
31 this order. The attorney should be consulted promptly so that the
32 attorney may assist you in any matter connected with this order."

33 (2) An emergency extreme risk protection order must be personally
34 served on the subject of the protection order by a law enforcement
35 officer.

36 (a) At the time of service, the law enforcement officer must
37 request that the subject of the order immediately surrender all
38 firearms to the law enforcement officer.

1 (b) If the subject of the order declines to surrender all
2 firearms at the time of service, a law enforcement officer shall make
3 a good faith effort to notify any family or household members or
4 known third parties who may be at risk of violence or stalking that
5 the subject of the order continues to have firearms in his or her
6 possession, custody, or control.

7 (c) If the subject of the order declines to surrender firearms at
8 the time of service, the subject of the order must surrender or sell
9 all firearms within forty-eight hours of the date and time of service
10 and file with the clerk of the court a proof of surrender and receipt
11 form, a declaration of nonsurrender form, or a proof of sale form by
12 the day and time set for the extreme risk protection order hearing.

13 (d) If the subject of the order fails to sell or surrender his or
14 her firearms within forty-eight hours of the date and time of
15 service, the subject of the order must immediately surrender all
16 firearms upon the request of a law enforcement officer. The law
17 enforcement officer shall take possession of all firearms in the
18 possession, custody, or control of the subject of the petition that
19 are surrendered, in plain sight, or discovered pursuant to a lawful
20 search.

21 (3) The clerk of the court shall enter an emergency extreme risk
22 protection order issued under this section into a statewide judicial
23 information system on the same day as issuance.

24 (4) If the court declines to issue an emergency extreme risk
25 protection order, the court shall state the particular reasons for
26 the court's denial. The court's denial of a motion for an emergency
27 extreme risk protection order must be filed with the court.

28 NEW SECTION. **Sec. 6.** (1) A family or household member of a
29 person, a child welfare agency, or a law enforcement officer may
30 request that a court, after notice and a hearing, issue an extreme
31 risk protection order enjoining the subject of the petition from
32 having in his or her custody or control, purchasing, possessing, or
33 receiving, or attempting to purchase or receive, a firearm for a
34 period of one to five years.

35 (2) In determining whether to issue an extreme risk protection
36 order pursuant to a petition filed under this section or pursuant to
37 a hearing scheduled after the issuance of an emergency extreme risk
38 protection order, the court must consider:

1 (a) A recent threat of violence or act of violence by the subject
2 of the petition directed toward himself, herself, or another;

3 (b) Any violation of a protection order or no-contact order
4 issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, or 26.50 RCW;

5 (c) A pattern of violent acts or violent threats within the past
6 twelve months including, but not limited to, threats of violence or
7 acts of violence by the subject of the petition directed toward
8 himself, herself, or another;

9 (d) A previous or existing extreme risk protection order;

10 (e) A violation of a previous or existing extreme risk protection
11 order; and

12 (f) A conviction for a crime that constitutes domestic violence
13 as defined in RCW 10.99.020.

14 (3) The court may also consider any other relevant evidence of an
15 increased risk of violence including:

16 (a) The unlawful and reckless use, display, or brandishing of a
17 firearm by the subject of the petition;

18 (b) The history of use, attempted use, or threatened use of
19 physical force by the subject of the petition against another person;

20 (c) Any prior arrest of the subject of the petition for a felony
21 offense;

22 (d) Corroborated evidence of the abuse of controlled substances
23 or alcohol; and

24 (e) Evidence of recent acquisition of firearms or ammunition.

25 (4) For purposes of this section, "recent" means within the six
26 months prior to the date the petition was filed.

27 (5) The petitioner has the burden of proving, by clear, cogent,
28 and convincing evidence, that:

29 (a) The subject of the petition, or a person subject to an
30 emergency extreme risk protection order, poses a significant danger
31 of personal injury to himself, herself, or another by having in his
32 or her custody or control, purchasing, possessing, or receiving a
33 firearm; and

34 (b) An extreme risk protection order is necessary to prevent
35 personal injury to the subject of the petition or the person subject
36 to an emergency extreme risk protection order, or another, because
37 less restrictive alternatives either have been tried and found to be
38 ineffective, or are inadequate or inappropriate for the circumstances
39 of the subject of the petition or the person subject to an emergency
40 extreme risk protection order.

1 (6) If the court finds there is clear, cogent, and convincing
2 evidence to issue an extreme risk protection order, the court shall
3 issue an extreme risk protection order prohibiting the subject of the
4 petition from having in his or her custody or control, purchasing,
5 possessing, or receiving, or attempting to purchase or receive, a
6 firearm.

7 (7) If the court finds there is not clear, cogent, and convincing
8 evidence to support the issuance of an extreme risk protection order,
9 the court shall dissolve any emergency extreme risk protection order
10 then in effect.

11 (8) The extreme risk protection order issued under this section
12 has a duration of a minimum of one year and a maximum of five years,
13 subject to termination by further order of the court. The court has
14 discretion to determine the duration of the protection order based on
15 all relevant factors, including but not limited to the issuance of
16 prior or existing extreme risk protection orders or violations of
17 prior or existing extreme risk protection orders.

18 (9) During the hearing on the extreme risk protection order, the
19 court shall consider whether a mental health evaluation or chemical
20 dependency evaluation is appropriate. The court may order the subject
21 of the order to undergo a mental health evaluation or chemical
22 dependency evaluation if appropriate.

23 (10) Upon the sworn statement or testimony of the petitioner or
24 any law enforcement officer alleging that the subject of the petition
25 has failed to comply with the surrender or sale of firearms as
26 required by an order issued under this chapter, the court shall
27 determine whether probable cause exists to believe that the subject
28 of the petition has failed to surrender or sell all firearms in his
29 or her possession, custody, or control by the hearing date. If such a
30 determination is made, the court shall issue a warrant for the search
31 and seizure of such firearms.

32 (11) When the petitioner for an extreme risk protection order is
33 a law enforcement officer, a law enforcement officer shall make a
34 good faith effort to provide notice to a family or household member
35 of the subject of the petition, or to a known third party, who may be
36 at risk of violence or stalking. The notice must include that the law
37 enforcement officer intends to petition the court for an extreme risk
38 protection order, and referral to relevant domestic violence or
39 stalking advocacy or counseling resources, if appropriate.

1 (12) Every person who files a petition for an extreme risk
2 protection order issued after notice and a hearing, knowing the
3 information in the petition to be false, is guilty of false swearing
4 under RCW 9A.72.040.

5 (13)(a) A person who purchases or possesses a firearm with
6 knowledge that he or she is prohibited from doing so by an extreme
7 risk protection order issued after notice and a hearing is guilty of
8 a misdemeanor and is prohibited from having in his or her custody or
9 control, purchasing, possessing, or receiving, or attempting to
10 purchase or receive, a firearm for a five-year period, to commence
11 upon expiration of the existing extreme risk protection order. If a
12 person has two or more misdemeanor convictions for violations of an
13 extreme risk protection order, the prohibition from having in his or
14 her custody or control, purchasing, possessing, or receiving, or
15 attempting to purchase or receive, a firearm is extended to a ten-
16 year period, to commence upon expiration of the existing extreme risk
17 protection order.

18 (b) A person who purchases or possesses a firearm with knowledge
19 that he or she is prohibited from doing so by an extreme risk
20 protection order issued after notice and a hearing is guilty of a
21 class C felony if the person has two or more previous convictions for
22 violating an extreme risk protection order issued under this section.

23 NEW SECTION. **Sec. 7.** (1) An extreme risk protection order must
24 include all of the following:

25 (a) A statement of the grounds supporting the issuance of the
26 order;

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

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

29 (d) Whether a mental health evaluation or chemical dependency
30 evaluation of the subject of the order is required;

31 (e) The address of the superior court for the county in which the
32 subject of the order resides; and

33 (f) The following statement:

34 "To the subject of this protection order: This order will last
35 until the date and time noted above. If you have not done so already,
36 you must surrender or sell all firearms that you possess or have in
37 your custody or control. You may not have in your custody or control,
38 purchase, possess, or receive, or attempt to purchase or receive, a
39 firearm while this order is in effect. You have the right to request

1 one hearing per year at any time during the effective period of this
2 order to terminate this order. You may seek the advice of an attorney
3 as to any matter connected with this order."

4 (2) When the court issues an extreme risk protection order, the
5 court shall inform the subject of the protection order that he or she
6 is entitled to one hearing per year at any time during the effective
7 period of the order to request a termination of the order and shall
8 provide the subject of the protection order with a form to request a
9 hearing.

10 (3) If a person subject to an extreme risk protection order was
11 not present in court at the time the order was issued or renewed, the
12 extreme risk protection order must be personally served on the
13 subject of the protection order by a law enforcement officer. The
14 person's presence in court constitutes proof of service of notice of
15 the terms of the order.

16 NEW SECTION. **Sec. 8.** (1) A person subject to an extreme risk
17 protection order may submit one written request per year at any time
18 during the effective period of the order for a hearing to terminate
19 the order.

20 (2) If the court finds there is no longer clear, cogent, and
21 convincing evidence to believe that section 6(5) of this act is true,
22 the court must terminate the order.

23 NEW SECTION. **Sec. 9.** (1) A family or household member of a
24 person, a child welfare agency, or a law enforcement officer may
25 request a renewal of an extreme risk protection order at any time
26 within the three months before the expiration of the order.

27 (2) The court must notify the petitioner of the impending
28 expiration of an extreme risk protection order. Notice must be
29 received by the petitioner one hundred five calendar days before the
30 date the order expires.

31 (3) A court may, after notice and a hearing, renew an extreme
32 risk protection order if the court finds there is clear, cogent, and
33 convincing evidence that section 6(5) of this act continues to be
34 true.

35 (4) In determining whether to renew an extreme risk protection
36 order issued under this chapter, the court shall consider evidence of
37 the facts identified in section 6 (2) through (4) of this act.

1 (5) If the renewal petition is supported by clear, cogent, and
2 convincing evidence, the court shall renew the extreme risk
3 protection order issued under this chapter.

4 (6) The renewal of an extreme risk protection order has a
5 duration of at least one year and up to five years at the discretion
6 of the court, subject to termination by further order of the court
7 under section 8 of this act and further renewal by order of the court
8 under this section.

9 NEW SECTION. **Sec. 10.** (1) A person subject to an extreme risk
10 protection order may not have in his or her custody or control,
11 purchase, possess, or receive, or attempt to purchase or receive, any
12 firearms while the order is in effect.

13 (2) An extreme risk protection order must:

14 (a) Require the person to surrender or sell any firearm in his or
15 her possession, custody, or control;

16 (b) Require the person to surrender any concealed pistol license
17 issued under RCW 9.41.070;

18 (c) Prohibit the person from having in his or her custody or
19 control, purchasing, possessing, or receiving, or attempting to
20 purchase or receive, a firearm; and

21 (d) Prohibit the person from obtaining or possessing a concealed
22 pistol license issued under RCW 9.41.070.

23 (3)(a) The court may require the subject of an extreme risk
24 protection order to surrender or sell any firearm in his or her
25 immediate possession, custody, or control or subject to his or her
26 immediate possession, custody, or control to the sheriff of the
27 county having jurisdiction of the proceeding or the chief of police
28 of the municipality having jurisdiction.

29 (b) All law enforcement agencies must develop policies and
30 procedures by January 1, 2017, regarding the acceptance, storage, and
31 return of firearms required to be surrendered under this section.

32 (4)(a) If a person ordered to surrender or sell firearms and his
33 or her concealed pistol license under this section was not subject to
34 an emergency extreme risk protection order issued under sections 4
35 and 5 of this act, the person must file with the clerk of the court a
36 proof of surrender and receipt form, a declaration of nonsurrender
37 form, or a proof of sale form within five judicial days after entry
38 of the order.

1 (b) By December 1, 2016, the administrative office of the courts
2 shall develop: (i) A proof of surrender and receipt pattern form to
3 be used to document that a respondent has complied with a requirement
4 to surrender firearms and his or her concealed pistol license, as
5 ordered under this section; (ii) a declaration of nonsurrender
6 pattern form to document compliance when the respondent has no
7 firearms or concealed pistol license; and (iii) a proof of sale
8 pattern form to be used to document that a respondent has complied
9 with a requirement to sell his or her firearms, as ordered under this
10 section.

11 (5) If a person other than the subject of the protection order
12 claims title to any firearms surrendered pursuant to this section,
13 and the person is determined by the law enforcement agency to be the
14 lawful owner of the firearm or firearms, the firearm or firearms
15 shall be returned to the lawful owner, provided that the lawful owner
16 agrees to maintain the firearm or firearms, while not in the lawful
17 owner's direct custody or control, locked and separate from
18 ammunition, and to ensure that the person subject to the protection
19 order does not gain access, possession, custody, or control of the
20 firearm or firearms.

21 NEW SECTION. **Sec. 11.** (1) The clerk of the court shall enter an
22 extreme risk protection order issued under this chapter into a
23 statewide judicial information system on the same day as issuance.

24 (2) The clerk of the court shall forward a copy of an extreme
25 risk protection order on or before the next judicial day to the
26 appropriate law enforcement agency specified in the order. Upon
27 receipt of the copy of the order, the law enforcement agency shall
28 enter the order into any computer-based criminal intelligence
29 information system available in this state used by law enforcement
30 agencies to list outstanding warrants. The order must remain in the
31 computer-based criminal intelligence information system for the
32 period stated in the order, and the law enforcement agency shall only
33 expunge orders from the system that are expired or terminated. Entry
34 into the computer-based criminal intelligence information system
35 constitutes notice to all law enforcement agencies of the existence
36 of the order. The order is fully enforceable in any county in the
37 state.

38 (3) If an extreme risk protection order is terminated before its
39 expiration date, the clerk of the court shall forward on or before

1 the next judicial day a copy of the termination order to the
2 department of licensing and the appropriate law enforcement agency
3 specified in the termination order. Upon receipt of the order, the
4 law enforcement agency shall promptly remove the order from the
5 computer-based criminal intelligence information system.

6 NEW SECTION. **Sec. 12.** No filing fees may be charged for a
7 petition filed by a law enforcement officer under this chapter.

8 NEW SECTION. **Sec. 13.** This chapter may not be construed to
9 impose criminal or civil liability on any person or entity for acts
10 or omissions related to reporting, declining to report,
11 investigating, declining to investigate, filing, or declining to file
12 an emergency extreme risk protection order or extreme risk protection
13 order pursuant to this chapter.

14 **Sec. 14.** RCW 9.41.047 and 2011 c 193 s 2 are each amended to
15 read as follows:

16 (1)(a) At the time a person is convicted or found not guilty by
17 reason of insanity of an offense making the person ineligible to
18 possess a firearm, or at the time a person is committed by court
19 order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or
20 chapter 10.77 RCW for mental health treatment, or at the time the
21 court enters any type of extreme risk protection order under chapter
22 26.--- RCW (the new chapter created in section 17 of this act), the
23 convicting ~~((~~or~~))~~, committing, or issuing court shall notify the
24 person, orally and in writing, that the person must immediately
25 surrender any concealed pistol license and that the person may not
26 possess a firearm unless his or her right to do so is restored by a
27 court of record. For purposes of this section a convicting court
28 includes a court in which a person has been found not guilty by
29 reason of insanity.

30 (b) The convicting ~~((~~or~~))~~, committing, or issuing court shall
31 forward within three judicial days after conviction ~~((~~or~~))~~, entry of
32 the commitment order, or issuance of any type of extreme risk
33 protection order a copy of the person's driver's license or
34 identicard, or comparable information, along with the date of
35 conviction ~~((~~or~~))~~, commitment, or issuance, to the department of
36 licensing. When a person is committed by court order under RCW
37 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW, for

1 mental health treatment, the committing court also shall forward,
2 within three judicial days after entry of the commitment order, a
3 copy of the person's driver's license, or comparable information,
4 along with the date of commitment, to the national instant criminal
5 background check system index, denied persons file, created by the
6 federal Brady handgun violence prevention act (P.L. 103-159).

7 (2) Upon receipt of the information provided for by subsection
8 (1) of this section, the department of licensing shall determine if
9 the convicted or committed person, or person subject to any type of
10 extreme risk protection order, has a concealed pistol license. If the
11 person does have a concealed pistol license, the department of
12 licensing shall immediately notify the license-issuing authority
13 which, upon receipt of such notification, shall immediately revoke
14 the license.

15 (3)(a) A person who is prohibited from possessing a firearm, by
16 reason of having been involuntarily committed for mental health
17 treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750,
18 chapter 10.77 RCW, or equivalent statutes of another jurisdiction
19 may, upon discharge, petition the superior court to have his or her
20 right to possess a firearm restored.

21 (b) The petition must be brought in the superior court that
22 ordered the involuntary commitment or the superior court of the
23 county in which the petitioner resides.

24 (c) Except as provided in (d) of this subsection, the court shall
25 restore the petitioner's right to possess a firearm if the petitioner
26 proves by a preponderance of the evidence that:

27 (i) The petitioner is no longer required to participate in court-
28 ordered inpatient or outpatient treatment;

29 (ii) The petitioner has successfully managed the condition
30 related to the commitment;

31 (iii) The petitioner no longer presents a substantial danger to
32 himself or herself, or the public; and

33 (iv) The symptoms related to the commitment are not reasonably
34 likely to recur.

35 (d) If a preponderance of the evidence in the record supports a
36 finding that the person petitioning the court has engaged in violence
37 and that it is more likely than not that the person will engage in
38 violence after his or her right to possess a firearm is restored, the
39 person shall bear the burden of proving by clear, cogent, and

1 convincing evidence that he or she does not present a substantial
2 danger to the safety of others.

3 (e) When a person's right to possess a firearm has been restored
4 under this subsection, the court shall forward, within three judicial
5 days after entry of the restoration order, notification that the
6 person's right to possess a firearm has been restored to the
7 department of licensing, the department of social and health
8 services, and the national instant criminal background check system
9 index, denied persons file.

10 (4) No person who has been found not guilty by reason of insanity
11 may petition a court for restoration of the right to possess a
12 firearm unless the person meets the requirements for the restoration
13 of the right to possess a firearm under RCW 9.41.040(4).

14 NEW SECTION. **Sec. 15.** A new section is added to chapter 10.79
15 RCW to read as follows:

16 A court may issue a warrant to search for and seize firearms that
17 are in the possession, custody, or control of a person subject to any
18 type of extreme risk protection order as provided in chapter 26.---
19 RCW (the new chapter created in section 17 of this act), if:

20 (1) The subject of the protection order has been served with the
21 order; and

22 (2) The subject of the protection order has failed to surrender
23 or sell any firearm subject to the order as required under chapter
24 26.--- RCW (the new chapter created in section 17 of this act).

25 NEW SECTION. **Sec. 16.** A new section is added to chapter 10.79
26 RCW to read as follows:

27 (1) A law enforcement officer conducting a search and seizure
28 pursuant to section 15 of this act must take custody of any firearm
29 that is in the custody, control, or possession of a person who is
30 subject to any type of extreme risk protection order.

31 (2) Any firearm found at a location subject to a search and
32 seizure warrant issued pursuant to section 15 of this act that is
33 owned by a person other than the subject of the protection order may
34 not be seized if:

35 (a) The firearm is removed from the subject of the protection
36 order's custody, control, or possession and stored in a manner such
37 that the subject of the protection order does not have access to or
38 control of the firearm; and

1 (b) The firearm is not otherwise unlawfully possessed by the
2 owner.

3 (3) A locked firearm storage safe or case that is owned by a
4 person other than the subject of the protection order may not be
5 searched except in the owner's presence and with his or her consent
6 or with a separately obtained search warrant.

7 NEW SECTION. **Sec. 17.** Sections 1 through 13 of this act
8 constitute a new chapter in Title 26 RCW.

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