
Civil Rights & Judiciary Committee

HB 2622

Brief Description: Concerning procedures for ensuring compliance with court orders requiring surrender of firearms, weapons, and concealed pistol licenses.

Sponsors: Representatives Kilduff, Walen, Senn, Pollet and Davis.

Brief Summary of Bill

- Establishes compliance hearing processes and contempt of court procedures for courts that have issued orders to surrender weapons and extreme risk protection orders.

Hearing Date: 1/29/20

Staff: Nico Wedekind (786-7290) and Edie Adams (786-7180).

Background:

Order to Surrender Weapons.

As part of a protection order, no-contact order, or restraining order, a court may order the respondent to surrender all firearms, dangerous weapons, and any concealed pistol license to law enforcement if specific criteria are met. Such criteria include evidence that the respondent used, displayed, or threatened to use a firearm or other dangerous weapon in a felony. An order to surrender weapons (OTSW) is effective immediately upon service by a law enforcement officer, and the officer must take possession of all firearms belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. If personal service of the OTSW 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 concealed pistol license 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 concealed pistol license and provide a copy of the receipt to the respondent. The agency

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must also file the original receipt with the court within 24 hours after service of the order and retain a copy of the receipt.

To ensure compliance with OTSWs, courts may hold compliance review hearings, which are to be scheduled as soon as possible upon receipt from law enforcement of proof of service of the order. A compliance review hearing is not required if there is a sufficient showing that the respondent has completely surrendered all of their firearms, dangerous weapons, and concealed pistol license.

The Administrative Office of the Courts has created a statewide pattern form to assist the courts in ensuring timely and complete compliance with OTSWs. The Administrative Office of the Courts is also directed to report annually on the number of OTSWs issued by each court, the degree of compliance, and the number of firearms obtained, and may make recommendations regarding additional procedures to enhance compliance and victim safety.

Extreme Risk Protection Order.

Extreme risk protection orders (ERPOs) are temporary or final court orders used to limit an individual's access to firearms when that individual poses a significant danger of harming themselves or others by possessing a firearm. A temporary ex parte ERPO may be issued where the court finds reasonable cause to believe the respondent poses a significant danger.

A petition for an ERPO may be filed by a family or household member of the respondent or a law enforcement officer or agency. The petition must:

- contain an allegation that the respondent poses a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, accessing, or receiving a firearm, and be accompanied by an affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of future dangerous acts by the respondent; and
- identify the number, types, and locations of any firearms the petitioner believes to be in the respondent's current ownership, possession, custody, access, or control.

Upon receipt of a petition, the court must order a hearing within 14 days. The court may issue an ERPO for a period of one year if, during the hearing, it finds by a preponderance of the evidence that the respondent poses a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm.

Upon the issuance of any ERPO, the court must order the respondent to surrender all their firearms and any concealed pistol license they may have to the local law enforcement agency. An order to surrender firearms is effective immediately upon service of the ERPO to the respondent by a law enforcement officer, and the officer must take possession of all firearms belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. If personal service of the ERPO by a law enforcement officer is not required because the respondent was present at the hearing at which the order was entered, or the respondent was served by alternate service, the respondent must immediately surrender all firearms to a law enforcement agency within 48 hours of the hearing.

A law enforcement officer must issue a receipt for all surrendered firearms and any concealed pistol license and provide a copy of the receipt to the respondent. The agency must also file the

original receipt with the court within 72 hours after service of the order and retain a copy of the receipt.

Upon the issuance of a one-year ERPO, the court must order a new hearing date and require the respondent to appear not later than three judicial days from the issuance of the order to show that the respondent has surrendered any firearm in his or her custody, control, or possession. The court may dismiss the hearing upon a satisfactory showing that the respondent is in compliance with the order to surrender weapons.

Contempt of Court.

Courts have the authority to issue a sanction for contempt of court after finding a party has intentionally disobeyed any lawful judgment, decree, order, or process of the court. When the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform, the court may issue a remedial sanction to coerce performance. Remedial sanctions may include: imprisonment (extended only so long as it serves a coercive purpose), forfeiture not to exceed \$2,000 for each day the contempt of court continues, or an order designed to ensure compliance with the prior order.

Summary of Bill:

Compliance hearing processes and contempt of court procedures are established for both court orders to surrender weapons (OTSWs) and extreme risk protection orders (ERPOs).

If a court determines during a compliance review hearing for an OTSW or an ERPO, or any other hearing where compliance with an order to surrender weapons is addressed, that there is probable cause to believe the respondent to the order was aware of, and failed to fully comply with, an order to surrender weapons, the court is directed to initiate a contempt proceeding against the respondent. The court must also initiate a contempt proceeding against the respondent if the respondent failed to appear at the review hearing or the respondent violated the underlying order after the court entered findings of compliance.

The proceeding may be initiated by the court on its own motion or the motion of the prosecutor, city attorney, or the petitioner's counsel. After the contempt proceedings have been initiated, the court must issue an order requiring the respondent to appear and show cause why the respondent should not be held in contempt of court. The order must state the date, time, and location of the show cause hearing, along with a notice warning the respondent that failure to comply with the terms of the original order to surrender firearms will lead to the respondent being held in contempt of court, and that failure to appear at the date, time, and location of the show cause hearing may result in the issuance of an arrest warrant.

During the show cause hearing, the respondent must be present and provide testimony to the court under oath and provide any other relevant evidence regarding compliance with the underlying order. Verification provided from a law enforcement agency is also required.

If the court finds the respondent in contempt of the OTSW or the ERPO, the court may impose remedial sanctions designed to ensure swift compliance with the respective order. The court may also order a respondent found in contempt of the order to pay for any losses incurred by a party in connection with the contempt proceeding, including costs and reasonable attorneys' fees.

Appropriation: None.

Fiscal Note: Requested on January 22, 2020.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.