

FINAL BILL REPORT

SHB 2622

C 126 L 20
Synopsis as Enacted

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

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Kilduff, Walen, Senn, Pollet and Davis).

House Committee on Civil Rights & Judiciary
Senate Committee on Law & Justice

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 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 an OTSW, a court may hold a compliance review hearing, which is 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.

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.

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 causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, accessing, or receiving 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: 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 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 firearms and any concealed pistol license the respondent may have to the local law enforcement agency. An order to surrender firearms is effective immediately upon service of the ERPO on 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 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, 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:

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 was aware of, and failed to fully comply with, an order to surrender weapons, the court may initiate a contempt proceeding against the respondent. The court may also initiate a contempt proceeding if the respondent failed to appear at the review hearing or 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 petitioner's counsel. The clerk of the court must electronically transmit to the law enforcement agency where the respondent resides an order requiring the respondent to appear and show cause why the respondent should not be held in contempt of court. The law enforcement agency must then serve the order to the respondent. The order must state the date, time, and location of the show cause hearing. The order must also contain 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 show cause hearing may result in the issuance of an arrest warrant.

During the show cause hearing, the respondent must be present and provide proof of compliance with the underlying order and demonstrate why the relief requested should not be granted. The court must provide the local law enforcement agency with sufficient notice of the show cause hearing so that the law enforcement agency can provide the court with a list of all firearms and weapons surrendered by the respondent and verification that the concealed pistol license has been surrendered and revoked.

If the law enforcement agency has a reasonable suspicion that the respondent is not in full compliance with the terms of the order, the agency is required to submit the basis for its belief to the courts during a show cause hearing. The agency may comply through the filing of an affidavit.

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 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. The petitioner cannot be made to bear the costs of the show cause hearing.

If an OTSW or ERPO is entered in open court in the presence of the respondent or defendant, the order must be personally served upon the respondent or defendant. A copy of the order and service must be immediately transmitted to law enforcement.

Votes on Final Passage:

House 56 42
Senate 29 19 (Senate amended)
House 56 40 (House concurred)

Effective: June 11, 2020