

# HOUSE BILL REPORT

## SHB 2622

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### As Passed Legislature

**Title:** An act relating to procedures for ensuring compliance with court orders requiring surrender of firearms, weapons, and concealed pistol licenses.

**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).

#### **Brief History:**

##### **Committee Activity:**

Civil Rights & Judiciary: 1/29/20, 2/5/20 [DPS].

##### **Floor Activity:**

Passed House: 2/13/20, 56-42.

Senate Amended.

Passed Senate: 3/6/20, 29-19.

House Concurred.

Passed House: 3/9/20, 56-40.

Passed Legislature.

#### **Brief Summary of Substitute Bill**

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

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### HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kilduff, Chair; Thai, Vice Chair; Goodman, Hansen, Kirby, Orwall, Peterson, Valdez and Walen.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Dufault, Assistant Ranking Minority Member; Graham, Klippert, Rude and Ybarra.

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*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.*

**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 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.

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 Substitute 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 may initiate a contempt proceeding

against the respondent. The court may 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 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 must provide proof of compliance with the underlying order and demonstrate why the relief requested should not be granted. The court must also provide law enforcement with sufficient notice of any show cause hearing so that law enforcement 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 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. 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.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Domestic violence is a serious and prevalent problem in Washington, and weapons and domestic violence are a deadly combination. The research is quite clear that the mere presence of a firearm in a domestic violence situation dramatically increases the risk of homicide for women. Between 2005-2015, 54 percent of domestic violence homicides were committed by an abuser that was previously prohibited from possessing a firearm. That means that the individuals who committed homicides had been to review hearings and many of them denied having firearms. Often, abusers may have more than one weapon, and may surrender only some or none at all. Even temporary removal of firearms from abusers will have a significant impact on public safety because 45 percent of domestic violence homicides occur in the first 90 days of separation or the end of a relationship, 75 percent in the first six months, and only 13 percent outside of one year.

Weapons in the hands of those struggling with suicidal ideation is a very dangerous mix. Seventy-five percent of gun deaths in Washington are due to suicide. Twenty veterans a day commit suicide, and two-thirds of these suicides are committed using guns. Lives can be saved if it can be ensured that weapons are surrendered when a person poses a risk to himself or herself.

One of the most effective tools that law enforcement has to prevent gun violence is an order to surrender weapons. An important part of keeping communities safe is ensuring that laws work as they are intended to. This legislation will strengthen compliance with an order that has already been issued by a judge and keep guns out of the hands of abusers and those who are inclined to self-injure. In addition, this bill allows more avenues for enforcement of orders by expanding the parties who may bring a contempt order to include prosecutors and city attorneys, instead of relying solely on a petitioner.

This legislation provides an enforcement mechanism with respect for due process, as respondents are provided notice, an opportunity to be heard, an opportunity to present evidence, and an opportunity to testify. Further, the threat of civil contempt will both provide a necessary incentive for respondents to promptly comply with the orders and help make victims of domestic violence and law enforcement community safer. Finally, probable cause is a notable standard of evidence that must be met before the court can find that the respondent is in contempt of an order to surrender weapons.

(Opposed) People who engage in domestic violence should not have guns. In fact, there are aspects of our laws that do not go far enough. There should be an apparatus that prevents these people from even committing these crimes of domestic violence. A person can already be, and should be, arrested if they are a violent threat and have committed crimes, or if they violate an order. The real concerns are releasing someone back to the street if they are an actual threat and not providing adequate mental health support to aid those struggling with suicidal ideations.

There are major due process concerns with this procedure. This bill creates a special rule that only applies to show cause firearm surrender hearings, not to any other civil proceedings, where the respondent must appear personally and cannot appear through counsel. Not being able to have representation through counsel in these hearings is an erosion of rights. In addition, this bill compels individuals to violate their Fifth Amendment protections and offer testimony against themselves. Extreme risk protection orders use the lowest standard

possible to take someone's rights away without due process. Ex parte orders are issued during secret meetings and require a respondent to prove their innocence, which flips the justice system on its head.

It is unclear what this bill would change, since prosecutors have already successfully filed for contempt against a respondent who failed to comply with an order to surrender weapons.

(Other) The process required by this bill raises some concerns, namely that the court may initiate a show cause proceeding. That is not how courts operate. Courts are supposed to be the neutral party and require the other parties to bring them evidence and motions. Further, requiring a respondent to testify may conflict with the Fifth Amendment.

This bill might help ensure people follow court orders. However, requiring a law enforcement agency to verify that all firearms have been surrendered by a respondent poses an impossible task. There is simply no way for law enforcement to verify this information, as law enforcement does not know how many firearms a respondent may own. Law enforcement only knows how many weapons came into law enforcement possession. The underlying statute already requires law enforcement to provide a receipt of weapons surrendered to a court, so the court already has all the information that law enforcement is able to provide.

**Persons Testifying:** (In support) Representative Kilduff, prime sponsor; Jane Weiss; David Bannick; Chris Anderson; Jordan Waits; and David Hackney.

(Opposed) Matthew Aimonetti, Pink Pistols of Seattle; Phil Watson, Firearms Policy Coalition; and Tom Kwieciak, National Rifle Association.

(Other) Judge Stephen Warning, Superior Court Judges' Association; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** Melanie Stewart, District and Municipal Court Judges Association.