

# SENATE BILL REPORT

## ESSB 5027

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As Amended by House, April 4, 2019

**Title:** An act relating to extreme risk protection orders.

**Brief Description:** Concerning extreme risk protection orders.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Frockt, Carlyle, Palumbo, Wellman, Pedersen, Keiser, Saldaña, Mullet and O'Ban).

**Brief History:**

**Committee Activity:** Law & Justice: 1/17/19, 1/24/19 [DPS, DNP].

**Floor Activity:**

Passed Senate: 3/05/19, 43-5.

Passed House: 4/04/19, 56-37.

**Brief Summary of Engrossed First Substitute Bill**

- Authorizes the court to enter an ERPO against a person under the age of eighteen years and requires notice to the person's parent or guardian of the legal obligation to safely secure any firearms.
- Allows a restrained party under the age of eighteen to petition the court to seal from public view court records relating to an ERPO proceeding.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5027 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

**Minority Report:** Do not pass.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

**Staff:** Shani Bauer (786-7468)

**Background:** An extreme risk protection order (ERPO) is a civil court order that temporarily prevents individuals who are at a high risk of harming themselves or others from

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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.*

accessing firearms and concealed pistol licenses (CPL). An ERPO may be filed by a family member of the respondent or by law enforcement. An ERPO petition must include:

- sworn allegations that the respondent poses a significant danger of causing personal injury to self or others by having access to a firearm;
- identification of the number, types, and locations of firearms the respondent is believed to have access to;
- disclosure of any known protection order against the respondent; and
- disclosure of any pending lawsuit, complaint, petition, or other action between the parties to the petition.

If the petitioner is a law enforcement officer or agency, the agency must make a good faith effort to provide notice to a family member of the respondent or any known third party who may be at risk of violence.

Upon receipt of a petition, the court must set a hearing within 14 days. The court may issue an ex parte ERPO pending the hearing. At the hearing, if the court finds by a preponderance of the evidence the respondent poses a significant danger of causing personal injury to themselves or others due to the person's access to firearms, the court will issue an ERPO for a period of one year. In determining whether to issue an ERPO, the court may consider all relevant evidence, including, but not limited to:

- a recent act or threat of violence;
- a pattern of acts or threats of violence within the past 12 months;
- any dangerous mental health issues of the respondent;
- a violation of a protection order or no-contact order;
- a previous or existing ERPO;
- a conviction for a crime that constitutes domestic violence;
- the respondent's ownership, access to, or intent to possess firearms;
- the respondent's history of use or threatened use of physical force;
- any prior arrest for a felony offense or violent crime; and
- corroborated evidence of alcohol abuse or other controlled substance.

As part of an ERPO, the respondent is required to surrender all firearms in the person's custody or control, along with any CPL the person may have. If the respondent fails to surrender their firearms, the court may issue a warrant authorizing a search of locations where the firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to the search. After issuance, law enforcement must enter an ERPO into the National Instant Criminal Background Check System.

Any person who has a firearm in their control, with knowledge they are prohibited from doing so by an ERPO, is guilty of a misdemeanor and will then be prohibited from possessing a firearm for a period of five years from expiration of the order. A person's third conviction for violating an ERPO is a Class C felony.

**Summary of Engrossed First Substitute Bill:** A petition for an ERPO may be brought against a person under the age of eighteen years. No guardian or guardian ad litem need be appointed if the person is age sixteen or older. The juvenile court may hear a petition for an ERPO if the person is under the age of eighteen. Language is added to clarify that an ERPO

may be directed to a person who has access to a firearm, not just a person who directly has custody, control, or possession of a firearm.

When an ERPO is issued against a person under the age of eighteen, a copy of the order must be served at any address where the minor resides, to the parent or guardian. The court must advise the parent or guardian in writing of the legal obligation to safely secure any firearm on the premises and the potential for criminal prosecution if a prohibited person were to obtain access to the firearm. Notice may be provided at the time the parent or guardian appears in court or may be served along with a copy of the order.

An ERPO entered against a person under the age of eighteen must be entered into and maintained in computer-based systems as required for any other ERPO. The restrained party may petition the court to seal the court records relating to an ERPO proceeding at the time the order is entered or anytime thereafter. The court must seal the records from public view if there are no other protection orders against the restrained party, no pending violations of the order, and the person has relinquished any firearms as required by the order.

AOC is required to create a standard petition and order form titled Extreme Risk Protection Order - Respondent Under 18 Years; pattern forms to assist a person in sealing the court records related to such an order, and an informational brochure to be served on any respondent under the age of eighteen who is subject to an ERPO proceeding.

An ERPO may not be denied by the court on grounds that relief may be available via another action. The court shall give law enforcement priority for any ERPO proceeding and shall allow law enforcement to petition after hours, recognizing the importance of immediate temporary removal of firearms in situations of extreme risk. The court may allow law enforcement to participate telephonically or allow the prosecutor's office to present information to the court. A police officer may arrest a person without a warrant when the officer has probable cause to believe the person has violated an ERPO.

Terminology throughout the chapters is updated to replace references to mental health and chemical dependency with behavioral health and references to mental health issues or crisis with language focusing on the person's behavior, for example, threatening behavior or behaviors that present an imminent risk of harm to self or others.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: King County established over 70 ERPOs in 2018 and advised law enforcement throughout the state on these issues. As of December, there are 113 active orders in the state. The process focuses on people in a behavioral health crisis with access to firearms. These individuals are at the lowest point in

their life and are often suicidal or have made homicidal threats to a school, hospital, law enforcement, or the community at large. The ERPO process is a critical lifesaving tool and provides a rare opportunity to intervene before a crime has occurred. At the same time, it is important to balance the importance of a person's constitutional rights and privacy.

The changes in this bill are common sense reforms. Questions have arisen as to whether an ERPO can be sought against a juvenile. Although a juvenile is largely prohibited from possessing a firearm, many have access in the home. In cases where the source of the weapon could be determined in a school shooting, 85 percent took guns from their own home or took them from a friend or relative. The ERPO should be another tool in the resource kit to help promote school safety.

Law enforcement supports SB 5027 over SB 5072 as it contains a few more provisions that will assist law enforcement. Time is of the essence in seeking these orders so it is important that law enforcement be able to access the court 24/7. It is also a time intensive process for law enforcement, taking approximately 37 hours per order. Anything that cuts down on that time is helpful. The sealing provisions are a problem. If the juvenile is in court on other matters, the prosecutor needs access to this information.

CON: The Legislature should do more to promote gun ownership by law abiding citizens. These are your first responders in a shooting scenario. Solutions should be directed at providing better mental health interventions to those in crisis rather than impacting a person's ability to protect themselves through lawful gun ownership.

There is the possibility of false accusations against a child, particularly those within the LGBTQ community. These individuals are often bullied and falsely targeted. False accusations of rape or assault can have devastating consequences, including suicide. This bill has the potential to violate due process. There is no age limit to how young a child can be targeted for an ERPO. Children often have behavioral issues. This process has the potential to impact a child's ability to own a firearm later in life.

OTHER: Some of these changes are positive and others are not. The confidentiality provisions are very important to ensure that these issues do not follow a juvenile around. Sixty percent of schools and 90 percent of employers conduct background checks for applicants. Court records for ERPOs should not be showing up in these background checks. There are also concerns with increasing the penalties on the second violation of an ERPO to a Class C felony. Sixteen and seventeen year-olds are not capable of representing themselves and a guardian ad litem or attorney should be appointed for them as well. Some provisions in the ERPO statute are vague, such as the language regarding imminence or the seriousness of the threat. We would like the opportunity to work on this language. It is important to recognize that a holistic approach is needed to combat the issue of school shootings. This bill is just one small portion of a more comprehensive approach that we need to take.

**Persons Testifying:** PRO: James McMahan, Washington Association of Sheriffs and Police Chiefs; Sandra Shanahan, King County Regional Domestic Violence Firearms Enforcement Unit; Kimberly Wyatt, King County Prosecuting Attorney's Office; Eric Pisconski, Seattle Police Department.

CON: Sharyn Hinchliffe, Pink Pistols Seattle; Mike Silvers, citizen; Radona Devereaux, citizen; Michael Scott, citizen.

OTHER: Vanessa Hernandez, American Civil Liberties Union of Washington.

**Persons Signed In To Testify But Not Testifying:** No one.

**EFFECT OF HOUSE AMENDMENT(S):** A conviction for a crime committed under the malicious harassment statute—hate crime—is added as a factor the court may consider when determining whether grounds for an ERPO exist. Language is added to clarify that law enforcement is the entity that serves notice of an ERPO issued against a minor to the parents or guardians of the minor. When a minor against whom an ERPO is issued is the subject of a dependency or an out-of-home placement, notice must be provided to the Department of Children, Youth, and Families.