

HOUSE BILL REPORT

ESSB 5202

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to ensuring the efficacy of judicial orders as harm reduction tools that increase the safety of survivors of abuse and support law enforcement in their efforts to enforce the law.

Brief Description: Ensuring the efficacy of judicial orders as harm reduction tools that increase the safety of survivors of abuse and support law enforcement in their efforts to enforce the law.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Salomon, Cortes, Dhingra and Hasegawa).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/18/25, 3/21/25 [DP].

Brief Summary of Engrossed Substitute Bill

- Amends various provisions relating to civil protection orders, including allowed uses of confidential information forms, renewal by minors protected under an order, and termination or modification of ex parte orders.
- Provides that a person commits the crime of Unlawful Possession of a Firearm in the first degree if the person owns, accesses, receives, or has in the person's custody, control, or possession an untraceable or undetectable firearm while subject to certain qualifying court orders.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 7 members: Representatives Taylor, Chair; Farivar,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Vice Chair; Entenman, Goodman, Salahuddin, Thai and Walen.

Minority Report: Do not pass. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Abell, Assistant Ranking Minority Member; Jacobsen.

Minority Report: Without recommendation. Signed by 2 members: Representatives Burnett and Graham.

Staff: Edie Adams (786-7180).

Background:

Protection Orders.

Civil protection orders allow a person to petition a court to seek protection from harmful, threatening, or harassing behavior. Protection orders are available for persons subjected to domestic violence, sexual assault, stalking, harassment, and vulnerable adult abuse.

Confidential Information Form. A petition for a protection order must be accompanied by a confidential information form to be used by the court and law enforcement to fully identify the parties and serve the respondent. The petitioner must fill out the form to the petitioner's fullest ability. A respondent should be provided a blank confidential information form at the time of service. The confidential information form is exempt from public disclosure and access to the form is restricted under General Rule 22.

Relief. When entering a protection order, a court may grant broad relief to protect the petitioner, including entering relief to restrain a person from having contact with or threatening another person or to exclude the person from certain locations or coming within a specified distance of certain locations, among many other forms of relief. The court may either grant relief for a fixed period of time or enter a permanent order of protection.

Renewal. A petitioner may seek renewal of a protection order within 90 days before expiration of the order. A court must grant a motion for renewal unless the respondent proves there has been a substantial change in circumstances and certain conditions relevant to each type of protection order are met. The plaintiff bears no burden of proving a current reasonable fear of harm by the respondent. A court may consider specified factors in determining whether there has been a substantial change of circumstances. A court may not deny a motion to renew based on certain circumstances, including that: the respondent has not violated the order, the petitioner or respondent is a minor, or the respondent no longer lives near the petitioner. The terms of the original protection order must not be changed except by request of the petitioner.

Modification and Termination. A court may modify the terms of a domestic violence, sexual assault, stalking, or antiharassment protection order upon a motion and with notice to all parties. A motion to modify or terminate an order must be determined based on written declarations and evidence submitted to the court. A hearing may be set only if the court

finds adequate cause exists. The respondent must prove, by a preponderance of the evidence, there has been a substantial change in circumstances such that the respondent will not engage in certain acts associated with the protection orders. The plaintiff bears no burden of proving a current reasonable fear of harm by the respondent. A court may consider specified factors in determining whether there has been a substantial change of circumstances, but may not base this determination on the fact that time has passed without a violation of the order.

Other. All superior courts and, by January 1, 2026, all courts of limited jurisdiction, must have systems that allow for enrollment of the petitioner to electronically track and receive notifications regarding the progress of the petition, including alerts when the petition is under review, the order has been signed, proof of service has been filed with the court, and a receipt for surrender of firearms has been filed with the court. The respondent, once served, may enroll for similar notifications.

Unlawful Possession of a Firearm.

Certain persons are prohibited from possessing firearms, including persons convicted of any felony offense and certain misdemeanor offenses, persons involuntarily committed for mental health treatment, and persons subject to certain qualifying protective orders. A violation of this prohibition constitutes the felony crime of Unlawful Possession of a Firearm.

First-Degree Unlawful Possession of a Firearm. Unlawful Possession of a Firearm in the first degree is committed when a person owns, accesses, receives, or has in the person's custody, control, or possession any firearm after having been convicted or found not guilty by reason of insanity (NGRI) of a serious offense. Unlawful Possession of a Firearm in the first degree is a class B felony ranked at seriousness level VII under the Sentencing Reform Act (SRA).

Second-Degree Unlawful Possession of a Firearm. Unlawful Possession of a Firearm in the second degree is committed when a person owns, accesses, receives, or has in the person's custody, control, or possession any firearm under a number of circumstances, including if the person is subject to certain qualifying court orders that meet specified requirements. Unlawful Possession of a Firearm in the second degree is a class C felony ranked at seriousness level III under the SRA.

Firearms possession is prohibited based on a qualifying court order during any period of time the person is subject to a protection order, no-contact order, or restraining order that:

- was entered after notice and an opportunity to respond;
- restrains the person from harassing, stalking, or threatening the protected person or the person's or protected person's child, or engaging in conduct that would place the protected person in reasonable fear of bodily injury to the protected person or child; and
- includes either: (a) a finding that the person represents a credible threat or by its

terms explicitly prohibits the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury; or (b) an order requiring the person to surrender, and prohibiting the person from possessing, purchasing, or receiving, all firearms and dangerous weapons.

Undetectable and Untraceable Firearms.

State law regulates undetectable and untraceable firearms, including by prohibiting persons from manufacturing, assembling, selling, purchasing, transferring, transporting, or possessing an undetectable or untraceable firearm. An undetectable firearm is one that is not detectable by metal detectors or magnetometers commonly used at airports or one that would not generate an image that accurately depicts its shape when examined by X-ray machines commonly used at airports. An untraceable firearm is one that cannot be traced by law enforcement by means of a serial number affixed to the firearm by a federally licensed manufacturer, importer, or dealer in compliance with federal law.

Summary of Bill:

Protection Orders.

A number of provisions relating to issuance, renewal, and modification or termination of protection orders are revised.

Confidential Information Form. The confidential information form may be used by prosecutors' offices. The designated purposes of the confidential information form are expanded to include: enabling notification of victims or protected persons, and otherwise fulfilling the identification, service, enforcement, and notification requirements under the protection order chapter and other specified laws. If a confidential information form is wrongfully disclosed, the court must issue a protective order and, if necessary, order sealing under applicable law.

Relief. A statement is added that issuance of mutual full protection orders is disfavored.

Renewal. A protected party, in addition to a petitioner, is authorized to seek to renew a protection order. A minor who is or was previously protected by a protection order who has reached the age of 18 may petition for renewal. A minor who reaches the age of 18 while the order is still in effect may file a motion for renewal of the order as the petitioner. A minor who reaches the age of 18 after expiration of the order has one year from the date of expiration to petition for renewal of the order as the petitioner. The petitioner may, but is not required to, allege new facts and circumstances that occurred after the original order expired. The clerk must issue a new cause number for the renewal and must include the previous protection order and petition for renewal in the new case file.

Modification or termination. A protected party may file a motion to terminate or modify an ex parte order without notice to the respondent if the respondent has not yet been served.

All other modifications or terminations of ex parte protection orders must be made by motion with notice given to all parties. A restrained person may not modify or terminate an ex parte protection order without notice to the protected party.

Judicial officers presiding over full hearings who are reissuing temporary orders may modify the terms of the ex parte order to remedy an error or based on the facts of the case.

Other. Court systems that allow a petitioner to electronically receive notifications relating to a protection order must include a notification 90 days before expiration of the protection order.

Beginning January 1, 2026, full and temporary protection orders and any modifications to the orders must be typewritten in their entirety, except for the judicial officer's signature, as available in the local jurisdiction.

Unlawful Possession of a Firearm.

The crime of Unlawful Possession of a Firearm in the first degree is amended to include cases where a person owns, accesses, receives, or has in the person's custody, control, or possession any untraceable or undetectable firearm while the person is subject to a qualifying protection order, no-contact order, or restraining order that meets specified criteria.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) Legislation enacted in 2021 has made the protection order process more user friendly and accessible and as a result there have been significant increases in the number of filings. This legislation adds some improvements based on lessons learned. Victims of abuse need better implementation of court-ordered firearm relinquishment and notification of petitions for restoration of firearm rights. The bill ensures prosecutors have the information they need to fulfill these requirements, and it empowers survivors by providing clear processes to modify or terminate ex parte orders if circumstances have changed.

The bill also allows minors to petition for renewal once they have aged out of an order obtained by a parent. Some courts are requiring the minor to file a new petition, which creates a new burden on the minor to prove harms that were already adjudicated. This bill will allow them to instead petition for renewal, which places the burden on the respondent to prove that the respondent will not continue acts of domestic violence.

Enforcement of protection orders can be incredibly challenging for law enforcement officers in the field. The provisions disfavoring the issuance of mutual full protection orders and requiring all protection orders to be typewritten will help alleviate some of the challenges faced by officers when presented with mutual orders or with handwritten orders that may not be legible.

The bill builds on existing laws to keep firearms out of dangerous hands. There has been a troubling increase in the prevalence of privately made firearms, commonly called ghost guns, being recovered in domestic violence and civil protection order cases. Ghost guns pose a significant danger when possessed by felons or individuals prohibited by active court orders. To protect the public, enhanced penalties for ghost guns are needed for individuals who are prohibited from possessing firearms.

(Opposed) None.

(Other) Language indicating that issuance of mutual protection orders is disfavored creates a race to the courthouse. Perpetrators are particularly manipulative and will try to be first to get a protection order. If mutual protection orders are disfavored that leaves the true victim out of a remedy. That language should be stricken. Another concern is whether the title is broad enough to encompass the provision regarding ghost guns.

Persons Testifying: (In support) Senator Jesse Salomon, prime sponsor; James McMahan, WA Assoc Sheriffs and Police Chiefs; Sandra Shanahan, KCPAO RDVFEU; Kimberly Wyatt, King County Prosecuting Attorney's Office; and Elizabeth Hendren, Sexual Violence Law Center.

(Other) Ramona Brandes, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: None.