
HOUSE BILL 2196

State of Washington

66th Legislature

2020 Regular Session

By Representatives Walsh and Young

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1 AN ACT Relating to standards for issuance and enforcement of
2 extreme risk protection orders; amending RCW 7.94.040, 7.94.050, and
3 7.94.080; adding a new section to chapter 7.94 RCW; and creating a
4 new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that there is a
7 substantial and compelling interest in ensuring the state of
8 Washington remains a place where the second amendment rights and
9 dignity of all residents are maintained and protected, and it is the
10 legislature's affirmative duty to bolster the rights of its people
11 and protect the second amendment from infringement. The legislature
12 finds that Washington state has a history of resisting overreaching
13 from the federal government and creating a sanctuary from federal
14 intervention. The legislature finds that state law enforcement
15 agencies are not federal law enforcement agencies and will not be
16 complicit in federal attempts to regulate firearms. Therefore, it is
17 the intent of the legislature to resist federal intervention in
18 firearm regulation by prohibiting state and local agencies from
19 assisting in the enforcement of any extreme risk protection order
20 issued under federal law. Further, the legislature finds that current
21 legal standards for issuance of extreme risk protection orders under

1 state law violate a person's second amendment rights. Therefore, the
2 legislature intends to heighten the legal standards for extreme risk
3 protection orders to better balance the fundamental rights of the
4 individual with the state's interest in protecting the public from
5 harm.

6 **Sec. 2.** RCW 7.94.040 and 2019 c 246 s 3 are each amended to read
7 as follows:

8 (1) Upon receipt of the petition, the court shall order a hearing
9 to be held not later than fourteen days from the date of the order
10 and issue a notice of hearing to the respondent for the same.

11 (a) The court may schedule a hearing by telephone pursuant to
12 local court rule, to reasonably accommodate a disability, or in
13 exceptional circumstances to protect a petitioner from potential
14 harm. The court shall require assurances of the petitioner's identity
15 before conducting a telephonic hearing.

16 (b) The court clerk shall cause a copy of the notice of hearing
17 and petition to be forwarded on or before the next judicial day to
18 the appropriate law enforcement agency for service upon the
19 respondent.

20 (c) Personal service of the notice of hearing and petition shall
21 be made upon the respondent by a law enforcement officer not less
22 than five court days prior to the hearing. Service issued under this
23 section takes precedence over the service of other documents, unless
24 the other documents are of a similar emergency nature. If timely
25 personal service cannot be made, the court shall set a new hearing
26 date and shall either require additional attempts at obtaining
27 personal service or permit service by publication or mail as provided
28 in RCW 7.94.070. The court shall not require more than two attempts
29 at obtaining personal service and shall permit service by publication
30 or mail after two attempts at obtaining personal service unless the
31 petitioner requests additional time to attempt personal service. If
32 the court issues an order permitting service by publication or mail,
33 the court shall set the hearing date not later than twenty-four days
34 from the date the order issues.

35 (d) The court may, as provided in RCW 7.94.050, issue an ex parte
36 extreme risk protection order pending the hearing ordered under this
37 subsection (1). Such ex parte order must be served concurrently with
38 the notice of hearing and petition.

1 (2) Upon hearing the matter, if the court finds by ((a
2 ~~preponderance of the~~) clear and convincing evidence that the
3 respondent poses a significant danger of causing personal injury to
4 self or others by having in his or her custody or control,
5 purchasing, possessing, or receiving a firearm, the court shall issue
6 an extreme risk protection order for a period of one year.

7 (3) In determining whether grounds for an extreme risk protection
8 order exist, the court may consider any relevant evidence including,
9 but not limited to, any of the following:

10 (a) A recent act or threat of violence by the respondent against
11 self or others, whether or not such violence or threat of violence
12 involves a firearm;

13 (b) A pattern of acts or threats of violence by the respondent
14 within the past twelve months including, but not limited to, acts or
15 threats of violence by the respondent against self or others;

16 (c) Any behaviors that present an imminent threat of harm to self
17 or others;

18 (d) A violation by the respondent of a protection order or a no-
19 contact order issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99,
20 26.50, or 26.52 RCW;

21 (e) A previous or existing extreme risk protection order issued
22 against the respondent;

23 (f) A violation of a previous or existing extreme risk protection
24 order issued against the respondent;

25 (g) A conviction of the respondent for a crime that constitutes
26 domestic violence as defined in RCW 10.99.020;

27 (h) A conviction of the respondent under RCW 9A.36.080;

28 (i) The respondent's ownership, access to, or intent to possess
29 firearms;

30 (j) The unlawful or reckless use, display, or brandishing of a
31 firearm by the respondent;

32 (k) The history of use, attempted use, or threatened use of
33 physical force by the respondent against another person, or the
34 respondent's history of stalking another person;

35 (l) Any prior arrest of the respondent for a felony offense or
36 violent crime;

37 (m) Corroborated evidence of the abuse of controlled substances
38 or alcohol by the respondent; and

39 (n) Evidence of recent acquisition of firearms by the respondent.

40 (4) The court may:

1 (a) Examine under oath the petitioner, the respondent, and any
2 witnesses they may produce, or, in lieu of examination, consider
3 sworn affidavits of the petitioner, the respondent, and any witnesses
4 they may produce; and

5 (b) Ensure that a reasonable search has been conducted for
6 criminal history records related to the respondent.

7 (5) In a hearing under this chapter, the rules of evidence apply
8 to the same extent as in a domestic violence protection order
9 proceeding under chapter 26.50 RCW.

10 (6) During the hearing, the court shall consider whether a
11 behavioral health evaluation is appropriate, and may order such
12 evaluation if appropriate.

13 (7) An extreme risk protection order must include:

14 (a) A statement of the grounds supporting the issuance of the
15 order;

16 (b) The date and time the order was issued;

17 (c) The date and time the order expires;

18 (d) Whether a behavioral health evaluation of the respondent is
19 required;

20 (e) The address of the court in which any responsive pleading
21 should be filed;

22 (f) A description of the requirements for relinquishment of
23 firearms under RCW 7.94.090; and

24 (g) The following statement: "To the subject of this protection
25 order: This order will last until the date and time noted above. If
26 you have not done so already, you must surrender to the (insert name
27 of local law enforcement agency) all firearms in your custody,
28 control, or possession and any concealed pistol license issued to you
29 under RCW 9.41.070 immediately. You may not have in your custody or
30 control, purchase, possess, receive, or attempt to purchase or
31 receive, a firearm while this order is in effect. You have the right
32 to request one hearing to terminate this order every twelve-month
33 period that this order is in effect, starting from the date of this
34 order and continuing through any renewals. You may seek the advice of
35 an attorney as to any matter connected with this order."

36 (8) When the court issues an extreme risk protection order, the
37 court shall inform the respondent that he or she is entitled to
38 request termination of the order in the manner prescribed by RCW
39 7.94.080. The court shall provide the respondent with a form to
40 request a termination hearing.

1 (9) If the court declines to issue an extreme risk protection
2 order, the court shall state the particular reasons for the court's
3 denial.

4 **Sec. 3.** RCW 7.94.050 and 2017 c 3 s 6 are each amended to read
5 as follows:

6 (1) A petitioner may request that an ex parte extreme risk
7 protection order be issued before a hearing for an extreme risk
8 protection order, without notice to the respondent, by including in
9 the petition detailed allegations based on personal knowledge that
10 the respondent poses (~~(a significant danger of causing personal~~
11 ~~injury to self or others in the near future)~~) an imminent,
12 particularized, and substantial risk of causing death or serious
13 physical injury to self or others by having in his or her custody or
14 control, purchasing, possessing, or receiving a firearm.

15 (2) In considering whether to issue an ex parte extreme risk
16 protection order under this section, the court shall consider all
17 relevant evidence, including the evidence described in RCW
18 7.94.040(3).

19 (3) If a court finds there is reasonable cause to believe that
20 the respondent poses (~~(a significant danger of causing personal~~
21 ~~injury to self or others in the near future)~~) an imminent,
22 particularized, and substantial risk of causing death or serious
23 physical injury to self or others by having in his or her custody or
24 control, purchasing, possessing, or receiving a firearm, the court
25 shall issue an ex parte extreme risk protection order.

26 (4) The court shall hold an ex parte extreme risk protection
27 order hearing in person or by telephone on the day the petition is
28 filed or on the judicial day immediately following the day the
29 petition is filed.

30 (5) In accordance with RCW 7.94.040(1), the court shall schedule
31 a hearing within fourteen days of the issuance of an ex parte extreme
32 risk protection order to determine if a one-year extreme risk
33 protection order should be issued under this chapter.

34 (6) An ex parte extreme risk protection order shall include:

35 (a) A statement of the grounds asserted for the order;

36 (b) The date and time the order was issued;

37 (c) The date and time the order expires;

38 (d) The address of the court in which any responsive pleading
39 should be filed;

1 (e) The date and time of the scheduled hearing;

2 (f) A description of the requirements for surrender of firearms
3 under RCW 7.94.090; and

4 (g) The following statement: "To the subject of this protection
5 order: This order is valid until the date and time noted above. You
6 are required to surrender all firearms in your custody, control, or
7 possession. You may not have in your custody or control, purchase,
8 possess, receive, or attempt to purchase or receive, a firearm while
9 this order is in effect. You must surrender to the (insert name of
10 local law enforcement agency) all firearms in your custody, control,
11 or possession and any concealed pistol license issued to you under
12 RCW 9.41.070 immediately. A hearing will be held on the date and at
13 the time noted above to determine if an extreme risk protection order
14 should be issued. Failure to appear at that hearing may result in a
15 court making an order against you that is valid for one year. You may
16 seek the advice of an attorney as to any matter connected with this
17 order."

18 (7) Any ex parte extreme risk protection order issued expires
19 upon the hearing on the extreme risk protection order.

20 (8) An ex parte extreme risk protection order shall be served by
21 a law enforcement officer in the same manner as provided for in RCW
22 7.94.040 for service of the notice of hearing and petition, and shall
23 be served concurrently with the notice of hearing and petition.

24 (9) If the court declines to issue an ex parte extreme risk
25 protection order, the court shall state the particular reasons for
26 the court's denial.

27 **Sec. 4.** RCW 7.94.080 and 2017 c 3 s 9 are each amended to read
28 as follows:

29 (1) The respondent may submit one written request for a hearing
30 to terminate an extreme risk protection order issued under this
31 chapter every twelve-month period that the order is in effect,
32 starting from the date of the order and continuing through any
33 renewals.

34 (a) Upon receipt of the request for a hearing to terminate an
35 extreme risk protection order, the court shall set a date for a
36 hearing. Notice of the request must be served on the petitioner in
37 accordance with RCW 4.28.080. The hearing shall occur no sooner than
38 fourteen days and no later than thirty days from the date of service
39 of the request upon the petitioner.

1 (b) The respondent shall have the burden of proving by a
2 preponderance of the evidence that the respondent does not pose a
3 significant danger of causing personal injury to self or others by
4 having in his or her custody or control, purchasing, possessing, or
5 receiving a firearm. The court may consider any relevant evidence,
6 including evidence of the considerations listed in RCW 7.94.040(3).

7 (c) If the court finds after the hearing that the respondent has
8 met his or her burden, the court shall terminate the order.

9 (2) The court must notify the petitioner of the impending
10 expiration of an extreme risk protection order. Notice must be
11 received by the petitioner one hundred five calendar days before the
12 date the order expires.

13 (3) A family or household member of a respondent or a law
14 enforcement officer or agency may by motion request a renewal of an
15 extreme risk protection order at any time within one hundred five
16 calendar days before the expiration of the order.

17 (a) Upon receipt of the motion to renew, the court shall order
18 that a hearing be held not later than fourteen days from the date the
19 order issues.

20 (i) The court may schedule a hearing by telephone in the manner
21 prescribed by RCW 7.94.040(1)(a).

22 (ii) The respondent shall be personally served in the same manner
23 prescribed by RCW 7.94.040(1)(b) and (c).

24 (b) In determining whether to renew an extreme risk protection
25 order issued under this section, the court shall consider all
26 relevant evidence presented by the petitioner and follow the same
27 procedure as provided in RCW 7.94.040.

28 (c) If the court finds by (~~a preponderance of the~~) clear and
29 convincing evidence that the requirements for issuance of an extreme
30 risk protection order as provided in RCW 7.94.040 continue to be met,
31 the court shall renew the order. However, if, after notice, the
32 motion for renewal is uncontested and the petitioner seeks no
33 modification of the order, the order may be renewed on the basis of
34 the petitioner's motion or affidavit stating that there has been no
35 material change in relevant circumstances since entry of the order
36 and stating the reason for the requested renewal.

37 (d) The renewal of an extreme risk protection order has a
38 duration of one year, subject to termination as provided in
39 subsection (1) of this section or further renewal by order of the
40 court.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 7.94 RCW
2 to read as follows:

3 (1) No state agency, or state or local law enforcement agency,
4 may use agency funds, facilities, property, equipment, or personnel
5 to investigate, enforce, or assist in the investigation or
6 enforcement of any extreme risk protection order issued under federal
7 law against a resident of the state.

8 (2) For purposes of this section, "extreme risk protection order"
9 means a civil order issued by a federal court, the primary purpose of
10 which is to reduce the risk of firearm-related death or injury by
11 doing one or more of the following: (a) Prohibiting a named
12 individual from having under the custody or control of the
13 individual, owning, purchasing, possessing, or receiving a firearm;
14 or (b) having a firearm removed or requiring the surrender of
15 firearms from a named individual.

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