



Summary of Initiative 1491

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 1491. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

BRIEF SUMMARY

- Creates a civil extreme risk protection order that allows law enforcement or a family or household member of a person to petition for a court order to prevent the person from having custody or control of, or purchasing, possessing, or receiving a firearm.
- Establishes procedures to petition for, renew, and terminate extreme risk protection orders, and standards for entry and enforcement of both ex parte and final extreme risk protection orders.
- Establishes a process for a person subject to an extreme risk protection order to surrender any concealed pistol license and firearms in his or her custody, control, or possession.
- Authorizes courts to issue a warrant to seize firearms from the subject of an extreme risk protection order who has failed to surrender firearms as required by the order.
- Establishes criminal penalties for violation of an extreme risk protection order and for filing an extreme risk protection order petition knowing it is materially false or with intent to harass the subject of the petition.

BACKGROUND

Initiative 1491

Initiative 1491 was certified to the ballot on July 27, 2016. The ballot title and ballot measure summary prepared by the Attorney General are as follows:

Ballot Title

Statement of Subject: Initiative Measure No. 1491 concerns court-issued extreme risk protection orders temporarily preventing access to firearms.

Concise Description: This measure would allow police, family, or household members to obtain court orders temporarily preventing firearms access by persons exhibiting mental illness, violent or other behavior indicating they may harm themselves or others.

Should this measure be enacted into law? Yes [] No []

Ballot Measure Summary

This measure would authorize courts, upon petition by police or a "family or household member," to issue an "extreme risk protection order" to prevent an individual from accessing firearms for a specified time period, if the court finds that the individual poses a significant danger of causing personal injury to himself or others with a firearm. Temporary ex parte orders could be issued where there is sufficient evidence of significant danger in the near future.

Protection Orders, Restraining Orders, and No-Contact Orders

There are a number of civil protection orders that allow a court 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. Protection orders are available for victims of domestic violence, stalking, harassment, sexual assault, and vulnerable adult abuse. A court may enter a temporary ex parte protection order without notice to the person subject to the order on a showing that irreparable injury may occur if an immediate order is not entered. After notice and a full hearing, a final protection order may be entered that lasts for a fixed term, or in some cases, is permanent.

In criminal proceedings a court may issue a no-contact order to protect the victim of the crime during the pendency of the criminal proceedings or as a condition of the offender's sentence. In family law proceedings a court may enter a civil restraining order that may include provisions restraining a person from contacting another or excluding the person from certain locations.

Generally, violation of a protection order, no-contact order, or restraining order is a gross misdemeanor. A violation of some orders is a class C felony if the person has two prior convictions for violation of a similar order or if the violation involved an assault or reckless endangerment.

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Surrender of Firearms and Dangerous Weapons

A person who is subject to a protection order, restraining order, or no-contact order may be required to surrender his or her firearms, dangerous weapons, and concealed pistol license while the order is in place. The court may order surrender when:

- The person has used, displayed, or threatened to use a firearm or dangerous weapon in a felony or has previously committed an offense making the person ineligible to possess a firearm.
- The person's possession of a firearm or dangerous weapon presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.
- The person is subject to a qualifying order that makes the person ineligible to possess a firearm. Qualifying orders are those issued after notice and an opportunity to be heard and that meet other requirements, including that the order finds the restrained person is a credible threat to the physical safety of an intimate partner or child of an intimate partner and explicitly prohibits the person from using or threatening physical force against an intimate partner or child.

The court may order the temporary surrender of firearms and dangerous weapons during the pendency of the petition without notice to the person subject to the order if the court finds irreparable injury could result before the time for response has elapsed.

The court may require the person to surrender his or her firearm or dangerous weapons to the local law enforcement agency, the person's counsel, or another person designated by the court. Law enforcement agencies are required to have policies and procedures regarding the acceptance, storage, and return of surrendered firearms and weapons.

SUMMARY

Extreme Risk Protection Orders

Civil extreme risk protection orders are created. A law enforcement officer or agency or a family or household member of a person may petition the court for an extreme risk protection order to enjoin the person (respondent) from having in his or her custody or control, purchasing, possessing, or receiving a firearm.

"Family or household member" means any person related by blood, marriage, or adoption to the respondent, dating partner of the respondent, person who has a child in common with the respondent, person who resides or has resided with the respondent within the past year, domestic partner of the respondent, person who has a biological or legal parent-child relationship with the respondent, including stepparents and stepchildren and grandparents and grandchildren, and person who is acting or has acted as the respondent's guardian.

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Jurisdiction and Venue. The superior courts have jurisdiction over extreme risk protection orders. District and municipal courts have limited jurisdiction over issuance and enforcement of ex parte extreme risk protection orders, but the case must be transferred to superior court for the full hearing on the petition. A petition for an extreme risk protection order must be filed in the county where either the petitioner or respondent resides.

Filing a Petition. A petition for an extreme risk protection order must allege 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. The petition must include a sworn affidavit stating specific information that gives rise to a reasonable fear of future dangerous acts by the respondent. The petition also must identify any firearms the petitioner believes to be in the respondent's possession, custody, or control and whether there are any known protection orders governing the respondent or pending actions between the petitioner and respondent.

A law enforcement officer or agency that petitions for an extreme risk protection order must make a good faith effort to provide notice of the petition to a family or household member and to any known third party who may be at risk of violence. The notice must include referrals to appropriate mental health, domestic violence, and counseling resources.

Service of Process and Hearings. Upon receipt of the petition, the court must order a hearing to be held no later than 14 days from the date of the order. The notice of hearing and petition must be personally served upon the respondent by a law enforcement officer at least five court days before the hearing. If timely service is not made, the court must set a new hearing date and either require additional attempts at personal service or permit service by publication or mail if certain criteria are met. The court may issue a temporary ex parte extreme risk protection order pending the full hearing, which must be served with the notice of hearing and petition.

The hearing may be held by telephone under certain circumstances. At the hearing the court must consider whether a mental health evaluation or chemical dependency evaluation of the respondent is appropriate.

The court must issue an extreme risk protection order 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.

No fee may be charged to the petitioner for filing or service of process, and the petitioner is entitled to certified copies at no charge.

Factors Considered by the Court. A court may consider any relevant evidence concerning the respondent in determining whether to issue an extreme risk protection order, including:

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- a recent act or threat of violence against self or others;
- a pattern of violent acts or violent threats within the past 12 months;
- any dangerous mental health issues of the respondent;
- a violation of a domestic violence, anti-harassment, stalking, or sexual assault protection order or no-contact order;
- a previous or existing extreme risk protection order and any violation of an extreme risk protection order;
- a conviction for a crime that constitutes domestic violence;
- ownership, access to, or intent to possess firearms;
- the unlawful or reckless use, display, or brandishing of a firearm;
- the history of use, attempted use, or threatened use of physical force against another person, or the stalking of another person;
- any prior arrest for a felony offense or violent crime;
- corroborated evidence of the abuse of controlled substances or alcohol; and
- evidence of recent acquisition of firearms.

Contents and Effect of Order. A person subject to an extreme risk protection order is prohibited from having in his or her custody or control, purchasing, possessing, receiving, or attempting to purchase or receive a firearm, and must surrender any concealed pistol license and all firearms in his or her custody, control, or possession.

An extreme risk protection order must contain certain information, including the grounds supporting issuance of the order, the date and time of issuance and expiration of the order, and whether a mental health or chemical dependency evaluation of the respondent is required. In addition, the order must include a statement informing the respondent that he or she must surrender any concealed pistol license and all firearms in the respondent's custody, control, or possession.

When entering an extreme risk protection order, the court must inform the respondent of the right to request termination of the order and provide the respondent with a form to request a termination hearing.

Temporary Ex Parte Orders. The court may issue a temporary ex parte extreme risk protection order pending a full hearing if the court determines there is reasonable cause to believe the respondent poses a significant danger in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm. A hearing on a petition for an ex parte order may be held in person or by telephone and must be held the day the petition is filed or the next judicial day.

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The court must set a full hearing within 14 days of the issuance of an ex parte order to determine if a final extreme risk protection order should be entered. If the court permits service by publication or mail, the court must set the full hearing date no later than 24 days from issuance of the ex parte order. An ex parte order expires upon the hearing on the final extreme risk protection order.

Final Orders. A final extreme risk protection order is effective for one year. The final order must be personally served on the respondent by a law enforcement officer, or at the election of the petitioner, by a private party. Service of the order by publication or mail is allowed in certain circumstances, and service of the order is not required if the order recites that the respondent appeared in person before the court.

A final order may be renewed one or more times and a renewed order is effective for one year. A motion for renewal of a final order may be filed at any time within 105 days of the expiration of the order. The court must notify the petitioner of the impending expiration of a final order 105 days before the order expires.

The respondent may request termination of a final order one time every 12-month period the order is in effect. Notice of the request for termination must be served on the petitioner, and a hearing on the request must take place no sooner than 14 days and no later than 30 days from service of the request on the petitioner. The court must terminate the final order if the respondent proves by a preponderance of the evidence that the respondent does not pose 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.

Surrender of Firearms. A law enforcement officer serving an ex parte or final extreme risk protection order must request the respondent to immediately surrender any concealed pistol license and all firearms in his or her custody, control, or possession. If a law enforcement officer does not serve the order, the respondent must surrender the firearms to law enforcement within 48 hours of being served by alternate service or within 48 hours of the hearing at which the respondent was present. The law enforcement officer must issue a receipt for a surrendered concealed pistol license or firearm, provide a copy of the receipt to the respondent, and file the receipt with the court within 72 hours.

At the time of issuance of a final order, the court must set a hearing date within three days and require the respondent to appear and show proof of the surrender of firearms in his or her custody, control, or possession.

The court may issue a warrant for the search and seizure of firearms if it determines based on the sworn testimony of the petitioner or a law enforcement officer that probable cause exists to believe the respondent has failed to surrender all firearms in his or her custody, control, or possession.

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A surrendered firearm that is lawfully owned by a person other than the respondent must be returned to the owner if the firearm is removed from the respondent's custody, control, or possession and the owner agrees to store the firearm in a manner that prevents the respondent from having access to or control of the firearm.

At the expiration or termination of an extreme risk protection order, a law enforcement agency must return any surrendered firearms requested by the respondent only after conducting a background check and determining that the respondent is eligible to possess firearms under federal and state law. If requested, the agency must provide prior notice of the return of firearms to a family or household member of the respondent.

Law enforcement agencies must develop policies and procedures by June 1, 2017, regarding the acceptance, storage, and return of surrendered firearms.

Criminal Penalties. A person who files a petition for an extreme risk protection order knowing the information in the petition is materially false or with the intent to harass the respondent is guilty of a gross misdemeanor.

A person who has in his or her custody or control, purchases, possesses, or receives a firearm knowing that he or she is prohibited from doing so by an extreme risk protection order is guilty of a gross misdemeanor and is prohibited from having in his or her custody or control, purchasing, possessing, receiving, or attempting to purchase or receive a firearm for an additional five years from the date the existing order expires. A violation of an extreme risk protection order is an unranked class C felony if the person has two or more prior convictions for a violation of an extreme risk protection order.

Other Provisions

The clerk of the court must enter an ex parte or final extreme risk protection order into the Judicial Information System and forward a copy of the order to the appropriate law enforcement agency on the same day as issuance. The local law enforcement agency must enter the order into the National Instant Criminal Background Check System, any other federal or state computer-based systems used to identify prohibited purchasers of firearms, and the state database used by law enforcement for listing outstanding warrants. An order must remain in these systems until the order expires or is terminated.

The court issuing an extreme risk protection order must forward within three judicial days a copy of the respondent's driver's license or comparable information and date of entry of the order to the Department of Licensing (DOL). If the DOL determines the respondent has a concealed pistol license, the DOL must immediately notify the license-issuing agency, which must immediately revoke the license.

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The Administrative Office of the Courts must develop and distribute to courts instructions and informational brochures, standard petitions and order forms, and a court staff handbook on the extreme risk protection order process. The standard petitions and order forms must be used after June 1, 2017. The instructions and informational brochures must be translated into the languages spoken by the significant non-English speaking populations in the state.

The act declares that it does not impose any civil or criminal liability, except as specifically provided, on any person or entity for acts or omissions related to reporting, investigating, or filing an ex parte or final extreme risk protection order, nor affect a law enforcement officer's ability to remove a firearm or concealed pistol license from a person or conduct a search and seizure of firearms pursuant to other lawful authority.

Effective Date: The initiative takes effect 30 days after the election at which it is approved.

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