
SENATE BILL 5727

State of Washington

64th Legislature

2015 Regular Session

By Senators Frockt, Mullet, Pedersen, Miloscia, Keiser, McCoy, Lias, Hasegawa, Chase, Darneille, Jayapal, Cleveland, Billig, Fraser, Rolfes, McAuliffe, and Habib

Read first time 01/30/15. Referred to Committee on Law & Justice.

1 AN ACT Relating to creating an extreme risk protective order;
2 amending RCW 9.41.040 and 9.41.047; adding new sections to chapter
3 10.79 RCW; adding a new chapter to Title 26 RCW; and prescribing
4 penalties.

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

6 NEW SECTION. **Sec. 1.** The public has expressed an overwhelming
7 interest in making sure firearms are kept out of the hands of those
8 individuals who might use them to cause great harm. The legislature
9 finds it has a public duty to enact common sense measures ensuring
10 that where an individual may be an extreme risk to himself, herself,
11 or another, the situation is not further exacerbated by access to
12 firearms. To that end, it is the legislature's intent to empower
13 family members and members of law enforcement with the ability to
14 seek a protective order to temporarily prevent an individual from
15 owning, accessing, or purchasing firearms while that individual poses
16 a significant danger of harm.

17 NEW SECTION. **Sec. 2.** For the purposes of this chapter "family
18 or household member" has the same meaning as in RCW 26.50.010.

1 NEW SECTION. **Sec. 3.** (1) A family or household member of a
2 person or a law enforcement officer may file a petition requesting
3 that the court issue an emergency extreme risk protective order on an
4 ex parte basis, pending a full hearing, enjoining the subject of the
5 petition from having in his or her custody or control, purchasing,
6 possessing, or receiving a firearm.

7 (2) A court may issue an emergency extreme risk protective order
8 if the petition, supported by a written affidavit signed by the
9 petitioner under oath, or an oral statement taken under section 4 of
10 this act, and any additional information provided to the court, shows
11 there is a substantial likelihood that both of the following are
12 true:

13 (a) The subject of the petition poses a significant danger, in
14 the near future, of personal injury to himself, herself, or another
15 by having in his or her custody or control, purchasing, possessing,
16 or receiving a firearm as determined by considering the factors
17 listed in section 4 of this act; and

18 (b) An emergency extreme risk protective order is necessary to
19 prevent personal injury to the subject of the petition or another
20 because less restrictive alternatives either have been tried and
21 found to be ineffective, or are inadequate or inappropriate for the
22 circumstances of the subject of the petition.

23 (3) An affidavit supporting a petition for an emergency extreme
24 risk protective order must set forth the facts tending to establish
25 the grounds of the petition, or the reason for believing that they
26 exist.

27 (4) An emergency extreme risk protective order must be issued or
28 denied on the same day the petition is submitted to the court, unless
29 the petition is filed too late in the day to permit effective review,
30 in which case the order must be issued or denied on the next day of
31 judicial business in sufficient time for the order to be filed that
32 day with the clerk of the court. The court may hold the emergency
33 hearing in person or by telephone.

34 (5) When the petitioner for an emergency extreme risk protective
35 order is a law enforcement officer, the law enforcement officer shall
36 make a good faith effort to provide notice to a family or household
37 member of the subject of the petition who may be at risk of domestic
38 violence or stalking. The notice must include that the law
39 enforcement officer intends to petition the court for an emergency
40 extreme risk protective order, and referral to relevant domestic

1 violence or stalking advocacy or counseling resources, if
2 appropriate.

3 (6) Every person who files a petition for an emergency extreme
4 risk protective order, knowing the information in the petition to be
5 false, is guilty of a misdemeanor.

6 (7) Every person who purchases or possesses a firearm with
7 knowledge that he or she is prohibited from doing so by an emergency
8 extreme risk protective order is guilty of a misdemeanor and is
9 prohibited from having in his or her custody or control, purchasing,
10 possessing, or receiving, or attempting to purchase or receive, a
11 firearm for a one-year period, to commence upon the expiration of the
12 existing order.

13 NEW SECTION. **Sec. 4.** (1) The court, before issuing an emergency
14 extreme risk protective order, may examine under penalty of perjury
15 the petitioner and any witness the petitioner may produce.

16 (2) In lieu of examining the petitioner and any witness the
17 petitioner may produce, the court may consider a written affidavit
18 submitted by the petitioner and any witness, signed under penalty of
19 perjury.

20 (3) In determining whether grounds for an emergency extreme risk
21 protective order exist, the court shall consider all evidence of the
22 following:

23 (a) A recent threat of violence or act of violence by the subject
24 of the petition directed toward himself, herself, or another;

25 (b) A violation of an antiharassment protection order or no-
26 contact order;

27 (c) A pattern of violent acts or violent threats within the past
28 twelve months including, but not limited to, threats of violence or
29 acts of violence by the subject of the petition directed toward
30 himself, herself, or another; and

31 (d) A conviction for a crime that constitutes domestic violence
32 as defined in RCW 10.99.020.

33 (4) In determining whether grounds for an emergency extreme risk
34 protective order exist, the court may consider any other evidence of
35 an increased risk for violence including, but not limited to,
36 evidence of any of the following:

37 (a) The unlawful and reckless use, display, or brandishing of a
38 firearm by the subject of the petition;

1 (b) The history of use, attempted use, or threatened use of
2 physical force by the subject of the petition against another person;

3 (c) Any prior arrest of the subject of the petition for a felony
4 offense;

5 (d) Any history of a violation by the subject of the petition of
6 an antiharassment protection order or no-contact order;

7 (e) Evidence of the abuse of controlled substances or alcohol;
8 and

9 (f) Evidence of recent acquisition of firearms, ammunition, or
10 other deadly weapons.

11 (5) For purposes of this section, "recent" means within the six
12 months prior to the date the petition was filed.

13 (6) If the court determines that grounds to issue an emergency
14 extreme risk protective order exist, it shall issue an emergency
15 extreme risk protective order prohibiting the subject of the petition
16 from having in his or her custody or control, purchasing, possessing,
17 or receiving, or attempting to purchase or receive, a firearm,
18 expiring no later than fourteen days from the date of the order.

19 (7) Within fourteen days after the date on the order, before the
20 court that issued the order or another court in the same
21 jurisdiction, the court shall hold a hearing pursuant to section 6 of
22 this act to determine if an extreme risk protective order should be
23 issued under this chapter.

24 NEW SECTION. **Sec. 5.** (1) An emergency extreme risk protective
25 order issued under this chapter must include all of the following:

26 (a) A statement of the grounds supporting the issuance of the
27 order;

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

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

30 (d) The address of the superior court in which any responsive
31 pleading should be filed;

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

33 (f) The following statement:

34 "To the subject of this protective order: This order is valid
35 until the expiration date and time noted above. You are required to
36 surrender all firearms that you own or possess and you may not have
37 in your custody or control, own, purchase, possess, or receive, or
38 attempt to purchase or receive, a firearm while this order is in
39 effect. A hearing will be held on the date and at the time noted

1 above to determine if a more permanent extreme risk protective order
2 should be issued. Failure to appear at that hearing may result in a
3 court making an order against you that is valid for one year. You may
4 seek the advice of an attorney as to any matter connected with this
5 order. The attorney should be consulted promptly so that the attorney
6 may assist you in any matter connected with this order."

7 (2) An emergency extreme risk protective order must be personally
8 served on the subject of the protective order by a law enforcement
9 officer, or any person who is at least eighteen years of age and not
10 a party to the action, if the subject of the protective order can
11 reasonably be located.

12 (3) The clerk of the court shall enter an emergency extreme risk
13 protective order issued under this section into a statewide judicial
14 information system within one judicial day after issuance.

15 (4) If the court declines to issue an emergency extreme risk
16 protective order, the court shall state the particular reasons for
17 the court's denial. The court's denial of a motion for an emergency
18 extreme risk protective order must be filed with the court.

19 NEW SECTION.

Sec. 6.

(1) A family or household member of a
20 person or a law enforcement officer may request that a court, after
21 notice and a hearing, issue an extreme risk protective order
22 enjoining the subject of the petition from having in his or her
23 custody or control, purchasing, possessing, or receiving a firearm
24 for a period of one year.

25 (2) In determining whether to issue an extreme risk protective
26 order pursuant to a petition filed under subsection (1) of this
27 section or pursuant to a hearing scheduled after the issuance of an
28 emergency extreme risk protective order, the court must consider:

29 (a) A recent threat of violence or act of violence by the subject
30 of the petition directed toward another;

31 (b) A recent threat of violence or act of violence by the subject
32 of the petition directed toward himself or herself;

33 (c) A violation of an antiharassment protection order or no-
34 contact order;

35 (d) A pattern of violent acts or violent threats within the past
36 twelve months including, but not limited to, threats of violence or
37 acts of violence by the subject of the petition directed toward
38 himself, herself, or another; and

1 (e) A conviction for a crime that constitutes domestic violence
2 as defined in RCW 10.99.020.

3 (3) The court may also consider any other evidence of an
4 increased risk of violence including:

5 (a) The unlawful and reckless use, display, or brandishing of a
6 firearm by the subject of the petition;

7 (b) The history of use, attempted use, or threatened use of
8 physical force by the subject of the petition against another person;

9 (c) Any prior arrest of the subject of the petition for a felony
10 offense;

11 (d) Any history of a violation by the subject of the petition of
12 an antiharassment protection order or no-contact order;

13 (e) Evidence of the abuse of controlled substances or alcohol;
14 and

15 (f) Evidence of recent acquisition of firearms, ammunition, or
16 other deadly weapons.

17 (4) For purposes of this section, "recent" means within the six
18 months prior to the date the petition was filed.

19 (5) The petitioner has the burden of proving, by clear, cogent,
20 and convincing evidence, that:

21 (a) The subject of the petition, or a person subject to an
22 emergency extreme risk protective order, poses a significant danger
23 of personal injury to himself, herself, or another by having in his
24 or her custody or control, purchasing, possessing, or receiving a
25 firearm; and

26 (b) An extreme risk protective order is necessary to prevent
27 personal injury to the subject of the petition or the person subject
28 to an emergency extreme risk protective order, or another, because
29 less restrictive alternatives either have been tried and found to be
30 ineffective, or are inadequate or inappropriate for the circumstances
31 of the subject of the petition or the person subject to an emergency
32 extreme risk protective order.

33 (6) If the court finds there is clear, cogent, and convincing
34 evidence to issue an extreme risk protective order, the court shall
35 issue an extreme risk protective order prohibiting the subject of the
36 petition from having in his or her custody or control, purchasing,
37 possessing, or receiving, or attempting to purchase or receive, a
38 firearm.

39 (7) If the court finds there is not clear, cogent, and convincing
40 evidence to support the issuance of an extreme risk protective order,

1 the court shall dissolve any emergency extreme risk protective order
2 then in effect.

3 (8) The extreme risk protective order issued under this chapter
4 has a duration of one year, subject to termination by further order
5 of the court.

6 (9) When the petitioner for an extreme risk protective order is a
7 law enforcement officer, the law enforcement officer shall make a
8 good faith effort to provide notice to a family or household member
9 of the subject of the petition who may be at risk of domestic
10 violence or stalking. The notice must include that the law
11 enforcement officer intends to petition the court for an extreme risk
12 protective order, and referral to relevant domestic violence or
13 stalking advocacy or counseling resources, if appropriate.

14 (10) Every person who files a petition for an extreme risk
15 protective order issued after notice and a hearing, knowing the
16 information in the petition to be false, is guilty of a misdemeanor.

17 (11) Every person who purchases or possesses a firearm with
18 knowledge that he or she is prohibited from doing so by an extreme
19 risk protective order issued after notice and a hearing is guilty of
20 a misdemeanor and is prohibited from having in his or her custody or
21 control, purchasing, possessing, or receiving, or attempting to
22 purchase or receive, a firearm for a five-year period, to commence
23 upon expiration of the existing extreme risk protective order.

24 NEW SECTION. **Sec. 7.** (1) An extreme risk protective order must
25 include all of the following:

26 (a) A statement of the grounds supporting the issuance of the
27 order;

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

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

30 (d) The address of the superior court for the county in which the
31 restrained party resides; and

32 (e) The following statement:

33 "To the subject of this protective order: This order will last
34 until the date and time noted above. If you have not done so already,
35 you must surrender all firearms that you own or possess. You may not
36 have in your custody or control, purchase, possess, or receive, or
37 attempt to purchase or receive, a firearm while this order is in
38 effect. You have the right to request one hearing to terminate this

1 order at any time during its effective period. You may seek the
2 advice of an attorney as to any matter connected with this order."

3 (2) When the court issues an extreme risk protective order, the
4 court shall inform the subject of the protective order that he or she
5 is entitled to one hearing to request a termination of the order and
6 shall provide the subject of the protective order with a form to
7 request a hearing.

8 (3) If a person subject to an extreme risk protective order was
9 not present in court at the time the order was issued or renewed, the
10 extreme risk protective order must be personally served on the
11 subject of the protective order by a law enforcement officer or any
12 person who is at least eighteen years of age and not a party to the
13 action, if the subject of the protective order can reasonably be
14 located. The person's presence in court constitutes proof of service
15 of notice of the terms of the order.

16 NEW SECTION. **Sec. 8.** (1) A person subject to an extreme risk
17 protective order may submit one written request per year at any time
18 during the effective period of the order for a hearing to terminate
19 the order.

20 (2) If the court finds there is no longer clear, cogent, and
21 convincing evidence to believe that section 6(5) of this act is true,
22 the court must terminate the order.

23 NEW SECTION. **Sec. 9.** (1) A family or household member of a
24 person or a law enforcement officer may request a renewal of an
25 extreme risk protective order at any time within the three months
26 before the expiration of the order.

27 (2) A court may, after notice and a hearing, renew an extreme
28 risk protective order if the court finds there is clear, cogent, and
29 convincing evidence that section 6(5) of this act continues to be
30 true.

31 (3) In determining whether to renew an extreme risk protective
32 order issued under this chapter, the court shall consider evidence of
33 the facts identified in section 6 (2) through (4) of this act.

34 (4) If the renewal petition is supported by clear, cogent, and
35 convincing evidence, the court shall renew the extreme risk
36 protective order issued under this chapter.

37 (5) The renewal of an extreme risk protective order has a
38 duration of one additional year, subject to termination by further

1 order of the court under section 8 of this act and further renewal by
2 order of the court under this section.

3 NEW SECTION. **Sec. 10.** (1) A person subject to an extreme risk
4 protective order may not have in his or her custody or control,
5 purchase, possess, or receive any firearms while that order is in
6 effect.

7 (2) An extreme risk protective order must:

8 (a) Require the person to surrender any firearm in his or her
9 possession, custody, or control;

10 (b) Require the person to surrender any concealed pistol license
11 issued under RCW 9.41.070;

12 (c) Prohibit the person from obtaining or possessing a firearm;
13 and

14 (d) Prohibit the person from obtaining or possessing a concealed
15 pistol license issued under RCW 9.41.070.

16 (3)(a) The court may require the subject of an extreme risk
17 protective order to surrender any firearm in his or her immediate
18 possession or control or subject to his or her immediate possession
19 or control to the sheriff of the county having jurisdiction of the
20 proceeding or the chief of police of the municipality having
21 jurisdiction.

22 (b) All law enforcement agencies must develop policies and
23 procedures by January 1, 2016, regarding the acceptance, storage, and
24 return of weapons required to be surrendered under this section.

25 (4)(a) A person ordered to surrender firearms and his or her
26 concealed pistol license under this section must file with the clerk
27 of the court a proof of surrender and receipt form or a declaration
28 of nonsurrender form within five judicial days of the entry of the
29 order.

30 (b) By December 1, 2015, the administrative office of the courts
31 shall develop a proof of surrender and receipt pattern form to be
32 used to document that a respondent has complied with a requirement to
33 surrender firearms and his or her concealed pistol license, as
34 ordered under this section, and a declaration of nonsurrender pattern
35 form to document compliance when the respondent has no firearms or
36 concealed pistol license.

37 (5) If a person other than the subject of the protective order
38 claims title to any firearms surrendered pursuant to this section,
39 and the person is determined by the law enforcement agency to be the

1 lawful owner of the firearm or firearms, the firearm or firearms
2 shall be returned to the lawful owner, provided that the lawful owner
3 agrees to maintain the firearm or firearms, while not in the lawful
4 owner's direct custody or control, locked and separate from
5 ammunition, and to ensure that the person subject to the protective
6 order does not gain access, possession, custody, or control of the
7 firearm or firearms.

8 NEW SECTION. **Sec. 11.** (1) The clerk of the court shall enter an
9 extreme risk protective order issued under this section into a
10 statewide judicial information system within one judicial day after
11 issuance.

12 (2) The court shall forward, within five judicial days, written
13 notice to the department of licensing and the Washington state patrol
14 when an extreme risk protective order has been entered. The
15 Washington state patrol must update its electronic database within
16 seven days.

17 (3) The court shall forward, within five judicial days, written
18 notice to the department of licensing and the Washington state patrol
19 when an extreme risk protective order has been dissolved or
20 terminated. The Washington state patrol must update its electronic
21 database within seven days.

22 NEW SECTION. **Sec. 12.** (1) A law enforcement agency or officer
23 may not be held liable in any civil action for requesting, serving,
24 or enforcing in good faith any type of extreme risk protective order
25 or warrant, or for any other act or omission under this chapter,
26 absent circumstances evidencing gross negligence.

27 (2) A law enforcement agency or law enforcement officer is not
28 required to apply for any type of extreme risk protective order in
29 any case including, but not limited to, a case in which the agency or
30 officer concludes, after investigation, that the criteria for
31 issuance of an extreme risk protective order are not satisfied.

32 **Sec. 13.** RCW 9.41.040 and 2014 c 111 s 1 are each amended to
33 read as follows:

34 (1)(a) A person, whether an adult or juvenile, is guilty of the
35 crime of unlawful possession of a firearm in the first degree, if the
36 person owns, has in his or her possession, or has in his or her
37 control any firearm after having previously been convicted or found

1 not guilty by reason of insanity in this state or elsewhere of any
2 serious offense as defined in this chapter.

3 (b) Unlawful possession of a firearm in the first degree is a
4 class B felony punishable according to chapter 9A.20 RCW.

5 (2)(a) A person, whether an adult or juvenile, is guilty of the
6 crime of unlawful possession of a firearm in the second degree, if
7 the person does not qualify under subsection (1) of this section for
8 the crime of unlawful possession of a firearm in the first degree and
9 the person owns, has in his or her possession, or has in his or her
10 control any firearm:

11 (i) After having previously been convicted or found not guilty by
12 reason of insanity in this state or elsewhere of any felony not
13 specifically listed as prohibiting firearm possession under
14 subsection (1) of this section, or any of the following crimes when
15 committed by one family or household member against another,
16 committed on or after July 1, 1993: Assault in the fourth degree,
17 coercion, stalking, reckless endangerment, criminal trespass in the
18 first degree, or violation of the provisions of a protection order or
19 no-contact order restraining the person or excluding the person from
20 a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

21 (ii) During any period of time that the person is subject to a
22 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,
23 26.09, 26.10, 26.26, or 26.50 RCW that:

24 (A) Was issued after a hearing of which the person received
25 actual notice, and at which the person had an opportunity to
26 participate;

27 (B) Restrains the person from harassing, stalking, or threatening
28 an intimate partner of the person or child of the intimate partner or
29 person, or engaging in other conduct that would place an intimate
30 partner in reasonable fear of bodily injury to the partner or child;
31 and

32 (C)(I) Includes a finding that the person represents a credible
33 threat to the physical safety of the intimate partner or child; and

34 (II) By its terms, explicitly prohibits the use, attempted use,
35 or threatened use of physical force against the intimate partner or
36 child that would reasonably be expected to cause bodily injury;

37 (iii) After having previously been involuntarily committed for
38 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,
39 71.34.750, chapter 10.77 RCW, or equivalent statutes of another

1 jurisdiction, unless his or her right to possess a firearm has been
2 restored as provided in RCW 9.41.047;

3 (iv) If the person is under eighteen years of age, except as
4 provided in RCW 9.41.042; (~~and/or~~)

5 (v) If the person is free on bond or personal recognizance
6 pending trial, appeal, or sentencing for a serious offense as defined
7 in RCW 9.41.010; and/or

8 (vi) During any period of time that the person is subject to any
9 type of extreme risk protective order issued under chapter 26.--- RCW
10 (the new chapter created in section 17 of this act).

11 (b) Unlawful possession of a firearm in the second degree is a
12 class C felony punishable according to chapter 9A.20 RCW.

13 (3) Notwithstanding RCW 9.41.047 or any other provisions of law,
14 as used in this chapter, a person has been "convicted", whether in an
15 adult court or adjudicated in a juvenile court, at such time as a
16 plea of guilty has been accepted, or a verdict of guilty has been
17 filed, notwithstanding the pendency of any future proceedings
18 including but not limited to sentencing or disposition, post-trial or
19 post-fact-finding motions, and appeals. Conviction includes a
20 dismissal entered after a period of probation, suspension or deferral
21 of sentence, and also includes equivalent dispositions by courts in
22 jurisdictions other than Washington state. A person shall not be
23 precluded from possession of a firearm if the conviction has been the
24 subject of a pardon, annulment, certificate of rehabilitation, or
25 other equivalent procedure based on a finding of the rehabilitation
26 of the person convicted or the conviction or disposition has been the
27 subject of a pardon, annulment, or other equivalent procedure based
28 on a finding of innocence. Where no record of the court's disposition
29 of the charges can be found, there shall be a rebuttable presumption
30 that the person was not convicted of the charge.

31 (4)(a) Notwithstanding subsection (1) or (2) of this section, a
32 person convicted or found not guilty by reason of insanity of an
33 offense prohibiting the possession of a firearm under this section
34 other than murder, manslaughter, robbery, rape, indecent liberties,
35 arson, assault, kidnapping, extortion, burglary, or violations with
36 respect to controlled substances under RCW 69.50.401 and 69.50.410,
37 who received a probationary sentence under RCW 9.95.200, and who
38 received a dismissal of the charge under RCW 9.95.240, shall not be
39 precluded from possession of a firearm as a result of the conviction
40 or finding of not guilty by reason of insanity. Notwithstanding any

1 other provisions of this section, if a person is prohibited from
2 possession of a firearm under subsection (1) or (2) of this section
3 and has not previously been convicted or found not guilty by reason
4 of insanity of a sex offense prohibiting firearm ownership under
5 subsection (1) or (2) of this section and/or any felony defined under
6 any law as a class A felony or with a maximum sentence of at least
7 twenty years, or both, the individual may petition a court of record
8 to have his or her right to possess a firearm restored:

9 (i) Under RCW 9.41.047; and/or

10 (ii)(A) If the conviction or finding of not guilty by reason of
11 insanity was for a felony offense, after five or more consecutive
12 years in the community without being convicted or found not guilty by
13 reason of insanity or currently charged with any felony, gross
14 misdemeanor, or misdemeanor crimes, if the individual has no prior
15 felony convictions that prohibit the possession of a firearm counted
16 as part of the offender score under RCW 9.94A.525; or

17 (B) If the conviction or finding of not guilty by reason of
18 insanity was for a nonfelony offense, after three or more consecutive
19 years in the community without being convicted or found not guilty by
20 reason of insanity or currently charged with any felony, gross
21 misdemeanor, or misdemeanor crimes, if the individual has no prior
22 felony convictions that prohibit the possession of a firearm counted
23 as part of the offender score under RCW 9.94A.525 and the individual
24 has completed all conditions of the sentence.

25 (b) An individual may petition a court of record to have his or
26 her right to possess a firearm restored under (a) of this subsection
27 (4) only at:

28 (i) The court of record that ordered the petitioner's prohibition
29 on possession of a firearm; or

30 (ii) The superior court in the county in which the petitioner
31 resides.

32 (5) In addition to any other penalty provided for by law, if a
33 person under the age of eighteen years is found by a court to have
34 possessed a firearm in a vehicle in violation of subsection (1) or
35 (2) of this section or to have committed an offense while armed with
36 a firearm during which offense a motor vehicle served an integral
37 function, the court shall notify the department of licensing within
38 twenty-four hours and the person's privilege to drive shall be
39 revoked under RCW 46.20.265.

1 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed
2 or interpreted as preventing an offender from being charged and
3 subsequently convicted for the separate felony crimes of theft of a
4 firearm or possession of a stolen firearm, or both, in addition to
5 being charged and subsequently convicted under this section for
6 unlawful possession of a firearm in the first or second degree.
7 Notwithstanding any other law, if the offender is convicted under
8 this section for unlawful possession of a firearm in the first or
9 second degree and for the felony crimes of theft of a firearm or
10 possession of a stolen firearm, or both, then the offender shall
11 serve consecutive sentences for each of the felony crimes of
12 conviction listed in this subsection.

13 (7) Each firearm unlawfully possessed under this section shall be
14 a separate offense.

15 (8) For purposes of this section, "intimate partner" includes: A
16 spouse, a domestic partner, a former spouse, a former domestic
17 partner, a person with whom the (~~restrained person~~) subject of the
18 protective order has a child in common, or a person with whom the
19 (~~restrained person~~) subject of the protective order has cohabitated
20 or is cohabitating as part of a dating relationship.

21 **Sec. 14.** RCW 9.41.047 and 2011 c 193 s 2 are each amended to
22 read as follows:

23 (1)(a) At the time a person is convicted or found not guilty by
24 reason of insanity of an offense making the person ineligible to
25 possess a firearm, or at the time a person is committed by court
26 order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or
27 chapter 10.77 RCW for mental health treatment, or at the time the
28 court enters any type of extreme risk protective order under chapter
29 26.--- RCW (the new chapter created in section 17 of this act), the
30 convicting (~~or~~), committing, or issuing court shall notify the
31 person, orally and in writing, that the person must immediately
32 surrender any concealed pistol license and that the person may not
33 possess a firearm unless his or her right to do so is restored by a
34 court of record. For purposes of this section a convicting court
35 includes a court in which a person has been found not guilty by
36 reason of insanity.

37 (b) The convicting (~~or~~), committing, or issuing court shall
38 forward within three judicial days after conviction (~~or~~), entry of
39 the commitment order, or issuance of any type of extreme risk

1 protective order a copy of the person's driver's license or
2 identicard, or comparable information, along with the date of
3 conviction ((~~or~~)), commitment, or issuance, to the department of
4 licensing. When a person is committed by court order under RCW
5 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW, for
6 mental health treatment, the committing court also shall forward,
7 within three judicial days after entry of the commitment order, a
8 copy of the person's driver's license, or comparable information,
9 along with the date of commitment, to the national instant criminal
10 background check system index, denied persons file, created by the
11 federal Brady handgun violence prevention act (P.L. 103-159).

12 (2) Upon receipt of the information provided for by subsection
13 (1) of this section, the department of licensing shall determine if
14 the convicted or committed person, or person subject to any type of
15 extreme risk protective order, has a concealed pistol license. If the
16 person does have a concealed pistol license, the department of
17 licensing shall immediately notify the license-issuing authority
18 which, upon receipt of such notification, shall immediately revoke
19 the license.

20 (3)(a) A person who is prohibited from possessing a firearm, by
21 reason of having been involuntarily committed for mental health
22 treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750,
23 chapter 10.77 RCW, or equivalent statutes of another jurisdiction
24 may, upon discharge, petition the superior court to have his or her
25 right to possess a firearm restored.

26 (b) The petition must be brought in the superior court that
27 ordered the involuntary commitment or the superior court of the
28 county in which the petitioner resides.

29 (c) Except as provided in (d) of this subsection, the court shall
30 restore the petitioner's right to possess a firearm if the petitioner
31 proves by a preponderance of the evidence that:

32 (i) The petitioner is no longer required to participate in court-
33 ordered inpatient or outpatient treatment;

34 (ii) The petitioner has successfully managed the condition
35 related to the commitment;

36 (iii) The petitioner no longer presents a substantial danger to
37 himself or herself, or the public; and

38 (iv) The symptoms related to the commitment are not reasonably
39 likely to recur.

1 (d) If a preponderance of the evidence in the record supports a
2 finding that the person petitioning the court has engaged in violence
3 and that it is more likely than not that the person will engage in
4 violence after his or her right to possess a firearm is restored, the
5 person shall bear the burden of proving by clear, cogent, and
6 convincing evidence that he or she does not present a substantial
7 danger to the safety of others.

8 (e) When a person's right to possess a firearm has been restored
9 under this subsection, the court shall forward, within three judicial
10 days after entry of the restoration order, notification that the
11 person's right to possess a firearm has been restored to the
12 department of licensing, the department of social and health
13 services, and the national instant criminal background check system
14 index, denied persons file.

15 (4) No person who has been found not guilty by reason of insanity
16 may petition a court for restoration of the right to possess a
17 firearm unless the person meets the requirements for the restoration
18 of the right to possess a firearm under RCW 9.41.040(4).

19 NEW SECTION. **Sec. 15.** A new section is added to chapter 10.79
20 RCW to read as follows:

21 A court may issue a warrant to search for and seize firearms that
22 are owned by, in the possession of, or in the custody or control of a
23 person subject to any type of extreme risk protective order as
24 provided in chapter 26.--- RCW (the new chapter created in section 17
25 of this act), if:

26 (1) The subject of the protective order has been served with the
27 order; and

28 (2) The subject of the protective order has failed to surrender
29 any firearm subject to the order as required under sections 5 and 6
30 of this act.

31 NEW SECTION. **Sec. 16.** A new section is added to chapter 10.79
32 RCW to read as follows:

33 (1) A law enforcement officer conducting a search and seizure
34 pursuant to section 15 of this act must take custody of any firearm
35 that is in the custody, control, or possession of a person who is
36 subject to any type of extreme risk protective order or that is owned
37 by the subject of the protective order.

1 (2) Any firearm found at a location subject to a search and
2 seizure warrant issued pursuant to section 15 of this act that is
3 owned by a person other than the subject of the protective order may
4 not be seized if:

5 (a) The firearm is removed from the subject of the protective
6 order's custody, control, or possession and stored in a manner such
7 that the subject of the protective order does not have access to or
8 control of the firearm; and

9 (b) The firearm is not otherwise unlawfully possessed by the
10 owner.

11 (3) A locked firearm storage safe or case that is owned by a
12 person other than the subject of the protective order may not be
13 searched except in the owner's presence and with his or her consent
14 or with a separately obtained search warrant.

15 NEW SECTION. **Sec. 17.** Sections 1 through 12 of this act
16 constitute a new chapter in Title 26 RCW.

--- END ---