

# SENATE LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 1217**

with committee amendments

# STATE OF NEW JERSEY

DATED: APRIL 16, 2018

The Senate Law and Public Safety Committee reports favorably and with committee amendments the Assembly Committee Substitute for Assembly Bill No. 1217 (1R).

As amended and reported by the committee, this bill, entitled the “Extreme Risk Protective Order Act of 2018,” establishes a process and procedures for obtaining a protective order against persons who pose a significant danger of bodily injury to themselves or others by possessing or purchasing a firearm. The protective order would prohibit the subject from possessing or purchasing a firearm or ammunition and from holding a firearms purchaser identification card (FPIC), permit to purchase a handgun (PPH), and permit to carry a handgun (PCH).

### TEMPORARY EXTREME RISK PROTECTIVE ORDERS (T-ERPO)

The amended bill authorizes a family or household member or a law enforcement officer to petition for a T-ERPO alleging that a person poses a significant danger of bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm. A petition for a T-ERPO is to be filed in court in accordance with the Rules of Court. The petition is to include an affidavit including the number, types, physical description, and locations of any firearms and ammunition the family member or law enforcement officer believes are controlled or possessed by the person.

The court is to issue the T-ERPO if it finds good cause to believe that the person poses an immediate and present danger of causing bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm. The amended bill sets forth alternate procedures if the petition for a T-ERPO is filed against a law enforcement officer.

In deciding whether to issue a T-ERPO, the court is required to consider whether the person has a history of threats or acts of violence directed toward self or others; a history of use, attempted use, or threatened use of physical force against another; any temporary or

final domestic violence restraining order or sexual violence protective order or a violation of a temporary or final domestic violence restraining order or sexual violence protective order; any prior arrests, pending charges, or convictions for a violent indictable crime or disorderly persons offense, a stalking offense, or domestic violence offense; an offense involving animal cruelty; a history of drug or alcohol abuse; and any recent acquisitions of a firearm, ammunition, or other deadly weapon.

While a T-ERPO is in effect, the person is prohibited from possessing or purchasing firearms or ammunition, as well obtaining or holding a FPIC, PPH, or PCH. Firearms, ammunition, FPICs, PPHs, and PCHs are to be surrendered, and the FPICs, PPHs, and PCHs are revoked.

#### EXTREME RISK PROTECTIVE ORDER (ERPO)

The court is to consider whether a one-year ERPO should be issued during a hearing to be held within 10 days of the filing of the T-ERPO. The court is to consider the same factors considered for a T-ERPO. The ERPO is to be issued if the court finds by a preponderance of the evidence that the person poses a significant danger of bodily injury to self or others by having custody or control of, owning, possessing, purchasing, or receiving a firearm. The ERPO may be extended for one year under certain circumstances.

#### SURRENDER PROVISIONS

A person against whom a T-ERPO or ERPO is issued is required to surrender to the local law enforcement agency or to surrender or sell to a federally licensed dealer all firearms and ammunition in the person's custody or control, or which the person owns or possesses, and to surrender to law enforcement any FPICs, PPHs, and PCHs the person holds. The person can petition for the return of the firearms or ammunition within three months, but not less than 30 days of expiration of the order, with certain exceptions. The person also may sell the firearms or ammunition to a licensed dealer. A law enforcement agency holding a surrendered firearm or ammunition a year after the order expires is authorized to destroy the firearm or ammunition in accordance with agency policies.

A person has one opportunity to terminate a T-ERPO or ERPO. The person is required to prove at a hearing, by a preponderance of the evidence, that he or she no longer poses a significant danger of causing bodily injury to self or another by having custody or control of, owning, possessing, purchasing, or receiving a firearm.

#### PENALTIES

A person who violates a condition of a T-ERPO or ERPO is to be arrested for contempt of court.

A person who violates a T-ERPO or ERPO is guilty of a fourth degree crime, which is punishable by a term of imprisonment of up to

18 months, a fine of up to \$10,000, or both. A person subject to a T-ERPO or ERPO who purchases, acquires, owns, possesses, or controls a firearm or ammunition commits a crime of the third degree, which is punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both. The person also is disqualified from obtaining a FPIC, PPH, or PCH.

#### ELECTRONIC CENTRAL REGISTRY

Finally, the amended bill requires the Administrative Office of the Courts (AOC) to include in an electronic central registry created and maintained by the AOC all persons who have had an ERPO entered against them, and all persons who have been charged with a violation of a T-ERPO or ERPO.

As amended and reported by the committee, Assembly Bill No. 1217 (ACS/1R), is identical to Senate Bill No. 2259, which was amended and reported by the committee on this same date.

#### COMMITTEE AMENDMENTS:

The committee amended the bill to:

- (1) remove the provision allowing a person to file a petition for a T-ERPO in any State, county, or municipal law enforcement agency;
- (2) clarify that filing a petition under the bill does not preclude a person from applying for a restraining order pursuant to the “Prevention of Domestic Violence Act of 1991”;
- (3) require the county prosecutor or a designee to produce in an expedited manner any available evidence;
- (4) require the court to consider whether the respondent is the subject of a temporary or final domestic violence restraining order or has violated a temporary or final domestic violence restraining order; as reported out of Assembly Appropriations the court was required to consider whether the respondent had any recent violation of a domestic violence restraining order;
- (5) require the court to consider whether the respondent is the subject of any temporary or final sexual violence protective orders or has violated a temporary or final sexual violence protective order as reported out of Assembly Appropriations, the court was required to consider any recent violation of a sexual violence protective order;
- (6) require the court to consider whether the respondent has any prior arrests, pending charges, or convictions for a violent indictable crime or disorderly persons offense; as reported out of Assembly Appropriations Committee, the court was required to consider whether the respondent has ever been convicted of a violent disorderly persons or petty disorderly persons offense;

- (7) require the court to consider whether the respondent has any recent acquisitions of a firearm, ammunition, or other deadly weapon; as reported out of Assembly Appropriations, the court was permitted to consider this factor;
- (8) remove the provision containing other factors that the court may consider in determining whether to issue an order;
- (9) require the county prosecutor to forward a copy of the T-ERPO to the appropriate law enforcement agency; as reported out of Assembly Appropriations, the court was required to forward it to the law enforcement agency;
- (10) require a petition for an extension of an ERPO to be filed at least three months, but not less than 30 days before the expiration of the current protective order;
- (11) require the respondent to file a receipt of surrender of firearms with the county prosecutor; as reported out of Assembly Appropriations the bill required the receipt to be filed with the law enforcement agency that served the protective order;
- (12) clarify that the bill does not prohibit revocation and seizure of a person's firearms purchaser identification card, permit to purchase a handgun, permit to carry a handgun, and weapons as provided under current law;
- (13) require the AOC to include in an electronic central registry created and maintained by the AOC all persons who have had an ERPO entered against them and all persons who have been charged with a violation of a T-ERPO or ERPO; as reported out of the Assembly Appropriations Committee the bill required the AOC to include these persons in the Domestic Violence Central Registry;
- (14) provide that the records in the registry are only to be released to certain persons for specific purposes;
- (15) provide that a respondent's information, other than information regarding a violation of an T-ERPO or an ERPO is to be removed from the registry upon expiration of the ERPO; and
- (16) make other clarifying and technical changes.