

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]

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

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 4, 2018

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1217 (ACS/2R), with committee amendments.

As amended, 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 ORDER (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 setting forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist, and, *to the extent available*, provide the number, types, physical description, and locations of any firearms and ammunition currently believed by the petitioner to be controlled or possessed by the respondent.

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 animal cruelty or 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.

FINAL EXTREME RISK PROTECTIVE ORDER (F-ERPO)

The court is to consider whether a F-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 F-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.

Upon request of the petitioner or respondent, at any time following the issuance of the F-ERPO and after notice and a hearing, the court may terminate the F-ERPO. The court is to consider the same factors during the hearing that were considered for the T-ERPO, as well as any other relevant evidence, including whether the respondent has received, or is receiving, mental health treatment. If the respondent petitioned to terminate the F-ERPO, the respondent bears the burden at the hearing of proving by a preponderance of the evidence that he or she no longer poses a significant danger of causing bodily injury to himself or herself or to others by having custody or control of, owning, possessing, purchasing, or receiving a firearm.

SURRENDER PROVISIONS

A person against whom a T-ERPO or F-ERPO is issued is required to surrender to the local law enforcement agency or 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 after the F-ERPO terminated. The agency is to return the firearms or ammunition within 30 days of the petition, unless the firearm has been reported stolen or the respondent is prohibited by law from possessing a firearm. The person also may sell surrendered

firearms or ammunition to a licensed dealer. A law enforcement agency holding a surrendered firearm or ammunition a year after the order is terminated is authorized to destroy the firearm or ammunition in accordance with agency policies.

PENALTIES

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

A person who violates a T-ERPO or F-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 F-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 F-ERPO.

As amended and reported by the committee, Assembly Bill No. 1217 (ACS/2R), is identical to the Senate Committee Substitute for Senate Bill No. 2259 (1R), which was reported by the committee on this same date.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

1) clarify that the immunity granted to law enforcement officers under the bill is in addition to any other privileges or immunities currently provided under law;

2) clarify that prior to filing a petition for a T-ERPO, a family or household member may request assistance from the law enforcement agency and that the agency is to advise the petitioner of the procedure for completing and signing the petition;

3) clarify that a law enforcement officer may assist the family or household member in preparing or filing the petition for the T-ERPO by providing information related to the factors supporting the petition, joining in the petition, referring the matter to another law enforcement agency for additional assistance, or filing the officer's own petition with the court;

4) require that the affidavit to be included with the petition set forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist, and, *to the extent available*, provide the number, types, physical description, and locations of any

firearms and ammunition currently believed by the petitioner to be controlled or possessed by the respondent;

5) require the court, before issuing a T-ERPO, to examine under oath the petitioner and any witness the petitioner may produce; in lieu of examining the petitioner and witnesses, the court may rely on an affidavit submitted in support of the petition;

6) include the respondent having a history of cruelty to animals in the factors for the court to consider;

7) require the court that issues the T-ERPO to immediately forward:

a) a copy to the petitioner and county prosecutor in the county in which the respondent resides; and

b) a copy of the T-ERPO and petition to the appropriate law enforcement agency in the municipality in which the respondent resides; the agency is required to immediately, or as soon as practicable, serve it on the respondent;

8) replace the provisions providing for automatic expiration of a F-ERPO after one year with a one-year extension, with a provision authorizing the court to terminate the F-ERPO upon request of the petitioner or respondent;

9) require the court to consider whether the respondent is receiving mental health treatment when deciding to terminate the F-ERPO;

10) require the court to issue a search warrant with a T-ERPO or F-ERPO if the petition for the temporary order indicates the respondent own or possesses firearms or ammunition;

11) remove the provision requiring the respondent to surrender all firearms and ammunition within 24 hours if the warrant is not personally served by the law enforcement officer, effectively requiring immediate surrender in all instances;

12) removing references to “expiration” of a F-ERPO in the context of a respondent petitioning to have surrendered firearms or ammunition returned after a F-ERPO is terminated; and

13) make other clarifying and technical changes.

FISCAL IMPACT:

The Office of Legislative Services (OLS) states that since there is not enough information with which to determine the number of petitions that would be filed with the court for temporary extreme risk protective orders (T-ERPO) or final extreme risk protective orders (F-ERPO), it cannot determine the cost to be incurred by the Judiciary for hearing these petitions. The OLS also notes that the Administrative Office of the Courts (AOC) would incur indeterminate costs to create and maintain an electronic central registry of all persons who have had a F-ERPO entered against them, and all persons who have been charged with a violation of a T-ERPO or ERPO.

In addition, the OLS notes that local law enforcement agencies may incur indeterminate costs to store or destroy after one year those

firearms or ammunition surrendered by individuals against whom T-ERPO or F-ERPO are issued.

The OLS states that the amended bill classifies certain violations of the provisions as third or fourth degree crimes. Offenders convicted of third or fourth degree crimes are subject to terms of imprisonment of up to 18 months (fourth degree) or 3 to 5 years (third degree). However, convictions for third and fourth degree offenses generally carry with them the presumption of non-incarceration for first time offenders. Any costs incurred by the Department of Corrections to house these offenders, if incarcerated, would be indeterminate.