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## OLR Bill Analysis

### sHB 6355

#### ***AN ACT CONCERNING RISK PROTECTION ORDERS OR WARRANTS AND THE EFFECT OF THE ISSUANCE OF A PHYSICIAN'S EMERGENCY CERTIFICATE ON A PERSON'S ABILITY TO POSSESS FIREARMS.***

#### **SUMMARY**

Existing law allows any two police officers or a state's attorney, under limited circumstances, to apply to court for a warrant ("risk warrant") to seize firearms and ammunition from someone who poses an imminent risk of injuring himself or herself or someone else.

This bill expands the scope of this law by also allowing these officials, family or household members, or medical professionals to apply for a risk protection order prohibiting someone from acquiring or possessing firearms or ammunition. The bill applies a probable cause standard for these orders sought by police or prosecutors and a reasonable belief standard for other applications. Similar to existing law for risk warrants, the bill requires a hearing within 14 days after a risk protection order is served.

Under the bill, if a judge issues a risk protection order upon application of the police or a state's attorney, the judge may issue a risk warrant along with or following that order under specified procedures. If a judge issues a risk protection order upon application of a family or household member or medical professional, the court must immediately contact the police. The police must investigate, and if they find probable cause of certain matters, then they must apply for a risk warrant.

The bill makes certain changes to risk warrant procedures. For example, it removes the current one-year maximum period on the state's hold of firearms or ammunition seized under a risk warrant. Instead, it continues the hold period until the person can prove that he

or she no longer poses an immediate risk of injuring anyone. It allows these individuals to petition the court every 180 days to challenge the items' seizure. Among other changes, the bill also narrows the list of people to whom someone under a risk warrant may transfer their firearms or ammunition (rather than having the state hold these items).

The bill (1) incorporates risk protection orders into the educational materials that the chief court administrator must already make available on risk warrants and (2) expands the types of materials that the administrator must make available.

The bill bars people from obtaining a handgun carry permit, handgun eligibility certificate, or long gun eligibility certificate if they (1) are subject to a risk protection order or (2) on or after October 1, 2021, were committed to a hospital under a physician's emergency certificate (see BACKGROUND) within the prior six months for psychiatric treatment and not just for alcohol or drug abuse. It also extends existing criminal penalties for unlawful possession of handguns or other firearms, electronic defense weapons, or ammunition to people possessing these items if they (1) know they are subject to a risk protection order or (2) were committed within the prior six months under an emergency certificate as specified above.

Under existing law, the prohibition on obtaining the gun credentials listed above already applies to, among others, people who (1) are subject to a risk warrant firearm seizure order issued after notice and a hearing or (2) were voluntarily admitted to a psychiatric hospital within the prior six months for the reasons noted above. Similarly, the criminal penalties already apply to people who (1) know they are subject to such a seizure order or (2) were voluntarily admitted as specified (except for police officers in certain circumstances).

The bill makes conforming changes to the responsibilities of the Department of Emergency Services and Public Protection (DESPP) and Department of Mental Health and Addiction Services (DMHAS) relating to psychiatric commitments under emergency certificates.

Finally, the bill extends certain firearm storage laws to include

people subject to a (1) risk warrant firearm seizure order issued after notice and a hearing or (2) risk protection order. It prohibits anyone in control of a premises from keeping unsecured firearms there if the person knows, or reasonably should know, that a resident is subject to such an order.

EFFECTIVE DATE: October 1, 2021, for the emergency certificate provisions and the firearm storage provisions relating to risk warrant seizure orders; June 1, 2022, for the other risk warrant provisions and the risk protection order provisions.

## **§§ 1 & 2 — RISK PROTECTION ORDERS AND RISK WARRANTS**

### ***Family or Household Member or Medical Professional Risk Protection Orders***

***Scope and Definitions.*** The bill allows family or household members or medical professionals to apply to Superior Court for a risk protection order, as explained below, if they have a good faith belief that someone poses a risk of imminent personal injury to himself, herself, or others.

For these purposes, a “family or household member” is one of the following people in relation to the person subject to the application:

1. the person’s spouse, parent, child, sibling, grandparent, grandchild, stepparent, stepchild, stepsibling, mother- or father-in-law, son- or daughter-in-law, or brother- or sister-in-law;
2. someone residing with the person;
3. someone who has a child in common with the person;
4. the person’s dating or intimate partner; or
5. the person’s current or former legal guardian.

Under the bill, a “medical professional” is one of the following state-licensed professionals who has examined the person: a physician or physician assistant, an advanced practice registered nurse, or a psychologist or clinical social worker.

**Application Procedure.** The bill requires the applicant to indicate whether the subject of the application holds certain firearm credentials and possesses any firearms or ammunition. These credentials include a handgun carry permit or eligibility certificate, long gun eligibility certificate, and an ammunition certificate.

In addition, the applicant must include an affidavit stating why he or she believes the person poses a risk of imminent harm.

**Court Issuance of Order.** Under the bill, after receiving an application, the court may issue a risk protection order prohibiting the person from acquiring or possessing a firearm or ammunition. To do so, the court must find that if the application's facts were true, there is a reasonable belief that the person poses a risk of imminent personal injury to himself or herself or others.

Immediately after issuing the order, the court must contact the municipal or state police agency with jurisdiction over the place, thing, or person subject to the order.

**Police Response.** Under the bill, after the court notifies the appropriate police department, the police must immediately send an officer to court to collect the order and the application that preceded it. The police must then immediately investigate the matter.

Under the bill, the police must apply to court for a risk warrant if, through this investigation, they determine that (1) there is probable cause to believe that the person poses a risk of imminent injury to self or others; (2) there is probable cause to believe that the person possesses one or more firearms; and (3) these firearms are at a location or upon any person. The police must apply for the risk warrant as soon as practicable, and if practicable within 24 hours after receiving the risk protection order.

In cases where the police do not make the required determination about the possession or location of firearms to seek a risk warrant, they must serve the risk protection order and notify the court of this determination in writing. They must do so as soon as practicable, and

if practicable within 48 hours after receiving the risk protection order.

***Police or Prosecutor Risk Protection Orders***

Under existing law, a risk warrant applicant must have conducted an independent investigation to establish probable cause before seeking the warrant. The bill extends this requirement to risk protection orders sought by police or prosecutors but not by family or household members or medical professionals.

Existing law also requires applicants for risk warrants to complete a sworn affidavit. The bill extends this requirement to risk protection orders sought by police or prosecutors. As noted above, family member, household member, or medical professional applicants must also complete an affidavit, but it need not be sworn.

***General Risk Protection Order Procedures and Standards***

Under the bill, in determining whether the standards are met to issue a risk protection order (whoever the applicant), the judge must consider the same factors as under existing law for risk warrants. Thus, the judge must consider any recent (1) threat or violent act the person directed at himself, herself, or others or (2) acts of animal cruelty committed by the person.

In addition, as under existing law for risk warrants, in determining whether the threats or acts constitute probable cause to believe a risk of injury is imminent, the judge may consider, among other things, whether the person: (1) recklessly used, displayed, or brandished a firearm; (2) has a history of using, attempting, or threatening to use physical force against people; (3) was ever involuntarily confined to a psychiatric hospital; (4) abused alcohol; or (5) illegally used controlled substances.

As under existing law for risk warrants, if the judge is satisfied that the standards have been met to issue the risk protection order, the judge must issue it, directed to the police, (1) naming or describing the person and (2) stating the grounds or probable cause as applicable. As under existing law for risk warrants, the court must also provide a

copy to the person along with a notice of his or her right to a hearing and legal representation.

The bill requires the police agency that serves the order to file a copy with the court and send a return of service to the state's attorney's office for the judicial district, indicating the service date and time. The police must do so by the next business day after serving it.

Before the order's service and return, the court clerk must not disclose any information about the application or related affidavits to anyone outside the judicial branch, the police agency that served the order, or the appropriate state's attorney's office. The order must be served and returned with reasonable promptness consistent with due process.

***Mandatory Hearing.*** Under existing law, the court in the geographical area where the person lives must hold a hearing within 14 days after a risk warrant's execution to determine if the state should continue to hold the firearms or ammunition or return them.

The bill similarly requires a hearing within 14 days after a risk protection order is served. The hearing's purpose is to determine whether the order should continue and, if applicable, whether the state should return the person's firearms or ammunition.

As under existing law for risk warrants, the state must prove all material facts by clear and convincing evidence. If the court finds that the person poses an imminent risk of injury to himself, herself, or others, it (1) may order that the risk protection order stay in effect and that the state continue to hold the firearms and ammunition (see below) and (2) must notify DMHAS, which may take appropriate action allowed by laws establishing its jurisdiction over people with mental illnesses.

***Risk Warrants — Period of Gun and Ammunition Seizure***

Under current law, if the court finds after a hearing that the subject of a risk warrant poses an imminent risk as described above, it may order that the state continue to hold the person's firearms and

ammunition for up to one year.

The bill removes this one-year limit. Under the bill, a risk protection order, and any hold on the person's firearms or ammunition, continues until the person can prove by a preponderance of the evidence at a hearing that he or she no longer poses an immediate risk of personal injury to himself, herself, or other individuals.

The person may petition the court for a hearing, starting 180 days after the first hearing. If the court denies the petition after a hearing, the person must wait at least 180 days before filing another petition.

***Risk Warrants — Other Changes***

The bill removes from current law the condition that the police or prosecutor may seek a risk warrant only after determining that there are no reasonable alternatives to avert the risk of harm.

Additionally, under current law, a risk warrant applicant must file a copy of the application and all supporting affidavits with the appropriate court clerk. The bill instead requires the police agency that executed the warrant to file these documents (whether the police or a prosecutor sought the warrant) and additionally requires that agency to file these documents with the state's attorney's office in the appropriate judicial district. As under current law, these documents must be filed by the next business day after the warrant is executed.

The bill also narrows a provision that currently allows anyone whose guns or ammunition have been seized (or the person's legal representative) to transfer them to anyone eligible to possess them. Instead, the bill allows these transfers only to federally licensed firearms dealers. As under current law, (1) these transfers must follow specified procedures and (2) the state agency holding the items must transfer them within 10 days of receiving notice.

***Educational Materials (§ 2)***

Existing law requires the chief court administrator to develop and make available to the public educational materials on the risk warrant

process. The bill extends this requirement to include the risk protection order process.

It also requires him to develop and make available, in hard copy and on the judicial branch website, a (1) form for family or household members or medical professionals to apply for a risk protection order and (2) one-page, plain language explanation of how to apply. The form must include questions designed to solicit information significant to a judge's determination in these matters.

In addition, the educational materials and form must prominently advise applicants (1) that the police or prosecutors may help them apply, and may apply for, a risk protection order or risk warrant and (2) about the benefits of seeking their assistance.

#### **§§ 11 & 12 — CRIMINAL POSSESSION PENALTIES**

The bill extends existing criminal penalties for unlawful possession of handguns or other firearms, electronic defense weapons, or ammunition to people possessing these items if they (1) know they are subject to a risk protection order or (2) were committed within the prior six months under an emergency certificate as described above. This is a class C felony (up to 10 years in prison, up to a \$10,000 fine, or both) with a two-year mandatory minimum sentence, and a \$5,000 minimum fine unless the court states on the record why it remits or reduces it.

#### **§§ 9 & 14 — DESPP AND DMHAS RESPONSIBILITIES**

The bill updates certain responsibilities of the DESPP and DMHAS commissioners regarding psychiatric commitments under a physician's emergency certificate, corresponding to the bill's other related changes described above. As is already the case for certain other psychiatric commitments or admissions under existing law:

1. DMHAS must maintain information on these commitments and provide it to the DESPP commissioner so that he may carry out his obligations pertaining to gun credentials (DESPP must otherwise keep the information confidential);

2. the DESPP commissioner must verify from DMHAS that a person applying for a gun credential was not subject to such a commitment; and
3. if the DESPP commissioner determines that an applicant was subject to such a commitment, he must report the status of the person's application to DMHAS.

### **§§ 15 & 16 — FIREARM STORAGE**

Under existing law, certain firearm storage requirements apply if the person who controls a premises knows or reasonably should know that (1) a minor is likely to gain access to the firearm without a parent's or guardian's permission or (2) a resident of the home is either ineligible to possess a firearm or poses a risk of personal harm or harm to others. The person controlling the premises must either:

1. keep any firearm in a securely locked box or other container or in a manner that a reasonable person would believe to be secure or
2. carry it on his or her person or within such close proximity that he or she can readily retrieve and use the firearm as if he or she were carrying it.

The bill extends these requirements to situations where the person controlling the premises knows or reasonably should know that a resident is subject to a (1) firearm seizure order issued after notice and a hearing or (2) risk protection order.

Under existing law, if the person controlling the premises violates these firearm storage requirements and the other person obtains the firearm and injures someone, then the person in control faces civil and criminal liability. Specifically, the person is (1) subject to strict civil liability for damages (i.e., liable regardless of intent) and (2) generally guilty of a class D felony punishable by up to five years in prison, a fine of up to \$5,000, or both (CGS §§ 52-571g & 53a-217a). The bill does not explicitly extend this to cases where the other person is subject to a firearm seizure order or risk protection order. But in some cases, this

civil and criminal liability could apply because these people are ineligible to possess firearms under existing law (for risk warrants) or the bill (for risk protection orders).

## **BACKGROUND**

### ***Psychiatric Commitment under a Physician's Emergency Certificate***

By law, a person may be confined for up to 15 days without a court order pursuant to a physician's emergency certificate. The physician must have concluded that the person (1) has psychiatric disabilities and is a danger to himself or herself or others or gravely disabled and (2) needs immediate care and treatment in a hospital for psychiatric disabilities.

If a written application for commitment has been filed in probate court before the end of the 15-day period, the emergency commitment may be continued for an additional 15 days or until completion of probate proceedings, whichever is sooner. The person must be examined by a psychiatrist within 48 hours of admission (or 36 hours if the person is admitted at a chronic disease hospital). If the psychiatrist determines that the person does not meet the criteria for emergency detention and treatment, the person must be released. Anyone held under these provisions has the right to a hearing within 72 hours of requesting one in writing, excluding weekends and holidays (CGS § 17a-502).

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 27 Nay 11 (04/06/2021)