

---

---

## OLR Bill Analysis

sHB 6355 (as amended by House "A")\*

### ***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 or assistant 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 to also cover other deadly weapons (see BACKGROUND). It also allows these officials to apply for a risk protection order prohibiting such a person from acquiring or possessing firearms, other deadly weapons, or ammunition.

The bill also allows (1) adult family or household members or (2) medical professionals to apply for a risk protection order investigation, to determine whether a person poses a risk of imminent injury to himself, herself, or someone else. After the court issues an investigation order, if the police determine that there is probable cause to believe that the person poses such a risk, they must seek a risk protection order and, when applicable, a risk warrant.

Under the bill, if a judge issues a risk protection order and there is probable cause to believe that the person possesses firearms or other deadly weapons, the judge must issue a risk warrant along with or following that order, under specified procedures. Like existing law for risk warrants, the bill requires a hearing within 14 days after a risk protection order is served.

The bill makes other changes to risk warrant procedures. For

example, it removes the current one-year maximum period on the state's hold of items seized under a risk warrant. Instead, it continues the risk protection order and seizure period until the person successfully petitions the court to terminate the order and warrant. It allows these individuals to periodically petition the court to challenge the order and items' seizure, starting 180 days after the initial hearing. 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's office must make available.

The bill bars people from obtaining a handgun carry permit, handgun eligibility certificate, or long gun eligibility certificate if they are subject to a risk protection order or risk protection investigation order. 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 know they are subject to a risk protection order or investigation order. 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.

The bill also reduces the circumstances in which certain misdemeanor convictions make someone (1) ineligible to obtain these firearm credentials or (2) guilty of criminal possession of handguns or other firearms, electronic defense weapons, or ammunition. It removes certain drug possession convictions before October 1, 2015, (principally, a first offense for possessing under four ounces of marijuana) from the list of misdemeanors that bar eligibility for these credentials or items. For other currently disqualifying misdemeanors, the bill limits the scope to only those occurring within the prior 20 years.

Finally, the bill extends certain firearm storage laws to include people subject to a 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.

The bill also makes minor, technical, and conforming changes.

\*House Amendment "A" replaces the underlying bill. Among other things, it (1) applies the risk warrant and risk protection order provisions to other deadly weapons; (2) removes provisions from the underlying bill allowing family and household members to apply for a risk protection order, and instead allows them to apply for a risk protection order investigation; (3) makes various changes to the underlying bill's procedures for risk warrants or risk protection orders; (4) removes provisions from the underlying bill barring people from owning guns or obtaining certain firearm permits if they were committed for psychiatric treatment under a physician's emergency certificate under certain circumstances; (5) adds the provisions on the time frame in which certain misdemeanor convictions bar people from gun ownership or certain permits; and (6) makes technical and conforming changes.

EFFECTIVE DATE: June 1, 2022

## **§ 1 — RISK PROTECTION ORDER INVESTIGATIONS**

The bill allows family or household members or medical professionals to apply to court for a risk protection order investigation if they have a good faith belief that someone poses a risk of imminent personal injury to himself, herself, or another person.

For these purposes, a "family or household member" is someone at least age 18 who is one of the following 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***

Under the bill, a family or household member or medical professional may apply for this investigation with the clerk of the court for any geographical area. The application and accompanying affidavit must be made under oath and must indicate:

1. the factual basis for the applicant's belief that the subject of the application poses such an imminent risk;
2. whether the subject of the application holds certain firearm credentials or possesses any firearms, other deadly weapons, or ammunition, if known; and
3. the location of the firearms, weapons, or ammunition, if known.

The credentials include a handgun carry permit or eligibility certificate, long gun eligibility certificate, and an ammunition certificate.

#### ***Court Order and Subsequent Duties***

Under the bill, after receiving the application and affidavit, if the court finds there is a good faith belief that the person poses an imminent risk of injury to himself, herself, or someone else, it must order a risk protection order investigation to determine if the person poses that risk.

Upon issuing the investigation order, the court must notify the Department of Emergency Services and Public Protection (DESPP) commissioner. The court also must immediately:

1. notify the law enforcement agency for the town where the person resides, and transmit to that agency the order, application, and affidavit; and
2. enter into the National Instant Criminal Background Check System (NICS) a record indicating that the person is ineligible to purchase or otherwise receive a firearm.

### ***Police Investigation***

Under the bill, after the court notifies the appropriate law enforcement agency, that agency must immediately investigate whether the subject of the investigation poses a risk of imminently injuring himself, herself, or someone else. If the police determine that there is probable cause to believe that is the case, they must apply to court for a risk protection order and, when applicable, a risk warrant (see below). The police must do so within 24 hours after receiving the investigation order, or as soon as practicable if they need more time to complete the investigation.

In cases where the police determine that there is no probable cause to believe that the person poses an imminent risk, they must notify the court, the applicant, and the DESPP commissioner in writing. The police must do so within 48 hours after receiving the investigation order, if practicable, or as soon as practicable if they need more time to complete the investigation. Under the bill, when the court receives this notification, it must immediately remove or cancel any associated record in the NICS system.

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

### ***Complaint Process***

The bill allows any two police officers or a state's attorney or assistant state's attorney, upon complaint under oath, to seek a risk protection order prohibiting someone from acquiring or possessing

firearms, other deadly weapons, or ammunition. As under existing law for risk warrants, they must have probable cause to believe the person poses a risk of imminent injury to himself, herself, or someone else. Under the bill, if the judge issues the order, the judge must also issue a risk warrant (as part of or following the risk protection order) if there is probable cause to believe that the person possesses firearms or deadly weapons at some location. Current law authorizes, but does not require, judges to issue risk warrants if there is this probable cause.

Under existing law, a risk warrant applicant must have (1) conducted an independent investigation to establish probable cause before seeking the warrant and (2) completed a sworn affidavit. The bill extends these requirements to risk protection orders.

### ***Factors in Judge's Determination***

Under the bill, in determining whether the standards are met to issue a risk protection order, the judge must consider the same factors as under existing law for risk warrants. So, 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. The bill also allows the judge to consider whether the person recklessly used, displayed, or brandished other deadly weapons for both orders and warrants.

### ***Issuance of Order and Warrant***

As under existing law for risk warrants, if the judge is satisfied that the standards have been met, the bill requires the judge to issue the risk protection order and warrant if applicable, directed to the police, (1) naming or describing the person, (2) stating the grounds or

probable cause, and (3) describing the place or thing to be searched when applicable. The bill specifies that if the standards to issue a risk protection order are met, the judge must issue it regardless of whether the person is already ineligible to possess firearms.

As under existing law for risk warrants, the court must provide a copy to the person along with a notice of his or her right to a hearing and legal representation. The bill (1) specifies that the court must provide the copy of the order and warrant within a reasonable time and (2) requires the notice to also include the telephone number for the court clerk who can inform the person of the hearing's date and time.

Under the bill, when the court issues a risk protection order and risk warrant, the court also must direct the clerk to notify the DESPP commissioner.

### ***Police Filing With the Court***

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 also 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 makes a conforming change by specifying that the inventory accompanying the warrant must include all other deadly weapons, not just firearms and ammunition, that were seized.

For risk protection orders, the bill requires the police agency that serves the order to file a copy with the appropriate 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. Existing law restricts disclosure of warrant information before its execution and return and similarly requires its prompt execution 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, deadly weapons, or ammunition.

As under existing law for risk warrants, the bill requires the state to 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 someone else, it may order that the risk protection order stay in effect and that the state continue to hold the items until the court (1) terminates the order and (2) orders the items' return as soon as practicable (see below). The court also must notify the Department of Mental Health and Addiction Services, which may take appropriate action allowed by laws establishing its jurisdiction over people with mental illnesses.

If the court finds that the state failed to prove that the person poses such a risk, the court must (1) terminate the order and warrant and (2) order the items' return as soon as practicable.

The bill specifies that the court cannot order the items to be returned if the person is not legally able to possess them.

### ***Period of Order and Item 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, deadly weapons, or ammunition, continues until the person successfully petitions the court to terminate the order and risk warrant if applicable.

The person may first petition the court for such a hearing starting 180 days after the hearing on the order or warrant. When the petition is filed, the court must take the following actions:

1. schedule a hearing to be held on the 28th day after the petition's filing (or the closest business day to that if the 28th day is not a business day);
2. notify the Division of Criminal Justice about the petition; and
3. direct the appropriate law enforcement agency to determine, within 14 days after the petition's filing, whether there is probable cause to believe the person poses a risk of imminently injuring himself, herself, or someone else.

The bill prohibits a finding of probable cause that is solely based on the petitioner being subject to an existing risk protection order or warrant.

The law enforcement agency must notify the court as to whether it determines that there is such probable cause. If the agency does not find probable cause, the court must cancel the hearing and terminate the order and warrant. If the agency finds probable cause, the hearing must proceed as scheduled.

At the hearing, the state has the burden of proving all material facts by clear and convincing evidence. If the court finds, after the hearing, that the petitioner poses such a risk, the order and warrant (if applicable) remain in effect. If the court finds that the state failed to prove this risk, then the court must terminate the order and warrant.

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

***Notification to NICS of Order's Termination***

Under the bill, immediately upon terminating a risk protection order, the court must remove or cancel any associated records in the NICS system.

***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.

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.

Under the bill, if DESPP or a local police department is holding firearms, other deadly weapons, or ammunition seized under a risk warrant, they must not destroy these items until at least one year has passed since the warrant's termination date. This applies despite an existing law which requires the police to destroy surrendered firearms which have not been transferred after one year.

**§ 2 — EDUCATIONAL MATERIALS**

Current law requires the chief court administrator to develop and make available to the public educational materials on the risk warrant process. The bill (1) extends this requirement to include the risk protection order process and (2) specifies that these provisions apply to the Office of the Chief Court Administrator rather than just to the administrator himself.

It also requires the office 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 investigation 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 with, and apply for, a risk protection order or risk warrant and (2) about the benefits of seeking their assistance.

### **§§ 3-7 — MISDEMEANOR CONVICTIONS AND FIREARM PERMIT AND POSSESSION ELIGIBILITY**

Under existing law, individuals are guilty of criminal possession of a handgun or other firearm, ammunition, or an electronic defense weapon when the person possesses these items and has convictions for felonies or certain misdemeanors. Additionally, they are prohibited from obtaining a handgun carry permit, handgun eligibility certificate, or long gun eligibility certificate if they have these criminal convictions.

The bill removes from the list of disqualifying convictions misdemeanor offenses committed before October 1, 2015, for a first offense for possessing (1) under four ounces of marijuana or (2) any amount of non-narcotic or non-hallucinogenic drugs.

For the other disqualifying misdemeanors under existing law, the bill limits the ineligibility to offenses committed during the past 20 years. These misdemeanors are as follows:

1. criminally negligent homicide (excluding deaths caused by motor vehicles) (CGS § 53a-58);
2. third-degree assault (CGS § 53a-61);
3. third-degree assault of an elderly, blind, disabled, or pregnant person or person with intellectual disability (CGS § 53a-61a);
4. second-degree threatening (CGS § 53a-62) (in some cases, this

crime is a felony, also barring eligibility for these credentials or items);

5. first-degree reckless endangerment (CGS § 53a-63);
6. second-degree unlawful restraint (CGS § 53a-96);
7. first-degree riot (CGS § 53a-175);
8. second-degree riot (CGS § 53a-176);
9. inciting to riot (CGS § 53a-178); and
10. second-degree stalking (CGS § 53a-181d).

Under existing law, unchanged by the bill, convictions for these misdemeanors make someone guilty of criminal possession of firearms other than handguns, ammunition, or electronic defense weapons, only if the crime was committed on or after October 1, 2013.

#### **§ 8 — 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 so closely 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 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 risk protection order. But in some cases, this civil and criminal liability could apply because these people are ineligible to possess firearms under the bill.

## **BACKGROUND**

### ***Deadly Weapons***

By law, a “deadly weapon” is a weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles (CGS § 53a-3).

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 27 Nay 11 (04/06/2021)