



PA 21-67—sHB 6355

Judiciary Committee

**AN ACT CONCERNING RISK PROTECTION ORDERS OR WARRANTS
AND DISQUALIFIERS FOR FIREARM PERMITS AND ELIGIBILITY
CERTIFICATES**

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.

Starting in June 2022, this act 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 act also allows adult family or household members, or 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 this risk, they must seek a risk protection order and, when applicable, a risk warrant.

Under the act, 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 act requires a hearing within 14 days after a risk protection order is served.

The act makes other changes to risk warrant procedures. For example, it removes the previous 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 act 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 act (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 act 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,

OLR PUBLIC ACT SUMMARY

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 (see [Table on Penalties](#)) 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.

Under existing law, the prohibition on obtaining the above gun credentials, and the criminal possession penalties listed above, already apply to people subject to a risk warrant firearm seizure order issued after notice and a hearing. Corresponding with the act's other changes, the act limits this to those orders issued before June 1, 2022.

The act also limits 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 disqualifying misdemeanors under existing law, the act limits the scope to only those occurring within the prior 20 years.

Lastly, the act extends certain firearm storage laws to cover 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 act also makes minor, technical, and conforming changes.
EFFECTIVE DATE: June 1, 2022

§ 1 — RISK PROTECTION ORDER INVESTIGATIONS

The act 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 act, 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

OLR PUBLIC ACT SUMMARY

Under the act, 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 person who is the subject of the application poses such an imminent risk;
2. whether the person 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 act, after receiving the application and affidavit, if the court finds there is a good faith belief that the person poses this imminent risk, it must order a risk protection order investigation to determine if the person poses that risk.

Upon issuing the 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 act, after the court notifies the appropriate law enforcement agency, that agency must immediately investigate whether the person 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 act, 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

OLR PUBLIC ACT SUMMARY

The act 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 act, 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. Prior law generally authorized, but did not require, judges to issue risk warrants if there was 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 act extends these requirements to risk protection orders.

Factors in Judge's Determination

Under the act, in determining whether 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 and (2) acts of animal cruelty committed by the person.

In addition, as under existing law for risk warrants, in evaluating 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 act 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 act 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 act 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 act (1) specifies that the court must provide the copy and notice 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.

OLR PUBLIC ACT SUMMARY

Under the act, when the court issues a risk protection order (and risk warrant if applicable), the court also must direct the clerk to notify the DESPP commissioner.

Police Filing With the Court

Under prior law, a risk warrant applicant had to file a copy of the application and all supporting affidavits with the appropriate court clerk. The act 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 prior law, these documents must be filed by the next business day after the warrant is executed. The act 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 act requires the police agency that serves the order to file a copy with the appropriate court and send to the state's attorney's office for the judicial district a return of service 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 disclosing 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 act 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 act 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 terminates the order and orders the items' return (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 terminate the order and warrant and order the items' return as soon as practicable.

OLR PUBLIC ACT SUMMARY

The act 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 prior law, if the court found after a hearing that the subject of a risk warrant posed an imminent risk as described above, it could order that the state continue to hold the person's firearms and ammunition for up to one year.

The act removes this one-year limit. Under the act, 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 this hearing starting 180 days after the hearing on the order or warrant.

Under the act, 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 act 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 about its determination. 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 must prove all material facts by clear and convincing evidence. If the court finds, after the hearing, that the petitioner poses 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 act, immediately upon terminating a risk protection order, the court must remove or cancel any associated records in the NICS system.

Other Changes

The act removes from the law the prior condition that the police or prosecutor could seek a risk warrant only after determining that there were no reasonable alternatives to avert the risk of harm.

The act also narrows a provision that previously allowed anyone whose guns

OLR PUBLIC ACT SUMMARY

or ammunition had been seized under these provisions (or the person's legal representative) to transfer them to anyone eligible to possess them. Instead, the act allows these transfers only to federally licensed firearms dealers. As under prior 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 act, 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

Existing law requires the chief court administrator to develop and make available to the public educational materials on the risk warrant process. The act (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. If they have these criminal convictions, they are also prohibited from obtaining a handgun carry permit, handgun eligibility certificate, or long gun eligibility certificate.

The act 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 act limits the ineligibility to offenses committed during the prior 20 years. These misdemeanors are as follows:

1. criminally negligent homicide (excluding deaths caused by motor

OLR PUBLIC ACT SUMMARY

- 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 act, convictions for these misdemeanors bar someone from possessing 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 is either ineligible to possess a firearm or poses a risk of imminent 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 act 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 (CGS §§ 52-571g & 53a-217a). The act 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 act.

BACKGROUND

Deadly Weapons

By law, a “deadly weapon” is a weapon, whether loaded or unloaded, from

OLR PUBLIC ACT SUMMARY

which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles (CGS § 53a-3).