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## OLR Bill Analysis

sHB 6877 (as amended by House "A")\*

***AN ACT CONCERNING RISK PROTECTION ORDERS OR WARRANTS AND DISQUALIFIERS FOR FIREARM PERMITS AND ELIGIBILITY CERTIFICATES BASED ON TEMPORARY COMMITMENT UNDER A PHYSICIAN'S EMERGENCY CERTIFICATION.***

### SUMMARY

Existing law allows the police or a state's attorney or assistant state's attorney, under limited circumstances, to apply to court for a risk protection order (RPO) prohibiting someone at imminent risk of injuring themselves or someone else from obtaining or possessing firearms, other deadly weapons, or ammunition. As part of this process, the court may also issue a risk warrant for the police to seize these items if the person possesses them (see BACKGROUND).

This bill makes various changes to this process, such as the following:

1. allowing a single police officer to apply for an RPO that does not include a risk warrant, instead of requiring two as under current law;
2. requiring the order and warrant, if applicable, to be served at least three days before the required hearing (current law does not set a specific deadline); and
3. limiting the existing process to adults and creating a new, separate risk warrant process for children (under age 18) who possess firearms or other deadly weapons and pose an imminent risk of injuring other people that, like the current process, starts with an investigation on the police or prosecutor's initiative or a court-ordered investigation requested by family or household members or medical professionals.

Additionally, the bill bars people from obtaining a handgun carry permit, handgun eligibility certificate, or long gun eligibility certificate if, on or after October 1, 2023, they were committed to a psychiatric hospital under a physician's emergency certificate (PEC, 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 were committed to a hospital within the prior six months under a PEC as specified above.

The bill makes conforming changes related to psychiatric commitments under PECs and the responsibilities of psychiatric hospitals, the Department of Emergency Services and Public Protection (DESPP), and Department of Mental Health and Addiction Services (DMHAS).

It also makes minor, technical, and conforming changes.

\*House Amendment "A" adds provisions (1) specifying certain circumstances when the police or prosecutors have discretion on whether to pursue an RPO and (2) requiring the appointment of counsel for indigent children who are subject to the bill's new process. It also specifies that the new process (1) is for children under age 18, regardless of whether they are legally emancipated, and (2) requires two police officers, rather than one as under the underlying bill, to apply for a risk warrant. Additionally, it removes a provision from the law requiring the judge, if the law's standards are met, to issue an RPO regardless of whether the person is already ineligible to possess firearms.

EFFECTIVE DATE: Upon passage, except that conforming changes to certain responsibilities for the chief court administrator's office related to the new risk warrant process for minors (§ 3) are effective June 1, 2023, and provisions on PECs (§§ 4-11) are effective October 1, 2023.

## **§ 1 — RPO AND RISK WARRANT PROCESS FOR ADULTS**

The bill limits the existing RPO and risk warrant process to adults

and creates a separate risk warrant process for minors (see § 2 below).

The bill allows a single police officer to apply for an RPO that does not include a risk warrant, rather than requiring two as under current law. As under existing law, a state's attorney or assistant state's attorney may also apply for an RPO and risk warrant.

The bill specifies that a police officer, state's attorney, or assistant state's attorney is not required to pursue an RPO, but may do so, if he or she has a good faith belief that the person posing the risk is already (1) prohibited from acquiring or possessing firearms or (2) the subject of an existing or pending RPO.

Current law requires that the applicant for an RPO, and risk warrant if applicable, complete an affidavit sworn to before the judge. The bill continues to require a sworn affidavit, but only requires the applicant to physically appear before the judge for a risk warrant.

Under the bill, a copy of the RPO and warrant, if applicable, and related information (e.g., hearing notice) must be served upon the person no later than three days before the required hearing. Current law requires these documents to be provided within a reasonable time but does not set a specific deadline.

The bill also changes the deadline for the mandatory hearing. It requires the hearing to be held within 14 days after the court issued the RPO and warrant, if applicable. Current law requires the hearing within 14 days after the person was served.

The bill removes a provision that currently requires the judge, if the law's standards are met, to issue an RPO regardless of whether the person is already ineligible to possess firearms.

### **§§ 2 & 3 — RISK WARRANT PROCESS FOR CHILDREN**

The bill creates a separate risk warrant process for children (i.e., anyone under age 18) who (1) pose an imminent risk of injuring other people and (2) possess firearms or other deadly weapons.

In several respects, the bill's new process is similar to the current process. For example, both provide two avenues to begin the process: (1) the police or a prosecutor applies to court after their investigation or (2) a family or household member or qualifying medical professional applies to court to begin a police investigation. Generally, both processes set similar standards and factors in the judge's determination on whether to grant the warrant or investigation order.

There are also several differences. For example, the new process provides for risk warrants to seize firearms, other deadly weapons, or ammunition, but it does not include risk protection orders to prevent children from acquiring or possessing these items (other laws restrict firearm sales to minors). Unlike the current process, the new process only applies if the child poses a risk to other people. While both processes require a hearing to determine whether the state continues to hold the items, the new process does not grant children the right to periodically request another hearing.

The bill's new process is summarized below.

***Process for Police or Prosecutor to Seek Risk Warrant (§ 2(a))***

Under the bill, any two police officers or an assistant state's attorney, upon complaint under oath, may seek a warrant from a Superior Court judge if they have probable cause to believe that (1) a child poses a risk of imminent injury to other people; (2) the child possesses at least one firearm or other deadly weapon; and (3) that weapon is within or upon any place, thing, or person. Before seeking the warrant, the applicants must have conducted an independent investigation and determined that there is (1) probable cause and (2) no reasonable alternative to prevent the child from causing imminent personal injury to other people with the firearm or deadly weapon.

***Process for Family or Household Members or Medical Professionals to Seek Investigation Order (§ 2(b)(1))***

The bill also allows certain family or household members or medical professionals to apply to juvenile court for a warrant if they have a good faith belief that (1) a child poses a risk of imminent injury to other

people; (2) the child possesses at least one firearm or other deadly weapon; and (3) these weapons are within or upon any place, thing, or person. These provisions apply to the same family or household members and medical professionals as under existing law for RPO investigations (see BACKGROUND).

The application and accompanying affidavit must be made under oath and indicate the (1) factual basis for the applicant's belief that the child poses this imminent risk and possesses a firearm or deadly weapon and (2) location of the firearms, weapons, or ammunition, if known.

***Court Order and Notice to Police (§ 2(b)(2)).*** Under the bill, after receiving the application and affidavit, if the court finds there is a good faith belief that the child poses this imminent risk and possesses at least one firearm or deadly weapon, it must order a risk warrant investigation to determine if the child poses that risk and has these weapons.

Upon issuing the order, the court must immediately notify the law enforcement agency for the town where the child lives and send the order, application, and affidavit to it.

***Police Investigation (§ 2(b)(3)).*** Under the bill, after receiving this order, the law enforcement agency must immediately investigate whether the child (1) poses a risk of imminently injuring someone else and (2) possesses a firearm or deadly weapon. If the agency determines that there is probable cause to believe that is the case, it must apply to court for a risk warrant. The agency must do so within 24 hours after receiving the investigation order or, if they need more time to complete the investigation, as soon as practicable.

If the law enforcement agency determines that there is no probable cause, it must notify the court and the applicant in writing. It must do so within 48 hours after receiving the investigation order or if they need more time to complete the investigation, as soon as practicable.

***Judge's Determination and Issuance of Warrant (§ 2(a) & (c))***

The bill establishes the same process for the judge to issue the

warrant, whether the applicants are (1) police officers or an assistant state's attorney applying after their investigation or (2) police officers applying after a court-ordered investigation for requests by family or household members or medical professionals.

The bill allows a judge to issue a risk warrant only upon an affidavit, sworn to by the applicant physically before the judge, establishing the grounds for the warrant. The affidavit is part of the juvenile court file. The bill specifies that the file is considered a record of juvenile matters with the same confidentiality protections that apply to juvenile delinquency matters (see BACKGROUND).

Under the bill, in determining whether there is probable cause for the warrant, the judge must consider the child's recent (1) threats or violent acts toward other people and (2) acts of animal cruelty. In evaluating whether these threats or acts constitute probable cause to believe the child poses an imminent risk, the judge may consider other things, including whether the child (1) recklessly used, displayed, or brandished a firearm or other deadly weapon; (2) has a history of using, attempting, or threatening to use physical force against other people; (3) was ever involuntarily confined to a psychiatric hospital; or (4) abused alcohol or illegally used controlled substances.

If the judge is satisfied that the standards have been met, the judge must issue a risk warrant, directed to a police officer, (1) naming or describing the child, (2) stating the grounds or probable cause, and (3) describing the place or thing to be searched. The warrant must direct the officer to search for the named child, place, or thing, within a reasonable time, for any firearm, other deadly weapons, or ammunition and take these items into custody.

Under the bill, at least three days before the required hearing (see below), a copy of the warrant must be served on the child and the parent or guardian named in the warrant, along with a notice informing them that the child has the right to a hearing and to be represented by counsel at the hearing.

Under the bill, counsel must be appointed on the child's behalf for

the juvenile court proceedings if the child and his or her parent or guardian cannot afford counsel and they are determined to be indigent and eligible for counsel under the public defender laws.

***Police Duties After Warrant Is Issued; Nondisclosure by Court Clerk (§ 2(d))***

The bill requires the warrant to be executed and returned with reasonable promptness consistent with due process and accompanied by a written inventory of all seized firearms, deadly weapons, and ammunition.

The police agency that executed the warrant must file a copy of the application and all supporting affidavits with the appropriate juvenile court clerk and assistant state's attorney office by the next business day after the warrant is executed. The court clerk cannot disclose any information about the application or related affidavits.

***Mandatory Hearing (§ 2(e) & (f))***

Under the bill, the juvenile court serving the town where the child lives must hold a hearing within 14 days after the risk warrant's issuance. The purpose of the hearing is to determine if the state should continue to hold the weapons or ammunition or return them to their rightful owner. During the hearing, the judge may exclude from the room anyone whose presence is unnecessary, in the judge's opinion.

At the hearing, the state must prove all material facts by clear and convincing evidence. After the hearing, if the court finds that the child poses an imminent risk of injuring someone else, it may order that the state continue to hold the items until a further court order. If the court finds that the state failed to prove this, it must order the items to be returned to their rightful owner as soon as practicable, so long as that person is legally eligible to possess them.

***Educational Materials (§ 3)***

Existing law requires the chief court administrator's office to develop and make available (1) public educational materials on the RPO and risk warrant processes; (2) forms (in hard copy and online) for family or

household members or medical professionals to apply for an RPO investigation; and (3) a one-page, plain language explanation of how to apply. The bill makes conforming changes by also requiring these materials and other documents for the bill's new risk warrant process for children.

#### **§§ 4-11 — PHYSICIAN EMERGENCY CERTIFICATES**

The bill prohibits people from obtaining a handgun carry permit, handgun eligibility certificate, or long gun eligibility certificate if, on or after October 1, 2023, they were committed to a psychiatric hospital under a PEC 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, or on after October 1, 2023, they were committed within the prior six months under a PEC as specified above. By law, these crimes are class C felonies (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.

Under existing law, the prohibition on obtaining the gun credentials listed above, and the criminal possession penalties, already apply to, among others, people who were voluntarily admitted to a psychiatric hospital within the prior six months for the reasons noted above (except the criminal penalties do not apply to police officers under certain circumstances). These provisions also already apply to people who were confined in a psychiatric hospital within the last 60 months by a probate court order (or for the criminal penalties, the previous 12 months in some cases).

The bill makes conforming changes to the responsibilities of psychiatric hospitals, DESPP, and DMHAS relating to psychiatric commitments under PECs. As is already the case for certain other psychiatric commitments or admissions under existing law:



1. psychiatric hospitals must notify DMHAS about these commitments;
2. DMHAS must maintain information on these commitments and give it to the DESPP commissioner so that he may carry out his obligations pertaining to gun credentials (DESPP must otherwise keep the information confidential);
3. the DESPP commissioner must verify from DMHAS that a person applying for a gun credential was not subject to such a commitment; and
4. 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.

## **BACKGROUND**

### ***RPO and Risk Warrant Process***

Existing law establishes two ways to begin the RPO and risk warrant process. The first is initiated by the police (or a state's attorney or assistant state's attorney) following their investigation, who then apply to court for the RPO and, when applicable, a risk warrant.

The second is initiated by qualifying family or household members or medical professionals applying to court for an RPO investigation. If the order is granted and the police subsequently determine there is probable cause to believe that the person poses an imminent risk, the police apply to court for an RPO and, when applicable, a risk warrant.

In either case, if the judge issues the order and warrant, the police seize the person's firearms, deadly weapons, and ammunition, and hold the items until the required court hearing.

After the hearing, if the court finds that the state failed to prove that the person poses an imminent risk, it terminates the order and warrant and orders the items' return (so long as the person is otherwise legally able to possess them). If the court finds that the person poses this risk, it may order that the RPO stay in effect and that the state continue to hold

the items. The person must wait at least 180 days before petitioning the court for another hearing (CGS § 29-38c).

***Family or Household Members or Medical Professionals***

Under existing law for RPO investigations, 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 living 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.

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 (CGS § 29-38c(j)).

***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 PEC. The physician must have concluded, based on a personal examination, 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 the probate proceedings conclude, 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).

***Juvenile Delinquency Records***

Records of juvenile delinquency cases are generally confidential but are available to certain people or agencies for specified purposes. For example, they are available to (1) court employees who need access to perform their jobs or (2) government employees and agents (such as law enforcement) involved in the delinquency proceedings, the direct provision of services to the child, or the delivery of court diversionary programs (CGS § 46b-124(c) & (d)).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 29 Nay 7 (03/30/2023)

Appropriations Committee

Joint Favorable

Yea 53 Nay 0 (05/01/2023)