



Ohio Legislative Service Commission

Bill Analysis

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H.B. 160

130th General Assembly
(As Introduced)

Reps. R. Hagan, Antonio, Foley, Fedor, Driehaus

BILL SUMMARY

- Requires a person who moves for a temporary protection order in a criminal action or who petitions for an ex parte civil protection order to describe in the motion or petition the number, types, and locations of any firearms known by the movant or petitioner to be possessed or controlled by the defendant or respondent.
- Requires that a temporary protection order in a criminal action or an ex parte civil protection order prohibit the defendant or respondent from owning, possessing, purchasing, or receiving a firearm or ammunition while the order is in effect.
- Requires that a temporary protection order in a criminal action or an ex parte civil protection order include or be accompanied by a written notice that states the defendant's or respondent's obligations under the bill, including the specific date by which any firearms must be surrendered.
- Requires a person subject to a temporary protection order in a criminal action or an ex parte civil protection order to surrender firearms to a law enforcement agency or to sell them to a federally licensed firearms dealer.
- Requires a law enforcement officer or a dealer who takes possession of a firearm to provide a receipt and requires the person subject to the order to file the original receipt with the court and a copy with the appropriate local law enforcement agency.
- Authorizes a law enforcement agency to charge a fee for the storage of any surrendered firearm.
- Provides for the return of a surrendered firearm following the expiration of the temporary protection order in a criminal action or an ex parte civil protection order

or the other disposition of the firearm if the defendant or respondent is not the legal owner or is prohibited from possessing a firearm.

- Authorizes a court to exempt a defendant or respondent from surrendering a firearm that is needed for employment or that is not under the control of the defendant or respondent.
- Authorizes a court to grant use immunity to a defendant or respondent who refuses to relinquish possession of a firearm on the grounds that relinquishment would constitute self-incrimination.

CONTENT AND OPERATION

The bill requires the surrender of firearms by a defendant who is subject to a temporary order of protection in a criminal action or by a respondent who is subject to an ex parte civil protection order. The bill includes exceptions to the surrender requirement and establishes procedures for the return or other disposition of surrendered firearms.

Temporary criminal and ex parte civil protection orders – background

Temporary criminal protection orders

The Revised Code authorizes an alleged victim of criminal damaging or endangering, criminal mischief, burglary, aggravated trespass, an offense of violence, or a sexually oriented offense to file a motion for a temporary protection order as a pretrial condition of release of the alleged offender if the victim was a family or household member of the offender at the time of the offense. The motion is also available in cases involving similar offenses under municipal ordinances and may be filed by the complainant or a family or household member of the victim as well as by the victim. In emergencies in which the victim is unable to file a motion, a person who arrested the alleged offender may file on behalf of the victim.¹ If the court issues such an order, the order may only contain those terms authorized by the statute that allows such order to be issued. The bill authorized such orders to also contain the terms authorized by the bill and discussed below.²

¹ R.C. 2919.26(A)(1).

² R.C. 2919.26(D)(3).



Ex parte civil protection orders

The Revised Code authorizes a person on the person's own behalf or a parent or adult household member on behalf of any other family or household member to petition a court for a protection order against someone the petitioner alleges has engaged in domestic violence against a family or household member. The petitioner may request an ex parte order (a temporary order issued immediately, without prior notice to the respondent). If the petitioner requests an ex parte order, the court must hold an ex parte hearing on the same day the petition is filed. The court may order an ex parte order if the court finds it necessary to protect the family or household member from domestic violence. If the court issues an ex parte order, it must schedule a full hearing to take place within seven or ten days (depending on the nature of the order) from the date of the ex parte hearing, upon notice to the respondent.³

Firearms prohibitions

Under the bill, an alleged victim or arresting officer who moves for a temporary protection order or a person who petitions for a civil ex parte protection order must describe in the motion or petition the number, types, and locations of any firearms presently known by the movant or petitioner to be possessed or controlled by the defendant or respondent. The Revised Code provides a form for a motion for a temporary protection order to which all such motions must substantially conform. The bill modifies the form to include a statement that, to the best of the movant's knowledge, the number, types, and locations of any firearms possessed or controlled by the defendant are those then listed on the form by the movant.⁴

If the court issues a temporary protection order or a civil ex parte protection order, the order must prohibit the defendant or respondent from owning, possessing, purchasing, or receiving a firearm or ammunition while the order is in effect. The order must include or be accompanied by a written notice that states the defendant's or respondent's obligations under the bill, including the specific date by which any firearms must be surrendered. This notice is in addition to the notice required under existing law.⁵

³ R.C. 3113.31(C) and (D).

⁴ R.C. 2919.26(B), 2919.261(A), 3113.31(C)(3), and 3113.311(A).

⁵ R.C. 2919.26(G)(2), 2919.261(B), 3113.31(D)(1) and (F)(2), and 3113.311(B).



Surrender of firearms

A defendant or respondent who is served with an order and notice described in the prior paragraph must promptly surrender any firearms in or subject to the defendant's or respondent's immediate possession or control. If the order and notice are served by a law enforcement officer and the officer requests the surrender to the officer of any firearms, the defendant or respondent must immediately surrender the firearms in a safe manner to the officer. If the order and notice are not served by a law enforcement officer or the officer does not request surrender to the officer of any firearms, the defendant or respondent must surrender any firearms within 24 hours after service of the order and notice by surrendering the firearms in a safe manner to a law enforcement officer or by selling the firearms to a federally licensed firearms dealer.⁶

Receipt for surrendered firearm

An officer or dealer who takes possession of a firearm must give a receipt for the firearm to the defendant or respondent at the time of surrender or sale. Within 48 hours after being served with the order and notice, the defendant or respondent must file the receipt with the court that issued the order and file a copy of the receipt with the law enforcement agency that employs the officer who served the order and notice. If someone other than a law enforcement officer served the order and notice, the defendant or respondent must file the copy with the municipal law enforcement agency having jurisdiction over the place where the order and notice were served or, if that place is in an unincorporated area, with the sheriff having jurisdiction over that place.⁷

Storage fee

The bill allows a law enforcement agency to charge the defendant or respondent a fee for the storage of any surrendered firearm. The fee may not exceed the costs incurred by the agency that are directly related to taking possession of and storing the firearm and either returning the firearm to the defendant or respondent or selling it to a federally licensed firearms dealer.⁸

Disposition of firearm

A law enforcement agency that has custody of a firearm surrendered pursuant to a temporary protection order in a criminal action or a ex parte civil protection order

⁶ R.C. 2919.261(C) and 3113.311(C).

⁷ R.C. 2919.261(C) and (D) and 3113.311(C) and (D).

⁸ R.C. 2919.261(E) and 3113.311(E).



must return it to the defendant or respondent within five days after the order expires, unless another protection order has been issued that prohibits the defendant or respondent from possessing a firearm or the agency determines that the firearm has been stolen or that the defendant or respondent is prohibited from possessing a firearm under state or federal law.

If the agency determines that the defendant or respondent is the legal owner of a firearm that is deposited with the agency but is prohibited from possessing a firearm, the defendant or respondent may make one sale of all of the defendant's or respondent's firearms that are in the agency's custody to a federally licensed firearms dealer while the order remains in effect. Within five days after a dealer presents the agency with a bill of sale indicating that the defendant or respondent has sold to the dealer all of the defendant's or respondent's firearms that are in the agency's custody, the agency must give possession of those firearms to the dealer. If a law enforcement agency determines that the defendant or respondent is not the legal owner of any firearm deposited with the agency, the agency must make a reasonable attempt to identify and return the firearm to the legal owner. If the agency cannot identify the legal owner or if the owner is prohibited from possessing a firearm, the agency must treat the firearm as unclaimed property and dispose of it accordingly.⁹

Exceptions to surrender requirement

In issuing a temporary protection order in a criminal action or an ex parte civil protection order, a court may grant an exemption from the requirement that the defendant or respondent surrender any firearms if the defendant or respondent can show that a particular firearm is necessary as a condition of the defendant's or respondent's continued employment and that the current employer is unable to reassign the defendant or respondent to another position where a firearm is unnecessary. If the court grants an exemption, the order must provide that the defendant or respondent may have physical possession of the firearm only during scheduled work hours and during travel to and from the defendant's or respondent's place of employment.

If the defendant or respondent is a peace officer who must carry a firearm as a condition of employment and whose personal safety depends on the ability to carry a firearm, a court may allow the defendant or respondent to carry a firearm while on or off duty if, after a psychological evaluation of the defendant or respondent, the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. The court may require the peace officer to enter into counseling or another remedial

⁹ R.C. 2919.261(F) and 3113.311(F).

treatment program to deal with any propensity for domestic violence. If the defendant or respondent notifies the court that the defendant or respondent owns a firearm that is not in the defendant's or respondent's immediate possession, the court may limit the order to exclude that firearm if the court is satisfied the defendant or respondent is unable to gain access to that firearm while the protective order is in effect.¹⁰

Self-incrimination

If the defendant or respondent refuses to relinquish possession of any firearm on the grounds that relinquishment would constitute self-incrimination in violation of the United States or Ohio Constitution, the court may grant use immunity for the act of relinquishing the firearm. Use immunity prevents the fact that the defendant or respondent relinquished a firearm from being used against the defendant or respondent in a subsequent criminal proceeding.¹¹

COMMENT

Under R.C. 2919.26(A)(1), a motion for a temporary protection order in a criminal action may be filed by the complainant, the alleged victim, or a family or household member of an alleged victim, or, in an emergency situation, by the arresting officer. R.C. 2919.261(A) in the bill requires an *alleged victim or arresting officer* who moves for a temporary protection order to describe in the motion the number, types, and locations of any firearms known by the movant to be possessed or controlled by the defendant. R.C. 2919.26(B) sets forth a statutory form for the motion to be used by *any* movant, including someone other than the alleged victim or arresting officer. The form requires the movant to state the number, types, and locations of any firearms known by the movant to be possessed or controlled by the defendant. R.C. 2919.261(A) and the form in R.C. 2919.26(B) should be made consistent.

HISTORY

ACTION	DATE
Introduced	05-08-13

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¹⁰ R.C. 2919.26(G) and 3113.311(G).

¹¹ R.C. 2919.261(H) and 3113.311(H).

