

SB 719 A STAFF MEASURE SUMMARY

Carrier: Sen. Boquist, Sen. Burdick

Senate Committee On Judiciary

Action Date: 04/18/17
Action: Do pass with amendments. (Printed A-Eng.)
Vote: 3-2-0-0
Yeas: 3 - Dembrow, Manning Jr, Prozanski
Nays: 2 - Linthicum, Thatcher
Fiscal: Fiscal impact issued
Revenue: No revenue impact
Prepared By: Whitney Perez, Counsel

WHAT THE MEASURE DOES:

Creates process for obtaining extreme risk protection order prohibiting person from possessing deadly weapons when court finds that person presents risk in near future of suicide or causing injury to others. Requires respondent to surrender deadly weapons and concealed handgun license upon issuance of order. Establishes court procedures for issuance of order, hearing, and renewal and termination of order. Creates Class A misdemeanor for violation of order, false application for order or filing application to harass. Defines key terms. Allows for service of case documents through court electronic filing system or e-mail in juvenile cases.

ISSUES DISCUSSED:

- Incorporated testimony from Senate Bill 868
- Due process concerns with hearing process
- Handling of firearms subject to National Firearm Act

EFFECT OF AMENDMENT:

Replaces measure.

BACKGROUND:

Senate Bill 719-A allows a law enforcement officer or family or household member of a person to petition the court for a one-year extreme risk protection order. This order prohibits the respondent from possessing a deadly weapon. SB 719-A establishes the court process for this petition, order, hearing (should respondent request one), and renewal or termination of the order. To obtain this order, a petitioner has the burden of proof at the initial ex parte hearing. The court must determine whether to grant a petition the same day as the petition is submitted or the next judicial day. The court may only issue this order if it finds by clear and convincing evidence that the respondent presents a risk in the near future of suicide or of causing physical injury to another person. Clear and convincing evidence means a finding that the "truth of the facts asserted is 'highly probable'." *Riley Hill General Contractor, Inc. v. Tandy Corp.*, 303 Or. 390, 402. SB 719-A specifies factors that the court must consider in deciding whether to issue this order, such as a history of suicide threats or attempts, acts of violence or certain prior convictions.

Hearings to Terminate or Extend Order

SB 719-A requires that a respondent be personally served with a copy of the order and a hearing request form. A respondent has 30 days to request a hearing once served with the order. If a hearing is requested, it must occur

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within 21 days of the date the respondent requested the hearing. If the respondent does not request a hearing within 30 days, the order is confirmed and is effective for one year. SB 719-A specifies procedures for these requested hearings. For example, the Oregon Evidence Code applies and the petitioner bears the burden of proving by clear and convincing evidence that the respondent is a risk in the near future of suicide or of causing physical injury to another person.

In addition, SB 719-A allows the petitioner or respondent to submit a written request for a hearing to terminate the order during the period it is effective. SB 719-A establishes the procedures for this hearing, including that the person requesting termination bears the burden of proving by clear and convincing evidence that the respondent no longer presents a risk in the near future of suicide or of causing physical injury to another person. SB 719-A provides additional procedures for a law enforcement officer or family or household member of respondent to request a one-year renewal of this order within 90 days of the order's expiration. This request must be in writing and notice provided to all parties at least 14 days before the hearing. At this hearing, the Oregon Evidence Code applies and the person requesting renewal bears the burden of proving by clear and convincing evidence that the respondent continues to present a risk in the near future of suicide or causing physical injury to another person.

Process to Surrender Deadly Weapons and Concealed Handgun Permit

SB 719-A establishes procedures requiring someone subject to an extreme risk protection order to surrender a concealed handgun license to a law enforcement agency and surrender deadly weapons to a law enforcement agency, gun dealer or a third party who may lawfully possess the weapons. If given to law enforcement, the agency must return these items when the order is terminated or expires. SB 719-A allows a law enforcement agency to return a surrendered deadly weapon to a third party who proves lawful ownership or right to possess the deadly weapon and affirms that he or she did not provide the weapon to the respondent and will prevent respondent's future access to it.

Penalties

SB 719-A makes it a Class A misdemeanor to knowingly possess a deadly weapon when the person is subject to an extreme risk protection order. A person who commits this offense is also prohibited from possessing a firearm for five years from the later of the extreme protection order's expiration or termination or entry of conviction. It is also a Class A misdemeanor under SB 719-A to file a petition for an extreme risk protection order with the intent to harass the respondent or knowing that the information in the petition is false.

Electronic Documents in Juvenile Cases

Finally, SB 719-A allows for service and delivery of case documents on a party in juvenile cases through e-mail or the Oregon Judicial Department's electronic filing system. However, the bill does not alter requirements for the initial service.