

Initiative Measure No.

# 1491

Initiative Measure No. 1491 concerns court-issued extreme risk protection orders temporarily preventing access to firearms.

This measure would allow police, family, or household members to obtain court orders temporarily preventing firearms access by persons exhibiting mental illness, violent or other behavior indicating they may harm themselves or others.

Should this measure be enacted into law?

☐ Yes

☐ No

<b>Explanatory Statement</b>	<b>. 27</b>
<b>Fiscal Impact Statement</b>	<b>. 28</b>
<b>Arguments For and Against</b>	<b>. 31</b>



The Secretary of State is not responsible for the content of statements or arguments (WAC 434-381-180).

## Explanatory Statement

Written by the Office of the Attorney General

### The Law as it Presently Exists

Washington law provides for civil protection orders in certain circumstances. These orders restrict one person from contacting another person. Civil protection orders are mostly entered in family law cases, such as divorce proceedings, where domestic violence is alleged. Protection orders also can be issued to protect victims during criminal cases and in other circumstances where a person can show he or she is in danger from another person.

A person subject to a protection order may be required to surrender his or her firearms, dangerous weapons, and concealed pistol license while the order is in place. This can happen if four conditions are met: (1) the order restrains the person from harassing, stalking, or threatening an intimate partner, a child of an intimate partner, or the person's own child (an "intimate partner" is a current or former spouse or domestic partner, a person with whom the restrained person has a child in common, or a person with whom the restrained person shares or shared a residence in a dating relationship); (2) the order includes a finding that the restrained person is a credible threat to the physical safety of the intimate partner or the child; (3) the order specifically restrains the person from using or threatening physical force against the intimate partner or child; and (4) the restrained person was given notice and an opportunity to participate in a hearing before the order issued. It is a crime for a person restrained by such an order to possess a firearm.

A court sometimes may order the temporary surrender of firearms before a hearing and without prior notice. The court may do so only if convinced that "irreparable injury" could result before the scheduled hearing. This option is available to the court only for protection orders addressing sexual assault, stalking, harassment, domestic violence, dissolution of marriage, parental rights, and child support.

There are other situations where a court may order a person to surrender firearms, dangerous weapons, and a concealed pistol license. A court may order surrender if it finds that the person used, displayed, or threatened to use them in a felony. The court also may order surrender if the person committed fourth degree assault, coercion, stalking, reckless endangerment, or first degree criminal trespass against a family or household member. If the evidence is clear and convincing, the court must order the surrender.

A person who has been involuntarily committed for mental health treatment is barred from possessing a firearm. After treatment, that person's right to possess a firearm may be

restored by court order. But the law does not authorize a court to restrict access to firearms by a person experiencing a mental health crisis or exhibiting threatening behavior unless that person is subject to one of the civil protection orders summarized above.

### The Effect of the Proposed Measure if Approved

The measure would allow courts to issue "extreme risk protection orders." These orders would prevent a person who poses a significant danger to himself/herself or others from possessing or accessing firearms. The measure refers to such a person as the "respondent."

The measure would create two kinds of court orders. The first type of order is called an "extreme risk protection order." A member of the respondent's family or household or a person in a dating relationship with the respondent could petition a superior court for an extreme risk protection order. The measure defines who is a family or household member and it lists specific information that must be contained in the petition. The petition must be accompanied by a statement made under oath. That statement must explain the specific facts that show a reasonable fear of future dangerous acts by the respondent. The petition would be served on the respondent by a law enforcement officer.

A law enforcement officer or agency also could file a petition, along with the required factual statement made under oath. The officer or agency must make a good faith attempt to notify a member of the respondent's family or household. They also must try to notify any other known person who may be at risk of violence by the respondent. Each notice must state that the officer or agency is petitioning for an extreme risk protection order. It also must include referrals to mental health, domestic violence, counseling, or similar resources.

The superior court must hold a hearing on the petition for the protection order. The court may issue the order only if it finds, based on the evidence, that the respondent "poses a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm."

If the superior court issues an extreme risk protection order, the order is served on the respondent by a law enforcement officer. The order would require the respondent to immediately surrender all firearms and any concealed pistol license to the local law enforcement agency. The order would bar the respondent from obtaining or possessing firearms while an order is in effect. If the respondent does not comply, the court would be authorized to issue a warrant to compel the surrender of these items.

An extreme risk protection order would last for one year.

The same persons who may seek an order in the first place may ask the court to renew the order for another year. The same procedures and requirements apply to a renewal request as to the original request, and the court applies the same standard.

The respondent could request a hearing to demonstrate that the order should be terminated. The respondent could file one termination request during each 12-month period the order is in effect. The respondent then must demonstrate at the hearing that he or she does not pose a significant danger of causing personal injury to the respondent or others by having a firearm. The person who petitioned for the order must be notified of the request and hearing.

The second type of order, called an “ex parte extreme risk protection order,” would be more immediate. “Ex parte” is a legal term that refers to a hearing held without notice to the other side. This type of order would be available where there is a showing of a significant risk of personal injury in the near future. A petition for this order could be filed in municipal court, district court, or superior court. The court must hold a hearing on the day the petition is filed or on the court’s next business day. If the court issues the ex parte order, it would last only until there is a hearing in superior court on whether a one-year “extreme risk protection order” should be issued. That hearing must be held within 14 days. All the requirements for issuing a one-year “extreme risk protection order” explained above would apply at that hearing.

The measure would impose the same notice and surrender requirements for an ex parte extreme risk protection order as for the one-year order. The measure imposes the same consequences for failure to comply. Like the one-year order, the ex parte order also would be served on the respondent by a law enforcement officer.

The measure makes it a crime to file a false or intentionally harassing petition. It also makes it a crime to violate either type of extreme risk protection order.

If an extreme risk protection order expires or is terminated, the surrendered firearms must be returned to the respondent, but only if the law enforcement agency holding the firearms confirms that the respondent is currently eligible to possess firearms under federal and state law.

## Fiscal Impact Statement

Written by the Office of Financial Management  
For more information visit [www.ofm.wa.gov/ballot](http://www.ofm.wa.gov/ballot)

### Summary

Initiative 1491 authorizes the court to issue extreme risk protection orders that require the respondent to surrender his/her firearms and concealed pistol license. Total expenditures for state and local government cannot be determined. The impact depends on the number of petitions filed and granted, and the number of violations of a granted order, which cannot be estimated. This fiscal impact statement uses data from similar types of protection orders to provide estimated costs that could result from the initiative. There would be an unknown revenue increase from assessed fines.

### General Assumptions

- The effective date of the initiative is December 8, 2016.
- Unless otherwise noted, estimates use the state’s fiscal year (FY) of July 1 through June 30. For example, FY 2018 is July 1, 2017, through June 30, 2018.
- FY 2017 is a partial fiscal year: from December 8, 2016, through June 30, 2017.
- One full-time equivalent (FTE) employee equates to 2,080 hours of work for one calendar year.

### State and Local Government Expenditure Assumptions

- Initiative 1491 (I-1491) creates the authority for a court to issue a new protection order, known as an extreme risk protection order (ERPO).
- No data is available to determine the number of cases that will be filed with the court and the number of orders that will subsequently be issued.
- In some instances, information on similar protection orders may be available. These data may be used to estimate some expected costs.

### State Expenditures

I-1491 would result in indeterminate fiscal impacts to the Department of Licensing, the Department of Corrections and the Administrative Office of the Courts.

### Department of Licensing

Section 12 of I-1491 requires the Department of Licensing (DOL), upon the receipt of an ERPO from the court, to determine if the respondent has a concealed pistol license. If the respondent has a concealed pistol license, the DOL is required to immediately notify the license-issuing authority in order to revoke the license. This work is similar to work already conducted by the DOL and would require less than

0.1 FTE and less than \$7,000 per year to accomplish. In addition, the printing and postage costs for notification to license-issuing authorities of issuance of an ERPO are estimated to be \$1 per ERPO. There is no data to estimate the number of ERPOs that would be issued.

### **Department of Corrections**

I-1491 creates a new felony offense for a person who is convicted of violating an ERPO and has two or more previous convictions for violating an ERPO. The creation of this new felony may increase the offender population. As an unranked class C felony, this crime is punishable by a standard range term of confinement of zero to 12 months in jail unless an aggravated exceptional sentence is imposed. Sentences for this new offense would likely affect only county jail facilities. There would be no increase in state expenditures in cases where the sentence is served in a county jail facility.

Depending on the circumstances, a judge may impose an aggravated exceptional sentence. There is no data to estimate the increase to the prison offender population resulting from this action. However, the cost estimate to the state for one offender is \$13,422 annually, which includes staffing in the housing units, food and health care.

### **Administrative Office of the Courts**

I-1491 creates a new protection order and establishes new crimes, both the above-referenced felony and misdemeanors for violation of the order and for filing petitions with false information. There is insufficient judicial data to determine how many cases would be filed each year as a result of this initiative. The Administrative Office of the Courts (AOC) used data for similar cases to provide estimated costs that may result from the initiative. Based upon these comparisons, the AOC assumes that I-1491 would result in indeterminate expenditures greater than \$100,000.

### **Domestic violence protection orders**

An average of 17,435 domestic violence protection orders are filed annually. The AOC assumes that the number of new cases filed for an ERPO will be approximately 5 percent of the number of domestic violence protection order cases. Therefore, the AOC assumes there will be 872 new cases filed in superior court each year for an ERPO. Superior court expenditures are funded by state and local funds. The state costs for the assumed number of new cases are estimated to be \$63,593 per fiscal year.

### **Stalking protection orders**

An average of 386 petitions for stalking protection orders are filed annually. The AOC assumes there will be approximately the same number of ERPOs. The state costs for the assumed number of new cases are estimated to be

\$28,150 per fiscal year.

### **New crimes and more cases filed**

Section 13 of the initiative creates a new gross misdemeanor for providing false information in a petition and for a person possessing firearms with knowledge that the respondent is prohibited from doing so by an ERPO. Section 13 also creates a class C felony on the third instance of violating the provisions of an ERPO. This would amend the felony of unlawful possession of a firearm in the second degree to include those who possess a firearm when subject to this new protection order.

There is no judicial data available to estimate how many cases would be filed each year as a result of this initiative. If 50 more criminal cases are filed, the superior courts would see higher expenditures. The state costs are estimated to be \$5,926 per fiscal year.

### **Forms and informational materials**

Section 16 of the initiative requires the AOC to develop and prepare instructions; informational brochures; standard petitions and extreme risk protection order forms; and a court staff handbook on the ERPO process. These materials must be prepared in consultation with gun violence prevention groups, judges and law enforcement personnel. Forms, brochures and handbooks would be distributed to elected clerks and court administrators in superior, district and municipal courts in electronic format.

Development of instructional materials and translation costs are estimated at \$25,000, depending on final word counts, cost per word per language and number of required languages for translation.

### **System modifications**

The initiative requires modification to the Judicial Information System to add codes for the protection order and new crimes created by this initiative. The modifications are estimated to take 239 hours of staff time, resulting in a one-time cost of \$13,000.

### **Local Government Expenditures**

#### **Law enforcement costs**

Local government may have higher costs to fulfill duties in the initiative. However, due to the lack of data to determine the level of activity, the expenditure impact to local governments cannot be determined. Based on data from domestic violence protection orders, local governments estimate that new misdemeanor violations of ERPOs would cost approximately \$300,000 statewide annually. The cost for most jurisdictions is estimated to be less than \$50,000 annually.

According to the Washington Association of Sheriffs and Police Chiefs, 9,883 instances of violations of no contact/

protection orders involved domestic violence in 2015. An officer may spend up to four hours to arrest an individual charged with a domestic violence crime, at an average cost of \$31 per hour. Additional work for prosecutors when charging and appearing at the sentencing for an offender typically takes three hours, at an average cost of \$62 per hour. Local governments assume ERPO violations would compose approximately 5 percent of domestic violence protection orders, resulting in 494 ERPOs annually.

- Total cost to law enforcement: \$61,256 annually  
(4 hours x 494 violations x \$31 hourly wage)
- Related prosecution costs: \$91,884 annually  
(3 hours x 494 violations x \$62 hourly wage)

For a person with two or more previous convictions for violating an ERPO, the third convicted violation constitutes a class C felony. It is not possible to determine the number of felonies that would result from this initiative. However, local governments estimate the number would be low and result in costs of less than \$50,000.

The new class C felony charge and misdemeanor charges that may result from this legislation create an indeterminate cost to county jails. Misdemeanor charges carry jail sentences of 0 to 90 days. Sentences of less than one year in length are typically served in county jails. The average cost of a jail bed is \$104 per day. The new class C felony charge that would result from three ERPO violation convictions may be punishable by a range of one to three months in jail and 51 to 68 months in prison.

### **Judicial costs**

I-1491 would result in indeterminate fiscal impacts to local courts, based on information from the AOC and using the same comparisons to similar types of protection orders. Assuming the number of ERPOs would be 5 percent of domestic violence protection orders, and equal to the number of stalking protection orders, the cost to local courts would be \$401,205. Due to new crimes and more cases filed, local superior courts could see an additional increase of \$25,917 per fiscal year. Based on these assumptions, the total expenditure increase to local courts may be \$427,122 per fiscal year.

### **State and Local Revenues**

Section 13 creates two new misdemeanors and a new felony. A person convicted of filing a petition knowing the information is false, or convicted of possessing or purchasing a firearm with knowledge that he or she is prohibited from doing so (gross misdemeanors), may be subject to a fine of up to \$5,000. A person convicted of violating an ERPO who has two or more previous ERPO violation convictions, which is a class C felony, may be subject to a fine of up to

\$10,000. Fines may be assessed, reduced or waived at the discretion of the judge. Therefore, revenue from these fines cannot be estimated.



## Argument for

Washington State has taken important steps to keep guns out of dangerous hands. But there are still gaps in our laws that make it hard to keep guns away from people threatening violence against themselves or others. We know that the majority of mass shooters and individuals who attempt suicide show signs of their intentions, but current law leaves families and law enforcement - often first to see those warning signs - unable to take life-saving action.

### Initiative 1491: Empower Families, Prevent Gun Violence

Initiative 1491 empowers families and law enforcement to prevent tragedy -- giving them a chance to remove guns from a dangerous situation when they know someone is a threat to themselves or others. Parents of shooters at Isla Vista, Seattle's Cafe Racer, and other tragedies have said they could have used this type of law to prevent senseless violence. Initiative 1491 would also expand protections that keep guns out of the hands of domestic abusers. Similar laws in other states have been shown to prevent some suicides.

### Initiative 1491: Respect Due Process

Initiative 1491 closely follows existing process for other civil protection orders. Both parties may present evidence in court. A judge determines whether evidence of danger is sufficient and issues an order, effective for one year. There are criminal penalties for false petitions.

### Initiative 1491: Community Support

Endorsed by Washington State Public Health Association, League of Women Voters, Faith Action Network, Everytown for Gun Safety, law enforcement, domestic violence experts, gun owners, and gun violence survivors.

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## Rebuttal of argument against

Initiative 1491 fills a critical need in Washington's proven, established protection order system. It simply gives families a tool to save lives— keeping guns from loved ones who are likely to use them for violence to themselves or others. Initiative 1491 is a targeted, tested way to keep guns out of dangerous hands and respect due process—endorsed by mental health professionals, law enforcement and suicide prevention advocates.

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## Written by

**Marilyn Balcerak**, Gun violence survivor, Bonney Lake;  
**Stephanie Holten**, Domestic abuse and gun violence survivor, Spokane; **John Urquhart**, King County Sheriff; **Regina Malveaux**, CEO, YWCA of Spokane; **Ken Taylor**, CEO, Valley Cities Behavioral Health Care; **Bobbe Bridge**, Washington State Supreme Court Justice (retired)

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<http://gunresponsibility.org/solution/extreme-risk-protection-orders/>

## Argument against

### I-1491 Duplicates Existing Laws

I-1491 disregards existing state laws that already require treatment and restriction of potentially dangerous individuals. I-1491 doesn't require evaluation, treatment, or monitoring and does nothing to address underlying issues. Recently implemented laws actually provide early detection and intervention of persons at danger to themselves or others.

### Stigmatizes Mental Illness

I-1491 associates mental illness with mass shootings and violent crime. Statistics show that only 3%-5% of violent acts are committed by people with serious mental illness. The *vast majority of people with mental illness are not violent* and are ten times more likely to be victims of violent crime than the general population.

### Violates Rights

A broadly defined set of people, including former roommates and police, can file a petition against you. Due process is undermined by allowing immediate *ex parte* orders; hearings and judgments *without notice* to the accused person. The definition of "Extreme Risk" is unclear. A judge can issue an order based on *arbitrary factors* and reported behaviors including simply purchasing a gun legally. To be released from an order, *a person must prove* he/she is not a danger to themselves or others *and* pay for the tremendous cost of their own defense.

### Gives False Sense of Security

There is *no evidence* that such orders reduce mass shootings and violent crime.

Restrictions on firearm ownership should not be based on ideological agendas manipulating public fears and misconceptions about gun violence. I-1491 is a targeted, discriminatory abridgement of Second Amendment rights. *Vote No!*

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## Rebuttal of argument for

*Ineffective!* We all want to reduce tragedy, but I-1491 doesn't include treatment of allegedly dangerous people, and doesn't remove other dangerous items (vehicles, knives...). *Misdirected!* I-1491 ignores that 95-97% of violent crimes are not related to mental illness. *Deceptive!* In Isla Vista, the parents told police they "found it difficult to believe their son either owned weapons or would actually hurt anyone." *Unintended consequences!* Confiscating firearms doesn't make someone stable, it makes them mad.

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## Written by

**David Combs**, Mental Health Advocate, Redmond; **Linda Sherry**, Mother, Educator, Support Group Facilitator, Woodinville; **Dean Takko**, State Senator, Democrat, Longview; **Matt Shea**, State Representative, Republican, Army Veteran, Spokane Valley; **Dave Workman**, Journalist, North Bend

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## Complete Text

### Initiative Measure No. 1491

AN ACT Relating to extreme risk protection orders; adding a new chapter to Title 7 RCW; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

**NEW SECTION. Sec. 1. INTENT.** (1) This act is designed to temporarily prevent individuals who are at high risk of harming themselves or others from accessing firearms by allowing family, household members, and police to obtain a court order when there is demonstrated evidence that the person poses a significant danger, including danger as a result of a dangerous mental health crisis or violent behavior.

(2) Every year, over one hundred thousand people are victims of gunshot wounds and more than thirty thousand of those victims lose their lives. Over the last five years for which data is available, one hundred sixty-four thousand eight hundred twenty-one people in America were killed with firearms—an average of ninety-one deaths each day.

(3) Studies show that individuals who engage in certain dangerous behaviors are significantly more likely to commit violence toward themselves or others in the near future. These behaviors, which can include other acts or threats of violence, self-harm, or the abuse of drugs or alcohol, are warning signs that the person may soon commit an act of violence.

(4) Individuals who pose a danger to themselves or others often exhibit signs that alert family, household members, or law enforcement to the threat. Many mass shooters displayed warning signs prior to their killings, but federal and state laws provided no clear legal process to suspend the shooters' access to guns, even temporarily.

(5) In enacting this initiative, it is the purpose and intent of the people to reduce gun deaths and injuries, while respecting constitutional rights, by providing a court procedure for family, household members, and law enforcement to obtain an order temporarily restricting a person's access to firearms. Court orders are intended to be limited to situations in which the person poses a significant danger of harming themselves or others by possessing a firearm and include standards and safeguards to protect the rights of respondents and due process of law.

**NEW SECTION. Sec. 2. SHORT TITLE.** This act may be known and cited as the extreme risk protection order act.

**NEW SECTION. Sec. 3. DEFINITIONS.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Extreme risk protection order" means an ex parte temporary order or a final order granted under this chapter.

(2) "Family or household member" means, with respect to a respondent, any: (a) Person related by blood, marriage, or adoption to the respondent; (b) Dating partners of the respondent; (c) Person who has a child in common with the

respondent, regardless of whether such person has been married to the respondent or has lived together with the respondent at any time; (d) Person who resides or has resided with the respondent within the past year; (e) Domestic partner of the respondent; (f) Person who has a biological or legal parent-child relationship with the respondent, including stepparents and stepchildren and grandparents and grandchildren; and (g) Person who is acting or has acted as the respondent's legal guardian.

(3) "Petitioner" means the person who petitions for an order under this chapter.

(4) "Respondent" means the person who is identified as the respondent in a petition filed under this chapter.

**NEW SECTION. Sec. 4. PETITION FOR AN EXTREME RISK PROTECTION ORDER.** There shall exist an action known as a petition for an extreme risk protection order.

(1) A petition for an extreme risk protection order may be filed by (a) a family or household member of the respondent or (b) a law enforcement officer or agency.

(2) An action under this chapter must be filed in the county where the petitioner resides or the county where the respondent resides.

(3) A petition must:

(a) Allege that the respondent poses a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm, and be accompanied by an affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of future dangerous acts by the respondent;

(b) Identify the number, types, and locations of any firearms the petitioner believes to be in the respondent's current ownership, possession, custody, or control;

(c) Identify whether there is a known existing protection order governing the respondent, under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, 26.50, or 26.52 RCW or under any other applicable statute; and

(d) Identify whether there is a pending lawsuit, complaint, petition, or other action between the parties to the petition under the laws of Washington.

(4) The court administrator shall verify the terms of any existing order governing the parties. The court may not delay granting relief because of the existence of a pending action between the parties or the necessity of verifying the terms of an existing order. A petition for an extreme risk protection order may be granted whether or not there is a pending action between the parties.

(5) If the petitioner is a law enforcement officer or agency, the petitioner shall make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for an extreme risk protection order or has already done so, and include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having

provided such notice, or attest to the steps that will be taken to provide such notice.

(6) If the petition states that disclosure of the petitioner's address would risk harm to the petitioner or any member of the petitioner's family or household, the petitioner's address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address under this subsection, the petitioner must designate an alternative address at which the respondent may serve notice of any motions. If the petitioner is a law enforcement officer or agency, the address of record must be that of the law enforcement agency.

(7) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by section 16 of this act. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(8) No fees for filing or service of process may be charged by a court or any public agency to petitioners seeking relief under this chapter. Petitioners shall be provided the necessary number of certified copies, forms, and instructional brochures free of charge.

(9) A person is not required to post a bond to obtain relief in any proceeding under this section.

(10) The superior courts of the state of Washington have jurisdiction over proceedings under this chapter. Additionally, district and municipal courts have limited jurisdiction over issuance and enforcement of ex parte extreme risk protection orders issued under section 6 of this act. The district or municipal court shall set the full hearing provided for in section 5 of this act in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court has concurrent jurisdiction with the superior court to extend the ex parte extreme risk protection order.

**NEW SECTION. Sec. 5. EXTREME RISK PROTECTION ORDER HEARINGS AND ISSUANCE.** (1) Upon receipt of the petition, the court shall order a hearing to be held not later than fourteen days from the date of the order and issue a notice of hearing to the respondent for the same.

(a) The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from potential harm. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing.

(b) The court clerk shall cause a copy of the notice of hearing and petition to be forwarded on or before the next judicial day to the appropriate law enforcement agency for service upon the respondent.

(c) Personal service of the notice of hearing and petition shall be made upon the respondent by a law enforcement officer not less than five court days prior to the hearing. Service issued under this section takes precedence over the

service of other documents, unless the other documents are of a similar emergency nature. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication or mail as provided in section 8 of this act. The court shall not require more than two attempts at obtaining personal service and shall permit service by publication or mail after two attempts at obtaining personal service unless the petitioner requests additional time to attempt personal service. If the court issues an order permitting service by publication or mail, the court shall set the hearing date not later than twenty-four days from the date the order issues.

(d) The court may, as provided in section 6 of this act, issue an ex parte extreme risk protection order pending the hearing ordered under this subsection (1). Such ex parte order must be served concurrently with the notice of hearing and petition.

(2) Upon hearing the matter, if the court finds by a preponderance of the evidence that the respondent poses a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm, the court shall issue an extreme risk protection order for a period of one year.

(3) In determining whether grounds for an extreme risk protection order exist, the court may consider any relevant evidence including, but not limited to, any of the following:

(a) A recent act or threat of violence by the respondent against self or others, whether or not such violence or threat of violence involves a firearm;

(b) A pattern of acts or threats of violence by the respondent within the past twelve months including, but not limited to, acts or threats of violence by the respondent against self or others;

(c) Any dangerous mental health issues of the respondent;

(d) A violation by the respondent of a protection order or a no-contact order issued under chapter 7.90, 7.92, 10.14, 9A.46, 10.99, 26.50, or 26.52 RCW;

(e) A previous or existing extreme risk protection order issued against the respondent;

(f) A violation of a previous or existing extreme risk protection order issued against the respondent;

(g) A conviction of the respondent for a crime that constitutes domestic violence as defined in RCW 10.99.020;

(h) The respondent's ownership, access to, or intent to possess firearms;

(i) The unlawful or reckless use, display, or brandishing of a firearm by the respondent;

(j) The history of use, attempted use, or threatened use of physical force by the respondent against another person, or the respondent's history of stalking another person;

(k) Any prior arrest of the respondent for a felony offense or violent crime;

(l) Corroborated evidence of the abuse of controlled substances or alcohol by the respondent; and

(m) Evidence of recent acquisition of firearms by the respondent.



(4) The court may:

(a) Examine under oath the petitioner, the respondent, and any witnesses they may produce, or, in lieu of examination, consider sworn affidavits of the petitioner, the respondent, and any witnesses they may produce; and

(b) Ensure that a reasonable search has been conducted for criminal history records related to the respondent.

(5) In a hearing under this chapter, the rules of evidence apply to the same extent as in a domestic violence protection order proceeding under chapter 26.50 RCW.

(6) During the hearing, the court shall consider whether a mental health evaluation or chemical dependency evaluation is appropriate, and may order such evaluation if appropriate.

(7) An extreme risk protection order must include:

(a) A statement of the grounds supporting the issuance of the order;

(b) The date and time the order was issued;

(c) The date and time the order expires;

(d) Whether a mental health evaluation or chemical dependency evaluation of the respondent is required;

(e) The address of the court in which any responsive pleading should be filed;

(f) A description of the requirements for relinquishment of firearms under section 10 of this act; and

(g) The following statement: "To the subject of this protection order: This order will last until the date and time noted above. If you have not done so already, you must surrender to the (insert name of local law enforcement agency) all firearms in your custody, control, or possession and any concealed pistol license issued to you under RCW 9.41.070 immediately. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, a firearm while this order is in effect. You have the right to request one hearing to terminate this order every twelve-month period that this order is in effect, starting from the date of this order and continuing through any renewals. You may seek the advice of an attorney as to any matter connected with this order."

(8) When the court issues an extreme risk protection order, the court shall inform the respondent that he or she is entitled to request termination of the order in the manner prescribed by section 9 of this act. The court shall provide the respondent with a form to request a termination hearing.

(9) If the court declines to issue an extreme risk protection order, the court shall state the particular reasons for the court's denial.

**NEW SECTION. Sec. 6. EX PARTE EXTREME RISK PROTECTION ORDERS.** (1) A petitioner may request that an ex parte extreme risk protection order be issued before a hearing for an extreme risk protection order, without notice to the respondent, by including in the petition detailed allegations based on personal knowledge that the respondent poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm.

(2) In considering whether to issue an ex parte extreme risk

protection order under this section, the court shall consider all relevant evidence, including the evidence described in section 5(3) of this act.

(3) If a court finds there is reasonable cause to believe that the respondent poses a significant danger of causing personal injury to self or others in the near future by having in his or her custody or control, purchasing, possessing, or receiving a firearm, the court shall issue an ex parte extreme risk protection order.

(4) The court shall hold an ex parte extreme risk protection order hearing in person or by telephone on the day the petition is filed or on the judicial day immediately following the day the petition is filed.

(5) In accordance with section 5(1) of this act, the court shall schedule a hearing within fourteen days of the issuance of an ex parte extreme risk protection order to determine if a one-year extreme risk protection order should be issued under this chapter.

(6) An ex parte extreme risk protection order shall include:

(a) A statement of the grounds asserted for the order;

(b) The date and time the order was issued;

(c) The date and time the order expires;

(d) The address of the court in which any responsive pleading should be filed;

(e) The date and time of the scheduled hearing;

(f) A description of the requirements for surrender of firearms under section 10 of this act; and

(g) The following statement: "To the subject of this protection order: This order is valid until the date and time noted above. You are required to surrender all firearms in your custody, control, or possession. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, a firearm while this order is in effect. You must surrender to the (insert name of local law enforcement agency) all firearms in your custody, control, or possession and any concealed pistol license issued to you under RCW 9.41.070 immediately. A hearing will be held on the date and at the time noted above to determine if an extreme risk protection order should be issued. Failure to appear at that hearing may result in a court making an order against you that is valid for one year. You may seek the advice of an attorney as to any matter connected with this order."

(7) Any ex parte extreme risk protection order issued expires upon the hearing on the extreme risk protection order.

(8) An ex parte extreme risk protection order shall be served by a law enforcement officer in the same manner as provided for in section 5 of this act for service of the notice of hearing and petition, and shall be served concurrently with the notice of hearing and petition.

(9) If the court declines to issue an ex parte extreme risk protection order, the court shall state the particular reasons for the court's denial.

**NEW SECTION. Sec. 7. SERVICE OF EXTREME RISK PROTECTION ORDERS.** (1) An extreme risk protection order issued under section 5 of this act must be personally served upon the respondent, except as otherwise provided

in this chapter.

(2) The law enforcement agency with jurisdiction in the area in which the respondent resides shall serve the respondent personally, unless the petitioner elects to have the respondent served by a private party.

(3) If service by a law enforcement agency is to be used, the clerk of the court shall cause a copy of the order issued under this chapter to be forwarded on or before the next judicial day to the law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.

(4) If the law enforcement agency cannot complete service upon the respondent within ten days, the law enforcement agency shall notify the petitioner. The petitioner shall provide information sufficient to permit such notification.

(5) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.

(6) If the court previously entered an order allowing service of the notice of hearing and petition, or an ex parte extreme risk protection order, by publication or mail under section 8 of this act, or if the court finds there are now grounds to allow such alternate service, the court may permit service by publication or mail of the extreme risk protection order issued under this chapter as provided in section 8 of this act. The court order must state whether the court permitted service by publication or service by mail.

(7) Returns of service under this chapter must be made in accordance with the applicable court rules.

**NEW SECTION. Sec. 8. SERVICE BY PUBLICATION OR MAIL.** (1) The court may order service by publication or service by mail under the circumstances permitted for such service in RCW 7.90.052, 7.90.053, 26.50.123, or 26.50.085, except any summons must be essentially in the following form:

In the . . . . . court of the state of Washington for the county of . . . . .

. . . . ., Petitioner

vs. No. . . . .

. . . . ., Respondent

The state of Washington to . . . . . (respondent):

You are hereby summoned to appear on the . . . day of . . . , (year) . . . , at . . . a.m./p.m., and respond to the petition. If you fail to respond, an extreme risk protection order may be issued against you pursuant to the provisions of the extreme risk protection order act, chapter 7.--- RCW (the new chapter created in section 18 of this act), for one year from the date you are required to appear. (An ex parte extreme risk protection order has been issued against you, restraining you from having in your custody or control, purchasing, possessing, or receiving any firearms. You must surrender to the (insert name of local law enforcement agency) all firearms in your custody, control, or possession and any concealed

pistol license issued to you under RCW 9.41.070 within forty-eight hours. A copy of the notice of hearing, petition, and ex parte extreme risk protection order has been filed with the clerk of this court.) (A copy of the notice of hearing and petition has been filed with the clerk of this court.)

. . . . .  
Petitioner

(2) If the court orders service by publication or mail for notice of an extreme risk protection order hearing, it shall also reissue the ex parte extreme risk protection order, if issued, to expire on the date of the extreme risk protection order hearing.

(3) Following completion of service by publication or by mail for notice of an extreme risk protection order hearing, if the respondent fails to appear at the hearing, the court may issue an extreme risk protection order as provided in section 5 of this act.

**NEW SECTION. Sec. 9. TERMINATION AND RENEWAL OF ORDERS.** (1) The respondent may submit one written request for a hearing to terminate an extreme risk protection order issued under this chapter every twelve-month period that the order is in effect, starting from the date of the order and continuing through any renewals.

(a) Upon receipt of the request for a hearing to terminate an extreme risk protection order, the court shall set a date for a hearing. Notice of the request must be served on the petitioner in accordance with RCW 4.28.080. The hearing shall occur no sooner than fourteen days and no later than thirty days from the date of service of the request upon the petitioner.

(b) The respondent shall have the burden of proving by a preponderance of the evidence that the respondent does not pose a significant danger of causing personal injury to self or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm. The court may consider any relevant evidence, including evidence of the considerations listed in section 5(3) of this act.

(c) If the court finds after the hearing that the respondent has met his or her burden, the court shall terminate the order.

(2) The court must notify the petitioner of the impending expiration of an extreme risk protection order. Notice must be received by the petitioner one hundred five calendar days before the date the order expires.

(3) A family or household member of a respondent or a law enforcement officer or agency may by motion request a renewal of an extreme risk protection order at any time within one hundred five calendar days before the expiration of the order.

(a) Upon receipt of the motion to renew, the court shall order that a hearing be held not later than fourteen days from the date the order issues.

(i) The court may schedule a hearing by telephone in the manner prescribed by section 5(1)(a) of this act.

(ii) The respondent shall be personally served in the same manner prescribed by section 5(1) (b) and (c) of this act.

(b) In determining whether to renew an extreme risk

protection order issued under this section, the court shall consider all relevant evidence presented by the petitioner and follow the same procedure as provided in section 5 of this act.

(c) If the court finds by a preponderance of the evidence that the requirements for issuance of an extreme risk protection order as provided in section 5 of this act continue to be met, the court shall renew the order. However, if, after notice, the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal.

(d) The renewal of an extreme risk protection order has a duration of one year, subject to termination as provided in subsection (1) of this section or further renewal by order of the court.

**NEW SECTION. Sec. 10. SURRENDER OF FIREARMS.** (1) Upon issuance of any extreme risk protection order under this chapter, including an ex parte extreme risk protection order, the court shall order the respondent to surrender to the local law enforcement agency all firearms in the respondent's custody, control, or possession and any concealed pistol license issued under RCW 9.41.070.

(2) The law enforcement officer serving any extreme risk protection order under this chapter, including an ex parte extreme risk protection order, shall request that the respondent immediately surrender all firearms in his or her custody, control, or possession and any concealed pistol license issued under RCW 9.41.070, and conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. Alternatively, if personal service by a law enforcement officer is not possible, or not required because the respondent was present at the extreme risk protection order hearing, the respondent shall surrender the firearms in a safe manner to the control of the local law enforcement agency within forty-eight hours of being served with the order by alternate service or within forty-eight hours of the hearing at which the respondent was present.

(3) At the time of surrender, a law enforcement officer taking possession of a firearm or concealed pistol license shall issue a receipt identifying all firearms that have been surrendered and provide a copy of the receipt to the respondent. Within seventy-two hours after service of the order, the officer serving the order shall file the original receipt with the court and shall ensure that his or her law enforcement agency retains a copy of the receipt.

(4) Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that the respondent has failed to comply with the surrender of firearms as required by an order issued under this chapter, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms in his

or her possession, custody, or control. If probable cause exists, the court shall issue a warrant describing the firearms and authorizing a search of the locations where the firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to such search.

(5) If a person other than the respondent claims title to any firearms surrendered pursuant to this section, and he or she is determined by the law enforcement agency to be the lawful owner of the firearm, the firearm shall be returned to him or her, provided that:

(a) The firearm is removed from the respondent's custody, control, or possession and the lawful owner agrees to store the firearm in a manner such that the respondent does not have access to or control of the firearm; and

(b) The firearm is not otherwise unlawfully possessed by the owner.

(6) Upon the issuance of a one-year extreme risk protection order, the court shall order a new hearing date and require the respondent to appear not later than three judicial days from the issuance of the order. The court shall require a showing that the person subject to the order has surrendered any firearms in his or her custody, control, or possession. The court may dismiss the hearing upon a satisfactory showing that the respondent is in compliance with the order.

(7) All law enforcement agencies must develop policies and procedures by June 1, 2017, regarding the acceptance, storage, and return of firearms required to be surrendered under this chapter.

**NEW SECTION. Sec. 11. RETURN AND DISPOSAL OF FIREARMS.** (1) If an extreme risk protection order is terminated or expires without renewal, a law enforcement agency holding any firearm that has been surrendered pursuant to this chapter shall return any surrendered firearm requested by a respondent only after confirming, through a background check, that the respondent is currently eligible to own or possess firearms under federal and state law and after confirming with the court that the extreme risk protection order has terminated or has expired without renewal.

(2) A law enforcement agency must, if requested, provide prior notice of the return of a firearm to a respondent to family or household members of the respondent in the manner provided in RCW 9.41.340 and 9.41.345.

(3) Any firearm surrendered by a respondent pursuant to section 10 of this act that remains unclaimed by the lawful owner shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

**NEW SECTION. Sec. 12. REPORTING OF ORDERS.** (1) The clerk of the court shall enter any extreme risk protection order or ex parte extreme risk protection order issued under this chapter into a statewide judicial information system on the same day such order is issued.

(2) The clerk of the court shall forward a copy of an order issued under this chapter the same day such order is issued to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law



enforcement agency shall enter the order into the national instant criminal background check system, any other federal or state computer-based systems used by law enforcement or others to identify prohibited purchasers of firearms, and any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only expunge orders from the systems that have expired or terminated. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(3) The issuing court shall, within three judicial days after issuance of an extreme risk protection order or ex parte extreme risk protection order, forward a copy of the respondent's driver's license or identicard, or comparable information, along with the date of order issuance, to the department of licensing. Upon receipt of the information, the department of licensing shall determine if the respondent has a concealed pistol license. If the respondent does have a concealed pistol license, the department of licensing shall immediately notify the license issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(4) If an extreme risk protection order is terminated before its expiration date, the clerk of the court shall forward the same day a copy of the termination order to the department of licensing and the appropriate law enforcement agency specified in the termination order. Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered pursuant to subsection (2) of this section.

**NEW SECTION. Sec. 13. PENALTIES.** (1) Any person who files a petition under this chapter knowing the information in such petition to be materially false, or with intent to harass the respondent, is guilty of a gross misdemeanor.

(2) Any person who has in his or her custody or control, purchases, possesses, or receives a firearm with knowledge that he or she is prohibited from doing so by an order issued under this chapter is guilty of a gross misdemeanor, and further is prohibited from having in his or her custody or control, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm for a period of five years from the date the existing order expires. However, such person is guilty of a class C felony if the person has two or more previous convictions for violating an order issued under this chapter.

**NEW SECTION. Sec. 14. LAW ENFORCEMENT RETAINS OTHER AUTHORITY.** This chapter does not affect the ability of a law enforcement officer to remove a firearm or concealed pistol license from any person or conduct any search and seizure for firearms pursuant to other lawful authority.

**NEW SECTION. Sec. 15. LIABILITY.** Except as provided in

section 13 of this act, this chapter does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining an extreme risk protection order or ex parte extreme risk protection including, but not limited to, reporting, declining to report, investigating, declining to investigate, filing, or declining to file a petition under this chapter.

**NEW SECTION. Sec. 16. INSTRUCTIONAL AND INFORMATIONAL MATERIAL.** (1) The administrative office of the courts shall develop and prepare instructions and informational brochures, standard petitions and extreme risk protection order forms, and a court staff handbook on the extreme risk protection order process. The standard petition and order forms must be used after June 1, 2017, for all petitions filed and orders issued under this chapter. The instructions, brochures, forms, and handbook shall be prepared in consultation with interested persons, including representatives of gun violence prevention groups, judges, and law enforcement personnel. Materials must be based on best practices and available electronically online to the public.

(a) The instructions must be designed to assist petitioners in completing the petition, and must include a sample of a standard petition and order for protection forms.

(b) The instructions and standard petition must include a means for the petitioner to identify, with only lay knowledge, the firearms the respondent may own, possesses, receive, or have in his or her custody or control. The instructions must provide pictures of types of firearms that the petitioner may choose from to identify the relevant firearms, or an equivalent means to allow petitioners to identify firearms without requiring specific or technical knowledge regarding the firearms.

(c) The informational brochure must describe the use of and the process for obtaining, modifying, and terminating an extreme risk protection order under this chapter, and provide relevant forms.

(d) The extreme risk protection order form must include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement: "You have the sole responsibility to avoid or refrain from violating this order's provisions. Only the court can change the order and only upon written application."

(e) The court staff handbook must allow for the addition of a community resource list by the court clerk.

(2) All court clerks may create a community resource list of crisis intervention, mental health, substance abuse, interpreter, counseling, and other relevant resources serving the county in which the court is located. The court may make the community resource list available as part of or in addition to the informational brochures described in subsection (1) of this section.

(3) The administrative office of the courts shall distribute a master copy of the petition and order forms, instructions, and informational brochures to all court clerks and shall distribute a master copy of the petition and order forms to all superior, district, and municipal courts. Distribution of all documents shall, at a minimum, be in an electronic format or



formats accessible to all courts and court clerks in the state.

(4) For purposes of this section, “court clerks” means court administrators in courts of limited jurisdiction and elected court clerks.

(5) The administrative office of the courts shall determine the significant non-English speaking or limited English speaking populations in the state. The administrator shall then arrange for translation of the instructions and informational brochures required by this section, which shall contain a sample of the standard petition and order for protection forms, into the languages spoken by those significant non-English speaking populations and shall distribute a master copy of the translated instructions and informational brochures to all court clerks by December 1, 2017.

(6) The administrative office of the courts shall update the instructions, brochures, standard petition and extreme risk protection order forms, and court staff handbook as necessary, including when changes in the law make an update necessary.

**NEW SECTION. Sec. 17. SEVERABILITY.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 18.** Sections 1 through 16 of this act constitute a new chapter in Title 7 RCW.

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## Complete Text

### Initiative Measure No. 1501

AN ACT Relating to the protection of seniors and vulnerable individuals from financial crimes and victimization; amending RCW 9.35.005, 9.35.001, and 9.35.020; adding a new section to chapter 42.56 RCW and chapter 43.17 RCW; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

**NEW SECTION. Sec. 1.** This act may be known and cited as the seniors and vulnerable individuals’ safety and financial crimes prevention act.

**NEW SECTION. Sec. 2.** It is the intent of this initiative to protect the safety and security of seniors and vulnerable individuals by (1) increasing criminal penalties for identity theft targeting seniors and vulnerable individuals; (2) increasing penalties for consumer fraud targeting seniors and vulnerable individuals; and (3) prohibiting the release of certain public records that could facilitate identity theft and other financial crimes against seniors and vulnerable individuals.

**Sec. 3.** RCW 9.35.005 and 2001 c 217 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) “Financial information” means any of the following information identifiable to the individual that concerns the amount and conditions of an individual’s assets, liabilities, or credit:

- (a) Account numbers and balances;
- (b) Transactional information concerning an account; and
- (c) Codes, passwords, social security numbers, tax identification numbers, driver’s license or permit numbers, state identicard numbers issued by the department of licensing, and other information held for the purpose of account access or transaction initiation.

(2) “Financial information repository” means a person engaged in the business of providing services to customers who have a credit, deposit, trust, stock, or other financial account or relationship with the person.

(3) “Means of identification” means information or an item that is not describing finances or credit but is personal to or identifiable with an individual or other person, including: A current or former name of the person, telephone number, an electronic address, or identifier of the individual or a member of his or her family, including the ancestor of the person; information relating to a change in name, address, telephone number, or electronic address or identifier of the individual or his or her family; a social security, driver’s license, or tax identification number of the individual or a member of his or her family; and other information that could be used to identify the person, including unique biometric data.

(4) “Person” means a person as defined in RCW 9A.04.110.

(5) “Senior” means a person over the age of sixty-five.