

RCW 9.41.801 Surrender of weapons or licenses—Ensuring compliance. (1) Because of the heightened risk of lethality to petitioners when respondents to protection orders become aware of court involvement and continue to have access to firearms, and the frequency of noncompliance with court orders prohibiting possession of firearms, law enforcement and judicial processes must emphasize swift and certain compliance with court orders prohibiting access, possession, and ownership of all firearms.

(2) A law enforcement officer serving a protection order, no-contact order, or restraining order that includes an order to surrender all firearms, dangerous weapons, and a concealed pistol license under RCW 9.41.800 shall inform the respondent that the order is effective upon service and the respondent must immediately surrender all firearms and dangerous weapons in the respondent's 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, dangerous weapons, and concealed pistol license. The law enforcement officer shall take possession of all firearms, dangerous weapons, and any concealed pistol license belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. If the order is entered in open court and the respondent appears in person, the respondent shall be provided a copy and further service is not required. If the respondent refuses to receive a copy, an agent of the court may indicate on the record that the respondent refused to receive a copy of the order. If the respondent appears remotely for the hearing, or leaves the hearing before a final ruling is issued or order signed, and the court believes the respondent has sufficient notice such that additional service is not necessary, the order must recite that the respondent appeared before the court, has actual notice of the order, the necessity for further service is waived, and proof of service of the order is not necessary. The court shall enter the service and receipt into the record. A copy of the order and service shall be transmitted immediately to law enforcement. The respondent must immediately surrender all firearms, dangerous weapons, and any concealed pistol license in a safe manner to the control of the local law enforcement agency on the day of the hearing at which the respondent was present in person or remotely. Alternatively, if personal service by a law enforcement officer is not possible, and the respondent did not appear in person or remotely at the hearing, the respondent shall surrender the firearms in a safe manner to the control of the local law enforcement agency within 24 hours of being served with the order by alternate service.

(3) At the time of surrender, a law enforcement officer taking possession of firearms, dangerous weapons, and any concealed pistol license shall issue a receipt identifying all firearms, dangerous weapons, and any concealed pistol license that have been surrendered and provide a copy of the receipt to the respondent. The law enforcement agency shall file the original receipt with the court within 24 hours after service of the order and retain a copy of the receipt, electronically whenever electronic filing is available.

(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 or dangerous weapons as required by an order issued under RCW 9.41.800 or 10.99.100, the court shall determine whether probable cause exists to believe that the respondent

has failed to surrender all firearms and dangerous weapons in their possession, custody, or control. If probable cause exists that a crime occurred, the court shall issue a warrant describing the firearms or dangerous weapons and authorizing a search of the locations where the firearms and dangerous weapons are reasonably believed to be and the seizure of all firearms and dangerous weapons discovered pursuant to such search.

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

(a) The firearm or dangerous weapon is removed from the respondent's access, custody, control, or possession and the lawful owner agrees by written document signed under penalty of perjury to store the firearm or dangerous weapon in a manner such that the respondent does not have access to or control of the firearm or dangerous weapon;

(b) The firearm or dangerous weapon is not otherwise unlawfully possessed by the owner; and

(c) The requirements of RCW 9.41.345 are met.

(6) (a) Courts shall develop procedures to verify timely and complete compliance with orders to surrender and prohibit weapons under RCW 9.41.800 or 10.99.100, including compliance review hearings to be held as soon as possible upon receipt from law enforcement of proof of service. For any case where the court has indication that the respondent has in the respondent's possession, custody, or control firearms, dangerous weapons, or a concealed pistol license, a compliance review hearing shall be held. A compliance review hearing may be waived by the court or held at a later date if the information attested to by the person subject to the order, along with verification from law enforcement and any other relevant evidence, makes a sufficient showing that the person has timely and completely surrendered all firearms and dangerous weapons in the person's custody, control, or possession, and any concealed pistol license issued under RCW 9.41.070, to a law enforcement agency, and the court is able to make a finding of compliance. If the court does not have a sufficient record before it on which to make such a finding, the court must set a review hearing to occur as soon as possible and service by law enforcement shall be prioritized to minimize the time during which the respondent could access their firearms, dangerous weapons, or concealed pistol license. The respondent must be present and provide proof of compliance with the court's order. Courts shall make available forms that petitioners may complete and submit to the court in response to a respondent's declaration of whether the respondent has surrendered weapons.

(b) In making its findings regarding compliance, the court should also consider any available department of licensing and Washington state patrol firearm records; for criminal cases, the police report and any documentation of firearms, or their recovery pursuant to RCW 10.99.030(3)(a); and for civil protection order cases, the protection order narrative, any sections of the protection order petition that specifically reference or inquire about firearms and other dangerous weapons, any attachments to the protection order petition, any affidavits from law enforcement or the petitioner in response to a respondent's declaration regarding firearm surrender, or other relevant evidence regarding firearms, dangerous weapons, or a

concealed pistol license in the person's custody, control, or possession.

(c) If the court is considering waiving or delaying the compliance review hearing, the petitioner, law enforcement, or the state or city attorney may request that the compliance hearing be held, if there is reasonable suspicion to believe that the respondent has not surrendered all firearms, dangerous weapons, and any concealed pistol license, or is otherwise out of compliance with the court's order.

(7) (a) If a court finds at the compliance review hearing, or any other hearing where compliance with the order to surrender and prohibit weapons is addressed, that there is probable cause to believe the respondent was aware of and failed to fully comply with the order, failed to appear at the compliance review hearing, or violated the order after the court entered findings of compliance, pursuant to its authority under chapter 7.21 RCW, the court may issue an arrest warrant and initiate a contempt proceeding to impose remedial sanctions on its own motion, or upon the motion of the prosecutor, city attorney, or the petitioner's counsel, and issue an order requiring the respondent to appear, with additional sanctions for failure to appear, provide proof of compliance with the order, and show cause why the respondent should not be held in contempt of court.

(b) If the respondent is not present in court at the compliance review hearing or if the court issues an order to appear and show cause after a compliance review hearing, the clerk of the court shall electronically transmit a copy of the order to show cause to the law enforcement agency where the respondent resides for personal service or service in the manner provided in the civil rules of superior court or applicable statute. Law enforcement shall also serve a copy of the order to show cause on the petitioner, either electronically or in person, at no cost.

(c) The order to show cause served upon the respondent shall state the date, time, and location of the hearing and shall include a warning that the respondent may be held in contempt of court if the respondent fails to promptly comply with the terms of the order to surrender and prohibit weapons and a warning that an arrest warrant could be issued if the respondent fails to appear on the date and time provided in the order.

(d) (i) At the show cause hearing, the respondent must be present and provide proof of compliance with the underlying court order to surrender and prohibit weapons and demonstrate why the relief requested should not be granted.

(ii) The court shall take judicial notice of the receipt filed with the court by the law enforcement agency pursuant to subsection (3) of this section. The court shall also provide sufficient notice to the law enforcement agency of the hearing. Upon receiving notice pursuant to this subsection, a law enforcement agency must:

(A) Provide the court with a complete list of firearms and other dangerous weapons surrendered by the respondent or otherwise belonging to the respondent that are in the possession of the law enforcement agency; and

(B) Provide the court with verification that any concealed pistol license issued to the respondent has been surrendered and an agency with authority to revoke the license has been notified.

(iii) If the law enforcement agency has a reasonable suspicion that the respondent is not in full compliance with the terms of the

order, the law enforcement agency must submit the basis for its belief to the court, and may do so through the filing of a declaration.

(e) If the court finds the respondent in contempt, the court may impose remedial sanctions designed to ensure swift compliance with the order to surrender and prohibit weapons.

(f) The court may order a respondent found in contempt of the order to surrender and prohibit weapons to pay for any losses incurred by a party in connection with the contempt proceeding, including reasonable attorneys' fees, service fees, and other costs. The costs of the proceeding shall not be borne by the petitioner.

(8) (a) To help ensure that accurate and comprehensive information about firearms compliance is provided to judicial officers, a representative from either the prosecuting attorney's office or city attorney's office, or both, from the relevant jurisdiction may appear and be heard or submit written information at any hearing that concerns compliance with an order to surrender and prohibit weapons.

(b) Either the prosecuting attorney's office or city attorney's office, or both, from the relevant jurisdiction may designate an advocate or a staff person from their office who is not an attorney to appear on behalf of their office. Such appearance does not constitute the unauthorized practice of law.

(9) (a) The act of voluntarily surrendering firearms or weapons, providing testimony relating to the surrender of firearms or weapons, or complying with an order to surrender and prohibit weapons issued pursuant to RCW 9.41.800 or 10.99.100, and any information directly or indirectly derived from such act or testimony, may not be used against the person subject to the order in any criminal prosecution under this chapter, chapter 7.105 RCW, or RCW 9A.56.310, or in any criminal prosecution pursuant to which such order to surrender and prohibit weapons was issued, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order. Every such order issued subsequent to July 23, 2023, shall contain language consistent with the statutory immunity set forth in this subsection.

(b) If a person subject to such an order invokes the privilege against self-incrimination at the time of issuance of the order or at a subsequent hearing, the court may afford the person subject to the order an opportunity to demonstrate that compliance with the surrender provision of the order would expose that person to a realistic threat of self-incrimination in a subsequent or pending criminal proceeding. The court may conduct this portion of the proceeding ex parte or receive evidence in camera, without the presence of the prosecuting attorney, after the court conducts an analysis under *State v. Bone-Club*, 128 wn.2d 254, and concludes that the courtroom may be closed.

(c) If the person subject to the order establishes such a realistic threat of self-incrimination regarding possible criminal prosecution that is not addressed by the immunity from prosecution set forth in (a) of this subsection, the court shall afford the relevant prosecuting attorney an opportunity to offer an immunity agreement tailored specifically to the firearms or weapons implicated by the potential self-incrimination. To achieve the purposes of this section, any immunity offered should be narrowly tailored to address any realistic threat of self-incrimination while ensuring that any other firearms not implicated are surrendered.

(d) Any immunity from prosecution beyond the immunity set forth in (a) of this subsection, may only be extended by the prosecuting attorney. If the prosecuting attorney declines to extend immunity such that the person subject to the order cannot fully comply with its

surrender provision without facing a realistic threat of self-incrimination, the court's order must provide for the surrender of every firearm, dangerous weapon, and concealed pistol license that does not implicate a realistic threat of self-incrimination. The order's prohibitions regarding accessing, purchasing, receiving, or attempting to purchase or receive, any firearms or other dangerous weapons, or concealed pistol license, remain in effect.

(e) Nothing in this section shall be interpreted as diminishing the requirement that the person subject to the order fully comply with the order issued by the court. The burden remains on the person subject to the order to prove compliance.

(10) To provide relevant information to the court to determine compliance with the order, the court may allow the prosecuting attorney or city attorney to question the respondent regarding compliance.

(11) All law enforcement agencies must have policies and procedures to provide for the acceptance, storage, and return of firearms, dangerous weapons, and concealed pistol licenses that a court requires must be surrendered under RCW 9.41.800. A law enforcement agency holding any firearm or concealed pistol license that has been surrendered under RCW 9.41.800 shall comply with the provisions of RCW 9.41.340 and 9.41.345 before the return of the firearm or concealed pistol license to the owner or individual from whom it was obtained.

(12) The administrative office of the courts shall create a statewide pattern form to assist the courts in ensuring timely and complete compliance in a consistent manner with orders issued under this chapter. The administrative office of the courts shall report annually on the number of ex parte and full orders issued under this chapter by each court, and, if available, the type of protection order, no-contact order, restraining order, or criminal charge with which the order was issued, the duration of the order, the period of time from issuance of the order until the court's finding of compliance, any violations, the nature of the violations, any sanctions imposed, the number of firearms obtained pursuant to each order, whether subsequent orders were issued involving the same respondent, and may make recommendations regarding additional procedures, training, or data collection and reporting to enhance compliance and victim safety. [2023 c 462 § 403; 2022 c 268 § 30; 2021 c 215 § 75; 2020 c 126 § 1; 2019 c 245 § 2.]

Effective dates—2022 c 268: See note following RCW 7.105.010.

Effective date—2022 c 268; 2021 c 215: See note following RCW 7.105.900.