

---

---

**Senate Committee on Judiciary**

This measure may be considered for action during today's work session.

**SENATE BILL 387**

**Provides for the issuance of certain orders for protection. (BDR 3-839)**

**Sponsored by: Senators Ratti, Ford, Manendo, Spearman, Farley, et al.**

**Date Heard: April 5, 2017**

**Fiscal Impact: Effect on Local Government: May have Fiscal Impact.**

**Effect on the State: Yes.**

Senate Bill 387 provides for the issuance and enforcement of various orders of protection against a person who is alleged to have committed acts that constitute a high risk of danger to themselves or others. The bill authorizes immediate family members to obtain protection orders and prohibits a person who is subject to such an order from acquiring or having in his or her possession a firearm or ammunition while the order is in effect. The bill provides mechanisms for both the surrender and storage of a weapon and ammunition, and for the return of same. Unless the act that constitutes the violation requires a more severe penalty, a person who violates such an order is guilty of a misdemeanor and may not possess or otherwise acquire a firearm or ammunition for five years.

**Amendments:** In consultation with several interested parties, the sponsor has proposed two amendments that are attached for the Committee's review.

The first amendment seeks to:

- Eliminate the surrender of ammunition from the bill;
- Change the implementation date from January 1, 2018, to June 30, 2018;
- Allow for automatic court hearings for an extended order for protection against a high-risk individual within 14 days after the date of the initial emergency protection order or within 21 days after the date of the initial ex parte protection order;
- Allow law enforcement to secure third-party storage of firearms;
- Allow for a family member of the high-risk individual or law enforcement to request a renewal of a high-risk protection order at any time within three months before the expiration of a high-risk protection order; and
- Allow for a person who files a petition for an ex parte high-risk protection order after notice and hearing, knowing the information in the petition to be false or with the intent to harass, is guilty of a misdemeanor.

The second amendment seeks to:

- Provide legal standards of proof throughout the bill;
- Include provisions for notice and opportunity to be heard in order to protect due process, and to provide a pathway to dissolve the order if the situation merits; and
- Provide a pathway to remove the order from a criminal history report held by the Central Repository for Nevada Records of Criminal History.

## **Proposed Conceptual Amendments (SB387 – Mockup 3395)**

Eliminate the surrender of ammunition from the bill.

Implementation date: Change from January 1, 2018 to June 30, 2018.

Page 3, Line 39 – Problem: No provision for automatic court hearings

- Solution: Allow for automatic court hearings for an extended order for protection against a high-risk individual within 14 days after the date of the initial emergency protection order or within 21 days after the date of the initial ex parte protection order

Page 5, Line 17 – Problem: No provision for 3<sup>rd</sup> party storage of firearms

- Solution: Allow law enforcement to secure 3<sup>rd</sup> party storage of firearms

Page 7, Line 44 – Problem: No provision for a time period allowing family members or law enforcement to request a renewal of a high-risk protection order

- Solution: Allow for a family member of the high-risk individual or law enforcement to request a renewal of a high-risk protection order any time within three months before the expiration of a high-risk protection order

Page 8, Line 29 – Problem: No provision for a criminal penalty concerning petitions that are false or with the intent to harass

- Solution: Allow for a person who files a petition for an ex parte high-risk protection order after notice and hearing, knowing the information in the petition to be false or with the intent to harass, is guilty of a misdemeanor

## PROPOSED AMENDMENTS TO SB 387

### Contact information:

**John J. Piro**

**Deputy Public Defender**

**Clark County Public Defenders Office**

**(702) 767-5611 or [john.piro@clarkcountynv.gov](mailto:john.piro@clarkcountynv.gov)**

**309 S. Third St. #226**

**Las Vegas, NV 89155-2610**

**Sean B. Sullivan**

**Deputy Public Defender**

**Washoe County Public Defenders Office**

**(775) 741-4536 or [ssullivan@washoecounty.us](mailto:ssullivan@washoecounty.us)**

**350 S. Center St., 6<sup>th</sup> Floor**

**Reno, NV 89501**

**EXPLANATION:** Matters in (1) *blue bold italics* is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; and (5) **orange double underlining** is deleted language in the original bill proposed to be retained in this amendment.

### PROPOSE TO AMEND BILL AS FOLLOWS:

**Purpose/Intent of Proposed Amendments:** The purpose of these amendments is to provide legal standards of proof throughout the bill. Additionally, the purpose of the conceptual amendments is to provide notice and opportunity to be heard provisions to protect due process, and to provide a pathway to dissolve the order if the situation merits, and lastly provide a pathway to remove the order from your criminal history report held by the repository.

#### Amendment #1:

**Amend Section 7, paragraph 1 & paragraph 2 as follows:**

- 1. A law enforcement officer who has ~~reasonable cause~~ **probable cause** to believe that a person is a high-risk individual may file a verified application for an emergency order for protection against a high-risk individual against that person.*
- 2. A family or household member, or a law enforcement officer **who has probable cause to believe** there is a substantial likelihood that a person will, in the near future, be a high-risk individual may file a verified application for an ex parte order for protection for a high-risk individual against that person.*

#### Amendment #2:

**Amend Section 8, paragraph 2, subparagraph (a) as follows:**

- (a) There is a substantial likelihood **shown by a preponderance of the evidence** that the high-risk individual will, in the near future, cause personal injury to himself, herself or*

*another person by possessing or having under his or her custody or control, or purchasing or otherwise acquiring, any firearm or ammunition; and*

**Amendment #3:**

**Amend Section 8, paragraph 4, as follows:**

*4. In determining whether to issue any order for protection against a high-risk individual, the court may ~~must~~ consider, without limitation, whether the high-risk individual:*

**Amendment #4:**

**Conceptual Amendments:**

In our meeting we discussed providing the following provisions to be added to the bill:

1. Providing notice of the hearing to the high-risk individual on temporary and extended orders. By providing notice and an opportunity to be heard, there will at least be some form of procedural due process protections provided to the high-risk individual before a temporary or an extended order will be issued.
2. Providing notice of the hearing to the high-risk individual before a renewal of an order can be issued. By providing notice and an opportunity to be heard, there again will at least be some form of procedural due process protections provided to the high-risk individual before an order will be renewed.
3. Providing a mechanism for a high-risk individual or the person that filed for the protective order to dissolve the order if the situation merits an early dissolution.
4. Providing a pathway to remove the entry of the order from a person's criminal history report.<sup>2</sup>