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Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1537

Introduced by

Representatives Hanson, Dockter, Keiser, Sanford, Satrom, Schauer

Senators J. Lee, Oban, Poolman, Wardner

A BILL for an Act to create and enact chapter 12.1-31.3 of the North Dakota Century Code, relating to the seizure of a firearm by a law enforcement officer and the issuance of a public safety protection order; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 12.1-31.3 of the North Dakota Century Code is created and enacted as follows:

12.1-31.3-01. Definitions.

As used in this chapter:

1. "Family or household member" means an individual who:
   a. Is or was married to the respondent;
   b. Is or was residing with the respondent in the same household;
   c. Is or was related by blood or marriage to the respondent;
   d. Has or is having a child in common with the respondent;
   e. Is or has been in a dating relationship with the respondent; or
   f. The court determines has a sufficient relationship to the respondent.
2. "Firearm" means a firearm as defined in section 62.1-01-01.
3. "Petitioner" means a family or household member, or a state's attorney with jurisdiction over the respondent's residence, who files a petition requesting a public safety protection order or an emergency public safety protection order.
4. "Public safety protection order" means an order issued by the court, prohibiting and enjoining a named individual from having a firearm in that individual's custody or control, or from purchasing, possessing, or receiving a firearm, for a period of up to one year.

5. "Respondent" means the individual alleged in a petition to pose a risk or an imminent risk of personal injury to self or others by having a firearm in that individual's custody or control or by purchasing, possessing, or receiving, a firearm.

12.1-31.3-02. Law enforcement firearm seizure process - Issuance of warrant - Hearing.

1. The court may issue a warrant to search for and seize a firearm in the possession of an individual who is dangerous if:
   a. A law enforcement officer provides the court a sworn affidavit:
      (1) Stating why the law enforcement officer believes the individual is dangerous and in possession of a firearm; and
      (2) Describing the law enforcement officer's interactions and conversations with:
         (a) The individual who is alleged to be dangerous; or
         (b) Another individual, if the law enforcement officer believes the information obtained from this individual is credible and reliable, leading the law enforcement officer to believe the individual is dangerous and in possession of a firearm.
   b. The affidavit specifically describes the location of the firearm; and
   c. The court determines probable cause exists to believe the individual is:
      (1) Dangerous; and
      (2) In possession of a firearm.
2. If a court issued a warrant to seize a firearm under subsection 1, the law enforcement officer who served the warrant, not later than forty-eight hours after the warrant was served, shall file a return with the court:
   a. Stating the warrant was served; and
   b. Setting forth:
      (1) The time and date on which the warrant was served;
      (2) The name and address of the individual named in the warrant; and
      (3) The quantity and identity of firearms seized by the law enforcement officer.

3. The law enforcement officer issued a search warrant to seize a firearm under subsection 1 shall provide to the individual from whom the firearm was seized signed documentation setting forth:
   a. The quantity of firearms seized; and
   b. A description and type of any firearm seized.
4. The court shall set a hearing for a date not later than fourteen days after a return is filed under subsection 2 or at a later date upon good cause shown, to determine whether a seized firearm is to be:
   a. Returned to the individual from whom the firearm was seized; or
   b. Retained by the law enforcement agency having custody of the firearm.
5. The court shall notify the state's attorney and the individual from whom the firearm was seized of the date and location of the hearing.
6. In a hearing conducted under subsection 4, the state has the burden of proving by clear and convincing evidence all material facts. Following the hearing:
   a. If the court determines the state has proven by clear and convincing evidence the individual is dangerous, the court shall issue a public safety protection order effective for up to one year, subject to section 12.1-31.3-07, and may order the law enforcement agency having custody of the seized firearm to retain the firearm.
   b. If the court determines the state has failed to prove the individual is dangerous, the court shall order the law enforcement agency having custody of the firearm to return the firearm to the individual from whom it was seized.
   c. Subject to section 12.1-31.3-08, if the court orders a law enforcement agency to retain a firearm, the law enforcement agency shall retain the firearm until the respondent produces documentation issued by the court indicating the order has expired or been terminated.
   d. The court may order the law enforcement agency having custody of the firearm to return the firearm to the owner of the firearm if the court determines:
      (1) The individual from whom a firearm was seized is dangerous; and
      (2) The firearm seized from the individual is owned by another individual.

7. A public safety protection order issued under subsection 6 must require the respondent to refrain from having in the respondent's custody or control a firearm, and from purchasing, possessing, or receiving a firearm for the duration of the order.

8. A public safety protection order issued under subsection 6 must be signed by the judge and include:

   a. A statement of the grounds for issuance of the order;

   b. The name and address of the court where any filings should be made, the date and time of the order, and the date and time the order expires;

   c. A description of how to appeal the order;

   d. A description of how to request termination of the order under section 12.1-31.3-07. The court shall include with the order a form for a motion to terminate the order; and

   e. A statement directing the law enforcement agency, approved federally licensed firearms dealer, or other person in possession of the firearm to release the firearm to the owner upon expiration of the order.

9. The court shall schedule a review hearing within thirty calendar days before the date the public safety protection order is set to expire. The respondent must be provided notice of the review hearing.

10. At the review hearing, the court may extend the public safety protection order for up to one year if the state proves by clear and convincing evidence, the respondent continues to be dangerous.

11. If the court declines to extend a public safety protection order after a review hearing, the court shall state the particular reasons for the denial in its decision.

12. As used in this section, an individual is "dangerous" if:

   a. The individual poses an imminent risk of personal injury to self or others by having a firearm in the individual's custody or control or by purchasing, possessing, or receiving a firearm; or

   b. The individual poses a risk of personal injury to self or others in the future and the individual is the subject of documented evidence establishing reasonable belief the individual has a propensity for violent or emotionally unstable conduct.

12.1-31.3-03. Public safety protection order - Filing of petition.

1. A family or household member, or a state's attorney with jurisdiction over the respondent's residence, may file a petition requesting a court to issue a public safety protection order prohibiting and enjoining the respondent from having a firearm in the respondent's custody or control and from purchasing, possessing, or receiving a firearm.
2. A petition for a public safety protection order may be filed in any county where the respondent resides.
3. The clerk may not charge a fee for filing, amending, vacating, certifying, photocopying petitions or orders, or for any related filing service. The sheriff or other law enforcement may not charge a fee for service by the sheriff or other law enforcement of a petition, rule, motion, or order in an action commenced under this section.
4. The court shall provide simplified forms and the state's attorney's office may provide assistance with writing and filing a petition.
5. A proceeding under this section does not preclude any other available civil or criminal remedies.

12.1-31.3-04. Content of petition.

1. A petitioner may file a petition for a public safety protection order upon receipt of credible information the respondent poses a risk of personal injury to self or others by having a firearm in the respondent's custody or control or by purchasing, possessing, or receiving a firearm.
2. A petition filed pursuant to this section must allege the respondent poses a risk of personal injury to self or others by having a firearm in his or her custody or control or by purchasing, possessing, or receiving a firearm.
3. A risk of personal injury to self or others may be shown by:
   a. An act of violence or threat of violence to self or others within the last twelve months;
   b. Conviction of or arrest for domestic violence, sexual assault, stalking or harassment;
   c. Violence or cruelty toward an animal;
   d. Prior unlawful or reckless use of a firearm; or

e. A violation of a prior domestic violence protection order, disorderly conduct restraining order, an order prohibiting contact, or a sexual assault restraining order.

4. A petition for a public safety protection order must be supported by a written affidavit signed by the petitioner under oath. The affidavit in support of the petition must include:

a. The specific facts supporting the allegations in the petition; and

b. A description, type, and location of any firearm the petitioner believes to be in the respondent's custody or control.

5. The petitioner may produce sworn statements or testimony of other witnesses to support the petition.

12.1-31.3-05. Emergency relief - Temporary ex parte order - Penalty.

1. A petitioner may request an emergency public safety protection order by filing an affidavit alleging the respondent poses an imminent risk of personal injury to self or others by having a firearm in the respondent's custody or control or by purchasing, possessing, or receiving a firearm. The petition must include a description of the type and location of any firearm presently believed by the petitioner to be in the respondent's custody or control.

2. If the respondent is alleged to pose an imminent risk of causing personal injury to a family or household member, or a family or household member is alleged to have been the target of a threat or act of violence by the respondent, the petitioner shall make a good faith effort to provide notice to all family or household members of the respondent. The notice must inform the family and household members the petitioner intends to petition the court for an emergency public safety protection order. The petitioner shall attest to having provided the notice in the filed affidavit. If, after making a good faith effort, the petitioner is unable to provide notice to all family or household members of the respondent, the affidavit must describe what efforts were made.

3. An individual is guilty of a class B misdemeanor if the individual files a petition for an emergency public safety protection order knowing the information provided to the court at any hearing or in the affidavit to be false.

4. An emergency public safety protection order must be issued on an ex parte basis.

5. An emergency hearing held on an ex parte basis must be held within forty-eight hours of the petition being filed or at a later date upon good cause shown.

6. If the court finds probable cause to believe the respondent poses an imminent risk of personal injury to self or others by having a firearm in the respondent's custody or control or by purchasing, possessing, or receiving a firearm, the court shall issue an emergency public safety protection order.

7. If the court issues an emergency public safety protection order, the court, upon a finding of probable cause the respondent possesses a firearm, shall issue a search warrant directing a law enforcement agency to seize the respondent's firearm. The court, as part of the warrant, may direct the law enforcement agency to search the respondent's residence and other places where the court finds probable cause to believe the respondent is likely to possess a firearm.

8. A law enforcement agency issued a search warrant to seize a firearm under subsection 7 shall provide the respondent with signed documentation setting forth:

   a. The quantity of firearms seized; and

   b. A description and type of any firearm seized.

9. Subject to section 12.1-31.3-08, if the court orders a law enforcement agency to seize a firearm under subsection 7, the law enforcement agency shall retain the firearm until the respondent produces documentation issued by the court indicating the order has expired or been vacated or terminated.

10. An emergency public safety protection order must require the respondent to refrain from having a firearm in the respondent's custody or control, and from purchasing, possessing, or receiving a firearm for the duration of the order.

11. An emergency public safety 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. A statement that the order is effective until the court considers the petition pursuant to section 12.1-31.3-06; and

   d. The date and time of the scheduled hearing.

12. In accordance with subsection 5, the court shall set a full hearing under section 12.1-31.3-06 for a date not later than fourteen days from the issuance of an

emergency public safety protection order or at a later date upon good cause shown, to determine if a public safety protection order is warranted. The court may extend an emergency firearm order as needed, but not to exceed fourteen days, to effectuate service of the order or, if necessary, to continue protection. The court may extend the order for a greater length of time by mutual agreement of the parties.

13. If the court declines to issue an emergency public safety protection order, the court shall state in writing the reasons for the denial.

12.1-31.3-06. Hearing on petition - Grounds for issuance - Contents of order - Penalty.

1. Upon receipt of a petition for a public safety protection order, the court shall set a hearing for a date not later than thirty days after receipt of the petition.
2. The court shall consider evidence of the following when determining whether to issue a public safety protection order:
   a. An act or threat of violence by the respondent against self or others, regardless of whether the act or threat of violence involves a firearm;
   b. A pattern of acts or threats of violence by the respondent within the last twelve months, including acts or threats of violence against self or others;
   c. The respondent's mental health history;
   d. The respondent's abuse of a controlled substance or alcohol;
   e. A violation of a prior domestic violence protection order, disorderly conduct restraining order, an order prohibiting contact, or a sexual assault restraining order;
   f. The issuance of a previous public safety protection order against the respondent;
   g. The unlawful, threatening, or reckless use or brandishing of a firearm by the respondent, including an act taken or displayed through social media;
   h. The respondent's ownership of, access to, or intent to possess a firearm;
   i. Any conviction of, or arrest for, domestic violence, sexual assault, stalking, or harassment; and
   j. The history, use, attempted use, or threatened use of physical violence by the respondent against another individual, or the respondent's history of stalking another individual, or evidence of cruelty or violence towards an animal by the respondent.

3. In determining whether grounds for a public safety protection order exist, the court also may consider any other relevant and credible evidence presented by the petitioner, respondent, and any witnesses the petitioner or respondent may produce.

4. At the hearing the petitioner has the burden of proving, by clear and convincing evidence, the respondent poses a risk of personal injury to self or others by having a firearm in the respondent's custody or control or by purchasing, possessing, or receiving a firearm.

5. If the court finds clear and convincing evidence to issue a public safety protection order, the court shall issue a public safety protection order effective for up to one year, subject to section 12.1-31.3-07.

6. If the court issues a public safety protection order, the court, upon a finding of probable cause the respondent possesses a firearm, shall issue a search warrant directing a law enforcement agency to seize the respondent's firearm. The court, as part of the warrant, may direct the law enforcement agency to search the respondent's residence and other places where the court finds probable cause to believe the respondent is likely to possess a firearm.

7. A law enforcement agency issued a search warrant to seize a firearm under subsection 6 shall provide the respondent with signed documentation setting forth:

   a. The quantity of firearms seized; and

   b. A description and type of any firearm seized.

8. Subject to section 12.1-31.3-08, if the court orders a law enforcement agency to seize a firearm under subsection 6, the law enforcement agency shall retain the firearm until the respondent produces documentation issued by the court indicating the order has expired or been vacated or terminated.

9. A public safety protection order must require the respondent to refrain from having in the respondent's custody or control a firearm, and from purchasing, possessing, or receiving a firearm for the duration of the order.

10. A public safety protection order must be signed by the judge and include:

    a. A statement of the grounds for issuance of the order;

b. The name and address of the court where any filings should be made, the names of the parties, the date of the petition, the date and time of the order, and the date and time the order expires;

c. A description of how to appeal the order;

d. A description of how to request termination of the order under section 12.1-31.3-07. The court shall include with the order a form for a motion to terminate the order; and

e. A statement directing the law enforcement agency, approved federally licensed firearms dealer, or other person in possession of the firearm to release the firearm to the owner upon expiration of the order.

11. The court shall schedule a review hearing in accordance with section 12.1-31.3-07 at least thirty calendar days before the date the public safety protection order is set to expire.

12. If the court declines to issue a public safety protection order, the court shall:

a. State in writing the particular reasons for the court's denial;

b. Order the return of the firearm to the respondent; and

c. Vacate a temporary emergency public safety protection order in effect.

13. An individual is guilty of a class B misdemeanor if the individual files a petition for a public safety protection order knowing the information provided to the court at any hearing or in the affidavit to be false.

12.1-31.3-07. Termination - Expiration - Review and extension of orders.

1. The respondent may file a motion to terminate a public safety protection order. A motion to terminate may not be filed more than once during the effective period of the order. The respondent may be represented by an attorney at the termination hearing.

2. At a hearing to terminate a public safety protection order before the scheduled date of expiration, the respondent has the burden of proving, by clear and convincing evidence, the respondent no longer poses a risk of personal injury to self or others, by having a firearm in the respondent's custody or control or by purchasing, possessing, or receiving a firearm.

3. The court may consider any relevant evidence, including evidence of the considerations listed in subsection 2 of section 12.1-31.3-06.

4. If the court finds the respondent has met the respondent's burden, the court shall terminate the order and order return of the firearm consistent with section 12.1-31.3-08.

5. At a review hearing scheduled under section 12.1-31.3-06 the court may extend the public safety protection order for up to one year subject to termination under subsection 1, if the petitioner proves, by clear and convincing evidence, the respondent continues to pose a risk of personal injury to self or others by having a firearm in the respondent's custody or control or by purchasing, possessing, or receiving a firearm.

   a. The petitioner and respondent must be served with notice of the review hearing.

   b. The court shall consider evidence of an increased risk for violence and the considerations listed in subsection 2 of section 12.1-31.3-06 when determining whether to extend a public safety protection order.

   c. If the court declines to extend a public safety protection order after a review hearing, the court shall state the particular reasons for the denial in its decision.

6. The court shall make termination forms available. The forms may be provided electronically.

12.1-31.3-08. Return of firearm - Disposal - Sale.

Unless provided otherwise by this section, the return, disposal, or sale of a firearm seized or surrendered under a public safety protection order or an emergency public safety protection order must be in accordance with section 62.1-01-02.

1. Upon request by the respondent, a firearm seized or surrendered under a public safety protection order or an emergency public safety protection order must be returned to the respondent within ten days if:

   a. The respondent produces documentation issued by the court indicating the order has expired, been vacated or terminated, or has not been renewed. The respondent is not required to acquire any additional court order granting the return of seized or surrendered firearms; and

   b. The law enforcement agency in possession of the firearm conducts a national criminal records check and determines the respondent is not otherwise prohibited from possessing a firearm under state or federal law.

2. If the respondent is not eligible to possess a firearm lawfully upon expiration of a public safety protection order or an emergency public safety protection order, the respondent may petition the court to transfer the respondent's firearm to an individual who is able to possess the firearm lawfully if the individual does not reside at the same address as the respondent. Notice of the petition must be served on the individual protected by the public safety protection order or emergency public safety protection order.

3. If requested by the court or the petitioner, a law enforcement agency shall provide prior notice to an interested party, including to a family or household member of the respondent, of the impending return of a firearm to a respondent, as provided under section 12.1-31.3-09.

4. Upon written request of the respondent, a law enforcement agency storing a firearm under a public safety protection order or an emergency public safety protection order, shall transfer possession of the firearm to a federally licensed firearms dealer, who may be designated by the respondent. The respondent may instruct the federally licensed firearms dealer designated by the respondent, if applicable, to sell the firearm or to transfer ownership or possession, in accordance with state and federal law, to a qualified named individual who is not a member of the respondent's household and who is not prohibited from possessing a firearm under state or federal law.

12.1-31.3-09. Service of public safety protection petition and orders.

1. A petition, temporary emergency order, or public safety protection order must be served in accordance with rule 4 of the North Dakota Rules of Civil Procedure and may be served by a law enforcement officer.

2. A respondent who attends a hearing held under sections 12.1-31.3-02, 12.1-31.3-05, 12.1-31.3-06, or 12.1-31.3-07 at which a public safety protection order is issued and who receives notice from the court on the record that the order has been issued is deemed to have been served. A respondent notified by the court on the record shall adhere immediately to the order. If the court previously has notified the respondent of the order, the court shall transmit the order for additional service by a law enforcement agency.

3. A public safety protection order and emergency public safety protection order must be served by the law enforcement agency at the earliest possible time and must take precedence over other summons and orders.
   a. An order must be served in a manner calculated to ensure the safety of the parties.
   b. Methods of service including advance notification to the respondent may not be used.
   c. The individual making service shall file a return of service with the court stating the date, time, and place at which the order was delivered personally to the respondent.
4. If service of a notice of hearing issued under sections 12.1-31.3-02, 12.1-31.3-06, or 12.1-31.3-07 cannot be made before the scheduled hearing, the court shall continue the hearing and extend the terms of the order upon request of the petitioner for any additional time the court deems necessary to achieve service on the respondent.

12.1-31.3-10. Reporting of orders.

1. The court shall enter any public safety protection order and emergency public safety protection order issued by the court into a statewide judicial information system on the same day the order is issued.
2. The court shall forward to the appropriate law enforcement agency specified in the order and to the attorney general a copy of a public safety protection order and emergency public safety protection order, renewal, or termination the same day order, renewal, vacation, or termination is issued.
   a. Upon receipt of the copy of a public safety protection order, the attorney general shall enter the order into:
      (1) The national instant criminal background check system, also known as the NICS database;
      (2) All federal or state computer-based systems and databases used by law enforcement or others to identify a prohibited purchaser of firearms; and
      (3) All computer-based criminal intelligence information systems and databases available in this state and used by law enforcement agencies.

b. The order must remain in each system for the period stated in the order, and the law enforcement agency may remove an order from the systems only upon notice the order has been vacated, terminated, or expired. 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 enforceable statewide.

3. Within three calendar days after issuance of a public safety protection order or an emergency public safety protection order, the issuing court shall forward a copy of the respondent's driver's license, or comparable information, along with the date the order was issued, to the attorney general and the appropriate licensing authority. Upon receipt of the information, the attorney general or the appropriate licensing authority shall determine if the respondent has a concealed carry permit. If the respondent has a concealed carry permit, the attorney general or the appropriate licensing authority shall suspend the license immediately.

4. If a public safety protection order is vacated or terminated before its expiration date, the court shall forward, on the same day, a copy of the termination order to the attorney general and the petitioner. Upon receipt of the order, the attorney general promptly shall remove the order from any computer-based system into which it was entered under subsection 2.

12.1-31.3-11. Safe storage of firearm.

1. If a public safety protection order or an emergency public safety protection order is issued against a respondent under the age of eighteen, the court may order an individual in the respondent's household who owns a firearm to securely lock the firearm in an appropriate safe storage depository.

2. As used in this section, "safe storage depository" means a safe or other secure container that, when locked, is incapable of being opened without the key, combination, or other unlocking mechanism and is capable of preventing an unauthorized individual from obtaining access to and possession of a firearm contained in the safe or container.

12.1-31.3-12. Penalty - Arrest.

1. An individual who knowingly violates a public safety protection order or an emergency public safety protection order is guilty of a class A misdemeanor for a first offense and a class C felony for a subsequent offense within one year.
2. Prosecution for a violation of a public safety protection order or an emergency public safety protection order does not preclude concurrent prosecution for any other criminal offense, including a criminal offense committed at the time of the violation of the public safety protection order or emergency public safety protection order.
3. A law enforcement officer shall arrest an individual without a warrant if the officer determines there is probable cause the individual has committed the offense of violating a public safety protection order or an emergency public safety protection order regardless of whether the violation was committed in the presence of the officer. A law enforcement officer who acts in good faith on probable cause and without malice is immune from civil or criminal liability for making an arrest under this subsection.

12.1-31.3-13. Appeals.

1. A public safety protection order issued or extended by the court is deemed a final order for the purposes of appeal.
2. Unless the public safety protection order is stayed by the appellate court, the order remains in effect while an appeal, by either party, is pending.

12.1-31.3-14. Limited law enforcement liability.

A law enforcement officer is not criminally or civilly liable for the failure of a respondent to relinquish a firearm.

12.1-31.3-15. Effect on other provisions of law.

This chapter does not prevent a court from prohibiting an individual from possessing a firearm under any other provision of law.