

HB 198 & SB 276: Addressing Imminent Danger Firearms; removal from persons posing substantial risk; penalties.¹

In Virginia, there is the need for law enforcement to have the clear legal authority to remove firearms from individuals who may pose a risk of harm to self or others but do not meet existing prohibitory criteria: involuntary admission to a facility, mandatory outpatient treatment, or voluntary admission following a temporary detention order (§ 18.2-308.1:3). These existing gun prohibitions are predicated on incompetence or an individual being at an increased risk of causing serious physical harm to self or others based on a mental illness; however, there are individuals at high risk due to other factors including, among others, substance or alcohol misuse or a recent history of interpersonal violence. If enacted, HB 198 and SB 276 would give law enforcement the authority and clear legal path to temporarily remove firearms from such individuals and to prohibit new purchases for the duration of the risk warrant and order. A recent study of a similar law in Connecticut estimated that for every 10 to 20 risk warrants issued, one life was saved.² If enacted, HB 198 and SB 276 will fill a gap in Virginia law by giving law enforcement the tools they need to save lives and protect public safety.

Who can request a risk warrant in Virginia?

- Commonwealth's attorney
- Law enforcement officer

What is the standard for a risk warrant?

Probable cause to believe, among other things, that (1) a person poses a substantial risk of personal injury to self or to other individuals in the near future, and (2) such person possesses one or more firearms.

What information does the judge consider when issuing a risk warrant?

The judge *shall* consider the following information:

- Recent threats or acts of violence towards self or others
- Recent issuance of a protective order
- Recent violation of an unexpired protective order
- Recent acts of cruelty to animals

The judge *may* consider the following information:

- Reckless use, display, or brandishing of a firearm
- History of the use, attempted use, or threatened use of physical force by such person against other persons
- Prior involuntary confinement of such person in a hospital for persons with psychiatric disabilities
- Prior arrest of such person for a violent felony offense

(The judge *may* consider the following information, cont'd)

- History of a violation of a protective order
- Illegal use of controlled substances or abuse of alcohol
- Evidence of recent acquisition of firearms or other deadly weapons

How long does the risk warrant last?

The risk warrant can last up to 14 days from the execution of the warrant. Within 14 days a hearing is held to determine if firearms removed pursuant to the risk warrant should be returned or if an order should be issued for law enforcement to continue to hold the firearm(s). If the order is issued, it may last for up to 180 days.

What happens at the hearing?

The attorney for the Commonwealth for the jurisdiction that issued the warrant must prove by clear and convincing evidence that the subject of the risk warrant poses a substantial risk of personal injury to self or to other individuals in the near future. If, at the hearing, the court finds that this burden has been met, the court may order that any firearm removed pursuant to the order continue to be held by the agency that executed the risk warrant.

Can the subject of the order get their guns back before the order expires?

30 days after the court issues an order to continue to hold the person's firearm(s), such person may petition the court for the return of his or her firearm(s).

Conclusion

HB 198 and SB 276 will fill a gap in Virginia law by giving law enforcement the tools they need to temporarily remove firearms from individuals who may not meet the requirements of § 18.2-308.1:3 but who pose a substantial risk of harm to self or others.

More Information

- **Data behind Extreme Risk Protective Order (ERPO) Policies**
<http://efsgv.org/wp-content/uploads/2017/09/CT-Risk-Warrant-Data-One-pager-ERPO-9-15-17-FINAL.pdf>
- **Firearm Homicide in Virginia**
https://efsgv.org/wp-content/uploads/2017/12/Firearm-Homicide-in-Virginia-August-2017_FINAL.pdf
- **Firearm Suicide in Virginia**
http://efsgv.org/wp-content/uploads/2017/12/Firearm-Suicide-in-Virginia-August-2017_FINAL.pdf

¹ House Bill 198, 2017 Reg. Sess. (Va.2017) <https://lis.virginia.gov/cgi-bin/legp604.exe?181+sum+HB198> and Senate Bill 276, 2017 Reg. Sess. (Va.2017) <https://lis.virginia.gov/cgi-bin/legp604.exe?181+sum+SB276>

² Swanson, J. W., Noriko, M. A., Lin, H. J., Alanis-Hirsch, K., Frisman, L. K., Baranoski, M. V., et al. (2017). Implementation and effectiveness of Connecticut's risk-based gun removal law: Does it prevent suicides? *Law and Contemporary Problems*. 80(2), 101-128.