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MEMORANDUM

To: Chairman Olson
Members of the Senate Committee on Federal and State Affairs

From: The Office of Revisor of Statutes

Date: March 2, 2022

Subject: SB 192 – Issuance of firearm relinquishment orders.

Senate Bill No. 192 (SB 192) would require a court to issue a relinquishment of firearms order against a defendant: (1) Upon issuance of a protection from abuse or protection from stalking, sexual assault, or human trafficking order based on certain findings by the court; or (2) upon the conviction of the defendant on a charge of domestic battery or a misdemeanor domestic violence offense.

If a protection order is issued against the defendant, then a firearm relinquishment order would only be issued if the court has:

- (1) Provided the defendant notice and an opportunity to participate in a hearing on such order;
- (2) Ordered the defendant to restrain from engaging in harassing, stalking, threatening, or otherwise intimidating conduct towards an intimate partner of the defendant or a child of the intimate partner or defendant; and
- (3) Found that the defendant presents a credible threat to the physical safety of the intimate partner or child, or explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child.

If the defendant is convicted on a charge of domestic battery or a misdemeanor domestic violence offense, then the court would issue a firearm relinquishment order upon sentencing the defendant.

Once a firearm relinquishment order is issued against a defendant, then the defendant must relinquish all firearms in the defendant's custody, control, or possession and any concealed

carry license issued to the defendant. If the defendant is present in court when the order is issued, then the defendant must comply with the relinquishment within 24 hours by surrendering the firearms and concealed carry license to the sheriff of the county where the court issued the order. If the defendant is not present, then the order must be personally served on the defendant, and the law enforcement officer serving the order must take possession of any firearms and concealed carry license that are subject to the order. If the defendant owns other firearms or a concealed carry license that is not seized by the law enforcement officer when serving the order, then the defendant must surrender such firearms and license within 24 hours after being served with the order.

The defendant must also file a proof of relinquishment with the court within 48 hours after issuance of the order. The proof of relinquishment must show that either the defendant has surrendered all firearms and any concealed carry license, or that the defendant is not in possession of any firearms or a concealed carry license.

A firearm relinquishment order would be valid for the duration of the protection order issued against the defendant if that is the basis for the relinquishment order. If the basis for the relinquishment order is a domestic battery conviction, then the order would be valid for the period of time the defendant is prohibited from possessing a firearm for such conviction under state law. For a felony domestic battery conviction this would be three years after satisfaction of the sentence, diversion agreement, probation, or other supervised release, and for a misdemeanor domestic violence conviction this would be five years after conviction.

At any time while a relinquishment order is in effect, the plaintiff, district or county attorney, or a law enforcement officer may file an affidavit with the court alleging that the defendant is in possession of a firearm or concealed carry license in violation of the order. If the court determines that probable cause exists to believe the defendant possesses a firearm or concealed carry license, then the court must issue a search warrant for such firearm or license.

Upon the expiration or termination of a relinquishment order, the firearms and concealed carry license will be returned to the defendant pending a state and national criminal history records check that verifies the defendant may lawfully possess a firearm under state and federal law. A firearm may not be returned to a defendant if the sheriff who took possession of the firearm elects to dispose of the firearm instead of holding it for the defendant. In such case, the proceeds from the disposal of the firearm, less the cost to the sheriff for taking possession, storing, and disposing of the firearm, will be paid to the defendant. If a person other than the defendant claims title to the firearm and such claim is verified, then the sheriff will return the

firearm to the person after verifying the person may lawfully possess firearms under state and federal law.

SB 192 also creates a new crime of possession of a firearm or concealed carry license in violation of a relinquishment order. It would not be a crime to transport a firearm or concealed carry license for the purpose of surrendering it to the sheriff. The penalty for the crime would be a level 8 nonperson felony.

If enacted, SB 192 would become effective on July 1, 2022.