

# SENATE BILL REPORT

## ESB 5561

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As Passed Senate, February 11, 2022

**Title:** An act relating to the restoration of the right to possess a firearm.

**Brief Description:** Concerning the restoration of the right to possess a firearm.

**Sponsors:** Senators Dhingra, Kuderer, Lovelett, Pedersen, Saldaña, Stanford, Van De Wege and Wellman.

**Brief History:**

**Committee Activity:** Law & Justice: 1/18/22, 1/20/22 [DP, DNP].

**Floor Activity:** Passed Senate: 2/11/22, 28-21.

**Brief Summary of Engrossed Bill**

- Adjusts time periods and requirements to petition for restoring a person's firearm rights when the loss resulted from a conviction or finding of not guilty by reason of insanity.
- Authorizes the court to restore firearm rights of a person convicted of a felony offense involving a firearm if ten years have passed without the person being charged with a new crime and the person proves they are sufficiently rehabilitated to warrant restoration.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen and Salomon.

**Minority Report:** Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Assistant Ranking Member; Honeyford and Wagoner.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Joe McKittrick (786-7287)

**Background:** A person prohibited from possessing a firearm may petition the court for restoration of their rights. The process and requirements for restoration depend on whether the person lost their firearm rights as the result of a conviction or due to a person's mental health.

Mental Health or Incompetency. A person who lost their firearm rights because they were involuntarily committed for mental health treatment or had charges dismissed based on incompetency to stand trial may, upon discharge, petition the court to have their right to possess a firearm restored. To have the right to possess firearms restored, the petitioner must prove by a preponderance of the evidence:

- the person is no longer required to participate in court-ordered treatment;
- the person has successfully managed the conditions related to the commitment or incompetency;
- the petitioner no longer presents a substantial danger to themselves or the public; and
- the symptoms related to the commitment or incompetency are not reasonably likely to recur.

Once a person's rights to possess a firearm have been restored, the person may request return of any firearms surrendered to law enforcement. Prior to returning a surrendered firearm, the law enforcement agency must confirm the person remains eligible under the law to possess a firearm. If a family or household member has asked to be notified of the return of any firearms to the person, law enforcement must provide notice to the family member and hold the firearm for 72 hours before releasing it to the owner.

Conviction. A person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm may petition the court for restoration of their firearm rights if:

- the person was not convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership;
- the person was not convicted or found not guilty by reason of insanity of a class A felony or a felony with a maximum sentence of at least 20 years; and
- the person has not been charged with a new crime for the last consecutive five years if the underlying conviction was a felony, or three years if the underlying conviction was a nonfelony.

A petition for restoration must be made to the court of record that ordered the petitioner's prohibition on possession of firearms, or the superior court in which the petitioner resides.

Federal law prohibits firearm possession for a person convicted of a domestic violence crime. There is currently no firearms restoration procedure under federal law. The definition of domestic violence differs slightly under federal law, but for many domestic violence crimes, a person will not be able to restore their firearm rights.

**Summary of Engrossed Bill:** The requirements to petition for the restoration of a person's firearm rights when the loss resulted from a conviction or a finding of not guilty by reason of insanity is moved to its own section, and provisions are modified.

To restore a person's rights, the person must not have been convicted of a new crime for a specified consecutive number of years immediately preceding the petition. The time periods are as follows:

- three consecutive years if the prohibiting conviction or finding of not guilty by reason of insanity was a nonfelony offense; or
- five consecutive years if the prohibiting conviction or finding of not guilty by reason of insanity was a class B or C felony.

In addition, to restore the person's firearm rights, the person:

- must have no pending charges for any felony, gross misdemeanor, or misdemeanor crime;
- must have completed all sentence conditions for the prohibiting conviction; and
- must not have had a protection order issued against them in the five years immediately preceding the petition.

If a person was convicted or found not guilty by reason of insanity of a felony offense in which a firearm was used, displayed, or threatened to be used, the person may petition a superior court to have their right to possess a firearm restored when the person has spent ten consecutive years, immediately preceding the petition, in the community without a new conviction. The court may restore the person's firearm rights if the person shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant restoration.

If a person has multiple convictions in different counties, the person must provide notice of a petition for restoration to the prosecuting attorney in each county where the convictions occurred.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on July 1, 2022.

**Staff Summary of Public Testimony:** PRO: Domestic violence offenders are in a special category of risk. They disproportionately use firearms to intimidate and control their victims and even use them to injure and kill. When it comes to firearm restoration recognizing these risks including the presence of civil protection orders and crime free behavior immediately before the petition are critically imported to the protection of

survivors of domestic violence.

This bill provides constructive fixes and brings a reasoned and responsible risk-based approach to the restoration of firearms rights. Domestic violence is especially dangerous when firearms are involved. Since the pandemic violent crime and violent deaths have surged. Making sure our firearm restoration laws are reasoned and rational given the cost of violent deaths. I am the victim of domestic violence involving a gun. This is important legislation. It will strengthen our ability to provide protection to the most hidden victims of violence in our society. This bill will keep guns away from people courts have deemed too dangerous.

CON: This bill would prevent individuals from regaining their rights and prevent them from becoming whole. Currently the process to restore firearms rights has continuity because the same judge who sentences hears the petition and creates forum shopping by attorneys representing those seeking to restore their rights. It will also increase the cost of filing a petition and prevent those without substantial funds from being able to hire a lawyer to represent them. This is not a step towards restorative justice.

This bill creates an access to justice issue, by increasing the cost of hiring an attorney to represent an individual seeking to restore the individual's rights. The court system does not have the bandwidth to handle the contested motions that would come from this bill. This creates a politicization of the courts and creates an incentive for defense attorneys to forum shop. This also gives prosecutors unfettered discretion and no incentive to cooperate. The rules created by this bill are arbitrary. There are minor class B felonies and the categorical 10-year period for class B felonies makes no sense. This gives no credit for time in the community with crime free behavior if it was not immediately preceding the petition.

**Persons Testifying:** PRO: Senator Manka Dhingra, Prime Sponsor; David Martin, Chair, Domestic Violence Unit King County Prosecuting Attorney; Trese Todd; Sandra Shanahan, Regional Domestic Violence Firearms Enforcement Unit.

CON: SCHOEN PARNELL, WA Association of Criminal Defense Lawyers; Vitaliy Kertchen, Washington Association of Criminal Defense Lawyers/Washington Defender Association.

**Persons Signed In To Testify But Not Testifying:** No one.