

HOUSE BILL REPORT

SHB 2420

As Passed Legislature

Title: An act relating to possession of firearms.

Brief Description: Revising standards for qualification to possess firearms.

Sponsors: By House Committee on Law & Justice (originally sponsored by Representatives McMorris, Sheahan, Thompson, Koster, Buck, Mastin, McMahan, Grant, Schoesler, Crouse, Chandler, Dyer, Smith, Campbell, Goldsmith, Radcliff, Boldt, Mulliken, Beeksma, Robertson, Morris, Fuhrman, L. Thomas, Sterk, D. Schmidt, Johnson, Chappell, Carrell, Hatfield, Sheldon, Sherstad, Stevens, Honeyford, Elliot, Huff, Van Luven, B. Thomas, Pennington, Kessler and Benton).

Brief History:

Committee Activity:

Law & Justice: 1/24/96, 1/31/96 [DPS].

Floor Activity:

Passed House: 2/7/96, 76-21.

Senate Amended.

House Concurred.

Passed Legislature.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Dellwo, Ranking Minority Member; Campbell; Carrell; Chappell; Lambert; McMahan; Morris; Robertson; Smith and Sterk.

Minority Report: Do not pass. Signed by 4 members: Representatives Costa, Assistant Ranking Minority Member; Cody; Murray and Veloria.

Staff: Bill Perry (786-7123).

Background: Under the state's firearms law, it is a crime to possess a firearm under certain circumstances. Among those circumstances is having been convicted of any one of a number of crimes. The crimes that disqualify a person under state law from possessing a firearm include some, but not all, felonies and a few misdemeanors.

Federal law, on the other hand, disqualifies a person who is convicted of any felony. No misdemeanor crimes disqualify a person from possession under federal law.

Under state law, felony offenses that disqualify a person include any "serious offense," any felony drug offense, any felony domestic violence or harassment offense, and any other felony offense in which a firearm was used or displayed. ("Serious offenses" include all "crimes of violence" and a variety of other enumerated felonies. The subcategory of "crimes of violence" includes all class A felonies and a variety of other felonies as well.) Unlawful possession of a firearm following a disqualifying felony conviction is a class B felony.

Misdemeanor offenses that disqualify a person include any misdemeanor domestic violence offense or harassment offense, and three or more drunk driving or drunk boating convictions within five years. (Misdemeanor domestic violence or harassment offenses include simple assault, coercion, reckless endangerment in the second degree, malicious mischief in the third degree, trespass, harassment or telephone harassment under certain circumstances, and stalking or violating court orders under certain circumstances.) Unlawful possession of a firearm following a disqualifying misdemeanor conviction (or following involuntary commitment for mental health reasons) is a class C felony.

In some cases, after five years in the community without a conviction or current charge for any crime, a person whose right to possess a firearm has been lost because of a criminal conviction may petition a court of record for restoration of the right. However, the person must also have passed the "washout" period under the Sentencing Reform Act before he or she may petition the court. Effectively, this means that a person with a conviction for a class A felony or any sex offense can never seek restoration of the right. Generally, in the case of a class B felony the washout period is 10 years, and in the case of a class C felony it is five years. A person who has been involuntarily committed may seek restoration of rights by demonstrating to a court that he or she is no longer needs treatment or medication and does not present a substantial danger to self or others.

Under the state's so called "case and carry" provision, a person may not carry a firearm in public unless it is in an opaque case or secure wrapper. Various exceptions exist to this requirement.

A person who sells ammunition is defined as a firearms "dealer" and must obtain an ammunition dealer's license. The cost of a license is \$125. However, if the dealer already has a license to sell firearms, the additional ammunition license costs nothing.

Under the federal Brady Handgun Violence Prevention Act, a national instant criminal background check system is to be established. Once the "instacheck" system is in place, states must meet certain requirements regarding the sale of firearms by dealers

in order to avoid a five-day waiting period for the purchase of a firearm. The federal Bureau of Alcohol, Tobacco & Firearms has indicated that in order to qualify as a "Brady alternative" state, Washington needs to amend its firearms law. Specifically, the state law needs to make it explicit that

- a felony conviction in another state that disqualifies a person from possession rights under federal law also disqualifies a person from possession rights under Washington law;
- no "emergency" concealed pistol license allows a person to purchase a pistol without a background check; and
- with respect to concealed pistol licenses issued before July 1, 1994, a background check is required for a pistol purchase.

Summary of Bill: Various changes are made with respect to the state's firearms law.

Brady Law Compliance: Out-of-state convictions that would disqualify a person from possessing a firearm under federal law will also disqualify a person under Washington law. An emergency concealed pistol license (CPL) will no longer allow a person to purchase a pistol without a background check. A person who obtained a CPL before July 1, 1994, and did not have a criminal background check done at that time, must get a background check before purchasing a pistol.

Disqualifying Offenses: The list of criminal offenses which disqualify a person from possessing a firearm is changed. The list is expanded to include all felony offenses. The list is reduced to exclude some of the current law's misdemeanor offenses. Those misdemeanors that are retained as disqualifiers are assault in the fourth degree, coercion, stalking, reckless endangerment in the second degree, criminal trespass in the first degree, and violation of a protection order or no contact order. These misdemeanor offenses are disqualifiers only if committed by one family or household member against another on or after July 1, 1993.

Possession of a firearm following a conviction for one of the disqualifying misdemeanors (or following involuntary commitment for mental health reasons) remains second-degree unlawful possession, which is a class C felony. A person convicted of one of these offenses may petition a court of record for restoration of rights only after three years in the community without being charged with or convicted of any criminal offense.

Possession of a CPL: A person must carry a CPL with him or her at all times during which the person possesses a pistol under circumstances for which a CPL is required. A licensee must also surrender the license upon demand of a law enforcement officer or other person when required by law to do so. Failure of a

licensee to comply with these provisions is a civil infraction punishable by a fine of up to \$250.

Case and Carry: Exemptions to the "case and carry" requirements are expanded and altered. The current law's exemption for "hunting or trapping under a valid license" is changed to an exemption for "a lawful outdoor recreational activity such as hunting, fishing, camping, hiking, or horseback riding." The exemption applies if it is reasonable to conclude under all attendant circumstances that a person is engaged in a lawful outdoor activity or is traveling to or from a legitimate outdoor recreation area. The requirement that a firearm be "secured" in a gun rack in a vehicle is changed to a requirement that it be "placed" in the rack. A further exemption from the case and carry restriction is created for motor homes, which may be considered a "residence" when parked at a recreational park, campground, or other "temporary residential setting." An exemption from the case and carry requirement is also provided for licensed private security guards and private detectives.

Involuntary Commitment: Procedures are changed for the restoration of a person's possession rights following an involuntary commitment for mental health reasons. The requirement that the person petition a court of record is retained, but the statement of what must be alleged in the petition is eliminated. Instead, the Secretary of the Department of Social and Health Services is directed to create by rule an "approval process." The rule must provide for the restoration of rights upon a showing in a court of competent jurisdiction that the person no longer needs treatment or medication and does not present a substantial danger to self or others.

Alien Licenses: Changes are made with respect to the issuance of the licenses that are required of persons who are not U.S. citizens and who wish to possess firearms while in the state. An alien must prove that he or she is in the country lawfully and must undergo a fingerprint check. The fee for an alien license is increased from \$25 to \$55, and investigative charges from the federal government are to be passed on to the alien. The proceeds from the fee are to be distributed as follows: \$15 to the Department of Licensing (DOL); \$25 to the State Patrol; and \$15 to the local agency conducting the background check. The duration of an alien license is increased from four years to five years.

Ammunition: The selling of ammunition is deleted from the definition of firearm's "dealer." A person who sells firearms will continue to need a dealer's license and a separate license to sell ammunition, but a person who sells ammunition but does not sell firearms will not need a dealer's license or a separate license to sell ammunition.

Retired Law Enforcement Officers: An additional eligibility requirement is imposed on retired police officers before they are exempt from needing CPLs. Such a retired officer must not have been convicted of any crime that would make him or her ineligible for a CPL.

Disposition of Forfeited Firearms: A restriction is removed on the ability of a local government to dispose of forfeited firearms. Local governments no longer must have complied with a requirement that they either auction guns seized under prior law or pay the state for each pistol not so auctioned.

Government Liability: Government is given immunity from liability for good faith decisions regarding issuing a dealer's license.

Delivery of Pistol: A dealer is prohibited from delivering a pistol to a purchaser without first recording the manufacturer's number.

Miscellaneous Provisions: The following changes are also made:

- Fees for the renewal of CPLs are explicitly made "nonrefundable."
- A person need no longer surrender any pistol acquired while he or she possessed a CPL for which he or she was ineligible or which had been revoked.
- DOL is required to maintain records of denials of applications for CPLs.
- It is made a misdemeanor to fail to surrender a revoked CPL.
- A dealer must use "the state system" as well as the national instant criminal background check system when doing background checks under the Brady Bill.
- A dealer must retain copies of pistol purchase records for six years.
- An application for purchase of a pistol can be denied if the applicant is ineligible to possess a pistol under federal law.
- Employees of law enforcement agencies are given the same exemption as the agencies themselves from the prohibition against purchasing or possessing machine guns and other generally banned firearms.
- Various additional definitional changes are made, including the way in which a pistol is defined in terms of measuring barrel length.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Becoming a Brady alternative state will save time and paperwork. Only felonies should cause loss of constitutional rights. State and federal laws should be consistent.

Testimony Against: Domestic violence offenses are serious, even when they are misdemeanors. Adjusting the effective date for misdemeanor disqualifications is a better solution.

Testified: Representative McMorris, prime sponsor; Brian Judy, National Rifle Association (pro); Joe Waldron, Gun Owners Action League of Washington (pro); Greg Dahlgren, Citizens Committee for the Right to Keep and Bear Arms (pro); Colonel Mel Pfankuche, Colonel Mel Pfankuche and Associates, Inc. (pro); and Victoria Pearson, Washington Ceasefire (with concerns).