

HOUSE BILL REPORT

HB 1283

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to including the open carry or display of weapons within the offense of criminal mischief.

Brief Description: Including the open carry or display of weapons within the offense of criminal mischief.

Sponsors: Representatives Senn, Valdez, Ramel, Bateman, Fitzgibbon, Berry, Peterson, Hackney, Thai, Kloba, Macri, Pollet, Stonier and Harris-Talley.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/2/21, 2/10/21 [DPS].

Brief Summary of Substitute Bill

- Prohibits acting with three or more other persons and openly carrying, exhibiting, displaying, or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Davis, Entenman, Goodman, Kirby, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Do not pass. Signed by 5 members: Representatives Gilday, Assistant

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.

Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Klippert and Ybarra.

Staff: John Burzynski (786-7133).

Background:

Criminal Mischief.

A person is guilty of the crime of Criminal Mischief if, acting with three or more other persons, he or she knowingly and unlawfully uses or threatens to use force, or in any way participates in the use of such force, against any other person or against property.

Criminal Mischief is a gross misdemeanor, unless the actor is armed with a deadly weapon, in which case Criminal Mischief is a class C felony.

"Deadly weapon" means any explosive or loaded or unloaded firearm, and includes any weapon, device, instrument, article, or substance, including a vehicle as defined in RCW 9A.04.110, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.

Unlawful Carrying or Handling of a Weapon.

A person is guilty of the crime of unlawful carrying or handling of a weapon if he or she carries, exhibits, displays, or draws any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons. The courts have incorporated a reasonable person standard into the phrase "warrants alarm."

Unlawful carrying or handling of a weapon is a gross misdemeanor. Additionally, any person convicted of unlawful carrying or handling of a weapon shall lose his or her concealed pistol license, if any.

The law expressly exempts certain individuals and activities from this statute:

1. any act committed by a person while in his or her place of abode or fixed place of business;
2. any person who by virtue of his or her office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duty;
3. any person acting for the purpose of protecting himself or herself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person;
4. any person making or assisting in making a lawful arrest for the commission of a felony; or
5. any person engaged in military activities sponsored by the federal or state

governments.

Offense Categories.

Gross misdemeanors are punishable by imprisonment in the county jail for a maximum term fixed by the court of up to 364 days, or by a fine in an amount fixed by the court of not more than \$5,000, or by both such imprisonment and fine.

A class C felony is punishable by confinement in a state correctional institution for up to five years, or by a fine in an amount fixed by the court of up to \$10,000, or by both such confinement and fine.

Summary of Substitute Bill:

The offense of Criminal Mischief is expanded to include a second form of prohibited conduct: acting with three or more other persons and openly carrying, exhibiting, displaying, or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

Any person convicted of this offense shall lose his or her concealed pistol license, if any.

This offense is not applicable to: (1) any act committed by a person while in his or her place of abode or fixed place of business; (2) any person who by virtue of his or her office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duty; (3) any person acting for the purpose of protecting himself or herself against the use of presently threatened unlawful force by another, or for the purpose of protecting another against the use of such unlawful force by a third person; (4) any person making or assisting in making a lawful arrest for the commission of a felony; or (5) any person engaged in military activities sponsored by the federal or state governments.

These changes effectively incorporate the offense of unlawful carrying or handling of a weapon, and its exceptions, into the offense of Criminal Mischief, subject to the additional requirement that the subject act with three or more other persons. Criminal Mischief remains a gross misdemeanor, unless the actor is armed with a deadly weapon, in which case it is a class C felony.

Substitute Bill Compared to Original Bill:

The substitute bill removes the original bill's prohibited conduct ("openly carries or displays a deadly weapon in a manner that would lead a reasonable person to feel threatened.") and replaces it with the substance of and exceptions to Washington's prohibition on unlawful

carrying or handling of a weapon.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The presence of assault weapons at protests and rallies chills free speech and discourages individuals from attending political events and supporting causes opposed by individuals carrying firearms. Survivors of gun violence do not feel they can freely testify at the Capitol if forced to walk through crowds of individuals carrying firearms. The purpose of open carry is not defense, but to intimidate and silence opposition. The law should level the power dynamic. Civil debate requires that every person feel free to speak without being intimidated. This bill will protect the first amendment without infringing on the second amendment.

Public spaces should be safe. Armed demonstrations lead to clashes and shootings. The rise of militia groups imperils the general welfare. Recent shootings at political events in Olympia, heavily armed rallies, and paramilitary activities demonstrate the inadequacy of existing law to maintain public safety. Some individuals are drawing and pointing assault weapons at adults and children in urban and bedroom communities. This law will help constrain armed groups seeking to intimidate others.

(Opposed) The proposed bill is unconstitutionally vague and would violate the first and second amendment. The law would require individuals to determine if another person feels threatened or uncomfortable. The Legislature cannot infringe on the right to bear arms to make others feel comfortable. This law would criminalize defense of property and lives, and peaceful conversations among groups of friends.

This law is unnecessary. It is already illegal in Washington to threaten another with a firearm, brandish a weapon, aim a firearm at another person, intimidate someone with a firearm, or commit an assault. The issues complained of can be addressed by enforcing existing laws. Existing laws are not being enforced.

Laws of this nature are subjective, empower the police and courts, and have a history of being weaponized against minorities. People of color are particularly likely to be victims of gun violence. This bill is designed to intimidate people of color and stop them from bearing arms.

Persons Testifying: (In support) Representative Senn, prime sponsor; Lyn Idahosa-Berry, Federal Way Black Collective; Liz Hjelmseth; Nyla Fritz; Margy Heldring, Grandmothers Against Gun Violence; Dani Madrone; Emma Silber; Niko Battle; Daniel Weiner; and Courtney Thomas.

(Opposed) Duncan Clark; Chase Abbott; James Barrick; Carter McKaughan, Montlake Investigations Group; Tom Kwieciak, National Rifle Association; Daniel Mitchell, Sporting Systems; Curtis Bingham, Washington Civil Rights Association; Jessica Zielinski; and Sharyn Hinchcliffe.

Persons Signed In To Testify But Not Testifying: Jenny Thurston; Marcel McCants; Rebecca E; Laura K; Kathleen R; Eileen Alexander; Stacy Andersen; Harriet Arkley; Ian Baldwin; Kristen Donovan; Virginia Bearson; Carla Wulfsburg; Bensky Sandra; Ray Moser; Judy Bentley; Dominick Bergeron; Lorren Garlich; Roberta Nestaas; Ann Aubuchon; Carolyn Bernhard; Timothy Noonan; Bharti Bharani; Nancy Boespflug; Roger Nystrom; Lisa Morris; Antoinette Bonsignore; Katherine Boyette; Susan Abolafya; Kevin Brannon; Richard Osborn; Jason Breeze; William Hochberg; Cinnamon Brown; Patricia Otley; Kimberly Clarke; Tim Burns; Coralie Burr; Michael Paolini; Justin Camarata; June Campbell; Zachary Carstensen; Sue Amorosi; Andrew Caughie; Patrick Parisot; Jenny Clauson; Susan Paro; Richard Gammon; Linda Clifton; Leeroy Perkins; Richard Gammon; Carl Henry; Patricia Perron; Cristina Cantor; Annie Phillips; Octavian Pop; Ann Cook; Cook Yanah; Lori Cohen-Sanford; Mike Ramey; Malcolm Cumming; David Ringley; Brian Cutler; Sophia Damelio; Corrine Kocher; Katherine Roscher; Alyssa Dayley; Jordan Van Voast; David Dittmore; Nancy Salovich; Sean Dittrich; Susan Schulkin; Jennifer Dolan-Waldman; Erin Senge; Goldie Silverman; Domingue; Jean Marie Dreyer; Tina Simchich; Nicolas Duchastel; Susan Simon; Tamara Ritchie; Melissa Dunbar; Treyvon Dunbar; Erin Sloane; Nancy Dombrowski; Thaddeus Smith; Duroe Anne; Sharon Victor; Bob Ellis; Jeff Snow; Marilyn Ellis; Gregory Sorlie; Joanne Engquist; Bharat Shyam; Tamara Erickson; Ashley Sternberg; Erika Fairman; Sage Miller; John Fairman; Justine Stromberg; Laurie Fairman; Shawn Stromme; Lucero Karen; Diane Studley; John Miller; Cherry Summers; Richard Firth; Niles Fairman; Elizabeth Sward; David Fish; Donna Benaroya; Randi Fleming; Mardel Tanquist; Wesley Francis; Roger Tanquist; Richard Gellman; Ian Taylor; Hae Sue Park; Stephanie Gianarelli; Richard Gibson; Michell Turley; Carol Sullivan; Nancy Gilbert; Meredith Goldstein; Jolie Hellings; David Turnoy; Alice Goss; David Varnau; Julie Cwinar; Margaret Graham; Sheila Guizzetti; Linda Leste; Deborah Viertel; Kennedy Gwin; Eva Wahl; Sophia Moser; Xander Waits; Christine Hanks; Maurice Hanks; Winston Walker; Amy Harmala; Gail Warren; Abe Rios; Christine Warren; Elizabeth Hauser; Frederic Webster; Alexander Gray; Greg Hauth; Jan Weisel; Samantha Eden; Connie Williams; Janet Hoffman; Roger Williams; Aileen Willmoth; Debbie Hollyer; Adrianna Hulscher; Julia Hurd; Hazel Brown; Kevin Collins; Patrick Inniss; Sean Kent; Maureen McGregor; Chelsey Wright; Kristen Ellingboe; Aquilla Jackson; Nelago Nuunyang; Jordan Jeffers; Dylan O'Connor; Raven Wilson; Jordan Waits; Renee Hopkins; Susan Wilson; Willa Jeffers; Laurie Valliancourt; Jon Younger; Tiara Jewell; Laurie Brockmann; Eva Johnson; Delight Roberts; Mary Will Allen; Kathy Jones; Jennifer

Erestroff; Sara Julin; Sundae Delgado; Kyra Humphrey; John Kennedy; Lenea Fritz; John Kingslight; Nancy Hevly; Jeanne Koenings; Laurie Werner; Luisa Recalcati; Jeff Panagos; Megan Koznek; Edward Humble; Daniel Kraus; Max Booher; Beth Call; Sandy Krauss; Andrew Kaplowitz; Joe Kunzler; John Lederer; Elizabeth Heath; Deborah Leslie; Stacey Sanner; Matthew Bellew; Lynne Levine; Heidi Rutledge; Zach Silk; Zachary Locken; Claire Cunningham; Shannon Mayo; Dawn Petricciani; Susan McBain; Sabryna McNally; Ellen Menshew; Kevin Lewis; Matt Vadnal; Sabrina Bates; Tim Moses; Paul Benz, Faith Action Network; Beau Jackson; Leanne Kennedy; Charlene Kahn; Gayle Davis; Jeannie Shu; Jane Weiss; Kristiana de Leon, Black Diamond City Council; Sharese Summers; Patrick Zunk; Shane Cridlebaugh; Kyle Thannisch; Henry Lohman; Jeff Pack; Damon Mon-Wai; Paul Milbourn; Noah Chesterman; Chip Schmeets; Eric Pratt; Matthew Kozma; Aidan Nickels; Tom Davis, Washington Farm Bureau; Ivan Chongarov; Micheal Fannin; Paul Certa; Kris Strutner; Robert Norton; Dana Morgan; Michael Frost; Brian Lange, A Brotherhood Against Totalitarian Enactments of Washington; Matthew Causey; Carrie Causey; and Craig Pete.