

HOUSE BILL REPORT

SHB 2420

As Amended by the Senate

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, Beeksmas, 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 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.)

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.)

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 under Washington law;
- no "emergency" concealed pistol permit allows a person to purchase a pistol without a background check; and
- with respect to concealed pistol permits issued before July 1, 1994, a background check is required for a pistol purchase.

Summary of Bill: Changes are made with respect to the crimes that disqualify a person from the right to possess a firearm. All felonies, and only felonies, disqualify a person. No misdemeanor crimes disqualify a person.

Changes are made with respect to out-of-state convictions, emergency permits, and background checks on pre-July 1, 1994 permits, in order to qualify Washington as a Brady alternative state.

Courts are directed to notify a person upon conviction of a disqualifying offense that he or she must surrender any concealed pistol permit.

EFFECT OF SENATE AMENDMENT(S): The Senate amendment makes various changes with respect to provisions in the bill dealing with disqualification from the right to possess a firearm. The amendment also adds various provisions dealing with restoration of the right to possess a firearm, concealed pistol licenses, and other matters.

The amendment expands the bill's list of criminal offenses which disqualify a person from possessing a firearm. Some of the current law's misdemeanors are retained as disqualifying offenses. Those misdemeanors 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 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 these offenses is second degree unlawful possession. 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.

The amendment requires that a person with a concealed pistol license must carry the license with him or her at all times during which the person possesses a pistol under circumstances in which a license to do so 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.

The amendment alters and expands exemptions to the current law's "case and carry" requirement for possession of a firearm in public. 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 and from the requirement for a concealed pistol license 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.

The amendment changes the current law's procedure for restoration of a person's possession rights following an involuntary commitment for mental health reasons. The current law requires such a person to petition a court of record and allege that the person no longer needs treatment or medication and does not present a substantial danger to self or others. The amendment retains the requirement that the person

petition a court of record, but eliminates the statement of what must be alleged in the petition. 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 is no longer needs treatment or medication and does not present a substantial danger to self or others.

The amendment places additional requirements on the issuance of an alien firearm license. 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; \$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.

The amendment eliminates the selling of ammunition from the definition of firearms "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.

The amendment also adds provisions to the bill dealing with several other topics, including retired law enforcement officers' exemption from licensing; agency disposition of forfeited firearms; records of denials of applications for licenses; surrender of revoked licenses; transfer of pistols without manufacturers' identifying numbers; retention of purchase records; eligibility for purchase of pistols; liability of government for licensing decisions; and the definitions of various terms.

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).