

# HOUSE BILL REPORT

## SHB 1739

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### As Amended by the Senate

**Title:** An act relating to firearms that are undetectable or untraceable.

**Brief Description:** Addressing undetectable and untraceable firearms.

**Sponsors:** House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Valdez, Dolan, Kilduff, Pollet, Bergquist, Frame, Jinkins, Kloba and Macri; by request of Attorney General).

#### **Brief History:**

##### **Committee Activity:**

Civil Rights & Judiciary: 2/8/19 [DPS].

##### **Floor Activity:**

Passed House: 3/4/19, 55-41.

#### **Brief Summary of Substitute Bill**

- Establishes criminal penalties applicable to undetectable firearms and untraceable firearms.

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### HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman, Hansen, Kilduff, Kirby, Klippert, Orwall, Valdez and Walen.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Dufault, Assistant Ranking Minority Member; Shea and Ybarra.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Graham.

**Staff:** Edie Adams (786-7180).

#### **Background:**

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

Certain persons are prohibited under state and federal law from possessing firearms, including persons convicted of felony offenses and certain misdemeanor offenses, persons who have been involuntarily committed for mental health treatment, persons subject to certain qualifying protection orders, and, with exceptions, persons under the age of 18. Sales or transfers of firearms in Washington are subject to background checks to determine the eligibility of the purchaser or transferee to possess firearms.

State law imposes a number of regulations with respect to certain types of weapons. With some exceptions, it is a class C felony for a person to manufacture, own, buy, sell, loan, furnish, transport, assemble, repair, or possess a machine gun, bump-fire stock, short-barreled shotgun, or short-barreled rifle, or any part designed for use in one of these weapons. These weapons and parts are considered contraband and subject to immediate seizure by law enforcement. In addition, it is a class A felony for a person, in the commission or furtherance of a felony, to use or make threats with a machine gun or firearm containing a bump-fire stock.

Undetectable and untraceable firearms have been the subject of recent interest and discussion. Undetectable firearms generally refer to firearms that are not detectable by common screening devices, such as walk-through metal detectors or airport screening devices. Untraceable firearms generally refer to firearms that do not have a serial number, resulting in an inability to trace the chain of distribution. Federal law contains prohibitions relating to some types of undetectable firearms. Under the Undetectable Firearms Act, it is unlawful to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm that is not detectable by walk-through metal detectors after removal of grips, stocks, and magazines, or that has any major component which would not generate an accurate image of its shape when subjected to airport screening devices.

Undetectable and untraceable firearms have been the subject of recent litigation in the context of three-dimensional (3D) printing technology, which allows a person to use computer aided design (CAD) files in conjunction with a 3D printer to make a firearm. In a case involving Defense Distributed, a company that produces and distributes CAD files for the production of firearms, the federal government initially took the position that Internet publication of CAD files that would allow the manufacture of firearms and their parts with a 3D printer would violate federal arms export regulations. In 2018 the federal government and Defense Distributed entered into a settlement agreement that removes these CAD files from regulation and allows their public release and distribution via the Internet. Washington and 19 other states brought suit for injunctive relief and in August 2018 the federal district court issued a preliminary injunction prohibiting implementation or enforcement of the settlement agreement.

### **Summary of Substitute Bill:**

Criminal penalties relating to undetectable firearms and untraceable firearms are established.

"Undetectable firearm" means any firearm that is not as detectable as 3.7 ounces of 17-4 PH stainless steel by walk-through metal detectors or magnetometers commonly used at airports or any firearm where the barrel, the slide or cylinder, or the frame or receiver of the firearm

would not generate an image that accurately depicts the shape of the part when examined by the types of X-ray machines commonly used at airports.

"Untraceable firearm" means any firearm manufactured after July 1, 2019, that is not an antique firearm and that cannot be traced by law enforcement by means of a serial number affixed to the firearm by a federally licensed manufacturer or importer.

Allowing, Facilitating, Aiding, or Abetting Manufacture or Assembly.

It is unlawful for a person to knowingly or recklessly allow, facilitate, aid, or abet the manufacture or assembly of an undetectable firearm or untraceable firearm by a person who is ineligible to possess a firearm under state or federal law or who has signed an unrevoked voluntarily waiver of firearm rights. Failure to conduct a background check is prima facie evidence of recklessness.

A violation is a gross misdemeanor offense; a second or subsequent violation is a class C felony ranked at seriousness level III under the Sentencing Reform Act (SRA). A person is guilty of a separate offense for each and every undetectable firearm or untraceable firearm.

Manufacturing, Owning, Buying, Selling, Loaning, Furnishing, Transporting, or Possessing.

With some exceptions, it is unlawful for a person to: manufacture, own, buy, sell, loan, furnish, transport, or have in possession or control, any undetectable firearm or any part designed and intended solely and exclusively for use in an undetectable firearm; or assemble or repair an undetectable firearm. A violation is a class C felony ranked at seriousness level III under the SRA. Undetectable firearms that are illegally held or illegally possessed are contraband subject to immediate seizure by law enforcement.

It is unlawful for a person to manufacture an untraceable firearm with the intent to sell the untraceable firearm. A violation is a class C felony ranked at seriousness level III under the SRA.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment separates the two penalty levels into separate subsections for the crime of allowing, facilitating, aiding, or abetting the manufacture or assembly of an undetectable firearm by a person who is prohibited from possessing firearms.

**Appropriation:** None.

**Fiscal Note:** Available (for HB 1073, which is identical to HB 1739 except for the title).

**Effective Date:** The bill contains an emergency clause and takes effect July 1, 2019.

**Staff Summary of Public Testimony:**

(In support—from testimony on HB 1073, which is identical to HB 1739 except for the title, on January 22, 2019) Washington has adopted laws to prevent dangerous persons from possessing firearms, but there is nothing in our laws to prevent the downloading of blueprints for three-dimensional (3D) printed guns. Washington and a bipartisan coalition of 19 other

states brought a lawsuit challenging the ability of a self-described cryptoanarchist to make blueprints for 3D-printed guns available on the Internet. There is an injunction in place, but there is a loophole. These blueprints cannot be placed on the Internet, but they can be emailed to people. This is being done without any background checks in contravention of our laws.

This bill will promote public safety. There is a long history of prohibiting dangerous weapons in our state and nation. Today's youth live in a world where twice as many students die in classrooms as in a war zone and in a country where someone is killed by a gun every 15 minutes. There are reasonable laws that can change the reality of gun violence and save lives. The state should make it harder for firearms and the accessories that make them even more deadly to fall into the wrong hands. No right is absolute, and no right is worth the lives of our young people.

The Legislature should support this legislation that makes it safer for first responders and their families. There have been too many funerals for fallen officers. There are too many illegal guns on the street. Just last year Seattle confiscated 1,408 firearms. Ghost guns put everyone at risk. No one needs to have a firearm that cannot be detected or traced. The job of law enforcement is hard enough, and it should not be made more difficult by allowing firearms that are not detectable or traceable on our streets. Law enforcement officers are not able to solve crimes involving these ghost guns, and this is detrimental to society because it puts law enforcement and the public at risk.

(Opposed—from testimony on HB 1073, which is identical to HB 1739 except for the title, on January 22, 2019) The state should do all it can to curb violence, but this bill is the wrong approach. Less than 2 percent of firearms used in felonies were purchased commercially. The bill focuses on pursuing those 2 percent while ignoring the 98 percent of firearms used by criminals. Undetectable and untraceable firearms are already illegal under federal law. The state should focus on enforcing existing laws, not creating new ones. This bill has many technical problems. It says an undetectable firearm must have more than 3.7 ounces of steel or steel alloy. This will eliminate all aluminum firearm receivers. Barrels are not given serial numbers by the manufacturer so this requirement will result in a firearms ban. The bill talks about metal detectors and X-ray machines, but not body scanners or other modern technology.

The bill does not protect public safety. It eliminates the public's ability to defend themselves. There is no obligation for the government to protect citizens from violence, so people have to protect themselves. The bill dangerously takes away protections for women. A woman's right to own firearms levels the fight between her and her attacker and allows her to protect her life. Women do not want to become a crime statistic. Punish the criminals and not law abiding women who just want to protect themselves.

The bill is being sold as preventative, but it only serves as a mechanism to punish law abiding citizens for the acts of criminals. The state should focus on solving mental health or behavioral problems that need to be addressed. Do not be fooled by the false promises of gun control by seeking to regulate inanimate objects. Do not blame gun owners for the evil hearts and bad behavior of the few.

**Persons Testifying:** (In support—from testimony on HB 1073, which is identical to HB 1739 except for the title, on January 22, 2019) Representative Valdez, prime sponsor; Bob Ferguson, Office of the Attorney General; Jane Weiss; Niko Battle; Carmen Best, City of Seattle; Elizabeth Hjelmseth, Alliance for Gun Responsibility; Pat Griffith, League of Women Voters; and Robert Klaus Brauer.

(Opposed—from testimony on HB 1073, which is identical to HB 1739 except for the title, on January 22, 2019) Tom Kwieciak, National Rifle Association; Jane Milhans; Daniel Mitchell; Art Giddings, SKT Research and Industries, Front Sight, Upper Nisqually Marksman Ranges, and National Rifle Association; Sharyn Hinchcliffe, Pink Pistols Seattle; and Ira Moser.

**Persons Signed In To Testify But Not Testifying:** Margy Heldring; Charlene Kahn; Emma Silber; Chris Spieth; Bob Scalise; Brendan Blevins; Erik Ordway; Trevor Quinn; Kevin Cassady; Christian Riley; and Sandy Brown.