

HOUSE BILL REPORT

SB 5491

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to clarifying waiver of firearm rights.

Brief Description: Clarifying waiver of firearm rights.

Sponsors: Senators Pedersen, Rivers and Mullet.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/16/22, 2/22/22 [DP].

Brief Summary of Bill

- Authorizes electronic filing of voluntary waivers of firearm rights.
- Exempts firearms voluntarily forfeited to the Washington State Patrol from mandatory disposal requirements.
- Creates a new civil infraction for possession or control of a firearm after a person files a voluntary waiver of firearm rights that has not been revoked.
- Encourages mental health and substance use disorder professionals to discuss voluntary waiver of firearm rights with their patients.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Hansen, Chair; Simmons, Vice Chair; Davis, Entenman, Goodman, Kirby, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Without recommendation. Signed by 6 members: Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham,

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.

Assistant Ranking Minority Member; Abbarno, Klippert and Ybarra.

Staff: John Burzynski (786-7133).

Background:

Voluntary Waiver of Firearm Rights.

Washington law allows individuals to file a voluntary waiver of their firearm rights with the clerk of the court in any county in the state. The clerk must request photo identification to verify the person's identity before accepting the waiver form. The person filing the waiver may identify an individual to be notified if the waiver is revoked.

The voluntary waiver form must include the following language: "Because you have filed this voluntary waiver of firearm rights, effective immediately you may not purchase or receive any firearm. You may revoke this voluntary waiver of firearm rights any time after at least seven calendar days have elapsed since the time of filing."

Once a waiver is filed, by the end of the business day the clerk of the court must transmit the waiver form to the Washington State Patrol. Within 24 hours of receiving the waiver form, the Washington State Patrol must enter the waiver into the National Instant Criminal Background Check System and any other federal and state databases used to identify persons prohibited from purchasing firearms.

Revoking Waiver of Firearm Rights.

No sooner than seven calendar days after filing a voluntary waiver of firearm rights, a person may file a revocation of the waiver. The clerk must request photo identification to verify the person's identity prior to accepting the revocation. By the end of the business day, the clerk must transmit the revocation to the Washington State Patrol and any revocation contact listed on the waiver form. Within seven days of receiving a revocation, the Washington State Patrol must destroy all records of the voluntary waiver and remove the person from the National Instant Criminal Background Check System and any other federal and state databases used to identify persons prohibited from purchasing firearms, unless the person is otherwise ineligible to possess a firearm.

Disposal of Forfeited Firearms.

Washington law provides that firearms in the possession of the Washington State Patrol that were judicially forfeited or unclaimed must be disposed of by being: (1) retained for agency use; (2) destroyed; or (3) auctioned or traded to licensed dealers.

Summary of Bill:

Voluntary Waiver of Firearm Rights.

Any person may file a voluntary waiver of firearm rights with the clerk of the court in any

county in Washington either in writing or electronically. The clerk of the court must verify a person's identity using either a physical or scanned copy of photo identification. When a person files a voluntary waiver of firearm rights, the person may name a family member, mental health professional, substance use disorder professional, or alternate person to be contacted if the person attempts to purchase a firearm while the voluntary waiver is in effect or revokes the waiver.

The voluntary waiver form must include the following updated language: "Because you have filed this voluntary waiver of firearm rights, effective immediately you may not purchase, receive, control, or possess any firearm. You may revoke this voluntary waiver of firearm rights any time after at least seven calendar days have elapsed since the time of filing."

Additionally, the clerk of the court must immediately provide notice to the person filing the waiver if the waiver is accepted, and the notice must state the person's possession or control of a firearm is unlawful and that any firearm in their possession or control should be surrendered immediately.

Revoking Waiver of Firearm Rights.

If a person files a revocation of their waiver, by the end of the business day the clerk of court must transmit the form to the Washington State Patrol and any family member, mental health professional, substance use disorder professional, or alternate person listed as a revocation contact on the voluntary waiver.

Disposal of Forfeited Firearms.

Firearms that have been voluntarily forfeited following a voluntary waiver of firearm rights are exempted from the mandatory disposal requirement for firearms in the possession of the Washington State Patrol.

Unlawful Possession of a Firearm.

A person commits a class 4 civil infraction if the person: (1) possesses or controls a firearm; (2) has filed a voluntary waiver of firearm rights that has been accepted by the clerk of the court; and (3) has not lawfully revoked the waiver of firearm rights. A class 4 civil infraction is punishable by a penalty of \$25. Each firearm unlawfully possessed is a separate infraction.

Discussion of Voluntary Waiver of Firearm Rights.

Mental health professionals and substance use disorder professionals are encouraged, but not required, to discuss voluntary waiver of firearm rights with their patients if the professional reasonably believes the discussion will avoid or minimize imminent danger to the patient or any other individual.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill was unanimously approved by the Senate. The voluntary firearm waiver program needs to be modified in response to a determination by the Federal Bureau of Investigation that waivers cannot be entered into the national background check system if there is no penalty for attempting to purchase a firearm after making a waiver. This bill creates the minimum possible penalty with the goal of allowing people to waive their firearm rights and protect themselves during a mental health crisis. The bill also lowers barriers to access by allowing electronic filings and conversations with mental health professionals about the voluntary waivers.

Voluntary waivers of firearm rights are an important way to help people experiencing a mental health crisis by restricting access to firearms. The law needs to be strengthened and the notification provision in this bill is an important enhancement. Enabling voluntary waivers of firearm rights is a lifesaving tool to prevent suicide.

(Opposed) This bill does not address the specific criteria required to restore a person's firearm rights after they go through a process of obtaining mental health care. Legislative committees do not have a history of addressing the problems created by bills and this bill needs to be fully redone.

The voluntary waiver process is effective immediately once accepted and affords no time for a person to surrender firearms before they violate the law. There is no notice requirement. This bill raises concerns that one may be unable to remove their name from a list of restricted firearm purchasers after their name is added to the list.

Persons Testifying: (In support) Senator Jamie Pedersen, prime sponsor; Diane Studley; and Leanne Kennedy.

(Opposed) Aoibheann Cline, National Rifle Association; and Sharyn Hinchcliffe, Pink Pistols and Washington Civil Rights Association.

Persons Signed In To Testify But Not Testifying: Laurie Layne; Brent Hanson; Sen Mcneely; Don Ness; Chris Klenke; William Hunt; Kim Welk; Dane Larsen; Daniel Free; and Jordan Lehman.