

# HOUSE BILL REPORT

## SHB 1562

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**As Passed House:**

March 8, 2023

**Title:** An act relating to reducing the risks of lethality and other harm associated with gun violence, gender-based violence, and other types of violence by clarifying and updating laws relating to the unlawful possession of firearms and restoration of firearm rights.

**Brief Description:** Reducing the risks of lethality and other harm associated with gun violence, gender-based violence, and other types of violence.

**Sponsors:** House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Thai, Lekanoff, Taylor, Berry, Ryu, Reed, Kloba, Entenman, Walen, Doglio, Davis, Wylie, Ramel, Ormsby, Pollet and Duerr).

**Brief History:**

**Committee Activity:**

Civil Rights & Judiciary: 2/7/23, 2/17/23 [DPS].

**Floor Activity:**

Passed House: 3/8/23, 51-46.

**Brief Summary of Substitute Bill**

- Makes changes to the crime of Unlawful Possession of a Firearm, including by adding additional crimes that prohibit a person from possessing a firearm.
- Revises provisions governing restoration of firearm rights, including by establishing additional eligibility requirements and procedures applicable to the petition process.

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**HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.

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

Signed by 7 members: Representatives Hansen, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Thai and Walen.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Cheney and Rude.

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

### **Background:**

#### Unlawful Possession of a Firearm.

State law prohibits certain persons from possessing firearms, including persons convicted of any felony offense and certain misdemeanor domestic violence offenses and persons subject to certain qualifying protective orders. A violation of this prohibition constitutes the felony crime of Unlawful Possession of a Firearm.

*First-Degree Unlawful Possession of a Firearm.* Unlawful Possession of a Firearm in the first degree, a class B felony, applies if the basis for the prohibition is a conviction or finding of not guilty by reason of insanity (NGRI) of a serious offense.

*Second-Degree Unlawful Possession of a Firearm.* Unlawful Possession of a Firearm in the second degree, a class C felony, is committed when a person owns, possesses, or has in the person's control, any firearm under a number of circumstances, including if the person has a conviction or finding of NGRI for certain disqualifying crimes or if the person is subject to a protective order meeting specified requirements. In addition, a person is prohibited from possessing firearms if the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense.

Disqualifying convictions under Unlawful Possession of a Firearm in the second degree are any felony offense that is not a serious offense, and any of the following nonfelony offenses committed by one intimate partner or family or household member against another, committed on or after certain dates specified in statute:

- Assault in the fourth degree;
- Coercion;
- Stalking;
- Reckless Endangerment;
- Criminal Trespass in the first degree;
- Harassment; and
- violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence.

Firearms possession is prohibited based on a protective order during any period of time the

person is subject to a protection order, no-contact order, or restraining order that was entered after notice and an opportunity to respond, restrains the person from harassing, stalking, or threatening the protected person or the person's or protected person's child, and that meets other specified requirements.

#### Restoration of Firearm Rights Following a Criminal Conviction.

Generally, firearm possession rights lost because of a criminal conviction or NGRI finding may be restored if certain conditions are met and certain time periods have passed. Firearm rights may never be restored for a conviction or NGRI finding for a felony sex offense, a class A felony, or a felony with a maximum sentence of at least 20 years.

For other disqualifying offenses, a person may petition a court for restoration if the person:

- is not currently charged with any crime;
- has no prior felony convictions that continue to count as criminal history under the Sentencing Reform Act;
- for a felony offense, has spent five or more consecutive years in the community without being convicted or found NGRI of any offense; and
- for a nonfelony offense, has spent three or more consecutive years in the community without being convicted or found NGRI of any offense, and the person has completed all conditions of the sentence.

A petition for restoration must be brought in the court of record that ordered the petitioner's prohibition on possession or the superior court in the county where the petitioner resides.

#### Restoration Following an Involuntary Commitment.

A person who has been involuntarily committed or detained for mental health treatment or had criminal charges dismissed based on incompetency to stand trial may apply, upon discharge, for restoration of firearm rights. The person must show by a preponderance of the evidence that he or she: is no longer required to participate in court-ordered treatment; has successfully managed the condition, and is unlikely to suffer a recurrence of symptoms, related to the commitment, detention, or incompetency; and does not present a substantial danger to self or the public. If the person engaged in violence and will likely engage in violence after restoration, the person must show by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

A person who is involuntarily committed following an NGRI finding may not petition for restoration of firearm rights unless the person meets the requirements for restoration following a criminal conviction.

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

Provisions governing the crime of Unlawful Possession of a Firearm and restoration of firearm rights are revised.

### Unlawful Possession of a Firearm.

*Definitions.* The term "serious offense" is amended to include the felony offenses of Driving Under the Influence and Actual Physical Control of a Vehicle While Under the Influence. As a result, these offenses fall under Unlawful Possession of a Firearm in the first degree, and a person who is charged with either offense is prohibited from possessing a firearm pending trial, sentencing, or appeal.

For purposes of the crime of Unlawful Possession of a Firearm, the term "firearm" includes frames and receivers. Definitions for "domestic violence" and "sex offense" are added. The definition of "conviction" or "convicted" is moved from the section governing unlawful possession of a firearm into the definition section.

*Prohibited Conduct.* The conduct that is prohibited under the offense is expanded to include accessing, having custody of, or receiving, any firearm.

*Prohibiting Offenses.* The following misdemeanor and gross misdemeanor crimes are included as prohibiting crimes, if committed on or after the effective date of the act:

- any domestic violence offense not currently included;
- Stalking;
- Cyberstalking;
- Cyber Harassment, except when based on lewd, indecent, or obscene images or language;
- Harassment;
- Aiming or Discharging a Firearm;
- Unlawful Carrying or Handling of a Firearm;
- Animal Cruelty in the second degree, except when based on abandonment or neglect;
- "prior offense" under the impaired driving laws, if committed within seven years of another "prior offense" conviction; and
- violation of an order to surrender and prohibit weapons (OTSW), an extreme risk protection order (ERPO), or the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence.

For the predicate offense of Harassment, the terms "intimate partner" and "family or household member" have the meanings given in statutes in effect at the time of commission of the crime.

*Protective Orders.* No-contact orders issued in sexual assault, trafficking, and promoting prostitution cases are added to the list of orders that prohibit a person from possessing firearms if they meet specified requirements. The prohibition applies to provisions in covered protective orders that restrain or protect "others identified in the order."

### Restoration of Firearm Rights Following a Criminal Conviction.

The eligibility requirements and petition process for restoration of firearm rights are revised and moved into a new section in the firearms chapter.

*Eligibility Requirements.* A person, for the specified consecutive time periods immediately preceding the filing of the petition, must not have been convicted of any offense that prohibits possession of a firearm.

The time period is extended to five consecutive years immediately preceding the petition for the following gross misdemeanor and misdemeanor offenses:

- Domestic Violence;
- Stalking;
- Cyberstalking;
- Cyber Harassment;
- Harassment;
- Aiming or Discharging a Firearm;
- Unlawful Carrying or Handling of a Firearm;
- Animal Cruelty in the second degree;
- "prior offense" under the impaired driving laws; and
- violation of an OTSW, ERPO, or the restraint or exclusion provisions of a protection order or no-contact order.

The requirement that the person has completed all sentencing conditions for any nonfelony offense applies also to felony offenses and is limited to sentencing conditions other than non-restitution fines and fees. The court must waive this requirement if the petitioner provides verification from the sentencing court that relevant court records are no longer available, or attests to the unavailability of relevant records from other entities.

An additional eligibility requirement is established that the person has been determined by law enforcement to not be subject to any other prohibition on possessing a firearm and would be able to pass a background check to purchase a firearm if the petition is granted.

*Petition Process.* A person may petition for restoration by filing the petition in the superior court in a county that entered any prohibition. Notice of the petition must be served on the prosecuting attorney. The prosecutor must take reasonable steps to notify the listed victim of a prohibiting crime and any person who previously obtained a full protective order against the person, if those persons have requested notification, of the procedure to provide a sworn statement regarding the existence of additional facts or information the person may have relevant to whether the petitioner meets requirements for restoration.

The prosecutor must verify in writing to the court that the prosecutor has reviewed the relevant records, and based on that information, whether there is sufficient evidence to determine that the person meets eligibility requirements. The court may set a hearing on the petition if the court determines additional information is necessary to determine whether the person meets the requirements for restoration of firearm rights.

The court must grant the petition if the court finds that the person meets the requirements

for restoration. The prosecutor must notify any victim who requests notification of the court's decision.

*Other Provisions.* The Administrative Office of the Courts (AOC) must create standard forms for restoration petitions and orders. The AOC must update protection order and no-contact order forms to allow victims to opt out of notification of firearm restoration proceedings. These updated forms and the standard forms for restoration petitions and orders must be used beginning January 1, 2024.

The court must send notice of the restoration of a person's firearm rights to the Washington State Patrol and the National Instant Criminal Background Check System.

Public officials, public employees, public agencies, or a combination of units of local government and its employees, are immune from civil liability for good-faith conduct in the performance of their duties in relation to restoration petitions.

Restoration of Firearm Rights Following an Involuntary Commitment.

A person prohibited from possessing firearms as a result of a civil commitment following an NGRI finding in a criminal case must wait one year following discharge before the person may apply for restoration of firearm rights.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Gun violence needs to be addressed from all angles, and one strategy is to strengthen laws regarding firearm prohibitions and firearm rights restoration. The bill addresses serious gaps in current law, adds important clarifications to the process for victims, and aligns with extensive research focused on evidence-based approaches to reducing the risk of harm. Strengthening this law will better ensure that schools, communities, and survivors are safer from gun violence.

Gun violence impacts all races and ethnicities, but exacts a particular toll on Black and Brown communities. Gun homicide disproportionately impacts people of color, but especially Black men aged 15 to 34 years. Research shows a disparate impact of high lethality risks for young, low-income women from historically marginalized groups. Research also shows that a firearm in a home significantly increases the risk of suicides. When perpetrators of intimate partner violence have access to firearms, women are at increased risk of serious or deadly harm. Black, Latina, and Indigenous women face the

highest rates of firearm-related intimate partner violence. Ensuring that domestic violence perpetrators do not have access to firearms is crucial to enhancing the safety of survivors.

The law needs to take into account specific risk factors that increase the likelihood of individuals engaging in future violence. The strongest predictor of future violence is prior violent behavior, including perpetration of domestic violence and violent misdemeanors. The most common precursor to a school shooting is domestic violence. It is critically important that firearms restoration law looks at civil protection orders since survivors may choose not to engage in the criminal system. Looking at criminal history alone puts public safety and survivors at risk. Other particularly strong risk factors for future violence include animal abuse and multiple alcohol-related offenses. Repeat Driving Under the Influence offenders present a very high risk for future gun violence or suicide. Numerous studies show this correlation.

The bill updates the law to address ambiguities and missing elements. It provides that the person must be crime-free in the required time period immediately preceding the petition. It also addresses persons who are prohibited from possessing firearms based on a conviction in another state as well as hate crimes and other threatening tactics, such as cyberstalking or cyber harassment.

The bill establishes a process for restoring firearms access so that there is consistency, transparency, verification of information, and victim notification. Currently the process differs dramatically from county to county. These petitions are often considered pro forma and done behind closed doors, not in open court. Many find the law convoluted and hard to understand, which creates hurdles for the indigent and others who cannot afford to hire a specialized attorney.

Victim notification is crucial for survivors' safety planning. In one case, a domestic violence perpetrator was able to regain his firearm rights, without any notice to the victim, and within a few months the perpetrator shot his victim, who is now permanently disabled and lives in physical pain and permanent fear of future violence. The bill ensures that victims are included in any firearm restoration proceeding, which current law does not do.

Formerly incarcerated people do not identify gun restoration as a priority; instead, nearly all are seeking support around housing, employment, child custody, and other basic needs.

(Opposed) The bill exacerbates racial disparities in the criminal legal system and arbitrarily places new and onerous barriers to reentry on impacted communities. Existing disparities will grow because under the bill, misdemeanors and other nonviolent offenses result in the loss of civil rights for up to 10 years. It defies logic to think that people seeking to legally restore firearm rights would then commit gun violence once their rights are restored. No data has been shown indicating that people who have legally restored firearms rights commit acts of gun violence at a greater rate than the general population. The bill jeopardizes the ability of the formerly incarcerated to live as free citizens and to protect

their children and families.

Current gun possession laws already disproportionately impact communities of color. People of color are disproportionately targeted by policing and will be further disproportionately criminalized under the bill. African Americans make up less than 4 percent of the state, but they are anywhere from 5.8 to 6.2 times more likely to be charged with unlawful possession of a firearm. This is a racist bill, and it takes the state back to the Jim Crow era. The bill impacts the ability of Indigenous people to participate in hunting, which is an integral part of Native American cultures.

The bill will make it easier to lose a core constitutional right and harder to restore that right. Many of the new offenses included in the list of crimes that will prohibit firearm possession are simply nonviolent in nature, such as Reckless Endangerment, which can be charged when someone does something stupid like popping a wheelie on a motorcycle. It is simply not true that the current process for restoration is not uniform. Current law works quite well and has a large body of case law that guides petitioners.

The health impact study on this bill made no findings regarding the waiting period to restore firearm rights and the impact on public safety. There is no scientific indication that doubling the waiting period to 10 years will improve public safety. The bill does nothing to address the root causes of gun violence or to close loopholes for illegally obtaining a firearm, and it fails to take any meaningful steps toward achieving its stated goals.

The way to address gun violence is through a holistic approach centered on communities. The Legislature should convene a stakeholder process and consider all perspectives and data before moving forward with a harmful bill. Survivors of domestic violence seeking help and support frequently find that the system only tries to criminalize them. There needs to be a conversation with community stakeholders and people with lived experiences about how to move forward in a way that sees all stakeholders in their humanity.

(Other) A health impact review found that overall evidence indicates the bill would likely decrease access to firearms for some people, which would likely decrease future risk of firearm abuse, injury, and death by homicide and suicide. There is strong evidence this would decrease health inequities for victims and survivors of firearm-related harm, including inequities due to racism, age, gender, and income level. The bill has the potential to extend felony charges and convictions for unlawful possession to people with certain convictions and civil violations. This may result in some people experiencing a first or subsequent felony conviction, incarceration, or reincarceration, and resulting collateral consequences, which may have an impact on inequities for formerly incarcerated people.

**Persons Testifying:** (In support) Representative My-Linh Thai, prime sponsor; Kelly Sampson, Brady Center to Prevent Gun Violence; Jolaine Joseph; Margaret MacRae, Northwest Justice Project; Dana Cuomo, Lafayette College; Riddhi Mukhopadhyay, Sexual Violence Law Center and Washington State Women's Commission; Stephen Paolini; Amy



Freedheim, King County Prosecuting Attorney's Office Felony Traffic Unit; and Kim Todaro, King County Bar Association Domestic Violence Legal Advocacy Project.

(Opposed) Gerald Hankerson, National Association for the Advancement of Colored People Alaska Oregon Washington State Area Conference; Anthony Powers, American Equity and Justice Group; Jason Clark, Northwest Credible Messenger; Charlie Klein, Civil Survival; Jewel Shepherd, Black Student Union; Melody Simle, Real Justice Washington; Derek Boyd; Schoen Parnell, Law Office of Schoen Parnell; Vitaliy Kertchen, Washington Defender Association and Washington Association of Criminal Defense Lawyers; Kristina Jorgensen; Emijah Smith; and Samuel Martin, Washington for Black Lives.

(Other) Lindsay Herendeen, State Board of Health.

**Persons Signed In To Testify But Not Testifying:** More than 20 persons signed in. Please see committee staff for information.