

HOUSE BILL REPORT

SSB 5006

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: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Rivers, Dhingra, Frame, Hasegawa, Hunt, Kuderer, Mullet, Nobles, Stanford and Valdez).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/14/23, 3/17/23 [DPA].

**Brief Summary of Substitute Bill
(As Amended By Committee)**

- Creates a new civil infraction for persons who have in their possession or control a firearm after filing a voluntary waiver of firearm rights that has not been revoked.
- Permits a voluntary waiver of firearm rights to be submitted or revoked, either in writing or electronically, and requires the clerk of the court to notify a filer and any listed contacts when a voluntary waiver of firearm rights has been accepted or revoked.
- Allows a filer to update contact information by making an electronic or written request to the clerk of the court.
- Encourages mental health professionals and substance use disorder professionals to discuss with their patients the voluntary waiver of firearm rights.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

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.

Majority Report: Do pass as amended. Signed by 9 members: Representatives Hansen, Chair; Farivar, Vice Chair; Cheney, Entenman, Goodman, Peterson, Rude, Thai and Walen.

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

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 another individual to be notified if the waiver is revoked. The voluntary waiver form must state the filer may not purchase or receive a firearm and may revoke their waiver after seven 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 (NICS) and any other federal or state databases used to identify persons prohibited from purchasing firearms. Copies and records of a voluntary waiver of firearm rights may not be disclosed except to law enforcement agencies.

Revoking a 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, and destroy all records of the voluntary waiver. Within seven days of receiving a revocation, the Washington State Patrol must remove the person from the NICS 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, and destroy all records of the voluntary waiver.

Limitations and Protections.

Neither a voluntary waiver of firearm rights nor a revocation of a voluntary waiver of firearm rights may be considered by a court in any legal proceeding. Additionally, a voluntary waiver of firearm rights may not be required as a condition of employment, or to receive any benefit or service. Records obtained and reports produced pursuant to the state law governing voluntary waivers of firearm rights are not subject to disclosure through the Public Records Act.

A person who knowingly makes a false statement regarding their identity on the voluntary waiver of firearm rights form or revocation of waiver of firearm rights form is guilty of false swearing, a gross misdemeanor.

The Federal National Instant Criminal Background Check System.

Federal law prohibits licensed firearms importers, manufacturers, and dealers from transferring a firearm to an unlicensed person unless, among other requirements, the licensee contacts NICS and NICS provides the licensee with a unique identification number for the transfer, or three days have passed and NICS has not notified the licensee that receipt of a firearm by the intended recipient would be unlawful. A unique identification number may only be assigned to the transfer by NICS if transfer or receipt of the firearm would not violate certain sections of federal law, or any state, local, or tribal law.

The Federal Bureau of Investigation has notified the Washington State Patrol that, in order for a firearm waiver to be entered into NICS' indices or considered prohibiting, state law must establish that this is a state prohibition, meaning the state limits firearm rights by either deeming that individuals who have waived their firearm rights are not authorized to either own, possess, or receive firearms, or that they cannot receive a state firearms permit.

Summary of Amended Bill:

Unlawful Possession of a Firearm.

A person, whether an adult or a juvenile, commits a class 4 civil infraction of unlawful possession of a firearm if the person has in their possession or control a firearm after the person files a voluntary waiver of firearm rights, the form has been accepted by the clerk of the court, and the voluntary waiver has not been lawfully revoked. Each firearm unlawfully possessed constitutes a separate infraction. A class 4 civil infraction is punishable by a maximum penalty of \$25, not including statutory assessments. The court may, in its discretion, order performance of up to two hours of community restitution instead of imposing a monetary penalty.

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. The voluntary waiver form must state the filer may not purchase, receive, control, or possess any firearm, and may revoke the waiver after seven days have elapsed since the time of filing. 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 applies to have the waiver revoked.

The clerk of the court must immediately provide notice to the person filing the waiver, and

any additional contact the filer named, if the voluntary waiver has been accepted. The notice must state the filer's possession or control of a firearm is unlawful and that any firearm in their possession or control should be surrendered immediately.

Updating Contacts.

Any person who files a voluntary waiver of firearm rights may update the contact information for any family member, mental health professional, substance use disorder professional, or alternate person listed in the waiver by making an electronic or written request to the clerk of court in the same county where the waiver was filed. The clerk of court must request a physical or scanned copy of the person's photo identification to verify their identity prior to updating any contact information. By the end of the business day, the clerk of court must transmit the updated contact information to the Washington State Patrol.

Revoking a Waiver of Firearm Rights.

No sooner than seven calendar days after filing a voluntary waiver of firearm rights, the person who filed the waiver may revoke the waiver either in writing or electronically in the same county where the waiver was filed. The clerk of court must request a physical or scanned copy of the person's photo identification to verify their identity prior to accepting the revocation. By the end of the business day, the clerk of court must transmit the revocation to the Washington State Patrol, and any family member, mental health professional, substance use disorder professional, or alternate person listed in the waiver. The statutory requirement that the clerk of court destroy all records of the voluntary waiver is removed.

Mental Health and Substance Use Disorder Professionals.

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.

Merged Definitions.

The definition section of the chapter of the revised code that governs firearms and dangerous weapons is reenacted to merge a double amendment resulting from two separate acts amending various definitions without reference to each other. Definitions for the terms "Mental Health Professional" and "Substance Use Disorder Professional" are added to this section.

Amended Bill Compared to Substitute Bill:

The amended bill allows a court to order performance of up to two hours of community restitution in lieu of a monetary penalty prescribed for the civil infraction of unlawful possession of a firearm.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended 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 voluntary waiver of firearm rights statute is a useful tool to prevent suicides and save lives. People who have concerns about their mental health or who know they may go through a crisis can put themselves on a do-not-purchase list to ensure that if they try to buy a firearm, the transaction will be prohibited. People can keep themselves safe by restricting their access to guns. Removing guns in the short term can save lives in the long term. The death of a loved one is horrific. Suicide is a leading cause of death among young adults and guns are the most lethal means of suicide. This bill will save lives. Other states are following suit and adopting similar laws.

The bill modifies the voluntary waiver program to encourage mental health professionals to share information about this suicide prevention tool, while retaining the underlying statute's provisions that bar professionals from conditioning service on providing a waiver of firearm rights.

The bill clarifies and strengthens the existing voluntary waiver program by requiring courts to provide notice and making possession a civil infraction. The Federal Bureau of Investigation will not maintain voluntary waivers in the background check system unless state law is modified to include a penalty. This bill sets the lightest penalty possible, a \$25 civil infraction.

The bill allows for electronic filing, eliminating barriers for the most vulnerable, and making it easier to take advantage of the program. Waiver is voluntary and can be revoked after seven days. The program does not infringe on anyone's rights.

(Opposed) When the firearm waiver law was first proposed, it was voluntary, surrender was not required, and no penalties applied. This bill imposes civil penalties on those seeking help and will have the result of discouraging those who need help from seeking help.

This bill may have good intentions, but is a trap for the unwary. Waiver is effective immediately upon filing; there is no grace period in which one can surrender their weapons without committing a violation. The notice process is backwards. A person seeking to waive their firearm rights should receive notice in advance of filing, not after filing. Violations have financial implications.

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

Paula Barnes; and Brian Duncan.

(Opposed) Aoibheann Cline, National Rifle Association.

Persons Signed In To Testify But Not Testifying: Laurie Layne; Julie Barrett, Conservative Ladies of Washington; Teo Morca; and Eric Pratt.