

SENATE BILL REPORT

SB 5635

As Reported By Senate Committee On:
Judiciary, March 2, 2005

Title: An act relating to clarifying the process for restoration of the right to possess firearms.

Brief Description: Clarifying the process for restoration of the right to possess firearms.

Sponsors: Senators Schoesler, Mulliken, Esser, Hargrove, Hewitt, Carrell, Stevens, Benson, Schmidt, Honeyford, McCaslin, Sheldon and Benton.

Brief History:

Committee Activity: Judiciary: 2/16/05, 3/2/05 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5635 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin, Rasmussen and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: A person convicted of a felony, or some specified non-felonies committed against household members, is precluded from possessing a firearm. There are two methods that can be used to regain firearm possession rights.

The person may petition the court to restore his or her right to possess a firearm after a period of time spent in the community without being convicted of or currently charged with a crime. For felonies the period is five years; for non-felonies the period is three years. This section of the statute provides criteria for when the petition may be brought, but does not provide any criteria for the court to use when deciding whether the right to possess a firearm should be restored.

Alternatively, the person is not precluded from firearm possession if the conviction has been subject to a pardon, annulment, or certificate of rehabilitation. There are no statutory procedures or criteria for obtaining a certificate of rehabilitation.

In *State v. Masangkay*, the Court of Appeals of Washington, division one, held that the creation of a procedure for restoring firearm rights, using a certificate of rehabilitation, is a matter for the legislature, not the courts. The court refused to exercise its power to adopt procedures necessary to effect its jurisdiction.

Summary of Substitute Bill: A previously convicted person may bring an action, in the county in which he or she resides, for an order restoring the person's right to possess a firearm. This is the only method to have the right to possess a firearm restored, other than by a pardon or annulment. A crime free period, of five years for felonies or three years for non-

felonies, must precede the petition. Petitioners must supply a statement of their criminal history and the appropriate certificate of discharge or other documentation showing that they have completed the conditions of the sentence. Petitioners must prove by a preponderance of the evidence that they are no longer a danger to themselves or society.

The clerk of the court granting the petition immediately transmits the order restoring the right to possess a firearm to the Washington State Patrol and the records are updated. The order contains a warning that, if the person is prohibited from possessing firearms under federal law, he or she may be prosecuted in federal court or the laws of another state.

Substitute Bill Compared to Original Bill: An action to restore the right to possess a firearm must be brought in the county where the person resides. The prosecuting attorney must be given notice. The documents to be submitted are specified. The court order, if the action is successful, is sent to the Washington State Patrol who immediately update their records. The person receives notice that federal law may still preclude possession.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill is intended to clarify and simplify the process. This merely restores a constitutional right to persons who have paid their debt to society. The process needs to be as simple as possible so that people can do it without hiring attorneys. This can be made a form driven process, so people can do it themselves.

Testimony Against: None.

Other: The bill, as introduced, does not clarify the process to the degree needed to provide the court with adequate guidance.

Who Testified: PRO: Senator Schoesler, prime sponsor; Joe Waldron, CCRKBA, WAC, WSR&PA, GOAL. OTHER: Pam Loginsky, WAPA.