

SENATE BILL REPORT

SB 5465

As Reported By Senate Committee On:
Judiciary, February 23, 2007

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, Kline, Carrell and Hatfield.

Brief History:

Committee Activity: Judiciary: 1/30/07, 2/23/07 [DPS, DNP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5465 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; Carrell, Hargrove, Murray and Roach.

Minority Report: Do not pass.

Signed by Senator Weinstein.

Staff: Lidia Mori (786-7755)

Background: A person convicted of a felony, or some specified non-felonies committed against a person, 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 specified period of time spent in the community without being convicted of, or currently charged with, a crime. The period is five years for felony convictions and three years for non-felony convictions. 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, Division I, of the state of Washington held that the creation of a procedure for the restoration of firearm rights by way of 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.

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.

Summary of Bill (Recommended Substitute): A petition to have the right to possess a firearm restored must be filed in the superior court of the county in which the conviction occurred and judgment, or finding of not guilty by reason of insanity, was entered. If there are disqualifying convictions from more than one county, then the offender must file a petition in each county separately. A petition must also be filed on the prosecuting attorney's or city attorney's office that prosecuted the crime.

If the offender has an out of state conviction, or finding of not guilty by reason of insanity, then the petition must be filed in Thurston County Superior Court and on the Washington State Attorney General's Office. The petition must include a statement under oath, setting out the offender's criminal history and prison or jail release date. It must also be accompanied by the offender's case financial history screen listing the offender's legal financial obligations. The city, county, or state prosecuting attorney must provide a declaration that the offender has satisfied all conditions of the sentence imposed for that particular conviction.

The Administrative Office of the Courts is required to create model forms and instructional brochures.

There are technical amendments clarifying that clerks must transmit the orders, restoring the individual's right, to the Washington State Patrol and the Department of Licensing when the order is granted.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute): A petition to have the right to possess a firearm restored must be filed in the superior court of the county in which the conviction occurred and judgment, or finding of not guilty by reason of insanity, was entered. If there are disqualifying convictions from more than one county, then the offender must file a petition in each county separately. A petition must also be filed on the prosecuting attorney's or city attorney's office that prosecuted the crime.

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Appropriation: None.

Fiscal Note: Requested on January 23, 2007.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original: PRO: This same bill was passed out of committee last year. It is not ground-breaking material. The problem that we face is that there is no statutory procedure in place for one to obtain a certificate of rehabilitation. This bill attempts to ameliorate that problem.

The concern is simple. Many calls are made by citizens who merely want to restore their right to possess a firearm. A clear, simple and uniform procedure to restore those rights is needed. The right to bear arms is a constitutional right. Individuals with less egregious offenses should have an easier time restoring his or her rights.

CON: This bill is unnecessary. While it is a good idea to clarify the procedure, this bill does not do that. Current law already works and the courts are comfortable with the procedure. This bill would set up a number of paper chase hurdles that might make the process more difficult. Furthermore, the warning within the statute may eliminate or undercut any protections one might get. Why would someone want to restore their rights within Washington if it does not qualify under federal law? The law, as it stands, works.

OTHER: This bill is needed for a number of reasons. The statute currently sets out the bare bones of the restoration process. Therefore, one must hire an attorney to complete the process, which can be expensive. We want to create a checklist so that an individual may pursue this process pro se at the lowest possible cost. We would also want to facilitate the production of pattern forms. The statutory list in the bill, which was taken directly from RCW 9.41.040 and pasted into RCW 9.41.047, provides the petitioner multiple ways in which to provide information to the court.

There are a few amendments that should be made to this bill. Certificates of rehabilitation do not exist in Washington State. The language regarding certificates of rehabilitation pertains to other jurisdictions that use certificates of rehabilitation and is a process in the executive branch. We want to modify this language so that persons from other jurisdictions do not have to go through extra hoops.

We want to have the venue in which an individual may petition in the Superior Court of the county in which the individual was convicted. The correct respondent would be the individual who prosecuted the case, whether a prosecutor or city attorney. As for out-of-state convictions, the correct venue would be that in which the petitioner resides, with the Attorney General acting as the respondent. We are not looking to change current law, but to provide certainty and clarification and remove any potential traps.

With regard to clerks, anything a clerk is required to attest to or certify should be limited to what is on record in that clerk's court. Clerks do not have the ability to provide individuals with information regarding date of release from jail, for example, because they are not privy to that information. They do have access to legal financial obligations. Clerks would also like a court order to be issued clarifying that the court is satisfied that all of the conditions have been met. The bill is a step in the right direction.

Persons Testifying: PRO: Senator Mark Schoesler, prime sponsor; Joe Waldron, Citizens Committee for the Right to Keep and Bear Arms, Washington Arms Collectors, Gun Owners

Action League, Washington State Rifle and Pistol Association, Wildlife Committee of Washington; Ed Owens, Hunters Heritage Council.

CON: Mark Muenster, Washington Association of Criminal Defense Lawyers.

OTHER: Pam Loginsky, Washington Association of Prosecuting Attorneys; Debbie Wilke, Washington Association of County Clerks.