

# HOUSE BILL REPORT

## ESSB 5038

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### As Passed House - Amended:

March 28, 2021

**Title:** An act relating to prohibiting the open carry of certain weapons at public permitted demonstrations and the state capitol.

**Brief Description:** Prohibiting the open carry of certain weapons at public permitted demonstrations and the state capitol.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Kuderer, Das, Carlyle, Darneille, Dhingra, Hunt, Lias, Lovelett, Nguyen, Pedersen, Rolfes, Saldaña, Salomon, Wellman and Wilson, C.).

### Brief History:

#### Committee Activity:

Civil Rights & Judiciary: 3/16/21, 3/19/21 [DPA].

#### Floor Activity:

Passed House: 3/28/21, 57-40.

### Brief Summary of Engrossed Substitute Bill (As Amended By House)

- Prohibits the open carry of firearms and other weapons at or near permitted demonstrations, on west State Capitol Campus grounds, in buildings on state capitol grounds, and in specified state legislative locations.
- Provides exemptions for law enforcement personnel when acting in conformance with their employing agency's policy and members of the armed forces while in the discharge of official duties.

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## HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

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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.*

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

**Minority Report:** Do not pass. Signed by 6 members: Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Klippert and Ybarra.

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

**Background:**

Washington law does not generally prohibit the open carry of firearms in public places, but does regulate the locations where firearms and other weapons may be possessed.

It is a gross misdemeanor for a person who knowingly possesses a weapon to enter certain locations. Weapons are prohibited in restricted areas of jails, public mental health facilities, commercial airports, courtrooms and other areas used in connection with court proceedings, and in places classified as off limits to persons under 21 years of age by the Washington State Liquor and Cannabis Board. The perimeter of any location where weapons are prohibited must be posted at reasonable intervals to alert the public that firearms are prohibited at the location. Law enforcement personnel, and military and security personnel, while engaged in official business, are exempt from these restrictions and a number of other exceptions apply.

"Weapon" is defined as a firearm, explosive, or an instrument or weapon listed in another statute governing dangerous weapons. For purposes of the restriction on possessing firearms in courtrooms and court facilities, "weapon" means any firearm, explosive, weapon of the kind usually known as slungshot, sand club, or metal knuckles, any knife, dagger, dirk or other similar weapon that is capable of causing death or bodily injury and is commonly used with that intent.

With several exceptions, it is also a gross misdemeanor offense for a person to possess firearms or weapons on public or private elementary or secondary school premises, school-provided transportation, or areas of facilities that are being used exclusively by public or private schools. Prohibited weapons include: nun-chu-ka sticks; throwing stars; air guns; stun guns; devices intended to injure a person with an electric shock, charge, or impulse; and weapons listed under the dangerous weapons statute. Elementary and secondary schools are required to post "GUN-FREE ZONE" signs providing notice that firearms are prohibited on school premises.

A person is prohibited from carrying a loaded pistol in a vehicle unless the person has a concealed pistol license and either: the pistol is on the licensee's person; the licensee is within the vehicle at all times the pistol is present; or the licensee is away from the vehicle

and the pistol is locked within the vehicle and concealed from view. An unloaded pistol kept in a vehicle must be locked within the vehicle and concealed from view. In addition, it is generally unlawful to possess or transport a loaded rifle or shotgun in or on a motor vehicle.

### **Summary of Amended Bill:**

Restrictions on the open carry of firearms and other weapons are established with respect to permitted demonstrations, as well as state capitol grounds and buildings, and legislative facilities.

It is unlawful for a person to knowingly open carry a firearm or other weapon:

- while knowingly at any permitted demonstration, whether the person carries the firearm or other weapon on his or her person or in a vehicle;
- while knowingly within 250 feet of the perimeter of a permitted demonstration after a law enforcement officer advises the person of the permitted demonstration and directs the person to leave until he or she no longer possesses or controls the firearm or other weapon, except this prohibition does not apply to a person possessing or controlling a firearm or other weapon on private property owned or leased by that person; or
- while knowingly being in the following locations: the west State Capitol Campus grounds, any buildings on the state capitol grounds, any state legislative office, or any location of a public legislative hearing or meeting during the hearing or meeting.

A violation is a gross misdemeanor offense. Exemptions are provided for: federal, state, and local law enforcement officers and personnel when carrying a firearm or weapon in conformance with their employing agency's policy; and members of the armed forces of the United States or the State of Washington when carrying a firearm or other weapon in the discharge of official duty or traveling to or from official duty.

"Weapon" means any firearm, explosive, weapon of the kind usually known as slungshot, sand club, or metal knuckles, any knife, dagger, dirk or other similar weapon that is capable of causing death or bodily injury and is commonly used with that intent.

"Permitted demonstration" means either: a gathering for which a permit has been issued by a federal or state agency or a local government; or a gathering of 15 or more people who are assembled for a single event at a public place that has been declared as permitted by the chief executive, sheriff, or chief of police of a local government in which the gathering occurs. A "gathering" means a demonstration, march, rally, vigil, sit-in, protest, picketing, or similar public assembly.

"Public place" means any site accessible to the general public for business, entertainment, or other lawful purpose, including: the front, immediate area, or parking lot of any store, shop, restaurant, tavern, shopping center, or other place of business; any public building, its grounds, or surrounding area; or any public parking lot, street, right-of-way, sidewalk,

public park, or other public grounds.

"Buildings on the state capitol grounds" is defined as specifically listed buildings located on the state capitol grounds.

Nothing in the act applies to the lawful concealed carry of a firearm by a person who has a valid concealed pistol license.

A severability clause is included, stating that if any provision of the act is held invalid, other provisions in the act are not affected.

**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) This bill is in response to the increasing intimidation and violence that has been occurring as a result of the presence of weapons at protests. This bill is not about squelching Second Amendment rights. It simply restricts where a person can openly carry a firearm. There are already laws that place these types of restrictions on firearm rights. Firearms are prohibited in courts, jails, bars, mental health facilities, and other locations. This bill just provides a logical extension of that policy to demonstrations and the State Capitol Campus.

Groups dressed in military fatigues and heavily armed with assault weapons are showing up at protests. They traumatize protestors in the name of protecting property when their real intent is intimidation. Participants armed with assault rifles are not responding to a credible threat; they are instilling fear, quieting free speech, and endangering the public. A person should not have to walk past a row of armed political opponents and fear being shot in order to attend a peaceful protest or make their voices heard in Olympia. The bill will help ensure safety and balance for all voices in the public square. Everyone has the right to be heard, but people should assemble with their voices and not with their firearms.

There is currently no statute that addresses the armed intimidation that has been happening at protests across the state. Under current law, it is necessary to prove intent to intimidate and cause fear, and this is an impossible burden to meet. This bill provides law enforcement and prosecutors with the clear standard they need to respond to these situations. The Supreme Court has recognized that these types of restrictions are allowable under the First and Second Amendments. The bill balances the rights of different groups. It allows people to protest without fear and it does not prevent others from protecting

themselves with concealed weapons.

(Opposed) This bill is ripe for abuse, especially for communities of color. It is based on an Alabama law that was designed to deny civil rights, and it mirrors the racism of California's Mulford Act, which was enacted with the express purpose of disarming black civil rights protestors by banning open carry of firearms. This bill can be used as a weapon to target and ensnare particular groups.

Female persons of color are significantly more likely to become victims of crime and they need the ability to protect themselves. During this past year, there have been many instances of violent protests erupting in locations throughout the state. It is not possible for people to predict when they will find themselves in the middle of a protest. The bill will turn law-abiding citizens into criminals if they inadvertently come across a small gathering of demonstrators.

Many of the recent protests have targeted businesses, and protestors have engaged in violent behavior, including assaulting people, setting fires, and smashing windows. Bystanders get trapped in this conflagration. The police have been absent, so people need to be able to protect themselves and their property. Intimidation, brandishing, and pointing a firearm at another person are already illegal. The bill has serious legal flaws and applies very broadly to places that people go on a daily basis. People's civil rights should not be squelched based on other people's fears.

The bill infringes Second Amendment rights by prioritizing First Amendment rights. The Legislature has the duty to uphold both. Open carry of firearms is not for the purpose of intimidation; it is for protecting life and property. Individuals who openly carry firearms provide protection for those who are peacefully protesting to support their right to have their voices heard.

**Persons Testifying:** (In support) Senator Kuderer, prime sponsor; Eric Richey, Whatcom County Prosecuting Attorney's Office; Lyn Idahosa-Berry; Breean Beggs, Spokane City Council; Niko Battle; Margy Heldring, Grandmothers Against Gun Violence; Thomas Koehnlein; and Liz Hjelmseth.

(Opposed) Curtis Bingham and Daniel Mitchell, Washington Civil Rights Association; Jessica Zielinski; Alisha Polson; Aoibheann Cline, National Rifle Association; and Sharyn Hinchcliffe.

**Persons Signed In To Testify But Not Testifying:** Ariel Young; Patrice Griffith, League of Women Voters of Washington; Charlene Kahn and Winona Hollins Haug, Grandmothers Against Gun Violence; Seth Dawson, Washington Association for Substance Abuse and Violence Prevention; Dani Madrone, Olympia City Council; Eileen Alexander; Linda Clifton, Pacific Northwest Anti-Defamation League and Jewish Community Relations Council; Lorren Garlich; Ann Aubuchon; Janette Ambauen; Lisa Morris; Nancy Salovich;

Rachel D. Van Gelder; Tiara Jewell; Eva Johnson; William Hochberg; Willa Jeffers; Stacy Andersen; Jordan Jeffers; Harriet Arkley; Beth Call; Susan Schulkin; Asukaa Jaxx; Kimberly Clarke; Ian Baldwin; Beau Jackson; Sue Amorosi; Bruce Becker; Aquilla Jackson; Kathy Jones; Richard Gammon; Patrick Inniss; Andrew Kaplowitz; Erin Senge; Sandra Bensky; Laura Hurtado-Webb; Sara Julin; Judy Bentley; Carl Henry Larson; Julia Hurd; John Kennedy; Adrianna Hulscher; Cristina Cantor; Paul Benz; Jeannie Shu; Heath Elizabeth; Debbie Hollyer; Janet Hoffman; John Kingslight; Dominick Bergeron; Lori Cohen-Sanford; Bellew Mathew; Carolyn Bernhard; Goldie Silverman; Greg Hauth; Jeanne Koenings; Corrine Kocher; Bhartie Bharani; Hauser Elizabeth; Silk Zach; Tina Simcich; Amy Harmala; Nancy Boespflug; Jordan Van Voast; Maurice Hanks; Antoinette Bonsignore; Tamara Sloan Ritchie; Christine Hanks; Katherine Boyette; Petricciani Dawn; Evan Koepfler; Sharon Victor; Kennedy Gwin; Kevin Brannon; Erin Sloane; Sheila Guizzetti; Megan Koznek; Jason Breeze; Suzanne Tripp; Cinnamon Brown; Thaddeus Smith; Alice Goss; Tim Burns; Bharat Shyam; Daniel Kraus; Meredith Goldstein; Cunningham Claire; Coralie Burr; Justin Camarata; Nancy Gilbert; Kahn Charlene; Richard Gibson; Sandy Krauss; Zachary Carstensen; Rutledge Heidi; Stephanie Gianarelli; Miller Sage; Andrew Caughie; Richard Gellman; Jenny Clauson; Wesley Francis; Randi Fleming; David Fish; Ashley Sternberg; Niles Fairman; Stacey Sanner; Laurie Fairman; Ann Clifton; John Fairman; Karen Lucero; Shawn Stromme; Erika Fairman; Joe Kunzler; Tamara Erickson; Yanah Cook; Max Booher; Joanne Engquist; Diane Studley; John Lederer; Marilyn Ellis; Bob Ellis; Deborah Leslie; Nyla Fritz; Treyvon Dunbar; Lynne Levine; Melissa Dunbar; Nicolas Duchastel; Elizabeth Sward; Zachary Locken; Jeff Panagos; Jean Marie Dreyer; Malcolm Cumming; Mardel Tanquist; Charles Domingue; Brian Cutler; Jennifer Dolan-Waldman; Sophia Damelio; Shannon Mayo; Laurie Werner; Alyssa Dayley; John Miller; Sean Dittrich; David Dittmore; Susan McBain; Richard Firth; Lenea Fritz; Katherine Roscher; David Turnoy; Donna Benaroya; David Ringlee; Judy McBroom; Ritchie Tamara S; Mike Ramey; Edward Humble; Octavian Pop; Renee Herst; Sundae Delgado; Sabryna McNally; Luisa Recalcati; Annie Phillips; Hae Sue Park; Patricia Perron; Nancy Hevley; Leroy Perkins; Kyra Humphrey; Carol Sullivan; Ellen Menshew; Susan Paro; Jennifer Estroff; Patrick Parisot; Jon Younger; Jolie Hellings; Kristen Donovan; Michael Alan Paolini; Raven Wilson; Laurie Brockmann; Aileen Willmoth; Julie Cwinar; Roger Williams; Patricia Otley; Linda Leste; Laurie Valliancourt; Connie Williams; Xander Waits; Jan Weisel; Roger Nystrom; Timothy Noonan; Frederic Webster; Renee Hopkins; Jeannie Mitchell; Roberta Nestaas; Sophia Moser; T. Christine Warren; Abe Rios; Jordan Waits; Ray Moser; Tim Moses; Dylan O'Connor; Alexander Gray; Samantha Eden; Maureen McGreggor; Hazel Brown; Chelsey Wright; Nelago Nuunyango; Kevin Collins; Ian Taylor; Courtney Thomas; Rebecca E; Justine Stromberg; Emma Silber; Daniel Weiner; Temple De Hirsch Sinai; Kevin Lewis; Joanna Briese; Jay Ward; Nancy Dombrowski; Laura Meyer; Paula Barnes; Jane Weiss; Leanne Kennedy; Miri Cypers, Anti-Defamation League; Kelli Curtis, City of Kirkland; Geoffrey Cridlebaugh; Patrick Zunk; Hongyi Yuan; Damon Mon Wai; Codi Winans; Paul Milbourn; Ivan Chongarov; Larry Haskell; Michael Kolivosky; Neil Beaver, Washington Defenders Association and the Washington Association of Criminal Defense Attorneys; Eric Pratt; Aaron Lang; James Barrick; and Jane Milhans.