

HOUSE BILL REPORT

ESB 5561

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to the restoration of the right to possess a firearm.

Brief Description: Concerning the restoration of the right to possess a firearm.

Sponsors: Senators Dhingra, Kuderer, Lovelett, Pedersen, Saldaña, Stanford, Van De Wege and Wellman.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/16/22, 2/23/22 [DP].

Brief Summary of Engrossed Bill

- Revises requirements for restoration of firearm rights lost based on a criminal conviction or finding of not guilty by reason of insanity.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Hansen, Chair; Davis, Entenman, Goodman, Orwall, Peterson, Thai, Valdez and Walen.

Minority Report: Do not pass. Signed by 8 members: Representatives Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Kirby, Klippert and Ybarra.

Staff: Edie Adams (786-7180).

Background:

A person loses the right to possess a firearm if the person is convicted or found not guilty by

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reason of insanity (NGRI) of any felony offense and certain nonfelony domestic violence offenses. A person also loses the right to possess a firearm based on an involuntary commitment or detention for mental health treatment or after dismissal of nonfelony charges based on incompetency to stand trial if the person has a history of violent acts. The right to possess firearms may be restored only by a court order after the person has met certain eligibility requirements.

Restoration 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.

However, firearm rights may never be restored for a conviction or NGRI finding for a felony sex offense, or a class A felony or 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; and
- for a felony offense, the person has spent five or more years in the community without being convicted or found NGRI of any offense; or
- for a nonfelony offense, the person has spent three or more years in the community without being convicted or found NGRI of any offense, and the person has completed all conditions of the sentence.

The 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 in which 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 for restoration of the right to possess a firearm. 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 related to the commitment, detention, or incompetency; does not present a substantial danger to self or the public; and is not reasonably likely to suffer a recurrence of the symptoms related to the commitment, detention, or incompetency. If the person has engaged in violence and it is more likely than not that the person will 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 found NGRI who is involuntarily committed may not petition for restoration unless the person meets the requirements for restoration of firearm rights following a criminal conviction.

Summary of Bill:

Eligibility requirements for restoration of firearm rights lost based on a criminal conviction or NGRI finding are revised and moved into a new section in the firearms chapter.

The requirement that the petitioner has no prior felony convictions that continue to count as criminal history is removed, and the following additional requirements are established:

- a requirement that the petitioner has completed all sentencing conditions applies to felony offenses, as well as nonfelony offenses, except that this requirement does not include payment of fees or fines;
- the five- or three-year consecutive time periods that a petitioner has to remain crime-free must immediately precede the filing of the petition; and
- the petitioner must not have had an extreme risk, domestic violence, stalking, or sexual assault protection order issued against the petitioner in the five years immediately preceding the petition.

A person who was convicted or found NGRI of a felony offense in which a firearm was used, displayed, or threatened to be used must meet the following additional requirements:

- the petitioner must have spent 10 or more consecutive years immediately preceding the petition in the community without a conviction or NGRI finding for any offense; and
- the petitioner must show by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant restoration.

If a person has multiple convictions in different counties, the person must provide notice to the prosecutor in every county where the convictions occurred.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on July 1, 2022.

Staff Summary of Public Testimony:

(In support) This bill is an update and clarification of the law on restoration of firearm rights. It ensures that a person has had five consecutive years of being crime-free and no protection orders issued against the person immediately before the petition. It also requires notice to every prosecutor where there has been a conviction to ensure those individuals who get their rights back will not pose a danger to the community.

There has been a rise in violent homicides and a surge in domestic violence in the state. Domestic violence offenders have the highest rate of violent recidivism and they present a

special category of risk, especially when they have firearms. Domestic violence offenders use firearms to injure and kill and, even more frequently, they use them as tools of intimidation and control. When it comes to restoration of firearm rights, it is important to recognize these risks and the presence of protection orders and prior behavior immediately prior to the petition.

The bill provides constructive fixes, removes inconsistencies, and brings a reasoned risk-based approach to the restoration of firearm rights. It is important to think more broadly than just risk of homicide and instead look at risk in terms of violent death as well as the serious behavioral health issues of many domestic violence offenders. It is important to make sure that firearm restoration law is not just ministerial, but is reasoned, rational, and responsible.

(Opposed) The firearm restoration law has been working well and does not need to be amended. The bill does not update and correct inconsistencies; instead it makes it much harder to restore firearm rights. It has new eligibility requirements, including doubling wait times for certain felonies. This bill is being passed on assumptions, not on data. The relevant question is whether persons who have their rights restored are more likely to commit violent crime, and no one has provided any data indicating this is the case.

The bill reduces access to justice by making the process more complicated and more costly. The bill takes what is currently a nondiscretionary decision and makes it discretionary, and this will politicize the process. It will also result in forum shopping by attorneys based on the politics of the judges in different counties. It takes away a path for poor and lower income people to seek restoration because the process will become more costly. Prosecutors and law enforcement should not be judging who has the right to have a gun or defend themselves.

The policy in this bill to further restrict rights based on a criminal record is racist because of the systemic racism in the criminal legal system that disproportionately impacts the black community. Judicial and prosecutorial discretion has worked against communities of color for decades. Creating more stringent measures for restoration will continue to add to an already lopsided population with access to firearm ownership. This policy will do little, if anything, to reduce violence and it is at odds with recently advanced policies, including restoration of voting rights for felons, implying that formerly incarcerated people can be trusted to vote but not to earn back full status as members of society.

Persons Testifying: (In support) Senator Manka Dhingra, prime sponsor; Sandra Shanahan, Regional Domestic Violence Firearms Enforcement Unit and King County Prosecuting Attorney's Office; and David Martin, King County Prosecuting Attorney's Office.

(Opposed) Jason Clark; Vitaliy Kertchen, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Thomas Fairchild, Civil Survival and

Shoulder to Shoulder; Darrell Pryor; Brittany Lovely; Aoibheann Cline, National Rifle Association; Schoen Parnell, Washington Association of Criminal Defense Lawyers; and Wesley Blackwell.

Persons Signed In To Testify But Not Testifying: Cynthia Gaudern; Darrell Gunning; Kevin Kerrigan; Daniel Free; and Jeremiah Blake.