

FINAL BILL REPORT

SHB 1562

C 295 L 23
Synopsis as Enacted

Brief Description: Reducing the risks of lethality and other harm associated with gun violence, gender-based violence, and other types of violence.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Thai, Lekanoff, Taylor, Berry, Ryu, Reed, Kloba, Entenman, Walen, Doglio, Davis, Wylie, Ramel, Ormsby, Pollet and Duerr).

House Committee on Civil Rights & Judiciary
Senate Committee on Law & Justice
Senate Committee on Ways & Means

Background:

Unlawful Possession of a Firearm.

State law prohibits certain persons from possessing firearms, including persons convicted of any felony offense and certain misdemeanor domestic violence offenses and persons subject to certain qualifying protective orders. A violation of this prohibition constitutes the felony crime of Unlawful Possession of a Firearm.

First-Degree Unlawful Possession of a Firearm. Unlawful Possession of a Firearm in the first degree, a class B felony, applies if the basis for the prohibition is a conviction or finding of not guilty by reason of insanity (NGRI) of a serious offense.

Second-Degree Unlawful Possession of a Firearm. Unlawful Possession of a Firearm in the second degree, a class C felony, is committed when a person owns, possesses, or has in the person's control, any firearm under a number of circumstances, including if the person has a conviction or finding of NGRI for certain disqualifying crimes or if the person is subject to a protective order meeting specified requirements. In addition, a person is prohibited from possessing firearms if the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense.

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.

Disqualifying convictions under Unlawful Possession of a Firearm in the second degree are any felony offense that is not a serious offense, and any of the following nonfelony offenses committed by one intimate partner or family or household member against another, committed on or after certain dates specified in statute:

- Assault in the fourth degree;
- Coercion;
- Stalking;
- Reckless Endangerment;
- Criminal Trespass in the first degree;
- Harassment; and
- violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence.

Firearms possession is prohibited based on a protective order during any period of time the person is subject to a protection order, no-contact order, or restraining order that was entered after notice and an opportunity to respond, restrains the person from harassing, stalking, or threatening the protected person or the person's or protected person's child, and that meets other specified requirements.

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

A 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 where 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, upon discharge from the facility, petition for restoration of firearm rights. 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, and is unlikely to suffer a

recurrence of symptoms; and does not present a substantial danger to self or the public. If the person engaged in violence and will likely 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 who is involuntarily committed following an NGRI finding may not petition for restoration of firearm rights unless the person meets the requirements for restoration following a criminal conviction.

Summary:

Provisions governing the crime of Unlawful Possession of a Firearm and restoration of firearm rights are revised.

Unlawful Possession of a Firearm.

Definitions. The term "serious offense" is amended to include the felony offenses of Driving Under the Influence and Actual Physical Control of a Vehicle While Under the Influence. As a result, these offenses fall under Unlawful Possession of a Firearm in the first degree, and a person who is charged with either offense is prohibited from possessing a firearm pending trial, sentencing, or appeal.

For purposes of the crime of Unlawful Possession of a Firearm, the term "firearm" includes frames and receivers. Definitions for "domestic violence" and "sex offense" are added. The definition of "conviction" or "convicted" is moved from the section governing unlawful possession of a firearm into the definition section.

Disqualifying Offenses. The following misdemeanor and gross misdemeanor offenses are included as disqualifying offenses, if committed on or after the effective date of the act:

- any domestic violence offense not currently included;
- Stalking;
- Cyberstalking;
- Cyber Harassment, except when based on lewd, indecent, or obscene images or language;
- Harassment;
- Aiming or Discharging a Firearm;
- Unlawful Carrying or Handling of a Firearm;
- Animal Cruelty in the second degree, except when based on abandonment or neglect;
- "prior offense" under the impaired driving laws, if committed within seven years of another "prior offense" conviction; and
- violation of an order to surrender and prohibit weapons (OTSW), an extreme risk protection order (ERPO), or the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence.

Protective Orders. No-contact orders issued in sexual assault, trafficking, and promoting

prostitution cases are added to the list of orders that prohibit a person from possessing firearms if they meet specified requirements. The prohibition applies to provisions that restrain or protect "others identified in the order."

Restoration of Firearm Rights Following a Criminal Conviction.

The eligibility requirements and petition process for restoration of firearm rights are revised and moved into a new section in the firearms chapter.

Eligibility Requirements. A person must not have been convicted of any offense that prohibits possession of a firearm for specified consecutive time periods immediately preceding the filing of the petition.

The time period is extended to five consecutive years immediately preceding the petition for the following gross misdemeanor and misdemeanor offenses:

- Domestic Violence;
- Stalking;
- Cyberstalking;
- Cyber Harassment;
- Harassment;
- Aiming or Discharging a Firearm;
- Unlawful Carrying or Handling of a Firearm;
- Animal Cruelty in the second degree;
- "prior offense" under the impaired driving laws; and
- violation of an OTSW, ERPO, or the restraint or exclusion provisions of a protection order or no-contact order.

The requirement that the person has completed all sentencing conditions for any nonfelony offense applies also to felony offenses and is limited to sentencing conditions other than non-restitution fines and fees. The court must waive this requirement if the petitioner provides verification from the sentencing court that relevant court records are no longer available, or attests to the unavailability of relevant records from other entities.

Additional eligibility requirements are established that:

- The person has no out-of-state conviction for an offense that would disqualify the person from purchasing or possessing a firearm in the state of conviction.
- Law enforcement has determined that the person is not subject to any other prohibition on possessing a firearm and would be able to pass a background check to purchase a firearm if the petition is granted.

Petition Process. A person may file a petition for restoration in the superior court in a county that entered any prohibition. Notice of the petition must be served on the prosecuting attorney. The prosecutor must take reasonable steps to notify the listed victim of a prohibiting crime and any person who previously obtained a full protective order against the person and who has requested notification of the procedure to provide a sworn

statement regarding additional facts or information the person may have relevant to whether the petitioner meets requirements for restoration.

The prosecutor is responsible for determining if a person petitioning for restoration of firearm rights has any prior felony convictions that would count as part of an offender score and whether the person has any out-of-state convictions for an offense that would disqualify the person from purchasing or possessing a firearm in the state of conviction. A person must not be precluded from filing a petition on the basis that the person cannot verify whether the person is prohibited from possessing a firearm in the state of conviction.

The prosecutor must verify in writing to the court that the prosecutor has reviewed the relevant records, including written verification that the Washington State Patrol has conducted a records check of all civil and criminal records relevant to firearm possession prohibitors, and based on that information, whether there is sufficient evidence to determine that the person meets eligibility requirements. The court may set a hearing on the petition if the court determines additional information is necessary to determine whether the person meets the requirements for restoration of firearm rights.

The court must grant the petition only if the court finds that the person meets the requirements for restoration. The prosecutor must notify any victim who requests notification of the court's decision.

Other Provisions. The Administrative Office of the Courts (AOC) must create standard forms for restoration petitions and orders. The AOC must update protection order and no-contact order forms to allow victims to opt out of notification of firearm restoration proceedings. These updated forms and the standard forms for restoration petitions and orders must be used beginning January 1, 2024.

The court must send notice of the restoration of a person's firearm rights to the Washington State Patrol.

Public officials, public employees, public agencies, or a combination of units of local government and its employees, are immune from civil liability for good-faith conduct in the performance of their duties in relation to restoration petitions.

Restoration of Firearm Rights Following an Involuntary Commitment.

A person prohibited from possessing firearms as a result of a civil commitment following an NGRI finding in a criminal case must wait one year following discharge before the person may apply for restoration of firearm rights.

Votes on Final Passage:

House	51	46	
Senate	28	21	(Senate amended)

House 51 45 (House concurred)

Effective: July 23, 2023