

HOUSE BILL REPORT

ESSB 5985

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to the firearms background check program.

Brief Description: Concerning firearms background check program.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Hansen, Dhingra, Frame, Hasegawa, Hunt, Kuderer, Lias, Lovick, Nguyen, Pedersen, Stanford, Trudeau, Valdez, Wellman and Wilson, C.; by request of Washington State Patrol).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/16/24, 2/21/24 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)

- Updates references related to firearms background checks to refer to the Washington State Patrol Firearms Background Check Program.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 8 members: Representatives Taylor, Chair; Farivar, Vice Chair; Cheney, Entenman, Goodman, Peterson, Thai and Walen.

Minority Report: Without recommendation. Signed by 3 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno.

Staff: Matt Sterling (786-7289).

Background:

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.

Firearms Background Checks.

State law requires background checks for the sale or transfer of a firearm where either the purchaser or seller or the transferee or transferor is in Washington unless specifically exempted by state or federal law. This requirement applies to all sales or transfers including sales and transfers through a licensed dealer, at gun shows, online, or between unlicensed individuals. When neither party to a prospective firearms transaction is a licensed dealer, the parties must complete the transaction through a licensed dealer who must process the sale or transfer as if it is selling or transferring the firearm from its own inventory.

Washington State Patrol Firearms Background Check Program.

Pursuant to legislation enacted in 2020 the Washington State Patrol (WSP) created an automated firearms background check program to conduct background checks on applicants for the purchase or transfer of firearms. Firearm dealers must use the WSP program to process all firearm background checks. When the WSP receives a request from a dealer for a background check in connection with the sale or transfer of a firearm, the WSP must:

- conduct a check of appropriate federal and state databases or resources, and the check must include the:
 - National Instant Criminal Background Check System (NICS);
 - Washington Crime Information Center and Washington State Identification System;
 - Health Care Authority electronic database;
 - Federal Bureau of Investigation's National Data Exchange database and any available repository of statewide local law enforcement record management systems information; and
 - the Administrative Office of the Courts case management system;
- perform an equivalency analysis on criminal charges in foreign jurisdictions to determine if the applicant has been convicted of an out-of-state crime that would prohibit firearm ownership in Washington; and
- notify the dealer without delay if the records indicate the individual is approved or prohibited from possessing a firearm or whether more investigation is needed.

Involuntary Treatment Act Possession of Firearm National Instant Criminal Background Check System Database.

When a person is detained under the Involuntary Treatment Act (ITA) for 72 hours on the grounds the person presents a likelihood of serious harm, but not detained for an additional 14 days, that person loses their right to possess a firearm for six months after the date of detention. The facility detaining the person must forward a copy of the person's identifying documents to the Department of Licensing and the WSP. The WSP must then forward the document to the NICS. The person's right to possess a firearm is automatically restored at the end of the six-month period and the WSP must forward notice that the person's right to possess a firearm has been restored to the NICS.

Summary of Amended Bill:

Washington State Patrol Firearms Background Check Program.

The WSP Firearms Background Check Program is defined as meaning the division within the state patrol that conducts all firearm transfers and the disposition of firearms. Provisions of law concerning firearm background checks are updated to specifically reference the WSP Firearms Background Check Program.

Beginning July 1, 2025, the WSP Firearms Background Check Program must annually report the average time between the receipt of requests for background checks and the final decision to the appropriate committees of the Legislature.

Involuntary Treatment Act Possession of Firearm National Instant Criminal Background Check System Database.

After the six-month period in which a person has lost their right to possess a firearm due to a 72-hour detainment under the ITA, the WSP Firearms Background Check Program must remove the person from the NICS database rather than forwarding notice of the restoration of firearm rights to NICS.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill clarifies:

- the definition of the Washington State Patrol Firearms Background Check Program;
- references to firearms by removing language that is included in the defined term;
- that a dealer must comply with the application, recordkeeping, and other requirements of the chapter that apply to the sale or transfer of a firearm when processing an application for the purchase or transfer of a firearm frame or receiver; and
- that the retention of application records for a denial of an attempted purchase or transfer applies to a firearm.

The amended bill makes corrections to correct multiple references to the Washington State Patrol Firearms Background Check Program. The amended bill replaces a definition of "frame or receiver" that applied to background checks with the existing definition that applies to the entire chapter on firearms and dangerous weapons. The conditional effective date of the act is replaced with an emergency clause that makes the bill have a prospective application.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) This bill is request legislation from the Washington State Patrol that is technical in nature. The Legislature implemented a single point of contact background check system and established that in the State Patrol. In the process of putting the system in place, the State Patrol identified provisions in law that needed references to be updated. There was an amendment added in committee to get a report on how quickly responses are coming from the background checks. The State Patrol Firearms Background Check Program had a soft launch in August 2023 and was fully implemented on January 1, 2024. Thus far, the system has processed over 106,000 background checks. This bill cleans up several references in law from the local law enforcement agency that used to conduct background checks, to the State Patrol who conducts the checks. It is important that the references are updated to indicate the correct process for background checks. Applications for concealed pistol licenses are still conducted by local law enforcement. This bill is part of a commonsense approach to reduce gun violence and should be implemented. Last year there were over 1,600 children killed by firearms. These are preventable deaths and underscore the need to reduce access to firearms.

(Opposed) This bill codifies the unconstitutional registry that current law implements. Federal law prohibits the use of the NICS to create any system of registration for firearms or firearms owners. Washington law is attempting to circumvent this prohibition and is collecting firearm owner information, as well as information about firearm frames or receivers, to establish a state registry. The bill further codifies the unconstitutional semiautomatic firearms ban that is being legally challenged. The majority of firearms used in the commission of crimes are obtained unlawfully and criminals are not using this background check system.

Persons Testifying: (In support) Senator Drew Hansen, prime sponsor; Kateri Candee, Washington State Patrol; and Gwen Loosmore, Washington State Parent Teacher Association.

(Opposed) Aoibheann Cline, National Rifle Association.

Persons Signed In To Testify But Not Testifying: Eric Pratt; James Ware; Richard Williams; and Jeff Lewis.