

SENATE BILL REPORT

SHB 1562

As of March 21, 2023

Title: An act relating to reducing the risks of lethality and other harm associated with gun violence, gender-based violence, and other types of violence by clarifying and updating laws relating to the unlawful possession of firearms and restoration of firearm rights.

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).

Brief History: Passed House: 3/8/23, 51-46.

Committee Activity: Law & Justice: 3/21/23.

Brief Summary of Bill

- Makes various changes to the crime of unlawful possession of a firearm, including adding additional crimes that prohibit individuals from possessing firearms.
- Revises provisions governing restoration of firearm rights, including by establishing additional eligibility requirements and procedures applicable to the petition process.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Joe McKittrick (786-7287)

Background: Unlawful Possession of a Firearm. State law prohibits certain people from possessing a firearm, including individuals convicted of any felony offense and certain misdemeanor domestic violence offenses, and individuals subject to certain qualifying

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protective orders. A violation of this prohibition constitutes the felony crime of 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.

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. 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.

Disqualifying convictions for 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;
- reckless endangerment;
- criminal trespass in the first degree;
- harassment; and
- violation of the provisions of a protective order or no-contact order restraining the person or excluding the person from a residence.

Firearm 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 entered after notice and an opportunity to respond, restrains the person from harassing, stalking, or threatening the protected person or the person's child, and meets other specified requirements.

Restoration of Firearm Rights Following a Criminal Conviction. 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 not 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 years 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 to 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, apply for restoration of firearm rights. The person must show by a preponderance of the evidence that the person:

- is no longer required to participate in court-ordered treatment;
- has successfully managed the condition, and is unlikely to suffer a recurrence of symptoms related to the commitment, detention, or incompetency; 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 the person 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 for the particular crime.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Striking Amendment): Provisions governing the crime of unlawful possession of a firearm and restoration of firearm rights are revised.

Unlawful Possession of a Firearm. The term serious offense is amended to include the felony offense 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 the purpose of the crime of unlawful possession of a firearm, the term firearm includes frames and receivers. Definitions of 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.

The conduct prohibited under the offense is expanded to include accessing, having custody of, or receiving, any firearm, and the following misdemeanor and gross misdemeanor crimes are included as prohibiting crimes, 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;
- any 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), and 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.

For the predicate offense of harassment, the term intimate partner and family or household member have the same meaning given in statutes in effect at the time of the commission of the crime.

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 in covered protective orders 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 of the firearms chapter.

A person, for the specified consecutive time periods immediately preceding the filing of the petition, must not have been convicted of any offense that prohibits possession of a firearm and has no out-of-state convictions for an offense that would disqualify the person from purchasing or possessing a firearm while residing in the state of conviction.

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

- domestic violence;
- stalking;
- cyberstalking;
- cyber harassment;
- harassment;
- aiming or discharging a firearm;
- animal cruelty in the second degree;
- prior offense under the impaired driving laws; and
- violation of an OSTW, 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 no-restitution fines and fees. The court must waive this requirement if the petitioner provides verification from the sentencing court that the relevant court records are no longer available, or attests to the unavailability of relevant records from other entities.

An additional eligibility requirement is established that the person has been determined by law enforcement to not be 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.

A person may petition for restoration by filing the petition 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 fill protective order against the person, if those persons have requested notification, of the procedure to provide a sworn statement regarding the existence of additional facts or information the person may have relevant to whether the petitioner meets requirements for restoration.

The prosecutor must verify in writing to the court that the prosecutor has reviewed the relevant records, including written verification from Washington State Patrol (WSP) that WSP has conducted a records check of all civil and criminal records relevant to the statutory 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 Related to Restoration of Firearms Rights Following a Conviction. 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 order must be used beginning January 1, 2024.

The court must send notice of the restoration of a person's firearm rights to WSP. 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 related 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 a finding of NGRI in a criminal case must wait one year following discharge before the person may apply for restoration of firearm rights.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony On Proposed Striking Amendment: PRO: The conversation around restoration of firearm rights often centers on the person who lost the right, but we need to consider those who may be harmed if the person's rights are restored. The goal of this bill is to update the laws to align with the current understanding of domestic violence and gender-based violence. This bill accounts for specific risk factors that increase the likelihood of future violence. This bill is supported by research and evidence to address unlawful possession of firearms. Access to firearms is particularly dangerous in the context of domestic violence. This bill takes a trauma-centered and trauma-informed approach to the issue of gun violence. Gun violence disproportionately affects people of color and particularly women of color. When abusers have access to firearms, the risk of lethality increases exponentially.

OTHER: Evidence indicates that this bill will likely decrease access to firearm for some people with certain criminal convictions and will likely decrease the number of firearm deaths and suicides.

Persons Testifying: PRO: Representative My-Linh Thai, Prime Sponsor; Kelly Sampson, Senior Counsel and Director of Racial Justice, Brady United to Prevent Gun Violence; April Zeoli, University of Michigan, School of Public Health, Institute for Firearm Injury Prevention; Julia Weber, Director, Battered Women's Justice Project, National Center on Gun Violence; Jolaine Joseph, Survivor; Mary Ellen Stone, CEO, King County Sexual Assault Resource Center; Riddhi Mukhopadhyay, Executive Director, Sexual Violence Law Center; Washington State Women's Commission; Angelica Campbell, Survivor; Stephen Paolini, Family Member; Dana Cuomo, Lafayette College; Amy Freedheim, Chair, Felony Traffic Unit, KCPAO; Sandra Shanahan, Regional Domestic Violence Firearms Enforcement Unit.

OTHER: Lindsay Herendeen, State Board of Health.

Persons Signed In To Testify But Not Testifying: No one.