

SENATE BILL REPORT

ESSB 5268

As Passed Senate, March 5, 2025

Title: An act relating to imposing community custody after a conviction for unlawful possession of a firearm.

Brief Description: Imposing community custody after a conviction for unlawful possession of a firearm.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Wagoner, Dozier and Fortunato).

Brief History:

Committee Activity: Law & Justice: 1/28/25, 1/30/25 [DPS].

Floor Activity: Passed Senate: 3/5/25, 49-0.

Brief Summary of Engrossed First Substitute Bill

- Requires 12 months of community custody for convictions of unlawful possession of a firearm.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5268 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Holy, Ranking Member; Fortunato, Lovick, Salomon, Torres and Wagoner.

Staff: Joe McKittrick (786-7287)

Background: Classification of Felony Offenses. Felony offenses may be classified under statute in a number of ways that affects sentencing and the ancillary consequences of a conviction. For instance, a person convicted of a class A felony that is classified as a serious

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violent offense or a sex offense may only earn a maximum of 15 percent earned early release time off their sentence.

Classifying a crime as a violent offense has a number of such consequences including:

- in calculating a person's offender score, if the present conviction is for a violent offense, prior adult violent felony convictions and certain juvenile convictions count as two points;
- if the current conviction is a violent offense the individual is prohibited from participating in a community parenting program unless the person has been determined not to be a high risk to reoffend;
- individuals convicted of a violent offense are prohibited from receiving a first-time offender waiver;
- courts must impose 18 months of community custody for persons sentenced for violent offenses that are not also classified as serious violent offenses;
- if a person is sentenced to a term of confinement of one year or less for a violent offense, the court may impose up to one year of community custody;
- a person's record cannot be cleared if the offense was a violent offense;
- victims of crimes are not eligible for benefits through the Crime Victims Compensation Fund if the victim has been convicted of a felony offense within the five years preceding the criminal act for which the victim is applying where the felony offense is a violent offense; and
- courts may not give offenders credit for any time the offender was required to comply with an electronic monitoring program prior to sentencing if the offender was convicted of a violent offense.

Unlawful Possession of a Firearm. A person commits the crime of unlawful possession of a firearm in the first degree if the person owns, accesses, has in their custody, control, or possession, or receives any firearm after the person has been convicted or found not guilty by reason of insanity of a crime classified as a serious offense. Unlawful possession of a firearm in the first degree is a class B felony.

A person commits the crime of unlawful possession of a firearm in the second degree if the person owns, accesses, has in their custody, control, or possession, or receives any firearm:

- after the person has been convicted or found not guilty by reason of insanity of any of the following crimes:
 1. any felony that would not otherwise raise the charge to unlawful possession in the first degree;
 2. certain domestic violence gross misdemeanors;
 3. a violation of certain protection orders; or
 4. a violation of the provisions of an order to surrender and prohibit weapons, an extreme risk protection order, or the provisions of any other protection or no-contact order;
- during any period of time that the person is subject to a protection order, no-contact order, or restraining order that:

1. was issued after a hearing where the person received actual notice and an opportunity to be heard, or an agreed order without a hearing;
 2. restrains the person from harassing, stalking, or threatening the persons identified in the order;
 3. includes a finding that the person represents a credible threat to the physical safety of the protected person; or
 4. includes an order requiring the person to surrender all firearms and prohibiting the person from accessing, having in their custody or control, possessing, purchasing, receiving, or attempting to purchase or receive firearms;
- after having been previously involuntarily committed based on a mental disorder, unless the person's right to possess a firearm has been restored;
 - if the person is under 18 years of age, unless allowed by law; or
 - if the person is free on bond or personal recognizance pending trial for a serious offense.

Unlawful possession of a firearm in the second degree is a class C felony.

Summary of Engrossed First Substitute Bill: Courts are required to impose 12 months of community custody when an individual is convicted of unlawful possession of a firearm.

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 Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill is an effective approach to addressing gun violence in Washington. Due to high volumes, local law enforcement and prosecutors are having to triage cases. This is a particular problem when the crime is unlawful possession of a firearm. By increasing this to a violent crime, it makes a step in the right direction on gun crime, gives prosecutors a tool to address this issue, and keeps our streets safer. Because these crimes are not classified as violent crimes, they are rarely prosecuted. This will increase the odds these cases are referred for prosecution.

CON: When the facts support it, prosecutors always file unlawful possession charges under current law. People may lose their firearm rights for a number of reasons, many of which do not rise to the level of committing an egregious crime. Many who have lost their firearm rights have mental health issues and may not comprehend the requirement to not possess a firearm. To call something that is not violent by its nature a violent offense is not appropriate.

Persons Testifying: PRO: Senator Keith Wagoner, Prime Sponsor; Anne Anderson, Washington State Narcotics Investigators Association.

CON: Kari Reardon, WACDL/WDA.

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