

HOUSE BILL REPORT

SHB 2373

As Passed Legislature

Title: An act relating to eligibility for a concealed weapon permit.

Brief Description: Changing provisions relating to eligibility for a concealed weapon permit.

Sponsor(s): By House Committee on Judiciary (originally sponsored by Representatives Kremen, Rayburn, Winsley, Anderson, McLean, Roland, R. Johnson, O'Brien, Pruitt, Chandler, Heavey, Betrozoff, Scott, Rasmussen, G. Cole, Spanel, Cantwell, Grant, Brekke, Peery, Braddock, G. Fisher, Paris, Wineberry, J. Kohl, Orr, Sheldon and Haugen).

Brief History:

Reported by House Committee on:
Judiciary, February 4, 1992, DPS;
Passed House, February 13, 1992, 96-0;
Amended by Senate;
Passed Legislature.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *The substitute bill be substituted therefor and the substitute bill do pass.* Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Hargrove; Inslee; Locke; H. Myers; Riley; Scott; D. Sommers; Tate; Vance; and Wineberry.

Minority Report: *Without recommendation.* Signed by 1 member: Representative Forner.

Staff: Bill Perry (786-7123).

Background: State and federal laws on the possession of firearms differ in some respects. The federal list of offenses which disqualify a person from possessing a firearm is more extensive than the state list. Federal law disqualifies persons convicted of any felony. State law disqualifies persons convicted of any class A felony or other felony "crime of violence" or any felony violation of the Uniform Controlled Substances Act. Thus, a given

person's criminal record may prevent him or her from possessing a firearm under federal law, when state law would not deny him the possession of a firearm. However, because federal law preempts state law where the two are inconsistent, such a person could not legally possess a firearm.

Even though an individual is prohibited from possessing a pistol under federal law, in some instances the person may still technically be eligible to obtain a concealed pistol permit under state law. Such a result is possible because the state permit law denies a permit to anyone ineligible to own a pistol under state law, but does not explicitly prohibit issuance of a permit to an applicant ineligible to possess a weapon under federal law. Therefore, a person prevented from owning a pistol under federal law, but not under state law, may still get a state concealed pistol permit. A permit issued in such a case is hollow and does not allow the permit holder to possess a pistol, concealed or otherwise. Some law enforcement agencies, however, object to the issuance of a permit in such a case because issuance incorrectly implies that the holder has the right to possess a pistol.

A recent state supreme court decision declared the firearms statute unconstitutional as it applies to the mentally ill. The court found the statute to violate the Equal Protection clause because it provides a method for criminals to have their firearms rights restored, but does not do so for the mentally ill.

Summary of Bill: Additional felony crimes are added to the category of offenses that disqualify a person from obtaining a state concealed pistol permit. Those crimes are: assault in the third degree, indecent liberties, malicious mischief in the first degree, possession of stolen property in the first or second degree, and theft in the first or second degree. One year after successful completion of a sentence imposed for violation of one of these new crimes, a person's eligibility for a concealed pistol permit is restored.

Firearm dealers, importers, manufacturers, or others who are convicted of certain federal felonies will not lose their rights to possess firearms under state law. Those felonies include antitrust law violations or other business practices act violations. Such persons who are convicted of other federal felonies will have their rights to possess firearms restored under state law if the secretary of the treasury has found them not to be "likely to act in a manner dangerous to public safety."

A person may not possess any firearm if he or she has been committed by court order for treatment of mental illness under the state's criminal insanity statute or for at least 90 days confinement under the state's Involuntary Treatment Act. At the time of commitment, the court must inform the person, orally and in writing, that he or she is prohibited from possessing firearms. The secretary of the Department of Social and Health Services must develop rules to create an approval process which allows a person committed for treatment of mental illness or insanity to regain his or her right to possess a firearm. The rules must provide for the immediate restoration of the person's right to possess a firearm upon a court showing that the person no longer is required to: 1) participate in an inpatient or outpatient treatment program and 2) take medication to treat any condition related to the commitment.

Unlawful possession of a firearm by a mentally ill or insane person is a class C felony.

Fiscal Note: Not requested.

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

Testimony For: (Original Bill): The bill will reduce the number of persons convicted of serious crimes who can get a concealed pistol permit.

Testimony Against: (Original Bill): The list of disqualifying crimes is too broad.

Witnesses: Tim Schellberg, Washington Association of Sheriffs and Police Chiefs (in favor of original bill); John Hosford, Citizens Committee for the Right to Keep and Bear Arms (opposed original bill); and Ted Cowan, Washington State Rifle and Pistol Association (opposed original bill).