

# HOUSE BILL REPORT

## HB 1923

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to requiring the denial of a concealed pistol license application when the applicant is ineligible to possess a firearm under federal law.

**Brief Description:** Requiring the denial of a concealed pistol license application when the applicant is ineligible to possess a firearm under federal law.

**Sponsors:** Representatives Goodman, Reykdal, Hunt, Pedersen, Roberts and Hunter.

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 2/17/11 [DPS].

#### **Brief Summary of Substitute Bill**

- Requires law enforcement agencies to conduct a background check through the National Instant Criminal Background Check System to determine an applicant's eligibility for a concealed pistol license.
- Requires law enforcement agencies to deny an application for a concealed pistol license if the applicant is prohibited from possessing a firearm under federal law.
- Requires certain additional information be provided on an application if the applicant is not a United States citizen.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Chandler, Eddy, Frockt, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

**Minority Report:** Do not pass. Signed by 1 member: Representative Shea, Assistant Ranking Minority Member.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Edie Adams (786-7180).

**Background:**

State and Federal Firearms Prohibitions.

Both state and federal law prohibit certain categories of persons from possessing firearms. Although there is substantial overlap in the categories of prohibited persons, there are a number of differences, with the result that federal law generally restricts a broader range of persons than state law. Examples of persons who are prohibited from possessing firearms under federal law, but not state law, include a person who:

- is subject to a qualified domestic violence order restraining the person from harassing, stalking, or threatening an intimate partner or child of an intimate partner;
- was dishonorably discharged from the armed forces;
- has renounced citizenship; and
- is an unlawful user of controlled substances.

Federal law also prohibits a nonimmigrant alien from possessing firearms unless the person meets one of several exceptions. Exceptions include nonimmigrants who: possess a valid state-issued hunting license; enter the United States for a competitive target shooting event or sports or hunting trade show; are certain diplomats or foreign officials, if the firearms are for official duties; or have received a waiver from the U.S. Attorney General.

Concealed Pistol Licenses.

In Washington it is generally unlawful for a person to carry a concealed pistol unless the person has a valid concealed pistol license. Carrying a concealed pistol without a license is a misdemeanor. Failure to carry a concealed pistol license in one's immediate possession while carrying a concealed pistol is a civil infraction.

In order to obtain a concealed pistol license, a person must apply with the local law enforcement agency and undergo a fingerprint-based background check to determine eligibility. A person who applies for a concealed pistol license must be eligible to possess a firearm under state law and meet other requirements. The local law enforcement agency must issue the concealed pistol license if the person meets these requirements, even if the person is prohibited under federal law from possessing a firearm. As a result, concealed pistol licenses must contain a warning indicating that federal and state laws on the possession of firearms differ and the state license is not a defense to federal prosecution for possession of a firearm in violation of federal law.

Prior to issuing the license, the law enforcement agency must conduct a background check through the National Crime Information Center, the Washington State Patrol electronic database, the Department of Social and Health Services database, and other agencies or resources as appropriate. Law enforcement agencies are not required to conduct a check through the National Instant Criminal Background Check System (NICS) although in practice many law enforcement agencies do conduct a NICS check.

**Summary of Substitute Bill:**

A law enforcement agency must deny an application for a concealed pistol license if the applicant is prohibited from possessing a firearm under federal law. Law enforcement agencies must conduct a NICS background check of the applicant to determine the applicant's eligibility for a concealed pistol license.

An applicant for a concealed pistol license who is not a United States citizen must provide the following additional information on the application: country of citizenship; United States issued alien number or admission number; and claimed basis for being exempt from federal restrictions on firearms possession by aliens.

**Substitute Bill Compared to Original Bill:**

The original bill did not require the law enforcement agencies to conduct a NICS background check and did not include the specific statement that a license must be denied if the applicant is ineligible to possess a firearm under federal or state law. The original bill also did not include the requirement that additional information be obtained from an applicant who is not a United States citizen.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support – from testimony on House Bill 1638, identical except for the title) This is an important bill for sheriffs and police chiefs. Because Washington is a mandatory issue state, sheriffs and police chiefs have to issue concealed pistol licenses to persons they know are prohibited by federal law from possessing a firearm. Sheriffs and police chiefs who are sworn to uphold the law, should not be put in the position of having to sign their names on these licenses when they know the person is prohibited from possessing a gun.

This is not a second amendment issue. It is a practical issue that will provide transparency and eliminate confusion for the public. This is not a question of whether state law or federal law is right. The purpose of the bill is not to create the opportunity for persons to unwittingly violate federal law. The bill does not affect possession rights. It only addresses the concealed pistol license issuing process.

(Opposed) None.

**Persons Testifying:** Representative Goodman, prime sponsor; Dave Brown, Washington State Sheriffs Association; and Don Pierce, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** None.