

# HOUSE BILL REPORT

## HB 1501

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to protecting law enforcement and the public from persons who illegally attempt to obtain firearms.

**Brief Description:** Protecting law enforcement and the public from persons who illegally attempt to obtain firearms.

**Sponsors:** Representatives Hansen, Hayes, Kagi, Smith, Tharinger, Clibborn and Muri.

#### **Brief History:**

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

Judiciary: 2/8/17, 2/16/17 [DPS].

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

- Requires firearm dealers to report to the Washington State Patrol (WSP) all instances where they deny an application for the purchase or transfer of a firearm based on ineligibility.
- Requires the WSP to maintain a database of reported denials, investigate cases of denials, and refer cases for prosecution.
- Requires the Washington Association of Sheriffs and Police Chiefs to create and operate a statewide, automated system to notify a registered person when a respondent subject to certain court orders has been denied the purchase of a firearm based on ineligibility.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Muri, Assistant Ranking Minority Member; Frame, Goodman, Graves, Haler, Hansen, Kirby, Klippert, Orwall and Shea.

**Staff:** Alex Pearson (786-7291) and Edie Adams (786-7180).

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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.*

## **Background:**

### Unlawful Possession of a Firearm.

Both federal and state law disqualify certain categories of individuals from possessing firearms.

Criminal disqualifiers include those who are: convicted of a felony (with minor exceptions) or are found not guilty by reason of insanity; convicted of certain specified gross misdemeanor domestic violence crimes; subject to certain protection and restraining orders; under indictment for a felony offense; fugitives from justice; persons free on bond or personal recognizance for a serious offense; and offenders under supervision of the Department of Corrections.

Mental health disqualifiers include those who are: committed to a mental institution by a court or other lawful authority; adjudicated as a mental defective; involuntarily committed for mental health treatment under state law; and ruled criminally insane or incompetent to stand trial.

Miscellaneous disqualifiers include those who are: under the age of 18 (with exceptions); in the United States illegally or on nonimmigrant visa (with exceptions); noncitizens (with exceptions); unlawful users of controlled substances; dishonorably discharged from the armed forces; and persons who have renounced citizenship.

### Background Check Requirements for Firearm Purchases and Transfers.

State and federal law require firearm dealers to conduct background checks for sales or transfers of firearms to unlicensed persons.

*Federal Background Check Requirements.* Under the federal Brady Handgun Violence Prevention Act, any federally licensed firearms dealer must conduct a background check to determine if the purchaser is prohibited from owning a firearm by state or federal law. These background checks are conducted through the Federal Bureau of Investigation (FBI) or state agencies via the National Instant Criminal Background Check System (NICS).

A NICS check typically returns an immediate response. However, if the NICS system response is delayed, the dealer may deliver the firearm to the purchaser three business days after initiating the NICS check if the dealer has not received a notification from NICS in that time that the transaction is denied. The FBI reports NICS denials to the Bureau of Alcohol, Tobacco, Firearms, and Explosives field divisions for further investigation and possible referral for prosecution.

*Washington Background Check Requirements.* Voter approved Initiative 594 extended criminal and public safety background checks to all firearm sales or transfers, with some exceptions. All sales or transfers must occur through a licensed firearm dealer who must conduct a background check. A dealer may not deliver a firearm until either: (1) the background check has indicated the purchaser is not prohibited from owning or possessing a firearm; or (2) 10 business days have elapsed from the date the dealer requested the background check.

For transfers of pistols, the dealer must contact the local sheriff or police department to conduct the NICS check and a state background check for all transfers where the purchaser does not have a valid concealed pistol license (CPL). If the purchaser has a valid CPL, local law enforcement must conduct a state background check, and the dealer must conduct the NICS check, if required. For transfers of long guns the dealer must conduct the NICS check, and no state background check by local law enforcement is required.

Protection Orders, Restraining Orders, and No-Contact Orders.

*Generally.* Numerous Washington statutes allow or require a court to enter a protection order, restraining order, or no-contact order, which restrains a person from having contact with or threatening another person, or that excludes the person from certain locations or coming within a specified distance of certain locations. During the pendency of the petition process, the court may order a temporary protection order (without notice) if irreparable injury could result if an order is not issued until the time for response has elapsed. After a full hearing, a final order that lasts for a fixed term may be issued.

A copy of the order must be forwarded to the appropriate law enforcement agency, which must enter the order into any computer-based criminal intelligence information system available in Washington, used by law enforcement agencies to list outstanding warrants. Such orders are fully enforceable in any county in the state.

Protection orders are available for victims of domestic violence, stalking, harassment, sexual assault, and vulnerable adult abuse. A court may enter a civil restraining order in family law proceedings that may include provisions restraining a person from contacting another or excluding the person from certain locations. In the context of criminal proceedings, a court may issue a no-contact order to protect the victim of the crime during the pendency of the criminal proceedings or as a condition of the sentence.

*Surrender of Firearms under Such Orders.* A person who is subject to a protection order, restraining order, or no-contact order may be required to surrender his or her firearms, dangerous weapons, and CPL while the order is in place. Circumstances under which a court may order the surrender include:

- The person has used, displayed, or threatened to use a firearm or dangerous weapon in a felony or has previously committed an offense, making the person ineligible to possess a firearm.
- The person's possession of a firearm or dangerous weapon presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.
- The person is subject to a qualifying order that makes the person ineligible to possess a firearm. Qualifying orders are those that are issued after notice and an opportunity to be heard and that meet other requirements, including that the order finds that the restrained person is a credible threat to the physical safety of an intimate partner or the child of an intimate partner and explicitly prohibits the person from using or threatening physical force against an intimate partner or child.

The court may require the person to surrender his or her firearm or dangerous weapon to the local law enforcement agency, the persons' counsel, or another person designated by the court. Law enforcement agencies are required to have policies and procedures regarding the acceptance, storage, and return of surrendered firearms and weapons.

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## **Summary of Substitute Bill:**

### Reporting Requirements.

Firearm dealers must report to the Washington State Patrol (WSP) information involving each case where the dealer denies an application for the sale or transfer of a firearm due to a background check indicating the applicant is ineligible to possess a firearm under either state or federal law. Dealers must make these reports to the WSP within two days of the denial and include specified information, including the applicant's identifying information. Dealers must update reports that indicated an initial denial but are subsequently approved within one day of the approval.

The WSP must generate and distribute a notice form to all firearm dealers informing denied applicants of the right to appeal a background check denial. Dealers must provide applicants denied based on ineligibility with a copy of this notice form. The notice form must inform the applicant of:

- the requirement that the dealer report the denial and other specific information;
- the possibility of criminal investigation if he or she fails to appeal a denial;
- information referring the applicant to local law enforcement for denials based on a state background check;
- information directing the applicant to a website describing the process of appealing a national criminal background check denial; and
- a phone number for a contact at the WSP to direct the person to resources regarding an individual's right to appeal a background check denial.

### Database Requirements.

The WSP is required to maintain a database consisting of the information received from firearm dealers regarding purchase or transfer denials. The database must be accessible to law enforcement agencies and officers, including federally recognized Indian tribes, connected to the WSP electronic database. Upon receipt of information from dealers that an initial denial has been subsequently approved, the WSP must remove the record of the original denial from the database.

Upon receipt of documentation that a person has appealed a background check denial, the WSP must remove the record of the person from the database and keep a separate record of the person's information for a period of one year or until the appeal has been resolved. After one year, the WSP must notify the person that the person must provide documentation that his or her appeal is still pending or the person's record will be put back in the database. Upon receipt of documentation of a granted appeal, the WSP must remove any record of the person from the database. The WSP must also establish a process for persons no longer ineligible to petition to have his or her record removed from the database.

The database must only be used for law enforcement purposes and for the notification requirements described below, and the WSP must ensure that the Washington Association of Sheriffs and Police Chiefs (WASPC) is given access to the data necessary to implement those

notification requirements. The database is not subject to public disclosure under the Public Records Act.

The WSP must prepare an annual report regarding the number of denied firearm sales and transfers reported and submit the report to the Attorney General and appropriate committees of the Legislature. The report must include specified information, including the total number of cases reported, total number of cases investigated, and total number of cases where a conviction was obtained.

#### Investigation and Prosecution Requirements.

Subject to amounts appropriated for this purpose, the WSP must investigate denied firearm purchases or transfers reported by dealers to determine if the applicant knowingly attempted to acquire a firearm in violation of federal or state law or knowingly provided false information in the application. If after investigation the WSP believes a knowing violation occurred, it must refer the case to the local prosecuting authority or tribal prosecuting authority, if appropriate. If those authorities decline to file the case, the WSP must refer the case to the Office of the Attorney General for prosecution. The Attorney General has concurrent authority and power with the prosecuting attorneys to investigate and conduct such prosecutions only if the local or tribal prosecuting authorities decline the case.

#### Notification Requirements.

The WASPC must create and operate a statewide system to automatically notify a registered person when a respondent subject to a court order has been denied the purchase of a firearm based on ineligibility. The system must allow a person to register or update his or her registration information by calling a toll-free phone number or by accessing a public website. The registered person may choose to be notified by telephone or electronic mail.

The notification requirements apply to any of the following court orders where the order prohibits the respondent from possessing firearms or, by operation of law, the respondent is ineligible to possess firearms during the term of the order:

- stalking protection orders;
- sexual assault protection orders;
- harassment related no-contact orders;
- antiharassment protection orders;
- domestic violence protection or no-contact orders;
- restraining orders related to a dissolution, legal separation, or parentage proceeding;
- or
- foreign protection orders properly filed with a Washington court.

Information and records received by the WASPC regarding the notification system, including information provided by persons registering to participate in the system, may only be used for the notification system and is exempt from the Public Records Act. Public officials, employees, or agencies, and the WASPC specifically, are granted immunity from civil liability for damages resulting from any release of information related to the statewide automated protected person notification system, so long as the release or failure to release was without gross negligence.

#### **Substitute Bill Compared to Original Bill:**

The Washington State Patrol (WSP) must generate and distribute a notice form to all firearm dealers, who must provide it to all applicants denied the purchase or transfer of a firearm based on ineligibility, that informs the applicant of specific information regarding the reporting requirement and the right to appeal a background check denial.

In addition, the WSP must establish procedures for temporary removal of a person's record from the database pending appeal of a background check denial and permanent removal upon granting of the appeal, and a process for persons no longer ineligible to possess a firearm to petition the WSP to be removed from the database.

The WSP, when investigating denied firearms transfers, must refer suspected violations to the local prosecuting authority or tribal prosecuting authority rather than the Attorney General, and if those authorities decline to file the case, then the WSP must refer the case to the Attorney General for prosecution.

Federally recognized Indian Tribes must also have access to the database, and foreign protection orders properly filed with a Washington court are added to the list of orders included in the victim notification requirement.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony:**

(In support) If you fail a firearms background check in Washington or lie on the application form, there is no follow-up by law enforcement. Criminals who knowingly violate the law by illegally trying to purchase a firearm should be arrested, prosecuted, and, if appropriate, spend time in prison. Despite disagreement over firearms, this is one area where there is a lot of agreement. Half of all failed background checks last year were because the prospective purchaser was a criminal or fugitive, so investigation of these denials should occur. This bill also provides more safety and information for law enforcement officers in the field, allowing them to enforce the firearms laws already in place. The bill holds offenders accountable and closes many loopholes in current law.

Those protected by a domestic violence or other protection order are not currently notified when the abuser attempts to illegally purchase a firearm. The victim notification component of this bill lets these individuals choose to be notified. There have been instances where individuals protected by these types of court orders have been attacked by those subject to the orders shortly after the attacker attempted to illegally purchase a firearm. These attacks have occurred even when the protected individual has taken advantage of all the available safeguards, and many victims of domestic violence have lost their lives. Such a notification

system would empower individuals in these circumstances and give them the ability to adjust their safety plans to protect themselves and their families. The Washington Association of Sheriffs and Police Chiefs already maintains a notification system regarding protection orders, so it makes sense to give it the responsibility to handle this additional notification system.

(Opposed) None.

(Other) There are a lot of moving parts in this bill and a few challenges remain, but the Washington State Patrol generally supports the bill. Gun rights groups generally support the bill, specifically the concept of holding those accountable who knowingly violate the law. However, there are concerns that, under federal law, federal firearms dealers may not be allowed to report this information to other agencies. There is also concern because a large number of people, as many as 5 percent nationally, are erroneously denied a purchase of a firearm, and clearing up such an error can take months. Only people who are truly ineligible should be in this database, and those incorrectly in the database should have a chance to clear up the issue without getting in trouble first. There is also no clear way for citizens to find out if they are ineligible without going through a background check. Other states offer a risk-free way for individuals to check this information. Those who are no longer ineligible should have a way to have their record removed from the database.

**Persons Testifying:** (In support) Representative Hansen, prime sponsor; Representative Hayes; Ken Balazs, Washington Council of Police and Sheriffs; Courtney Weaver; Paula Marr; Shannon Benefield, Seattle Social Services; Tom McBride, Washington Association of Prosecuting Attorneys; Tamaso Johnson, Washington Coalition Against Domestic Violence; and Robert Snaza, Lewis County Sheriff's Office.

(Other) Monica Alexander, Washington State Patrol; Tom Kweciak, National Rifle Association; and Phil Watson, Firearms Policy Coalition.

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