

SENATE BILL REPORT

SHB 1501

As of March 23, 2017

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: House Committee on Judiciary (originally sponsored by Representatives Hansen, Hayes, Kagi, Smith, Tharinger, Clibborn and Muri).

Brief History: Passed House: 3/03/17, 84-13.

Committee Activity: Law & Justice: 3/23/17.

Brief Summary of 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.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

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

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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).

An 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) ten 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. 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. The 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.

A person who is subject to a protection order, restraining order, or no-contact order may be required to surrender the person's 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; or
- 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 the person's 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.

Summary of Bill: Reporting Requirements. Firearm dealers must report to the 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 the applicant 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 the person's 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 the person's 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 any of the following orders:

- 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.

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: PRO: We have a very good background check system in place now, so it is time to use it to protect the public. There were over 3000 failed background checks in Washington last year. There should be an arrest and prosecution when people try to obtain a firearm knowing that they are prohibited from doing so. The notice provisions will help those with no-contact or protection orders who want notice of a failed attempt to purchase a firearm. This bill will do three things: it will increase officer safety, provide an investigation opportunity, and help provide justice for victims. It will help give victims peace of mind.

OTHER: The Washington State Patrol is looking forward to helping make this happen.

Persons Testifying: PRO: Representative Drew Hansen, Prime Sponsor; John Snaza, Thurston County Sheriff; James McMahan, Policy Director, WASPC; Courtney Weaver, Survivor; Paula Harwood, Gun Violence Survivor; Catherine Person, Gun Violence Survivor; Bud Sizemore, WACOPS.

OTHER: Monica Alexander, Washington State Patrol.

Persons Signed In To Testify But Not Testifying: No one