

SENATE BILL REPORT

SB 5061

As Reported by Senate Committee On:
Law & Justice, January 24, 2019

Title: An act relating to undetectable firearms.

Brief Description: Addressing undetectable firearms. [**Revised for 1st Substitute:** Addressing undetectable or untraceable firearms.]

Sponsors: Senators Dhingra, Pedersen, Frockt, Wellman, Hunt, Kuderer, Saldaña and Liias; by request of Attorney General.

Brief History:

Committee Activity: Law & Justice: 1/21/19, 1/24/19 [DPS, DNP].

Brief Summary of First Substitute Bill

- Defines undetectable and untraceable firearms.
- Prohibits the manufacture, assembly, repair, purchase, sale, or possession of an undetectable or untraceable firearm or its parts.
- Creates a crime for aiding or facilitating in the manufacture or assembly of an undetectable or untraceable firearm by another person who is prohibited from possession of firearms.
- Creates a crime for the unlawful use of an undetectable or untraceable firearm in the commission of a felony.
- Authorizes the seizure of undetectable or untraceable firearms as contraband by law enforcement.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5061 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

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: Tim Ford (786-7423)

Background: In Washington State, with limited exceptions, it is unlawful for any person to manufacture, assemble, repair, sell, purchase, or possess a machine gun, short-barreled shotgun, short-barreled rifle, or bump-fire stock. Those specified firearms are declared to be contraband and may be seized by law enforcement. It is also unlawful for a person, in the commission of a felony, to discharge or menace another person with a machine gun, or with a firearm containing a bump-fire stock.

Certain persons are prohibited from possessing firearms under federal and state law. Under state law, a person is prohibited from owning or possessing a firearm when the person:

- has a felony conviction or finding of not guilty by reason of insanity;
- has a conviction or finding of not guilty by reason of insanity for certain domestic violence offenses;
- is subject to a qualifying protection order, no-contact order, or restraining order that meets certain criteria;
- has previously been committed for involuntary mental health treatment for 14 days or more, or after being found criminally insane or incompetent to stand trial;
- is free on bond or personal recognizance for a serious offense;
- is an offender under Department of Corrections supervision;
- is a non-citizen, unless the person has an alien firearms license;
- is under age eighteen—with exceptions, or with respect to possession of pistols, is under age twenty-one—with exceptions; or
- has signed a voluntary waiver of firearm rights that has not been revoked.

Under federal law, the Undetectable Firearms Act of 1988, it is illegal to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm that is not detectable by walk-through metal detectors, or have any major components of firearms that do not generate an accurate image by airport detection machines. Federal law requires a firearm to possess at least 3.7 ounces of steel, but does not specify which component or components.

Modern 3D printing technology uses computer aided design files (CAD) to manufacture three dimensional objects with diverse materials, including polymers and ceramics. Defense Distributed is an organization that produces and distributes CAD files for the manufacture of firearms and related parts. In 2013, the U.S. State Department forced Defense Distributed to remove its CAD files for the production of firearms from its website. The State Department claimed distribution of the files violated the International Traffic in Arms Regulations. Defense Distributed filed a lawsuit against the State Department in 2015 alleging a violation of their first, second, and fifth amendment rights. In April 2018, both parties reached a tentative settlement to allow Defense Distributed to place downloadable CAD files for firearm printing on its website. Washington State and 19 other states filed a temporary restraining order to prevent the settlement, which Federal District Judge Lasnik granted. The case is pending.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (First Substitute): "Undetectable firearm" is defined as a firearm with insufficient metal to be detected by a walk-through metal detector, or that would not generate

an X-ray image of a firearm or components. "Untraceable firearm" is defined as a firearm manufactured after July 1, 2019 which does not have a serial number registered with a federally licensed manufacturer. Antique firearms are exempt from the definition of an untraceable firearm.

It is unlawful to manufacture, assemble, repair, sell, purchase, loan, furnish, or possess an undetectable or untraceable firearm, or any component for use in such firearms. Violation of this law constitutes a class C felony. Undetectable or untraceable firearms are considered contraband and may be seized by law enforcement. It is also unlawful for a person, in the commission of a felony, to discharge or menace another person with an undetectable or untraceable firearm. Such a violation is class A felony.

It is unlawful for a person to knowingly or recklessly allow, facilitate, aid, or abet in the manufacture or assembly of an undetectable or untraceable firearm by a person who is ineligible to possess firearms. A first-time violation constitutes a gross misdemeanor, while each subsequent violation is a class C felony.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2019.

Staff Summary of Public Testimony on First Substitute: PRO: This bill is about 3D printed guns and ensuring our law enforcement officers and our security officers have the tools they need to keep us safe. This bill prohibits the manufacture, assembly, repair, purchase, sale, or possession of an undetectable or untraceable firearm. It prohibits ownership or transfer of any firearm that cannot be reliably detected by a metal detector, such as a plastic 3D-printed gun. This bill does not affect legal, detectable firearms. Working in a courthouse, where we had x-ray machines and security, we still had individuals attempting to bring in guns by changing the way they look. They contained metal so were detected by courthouse security. The untraceable and undetectable nature of these small firearms poses a unique danger. While the law is not always able to keep up with technology, here we have the ability to do so. These printers are here to stay. Currently, individuals with these weapons can pass through firearm detectors with no problem. By limiting the creation and distribution of 3D printed guns, we are reducing gun trafficking and potentially saving lives. This bill is good for families, for our security, and for our state.

CON: It is the right of the people to make firearms for their personal use. The use of the word manufacture in this bill is in conflict with the federal definition of a firearms manufacturer. People who create firearms for their personal use are makers, not manufacturers. There is no expectation to be protected by the government from a criminal or a madman who wishes to do harm or murder any individual. Proposing that the ownership or creation of a firearm for personal use be punishable by 364 days in a county jail or by a fine of \$5,000 is an obvious attempt to scare people. For centuries Americans have been making their own firearms and it is legal to do so. Nothing can stop a criminal from filing the serial

number off a gun. Some firearm enthusiasts collect and use antique firearms or muzzleloaders that have no serial numbers. It is currently legal but would be made illegal by the bill.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Bob Ferguson, Washington State Attorney General; Ami Strahan, citizen; Mike Van Dyke, citizen; Adam Cornell, Snohomish County Prosecutor; Matt Vadnal, citizen; Emily Cantrell, citizen; Colin English, citizen; Charlene Kahn, citizen; Nara Kim, citizen.

CON: Sharyn Hinchcliffe, Pink Pistols Seattle; Dana Morgan Jr, citizen; Daniel Mitchell, citizen; Tom Kwieciak, NRA; Jane Milhans, citizen; Gregory Patnude, citizen.

Persons Signed In To Testify But Not Testifying: PRO: Tim Moses, citizen; Jane Weiss, citizen.

CON: Jonathan Conley, citizen; Mike Silvers, Pink Pistols Seattle; Ira Moser, citizen; Richard Downs, citizen; Steve Baima, Washington Historical Gunmakers Guild; Ernst Schubert, Washington Historical Gunmakers Guild; Erik Firm, citizen; Luis Berbesi, citizen; Ryan Hurey, citizen; Mary Wilkes, citizen; Michael Moran, Washington State Muzzleloader's Association; Simon McFarlane, citizen; Jared Loch, citizen; Robert Mueri, citizen; Aaron Cooper, citizen; Amelia Silverman, citizen; Arturo Lopez, Sublime Painting LLC; Connie Krier, citizen; Jimmy Martin, citizen; Adam Florenzen, citizen; Christian Martinson, citizen; Joseph Lukasunis, citizen.

OTHER: Mike Eberle, citizen.