

SENATE BILL REPORT

SB 6289

As Reported by Senate Committee On:
Law & Justice, February 6, 2020

Title: An act relating to the restoration of the right to possess a firearm.

Brief Description: Concerning the restoration of the right to possess a firearm.

Sponsors: Senators Dhingra, Kuderer, Lovelett, Darneille, Carlyle, Wilson, C., Das and Frockt.

Brief History:

Committee Activity: Law & Justice: 2/03/20, 2/06/20 [DPS, DNP].

Brief Summary of First Substitute Bill

- Adjusts time periods and requirements to petition for restoring a person's firearm rights when the loss resulted from a conviction or finding of not guilty by reason of insanity.
- Authorizes the court to restore the firearm rights of a person convicted of a felony offense involving a firearm if ten years have passed without the person being charged with a new crime and the person proves they are sufficiently rehabilitated to warrant restoration.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6289 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..

Staff: Shani Bauer (786-7468)

Background: A person prohibited from possessing a firearm may petition the court for restoration of their rights. The process and requirements for restoration will depend on whether the person lost their firearms rights as the result of a conviction or due to the person's mental health.

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.

Mental Health or Incompetency. A person who lost their firearm rights because they were involuntarily committed for mental health treatment or had charges dismissed based on incompetency to stand trial may, upon discharge, petition the court to have their right to possess a firearm restored. To have the right to firearms restored, the petitioner must prove by a preponderance of evidence:

- the person is no longer required to participate in court-ordered treatment;
- the person has successfully managed the condition related to the commitment or incompetency;
- the petitioner no longer presents a substantial danger to themselves or the public; and
- the symptoms related to the commitment or incompetency are not reasonably likely to recur.

Once a person's right to possess a firearm has been restored, the person may request return of any firearms surrendered to law enforcement. Prior to returning a surrendered firearm, the law enforcement agency must confirm the person remains eligible under the law to possess a firearm. If a family or household member has asked to be notified of the return of any firearms to the person, law enforcement must provide notice to the family member and hold the firearm for 72 hours before releasing it to the owner.

Conviction. A person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm may petition the court for restoration of their firearm rights if:

- the person was not convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership;
- the person was not convicted or found not guilty by reason of insanity of a Class A felony or felony with a maximum sentence of at least 20 years; and
- the person has not been charged with a new crime for the last consecutive five years if the underlying conviction was a felony, or three years if the underlying conviction was a nonfelony.

A petition for restoration must be made to the court or record that ordered the petitioner's prohibition on possession of a firearm, or the superior court in which the petitioner resides.

Federal law also prohibits firearm possession for a person convicted of a domestic violence crime. There is currently no firearms restoration procedure under federal law. The definition of domestic violence differs slightly under federal law, but for many domestic violence crimes, a person will not be able to restore their firearm rights.

Summary of Bill (First Substitute): The requirements to petition for the restoration of a person's firearm rights when the loss resulted from a conviction or finding of not guilty by reason of insanity is moved to its own section, and provisions are modified.

To restore a person's rights, the person must not have been charged with a new crime for a consecutive number of years, immediately preceding the petition. Time periods are as follows:

- three consecutive years if the prohibiting conviction or finding was a nonfelony offense;

- five consecutive years if the prohibiting conviction or finding was a Class C felony; or
- ten consecutive years if the prohibiting conviction or finding was a Class B felony.

To restore the person's rights, the person:

- must have no pending charges for any felony, gross misdemeanor, or misdemeanor crime;
- must have completed all sentence conditions for the prohibiting conviction; and
- must not have had a protection order issued against them in the five years immediately preceding the petition.

If a person was convicted or found not guilty by reason of insanity of a felony offense in which a firearm was used, displayed, or threatened to be used, the person may petition a superior court to have their right to possess a firearm restored when the person has spent ten consecutive years, immediately preceding the petition, in the community without a new conviction. The court may restore the person's firearm rights if the person shows by a preponderance of the evidence that the petitioner is sufficiently rehabilitated to warrant restoration.

If a person has multiple convictions in different counties, the person must provide notice of a petition for restoration to the prosecuting attorney in each county where the convictions occurred.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute): Language is added to clarify that a person may not petition for restoration if they have a conviction for a felony sex offense. The court must send information regarding a person prohibited from possessing a firearm to the WSP rather than the law enforcement agency where the person resides. References to court of record are updated to superior court.

Appropriation: None.

Fiscal Note: Not requested.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Currently Washington does not have a cohesive way to deal with firearm restoration. This bill requires the person to file in the county of conviction and makes sure the requirements for restoration coincide with the escalation of the crime.

This is essentially a cleanup bill and strengthens the requirements for persons convicted to obtain restoration of their firearm rights. Guns reinforce violent behavior. Persons with felony convictions need time and intervention to break the cycle of violence. We need to give people the best possible chance to change. This bill allows people convicted of certain crimes to show a pattern of behavior and are capable of responsible firearm ownership.

I have reviewed hundreds of firearm petitions. This bill addresses key problems. It ensures a convicted person must have done everything the judge asks in order to get their rights back. It increases the crime free period for Class B felonies to ten years. This time period is in line with other requirements such as the time period for a no contact order. These restoration orders are ministerial and the court has no discretion to look beyond the time period for restoration. It is crucial the court be able to consider the existence of a no contact order.

OTHER: Changes are necessary to make this bill more reasonable and less political. Currently, restoration could be denied if the person had an ex parte protection order issued against them. The increased time period for Class B felonies sweeps in felonies that are based on the value of property and have no relation to firearms or public safety. I am not aware of any incident of violence resulting from a person who had his or her firearm restored.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Sharyn Hinchcliffe, Pink Pistols Seattle—Tacoma; Jordan Waits, citizen; Sue Whitcomb, citizen; Laura Petregal, King County Prosecuting Attorney's Office.

OTHER: Vitaliy Kerchen, Washington Defenders Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: No one.