

HOUSE BILL REPORT

HB 1599

As Passed House:

March 4, 2023

Title: An act relating to court files and records exemptions for firearm background checks.

Brief Description: Concerning court files and records exemptions for firearm background checks.

Sponsors: Representatives Goodman, Berry, Ramel and Pollet; by request of Washington State Patrol.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/1/23, 2/10/23 [DP].

Floor Activity:

Passed House: 3/4/23, 95-0.

Brief Summary of Bill

- Allows the Washington State Patrol Firearms Background Check Program to access files and records of Involuntary Treatment Act court proceedings for purposes of conducting background checks for firearms transfers, firearms-related licenses, and release of firearms from evidence.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Hansen, Chair; Farivar, Vice Chair; Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Cheney, Entenman, Goodman, Peterson, Rude, Thai and Walen.

Staff: Edie Adams (786-7180).

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

Background:

Involuntary Treatment Act.

The Involuntary Treatment Act (ITA) for adults sets forth the procedures, rights, and requirements for involuntary treatment of behavioral health disorders. Under the ITA, a person may be committed by a court for involuntary treatment if he or she, due to a mental health or substance use disorder, poses a likelihood of serious harm, is gravely disabled, or is in need of assisted outpatient treatment. The provisions governing involuntary treatment of minors over the age of 13 (minor ITA) are parallel with the adult ITA in many respects.

The adult ITA provides that files and records of court proceedings regarding involuntary treatment under both the adult and minor ITA statutes are closed and only accessible to persons and entities listed in statute. Files and records are accessible to: the Department of Health; the Department of Social and Health Services; the Health Care Authority; the state hospitals; any person who is the subject of an involuntary treatment petition; the subject of the petition's attorney or guardian; resource management services for the subject of the petition; and service providers authorized to receive such information by resource management services.

Under the minor ITA, records and files maintained in any court proceedings are confidential and available only to the minor, the minor's parent, and the minor's attorney. The court may order the subsequent release or use of these records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality will be maintained.

Loss of Firearm Rights Based on an Involuntary Treatment Act Detention or Commitment. Both state and federal law generally prohibit a person from possessing firearms if the person has been involuntarily committed for mental health treatment. Federal law prohibits firearms possession by a person who has been adjudicated as a mental defective or been committed to any mental institution. Under state law, persons committed under the ITA for involuntary mental health treatment for 14 days or longer lose the right to possess firearms. In addition, a person loses the right to possess firearms for a period of six months if the person is detained for 120-hour evaluation and treatment because the person presents a likelihood of serious harm as the result of a mental disorder or substance use disorder, but is not subsequently committed for involuntary treatment.

When a person loses the right to possess firearms under these circumstances, the court must forward the person's identification information to the National Instant Criminal Background Check System (NICS). Any subsequent restoration of the person's right to possess firearms must also be forwarded to the NICS.

Firearm Background Check Requirements.

Under federal law, a dealer must conduct a background check on all firearms transfers to determine whether the purchaser is prohibited by state or federal law from possessing a firearm. This background check is conducted through the NICS. Under state law, a state

background check in addition to the federal NICS check is required for the purchase or transfer of a pistol or semiautomatic assault rifle. The state background check must be conducted by the local law enforcement agency, and must include a check of the NICS, Washington State Patrol (WSP) database, Health Care Authority database, and other appropriate agencies or resources.

Legislation enacted in 2020 requires the WSP to establish a state firearms background check program to serve as a single point of contact for firearms dealers to conduct background checks for firearms transfers required under state and federal law. The WSP Firearms Background Check Program is in the process of establishing the state firearm background check system, which is expected to be operational statewide beginning January 1, 2024. Once the state system is operational, firearms dealers must contact the WSP Firearms Background Check Program to conduct background checks for all firearms transfers. The state background check program must include a check of the NICS, specified state databases, and other databases or resources as appropriate.

Bipartisan Safer Communities Act.

The federal Bipartisan Safer Communities Act (BSCA), enacted in 2022, specifically provides that federal firearms prohibitions apply if the person's juvenile record includes a prohibiting criminal conviction or involuntary commitment or mental health adjudication. In addition, the BSCA established new provisions relating to background checks for persons under the age of 21. The NICS must contact state and local authorities to determine whether the individual has juvenile criminal or mental health records that would disqualify the person from purchasing a firearm. Mental health history records may only be accessed from the time the person turned 16. This enhanced background check requirement for persons under the age of 21 expires automatically after 10 years if not renewed.

Summary of Bill:

The WSP Firearms Background Check Program is authorized to access files and records of court proceedings under the ITA for the purpose of conducting background checks for processing and purchasing firearms, concealed pistol licenses (CPLs), alien firearms licenses, and release of firearms from evidence, including appeals of denials.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) It is anticipated that the state firearms background check program will be

operational near the end of this year and will begin providing background checks for federal firearms licensees. The NICS Indices is a nationwide database used by criminal justice agencies when making determinations on firearms-related transactions. Any entry into the NICS Indices is an automatic disqualifier.

There are approximately 165,000 Washington mental health entries in the NICS Indices that do not have supporting documentation. The WSP currently does not have access to court records regarding involuntary commitments to check the accuracy of a NICS response indicating a person is prohibited from possessing firearms. This creates a situation where either the person is wrongfully denied a firearms transfer or CPL, or the NICS Indices record is removed and a firearm transfer or CPL is issued to someone who is truly prohibited. It is extremely important to get it right when either denying or approving firearms transfers, and this simple change will help make that happen.

(Opposed) The one concern is that somebody with an axe to grind could go through the system and misuse it. It would be nice if there was some way for NICS to be reported to the WSP. It is unclear why they aren't allowed to have that access currently. It would be better to instead strengthen the NICS system so that it can be used by the WSP.

Persons Testifying: (In support) Representative Roger Goodman, prime sponsor; and Neil Weaver and Kateri Candee, Washington State Patrol.

(Opposed) Laurie Layne.

Persons Signed In To Testify But Not Testifying: None.