

SENATE BILL REPORT

SSB 5006

As Amended by House, March 24, 2023

Title: An act relating to clarifying waiver of firearm rights.

Brief Description: Clarifying waiver of firearm rights.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Rivers, Dhingra, Frame, Hasegawa, Hunt, Kuderer, Mullet, Nobles, Stanford and Valdez).

Brief History:

Committee Activity: Law & Justice: 1/12/23, 1/19/23 [DPS, DNP].

Floor Activity: Passed Senate: 2/15/23, 36-12.

Passed House: 3/24/23, 61-35.

Brief Summary of First Substitute Bill

- Creates a new civil infraction for persons who have in their possession or have under their control a firearm after filing a voluntary waiver of firearm rights.
- Permits voluntary waiver of firearm rights to be submitted or revoked either in writing or electronically, and requires the clerk of the court to immediately notify a filer and contact persons when a voluntary waiver of firearm rights has been accepted.
- Allows a filer to update contact person information by making an electronic or written request to the clerk of the court.
- Encourages mental health professionals and substance use disorder professionals to discuss with their patients the voluntary waiver of firearm rights.

SENATE COMMITTEE ON LAW & JUSTICE

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.

Majority Report: That Substitute Senate Bill No. 5006 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Torres, Wagoner and Wilson, L..

Staff: Ryan Giannini (786-7285)

Background: In 2018, the Legislature passed SB 5553, allowing any person to file a voluntary waiver of firearm rights with the clerk of the court in any county in Washington. The clerk of the court must verify the person's identity using photo identification. Once the waiver has been accepted, the clerk must transmit the waiver to the Washington State Patrol (WSP) by the end of the business day. WSP must enter the waiver into the National Instant Criminal Background Check System (NICS), and all other databases used to identify persons prohibited from buying firearms, within 24 hours of receiving a voluntary waiver of firearm rights.

A person may file a revocation of the voluntary waiver of firearm rights in the same county where the waiver was originally filed after seven days have passed. WSP must remove the person from the NICS database and any other federal or state computer-based systems used to identify prohibited purchasers of firearms within seven days of receiving a revocation of the waiver, unless the person is otherwise ineligible to possess a firearm.

For a waiver to be entered into the NICS database, it must be considered prohibiting. The federal Gun Control Act, among other restrictions, prohibits firearm dealers from selling to an individual based on a violation of any state law or any published ordinance.

Summary of First Substitute Bill: Any person may file a voluntary waiver of firearm rights with the clerk of the court in any county in Washington State, either in writing or electronically. The clerk of the court must verify a person's identity using either a physical or scanned copy of photo identification.

Any person may file a revocation of a voluntary waiver of firearm rights with the clerk of the court in the same county where the voluntary waiver was filed, either in writing or electronically. The clerk of the court must verify a person's identity using either a physical or scanned copy of photo identification before accepting a revocation of the voluntary waiver. Clerks of the court are no longer required to destroy all records of a voluntary waiver after it has been revoked.

When a person files a voluntary waiver of firearm rights, the person may name a family member, mental health professional, substance use disorder professional, or alternate person to be contacted if the person attempts to purchase a firearm while the voluntary waiver is in

effect or if it is revoked. The filer may update the contact person information by making an electronic or written request to the clerk. The clerk of the court must immediately notify the filer and any of the contact people listed on the form if the filer's waiver has been accepted. The clerk of the court must give notice that possession or control of a firearm is unlawful and that any firearm under the filer's possession or control should be immediately surrendered.

A new class 4 civil infraction is created for persons who have in their possession or have under their control a firearm after filing a voluntary waiver of firearm rights and the form has been accepted by the clerk of the court. Each firearm possessed is a separate infraction.

Mental health professionals and substance use disorder professionals are encouraged to talk to their patients about the voluntary waiver of firearm rights if they reasonably believe that such a discussion will avoid or minimize an imminent danger to the health or safety of the individual or other individuals, but there is no obligation to do so.

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 on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill improves legislation that was passed five years ago to help people experiencing mental health crises. The bill will make the voluntary waiver of firearm rights more widely known and more available. This change was brought by the Washington State Patrol after interactions with the FBI about the NICS database. Every senator voted for a similar bill last session. The voluntary waiver program is a lifesaving suicide prevention tool that is not being used to its full potential. Electronic filing will eliminate barriers for the most vulnerable people and make it easier to take lifesaving action. Allowing mental health and substance use disorder specialists to discuss the waiver will help spread the tool.

CON: This has the potential to be abused by people in positions of power. This bill will broaden the definition of "mental health professional" and allow people to be flagged by even marriage counselors. No one is opposed to helping people in crisis, but doing so without due process is a risky path. The civil penalty should not be part of this bill since this is a voluntary program. Language specifying the immediate surrender of a firearm after filing a voluntary waiver must be changed because it potentially puts electronic filers in legal jeopardy. This is another attempt to infringe on the Second Amendment right of people in Washington.

OTHER: Filing these types of waivers electronically is a concern because clerks cannot verify the identity of the person scanning and emailing a copy of their photo license. Emails are not secure and any email communication between filers and clerks would be subject to the Public Records Act. The notification process is also of concern.

Persons Testifying: PRO: Senator Jamie Pedersen, Prime Sponsor; Diane Studley; Jane Weiss; Ann Madsen.

CON: Julie Barrett, Conservative Ladies of Washington; Eric Pratt, America; Tom Kwieciak, National Rifle Association.

OTHER: Josie Delvin, Washington State Association of County Clerks.

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

EFFECT OF HOUSE AMENDMENT(S):

- Allows the court to order performance of up to two hours of community restitution in lieu of a monetary penalty prescribed for the civil infraction of unlawful possession of a firearm.