

SENATE BILL REPORT

ESSB 5985

As Amended by House, February 27, 2024

Title: An act relating to the firearms background check program.

Brief Description: Concerning firearms background check program.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Hansen, Dhingra, Frame, Hasegawa, Hunt, Kuderer, Lias, Lovick, Nguyen, Pedersen, Stanford, Trudeau, Valdez, Wellman and Wilson, C.; by request of Washington State Patrol).

Brief History:

Committee Activity: Law & Justice: 1/16/24, 1/18/24 [DPS, DNP, w/oRec].

Floor Activity: Passed Senate: 2/1/24, 29-20.

Passed House: 2/27/24, 63-33.

Brief Summary of Engrossed First Substitute Bill

- Updates statutes concerning firearms background checks to refer to the Washington State Patrol firearms background check program.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5985 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, Wagoner and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senator Torres.

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.

Staff: Joe McKittrick (786-7287)

Background: State law requires background checks for the sale or transfer of a firearm where either the purchaser or seller or the transferee or transferor is in Washington unless specifically exempted by state or federal law. This requirement applies to all sales or transfers including, but not limited to, sales and transfers through a licensed dealer, at gun shows, online, or between unlicensed individuals. When neither party to a prospective firearms transaction is a licensed dealer, the parties must complete the transaction through a licensed dealer who must process the sale or transfer as if it is selling or transferring the firearm from its own inventory.

Pursuant to legislation enacted in 2020 the Washington State Patrol (WSP) created an automated firearms background check system to conduct background checks on applicants for the purchase or transfer of firearms. Firearm dealers must now use the WSP system to process all firearm background checks.

When WSP receives a request from a dealer for a background check in connection with the sale or transfer of a firearm, WSP must:

- conduct a check of federal and state databases, including the National Instant Criminal Background Check System (NICS); the Washington crime information center and Washington State identification system; the Health Care Authority electronic database, the Federal Bureau of Investigations national data exchange database, and any available repository of statewide local law enforcement record management systems information; the Administrative Office of the Courts case management system; and other databases or resources as appropriate;
- perform an equivalency analysis on criminal charges in foreign jurisdictions to determine if the applicant has been convicted of an out of state crime that would prohibit firearm ownership in Washington; and
- notify the dealer without delay if the records indicate the individual is approved or prohibited from possessing a firearm or whether more investigation is needed.

When a person is detained under the Involuntary Treatment Act (ITA) for 72 hours on the grounds the person presents a likelihood of serious harm, but not detained for an additional 14 days, that person loses their right to possess a firearm for six months after the date of detention. The facility detaining the person must forward a copy of the person's identifying documents to the Department of Licensing and WSP. WSP must then forward the document to the NICS. The person's right to possess a firearm is automatically restored at the end of the six-month period. At the end of the six-month period WSP must forward notice that the person's right to possess a firearm has been restored to the NICS.

Summary of Engrossed First Substitute Bill: WSP firearms background check program is defined as meaning the division within the state patrol that conducts all firearm transfers and the disposition of firearms. Statutes concerning firearm background checks are updated to specifically reference the WSP firearms background check program.

After the six-month period in which a person has lost their right to possess a firearm due to a 72-hour detainment under the ITA, the WSP firearms background check program must remove the person from the NICS database rather than forwarding notice of the restoration of firearm rights to NICS.

Beginning July 1, 2025, and annually thereafter, the WSP firearms background check program must report the average time between receipt of requests for background checks and final decision to the appropriate committees of the Legislature.

Appropriation: None.

Fiscal Note: Not requested.

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

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Firearm safety starts with a strong and reliable system of background checks. The creation of the Washington State Patrol firearm background check program moved Washington from a fragmented and often unreliable system to a robust single point of contact system. This bill simply updates statutes related to firearm background checks to reference the State Patrol system rather than the myriad precursors. This bill cleans up several statutes by removing references to local jurisdictions that no longer process firearm background checks. This also makes it easier for citizens to know where to go and who to contact when they have questions about background checks.

CON: The bill expands the recordkeeping requirements of the Department of Licensing by requiring the department to keep records of all firearm background checks. Keeping such records is illegal. There is no historical analog to this bill, and given recent U.S. Supreme caselaw, this bill is unconstitutional.

Persons Testifying: PRO: Senator Drew Hansen, Prime Sponsor; Kateri Candee, Washington State Patrol.

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

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

EFFECT OF HOUSE AMENDMENT(S):

- Clarifies references to firearms by removing language in the defined term.

- Clarifies that a dealer must comply with the application, recordkeeping, and other requirements of the chapter that apply to the sale or transfer of a pistol when processing an application for the purchase or transfer of a frame or receiver.
- Clarifies that the retention of records of a denial of an attempted purchase or transfer applies to a firearm.
- Corrects references to the Washington State Patrol firearms Background Check Program.
- Comports the definition of "frame or receiver" that applies to background checks with the existing definition of "frame or receiver" that applies to the entire chapter.
- Replaces the effective date with an emergency clause making the bill effective immediately upon passage.