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## Civil Rights & Judiciary Committee

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### HB 1562

**Brief Description:** Reducing the risks of lethality and other harm associated with gun violence, gender-based violence, and other types of violence.

**Sponsors:** Representatives Thai, Lekanoff, Taylor, Berry, Ryu, Reed, Kloba, Entenman, Walen, Doglio, Davis, Wylie, Ramel, Ormsby, Pollet and Duerr.

#### Brief Summary of Bill

- Makes changes to the crime of Unlawful Possession of a Firearm, including by adding additional crimes that prohibit a person from possessing a firearm.
- Revises provisions governing restoration of firearm rights, including by establishing additional eligibility requirements and procedures applicable to the petition process.

**Hearing Date:** 2/7/23

**Staff:** Edie Adams (786-7180).

#### Background:

##### Unlawful Possession of a Firearm.

State law prohibits certain persons from possessing firearms, including persons convicted of any felony offense and certain misdemeanor domestic violence offenses and persons subject to certain qualifying protective orders. A violation of this prohibition constitutes the felony crime of Unlawful Possession of a Firearm.

*First-Degree Unlawful Possession of a Firearm.* Unlawful Possession of a Firearm in the first degree, a class B felony, applies if the basis for the prohibition is a conviction or finding of not

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*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.*

guilty by reason of insanity (NGRI) of a serious offense.

"Serious offense" means: crime of violence; class B felony drug offense; Child Molestation 2; Incest against a child under age 14; Indecent Liberties; Leading Organized Crime; Promoting Prostitution 1; Rape 3; Drive-by Shooting; Sexual Exploitation; Vehicular Assault or Vehicular Homicide (based on driving under the influence or in a reckless manner); felony with a deadly weapon verdict; any comparable federal or out-of-state conviction; or any felony violation of firearm background check requirements.

*Second-Degree Unlawful Possession of a Firearm.* Unlawful Possession of a Firearm in the second degree, a class C felony, is committed when a person owns, possesses, or has in the person's control, any firearm under a number of circumstances, including if the person has a conviction or finding of NGRI for certain disqualifying crimes or if the person is subject to a protective order meeting specified requirements. In addition, a person is prohibited from possessing firearms if the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense.

Disqualifying convictions under Unlawful Possession of a Firearm in the second degree are any felony offense that is not a serious offense, and any of the following nonfelony offenses committed by one intimate partner or family or household member against another, committed on or after certain dates specified in statute:

- Assault in the fourth degree;
- Coercion;
- Stalking;
- Reckless Endangerment;
- Criminal Trespass in the first degree;
- Harassment; and
- violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence.

Firearms possession is prohibited based on a protective order during any period of time the person is subject to a protection order, no-contact order, or restraining order that:

- was entered after notice and an opportunity to respond;
- restrains the person from harassing, stalking, or threatening the protected person or the person's or protected person's child; and
  - includes a finding that the restrained person is a credible threat to the protected person or child or restrains the person from using or threatening physical force against the protected person or child; or
  - includes an order requiring the person to surrender all firearms and prohibiting the person from accessing, obtaining, or possessing firearms.

#### Restoration of Firearm Rights Following a Criminal Conviction.

Generally, firearm possession rights lost because of a criminal conviction or NGRI finding may be restored if certain conditions are met and certain time periods have passed. However, firearm

rights may never be restored for a conviction or NGRI finding for a felony sex offense, a class A felony, or a felony with a maximum sentence of at least 20 years.

For other disqualifying offenses, a person may petition a court for restoration if the person:

- is not currently charged with any crime;
- has no prior felony convictions that continue to count as criminal history under the Sentencing Reform Act;
- for a felony offense, has spent five or more consecutive years in the community without being convicted or found NGRI of any offense; and
- for a nonfelony offense, has spent three or more consecutive years in the community without being convicted or found NGRI of any offense, and the person has completed all conditions of the sentence.

The petition for restoration must be brought in the court of record that ordered the petitioner's prohibition on possession or the superior court in the county in which the petitioner resides.

#### Restoration Following an Involuntary Commitment.

A person who has been involuntarily committed or detained for mental health treatment or had criminal charges dismissed based on incompetency to stand trial may apply, upon discharge, for restoration of the right to possess a firearm. The person must show by a preponderance of the evidence that he or she: is no longer required to participate in court-ordered treatment; has successfully managed the condition, and is unlikely to suffer a recurrence of symptoms, related to the commitment, detention, or incompetency; and does not present a substantial danger to self or the public. If the person has engaged in violence and will likely engage in violence after restoration, the person must show by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

A person who is involuntarily committed following an NGRI finding may not petition for restoration of firearm rights unless the person meets the requirements for restoration following a criminal conviction.

#### **Summary of Bill:**

Provisions governing the crime of Unlawful Possession of a Firearm and restoration of firearm rights are revised, including by adding additional crimes that prohibit a person from possessing a firearm and eligibility requirements and procedures for restoration of firearm rights.

#### Unlawful Possession of a Firearm.

*Definitions.* The term "serious offense" is amended to include the felony offenses of Driving Under the Influence and Actual Physical Control of a Vehicle While Under the Influence. As a result, these offenses fall under Unlawful Possession of a Firearm in the first degree, and a person who is charged with either of these offenses is prohibited from possessing a firearm while free on bond or personal recognizance pending trial, sentencing, or appeal.

For purposes of the crime of Unlawful Possession of a Firearm, the term "firearm" includes frames and receivers. Definitions for "domestic violence" and "sex offense" are added. The definition of "conviction" or "convicted" is moved from the section governing unlawful possession of a firearm into the definition section.

*Prohibited Conduct.* The conduct that is prohibited under the offense is expanded to include accessing, having custody of, receiving, purchasing, or attempting to receive or purchase, any firearm.

*Prohibiting Offenses.* The following misdemeanor and gross misdemeanor crimes are included as prohibiting crimes, if committed on or after the effective date of the act:

- any crime of domestic violence not currently included;
- Coercion;
- Stalking;
- Cyberstalking;
- Cyber Harassment, except where the conviction is based only on lewd, lascivious, indecent, or obscene words, images, or language;
- Reckless Endangerment;
- Harassment;
- Aiming or Discharging a Firearm;
- Unlawful Carrying or Handling of a Firearm;
- Animal Cruelty in the second degree, except where the conviction is based on abandonment or neglect by the owner;
- "prior offense" under the impaired driving laws, if committed within seven years of another "prior offense" conviction; and
- violation of an order to surrender and prohibit weapons (OTSW), an extreme risk protection order (ERPO), or the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence.

*Protective Orders.* No-contact orders issued in sexual assault, trafficking, and promoting prostitution cases are added to the list of orders that prohibit a person from possessing firearms if they meet specified requirements. In addition, the prohibition applies to provisions in covered protective orders that restrain or protect "others identified in the order."

#### Restoration of Firearm Rights Following a Criminal Conviction.

The eligibility requirements and petition process for restoration of firearm rights lost based on a criminal conviction or finding of not guilty by reason of insanity (NGRI) are revised and moved into a new section in the firearms chapter.

*Eligibility Requirements.* The consecutive time periods that a person has to remain crime-free before petitioning for restoration of firearm rights must immediately precede the filing of the petition.

The crime-free time period is extended to 10 consecutive years immediately preceding the

petition for the following felony, gross misdemeanor, and misdemeanor offenses:

- crime of violence;
- crime of domestic violence;
- Coercion;
- Stalking;
- Cyberstalking;
- Cyber Harassment;
- Reckless Endangerment;
- Harassment;
- Hate Crime;
- Aiming or Discharging a Firearm;
- Unlawful Carrying or Handling of a Firearm;
- Animal Cruelty 1 and 2;
- "prior offense" under the impaired driving laws; and
- violation of an OTSW, ERPO, or the restraint or exclusion provisions of a protection order or no-contact order.

The requirement that the person has completed all sentencing conditions for any nonfelony offense is extended to apply also to felony offenses and is limited to sentencing conditions other than non-restitution fines and fees.

The following additional eligibility requirements are established in order for a person to have the right to possess a firearm restored:

- The person has no prior felony convictions that prohibit possession of a firearm in another state.
- The person has not been the respondent or defendant in a full protection order, no-contact order, or restraining order that includes an OTSW, in the five consecutive years immediately preceding the filing of the petition or during the petition process.
- The person has not at any time knowingly attempted to receive, access, or purchase dangerous weapons or ammunition or to acquire a concealed pistol license during any time the person was prohibited from doing so under federal, state, local, or tribal law.
- The person has been determined by law enforcement to not be subject to any other prohibition on possessing a firearm and would be able to pass a background check to purchase a firearm if the petition is granted.

*Petition Process.* A person may petition for restoration of firearm rights by filing the petition in the superior court in a county that entered any prohibition. Notice of the petition must be served on the prosecuting attorney. The court must set a hearing on the petition, which must be scheduled no sooner than 45 days after the petition is filed and served.

The prosecutor must notify and request information from law enforcement agencies that may have relevant information relating to the petitioner's eligibility for restoration, including the Washington Association of Sheriffs and Police Chiefs pursuant to their responsibility to maintain data regarding persons who attempt to purchase firearms while prohibited.

The prosecutor must take reasonable steps to notify any victim of a prohibiting crime, or any person who previously obtained a full protection order against the person petitioning for restoration of firearm rights, of the procedure to provide a sworn written statement regarding the existence of any facts or information that the person or third parties may have relevant to whether the petitioner meets the requirements for restoration.

The prosecutor must verify to the court prior to the hearing that the prosecutor has reviewed the relevant and available civil and criminal records, and information from law enforcement agencies and victims, and based on that information, whether there is sufficient evidence to determine that the person petitioning for restoration of firearm rights meets the requirements.

The court must grant the petition only if the court finds the petitioner has proven by clear and convincing evidence that the person meets the requirements for restoration. The prosecutor must notify any victim who requests notification of the court's decision.

*Other Provisions.* The Administrative Office of the Courts must create and distribute standard forms for restoration petitions and orders. When a person's right to possess firearms is restored, the court must send notice of the restoration to the Department of Licensing and the National Instant Criminal Background Check System.

Public officials, public employees, public agencies, or a combination of units of local government and its employees, are immune from civil liability for good faith conduct in the performance of their duties in relation to restoration petitions.

Restoration of Firearm Rights Following an Involuntary Commitment.

A person prohibited from possessing firearms as a result of a civil commitment following an NGRI finding in a criminal case must wait one year following discharge before the person may apply for restoration of firearm rights.

**Appropriation:** None.

**Fiscal Note:** Requested on February 3, 2023.

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