



Summary of Initiative 1639

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 1639. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

BRIEF SUMMARY

- Establishes regulations applicable to semiautomatic assault rifles, including: requiring a state background check and firearms safety training for purchasers or transferees; imposing age restrictions on purchase, possession, and transfer; prohibiting purchase by non-Washington residents; establishing waiting periods and other requirements for dealer deliveries; and authorizing a fee of up to \$25 for sales or transfers.
- Requires applications for the purchase of a pistol or semiautomatic assault rifle to include a warning regarding the dangers associated with firearms in the home.
- Prohibits a person who is under the age of 21 from purchasing a pistol.
- Imposes criminal liability for leaving or storing an unsecured firearm in a location where a prohibited person is likely to access the firearm and does access and use the firearm under specified circumstances.
- Requires firearms dealers to offer to sell or give purchasers a secure gun storage device or trigger lock or similar device, and provide warnings regarding potential criminal liability for unsecured storage of firearms.
- Requires the Department of Licensing to maintain certain firearms-related records and to establish procedures to verify that persons who have acquired pistols and semiautomatic assault rifles remain eligible to possess firearms.

BACKGROUND

Initiative 1639

Initiative 1639 was certified to the ballot on July 27, 2018. A lawsuit was subsequently filed to prevent the Secretary of State from certifying Initiative 1639 to the ballot. On August 24, 2018, the state Supreme Court ruled that Initiative 1639 must appear on the November ballot. This decision reversed an earlier decision of the Thurston County Superior Court.

The ballot title and ballot measure summary prepared by the Attorney General and as amended by court order are as follows:

Ballot Title

Statement of Subject: Initiative Measure No. 1639 concerns firearms.

Concise Description: This measure would require increased background checks, training, age limitations, and waiting periods for sales or delivery of semiautomatic assault rifles; criminalize noncompliant storage upon unauthorized use; allow fees; and enact other provisions.

Should this measure be enacted into law? Yes [] No []

Ballot Measure Summary

This measure would require increased background checks, firearm safety training, and waiting periods before semiautomatic assault rifles may be purchased or delivered. It would impose age limitations on who may purchase or possess certain firearms, including prohibiting purchases by persons under age 21. It would require certain secured firearm storage or trigger-locks, and criminalize noncompliant firearm storage if it results in unauthorized use. It would enact other firearm-related requirements, including certain warnings, recordkeeping, and fees.

Background Check Requirements for Firearms Sales or Transfers

Federal law generally requires a background check through the National Instant Criminal Background Check System (NICS) for the sale or transfer of a firearm by a federally licensed dealer, but does not regulate sales or transfers by persons who are not licensed dealers. Under state law, all firearms sales or transfers are subject to background checks unless specifically exempted by federal or state law. This requirement applies to all sales or transfers in whole or in part in Washington, including sales and transfers through a dealer, at gun shows, online, and between persons who are not licensed dealers (unlicensed persons).

A sale or transfer of a firearm where neither party is a dealer must be completed through a dealer. The dealer must process the transaction by complying with all federal and state laws that would apply if the dealer were selling or transferring the firearm from the dealer's inventory, including

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conducting required background checks and complying with recordkeeping requirements. These requirements for firearms sales or transfers between unlicensed persons are subject to numerous exceptions.

A dealer may not deliver a firearm to a purchaser or transferee, except as otherwise authorized, until the earlier of:

- the completion of all required background checks if the purchaser or transferee is not ineligible under federal or state law to possess a firearm; or
- 10 business days after the dealer requested the background check (except a longer time period of 60 days applies for pistol transfers under certain conditions).

Sales or Transfers of Pistols

Additional requirements apply to the sale or transfer of a pistol by a dealer, including a requirement for a state background check and specific application and recordkeeping requirements.

A pistol purchaser must fill out an application that includes identifying information of the applicant and a description of the pistol, including the make, model, and manufacturer's number. A signed application constitutes a waiver of confidentiality for purposes of release of information by the Health Care Authority, mental health institutions, and other health care facilities upon request of a law enforcement agency to determine the applicant's eligibility to possess firearms.

The dealer must forward the pistol transfer application to the local law enforcement agency and the law enforcement agency must conduct a state background check of the applicant. The state background check includes a check of the Washington State Patrol databases, the Department of Licensing (DOL) firearms database, and state and local mental health agency records.

A dealer may not deliver a pistol to a purchaser until: the purchaser produces a valid concealed pistol license (CPL); required background checks are completed and the purchaser is found to be not ineligible to possess a firearm; or 10 business days have elapsed since the dealer requested the background check (except this period is 60 days if the purchaser does not have a Washington driver's license or identification card or has not resided in the state for the previous 90 days). A dealer must hold delivery of a pistol if the applicant has an outstanding arrest warrant or the law enforcement agency has notified the dealer of an investigative hold based on pending charges or proceedings.

A dealer must make a record of every pistol sold that includes information on the purchaser, the date of the sale, the type of pistol purchased, and the signature of both the purchaser and the person selling the pistol. The dealer must retain one copy of the pistol transfer record for six years, and send one copy of the record to the DOL for entry into the DOL firearm database.

Sales or Transfers of Rifles or Shotguns

State law does not require a state background check by local law enforcement for sales or transfers of rifles or shotguns. However, under federal law, a dealer must conduct a NICS check for any transfer of a rifle or shotgun to an unlicensed person to determine whether the person is eligible to possess a firearm.

A resident of another state may purchase rifles and shotguns in Washington as long as the transaction complies with federal law and the purchaser is eligible to purchase or possess the firearm under the laws of Washington and the laws of the purchaser's state of residence. The purchaser is subject to all procedures and background check requirements under Washington law.

Persons Prohibited from Possessing Firearms

State law prohibits certain persons from possessing firearms. The crime of Unlawful Possession of a Firearm includes prohibitions on firearm possession for persons: convicted or found not guilty by reason of insanity of a felony or certain gross misdemeanor domestic violence offenses; involuntarily committed for mental health treatment; subject to a qualifying protection order, no-contact order, or restraining order that meets certain criteria; free on bond or personal recognizance for a serious offense; or under the age of 18, with a number of exceptions.

Other statutory provisions prohibit firearm possession by offenders under the supervision of the Department of Corrections, non-citizens who do not have an alien firearm license (with exceptions), and persons who are subject to a protection order, no-contact order, or restraining order that includes an injunction regarding firearms.

In addition, a person under 21 years of age is generally prohibited from possessing a pistol except in the person's abode or fixed place of business, or on property under the person's control. This restriction is subject to a number of exceptions listed in a statute governing permissible possession of firearms by minors and a statute governing exceptions to restrictions on the carrying of pistols.

Department of Licensing Firearms Unit

The DOL Firearms Unit maintains the state firearms database, which includes records of applications for CPLs, alien firearms licenses, and pistol purchase applications and transfers. The DOL Firearms Unit also provides forms, information, and training to law enforcement agencies, firearms dealers, and the public relating to state firearms licensing requirements and regulations.

SUMMARY

Requirements for Semiautomatic Assault Rifles

Requirements are established for the purchase, transfer, or possession of semiautomatic assault rifles. A semiautomatic assault rifle means any rifle that utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round and that requires a separate

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pull of the trigger to fire each cartridge. The term does not include antique firearms, a firearm made permanently inoperable, or a firearm that is manually operated by bolt, pump, lever, or slide action.

A dealer may not deliver a semiautomatic assault rifle to a purchaser until:

- the purchaser provides proof of completion of a recognized firearm safety program within the last five years; and
- the dealer is notified by local law enforcement that the person is eligible to possess a firearm and the application is approved; or
- 10 business days have elapsed from the date of the purchase application, or in the case of a transfer, from the date the dealer requested the background check.

Except as otherwise provided, a dealer may not deliver a semiautomatic assault rifle to a purchaser or transferee until 10 business days have elapsed from the date of the purchase application, or in the case of a transfer, from the date the dealer requested the background check.

An application for the purchase of a semiautomatic assault rifle must include a statement made under penalty of perjury that the applicant has completed a recognized firearm safety training program within the last five years. The recognized firearm safety training program must be provided by specified entities and include certain minimum instructional requirements.

Requirements that apply to dealer deliveries of pistols are made applicable to dealer deliveries of semiautomatic assault rifles, including provisions governing state background checks by local law enforcement, arrest warrant and investigative holds, application requirements, mental health confidentiality waivers, and recordkeeping requirements.

The Department of Licensing (DOL) may require dealers to charge each semiautomatic assault rifle purchaser or transferee a fee that is no more than necessary to fund associated costs incurred by the state, local law enforcement agencies, and state and local mental health entities. The fee may not exceed \$25, except the fee may be adjusted for inflation on a biennial basis.

A person who is not a resident of Washington is prohibited from purchasing a semiautomatic assault rifle in Washington.

Age Restrictions Applicable to Pistols and Semiautomatic Assault Rifles

A person under 21 years of age may not purchase a pistol or semiautomatic assault rifle. A person may not sell or transfer a semiautomatic assault rifle to a person under 21 years of age except as otherwise authorized under the chapter of law governing firearms.

Subject to a number of exceptions, a person who is at least 18 years of age and under 21 years of age may possess a semiautomatic assault rifle only in the following circumstances:

- in the person's place of abode;
- at the person's fixed place of business;
- on real property under the person's control; or

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- while moving to a new place of abode, travelling between the person's place of abode and real property under the person's control, or selling or transferring the firearm, as long as the semiautomatic assault rifle is unloaded and in secure gun storage or secured with a trigger lock or similar device to prevent unauthorized use or discharge.

Exceptions from the restriction on possessing a semiautomatic assault rifle by persons aged 18 to 20 include places and situations listed in the statute governing permissible possession of firearms by minors and the statute providing exceptions to restrictions on carrying pistols.

Warning Statement for Pistol and Semiautomatic Assault Rifle Purchase Applications

An application for the purchase of a pistol or semiautomatic assault rifle must include the following statement:

CAUTION: The presence of a firearm in the home has been associated with an increased risk of death to self and others, including an increased risk of suicide, death during domestic violence, and unintentional deaths to children and others.

Unsafe Storage of a Firearm

A new crime is created addressing storing or leaving a firearm where a prohibited person may gain access to the firearm. "Prohibited person" means a person who is prohibited from possessing firearms under federal or state law.

A person is guilty of Community Endangerment Due to Unsafe Storage of a Firearm if the person stores or leaves a firearm in a location where the person knows, or reasonably should know, that a prohibited person is likely to gain access, and the prohibited person accesses the firearm and either:

- causes personal injury or death with the firearm, in which case the offense is an unranked class C felony; or
- causes the firearm to discharge, carries or exhibits the firearm in a public place in a manner that manifests an intent to intimidate others or that warrants alarm for the safety of others, or uses the firearm in a crime, in which case the offense is a gross misdemeanor.

The crime does not apply under the following circumstances:

- the firearm was in secure gun storage or secured with a trigger lock or similar device designed to prevent unauthorized use or discharge of a firearm. "Secure gun storage" means a locked box, gun safe, or other locked storage space designed to prevent unauthorized use or discharge of a firearm;
- in the case of a person who is a prohibited person on the basis of age, access to the firearm was with the permission of a parent or guardian and supervised by an adult or in accordance with laws governing permissible possession of firearms by minors;
- the prohibited person obtains the firearm in a lawful act of self-defense; or
- access to the firearm was obtained as a result of an unlawful entry, if the unauthorized access or theft of the firearm is reported to law enforcement within five days of when the victim of the unlawful entry knew or reasonably should have known the firearm had been taken.

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Nothing in the provisions governing Community Endangerment Due to Unsafe Storage of a Firearm is intended to mandate how or where a firearm must be stored.

A firearms dealer must offer to sell or give to a firearm purchaser or transferee a secure gun storage device or a trigger lock or similar device designed to prevent unauthorized use or discharge of a firearm. A firearms dealer must conspicuously post a sign, and deliver written materials to firearms purchasers and transferees, that provide a warning indicating it is a crime to leave an unsecured firearm where a prohibited person can and does gain possession. A firearms dealer who violates these requirements is guilty of a class 1 civil infraction and subject to a fine of up to \$250.

Department of Licensing Requirements

The DOL must, rather than may, keep copies or records of applications for concealed pistol licenses (CPLs), alien firearm licenses, and pistol purchase applications and transfers. In addition, the DOL must keep copies or records of semiautomatic assault rifle purchase applications and transfers.

The DOL must develop a process to verify that persons who have acquired pistols or semiautomatic assault rifles remain eligible to possess firearms, and if a person is no longer eligible, to notify the local law enforcement agency and take steps to ensure the person is not illegally in possession of firearms. The DOL must work with the Washington State Patrol and other law enforcement agencies and may consult with public and private sector individuals to accomplish this task.

State Background Check System

The state may establish a statewide firearms background check system that is equivalent to, or more comprehensive than, the current background check requirements. Once the state system is established, a dealer must use the state system and the National Instant Criminal Background Check System to make criminal background checks of applicants to purchase firearms.

Effective Date: The initiative takes effect July 1, 2019, except section 13, relating to age restrictions on the purchase of pistols and semiautomatic assault rifles and the possession and transfer of semiautomatic assault rifles, which takes effect January 1, 2019.

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