



Washington Firearms Laws Summary 2019

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I. Definition of a Firearm (RCW 9.41.010)

A firearm is defined as a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder.

Firearms are generally grouped into two main categories: pistols or handguns and long guns. Washington law defines pistol as any firearm with a barrel less than sixteen inches in length, or designed to be held and fired by the use of a single hand.

The term "long gun" is not used in the code, but includes the defined terms of rifle and shotgun.

- Rifle: a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifle bore for each single pull of the trigger.
- Shotgun: a weapon with one or more barrels, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

In 2019, I-1639 added a new definition for a semiautomatic assault rifle (SAR). An SAR is defined as any rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge. The definition specifically excludes antique firearms, firearms that have been made permanently inoperable, or any firearm that is manually operated by bolt, pump, lever, or slide action.

Unlawful Firearms or Firearm Accessories (RCW 9.41.190-.230)

Certain firearms or firearm accessories are specifically prohibited under the code. Prohibited firearms or firearm accessories include the following:

- Machine gun: any firearm known as a machine gun, mechanical rifle, submachine gun, or any other mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the firearm, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.
- Short-barreled rifle: a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

- Short-barreled shotgun: a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than twenty-six inches.
- Undetectable firearm: a firearm that is not as detectable as 3.7 oz. of 17-4 PH stainless steel by walk-through metal detectors or magnetometers commonly used at airports or any firearm where the barrel, slide or cylinder, or the framer or receiver would not generate an image that accurately depicts the shape of the part when examined by the types of x-ray machines commonly used at airports.
- Bump-fire stock: a butt stock designed to be attached to a semiautomatic firearm with the effect of increasing the rate of fire achievable with the semiautomatic firearm to that of a fully automatic firearm by using the energy from the recoil of the firearm to generate reciprocating action that facilitates repeated activation of the trigger.

It is illegal to possess or manufacture any of the above prohibited firearms or firearm accessories. Any prohibited firearm or firearm accessory may be seized by law enforcement if discovered. Possession or manufacture of an unlawful firearm or firearm accessory is a class C felony. The use of an unlawful firearm or firearm accessory in the commission of a felony is punishable as a class A felony.

It is also unlawful to manufacture an untraceable firearm with the intent to sell the untraceable firearm. An untraceable firearm is any firearm manufactured after July 1, 2019 that is not an antique firearm and that cannot be traced by law enforcement by means of a serial number affixed to the firearm by a federally licensed manufacturer or importer. The manufacture of an untraceable firearm is a class C felony.

II. Eligibility to Possess Firearms (RCW 9.41.040)

The right to bear arms is an individual right under the United States Constitution and the Constitution of the State of Washington. That right is not, however, without restriction.

The following persons are prohibited from possessing firearms:

- Any person convicted or found not guilty by reason of insanity of any felony;
- Any person convicted or found not guilty by reason of insanity of any of the following crimes committed by one family or household member against another: assault in the 4th degree, coercion, stalking, reckless endangerment, criminal trespass in the 1st degree, or violation of the provisions of a protection order or no-contact order restraining the person or the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);
- Any person convicted or found not guilty by reason of insanity of harassment when committed by one family or household member against another;
- During any period of time a person is subject to a restraining order or no contact order that explicitly prohibits the use of physical force against a protected person or the protected person's child;
- After having been involuntarily committed for mental health treatment unless the person's right to possess a firearm has been restored;
- After dismissal of criminal charges based on incompetency to stand trial when the court has made a finding the defendant has a history of one or more violent acts, unless the person's right to possess a firearm has been restored;
- If the person is under eighteen years of age (however, see Possession of Firearms by Minors);
- If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

At the time a person is convicted or found not guilty by reason of insanity, the person is committed for mental health treatment, or charges are dismissed based on incompetency to stand trial coupled with a finding that the person has a history of violent acts, the court must notify the person orally and in writing that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless the person's right to do so is restored by a court of record. Within three days after conviction, the court must forward a copy of the person's driver's license along with the date of conviction to the Department of Licensing for purposes of license revocation.

A person in possession of a firearm who has been convicted or found not guilty by reason of insanity of a serious offense is guilty of unlawful possession of a firearm in the first degree, a Class

B felony.

A person in possession of a firearm who is prohibited from possession for any other reason is guilty of unlawful possession of a firearm in the second degree, a Class C felony.

Purchase and Possession of Firearms by Minors and Persons age Eighteen to Twenty-One

A person under the age of eighteen may possess a firearm if the minor is:

- In attendance at a hunter's safety course or a firearms safety course;
- Engaging in practice in the use of a firearm or target shooting at a shooting range;
- Engaging in organized competition involving the use of a firearm;
- Hunting or trapping under a valid license;
- In an area where shooting a firearm is permitted and: the person is at least 14 years of age, has been issued a hunter safety certificate, and is not using a pistol; or the person is under the supervision of an adult.
- Is on private property and under the control of a parent or guardian; or
- Is a member of the armed services. (RCW 9.41.040.)

Unless an exception applies, a person at least eighteen years of age but less than twenty-one, may possess a pistol or SAR only:

- In the person's place of abode;
- At the person's fixed place of business;
- On real property under his or her control; or
- Under any of the circumstances listed above for which a minor may possess a firearm. (RCW 9.41.240.)

An exception is also provided for possession of an SAR for the purpose of transporting the firearm to approved places or selling or transferring the firearm as authorized by law, so long as the SAR is unloaded and properly secured to prevent unauthorized use or discharge.

The circumstances in which a person under the age of twenty-one may purchase a firearm are more limited. Under federal law, a person must be twenty-one years of age to purchase a pistol and eighteen years of age to purchase a long gun. After the passage of I-1639, state law now specifies that a person under twenty-one years of age may not purchase a pistol or SAR and no person may sell or transfer an SAR to a person under twenty-one years of age. (RCW 9.41.240.)

Transfer is the intended delivery of a firearm to another person without the payment of money or other consideration and includes the transfer of a firearm by gifting or loaning. Washington

law includes specific exemptions for when a firearm may be transferred without the requisite background check. (RCW 9.41.113.) Those circumstances include transfers between immediate family members or temporary transfer for a lawful purpose such as hunting or shooting at an established shooting range. Given the language of RCW 9.41.240 prohibiting transfer of an SAR to a person under the age of twenty-one, it is unclear whether these exemptions would apply.

Note, the definition of transfer excludes situations where the firearm is owned by an entity and the firearm is used by an employee or agent of the entity, including volunteers participating in an honor guard for lawful purposes.

Exemptions for Military Service Members

In several circumstances, Washington law exempts a member of the Armed Forces of the United States, National Guard, or organized reserves from state firearm regulations. The following restrictions do not apply when the member is acting within the scope of his or her official duties:

- Restricting a person under the age of eighteen from possessing a firearm (RCW 9.41.042)
- Restrictions against carrying. (RCW 9.41.060)
- Restrictions and background check requirements for the sale and transfer of firearms (RCW 9.41.113)
- Prohibition from possessing a firearm on restricted premises (RCW 9.41.300)

Possession by Offenders (RCW 9.41.045)

As a sentence condition, offenders under the supervision of the Department of Corrections (DOC) may not own, use, or possess firearms or ammunition. In addition to other penalties in law, an offender in possession of a firearm is subject to violation and sanctions through DOC.

Alien Firearm Possession (RCW 9.41.171)

It is a Class C felony for any person who is not a citizen of the United States to carry or possess a firearm unless the person is a lawful permanent resident, has obtained a valid alien firearm license, or meets certain limited exceptions.

III. Sales and Transfers of Firearms

Firearm Dealers (FFLs)

In Washington, only licensed firearms dealers are authorized to engage in retail sales of firearms. In order to obtain a dealer license, the person must first receive a federal firearms license (FFL) and undergo a fingerprinting and background check through local law enforcement. Any employee of the dealer must also undergo a fingerprinting and background check and be eligible to possess a firearm. (RCW 9.41.110.)

Dealers must comply with both state and federal background check requirements before transferring firearms to persons who are not also dealers. Under federal law, a dealer cannot sell a firearm or ammunition to a person whom the dealer knows, or has reasonable cause to know, is federally prohibited from possessing a firearm. The consequence for willful violations of the federal background check requirement is revocation of the federal firearms license (subject to a hearing) and imposition of a civil fine. In addition, a knowing violation of the background check requirements can subject the dealer to criminal prosecution and up to ten years imprisonment.

Under state law, it is a class C felony for a person to transfer a firearm to another person whom the transferor has reasonable cause to believe is ineligible to possess a firearm. (RCW 9.41.080.) Initiative 594, passed by Washington voters in 2014, subjects most private transfers between individuals to a background check conducted through a licensed dealer. First-time, knowing violations of this requirement are a gross misdemeanor punishable by up to one year in jail and up to a \$5,000 fine. (RCW 9.41.113.)

Both federal and Washington law prohibit purchases by straw buyers. A straw purchase is buying a firearm for someone who is prohibited by law from possessing one, or buying a firearm for someone who does not want his or her name associated with the transaction. Such transfers are punishable under federal law by a \$250,000 fine and two years in federal prison.

Firearm Background Check System

The firearm background check system consists of two parts. The National Instant Criminal Background Check System (NICS) maintained by the FBI and a state background check, which consists of local law enforcement conducting an individualized check of the databases of the Washington State Patrol, DSHS, and local mental health agencies. Many of these disqualifying state records are electronically submitted to NICS and will ultimately show up in a NICS check. A NICS check usually returns an immediate response. A state background check can take up to 10 days and longer in some circumstances.

In accessing NICS, the state must designate what entity or entities will act as its point of contact. Washington has chosen to be a partial point of contact state. Firearm dealers are authorized to access NICS directly in obtaining background check information for long gun purchases other than

SARs. Local law enforcement (260 sheriffs and police departments) is authorized to access NICS for pistol and SAR purchases.

Long gun purchases other than SARs are handled exclusively between the dealer and NICS. Firearms dealers contact NICS by phone or electronically (known as “e-check”) to determine whether a prospective purchaser is prohibited from possessing a firearm. Dealers also have the option of requesting a check on a person who attempts to pawn a firearm. The dealer is notified that the transfer may proceed, may not proceed, or is delayed pending further review of the applicant’s history.

For a pistol or SAR sale or transfer, a purchaser must complete a purchase application with the dealer. The dealer then forwards the application to one of Washington’s 260 local sheriffs or police departments to conduct the NICS check and a state background check.

Time and Waiting Periods

Washington has not historically had a waiting or cooling off period before a firearm can be delivered to the purchaser. For pistol sales, a dealer may deliver the pistol to the purchaser on the earlier of notice from law enforcement that the purchaser is not prohibited from owning a firearm, or 10 days after the dealer has requested the background check from local law enforcement.

I-1639 does not contain the "earlier of" language for SAR sales. A dealer is prohibited from delivering an SAR to a purchaser until 10 days have elapsed from the date of the purchase application. This provision institutes a mandatory 10 day waiting period for the purchase of an SAR.

In either case, if law enforcement has reasonable grounds, the jurisdiction may hold the sale and delivery of the pistol or SAR up to thirty days in order to confirm existing records.

Firearm Safety Training Program

In order to purchase an SAR, the purchaser must provide proof to the dealer that he or she has completed a recognized firearm safety training program within the last five years. At a minimum, the training must include instruction on:

- Basic firearms safety rules;
- Firearms and children, including secure gun storage and talking to children about gun safety;
- Firearms and suicide prevention;
- Secure gun storage;
- Safe handling of firearms; and

- State and federal firearms laws, including prohibited firearms transfers.

The training must be sponsored by a federal, state, county, or municipal law enforcement agency, college or university, firearms training school with certified instructors, or other nationally recognized organization that typically offers firearms training. The proof of training must be in the form of a certification that states under penalty of perjury that the training meets the minimum requirements.

Other than the above criteria, no form of certificate is specified and there is no state oversight that approves training providers.

NICS Audit and the Single Point of Contact System

In 2017-18, the FBI conducted an audit of Washington's point of contact agreement and how the state accesses NICS.

Up until recently, a CPL holder could purchase a pistol and take delivery on the same day without waiting for return of the state background check from local law enforcement. State law authorized the dealer to conduct a NICS background check and immediately transfer possession of the pistol if the CPL holder passed the NICS check. Upon completion of its audit, the FBI notified Washington that allowing dealers to conduct these checks was a violation of its partial point of contact agreement in utilizing the NICS system.

In response, the legislature removed the authority for dealers to conduct a same day transfer for CPL holders. (EHB 1465 (2019).) A pistol purchase application for a CPL holder must be forwarded to local law enforcement consistent with any other pistol purchase. The provisions of EHB 1465 expire on June 30, 2022 or six months after the Washington State Patrol determines that the state has an operational single point of contact system. Without further action of the legislature, after June 30, 2022, the law authorizing a same day transfer to CPL holders will be reinstated.

The legislature has directed the Office of Financial Management (OFM) to conduct a feasibility study and make recommendations regarding the establishment of a single or full point of contact system for conducting firearm background checks. OFM must consider if public safety could be improved by implementing such a system, whether the system would more effectively keep prohibited persons from obtaining firearms, whether the single point of contact system will simplify the background check process, what agency or entity may be best suited to act as the single point of contact, and the cost and computer system improvements needed to implement the single point of contact system. The report is due to the legislature by December 1, 2019.

Out of State Purchasing (RCW 9.41.122)

Residents of Washington may purchase rifles and shotguns in a state other than Washington from a federally licensed dealer. For internet sales and the purchase of a pistol or SAR out of state, residents are subject to procedures and background checks required by Washington law.

Procedurally, this requires purchase of the firearm from a federally licensed dealer and shipment to a licensed Washington dealer who will conduct the necessary background checks before transfer of ownership to the purchaser.

Residents of a state other than Washington may purchase rifles and shotguns in Washington, with the exception of those firearms defined as SARs.

The Department of Licensing's Role in Washington's Firearms System (RCW 9.41.129)

Department of Licensing (DOL) has no regulatory role in Washington's firearms system. Rather, DOL has a limited, record keeping role in firearms data collection and maintenance. DOL maintains copies of four types of records: applications for concealed pistol licenses, applications for alien firearms licenses, applications for purchase of pistols and SARs, and records of transfers when a pistol or SAR is transferred through a licensed firearms dealer.

DOL does not determine whether to issue or revoke a concealed pistol license or alien firearms license. Nor does DOL have authority to determine whether the sale or transfer of a pistol or SAR should proceed. This authority is held by local law enforcement.

No later than July 1, 2020, I-1639 requires DOL to develop a process to verify on an annual basis that persons who acquired pistols or SARs remain eligible to possess a firearm under state and federal law.

Mental Health Records

When a person becomes ineligible to possess a firearm because the person has been committed for mental health treatment or charges are dismissed based on incompetency to stand trial with a finding that the person has a history of violent acts, the court must notify NICS and the Washington Department of Licensing (DOL) within three business days after a commitment order is issued or the charges are dismissed. (RCW 9.41.047.)

Involuntary mental health treatment orders are also sent to DOL for matching with its concealed pistol license records. If DOL finds a match, notice to revoke that person's license is sent to the local law enforcement agency that originally issued it. Once DOL checks its database for the presence of a concealed pistol license, the mental health record from the court is destroyed.

IV. Restoration of Rights

A person prohibited from possessing a firearm by reason of having been involuntarily committed for mental health treatment or having charges dismissed based on incompetency to stand trial may, upon discharge, petition the court to have his or her right to possess a firearm restored. In order to have the right to firearms restored, the petitioner must prove by a preponderance of the evidence that:

- The person is no longer required to participate in court-ordered treatment;
- The person has successfully managed the condition related to the commitment or incompetency;
- The petitioner no longer presents a substantial danger to themselves or the public; and
- The symptoms related to the commitment or incompetency are not reasonably likely to recur.

Once a person's right to possess a firearm has been restored, the person may request return of any firearms surrendered to law enforcement. Prior to returning a surrendered firearm, the law enforcement agency must confirm the person remains eligible under the law to possess a firearm. If a family or household member has requested to be notified of the return of any firearms to the person, law enforcement must provide notice to the family member and hold the firearm for seventy-two hours before releasing it to the owner. (RCW 9.41.047.)

A person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm may petition the court for restoration of his or her firearm rights if:

- The person was not convicted of a sex offense or Class A felony;
- The person has not been charged with a new crime for the last consecutive five years if the underlying conviction was a felony, or three years if the underlying conviction was a nonfelony;
- The underlying offense does not specifically prohibit firearm possession. (RCW 9.41.040.)

Federal law also prohibits firearm possession for a person convicted of a domestic violence crime. There is currently no firearms restoration procedure under federal law. The definition of domestic violence differs slightly under federal law, but for many domestic violence crimes, a person will not be able to restore his or her firearm rights.

V. Firearms and Domestic Violence

The Washington legislature has taken several steps to prohibit domestic violence perpetrators from possessing firearms, including prohibiting firearm possession for persons convicted of domestic violence related offenses and for persons subject to domestic violence related protection orders. The law also provides the ability for a person or law enforcement to obtain an extreme risk protection order specifically ordering a person to surrender his or her firearms when there are domestic violence concerns.

Domestic Violence Convictions

As referenced in Section II, a person may not own a firearm if the person has been convicted or found not guilty by reason of insanity of any one of the following misdemeanor crimes committed by one family or household member against another:

- Assault in the fourth degree;
- Coercion;
- Stalking;
- Reckless endangerment;
- Criminal trespass in the first degree;
- Harassment; or
- Violation of the provisions of a protection order or no contact order restraining the person or excluding the person from a residence.

Protection Orders

A person subject to most types of protection orders, no-contact orders, or restraining orders may, under some circumstances, be required to surrender their firearms, dangerous weapons, and CPL while the order is in place. In entering an order, if the person to be restrained has used or threatened to use a firearm in the commission of a felony, or is otherwise disqualified from having a firearm, the court either may or must require the person to surrender their firearms, dangerous weapons, and CPL, depending on the evidence presented.

The court must also require a person to surrender their firearms, CPL, and other dangerous weapons if the order if the court finds the person represents a credible threat to the physical safety of an intimate partner or child, and explicitly prohibits the use or threatened use of physical force against the intimate partner or child. (RCW 9.41.800.)

The order shall be served on a restrained person by local law enforcement, at which time the restrained party must immediately surrender all firearms, dangerous weapons, and the person's

CPL. If probable cause exists to believe the restrained party has failed to surrender all firearms and weapons in their possession, the court may issue a warrant authorizing the search of any location firearms are reasonably believed to be and seizure of any discovered firearms (RCW 9.41.804.)

Extreme Risk Protection Order (Chapter 7.94 RCW)

An extreme risk protection order (ERPO) is a civil court order that allows a court to prohibit a person from possessing, purchasing, or receiving a firearm if the court finds that the person poses a significant danger of causing personal injury to self or others by purchasing, possessing, or receiving a firearm.

A petition for an ERPO may be brought by a family member or law enforcement. If the court finds by a preponderance of the evidence the respondent poses a significant danger of causing personal injury to themselves or others due to the person's access to firearms, the court will issue an ERPO for a period of one year.

The person is required to surrender any firearms in the person's possession as well as any CPL the person may hold. If the person does not do so, the court may issue a warrant authorizing the search of any location firearms are reasonably believed to be and seizure of any discovered firearms.

In 2019, the legislature amended the law to allow an extreme risk protection order to be issued against a juvenile. An ERPO issued against a juvenile prohibits the juvenile from accessing or possessing a firearm and must also be served on the parents or guardians of the juvenile.

VI. Carrying and Concealed Pistol Licenses

Washington is an "open carry" state - it is legal in Washington to carry any firearm that is not concealed unless the circumstances that either manifest an intent to intimidate another or that warrant alarm for the safety of other persons. Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed pistol (CPL). (RCW 9.41.050-.060.)

Washington is a "shall issue state". States that issue CPLs are generally categorized as either "shall issue" or "may issue" states. In "shall issue" states, law enforcement officials are required to issue a permit to anyone who meets certain minimal statutory requirements (e.g., that the person is not a convicted felon or mentally incompetent). "May issue" states give discretion to the issuing official to grant or deny the permit, based on various statutory factors.

In order to obtain a CPL, a person must submit a license application to the local law enforcement agency and undergo a fingerprint-based background check to determine eligibility. The applicant's CPL application cannot be denied, unless:

- He or she is ineligible to possess or is prohibited from possessing a firearm under federal law;
- The applicant's concealed pistol license is in a revoked status;
- He or she is under twenty-one years of age;
- He or she is subject to a court order or injunction regarding firearms;
- He or she is free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense;
- He or she has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor; or
- He or she has been ordered to forfeit a firearm within one year before filing an application to carry a pistol concealed on his or her person. (RCW 9.41.070.)

A CPL is valid for five years and may be renewed for successive five-year periods.

Renewals for Military Service Members

Any member of the armed forces of the United States, National Guard, or organized reserves who is unable to renew a CPL because of the person's assignment or deployment out of state may renew his or her license within ninety days after the person returns to the state.

Effective October 1, 2019, law enforcement agencies must have a mail or online application process for out of state military personnel to renew a concealed pistol license (RCW 9.41.070).

Reciprocity

Washington will recognize a license to carry issued by another state if the other state's laws are substantially similar to Washington concealed carry laws. Specifically, Washington will grant reciprocity if:

- The licensing state does not issue concealed pistol licenses to persons under twenty-one years of age; and
- The licensing state requires mandatory fingerprint-based background checks of criminal and mental health history for all persons who apply for a concealed pistol license.

The license holder must comply with Washington's concealed carry laws while in this state. The attorney general periodically publishes a list of states that Washington recognizes under this section. (RCW 9.41.073.)

VII. Secure Gun Storage

I-1639 creates a new crime for the failure to safely store a firearm under certain circumstances and obligates dealers to provide information on safe storage to purchasers.

Community Endangerment Due to Unsafe Storage

A person who stores a firearm in a location where the person reasonably should know that a prohibited person (such as a minor or convicted felon) may gain access to the firearm is guilty of:

- Community endangerment due to unsafe storage of a firearm in the first degree, a class C felony, if a prohibited person causes personal injury or death with the firearm; or
- Community endangerment due to unsafe storage of a firearm in the second degree, a gross misdemeanor, if a prohibited person:
 1. Causes the firearm to discharge;
 2. Carries, exhibits, or displays the firearm in a public place with an intent to intimidate or warrants alarm for the safety of others; or
 3. Uses the firearm in the commission of a crime.

A person will not be guilty of community endangerment due to unsafe storage if:

- The firearm was in secure gun storage or secured with a trigger lock or similar device;
- The prohibited person is underage and access to the firearm is with the lawful permission of the person's parent or guardian and supervised by an adult as allowed by law;
- The prohibited person obtains and discharges the firearm in a lawful act of self-defense; or
- The prohibited person's access was obtained as a result of theft and the theft was timely reported to law enforcement.

Dealer Obligations

When selling or transferring a firearm, a dealer must offer to sell the purchaser a secure gun storage device, trigger lock, or similar device. The dealer must further post a warning sign and deliver a written warning to any purchaser with the following language in all capital letters:

WARNING: YOU MAY FACE CRIMINAL PROSECUTION IF YOU STORE OR LEAVE AN UNSECURED FIREARM WHERE A PERSON WHO IS PROHIBITED FROM POSSESSING FIREARMS CAN AND DOES OBTAIN POSSESSION.

Failure to post or provide the above warning is a civil infraction and will subject the dealer to a fine up to \$250.

VIII. State Preemption

The state of Washington preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms. Cities, towns, and counties may enact only those laws and ordinances relating to firearms that are specifically authorized by state law. (RCW 9.41.290)

Pursuant to RCW 9.41.300, cities, towns, counties, and other municipalities may enact laws and ordinances:

- Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized; and
- Restricting the possession of firearms in any stadium or convention center, operated by a city, town, county, or other municipality, except that such restrictions shall not apply to:
 - Any pistol in the possession of a person with a CPL; or
 - Any showing, demonstration, or lecture involving the exhibition of firearms.

A municipality's authority to restrict persons possessing a CPL from bringing firearms on government premises has been challenged. The court has found that such a restriction is permissible when the municipality is acting in a private capacity, such as when it enters into an agreement allowing private persons to rent government facilities or premises. *Cherry v. Municipality of Metropolitan Seattle*, 116 Wn.2d 794 (1991), *Pacific Northwest Shooting Park Association v. City of Sequim*, 158 Wn.2d 342 (2006), and *Chan v. City of Seattle*, 164 Wash. App. 549 (2011).

In 2015, the City of Seattle imposed a "Firearms and Ammunition Tax" of \$ 25.00 on each firearm and \$ 0.02 to \$ 0.05 per round of ammunition sold within the city limits. Opponents challenged the tax as violative of RCW 9.41.290. The court found the tax was not a regulation preempted by state law because its primary purpose was to raise revenue for public services and did not have a regulatory purpose or intent. *Watson v. City of Seattle*, 189 Wn.2d 149, 156 (2017).

IX. Miscellaneous Firearm Provisions

Obliteration or Alteration of Firearm Identification (RCW 9.41.140)

It is illegal for any person to obliterate or alter the identification marks place on any firearm including the make, model, manufacturer's number or other mark of identification. Possession of a firearm with an obliterated or altered identification is prima facie evidence that the possessor altered the firearm. (RCW 9.41.140.)

Unauthorized Possession of a Firearm on School Grounds (RCW 9.41.280)

It is illegal for any unauthorized person to possess or bring a firearm on the premises of any public or private elementary or secondary school, school provided transportation, or other facilities while being used exclusively by public or private schools. Generally authorized persons are limited to law enforcement officers or persons directly engaged in school district security activities. Violation is a gross misdemeanor.

The federal Gun-Free School Zone Act also prohibits carrying a firearm within 1,000 feet of elementary or secondary schools. On-duty law enforcement officers are exempted from the Act.

Post-secondary institutions in Washington regulate firearms by rule. All of these institutions assert that they derive the power to regulate the firearms under their general rule-making authority.

The rules vary by institution. Those with residential campuses are more likely to allow possession with restrictions on storage and notice to administration requirements. Those without residential facilities are more likely to restrict possession.

Other Restricted Possession Locations (RCW 9.41.300)

Other restricted firearms possession locations provided by state law are:

Areas of a jail, or of a law enforcement facility, or any place used for the confinement of a person (i) arrested for, charged with, or convicted of an offense, (ii) held for extradition or as a material witness, or (iii) otherwise confined pursuant to an order of a court. Restricted access areas do not include common areas of egress or ingress open to the general public.

Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings. The restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings.

Restricted access areas of a public mental health facility certified by the department of social and health services for inpatient hospital care and state institutions for the care of the mentally ill, excluding those facilities solely for evaluation and treatment. Restricted access areas do not

include common areas of egress and ingress open to the general public;

That portion of an establishment classified by the state liquor control board as off-limits to persons under twenty-one years of age; or

The restricted access areas of a commercial service airport designated in the airport security plan approved by the federal transportation security administration.

X. Assault Weapons

The term assault weapon or assault rifle has been used in various jurisdictions to define certain types of firearms for the purposes of requiring more stringent background checks or banning certain types of firearms altogether. The exact definition varies by jurisdiction, but generally refers to a semiautomatic firearm with the capacity to accept a detachable magazine and also having either one or two other distinguishing features such as a:

- Pistol grip;
- Thumbhole stock;
- Folding or telescoping stock;
- Second handgrip that can be held by the non-trigger hand;
- Flash suppressor; or
- Grenade launcher.

The definition may also include reference to specific firearms.

Federal Assault Weapons Ban

In 1994, Congress passed the Violent Crime Control and Law Enforcement Act, which included a ban on assault weapons manufactured after the date of the ban's enactment. The Act prohibited the manufacture, transfer, or possession of "semiautomatic assault weapons" as well as the transfer and possession of "large capacity ammunition feeding devices." The law expired on September 13, 2004 due to a sunset provision and has not been renewed.

The Act separately defined assault rifle, assault pistol, and assault shotgun. Generally, the definition required the firearm accept a detachable magazine and have two or more distinguishing features. It also included a ban of 19 specifically named models of firearms as well as copies of those guns. That list included firearms such as the AK-47, AR-15, MAC-10, and TEC-9.

Other States

Seven states and the District of Columbia currently have some form of ban on assault weapons. Those states include California, Connecticut, Hawaii, Maryland, Massachusetts, New Jersey, and New York.

Minnesota and Virginia both define assault weapons in some manner and place additional regulations on the sale and transfer of the weapons.

Minnesota prohibits the possession of "semiautomatic military-style assault weapons" by persons under 18 years of age as well as other prohibited persons. Purchase of an assault weapon

requires a permit to purchase (or carry) similar to the purchase of a handgun.

Virginia requires proof of age over age 18 and proof of citizenship in order to purchase an "assault weapon." Some cities and counties disallow the open carry of any firearm defined as an assault weapon. Plastic firearms and certain specific firearms such as the striker 12 shotgun are also prohibited.

Initiative 1639

I-1639 was adopted by a majority of the voters in 2018 and took effect July 1, 2019. The provisions add a new term to chapter 9.41 RCW and define "semiautomatic assault rifle" as a rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge. This is the common definition of a semiautomatic firearm.

The new law requires a background check equivalent to that of purchasing a pistol, a 10 day waiting period, and completion of a recognized firearm safety training program in order to purchase an SAR. It also prohibits the sale or transfer of an SAR to persons under the age of twenty-one.

Opponents of I-1639, the National Rifle Association (NRA) and the Second Amendment Foundation (SAF) have filed a lawsuit challenging the provisions relating to (1) the increased age requirement and (2) sales to people from out-of-state. The plaintiffs alleged that the measure violates the right to bear arms and wrongly regulates interstate commerce, which is under the jurisdiction of the federal government. Plaintiffs are seeking to have the above-mentioned provisions ruled unconstitutional and to block enforcement of the entire measure unless and until those provisions are deemed severable and are blocked.

Second Amendment Challenges

Second Amendment challenges to assault weapon bans have been unsuccessful and to date, the U.S. Supreme Court has declined further review. Notable cases include:

- *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (en banc) Maryland's assault weapons ban does not violate the Second Amendment;
- *New York State Rifle & Pistol Ass'n v. Cuomo*, 804 F.3d 242 (2d Cir. 2015) New York and Connecticut laws prohibiting possession of semiautomatic assault weapons and large-capacity magazines do not violate the Second Amendment;
- *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015) upholding local ordinance prohibiting assault weapons and large capacity ammunition magazines.

Both sides of the issue have looked to the Supreme Court's ruling in *District of Columbia v. Heller*, 554 U.S. 570 (2008), for guidance. In *Heller*, the Court was asked to determine whether the District of Columbia's provisions banning the ownership of handguns and requiring the safe storage of firearms in the home violated the Second Amendment. The court struck down the

provisions as an unlawful infringement, holding that the Second Amendment protects those weapons in common use by citizens for lawful purposes and stating that the provisions amounted to the prohibition of an entire class of arms that Americans overwhelmingly choose for the lawful purpose of self-defense.

The court went on, however, to clarify that the Second Amendment does not confer an "unlimited right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." The court identified laws it considered presumptively lawful including prohibitions of firearm possession by felons and the mentally ill, forbidding possession in sensitive places such as school and government buildings, and imposing conditions on the commercial sales of firearms. The court clarified that these provisions were examples and not meant to be an exhaustive list. *Heller*, 554 U.S. at 626-627.

Lower courts have applied the reasoning in *Heller* to assault weapon bans with a two-part analysis focusing on:

- (1) Whether the weapons are in common use and typically possessed by law-abiding citizens for lawful purposes; and
- (2) Whether the government's prohibition is substantially related to a lawful purpose.

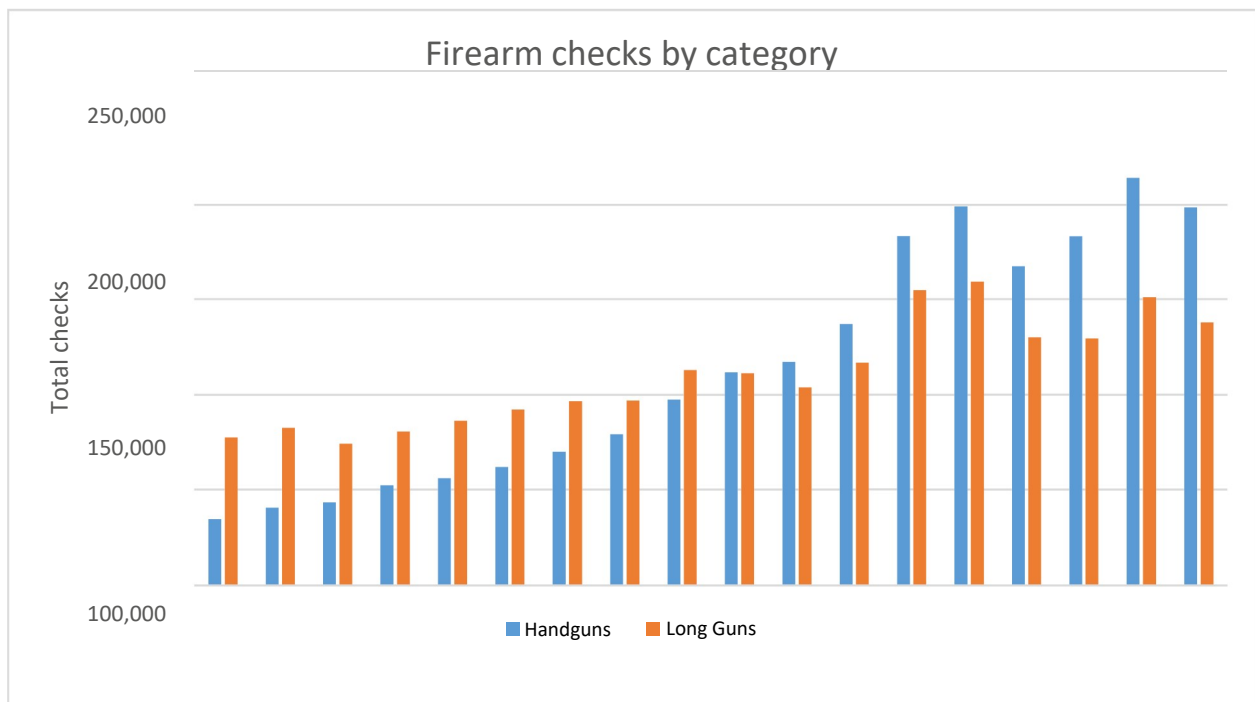
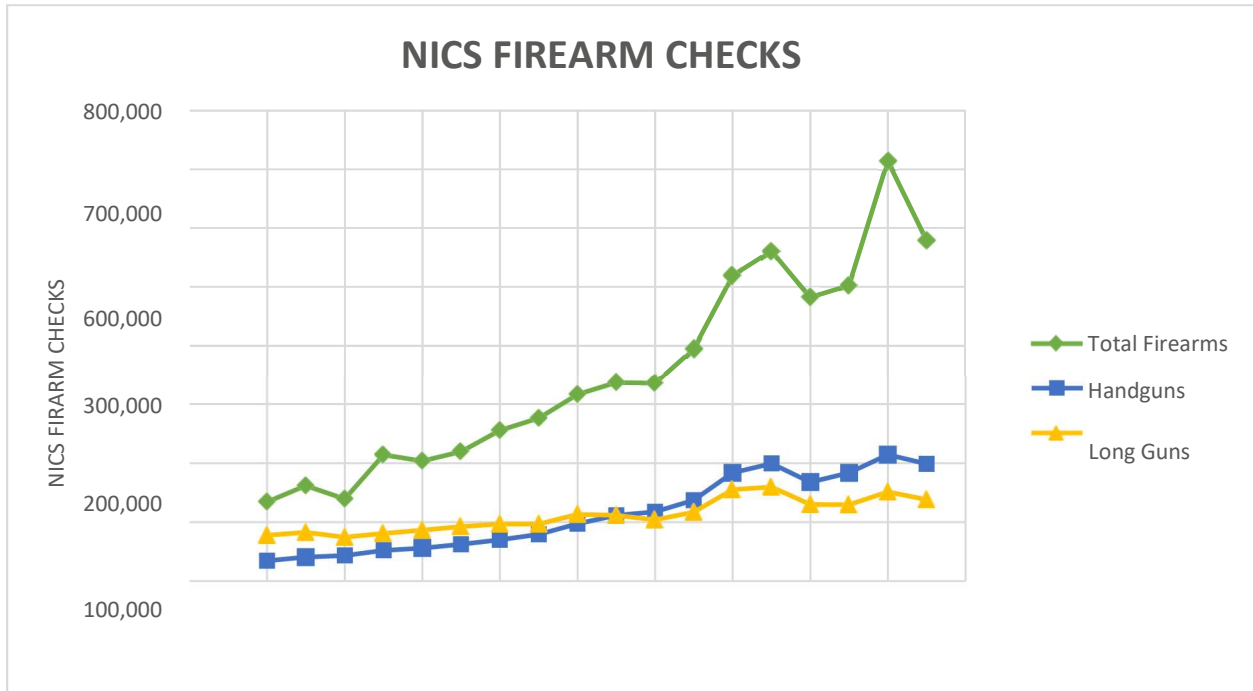
Although the court in *NY State Rifle* acknowledged opposing viewpoints, it found that firearms typically labeled as assault weapons are in common use and typically possessed for lawful purposes. In the second part of its analysis, however, it found that the ban was substantially related to the government's interest of preventing mass shootings and reducing the number of particularly hazardous weapons in circulation among criminals. The court was unconcerned that the law may have minimal impact on violent crime, particularly given "the dearth of evidence that law-abiding citizens typically use these weapons for self-defense." *New York State Rifle*, 804 F.3d at 263.

Appendix A: Select Recent Firearm Legislation

Bill Number	Brief Summary
EHB 1465 (2019)	Removes the provision allowing a dealer to deliver a pistol to a purchaser who produces a valid concealed pistol license prior to completion of the state background check. The bill expires June 30, 2022 or 6 months after the WSP determines a single point of contact firearm background check system is operational in the state.
SHB 1739 (2019)	Establishes criminal penalties applicable to undetectable firearms and untraceable firearms.
SHB 1786 (2019)	Applies the same procedures and standards for the mandatory surrender of firearms under the state's 2016 Extreme Risk Protection Order (ERPO) or "red flag" law to the surrender process for other types of protection orders.
ESSB 5027 (2019)	Authorizes the court to enter an ERPO against a person under the age of eighteen and requires notice to the person's parent or guardian of the obligation to safely secure any firearms.
SSB 5181 (2019)	Prohibits a person detained for 72 hours under the involuntary treatment act from possessing a firearm for six months following detention.
SB 5205 (2019)	Requires the court to determine whether a defendant has a history of violent acts when dismissing nonfelony charges because the defendant is incompetent to stand trial. An affirmative finding will result in removal of the person's firearm rights.
SSB 5553 (2018)	Provides a procedure for the voluntary waiver of firearm rights and the revocation of the voluntary waiver.
SB 6298 (2018)	Adds the crime of harassment to the list of domestic violence misdemeanor convictions that prohibit possession of a firearm.
EHB 2519 (2018)	Requires a law enforcement agency to ensure a person meets the eligibility requirements for a concealed pistol license prior to returning a CPL that has been surrendered to law enforcement.
ESB 5992 (2018)	Prohibits the manufacture, sale, or possession of a bump-fire stock and establishes criminal penalties. Requires the Washington State Patrol (WSP) to establish and administer a bump-fire stock buy-back program to allow a person to relinquish a bump-fire stock to the WSP.
SHB 1501 (2017)	Requires firearms dealers to report to WASPC all instances where an application for the purchase or transfer of firearm is denied based on eligibility and establishes a grant program for local law enforcement agencies to conduct criminal investigations of persons illegally attempting to purchase or transfer firearms.

Appendix B: Washington Gun Ownership

Gun ownership in Washington State is graphically represented through trends in NICS firearm checks from 2000-2017. See table below for specific number of checks. Note that Total Firearms includes checks for reasons other than pure firearm salesⁱ.



NICS Firearm Background Checks, 2000-2017

Year	Total Firearms ¹	Handguns	Long Guns
2000	134,255	34,495	77,732
2001	161,380	40,469	82,660
2002	139,439	43,246	74,411
2003	213,916	52,210	80,915
2004	203,432	55,820	86,352
2005	219,559	62,214	92,216
2006	255,387	70,278	96,733
2007	276,156	79,340	96,921
2008	316,589	97,464	113,027
2009	336,732	111,756	111,328
2010	335,342	117,336	103,848
2011	394,410	137,157	116,763
2012	519,209	183,670	154,850
2013	561,122	199,142	159,388
2014	482,115	167,432	130,056
2015	502,280	183,549	129,667
2016	713,996	214,106	151,029
2017	579,678	198,632	138,057

¹ Total firearms is calculated by the addition of handgun, long gun, other (refers to frames, receivers and other firearms that are not either handguns or long guns, such as firearms not having a pistol grip that expel a shotgun shell), multiple (multiple types of firearms selected), or administrative permits. These fall in the categories of *Pre-Pawn, Redemption, Returned/Disposition, Rentals, Private Sale, or Return to Seller - Private Sale*.