

POLICY NOTE

Citizens' Guide to Initiative 1639, to enact new restrictions on firearms ownership in Washington state

By Paul Guppy, Vice President for Research

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Key Findings

1. The initiative would re-define most commonly-owned sporting, collectable and self-defense rifles as "assault" weapons.
2. The initiative would create a new criminal offense; gun owners would be charged with a class C felony if any of their stolen firearms were used by someone else to commit a crime.
3. Applicants to buy a firearm would be required to give up their health care privacy and allow government employees full access to their medical and counseling records.
4. Government employees would be granted immunity from lawsuits for violating the civil rights of a person to legally buy or possess a firearm.
5. The right of adults age 18 to 21 to buy a firearm would be repealed. They would also lose the right to possess a firearm except in their home, place of business, or on their own property.
6. Initiative 1639 would restrict the civil rights of people who already follow the law, but would have less effect on people who choose to engage in violence and break the law.
7. By restricting and stigmatizing legal ownership, Initiative 1639 would make it more difficult for state residents to protect themselves, neighbors or family members from criminal acts.

Introduction

Initiative 1639 seeks to increase public safety by enacting a series of new restrictions on firearms ownership in Washington state. In particular, the initiative would define most rifles in private ownership as "assault rifles," make certain storage practices illegal, impose training and waiting requirements, ban certain out-of-state sales, and repeal the right of adults under 21 to buy a firearm or possess one in a public place.

Legislation introduced earlier this year with similar provisions faced bi-partisan opposition from Democrats and Republicans in Olympia and failed to pass.¹

This study presents the main provisions of the initiative, describes how they would change current law, how they would create new criminal liability for firearms owners, and in general how the measure would affect firearms ownership across the state,

The study also assesses the impact Initiative 1639 would have on the public interest, whether or not it would increase public safety, and the effect these policy changes would have on the ability of citizens to act in self-defense, or to reduce and prevent crime at times when police protection is not immediately available.

Description of main provisions – ballot title

The ballot title of the initiative reads:²

"Initiative Measure No. 1639 concerns firearms

"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"

1 "I-1639 the most ambitious effort at gun regulation in Washington state's history," by Joseph O'Sullivan, *The Seattle Times*, September 24, 2018.

2 Initiative Measure No. 1639, Washington State Voters' Guide, 2018 General Election, Washington Secretary of State, at <https://weiapplets.sos.wa.gov/MyVoteOLVR/OnlineVotersGuide/Measures?language=en&electionId=71&countyCode=xx&ismyVote=False&electionTitle=2018%20General%20Election%20#ososTop>.

The following sections provide a brief description of the measure's main provisions.

Defining commonly-owned firearms as “assault rifles”

The ballot title is misleading in part because it describes limitations that the initiative would impose on “assault rifles,” even though this is not how the kinds of rifles the initiative seeks to restrict are defined in current law. The ballot title uses a term that doesn't exist in the law.

Instead, the initiative itself seeks to create the designation “assault rifle” and impose it on commonly-owned firearms.³ Many rifles designed for civilian use are for sporting, collecting or hunting purposes and are not considered “military-style” weapons.

The provocative label appears to be an effort by initiative sponsors to impose a negative social stigma on firearms owners and to make it more difficult for citizens to exercise a basic civil right.

Annual review of firearms possession

The initiative sets up a process for the state to review annually whether a person would be allowed to keep a firearm that is already in his or her possession. If the state determines such possession is illegal, the state could instruct law enforcement to confiscate the firearm.⁴

Creating a new crime of “community endangerment”

Under Initiative 1639, if a “prohibited person” gains access to any firearm, steals it, and then fires it or displays it in public, or uses it in a crime, the owner of the firearm from whom it was stolen would be guilty of the crime of “community endangerment” and would be charged with a class C felony.⁵ Conviction would result in a term of up to one year in jail.

Giving up health care privacy

Under Initiative 1639, applying to buy a firearm would require a person to give up state and federal legal protections for health care privacy, and would allow government employees full access to a person's physical, mental health counseling, and therapy treatment records.⁶

Government employee immunity from citizen lawsuits

Section 9 of the initiative would make government employees, or any contractor or private agency working for the government, immune from lawsuits for failing

3 Text of Initiative 1639, Section 16 (25).

4 Ibid, Section 15 (1) (a) and (b).

5 Ibid, Section 5 (2) (a).

6 Ibid, Section 7.

to recognize the rights of a person to legally buy or possess a firearm, including unlawful denial of a concealed pistol license.⁷ Under the initiative, citizens could not sue if their civil rights are violated.

Creating a state database of firearms owners

If Initiative 1639 is enacted, every licensed firearms dealer would be required to make a record in triplicate of each firearm purchased that shows every customer's name, address, occupation and birthplace, to be filed within six hours with the local chief of police and the state director of licensing.⁸ The state would maintain an ongoing database of firearms ownership.

Firearms purchase by adults age 18 to 21 banned

Under Section 13 of the initiative, adults age 18 to 21 would lose their right to buy a firearm in Washington state. In addition, it would become illegal for adults age 18 to 21 to have possession of a firearm, except inside their own home, place of business, or on their own property.⁹

10-day waiting period and mandatory training

The initiative would ban the transfer of a semiautomatic rifle to any person within 10 business days of purchase.¹⁰ Potential purchasers would also be required to present proof that he or she had attended and successfully completed a state-mandated training course within the last five years.¹¹

Ban on out-of-state sales

Initiative 1639 would ban Washington state residents from engaging in interstate commerce in the sale of legal "assault rifles," as defined by the initiative. It would also become illegal for out-of-state residents to purchase a semiautomatic rifle from a Washington-based sporting goods store or other business.¹²

Policy analysis – new restrictions and penalties

Initiative 1639 would create a range of new restrictions and penalties on firearms sales, transfers and ownership in Washington state. Many provisions, such as locked storage and training classes, are already common practice and are available across the state. Under the initiative, however, these practices would become mandatory for all citizens, with civil and criminal penalties for failure to comply.

7 Ibid, Section 9 (1).

8 Ibid, Section 10 (9) (a) and (b).

9 Ibid, Section 13, (1), (2), and (3). Note: pistol purchases are already restricted for residents under 21.

10 Ibid, Section 4 (2).

11 Ibid, Section 3 (2) (a).

12 Ibid, Section 12.

Perhaps the harshest penalty proposed in the initiative is the one that would be levied against the owner of a legal firearm after it is stolen. The severity of the penalty imposed would depend on crimes committed later, with the owner being sentenced to up to one year in prison based on criminal acts committed by another person.

The initiative, for the first time, would create a state database of firearms ownership, and would empower state employees to review these records on an annual basis to determine whether citizens would continue to be allowed to own or possess a firearm.

The authorities would also be authorized to confiscate the firearm of any person who failed the yearly review. These two provisions would discourage citizens from exercising their civil rights or who want to be prepared to act in personal or home defense.

Restricting civil rights

The initiative would repeal the civil rights of adults under age 21. If enacted, an 18-year-old in Washington could vote, pay taxes, buy a house, take out a loan, start a business, inherit property, run for office, get married, sit on a jury, or serve in the military, but could not buy a firearm or have one in his or her possession outside the home or personal place of business.

In addition, the initiative would burden the civil rights of all law-abiding state residents, while failing to deter criminals who already choose to ignore the state's existing gun laws.

When firearms are used to prevent crime

Further, the initiative does not take into account the number of times firearms possession serves the public interest by preventing crimes. Examples of such citizen action when police are not available include:

- A 20-year-old in Ferndale who used a firearm to prevent an intruder from entering his house.¹³
- A homeowner in Vancouver who defended his home from an attacker.¹⁴
- A 17-year-old in Spokane County who used the family's firearm to prevent someone from breaking into her home.¹⁵

13 "Homeowner held burglar suspect at gunpoint," *My Ferndale News*, March 2018, https://myferndalenews.com/neighbor-held-burglary-suspect-gunpoint_74295/.

14 "Police: Vancouver homeowner, former mayoral candidate, shoots prowler," KPTV 12 News, October 17, 2017, at https://www.kptv.com/news/police-vancouver-homeowner-former-mayoral-candidate-shoots-prowler/article_f22e4b3f-0440-552d-9f50-66a70423f354.html.

15 "17-year-old Spokane girls pulls gun on home intruder on the run from Spokane County deputies," KHQ 6 News, July 18, 2017, at <http://www.khq.com/story/35903003/17-year-old-spokane-girl-pulls-gun-on-home-intruder-on-the-run-from-spokane-county-deputies>.



Paul Guppy is the Vice President for Research at Washington Policy Center. He is a graduate of Seattle University and holds graduate degrees from Claremont Graduate University and the London School of Economics. He worked for 12 years in the U.S. Congress as a Chief of Staff and Legislative Director. As the Vice President for Research, he writes extensively on tax policy, public finance and other issues. He is a frequent commentator on radio and TV news programs, and in newspapers across the state.

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- A man in Seattle who defended himself and his wife after three men broke into their home at night.¹⁶
- An elderly woman in Sultan who stopped a home intruder's attack on her husband.¹⁷

Initiative 1639 would not ban acts of self defense under state law, but by making legal ownership more difficult, it would make it harder for state residents to protect themselves, neighbors or family members from becoming victims of a crime.

Finally, the initiative would work against the public interest by reducing the ability of citizens to contribute to crime reduction and prevention, especially during incidents when police protection is not immediately available.

Conclusion

Initiative 1639 would create a system rules and mandates that would be new to Washington and would make state firearms law among the most restrictive in the country. It would also create a series of new criminal offenses. In particular, it would make a gun owner criminally liable for violent offenses committed by another person.

The initiative's stated purpose is to increase public safety and prevent the misuse of firearms. For all its mandates and penalties, however, the initiative is unlikely to have the intended effect. People who choose to engage in violence and break the law are not deterred by new laws that limit firearms ownership and use.

The main effect of Initiative 1639 would be to restrict the civil rights of citizens who already follow the law, making them less prepared to act in defense of themselves, neighbors or family members.

Given its list of new proposed restrictions, voters will decide whether Initiative 1639, as its proponents claim, would actually enhance community safety or promote the general public interest, or would have the opposite effect.

¹⁶ "Robber arrested, police seek two others, after Friday home-invasion," by Detective Mark Jamieson, Seattle Police, February 17, 2017, at <http://spdblotter.seattle.gov/2017/02/17/robber-arrested-police-seek-two-others-after-friday-home-invasion/>.

¹⁷ "Sultan woman, 80, fatally shoots intruder after he stabs her husband," by Jessica Lee, *The Seattle Times*, April 16, 2018, at <https://www.seattletimes.com/seattle-news/crime/woman-80-fatally-shoots-intruder-after-he-stabs-her-husband/>.