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**SENATE BILL 5643**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators O'Ban, Dammeier, and Darneille

AN ACT Relating to preventing firearms access by a person detained for involuntary mental health treatment; amending RCW 9.41.047; and adding a new section to chapter 71.05 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 71.05 RCW to read as follows:

(1) When a designated mental health professional conducts an investigation and evaluation of a person under RCW 71.05.150 or 71.05.153 and the designated mental health professional finds (a) that the person meets criteria for detention; and either (b) the circumstances leading to detention involve the use or threatened use of a firearm; or (c) during in the course of the investigation, the person made statements or engaged in conduct indicating a substantial risk that the person may seek to obtain and use or threaten use of a firearm; the designated mental health professional must forward a copy of the detention petition and supporting information to the prosecuting attorney within two business days.

(2) If no petition for further commitment of the person is filed under RCW 71.05.240, the prosecutor may file a motion in superior court to determine that the person is ineligible to possess a firearm. The prosecutor shall issue a summons to the person, who has the right to counsel. If a petition for further commitment under RCW 71.05.240 is filed, the prosecutor may bring this motion in the event that the court does not adjudicate the petition or does not commit the person for further treatment.

(3) The court shall grant the motion following an evidentiary hearing if it finds by a preponderance of the evidence that:

(a) The person suffers from a mental disorder; and

(b) The person was placed in initial detention under RCW 71.05.150 or 71.05.153 and a substantial nexus exists between the circumstances of the detention and the use or threatened use of a firearm.

**Sec.**  RCW 9.41.047 and 2011 c 193 s 2 are each amended to read as follows:

(1)(a) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, section 1 of this act, or chapter 10.77 RCW for mental health treatment, the convicting or committing court shall 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 his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

(b) The convicting or committing court shall forward within three judicial days after conviction or entry of the commitment order a copy of the person's driver's license or identicard, or comparable information, along with the date of conviction or commitment, to the department of licensing. When a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW, for mental health treatment, the committing court also shall forward, within three judicial days after entry of the commitment order, a copy of the person's driver's license, or comparable information, along with the date of commitment, to the national instant criminal background check system index, denied persons file, created by the federal Brady handgun violence prevention act (P.L. 103-159).

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition the superior court to have his or her right to possess a firearm restored.

(b) The petition must be brought in the superior court that ordered the involuntary commitment or the superior court of the county in which the petitioner resides.

(c) Except as provided in (d) of this subsection, the court shall restore the petitioner's right to possess a firearm if the petitioner proves by a preponderance of the evidence that:

(i) The petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment;

(ii) The petitioner has successfully managed the condition related to the commitment;

(iii) The petitioner no longer presents a substantial danger to himself or herself, or the public; and

(iv) The symptoms related to the commitment are not reasonably likely to recur.

(d) If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(e) When a person's right to possess a firearm has been restored under this subsection, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the department of licensing, the department of social and health services, and the national instant criminal background check system index, denied persons file.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under RCW 9.41.040(4).

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