

# SENATE BILL REPORT

## SB 5205

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As Reported by Senate Committee On:  
Law & Justice, January 31, 2019

**Title:** An act relating to provisions governing firearms possession by persons who have been found incompetent to stand trial and who have a history of one or more violent acts.

**Brief Description:** Concerning provisions governing firearms possession by persons who have been found incompetent to stand trial and who have a history of one or more violent acts.

**Sponsors:** Senators Dhingra, King, Frockt, Zeiger, Pedersen, Das, Rolfes, Palumbo, Kuderer, Keiser, Wellman, Hunt, Mullet and Saldaña.

**Brief History:**

**Committee Activity:** Law & Justice: 1/29/19, 1/31/19 [DP, DNP].

### Brief Summary of Bill

- 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.
- Prohibits a person who has a history of one or more violent acts from possessing a firearm following the dismissal of nonfelony charges on the basis the person is found incompetent to stand trial, unless the court restores their firearm rights.
- Allows the person to ask to have their firearm rights restored by filing a petition in the superior court that prohibited their firearm possession.
- Adds additional violations of second degree unlawful possession of a firearm for violating a restraining order under the Parentage Act, or violating an order barring firearm possession after dismissal of nonfelony charges based on incompetency.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

**Staff:** Melissa Burke-Cain (786-7755)

**Background:** Under federal law, it is unlawful for any person to sell, or otherwise dispose of, any firearm or ammunition to a person they know or have reasonable cause to believe, have been adjudicated as a mental defective or has been committed to any mental institution.

In Washington State, a person who has been involuntarily committed for treatment for a mental health disorder, or any other basis for involuntary commitment, loses their right to possess a firearm unless the person's right has been restored by the court. At the time of commitment, the court must notify the person they must immediately surrender any concealed pistol license and may not possess a firearm.

Involuntary Commitment of Criminal Defendants. A criminal defendant may be involuntarily committed for mental health treatment and placed in a facility for treatment related to a competency evaluation, competency restoration, or criminal insanity. An involuntary civil commitment, can also occur directly following dismissal of criminal charges based on the criminal defendant's incompetency to stand trial. A defendant who is found incompetent only loses their firearm rights if the person is committed to an inpatient treatment facility.

A criminal defendant is incompetent to stand trial when, due to a mental disorder, the defendant lacks the capacity to understand the nature of the criminal proceedings or lacks the ability to rationally assist in their defense. Whenever there is reason to doubt the defendant's competency, the court delays further criminal proceedings for a competency evaluation.

If the court determines, following evaluation, a defendant is incompetent, a period of competency restoration treatment is permitted to restore the defendant to competency in all felony cases, and in all nonfelony cases which are classified as serious offenses. State law allows a number of options for competency restoration treatment, including treatment in a state hospital, other secure facility, or an outpatient setting.

If the case is a nonfelony, the maximum in-custody restoration period is 14 days in addition to any unused time of the competency evaluation period. The court may alternatively order the defendant be conditionally released for 90 days to receive outpatient treatment. If the court decides, or the parties agree, the defendant is unlikely to regain competency, the court may dismiss charges against the defendant without ordering the defendant to undergo restoration treatment.

After dismissal, if the nonfelony charges are serious, the person is detained and sent to an evaluation and treatment facility (E&T) for up to 72 hours for evaluation under the Involuntary Treatment Act. This commitment is sufficient to trigger loss of firearm rights. If the charges are not serious, the court must order an evaluation of the defendant by a designated crisis responder (DCR) for possible commitment. If the DCR detains the defendant, then the person may lose their firearm rights again at the end of the 72 hours when the E&T files a 14-day commitment petition. If the DCR does not detain the person, or

having been detained, the person is released at the end of the 72-hour detention period without a judicial commitment order, the person is released without losing their firearm rights.

Restoring Firearms Rights. The superior court hears the case of a person who is prohibited from possessing a firearm and asks the court to restore their firearm rights. For a person whose prohibition comes from involuntary commitment, the person must file a restoration petition in the superior court that ordered the involuntary commitment, and must establish by a preponderance of evidence:

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

History of one or more violent acts means violent acts committed during:

- the ten-year period of time prior to the filing of criminal charges; plus
- the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

**Summary of Bill:** If the court finds a defendant incompetent to stand trial and dismisses nonfelony charges without committing the defendant for treatment, the court must make a finding whether the defendant has a history of one or more violent acts. Generally, a violent act means behavior that resulted in or if completed as threatened, would have resulted in homicide, nonfatal injuries, or substantial damage to property, or behavior recklessly creating an immediate risk of serious physical injury to another person. If the court finds a history of one or more violent acts, the person is barred from possessing a firearm until the court restores the right to possess a firearm. The court must notify the defendant verbally and in writing of the bar to firearm possession. The bar remains in effect until a court restores the defendant's right to possess a firearm.

The person who has been prohibited from possessing a firearm after their nonfelony charge is dismissed based on their incompetency to stand trial may petition the superior court to have the right to possess a firearm restored. The person must prove each restoration requirement by a preponderance of evidence.

A person who violates a restraining order under the Parentage Act, or violates an order barring firearm possession after dismissal of nonfelony charges based on incompetency, commits the crime of second degree unlawful possession of a firearm. Unlawful possession of a firearm in the second degree is a Class C felony.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which the bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill closes a gap for criminal defendants who are found incompetent to stand trial, and their nonfelony charges are dismissed, without committing them for treatment. A law change failed to address the potential risk posed by this group when they have a history of one or more violent acts. Mental competency can become an issue for the court at any time during a trial. If behavior makes competency a concern, the defendant is referred for a competency evaluation. I have seen cases over my years of practice where an individual suffering from a mental health disorder has access to guns. We do something similar in felony cases and nonfelony serious offenses. The courts should not be hamstrung by the title of the crime. I know personally how a family is changed by gun violence. My wife was shot by an assault rifle at a public venue. Our child experienced the trauma resulting from witnessing the aftermath of his mother's shooting. Help keep guns from falling into violent hands; close this loophole in the law. The bill addresses persons who have an existing propensity to use violence to address problems. We should give the justice system the tools it needs to protect the public. A person who is incompetent to stand trial has a serious mental illness and is at higher risk to perform violent acts. As a leader of a crisis response unit, identifying persons more likely to cause harm is an important priority for law enforcement. We have to balance rights with risks to public safety without criminalizing mental health conditions.

**Persons Testifying:** PRO: Senator Manka Dhingra, Prime Sponsor; Ben Carr, citizen; Tom DuHamel, citizen; Colin English, citizen; Eric Pisconski, citizen; Jordan Waits, citizen; Raymond Miller, citizen.

**Persons Signed In To Testify But Not Testifying:** No one.