
Civil Rights & Judiciary Committee

SSB 5181

Brief Description: Concerning certain procedures upon initial detention under the involuntary treatment act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kuderer, Saldaña, Pedersen, Wilson, C., Dhingra, Billig, Takko, McCoy, Hunt, Cleveland, Wellman, Darneille, Carlyle, Das and Liias).

Brief Summary of Substitute Bill

- Imposes a six-month suspension on a person's right to possess a firearm where the person is detained under the Involuntary Treatment Act on the grounds of likelihood of serious harm and not subsequently committed for involuntary treatment.
- Allows a person whose firearm rights are suspended for six months to petition for restoration of firearm rights upon release from detention and imposes the burden of proof on the State to establish the person does not meet restoration criteria.
- Establishes requirements for entering information on a person whose firearm rights are suspended into the National Instant Criminal Background Check System and removing the information when the right is restored, and creates procedures for a six-month suspension of the person's concealed pistol license.

Hearing Date: 3/20/19

Staff: Edie Adams (786-7180).

Background:

The Involuntary Treatment Act (ITA) provides requirements and procedures for the involuntary detention and civil commitment of persons with mental disorders or substance use disorders. The standard for commitment under the ITA requires that, due to a mental disorder or substance use disorder, a person poses a likelihood of serious harm, is gravely disabled, or is in need of assisted outpatient treatment. "Likelihood of serious harm" means the person poses a substantial risk of physical harm to self, others, or the property of others, as evidenced by certain behavior,

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or that a person has threatened the physical safety of another and has a history of one or more violent acts.

Designated crisis responders (DCRs) are responsible for investigating and determining whether an individual may be in need of involuntary treatment. The DCR may not seek initial detention unless satisfied that the allegations are true and the person will not voluntarily seek appropriate treatment.

The initial detention period under the ITA is for up to 72 hours, excluding weekends and holidays. Under emergency circumstances, when the likelihood of serious harm or danger due to grave disability is imminent, the DCR may detain a person without a court order. Under nonemergent conditions, a court order is required for an initial detention. A court order to detain a person for a 72-hour period may be issued upon the DCR's request when the court is satisfied that there is probable cause to support the petition and that the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

After the initial 72-hour detention, the facility providing treatment may petition the court to have the person committed for behavioral health treatment for 14 days. The person is entitled to a hearing, legal counsel, and the right to present witnesses. Upon subsequent petitions and hearings, a court may order up to an additional 90 days of commitment at a state hospital, followed by successive commitment terms of up to 180 days. If a petition is for a 14-day or longer commitment for mental health treatment, the court must inform the person both orally and in writing that the failure to make a good faith effort to seek voluntary treatment will result in the loss of his or her firearm rights if the person is subsequently committed for involuntary treatment.

Loss of Firearm Rights Based on Involuntary Commitment.

Both state and federal law generally prohibit a person from possessing firearms if the person has been involuntarily committed for mental health treatment. Federal law prohibits firearms possession by a person who has been adjudicated as a mental defective or been committed to any mental institution.

Under state law, persons committed under the ITA for involuntary mental health treatment for 14 days or longer lose the right to possess firearms. Persons committed for substance use disorder treatment do not lose their firearm rights.

The court must inform a person committed for involuntary mental health treatment that the person is prohibited from possessing firearms. Within three judicial days of the commitment, the court must forward a copy of the person's driver's license or other identification information to the Department of Licensing (DOL) and the National Instant Criminal Background Check System (NICS).

A person who is prohibited from possessing a firearm because of an involuntary mental health commitment may petition the court to restore his or her right of possession once the person is discharged. The person must show 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;
- the person no longer presents a substantial danger to self or the public; and

- the symptoms related to the commitment are not reasonably likely to recur.

If the person has engaged in violence and 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 must show by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

The court ordering restoration of a person's right to possess firearms must, within three judicial days, forward notification of the restoration order to the DOL, the Health Care Authority, and the NICS.

State law restoration of firearms rights lost based on an involuntary mental health commitment does not restore the person's right to possess firearms under federal law.

Summary of Bill:

A person detained for 72-hour evaluation and treatment on the grounds that the person presents a likelihood of serious harm as the result of a mental disorder or substance use disorder, but who is not subsequently committed for 14-day treatment, is prohibited from possessing a firearm for six months following the date of detention.

The designated crisis responder (DCR) must, prior to the person's discharge, inform the person orally and in writing that the person is prohibited from possessing or controlling any firearm for a period of six months, and the person must immediately surrender any concealed pistol license (CPL) and firearms that the person possesses or controls to the local law enforcement agency.

A DCR must include a copy of the person's driver's license, identicard, or comparable information in a petition for initial detention based on the grounds the person presents a likelihood of serious harm. If the person is not committed for 14-day involuntary treatment, the court must forward a copy of the person's driver's license or other identification information to the Department of Licensing (DOL) and the Washington State Patrol (WSP). The WSP must forward the information to the National Instant Criminal Background Check System (NICS). The DOL must determine whether the person has a CPL, and if so, notify the license-issuing authority, which must immediately suspend the CPL for six months.

The person's right to possess a firearm is automatically restored at the expiration of the six-month suspension period. The WSP must forward to the NICS a notice that the person's right to possess a firearm is restored. The person may petition a superior court for restoration of the right to possess a firearm prior to the expiration of the six-month period under the current law restoration process. The State bears the burden of proof to show by a preponderance of the evidence that the petitioner does not meet restoration criteria.

If the court enters a restoration order, the court must, within three judicial days, forward notification of the restoration order to the DOL, the Health Care Authority, and the NICS.

Appropriation: None.

Fiscal Note: Requested on March 11, 2019.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.