

HOUSE BILL REPORT

SSB 5181

As Reported by House Committee On: Civil Rights & Judiciary

Title: An act relating to certain procedures upon initial detention under the involuntary treatment act.

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 History:

Committee Activity:

Civil Rights & Judiciary: 3/20/19, 3/26/19 [DP].

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.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

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.

Majority Report: Do pass. Signed by 9 members: Representatives Jinkins, Chair; Thai, Vice Chair; Goodman, Hansen, Kilduff, Kirby, Orwall, Valdez and Walen.

Minority Report: Do not pass. Signed by 6 members: Representatives Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Graham, Klippert, Shea and Ybarra.

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, 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 nonemergency 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 inpatient treatment or 90-day less restrictive alternative 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: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is an important measure to address the issue of suicide. Nearly 1,300 Washingtonians ended their lives in 2017, and almost half of those suicides involved firearms. There is evidence of an increased risk of committing suicide or violence after being released from a 72-hour involuntary treatment hold. The bill gives people who are in crisis the time to calm down and get the treatment they need. If they choose not to seek help, the family would have time to seek an extreme risk protection order. The bill is narrowly tailored and contains due process protections. The person can go to court to restore their firearm rights, and the state has the burden to prove the person's right should not be restored.

Therapists have a duty to warn if they perceive someone is at risk of harm to self or others, but state law does not support them in that duty. A person who is put on a 72-hour hold is deemed to be a risk to self or others, and the majority of them are often suicidal. The fact that a person is released after detention does not mean the person is no longer at risk. There is no guarantee the person will follow up with treatment. The state has a duty to protect those who cannot or will not protect themselves.

Veterans are disproportionately affected by suicide. In 2014 an average of 20 veterans a day died from suicide. There are veterans who would not be alive today if they had had access to

firearms when they were in crisis. The causes of suicide are varied, but one concrete step that can be taken is to remove the threat of firearms. There is a gap in the current law for those persons detained on a 72-hour involuntary hold. These people are likely still in crisis at the end of the 72 hours, and they should not be able to go out and legally purchase a gun. The bill provides time for those persons to receive necessary treatment.

There are many ripple effects from suicide, including the long-term suffering of family members. So many Americans have become numb to gun violence in America. The gunman who killed 17 people in Parkland had a history of mental health struggles and showed a series of warning signs prior to the shooting, but none of that prevented him from buying a number of high-powered guns. The bill will help save lives by keeping guns out of the hands of people like the Parkland shooter who are in crisis and pose a threat to themselves and others.

Temporarily prohibiting access to firearms by people subject to a 72-hour involuntary hold is an important intervention measure. It is important to be proactive, rather than reactive, during periods of heightened risk in order to avoid the tragic loss of life. There are a few brief windows of opportunity to intervene to prevent future harm. This bill creates one of those opportunities. Families with loved ones in behavioral health crisis or at risk of suicide need support, as do people who are in crisis. Temporarily removing firearms from these volatile situations is a critical evidence-based harm reduction tool.

(Opposed) Currently, a person loses firearm rights only after a court-ordered commitment of 14 days or longer. The bill removes firearm rights before any judicial commitment order is entered, even if the case is dropped during the 72-hour hold. There are clear due process concerns with this bill. It imposes a blanket prohibition with no individual determination of risk by a court, and there is no required connection between the person's acts and access to firearms. There are severe criminal consequences that result from loss of firearm rights. There will be collateral consequences in that people will be discouraged from going to the emergency room to seek needed help.

The bill also creates a concern as to whether the person's federal firearm rights can be restored. The federal government does not have a means to reinstate firearm rights when lost based on a mental health suspension. There are many people who are detained that do not pose any threat to self or others and are not committed after an evaluation. They are perfectly capable and should not be prohibited from possessing firearms. The bill indicates a person can petition the courts for restoration, but it is not easy to navigate the court system without an attorney, and having to pay for an attorney to seek restoration imposes a significant burden.

(Other) A person may be detained for 72 hours without any court order. Firearm rights should not be taken away based only on the judgment of a designated crisis responder with no judicial process. Not all behavioral health conditions present a danger to the person or others. A person whose firearm rights are being revoked should have the opportunity to appeal the loss of firearm rights and force the state to prove that the person has a behavioral health disorder, and as a result presents a danger to self or others. The bill also creates privacy concerns. Sensitive personal information relating to behavioral health detentions must not be used for unauthorized or inappropriate purposes.

Persons Testifying: (In support) Senator Kuderer, prime sponsor; Leanne Kennedy, Alliance for Gun Responsibility; Ray Miller; Jordan Waits; Ryan Youkillis; and Sandra Shanahan, King County Prosecutor's Office.

(Opposed) Mike De Felice, King County Department of Public Defense; and Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

(Other) Rebecca Faust.

Persons Signed In To Testify But Not Testifying: Jan Burbank.