

SENATE BILL REPORT

SB 5181

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

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: Senators Kuderer, Saldaña, Pedersen, Wilson, C., Dhingra, Billig, Takko, McCoy, Hunt, Cleveland, Wellman, Darneille, Carlyle, Das and Liias.

Brief History:

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

Brief Summary of Bill

- Prohibits a person detained for 72 hours under the involuntary treatment act from possessing a firearm for six months following detention on the basis that the person presents a likelihood of serious harm.
- Restores a person's firearm rights automatically six months after detention and requires returning the person's firearms and their concealed pistol license.
- Allows the person to petition the court for restoring of their firearm rights before the end of the six-month period.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

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

Minority Report: Do not pass.

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

Staff: Melissa Burke-Cain (786-7755)

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.

Background: The Involuntary Treatment Act. If a designated crisis responder (DCR) finds a person has a mental disorder or substance use disorder, and because of the disorder, the person presents a likelihood of serious harm or is gravely disabled, the Involuntary Treatment Act (ITA) authorizes civil commitment. Two other ITA requirements are that the person will not voluntarily cooperate with treatment, and no less restrictive alternative is available that will meet health and safety needs.

Likelihood of serious harm means a substantial risk that a person will harm:

- themselves, evidenced by suicide threats or attempts, or by inflicting physical harm on themselves;
- another person, evidenced by causing harm or placing another person in reasonable fear of sustaining harm; or
- another person's property, evidenced by causing substantial loss or damage to another person's property.

Initially, a person may be detained for investigation for civil commitment by a DCR for up to 12 hours. If the DCR finds a basis for commitment, they may detain the person for up to 72 hours in an evaluation and treatment facility (E&T). If an E&T cannot be located, they may detain the person in a facility which is willing and able to provide timely and appropriate mental health treatment under a single bed certification. If neither an E&T bed nor a single bed certification can be located within the twelve-hour initial detention period, the DCR may not detain the person. During the 72-hour detention period, the facility providing detention may file a court petition to authorize an additional 14 days of involuntary treatment. At this point, the law provides the person with a court hearing, legal counsel, the right present evidence, and the right to confront witnesses. If detention continues past this stage, further court petitions may be filed for 90 or 180 days of involuntary treatment.

Loss of Firearm Rights Upon Judicial Commitment. A person who is judicially committed for involuntary treatment loses their right to possess a firearm under state and federal law. Judicial commitments happen at the 14-day, 90-day, and 180-day stages of the ITA. Judicial commitment also occurs when a person who is a criminal defendant is placed in a facility for treatment related to criminal insanity or restoration of competency to stand trial. Under the ITA, the person is notified that they may not possess firearms. Within three judicial days notice is also sent to the Department of Licensing (DOL), Washington State Patrol (WSP), and National Instant Criminal Background Check System database operated by the FBI.

State law authorizes a person prohibited from possessing a firearm to petition the superior court for restoration of their firearm rights. For a person whose prohibition comes from involuntary commitment, the person must petition the superior court that ordered the involuntary commitment and establish by a preponderance of evidence that:

- 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.

Washington State currently has no procedure that is effective to restore a person's prohibition to possess a firearm under federal law.

Summary of Bill: A person detained under the ITA for 72 hours on the grounds that the person presents a likelihood of serious harm, but not detained for an additional 14 days, may not possess a firearm for six months after the date of detention. The DCR must inform the person of this six-month prohibition orally and in writing before discharge. The person must surrender any concealed pistol license and any firearms they possess or control to the sheriff or chief of police where the person lives.

The person's right to possess a firearm is restored automatically at the end of the six-month period, and any surrendered firearms must be returned. The person may petition the superior court to restore their right to possess a firearm before the end of the six-month period by following restoration procedures under law. The facility detaining the person must forward a copy of the person's identifying document to DOL and WSP, which must forward it to the National Instant Criminal Background Check System operated by the FBI.

Appropriation: None.

Fiscal Note: Requested on January 23, 2019.

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

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

Staff Summary of Public Testimony: PRO: This bill gives an opportunity for a cool down period after a crisis event, potentially it gives time for a family to obtain an extreme risk protection order. The six month prohibition on firearm possession is temporary and after the 6 months, the firearm rights and concealed pistol permit are automatically restored with no questions asked. As a firefighter, EMT and member of the military, I know the damage that firearms can do, but in a crisis the access to a gun can have tragic consequences. Right now the ban on gun possession only applies to those who have been subject to a 14 day involuntary commitment. We should ensure we are doing what we can to protect people who are going through a crisis period in their lives. The bill is a common sense suicide prevention measure. The laws often do not support therapists with their obligatory duty to warn. The persons in the situation covered by the bill have potential to harm themselves, harm others, and the majority are non-compliant with treatment. There is no guarantee that the person will follow up with treatment in an already overburdened system. The bill would create time and space for a person to stabilize; it is a humane and compassionate measure. A large number of firearm deaths are suicides. The damage from a gunshot to the brain cannot be undone. As a clinical therapist and veterans' advocate we often talk about mass shootings but alongside that are firearm suicides. Veterans are particularly affected and it will save lives by closing a gap for someone who only has a 72-hour hold. This bill is consistent with a policy suggestion from a white paper produced by the Office of the Attorney General. It is modeled on a California statute that has been found constitutional by the California courts. It applies only if detention is because of a substantial risk of harm. It allows immediate restoration through a judicial process, and it reduces the risk of suicide and violence to others. It does have a due process consideration albeit after the fact. It appears narrowly tailored. There appears to be a sufficient nexus because it only applies to the "substantial risk of harm" aspect and not the "gravely disabled" aspect of civil commitment. It is not, by definition, a release at 72 hours. The DCR may decide without the need for a 14 petition or a 14 day

petition could be filed, and subsequently withdrawn. By definition there is no judicial decision. As a mother who has lost a daughter, I know if this bill had been in effect, my daughter might still be alive. It would help. As a family member I would have had the chance to get help for my 27-year-old daughter. She committed suicide. The schizophrenia overwhelmed her. She had a gun permit, but she had a severe mental illness. I did everything I could to try to save her, but I was powerless to help. Life is precious; children are precious. Please think about that as you consider this bill. I am a therapist with 25-years experience working in highly acute mental health crisis treatment facilities. The decreased insight and impaired judgement of someone in crisis does not clear up in 72 hours. A person who needs help can slip through the system. As an example, last week we treated a person who the treatment team all agreed should not be released. The court dismissed the case. The treatment team has no way of ensuring that the released person will not harm themselves or others. The period after release from treatment is a very fragile period and it extends long after a court might decide to release someone. Our communities are facing violent acts. If someone is detained for 72 hours, we should heed the warning. Access to firearms can be just as dangerous for these people as those who are criminal actors. This is an evidence-based law that should be passed.

CON: I am concerned about allowing gun rights to be taken away from someone who has not had their day in court. Everyone should have their day in court, whether by judge or jury, before being denied a constitutional right. There is a difference between a criminal defendant and the civil commitment decision involving a designated crisis responder. The person who is evaluated for possible civil commitment should have a court process before their firearm right is taken away. One alternative you might consider would be to allow the DCR to petition for a court decision prohibiting firearm possession. That may be an option that judges could consider. That way, a person would still have their day in court.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Ray Miller, citizen; Beau Jackson, citizen; Leanne Kennedy, citizen; Zoe Mooer, citizen; Martin Reinsel, citizen; Mike Nelson, City of Edmonds; Eric Nelson, Attorney General's Office.

CON: Rebecca Faust, citizen.

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