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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

Read first time 01/27/15. Referred to Committee on Human Services,  
Mental Health & Housing.

1 AN ACT Relating to preventing firearms access by a person  
2 detained for involuntary mental health treatment; amending RCW  
3 9.41.047; and adding a new section to chapter 71.05 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 71.05  
6 RCW to read as follows:

7 (1) When a designated mental health professional conducts an  
8 investigation and evaluation of a person under RCW 71.05.150 or  
9 71.05.153 and the designated mental health professional finds (a)  
10 that the person meets criteria for detention; and either (b) the  
11 circumstances leading to detention involve the use or threatened use  
12 of a firearm; or (c) during in the course of the investigation, the  
13 person made statements or engaged in conduct indicating a substantial  
14 risk that the person may seek to obtain and use or threaten use of a  
15 firearm; the designated mental health professional must forward a  
16 copy of the detention petition and supporting information to the  
17 prosecuting attorney within two business days.

18 (2) If no petition for further commitment of the person is filed  
19 under RCW 71.05.240, the prosecutor may file a motion in superior  
20 court to determine that the person is ineligible to possess a  
21 firearm. The prosecutor shall issue a summons to the person, who has

1 the right to counsel. If a petition for further commitment under RCW  
2 71.05.240 is filed, the prosecutor may bring this motion in the event  
3 that the court does not adjudicate the petition or does not commit  
4 the person for further treatment.

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

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

8 (b) The person was placed in initial detention under RCW  
9 71.05.150 or 71.05.153 and a substantial nexus exists between the  
10 circumstances of the detention and the use or threatened use of a  
11 firearm.

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

14 (1)(a) At the time a person is convicted or found not guilty by  
15 reason of insanity of an offense making the person ineligible to  
16 possess a firearm, or at the time a person is committed by court  
17 order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, section 1  
18 of this act, or chapter 10.77 RCW for mental health treatment, the  
19 convicting or committing court shall notify the person, orally and in  
20 writing, that the person must immediately surrender any concealed  
21 pistol license and that the person may not possess a firearm unless  
22 his or her right to do so is restored by a court of record. For  
23 purposes of this section a convicting court includes a court in which  
24 a person has been found not guilty by reason of insanity.

25 (b) The convicting or committing court shall forward within three  
26 judicial days after conviction or entry of the commitment order a  
27 copy of the person's driver's license or identicard, or comparable  
28 information, along with the date of conviction or commitment, to the  
29 department of licensing. When a person is committed by court order  
30 under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter  
31 10.77 RCW, for mental health treatment, the committing court also  
32 shall forward, within three judicial days after entry of the  
33 commitment order, a copy of the person's driver's license, or  
34 comparable information, along with the date of commitment, to the  
35 national instant criminal background check system index, denied  
36 persons file, created by the federal Brady handgun violence  
37 prevention act (P.L. 103-159).

38 (2) Upon receipt of the information provided for by subsection  
39 (1) of this section, the department of licensing shall determine if

1 the convicted or committed person has a concealed pistol license. If  
2 the person does have a concealed pistol license, the department of  
3 licensing shall immediately notify the license-issuing authority  
4 which, upon receipt of such notification, shall immediately revoke  
5 the license.

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

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

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

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

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

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

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

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

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

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

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