

# HOUSE BILL REPORT

## SB 5205

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### As Passed House - Amended:

April 10, 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:

Civil Rights & Judiciary: 3/20/19, 3/28/19 [DPA].

#### Floor Activity:

Passed House - Amended: 4/10/19, 53-39.

### Brief Summary of Bill (As Amended by House)

- Requires a court that dismisses nonfelony charges against a defendant based on incompetency to stand trial to make a finding as to whether the defendant has a history of one or more violent acts.
- Prohibits possession of firearms by a person whose nonfelony charge is dismissed based on incompetency to stand trial where the court finds that the person has a history of one or more violent acts, and a person violating this prohibition is guilty of Unlawful Possession of a Firearm in the second degree.
- Allows a person to petition a superior court for restoration of firearm rights lost due to a finding of incompetency to stand trial and a history of one or more violent acts.

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## 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 as amended. 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 2 members: Representatives Klippert and Shea.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Irwin, Ranking Minority Member.

**Staff:** Edie Adams (786-7180).

### **Background:**

#### Incompetent to Stand Trial.

A criminal defendant is incompetent to stand trial if, due to a mental disease or defect, he or she lacks the capacity to understand the nature of the proceedings or is unable to assist in his or her own defense. A defendant who is incompetent may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues. When a defendant's competency is in question, the court must either appoint, or ask the Department of Social and Health Services to designate, a qualified expert to evaluate and report on the defendant's mental condition.

#### Competency Restoration.

If a person is found incompetent to stand trial, the court must stay the criminal proceedings and, depending on the charged offense, either order a period of treatment for restoration of competency or dismiss the charges without prejudice. A court may order a period of restoration treatment for an incompetent defendant who is charged with a felony or a serious nonfelony as defined in statute, but not for a defendant charged with a nonfelony that is not a serious offense.

If the defendant is charged with a felony, the court may order restoration treatment for an initial period of up to 45 or 90 days, depending on the seriousness of the crime charged. Subsequent periods of restoration treatment may be ordered if necessary and reasonably likely to restore competency. If the defendant is charged with a serious nonfelony offense, the court may order restoration treatment for a period of 14 days plus any unused time from the evaluation period. A defendant charged with a serious nonfelony offense may not be held for restoration evaluation and treatment for more than 29 days.

If the court finds, or the parties agree, that a defendant is not likely to regain competency, the court may dismiss the charges without ordering a period of restoration treatment. If the defendant is ordered to restoration treatment and cannot be restored to competency within the designated time periods, the criminal case must be dismissed without prejudice. If the offense charged is a felony, the court must order the defendant to be committed to a state hospital for evaluation for civil commitment. If the offense charged is a serious nonfelony, the court may detain the defendant to an evaluation and treatment facility, or refer the defendant to a designated crisis responder (DCR), for an evaluation for civil commitment.

A defendant who is charged with a nonserious nonfelony offense and found incompetent to stand trial is not eligible for competency restoration. The defendant's charges must be

dismissed and the person may be detained for sufficient time for a DCR to evaluate the person for initial detention under the Involuntary Treatment Act.

#### Loss of Firearms Rights.

A defendant found incompetent to stand trial and committed for a period of competency restoration treatment is prohibited from possessing firearms. The court must inform the person orally and in writing that the person is prohibited from possessing firearms and must immediately surrender any concealed pistol license. 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).

Possession of a firearm by a person committed for competency restoration treatment, if the person's firearm rights have not been restored, constitutes the crime of Unlawful Possession of a Firearm in the second degree, a class C felony.

A person prohibited from possessing firearms based on a commitment for competency restoration treatment may petition the superior court for restoration of the right 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 a mental health commitment does not restore the person's right to possess a firearm under federal law.

#### History of One or More Violent Acts.

Under the laws governing competency to stand trial, "history of one or more violent acts" means violent acts committed during the 10-year period of time prior to the filing of criminal charges, not including time spent in a mental health facility or in confinement as a result of a criminal conviction.

"Violent act" means behavior that: (a) resulted in or, if completed as intended or threatened would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person.

#### **Summary of Amended Bill:**

If a court dismisses nonfelony charges against a defendant who is found incompetent to stand trial, the court must make a finding as to whether the defendant has a history of one or more violent acts, as defined under laws governing competency to stand trial. If the court makes such a finding, the defendant is barred from possessing firearms until a court restores the person's firearm rights. The court must inform the defendant orally and in writing that the defendant is barred from possessing firearms and that the prohibition remains in effect until the right is restored by a court.

Possession of a firearm by a person whose nonfelony charges are dismissed based on incompetency to stand trial where the person is found to have a history of one or more violent acts constitutes the crime of Unlawful Possession of a Firearm in the second degree, a class C felony, unless the person's right to possess firearms has been restored.

The court that dismisses a case based on incompetency to stand trial where the defendant is found to have a history of violent acts must send a copy of the person's driver's license, identicard, or comparable information to the Department of Licensing (DOL) and the National Instant Criminal Background Check System (NICS). The DOL must determine whether the person has a concealed pistol licence, and if so, notify the license-issuing authority, which must immediately revoke the license.

A person may petition a superior court for restoration of the right to possess a firearm under the current law restoration process. 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 of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The bill closes a loophole inadvertently created a few years ago. Under prior law, if a person charged with a crime was found incompetent and had a history of violence, the person would be sent for restoration treatment. The law changed to require restoration treatment only for those that have a current serious offense. Since the firearm prohibition is attached to the restoration treatment, there is now a loophole in the law for defendants with nonserious charges that are dismissed based on incompetency where there is a history of violence.

Families that experience gun violence are forever changed. One of the most effective ways to address gun violence is to keep guns out of the hands of dangerous people. The Parkland shooter had a history of mental health issues, but despite this history, he was able to legally walk out of a gun store with a weapon of war. When a person is incompetent to stand trial, it means the person is unable to understand the nature and consequences of the legal proceeding. People who are found incompetent often suffer from serious mental illness.

Individuals in this situation who have a history of violent behavior represent a significant threat. Past acts are the best predictor of future behavior.

The bill closes this dangerous loophole that allows an incompetent defendant who has a history of violent behavior to access firearms. It is a smart risk management tool, and it just makes sense because it is important to take steps to prevent violence before it occurs. Similar to extreme risk protection orders, the bill will prohibit firearms possession by those who have been identified as high risk for future violence. This is a critical tool for the safety of communities and law enforcement. The court has access to the person's criminal history and will be very familiar with the person, so the court has the relevant information needed to make the determination regarding history of violence. Someone who is found incompetent and who has a history of violence should not have a firearm. The bill balances the health and safety of individuals with the rights of law abiding citizens to keep guns.

(Opposed) The bill takes firearms away from persons charged with nonserious offenses such as trespass, disorderly conduct, and malicious mischief. These are not serious offenses, and that is why they do not qualify for restoration. Violence is broadly defined under the bill. It does not require a previous conviction, and it is not limited to more serious offenses, such as felonies. This means it can include allegations that a person scratched a sister or damaged a person's property in the last 10 years. It is not appropriate to remove firearm rights based on being charged for these nonserious offenses. It is not the case that the judge will have lots of information about the person to make the determination of prior violent acts. The bill is fraught with problems. There is no specified standard of proof and no time frame for conducting the hearing.

**Persons Testifying:** (In support) Senator Dhingra, prime sponsor; Colin English; Ben Carr; Jordan Waits; Sandra Shanahan; Ryan Youkillis; and Ray Miller.

(Opposed) Kari Reardon, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

**Persons Signed In To Testify But Not Testifying:** None.