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**SENATE BILL 5205**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Dhingra, King, Frockt, Zeiger, Pedersen, Das, Rolfes, Palumbo, Kuderer, Keiser, Wellman, Hunt, Mullet, and Saldaña

Read first time 01/16/19. Referred to Committee on Law & Justice.

1 AN ACT Relating to provisions governing firearms possession by  
2 persons who have been found incompetent to stand trial and who have a  
3 history of one or more violent acts; amending RCW 10.77.088,  
4 9.41.040, and 9.41.047; and prescribing penalties.

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

6 **Sec. 1.** RCW 10.77.088 and 2016 sp.s. c 29 s 411 are each amended  
7 to read as follows:

8 (1)(a) If the defendant is charged with a nonfelony crime which  
9 is a serious offense as identified in RCW 10.77.092 and found by the  
10 court to be not competent, then the court:

11 (i) Shall commit the defendant to the custody of the secretary  
12 who shall place such defendant in an appropriate facility of the  
13 department for evaluation and treatment;

14 (ii) May alternatively order the defendant to undergo evaluation  
15 and treatment at some other facility or provider as determined by the  
16 department, or under the guidance and control of a professional  
17 person. The facilities or providers may include community mental  
18 health providers or other local facilities that contract with the  
19 department and are willing and able to provide treatment under this  
20 section. During the 2015-2017 fiscal biennium, the department may  
21 contract with one or more cities or counties to provide competency

1 restoration services in a city or county jail if the city or county  
2 jail is willing and able to serve as a location for competency  
3 restoration services and if the secretary determines that there is an  
4 emergent need for beds and documents the justification, including a  
5 plan to address the emergency. Patients receiving competency  
6 restoration services in a city or county jail must be physically  
7 separated from other populations at the jail and restoration  
8 treatment services must be provided as much as possible within a  
9 therapeutic environment. The placement under (a) (i) and (ii) of this  
10 subsection shall not exceed fourteen days in addition to any unused  
11 time of the evaluation under RCW 10.77.060. The court shall compute  
12 this total period and include its computation in the order. The  
13 fourteen-day period plus any unused time of the evaluation under RCW  
14 10.77.060 shall be considered to include only the time the defendant  
15 is actually at the facility and shall be in addition to reasonable  
16 time for transport to or from the facility;

17 (iii) May alternatively order that the defendant be placed on  
18 conditional release for up to ninety days for mental health treatment  
19 and restoration of competency; or

20 (iv) May order any combination of this subsection.

21 (b) If the court has determined or the parties agree that the  
22 defendant is unlikely to regain competency, the court may dismiss the  
23 charges without prejudice without ordering the defendant to undergo  
24 restoration treatment, in which case the court shall order that the  
25 defendant be referred for evaluation for civil commitment in the  
26 manner provided in (c) of this subsection.

27 (c) (i) If the proceedings are dismissed under RCW 10.77.084 and  
28 the defendant was on conditional release at the time of dismissal,  
29 the court shall order the designated crisis responder within that  
30 county to evaluate the defendant pursuant to chapter 71.05 RCW. The  
31 evaluation may be conducted in any location chosen by the  
32 professional.

33 (ii) If the defendant was in custody and not on conditional  
34 release at the time of dismissal, the defendant shall be detained and  
35 sent to an evaluation and treatment facility for up to seventy-two  
36 hours, excluding Saturdays, Sundays, and holidays, for evaluation for  
37 purposes of filing a petition under chapter 71.05 RCW. The seventy-  
38 two hour period shall commence upon the next nonholiday weekday  
39 following the court order and shall run to the end of the last  
40 nonholiday weekday within the seventy-two-hour period.

1 (2) If the defendant is charged with a nonfelony crime that is  
2 not a serious offense as defined in RCW 10.77.092((+)) and found by  
3 the court to be not competent, the court may stay or dismiss  
4 proceedings and detain the defendant for sufficient time to allow the  
5 designated crisis responder to evaluate the defendant and consider  
6 initial detention proceedings under chapter 71.05 RCW. The court must  
7 give notice to all parties at least twenty-four hours before the  
8 dismissal of any proceeding under this subsection, and provide an  
9 opportunity for a hearing on whether to dismiss the proceedings.

10 (3) If at any time the court dismisses charges under subsection  
11 (1) or (2) of this section, the court shall make a finding as to  
12 whether the defendant has a history of one or more violent acts. If  
13 the court so finds, the defendant is barred from the possession of  
14 firearms until a court restores his or her right to possess a firearm  
15 under RCW 9.41.047. The court shall state to the defendant and  
16 provide written notice that the defendant is barred from the  
17 possession of firearms and that the prohibition remains in effect  
18 until a court restores his or her right to possess a firearm under  
19 RCW 9.41.047.

20 **Sec. 2.** RCW 9.41.040 and 2018 c 234 s 1 are each amended to read  
21 as follows:

22 (1)(a) A person, whether an adult or juvenile, is guilty of the  
23 crime of unlawful possession of a firearm in the first degree, if the  
24 person owns, has in his or her possession, or has in his or her  
25 control any firearm after having previously been convicted or found  
26 not guilty by reason of insanity in this state or elsewhere of any  
27 serious offense as defined in this chapter.

28 (b) Unlawful possession of a firearm in the first degree is a  
29 class B felony punishable according to chapter 9A.20 RCW.

30 (2)(a) A person, whether an adult or juvenile, is guilty of the  
31 crime of unlawful possession of a firearm in the second degree, if  
32 the person does not qualify under subsection (1) of this section for  
33 the crime of unlawful possession of a firearm in the first degree and  
34 the person owns, has in his or her possession, or has in his or her  
35 control any firearm:

36 (i) After having previously been convicted or found not guilty by  
37 reason of insanity in this state or elsewhere of any felony not  
38 specifically listed as prohibiting firearm possession under  
39 subsection (1) of this section, or any of the following crimes when

1 committed by one family or household member against another,  
2 committed on or after July 1, 1993: Assault in the fourth degree,  
3 coercion, stalking, reckless endangerment, criminal trespass in the  
4 first degree, or violation of the provisions of a protection order or  
5 no-contact order restraining the person or excluding the person from  
6 a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

7 (ii) After having previously been convicted or found not guilty  
8 by reason of insanity in this state or elsewhere of harassment when  
9 committed by one family or household member against another,  
10 committed on or after June 7, 2018;

11 (iii) During any period of time that the person is subject to a  
12 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,  
13 26.09, 26.10, (~~26.26~~) 26.26B, or 26.50 RCW that:

14 (A) Was issued after a hearing of which the person received  
15 actual notice, and at which the person had an opportunity to  
16 participate;

17 (B) Restrains the person from harassing, stalking, or threatening  
18 an intimate partner of the person or child of the intimate partner or  
19 person, or engaging in other conduct that would place an intimate  
20 partner in reasonable fear of bodily injury to the partner or child;  
21 and

22 (C) (I) Includes a finding that the person represents a credible  
23 threat to the physical safety of the intimate partner or child; and

24 (II) By its terms, explicitly prohibits the use, attempted use,  
25 or threatened use of physical force against the intimate partner or  
26 child that would reasonably be expected to cause bodily injury;

27 (iv) After having previously been involuntarily committed for  
28 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,  
29 71.34.750, chapter 10.77 RCW, or equivalent statutes of another  
30 jurisdiction, unless his or her right to possess a firearm has been  
31 restored as provided in RCW 9.41.047;

32 (v) After dismissal of criminal charges based on incompetency to  
33 stand trial under RCW 10.77.088 when the court has made a finding  
34 indicating that the defendant has a history of one or more violent  
35 acts, unless his or her right to possess a firearm has been restored  
36 as provided in RCW 9.41.047;

37 (vi) If the person is under eighteen years of age, except as  
38 provided in RCW 9.41.042; and/or

1       (~~(vi)~~) (vii) If the person is free on bond or personal  
2 recognizance pending trial, appeal, or sentencing for a serious  
3 offense as defined in RCW 9.41.010.

4       (b) (a)(iii) of this subsection does not apply to a sexual  
5 assault protection order under chapter 7.90 RCW if the order has been  
6 modified pursuant to RCW 7.90.170 to remove any restrictions on  
7 firearm purchase, transfer, or possession.

8       (c) Unlawful possession of a firearm in the second degree is a  
9 class C felony punishable according to chapter 9A.20 RCW.

10       (3) Notwithstanding RCW 9.41.047 or any other provisions of law,  
11 as used in this chapter, a person has been "convicted", whether in an  
12 adult court or adjudicated in a juvenile court, at such time as a  
13 plea of guilty has been accepted, or a verdict of guilty has been  
14 filed, notwithstanding the pendency of any future proceedings  
15 including but not limited to sentencing or disposition, post-trial or  
16 post-fact-finding motions, and appeals. Conviction includes a  
17 dismissal entered after a period of probation, suspension or deferral  
18 of sentence, and also includes equivalent dispositions by courts in  
19 jurisdictions other than Washington state. A person shall not be  
20 precluded from possession of a firearm if the conviction has been the  
21 subject of a pardon, annulment, certificate of rehabilitation, or  
22 other equivalent procedure based on a finding of the rehabilitation  
23 of the person convicted or the conviction or disposition has been the  
24 subject of a pardon, annulment, or other equivalent procedure based  
25 on a finding of innocence. Where no record of the court's disposition  
26 of the charges can be found, there shall be a rebuttable presumption  
27 that the person was not convicted of the charge.

28       (4)(a) Notwithstanding subsection (1) or (2) of this section, a  
29 person convicted or found not guilty by reason of insanity of an  
30 offense prohibiting the possession of a firearm under this section  
31 other than murder, manslaughter, robbery, rape, indecent liberties,  
32 arson, assault, kidnapping, extortion, burglary, or violations with  
33 respect to controlled substances under RCW 69.50.401 and 69.50.410,  
34 who received a probationary sentence under RCW 9.95.200, and who  
35 received a dismissal of the charge under RCW 9.95.240, shall not be  
36 precluded from possession of a firearm as a result of the conviction  
37 or finding of not guilty by reason of insanity. Notwithstanding any  
38 other provisions of this section, if a person is prohibited from  
39 possession of a firearm under subsection (1) or (2) of this section  
40 and has not previously been convicted or found not guilty by reason

1 of insanity of a sex offense prohibiting firearm ownership under  
2 subsection (1) or (2) of this section and/or any felony defined under  
3 any law as a class A felony or with a maximum sentence of at least  
4 twenty years, or both, the individual may petition a court of record  
5 to have his or her right to possess a firearm restored:

6 (i) Under RCW 9.41.047; and/or

7 (ii)(A) If the conviction or finding of not guilty by reason of  
8 insanity was for a felony offense, after five or more consecutive  
9 years in the community without being convicted or found not guilty by  
10 reason of insanity or currently charged with any felony, gross  
11 misdemeanor, or misdemeanor crimes, if the individual has no prior  
12 felony convictions that prohibit the possession of a firearm counted  
13 as part of the offender score under RCW 9.94A.525; or

14 (B) If the conviction or finding of not guilty by reason of  
15 insanity was for a nonfelony offense, after three or more consecutive  
16 years in the community without being convicted or found not guilty by  
17 reason of insanity or currently charged with any felony, gross  
18 misdemeanor, or misdemeanor crimes, if the individual has no prior  
19 felony convictions that prohibit the possession of a firearm counted  
20 as part of the offender score under RCW 9.94A.525 and the individual  
21 has completed all conditions of the sentence.

22 (b) An individual may petition a court of record to have his or  
23 her right to possess a firearm restored under (a) of this subsection  
24 (4) only at:

25 (i) The court of record that ordered the petitioner's prohibition  
26 on possession of a firearm; or

27 (ii) The superior court in the county in which the petitioner  
28 resides.

29 (5) In addition to any other penalty provided for by law, if a  
30 person under the age of eighteen years is found by a court to have  
31 possessed a firearm in a vehicle in violation of subsection (1) or  
32 (2) of this section or to have committed an offense while armed with  
33 a firearm during which offense a motor vehicle served an integral  
34 function, the court shall notify the department of licensing within  
35 twenty-four hours and the person's privilege to drive shall be  
36 revoked under RCW 46.20.265, unless the offense is the juvenile's  
37 first offense in violation of this section and has not committed an  
38 offense while armed with a firearm, an unlawful possession of a  
39 firearm offense, or an offense in violation of chapter 66.44, 69.52,  
40 69.41, or 69.50 RCW.

1 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed  
2 or interpreted as preventing an offender from being charged and  
3 subsequently convicted for the separate felony crimes of theft of a  
4 firearm or possession of a stolen firearm, or both, in addition to  
5 being charged and subsequently convicted under this section for  
6 unlawful possession of a firearm in the first or second degree.  
7 Notwithstanding any other law, if the offender is convicted under  
8 this section for unlawful possession of a firearm in the first or  
9 second degree and for the felony crimes of theft of a firearm or  
10 possession of a stolen firearm, or both, then the offender shall  
11 serve consecutive sentences for each of the felony crimes of  
12 conviction listed in this subsection.

13 (7) Each firearm unlawfully possessed under this section shall be  
14 a separate offense.

15 (8) For purposes of this section, "intimate partner" includes: A  
16 spouse, a domestic partner, a former spouse, a former domestic  
17 partner, a person with whom the restrained person has a child in  
18 common, or a person with whom the restrained person has cohabitated  
19 or is cohabitating as part of a dating relationship.

20 **Sec. 3.** RCW 9.41.047 and 2018 c 201 s 6001 are each amended to  
21 read as follows:

22 (1)(a) At the time a person is convicted or found not guilty by  
23 reason of insanity of an offense making the person ineligible to  
24 possess a firearm, or at the time a person is committed by court  
25 order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or  
26 chapter 10.77 RCW for mental health treatment, or at the time that  
27 charges are dismissed based on incompetency to stand trial under RCW  
28 10.77.088 and the court makes a finding indicating that the person  
29 has a history of one or more violent acts, the convicting or  
30 committing court shall notify the person, orally and in writing, that  
31 the person must immediately surrender any concealed pistol license  
32 and that the person may not possess a firearm unless his or her right  
33 to do so is restored by a court of record. For purposes of this  
34 section a convicting court includes a court in which a person has  
35 been found not guilty by reason of insanity.

36 (b) The (~~convicting or committing~~) court which convicts or  
37 commits the person or finds the person incompetent to stand trial  
38 shall forward within three judicial days after conviction or entry of  
39 the commitment order a copy of the person's driver's license or

1 identicard, or comparable information, along with the date of  
2 conviction or commitment, to the department of licensing. When a  
3 person is committed by court order under RCW 71.05.240, 71.05.320,  
4 71.34.740, 71.34.750, or chapter 10.77 RCW, for mental health  
5 treatment, the committing court also shall forward, within three  
6 judicial days after entry of the commitment order, a copy of the  
7 person's driver's license, or comparable information, along with the  
8 date of commitment, to the national instant criminal background check  
9 system index, denied persons file, created by the federal Brady  
10 handgun violence prevention act (P.L. 103-159). The petitioning party  
11 shall provide the court with the information required. If more than  
12 one commitment order is entered under one cause number, only one  
13 notification to the department of licensing and the national instant  
14 criminal background check system is required.

15 (2) Upon receipt of the information provided for by subsection  
16 (1) of this section, the department of licensing shall determine if  
17 the convicted or committed person has a concealed pistol license. If  
18 the person does have a concealed pistol license, the department of  
19 licensing shall immediately notify the license-issuing authority  
20 which, upon receipt of such notification, shall immediately revoke  
21 the license.

22 (3)(a) A person who is prohibited from possessing a firearm, by  
23 reason of having been involuntarily committed for mental health  
24 treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750,  
25 chapter 10.77 RCW, or equivalent statutes of another jurisdiction, or  
26 whose charges are dismissed based on incompetency to stand trial  
27 under RCW 10.77.088 and the court makes a finding indicating that the  
28 person has a history of one or more violent acts, may, upon  
29 discharge, petition the superior court to have his or her right to  
30 possess a firearm restored.

31 (b) The petition must be brought in the superior court that  
32 ordered the involuntary commitment or dismissed the charges based on  
33 incompetency to stand trial or the superior court of the county in  
34 which the petitioner resides.

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

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

1           (ii) The petitioner has successfully managed the condition  
2 related to the commitment or incompetency;

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

5           (iv) The symptoms related to the commitment or incompetency are  
6 not reasonably likely to recur.

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

14           (e) When a person's right to possess a firearm has been restored  
15 under this subsection, the court shall forward, within three judicial  
16 days after entry of the restoration order, notification that the  
17 person's right to possess a firearm has been restored to the  
18 department of licensing, the health care authority, and the national  
19 instant criminal background check system index, denied persons file.

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

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