

# HOUSE BILL REPORT

## HB 3095

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to provisions governing firearms possession by persons who have been involuntarily committed.

**Brief Description:** Concerning provisions governing firearms possession by persons who have been involuntarily committed.

**Sponsors:** Representatives Lantz, Ericks, Kagi, Pedersen, Green, Moeller, Goodman, Seaquist, Williams and Ormsby.

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/23/08, 2/5/08 [DPS].

#### **Brief Summary of Substitute Bill**

- Prohibits the possession of firearms by persons who have been involuntarily committed for mental health treatment under the 14-day commitment process.
- Requires courts to forward within three judicial days a disqualified person's identifying information to the Department of Licensing (DOL) and the federal National Instant Criminal Background Check system (NICS).
- Requires courts to notify the DOL, the Department of Social and Health Services, and the NICS within three judicial days when a court reinstates the right to possess a firearm to a person who was previously involuntarily committed.
- Revises the process for restoration of the right to possess a firearm for those persons who have been involuntarily committed.
- Amends the civil commitment statutes to require notice regarding the loss of firearm rights if a person is involuntarily committed.

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### HOUSE COMMITTEE ON JUDICIARY

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*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:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Flannigan, Kirby, Moeller, Pedersen and Williams.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Warnick, Assistant Ranking Minority Member; Ahern and Ross.

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

**Background:**

Both state and federal laws prohibit certain persons from legally possessing firearms. Generally, a person may not possess a firearm if he or she has been convicted of any felony or has been involuntarily committed to a mental health treatment facility for a specific period of time.

Under Washington's involuntary treatment laws, a person who is gravely disabled or presents a likelihood of serious harm because of a mental disorder may be held in a mental health treatment facility for evaluation for up to 72 hours.

Within that initial 72-hour evaluation period, a professional in charge of the treatment facility may petition the court for a 14-day involuntary treatment commitment of the person. After a hearing and finding by a preponderance of the evidence that the person is gravely disabled or presents a likelihood of serious harm, the court may order the person to be involuntarily committed to a mental health facility for up to 14 days. If the court finds that a less restrictive alternative than detention is in the person's best interest, the court may order the person to receive up to 90 days of outpatient treatment.

At any time during the treatment period, the professional in charge of the treatment facility may petition the court for an additional 90-day commitment, and subsequently for an additional 180-day commitment. There are similar 14-day and 180-day commitment procedures for mental health treatment for minors.

**Firearms Laws**

In Washington, a person is guilty of unlawful possession of a firearm in the second degree if the person owns, possesses, or has in his or her control any firearm and the person, either as an adult or juvenile, has previously been involuntarily committed for mental health treatment under the 90-day or 180-day procedures or under the statutes governing competency and insanity pleas in criminal cases. Unlawful possession of a firearm in the second degree is a class C felony.

Washington's law does not prohibit the possession of firearms by persons who have been involuntarily committed under the 14-day commitment procedure. However, federal law prohibits the possession of firearms by a person who has been "adjudicated as a mental defective" or who has been committed to a mental institution. The term "adjudicated as a mental defective" and "committed to a mental institution" are defined by federal rule and

would include a person involuntarily committed under Washington's 14-day commitment procedure.

When a person is disqualified from possessing a firearm due to a conviction or commitment, the court must forward a copy of the person's driver's license or other identification information to the Department of Licensing (DOL). The statutes do not specify when the court must forward this information.

A person who is prohibited from possessing a firearm because of an involuntary commitment may petition the court to restore his or her right of possession once the person is discharged. The person must show that he or she is no longer required to participate in an inpatient or outpatient treatment program, is no longer required to take medication to treat any condition related to the commitment, and does not present a substantial danger to self or others. The person must show by a preponderance of the evidence that the circumstances resulting in the commitment no longer exist and are not reasonably likely to recur. However, 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.

#### **National Instant Criminal Background Check System and Background Checks**

National Instant Criminal Background Check system (NICS) is a federal database run by the Federal Bureau of Investigations. The NICS check involves three major federal databases containing extensive criminal justice information. The NICS receives records of persons ineligible to possess firearms from federal and state sources.

The Department of Social and Health Services (DSHS) submits certain mental health records to the NICS. The DSHS records come from a variety of sources, such as its state hospital admission data and county-based mental health authorities.

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#### **Summary of Substitute Bill:**

It is an unlawful possession of a firearm in the second degree if a person owns, possesses, or has in his or her control any firearm and the person has previously been involuntarily committed for mental health treatment, either as an adult or juvenile, under the 14-day commitment procedure.

When a person is involuntarily committed, the court must forward, within three judicial days a copy of the person's driver's license or other identification information to the NICS. When a person who was prohibited from possessing a firearm due to involuntary commitment has his or her right to possess a firearm restored, the court must forward, within three judicial days, notice of the restoration to the DOL, the DSHS, and the NICS.

The standards and processes that apply for restoration of firearm rights when a person was involuntarily committed are revised. A petition for restoration of firearm rights may be filed

in the superior court that ordered the commitment or where the petitioner resides. The petitioner must show by a preponderance of the evidence that: the petitioner is no longer required to participate in court-ordered treatment; the petitioner has successfully managed the condition related to the commitment; the petitioner does not present a danger to self or the public; and the symptoms related to the commitment are not reasonably likely to recur.

Other changes to the restoration process include: removing the requirement that the Secretary of the DSHS adopt rules on a restoration approval process; and adding DSHS to the list of agencies to be notified when a court restores a person's firearm rights.

The civil commitment statutes are amended to require notice regarding the loss of firearm rights when a person is involuntarily committed. A petition filed in a 14-day commitment proceeding for an adult or a minor must state that the person was informed of the loss of firearm rights if involuntarily committed. In addition, the court must inform the person during the hearing of the loss of firearm rights if the person is involuntarily committed.

**Substitute Bill Compared to Original Bill:**

The original bill did not amend the process for restoring a person's firearm rights after being involuntarily committed and did not amend the civil commitment laws to provide notice requirements regarding the loss of firearm rights. The original bill required court notification that a person is disqualified from possessing a firearm, or has had firearm rights restored, within one judicial day, rather than three judicial days.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill takes a comprehensive look at a particular problem and was carefully examined by many stakeholders. It closes the gap between federal and state law and promotes public safety. Law enforcement officers need to have information about persons with mental illnesses. The bill is not a cure-all, but it is one important tool to increase officer safety. This issue has been a topic of discussion by Attorneys General nationwide. The two major recommendations of the report from the Washington Attorney General are to address possession of firearms by persons subject to the 14-day commitment and increase the reporting frequency from the courts to the national database.

(In support with concerns) Currently, the DSHS reports to the national database monthly, but they are relying on hospital admission records and not court records. Courts should be the entity doing the reporting. A 72-hour reporting requirement may be more practical than a requirement that the court make a report by the next judicial day. The bill should allow the

restoration of rights to persons who have recovered from their mental illness and are stable with medication.

(Neutral) This topic has been handled carefully without stigmatizing people. Not all people with mental illness are dangerous. Allowing for the restoration of rights recognizes that people with mental illness can and do recover.

(Opposed) Gun owners were excluded from the stakeholder process. In 14-day commitment hearings, the court applies the lowest standard of proof, preponderance of the evidence, before taking away a person's civil rights. The standard should be by clear and convincing evidence and a person should have the right to a jury trial before a person loses the right to possess a firearm. The court should be required to give a warning to the person that he or she may lose the right to possess if committed under the 14-day process. The process for restoring a person's rights should be changed.

**Persons Testifying:** (In support) Representative Lantz, prime sponsor; Nicholas Metz, Seattle Police Department; Chris Johnson and Eric Nelson, Office of the Attorney General; and Robert Berg, Centralia Police Department.

(In support with concerns) Ed Owens, Hunters Heritage Council.

(Neutral) David Lord, Disability Rights of Washington.

(Opposed) Mark A. Taff, Citizens Committee for the Right to Keep and Bear Arms; and Brian Judy, National Rifle Association.

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