

# SENATE BILL REPORT

## HB 1498

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As of March 17, 2009

**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 Hunter, Blake, Kretz, Pedersen, Goodman, Williams, Carlyle, Roberts, McCune, Ericks, White, Hasegawa, Kagi, Nelson and Warnick.

**Brief History:** Passed House: 3/05/09, 97-0.

**Committee Activity:** Human Services & Corrections: 3/17/09.

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Staff:** Kevin Black (786-7747)

**Background:** Under the Involuntary Treatment Act, a person who is found to meet civil commitment criteria for involuntary mental health treatment may be civilly committed for 72 hours, followed by 14 days, followed by 90 days, followed by successive commitments for 180 days. A minor who is found to meet civil commitment criteria for involuntary mental health treatment may be committed for a period of 72 hours, followed by 14 days, followed by successive commitments for 180 days. Under state law, a person loses his or her right to possess a firearm if the person is committed for involuntary mental health treatment for 90 days or 180 days. A person may lose his or her right to possess a firearm by other means, such as upon conviction for a felony offense. The convicting or committing court must notify the person orally and in writing that the right to possess a firearm has been lost, and forward a copy of the person's driver's license or identicaid to the state Department of Licensing (DOL), along with the date of conviction or commitment. No time limit is provided for sending this information.

A person who is prohibited by state law from possessing a firearm as the result of a commitment for involuntary mental health treatment may be prosecuted in state court for Unlawful Possession of a Firearm in the Second Degree, a class C felony.

A person who has lost the right to possess a firearm as the result of an commitment for involuntary mental health treatment may petition to have the right restored. Firearm rights

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may be restored if the petitioner proves by a preponderance of the evidence that the circumstances resulting in commitment no longer exist and are not reasonably likely to recur, that the petitioner is no longer required to take medication to treat any condition related to the commitment, that the petitioner is no longer required to participate in inpatient or outpatient treatment, and that the petitioner does not present a substantial danger to himself or herself, others, or the public.

Federal law prohibits any person from possessing a firearm if the person "has been adjudicated as a mental defective or has been committed to any mental institution." The federal law is farther reaching than state law, and would allow for prosecution of a person for unlawful possession of firearm in federal court if a person is accused of possessing a firearm following a 14-day civil commitment, which would not be a violation of state law.

**Summary of Bill:** Adults and juveniles who are civilly committed for 14 days of involuntary mental health treatment are prohibited from possessing a firearm. An adult or juvenile who is alleged to possess a firearm following a 14-day commitment may be prosecuted in state court. Whenever a person loses the right to possess a firearm, this information must be provided to the DOL within three judicial days. When a person is committed for mental health treatment, the court must forward a copy of the person's driver's license, or comparable information, with the date of commitment, within three judicial days to the National Instant Criminal Background Check System Index, Denied Persons File, created by the federal Brady Handgun Violence Prevention Act.

A court must restore the firearm rights of a petitioner if the petitioner proves by a preponderance of the evidence that the petitioner is no longer required to participate in a court-ordered treatment program, that the petitioner has successfully managed the condition related to the commitment, that the petitioner no longer presents a substantial danger to himself or herself, or the public, and that the symptoms related to the commitment are not reasonably likely to recur.

A person who is the subject of a civil commitment hearing for involuntary mental health treatment must be informed that the person may lose the right to possess a firearm before the petition is filed, and at a first appearance upon the filing of a 90 or 180 day petition. During and before the conclusion of a civil commitment hearing, the person must be informed orally and in writing that failure to make a good faith effort to seek voluntary treatment will result in the loss of firearm rights if the person is committed at the conclusion of the hearing.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: Instability, unpredictable behavior, and poor judgment are hallmarks of mental illness. Adding a gun into a situation just increases the chance that an encounter will become tragic. This measure will protect the person, police

officers, and the public. Bringing state law in line with federal law makes sense. After a 14-day commitment, a person has had the protection of significant due process.

**Persons Testifying:** PRO: Assistant Chief Mike Zaro, Lakewood Police Department; Deputy Chief Bryan Jeter, Puyallup Police Department; Don Pierce, Washington Association of Sheriffs and Police Chiefs; Richard Kellogg, Mental Health Division.