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**SENATE BILL 5441**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Kuderer, Frockt, Carlyle, Keiser, Nelson, Liias, Darneille, Wellman, Saldaña, McCoy, Rolfes, Ranker, Billig, and Hasegawa

AN ACT Relating to certain procedures upon initial detention under the involuntary treatment act; amending RCW 71.05.. . . and 9.41.047; adding a new section to chapter 71.05 RCW; adding a new section to chapter 9.41 RCW; providing an effective date; and providing an expiration date.

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

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

(1) A person who under RCW 71.05.150 or 71.05.153 has been detained at a facility for seventy-two-hour evaluation and treatment on the grounds that the person presents a likelihood of serious harm, but who has not been subsequently detained for involuntary treatment under RCW 71.05.240, may not have in his or her possession or control any firearm for a period of six months after the date that the person is detained.

(2) Before the discharge of a person who has been initially detained under RCW 71.05.150 or 71.05.153 on the grounds that the person presents a likelihood of serious harm, but has not been subsequently detained for involuntary treatment under RCW 71.05.240, the designated mental health professional shall inform the person orally and in writing that:

(a) He or she is prohibited from possessing or controlling any firearm for a period of six months;

(b) He or she must immediately surrender, for the six-month period, any concealed pistol license and any firearms that the person possesses or controls to the sheriff of the county or the chief of police of the municipality in which the person is domiciled;

(c) After the six-month suspension, the person's right to control or possess any firearm or concealed pistol license shall be automatically restored, absent further restrictions imposed by other law; and

(d) Upon discharge, the person may petition the superior court to have his or her right to possess a firearm restored before the six-month suspension period has elapsed by following the procedures provided in RCW 9.41.047(3).

(3)(a) A law enforcement agency holding any firearm that has been surrendered pursuant to this section shall return the firearm to the person from whom it was obtained at the expiration of the six-month suspension period, or prior to the expiration of the six-month period if the person's right to possess firearms has been restored by the court under RCW 9.41.047. The law enforcement agency may return any firearm surrendered under this section only after confirming, through a background check, that the person to whom the firearm is being returned is currently eligible to own or possess firearms under federal and state law.

(b) Any firearm surrendered pursuant to this section that remains unclaimed by the lawful owner shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

**Sec.**  RCW 71.05.. . . and 2017 c . . . s 1 (section 1 of this act) are each amended to read as follows:

(1) A person who under RCW 71.05.150 or 71.05.153 has been detained at a facility for seventy-two-hour evaluation and treatment on the grounds that the person presents a likelihood of serious harm, but who has not been subsequently detained for involuntary treatment under RCW 71.05.240, may not have in his or her possession or control any firearm for a period of six months after the date that the person is detained.

(2) Before the discharge of a person who has been initially detained under RCW 71.05.150 or 71.05.153 on the grounds that the person presents a likelihood of serious harm, but has not been subsequently detained for involuntary treatment under RCW 71.05.240, the designated ((~~mental health professional~~)) crisis responder shall inform the person orally and in writing that:

(a) He or she is prohibited from possessing or controlling any firearm for a period of six months;

(b) He or she must immediately surrender, for the six-month period, any concealed pistol license and any firearms that the person possesses or controls to the sheriff of the county or the chief of police of the municipality in which the person is domiciled;

(c) After the six-month suspension, the person's right to control or possess any firearm or concealed pistol license shall be automatically restored, absent further restrictions imposed by other law; and

(d) Upon discharge, the person may petition the superior court to have his or her right to possess a firearm restored before the six-month suspension period has elapsed by following the procedures provided in RCW 9.41.047(3).

(3)(a) A law enforcement agency holding any firearm that has been surrendered pursuant to this section shall return the firearm to the person from whom it was obtained at the expiration of the six-month suspension period, or prior to the expiration of the six-month period if the person's right to possess firearms has been restored by the court under RCW 9.41.047. The law enforcement agency may return any firearm surrendered under this section only after confirming, through a background check, that the person to whom the firearm is being returned is currently eligible to own or possess firearms under federal and state law.

(b) Any firearm surrendered pursuant to this section that remains unclaimed by the lawful owner shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

NEW SECTION. **Sec.**  A new section is added to chapter 9.41 RCW to read as follows:

(1) The facility discharging a person who has been initially detained under RCW 71.05.150 or 71.05.153 on the grounds that the person presents a likelihood of serious harm, but who is not being subsequently detained for involuntary treatment under RCW 71.05.240, shall forward within three business days of discharge a copy of the person's driver's license or identicard, or comparable information, along with the date of release from the facility, to the department of licensing and to the state patrol, who shall forward the information to the national instant criminal background check system index, denied persons file, created by the federal Brady handgun violence prevention act (P.L. 103-159). Upon expiration of the six-month period during which the person's right to possess a firearm is suspended as provided in section 1 of this act, the Washington state patrol shall forward to the national instant criminal background check system index, denied persons file, notice that the person's right to possess a firearm has been restored.

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the detained person has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority, which, upon receipt of such notification, shall immediately suspend the license for a period of six months from the date of the person's release from the facility.

(3) A person who is prohibited from possessing a firearm by reason of having been detained under RCW 71.05.150 or 71.05.153 may, upon discharge, petition the superior court to have his or her right to possess a firearm restored before the six-month suspension period has elapsed by following the procedures provided in RCW 9.41.047(3).

**Sec.**  RCW 9.41.047 and 2016 c 93 s 1 are each amended to read as follows:

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

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

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

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, or by reason of having been detained under RCW 71.05.150 or 71.05.153, may, upon discharge, petition the superior court to have his or her right to possess a firearm restored.

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

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

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

(ii) The petitioner has successfully managed the condition related to the commitment or detention;

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

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

(d) If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that 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 shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(e) When a person's right to possess a firearm has been restored under this subsection, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the department of licensing, the department of social and health services, and the national instant criminal background check system index, denied persons file. In the case of a person whose right to possess a firearm has been suspended for six months as provided in section 1 of this act, the department of licensing shall forward notification of the restoration order to the licensing authority, which, upon receipt of such notification, shall immediately lift the suspension, restoring the license.

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

NEW SECTION. **Sec.**  Section 1 of this act expires April 1, 2018.

NEW SECTION. **Sec.**  Section 2 of this act takes effect April 1, 2018.

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