

SENATE BILL REPORT

ESB 6246

As Amended by House, February 27, 2024

Title: An act relating to the transmission of information relating to firearm prohibitions for persons committed for mental health treatment.

Brief Description: Concerning transmission of information relating to firearm prohibitions for persons committed for mental health treatment.

Sponsors: Senators Dhingra, Kuderer, Nobles, Saldaña, Valdez, Wellman and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 1/23/24, 1/25/24 [DP, DNP, w/oRec].

Floor Activity: Passed Senate: 2/7/24, 37-11.

Passed House: 2/27/24, 84-11.

Brief Summary of Engrossed Bill

- Requires a court to issue a firearms prohibition order when a person's felony charges are dismissed based on incompetency to stand trial and the person is not committed to a facility for treatment.
- Requires court clerks to send firearm prohibition information relating to involuntary commitment to the criminal division of the county prosecutor in the county of commitment.
- Prohibits a court from restoring the firearm rights of a person who lost their firearm rights due to involuntary commitment and is currently subject to an extreme risk protection order.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; McCune, Torres and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senator Wagoner.

Staff: Kevin Black (786-7747)

Background: Civil and Forensic Involuntary Commitment. A person may be detained for civil involuntary commitment by a designated crisis responder (DCR) if the DCR determines, following an evaluation, that the person presents a likelihood of serious harm or is gravely disabled. This initial detention period is 120 hours, excluding weekends and holidays. The person may subsequently be committed by a court following a due process hearing for 14, 90, and then successive 180-day periods of involuntary treatment if the court finds the person continues to meet civil commitment criteria and there is no less restrictive alternative than detention that would meet the safety needs of the person and the general public.

A person may be forensically committed to an inpatient facility for involuntary treatment if they are charged with a crime and:

- ordered to undergo an inpatient competency evaluation;
- ordered to receive inpatient competency restoration treatment;
- committed to the care of a mental health facility after charges are dismissed based on incompetency to stand trial; or
- found by the court to have a history of one or more violent acts after the person's nonfelony charges are dismissed based on incompetence to stand trial.

Firearm Prohibitions Related to Involuntary Commitment. A court must prohibit a person from possessing a firearm and order the person to immediately surrender all firearms if:

- the person is civilly committed by a court for 14 days or more of involuntary treatment; or
- the person is forensically committed by a court for treatment in an inpatient psychiatric facility.

A person's right to possess a firearm must additionally be suspended for six months if the person is detained by a DCR for 120 hours for a civil commitment evaluation and the person is released without a court hearing.

In all the above cases, the court clerk must forward the person's detention or commitment information and the person's driver's license, identicard, or comparable identifying information to the Department of Licensing (DOL), Washington State Patrol (WSP), and National Instant Criminal Background Check System (NICS).

Firearm Rights Restoration. A person may petition a superior court for restoration of their

right to possess a firearm after entry of a firearm prohibition related to involuntary commitment. The court must grant this petition if:

- the person is no longer required to participate in court-ordered inpatient or outpatient treatment;
- the person has successfully managed the condition related to the commitment or detention;
- the person no longer presents a substantial danger to themselves or the public; and
- the symptoms related to the commitment or detention or incompetency are not reasonably likely to recur.

Authorized Release of Civil Commitment Information. Under state law a mental health service agency must release certain mental health treatment information, including the fact, place, and date of involuntary commitment, on a standard form upon request from a law enforcement officer, county or city jail personnel, DCR, public health officer, therapeutic court personnel, or Department of Corrections personnel. The requester must act in the course of business for the purpose of carrying out the responsibilities of their office. Certain restrictions apply.

Summary of Engrossed Bill: A court must prohibit a person whose felony charges are dismissed based on incompetency to stand trial from possessing a firearm. The court must notify the person orally and in writing that they may not possess a firearm unless their right to do so is restored by the superior court which issued the order, and that the person must immediately surrender all firearms and any concealed pistol license to their local law enforcement agency.

The court clerk must forward the person's firearm prohibition order and identifying information to the criminal division of the county prosecutor in the county of commitment when:

- a person is detained for a 120-hours civil commitment evaluation but not subsequently court-committed for involuntary treatment;
- a firearm prohibition order is entered following dismissal of felony charges based on incompetency to stand trial; and
- a firearm prohibition order is entered following dismissal of nonfelony charges based on incompetency to stand trial, and the court finds the person has a history of one or more violent acts.

A court may not restore a petitioner's firearm rights related to involuntary commitment if there is either an active extreme risk protection order or an order to surrender and prohibit weapons entered against the petitioner.

A county prosecuting attorney may release involuntary commitment information on behalf of a mental health service agency represented by the prosecutor for the purpose of involuntary commitment hearings to city or county prosecuting attorneys, or to other individuals with a statutory right to request the information. This information may be used

for the purpose of assessing the need for an extreme risk protection order or the prosecutor's other official duties.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This bill is about making sure we close the gaps from other recently passed legislation. Forensic patients lose their right to possess a firearm when they are committed for treatment. However, some are being released from jail without commitment for treatment because of delays in the system. Firearm prohibition information does not always get sent to the right people, especially when it is needed for assessing the need for an extreme risk protection order. This bill closes significant gaps in information sharing. It can be hard to determine if a person is already prohibited from possessing firearms. Prosecutors cannot request the same treatment information which is accessible by law enforcement.

CON: This is a sensitive topic with major implications on a constitutional right. Immediate surrender is a concern. The firearm prohibition applies to a mental health evaluation as well as mental health treatment, and will deter some people from seeking care. You should not disallow restoration of firearm rights based on an extreme risk protection order which could have been obtained ex parte and may not have proper notification. There is no timing exemption for a person whose commitment was 30 years ago.

OTHER: We need to establish a work group to comprehensively address issues related to chapter 10.77 RCW. We continue to address these statutes piecemeal. Not everyone accused of a felony presents violence concerns implicating danger from firearms.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Kimberly Wyatt, King County Prosecuting Attorney's Office.

CON: Aoibheann Cline, National Rifle Association.

OTHER: Kari Reardon, Washington Defender Association/Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: No one.

EFFECT OF HOUSE AMENDMENT(S):

- Expands the crime of unlawful possession of a firearm in the first degree to include possession of a firearm after felony criminal charges are dismissed based on incompetency

to stand trial.

- Specifies that when felony and qualifying nonfelony criminal charges are dismissed based on incompetency to stand trial, the defendant's identifying information must be forwarded to the prosecutor in the county in which charges are dismissed, as well as the prosecutor in the county of commitment.
- Makes technical corrections to cross references.