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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, Lias, Darneille, Wellman, Saldaña, McCoy, Rolfes, Ranker, and Billig

1 AN ACT Relating to certain procedures upon initial detention  
2 under the involuntary treatment act; amending RCW 71.05.. . . and  
3 9.41.047; adding a new section to chapter 71.05 RCW; adding a new  
4 section to chapter 9.41 RCW; providing an effective date; and  
5 providing an expiration date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 71.05  
8 RCW to read as follows:

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

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

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

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

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

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

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

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

29 **Sec. 2.** RCW 71.05.. . . and 2017 c . . . s 1 (section 1 of this  
30 act) are each amended to read as follows:

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

38 (2) Before the discharge of a person who has been initially  
39 detained under RCW 71.05.150 or 71.05.153 on the grounds that the

1 person presents a likelihood of serious harm, but has not been  
2 subsequently detained for involuntary treatment under RCW 71.05.240,  
3 the designated (~~mental health professional~~) crisis responder shall  
4 inform the person orally and in writing that:

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

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

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

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

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

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

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.41 RCW  
34 to read as follows:

35 (1) The facility discharging a person who has been initially  
36 detained under RCW 71.05.150 or 71.05.153 on the grounds that the  
37 person presents a likelihood of serious harm, but who is not being  
38 subsequently detained for involuntary treatment under RCW 71.05.240,  
39 shall forward within three business days of discharge a copy of the

1 person's driver's license or identicard, or comparable information,  
2 along with the date of release from the facility, to the department  
3 of licensing and to the state patrol, who shall forward the  
4 information to the national instant criminal background check system  
5 index, denied persons file, created by the federal Brady handgun  
6 violence prevention act (P.L. 103-159). Upon expiration of the six-  
7 month period during which the person's right to possess a firearm is  
8 suspended as provided in section 1 of this act, the Washington state  
9 patrol shall forward to the national instant criminal background  
10 check system index, denied persons file, notice that the person's  
11 right to possess a firearm has been restored.

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

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

25 **Sec. 4.** RCW 9.41.047 and 2016 c 93 s 1 are each amended to read  
26 as follows:

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

38 (b) The convicting or committing court shall forward within three  
39 judicial days after conviction or entry of the commitment order a

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

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

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

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

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

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

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

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

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

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

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

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

28 NEW SECTION. Sec. 5. Section 1 of this act expires April 1,  
29 2018.

30 NEW SECTION. Sec. 6. Section 2 of this act takes effect April  
31 1, 2018.

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