
SUBSTITUTE SENATE BILL 5441

State of Washington

65th Legislature

2018 Regular Session

By Senate Law & Justice (originally sponsored by Senators Kuderer, Frockt, Carlyle, Keiser, Nelson, Llias, Darneille, Wellman, Saldaña, McCoy, Rolfes, Ranker, Billig, and Hasegawa)

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

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

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

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

15 (2) Before the discharge of a person who has been initially
16 detained under RCW 71.05.150 or 71.05.153 on the grounds that the
17 person presents a likelihood of serious harm, but has not been
18 subsequently committed for involuntary treatment under RCW 71.05.240,
19 the designated crisis responder shall inform the person orally and in
20 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, upon the request of the
17 person from whom it was obtained, return the firearm at the
18 expiration of the six-month suspension period, or prior to the
19 expiration of the six-month period if the person's right to possess
20 firearms has been restored by the court under RCW 9.41.047. The law
21 enforcement agency must comply with the provisions of RCW 9.41.345
22 when returning a firearm pursuant to this section.

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

27 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.41 RCW
28 to read as follows:

29 (1) When a designated crisis responder files a petition for
30 initial detention under RCW 71.05.150 or 71.05.153 on the grounds
31 that the person presents a likelihood of serious harm, the petition
32 shall include a copy of the person's driver's license or identicard
33 or comparable information. If the person is not subsequently
34 committed for involuntary treatment under RCW 71.05.240, the court
35 shall forward within three business days of the probable cause
36 hearing a copy of the person's driver's license or identicard, or
37 comparable information, along with the date of release from the
38 facility, to the department of licensing and to the state patrol, who
39 shall forward the information to the national instant criminal

1 background check system index, denied persons file, created by the
2 federal Brady handgun violence prevention act (P.L. 103-159). Upon
3 expiration of the six-month period during which the person's right to
4 possess a firearm is suspended as provided in section 1 of this act,
5 the Washington state patrol shall forward to the national instant
6 criminal background check system index, denied persons file, notice
7 that the person's right to possess a firearm has been restored.

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

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

21 **Sec. 3.** RCW 9.41.047 and 2016 c 93 s 1 are each amended to read
22 as follows:

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

34 (b) The convicting or committing court shall forward within three
35 judicial days after conviction or entry of the commitment order a
36 copy of the person's driver's license or identicard, or comparable
37 information, along with the date of conviction or commitment, to the
38 department of licensing. When a person is committed by court order
39 under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter

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

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 convicted or committed person has a concealed pistol license. If
15 the person does have a concealed pistol license, the department of
16 licensing shall immediately notify the license-issuing authority
17 which, upon receipt of such notification, shall immediately revoke
18 the license.

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

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

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

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

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

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

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

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

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

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

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