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**SUBSTITUTE SENATE BILL 5181**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Kuderer, Saldaña, Pedersen, Wilson, C., Dhingra, Billig, Takko, McCoy, Hunt, Cleveland, Wellman, Darneille, Carlyle, Das, and Liias)

READ FIRST TIME 02/28/19.

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; adding a new section to chapter  
4 9.41 RCW; and creating a new section.

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 2018 c 201 s 6001 are each amended to  
22 read 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) and (e) of this subsection, the  
30 court shall restore the petitioner's right to possess a firearm if  
31 the petitioner 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) If the petitioner seeks restoration after having been  
9 detained under RCW 71.05.150 or 71.05.153, the state shall bear the  
10 burden of proof to show, by a preponderance of the evidence, that the  
11 petitioner does not meet the restoration criteria in (c) of this  
12 subsection.

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

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

29 NEW SECTION. Sec. 4. If specific funding for the purposes of  
30 this act, referencing this act by bill or chapter number, is not  
31 provided by June 30, 2019, in the omnibus appropriations act, this  
32 act is null and void.

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