
Judiciary Committee

HB 3095

Title: An act relating to provisions governing firearms possession by persons who have been involuntarily committed.

Brief Description: Concerning provisions governing firearms possession by persons who have been involuntarily committed.

Sponsors: Representatives Lantz, Ericks, Kagi, Pedersen, Green, Moeller, Goodman and Seaquist.

Brief Summary of Bill

- Prohibits the possession of firearms by persons who have been involuntarily committed for mental health treatment under the 14-day commitment process.
- Requires courts to forward on or before the next judicial day a disqualified person's identifying information to the Department of Licensing and the federal National Instant Criminal Background Check system (NICs).
- Requires courts to notify the NICs on or before the next judicial day when a court reinstates the right to possess a firearm to a person who was previously involuntarily committed.

Hearing Date: 1/23/08.

Staff: Trudes Tango (786-7384).

Background:

Both state and federal laws prohibit certain persons from legally possessing firearms. Generally, a person may not possess a firearm if he or she has been convicted of any felony or has been involuntarily committed to a mental health treatment facility for a specific period of time.

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

Under Washington's involuntary treatment laws, a person who is gravely disabled or presents a likelihood of serious harm because of a mental disorder may be held in a mental health treatment facility for evaluation for up to 72 hours.

Within that initial 72-hour evaluation period, a professional in charge of the treatment facility may petition the court for a 14-day involuntary treatment commitment of the person. After a hearing and finding by a preponderance of the evidence that the person is gravely disabled or presents a likelihood of serious harm, the court may order the person to be involuntarily committed to a mental health facility for up to 14 days. If the court finds that a less restrictive alternative than detention is in the person's best interest, the court may order the person to receive up to 90 days of outpatient treatment.

At any time during the treatment period, the professional in charge of the treatment facility may petition the court for an additional 90-day commitment, and subsequently for an additional 180-day commitment. There are similar 14-day and 180-day commitment procedures for mental health treatment for minors.

Firearms Laws

In Washington, a person is guilty of unlawful possession of a firearm in the second degree if the person owns, possesses, or has in his or her control any firearm and the person, either as an adult or juvenile, has previously been involuntarily committed for mental health treatment under the 90-day or 180-day procedures or under the statutes governing competency and insanity pleas in criminal cases. Unlawful possession of a firearm in the second degree is a class C felony.

Washington's law does not prohibit the possession of firearms by persons who have been involuntarily committed under the 14-day commitment procedure. However, federal law prohibits the possession of firearms by a person who has been "adjudicated as a mental defective" or who has been committed to a mental institution. The term "adjudicated as a mental defective" and "committed to a mental institution" are defined by federal rule and would include a person involuntarily committed under Washington's 14-day commitment procedure.

When a person is disqualified from possessing a firearm due to a conviction or commitment, the court must forward a copy of the person's driver's license or other identification information to the Department of Licensing. The statutes do not specify when the court must forward this information.

A person who is prohibited from possessing a firearm because of an involuntary commitment may petition the court to restore his or her right of possession once the person is discharged. The person must show that he or she is no longer required to participate in an inpatient or outpatient treatment program, is no longer required to take medication to treat any condition related to the commitment, and does not present a substantial danger to self or others. The person must show by a preponderance of the evidence that the circumstances resulting in the commitment no longer exists and are not reasonably likely to recur. However, if the person has engaged in violence and 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 must show by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

National Instant Criminal Background Check System and Background Checks

National Instant Criminal Background Check system (NICS) is a federal database run by the Federal Bureau of Investigations. The NICS check involves three major federal databases containing extensive criminal justice information. The NICS receives records of persons ineligible to possess firearms from federal and state sources.

The Department of Social and Health Services (DSHS) submits certain mental health records to the NICS. The DSHS records come from a variety of sources, such as its state hospital admission data and county-based mental health authorities.

Summary of Bill:

It is unlawful possession of a firearm in the second degree if a person owns, possesses, or has in his or her control any firearm and the person has previously been involuntarily committed for mental health treatment, either as an adult or juvenile, under the 14-day commitment procedure.

Courts must forward on or before the next judicial day a copy of the person's driver's license or other identification information to the NICs. When a person who was prohibited from possessing a firearm due to involuntary commitment has his or her right to possess a firearm restored, the court must forward, on or before the next judicial day, notice of the restoration to the NICs.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.