

SENATE BILL REPORT

SB 5441

As Reported by Senate Committee On:
Human Services, Mental Health & Housing
Human Services & Corrections, January 10, 2018

Title: An act relating to certain procedures upon initial detention under the involuntary treatment act.

Brief Description: Concerning certain procedures upon initial detention under the involuntary treatment act.

Sponsors: Senators Kuderer, Frockt, Carlyle, Keiser, Nelson, Liias, Darneille, Wellman, Saldaña, McCoy, Rolfes, Ranker, Billig and Hasegawa.

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 2/15/17.
Human Services & Corrections: 1/10/18 [w/oRec-LAW].

Brief Summary of Bill

- Prohibits a person from possessing a firearm for six months following detention for 72 hours under the Involuntary Treatment Act on the basis that the person presents a likelihood of serious harm.
- Provides that the suspension of firearm rights will be automatically lifted after six months and any confiscated firearms or concealed pistol license must be returned to the individual at that time.
- Establishes a procedure for the person to petition for restoration of firearm rights before the end of this six-month period.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That it be referred without recommendation and be referred to Committee on Law & Justice.

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.

Signed by Senators Darneille, Chair; Dhingra, Vice Chair; O'Ban, Ranking Member; Carlyle, Frockt, Miloscia and Walsh.

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Background: The Involuntary Treatment Act (ITA) provides for the civil commitment of persons who are found to have a mental disorder, and as a result of the mental disorder, to present a likelihood of serious harm or to be gravely disabled. Other requirements include that the person will not voluntarily cooperate with treatment and that there is no less restrictive alternative available that will meet the needs of health and safety.

Likelihood of serious harm means a substantial risk that a person:

- will inflict physical harm upon their own person, evidenced by threats or attempts to commit suicide or inflict physical harm on themselves;
- will inflict physical harm upon another, evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or
- will inflict physical harm upon the property of others, evidenced by behavior which has caused substantial loss or damage to the property of others.

Likelihood of serious harm may also be established if the person has threatened the physical safety of another and has a history of one or more violent acts.

Gravely disabled means a condition in which a person, as a result of a mental disorder:

- is in danger of serious physical harm resulting from a failure to provide for the individual's essential human needs of health or safety; or
- manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over their actions and is not receiving such care as is essential for their health or safety.

A person may be initially detained for investigation for civil commitment by a designated mental health professional (DMHP) for up to 12 hours. If the DMHP finds a basis for commitment, the DMHP may detain the person for up to 72 hours, excluding weekends and state holidays, to an evaluation and treatment facility (E&T), or if an E&T cannot be located, to a facility which is willing and able to provide timely and appropriate mental health treatment under a single bed certification. If neither an E&T bed nor a single bed certification can be located within the 12 hour initial detention period, the DMHP may not detain the person. During the 72-hour detention period, the facility providing detention may file a court petition for authorization of an additional 14 days of involuntary treatment. At this point, the person is provided with counsel and is provided with a judicial hearing, including the right to present evidence and confront witnesses. If detention continues past this stage, further petitions may be filed for 90 or 180 additional days of involuntary treatment.

Any person who is judicially committed for involuntary treatment loses their right to possess a firearm under state and federal law. Judicial commitments happen at the 14-day, 90-day, and 180-day stages of the ITA and also occur when a person who is a criminal defendant is placed in a facility for treatment related to criminal insanity or restoration competency to

stand trial. Under the ITA, the person is provided with notice of the prohibition, and information about the prohibition is forwarded within three judicial days to the Department of Licensing, Washington State Patrol, and National Instance Criminal Background Check System database operated by the Federal Bureau of Investigation.

Effective April 1, 2018, the ITA is expanded to include detention based on a substance use disorder as well as a mental health disorder. At this time, DMHPs will be renamed designated crisis responders.

A procedure exists under state law for a person who is prohibited from possessing of a firearm to petition for restoration of this right by superior court. For a person whose prohibition comes from involuntary commitment, the person must petition the superior court that ordered the involuntary commitment and establish by a preponderance of the evidence that:

- 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;
- the person no longer presents a substantial danger to oneself, or the public; and
- the symptoms related to the commitment are not reasonably likely to recur.

Washington State currently has no procedure that is effective to restore a person's prohibition to possess a firearm under federal law.

Summary of Bill: A person detained under the ITA for 72 hours but not for 14 days on the grounds that the person presents a likelihood of serious harm may not possess a firearm for a period of six months after the date of detention. The DMHP must inform the person of this prohibition orally and in writing before discharge. The person must surrender any concealed pistol license and any firearms they possess or control to the sheriff or chief of police where the person is domiciled.

The person's right to possess a firearm must be automatically restored at the end of the six-month period, and any surrendered firearms must be returned. The person may petition the superior court to restore their right to possess a firearm before the end of the six-month period by following restoration procedures under law. The facility detaining the person must forward a copy of the person's identification to the Department of Licensing and Washington State Patrol, which must forward it to the National Instant Criminal Background Check System, operated by the Federal Bureau of Investigation.

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 (Human Services, Mental Health & Housing): *Testimony from 2017 Regular Session.* PRO: At its core, this is a suicide prevention bill.

Suicide is one of the leading causes of early death in our state, including by firearms. My cousin committed suicide by firearm. There are ripple effects to suicides that go far beyond the immediate victims. When a person is placed on a 72-hour hold there is no restriction on firearms. A person in this position may not realize they are a danger to themselves or others. We want to reduce the potential risk. A six-month suspension gives families time to get an extreme risk protection order. The person does not lose their rights, they lose temporary access. This bill protects the rights of the person and of people who may be in harm's way during crisis. Our patients have been in a state of decompensation for months. Patients often leave against medical advice before the 14-day hearing. We need additional tools to protect the safety of patients and the community. The vast majority of the gun deaths in our state are caused by suicide by gun. The mental health system is underfunded and overburdened. We don't have the capacity to monitor everybody. To allow access to a firearm is unjustified. My father took his own life with a firearm. Specific risks should be mitigated; this does not mean that persons with mental illness are dangerous.

CON: There are grave due process concerns with this bill. It takes away a constitutional right without access to a court or advice of counsel. The right is lost even if the hospital or prosecutor decides to drop the case before it goes to court. Serious criminal consequences flow from a violation once this right is taken away. If this bill passes, persons may be reluctant to go to an emergency room for fear of losing their rights. We cannot be assured that a federal bar to possession of a firearm would end after six months. It practically takes a presidential pardon to restore federal firearm rights.

OTHER: Please consider an amendment related to procedures and protocols relating to return of a firearm by law enforcement.

Persons Testifying (Human Services, Mental Health & Housing): PRO: Senator Kuderer, Prime Sponsor; Marty Reinsel, Clinical Educator and Therapist; Leanne Kennedy, Aidan Poteet, citizens.

CON: Mike De Felice, WA Defender Assn., WA Assn. of Criminal Defense Attorneys.

OTHER: James McMahan, WA Assn. of Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying (Human Services, Mental Health & Housing): No one.