

SENATE BILL REPORT

SB 5441

As Reported by Senate Committee On:
Human Services, Mental Health & Housing
Human Services & Corrections, January 10, 2018
Law & Justice, February 1, 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, Lias, 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].
Law & Justice: 1/23/18, 2/01/18 [DPS, DNP].

Brief Summary of First Substitute 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

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.

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

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

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5441 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille and Frockt.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; Angel, Assistant Ranking Member; Wilson.

Staff: Melissa Burke-Cain (786-7755)

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 of 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 (DOL), Washington State Patrol (WSP), and National Instant 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: The bill as referred to committee not considered.

Summary of Bill (First Substitute): A person who has been detained for a 72-hour evaluation and treatment, but not subsequently committed for involuntary treatment, may not have possession or control of a firearm for six months following the detention. Before release, the designated crisis responder will tell the person, and give them written notice, that they:

- cannot control or possess a firearm for six months;
- must immediately surrender their concealed carry pistol license and any firearms they control or possess to the county sheriff or police chief for six months;

- after six months their right to control or possess a concealed carry pistol license and firearms will be restored automatically as long as there are no restrictions imposed by other laws; and
- may petition the superior court to restore their right to possess a firearm before the six month suspension ends by following the legal procedures for restoring firearm possession rights.

If the six months are passed, or the person's rights to possess firearms have been restored by the superior court sooner than six months, the law enforcement agency holding the person's firearms may return them. The person from whom the firearms were taken must contact the law enforcement agency and request the return. Before returning the firearms, the law enforcement agency must comply with the requirements of RCW 9.41.345. If surrendered firearms are not claimed by its owner, the law enforcement agency must dispose of the firearms as required by law.

Within three days, the designated crisis responder must send a copy of the person's identification and the date of release to the court. The court must forward the information to DOL and the WSP. DOL and WSP must notify the National Instant Criminal Background Check System the denied person's file. After six months, WSP must notify the national system that the person's right to possess a firearm has been restored.

When DOL receives the discharge notice from the court, it must check whether the person has a concealed carry pistol license. If the person does have the concealed carry license, DOL must notify the license-issuing entity. Upon receipt of notice, the issuing entity must immediately suspend the license for six months from the discharge date. When the court notifies DOL that the person's rights have been restored after a six-month suspension, DOL must notify the license-issuing entity of the restoration order, and the license must be restored.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Replaces "detained" with "committed" in sections 1 and 2 wherever the reference refers to judicial commitment under the ITA.
- Clarifies that the person from whom a firearm is taken must contact the law enforcement agency and request the firearm's return.
- Clarifies that RCW 9.41.345 governs the process law enforcement must follow when returning the firearm.
- Requires the designated crisis responder to provide identity information and the discharge date to the court.
- Requires the court to forward the identity information and date of release to the DOL and WSP.

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 on Original Bill (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 Patty 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.

Staff Summary of Public Testimony on Proposed Substitute (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: This bill addresses a problem in the Involuntary Treatment Act. For persons held for a 72-hour evaluation and treatment, and then released, the crisis isn't necessarily over. Half of the people who commit suicide do so with a gun. The suspension of gun possession allows additional time to get the help the person in crisis needs, while also giving the family time to get an extreme risk protection order, if necessary. My personal experience with a relative

who committed suicide with a gun is that the ripple effects on the family go on forever. The bill protects persons who need help so that they don't do something rash. Sharing a quote from my father: "Suicide is a permanent solution to a temporary problem," Some persons may have help and support around them to get through the difficult problem in the moment; some people may be alone at the time; that is when a rash act occurs. The bill is an evidence-based, public health approach to suicide prevention and firearms-related deaths and injuries. It is one part of a larger, comprehensive approach to suicide prevention. As an experienced clinician I have worked with persons who are at serious risk of harm; it is like trying to put a storm back into a bottle. Clinically, the period after a 72-hour hold is a point of great concern. Patients often manifest impulsivity and chaotic behavior. These behaviors don't subside so quickly; there is a high probability of recurrence. Separating the person from firearms is a great act of prevention. Involuntary detention usually means continued risk. Patients may struggle to follow through with treatment. Clinically, those released after 72 hour detention are the ones I worry about the most. The person's firearm access is not lost for a lifetime, only for up to six months. There are gaps in the law that should be addressed, and one of them is addressed by this bill. The vast majority of firearms deaths are suicides. Even after the 72-hour evaluation and treatment period, the person can go quickly back into crisis. In the crisis state the person can do something drastic in the moment to relieve some of the pain they experience.

CON: This bill presents grave due process concerns. It takes away a constitutional right without a hearing or advice of counsel. In a 14-day or 90-day petition, where right to possess a firearm is taken away, the individual has a hearing and counsel representing them. Under the bill, signing paperwork triggers the suspension. It is a blanket prohibition on firearms possession, and yet there is no individualized risk determination made by a judge.

OTHER: There are some minor changes in the bill that would be helpful. Regarding return of weapons by law enforcement, it should be clarified that the person must come to law enforcement for their firearms. Current language may be misinterpreted to put a burden on law enforcement to try to find the person to give them back their firearms. It should also be clear that law enforcement agencies have consistent, specific procedures when returning an impounded firearm. Those procedures must be followed in the situation this bill contemplates. From the treating provider and facility perspective, the bill requires the facility to notify DOL and WSP. It should be the court or the designated crisis responder's responsibility to provide notice to DOL and WSP.

Persons Testifying (Law & Justice): PRO: Senator Patty Kuderer, Prime Sponsor; Karyn Brownson, King County Public Health, Community Safety Manager, Violence and Injury Prevention Unit; Margaret Heldring, citizen; Raymond Miller, citizen; Leanne Kennedy, citizen.

CON: Mike De Felice, Washington Defender Association, Washington Association of Criminal Defense Lawyers.

OTHER: Ian Goodhew, UW Medicine-Harborview Medical Center; Chris Bandoli, Washington State Hospital Association; James McMahan, Washington Association Sheriffs & Police Chiefs.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.