

SENATE BILL REPORT

SB 6297

As of January 24, 2018

Title: An act relating to provisions governing firearms possession by persons who have been found incompetent to stand trial and who have a history of one or more violent acts.

Brief Description: Concerning provisions governing firearms possession by persons who have been found incompetent to stand trial and who have a history of one or more violent acts.

Sponsors: Senators Dhingra, Palumbo, Darneille, Mullet, Saldaña, Takko, Frockt, Rolfes, Kuderer, Cleveland, Chase, Carlyle, Wellman, Hasegawa, Ranker, Keiser, Lias, Billig, Nelson, McCoy, Van De Wege, Pedersen, Hunt and Conway.

Brief History:

Committee Activity: Law & Justice: 1/23/18.

Brief Summary of Bill

- Requires the court to determine whether a defendant has a history of violent acts when dismissing nonfelony charges based on incompetency to stand trial.
- Prohibits persons who have a history of one or more violent acts from possessing a firearm following the dismissal of nonfelony charges based on incompetency to stand trial, unless firearm rights are restored by a court.
- Allows the person to ask to have their firearm rights restored by filing a petition in superior court.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Shani Bauer (786-7468)

Background: Under federal law, it is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person has been adjudicated as a mental defective or has been committed to any mental institution. In Washington, a person who has been involuntarily committed for mental health treatment loses the person's right to possess a firearm unless the person's right has been

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restored by the court. At the time of commitment, the court must notify the person that they must immediately surrender any concealed pistol license and may not possess a firearm.

Involuntarily committed for mental health treatment includes when a person who is a criminal defendant is placed in a facility for treatment related to competency evaluation, competency restoration, or criminal insanity. It also includes civil commitment, which can occur directly following dismissal of criminal charges based on incompetency to stand trial. A defendant who is found to be incompetent only loses their firearm rights if the person is committed to an inpatient treatment facility.

A criminal defendant is incompetent to stand trial when, due to a mental disorder, the defendant lacks the capacity to understand the nature of the criminal proceedings or lacks the ability to rationally assist in the defendant's defense. Whenever there is reason to doubt the competency of the defendant, the criminal proceedings must be stayed for a competency evaluation by a mental health professional.

If the court determines, following evaluation, that a defendant is incompetent, a period of competency restoration treatment is permitted in order to restore the defendant to competency in all felony cases, and in all nonfelony cases which are classified as serious offenses. State law allows a number of options for competency restoration treatment, including treatment in a state hospital, other secure facility, an outpatient setting, or during the 2017-19 biennium, within a city or county jail.

If the case is a nonfelony, the maximum in-custody restoration period is 14 days in addition to any unused time of the competency evaluation period. The court may alternatively order that the defendant be conditionally released for 90 days to receive outpatient treatment. If the court has determined or the parties agree the defendant is unlikely to regain competency, the court may dismiss charges against the defendant without ordering the defendant to undergo restoration treatment.

After dismissal, if the nonfelony charges are serious, the person is detained and sent to an evaluation and treatment facility (E&T) for up to 72 hours for evaluation under the Involuntary Treatment Act. This commitment is sufficient to trigger loss of firearm rights. If the charges are not serious, the court must order the defendant to be evaluated by a designated mental health professional (DMHP) for possible commitment. If the DMHP detains the defendant, then the person has the opportunity to lose their firearm rights again at the end of the 72 hours when the E&T files a 14-day commitment petition. If the DMHP does not detain the person, or having been detained, the person is released at the end of the 72-hour detention period without a judicial commitment order, the person is released without losing their firearm rights.

A procedure exists under state law for a person who is prohibited from possessing 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.

Summary of Bill: If the court has found a defendant to be incompetent and dismisses nonfelony charges against the defendant without committing the defendant for treatment, the court must make a finding as to whether the defendant has a history of one or more violent acts. If the court so finds, the defendant is barred from the possession of firearms until a court restores the person's right to possess a firearm.

The court must notify the defendant orally and in writing that the defendant is barred from the possession of firearms and that the prohibition remains in effect until a court restores the defendant's right to possess the firearm.

A person whose charges are dismissed based on incompetency to stand trial and where the court has made a finding that the person has a history of one or more violent acts may petition the superior court to have the person's right to possess a firearm restored.

Generally, Violent act means behavior that resulted in or if completed as threatened would have resulted in homicide, nonfatal injuries, or substantial damage to property; or behavior that recklessly creates an immediate risk of serious physical injury to another person.

History of one or more violent acts means violent acts committed during: (1) the ten-year period of time prior to the filing of criminal charges; plus (2) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

Appropriation: None.

Fiscal Note: Available.

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: PRO: As a matter of public safety, state law regulates firearms in a number of ways when the person has a history of mental illness. This bill is closing a loophole that allows an offender who has been found incompetent to keep a firearm. This bill is similar in process to the authority that is provided with an extreme risk protection order (ERPO). The difference is that the person is already before the court. The court has all of the information in front of them and this is the best possible time to make the determination. In King County, 72 cases were dismissed for incompetence last year; of those, 21 involved assaults. This bill is narrowly tailored and designed to mimic a process that we already have with ERPO.

The guiding principles for gun violence prevention is to keep guns out of hands of people who should not have them and have a risk to cause harm to themselves or others. The best predictor of future behavior is past behavior. It makes all the sense in the world to remove the firearm rights of those who have been found mentally incompetent and have a history of

violence. This bill balances health and safety with individual rights to possess and restore firearm rights.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; David Martin, citizen; Ray Miller, citizen; Leanne Kennedy citizen; Margy Heldring, citizen.

Persons Signed In To Testify But Not Testifying: No one.