

SB 5205 - H COMM AMD

By Committee on Civil Rights & Judiciary

ADOPTED 04/10/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 10.77.088 and 2016 sp.s. c 29 s 411 are each
4 amended to read as follows:

5 (1)(a) If the defendant is charged with a nonfelony crime which
6 is a serious offense as identified in RCW 10.77.092 and found by the
7 court to be not competent, then the court:

8 (i) Shall commit the defendant to the custody of the secretary
9 who shall place such defendant in an appropriate facility of the
10 department for evaluation and treatment;

11 (ii) May alternatively order the defendant to undergo evaluation
12 and treatment at some other facility or provider as determined by the
13 department, or under the guidance and control of a professional
14 person. The facilities or providers may include community mental
15 health providers or other local facilities that contract with the
16 department and are willing and able to provide treatment under this
17 section. During the 2015-2017 fiscal biennium, the department may
18 contract with one or more cities or counties to provide competency
19 restoration services in a city or county jail if the city or county
20 jail is willing and able to serve as a location for competency
21 restoration services and if the secretary determines that there is an
22 emergent need for beds and documents the justification, including a
23 plan to address the emergency. Patients receiving competency
24 restoration services in a city or county jail must be physically
25 separated from other populations at the jail and restoration
26 treatment services must be provided as much as possible within a
27 therapeutic environment. The placement under (a)(i) and (ii) of this
28 subsection shall not exceed fourteen days in addition to any unused
29 time of the evaluation under RCW 10.77.060. The court shall compute
30 this total period and include its computation in the order. The
31 fourteen-day period plus any unused time of the evaluation under RCW

1 10.77.060 shall be considered to include only the time the defendant
2 is actually at the facility and shall be in addition to reasonable
3 time for transport to or from the facility;

4 (iii) May alternatively order that the defendant be placed on
5 conditional release for up to ninety days for mental health treatment
6 and restoration of competency; or

7 (iv) May order any combination of this subsection.

8 (b) If the court has determined or the parties agree that the
9 defendant is unlikely to regain competency, the court may dismiss the
10 charges without prejudice without ordering the defendant to undergo
11 restoration treatment, in which case the court shall order that the
12 defendant be referred for evaluation for civil commitment in the
13 manner provided in (c) of this subsection.

14 (c) (i) If the proceedings are dismissed under RCW 10.77.084 and
15 the defendant was on conditional release at the time of dismissal,
16 the court shall order the designated crisis responder within that
17 county to evaluate the defendant pursuant to chapter 71.05 RCW. The
18 evaluation may be conducted in any location chosen by the
19 professional.

20 (ii) If the defendant was in custody and not on conditional
21 release at the time of dismissal, the defendant shall be detained and
22 sent to an evaluation and treatment facility for up to seventy-two
23 hours, excluding Saturdays, Sundays, and holidays, for evaluation for
24 purposes of filing a petition under chapter 71.05 RCW. The seventy-
25 two hour period shall commence upon the next nonholiday weekday
26 following the court order and shall run to the end of the last
27 nonholiday weekday within the seventy-two-hour period.

28 (2) If the defendant is charged with a nonfelony crime that is
29 not a serious offense as defined in RCW 10.77.092((+)) and found by
30 the court to be not competent, the court may stay or dismiss
31 proceedings and detain the defendant for sufficient time to allow the
32 designated crisis responder to evaluate the defendant and consider
33 initial detention proceedings under chapter 71.05 RCW. The court must
34 give notice to all parties at least twenty-four hours before the
35 dismissal of any proceeding under this subsection, and provide an
36 opportunity for a hearing on whether to dismiss the proceedings.

37 (3) If at any time the court dismisses charges under subsection
38 (1) or (2) of this section, the court shall make a finding as to
39 whether the defendant has a history of one or more violent acts. If
40 the court so finds, the defendant is barred from the possession of

1 firearms until a court restores his or her right to possess a firearm
2 under RCW 9.41.047. The court shall state to the defendant and
3 provide written notice that the defendant is barred from the
4 possession of firearms and that the prohibition remains in effect
5 until a court restores his or her right to possess a firearm under
6 RCW 9.41.047.

7 **Sec. 2.** RCW 9.41.040 and 2018 c 234 s 1 are each amended to read
8 as follows:

9 (1)(a) A person, whether an adult or juvenile, is guilty of the
10 crime of unlawful possession of a firearm in the first degree, if the
11 person owns, has in his or her possession, or has in his or her
12 control any firearm after having previously been convicted or found
13 not guilty by reason of insanity in this state or elsewhere of any
14 serious offense as defined in this chapter.

15 (b) Unlawful possession of a firearm in the first degree is a
16 class B felony punishable according to chapter 9A.20 RCW.

17 (2)(a) A person, whether an adult or juvenile, is guilty of the
18 crime of unlawful possession of a firearm in the second degree, if
19 the person does not qualify under subsection (1) of this section for
20 the crime of unlawful possession of a firearm in the first degree and
21 the person owns, has in his or her possession, or has in his or her
22 control any firearm:

23 (i) After having previously been convicted or found not guilty by
24 reason of insanity in this state or elsewhere of any felony not
25 specifically listed as prohibiting firearm possession under
26 subsection (1) of this section, or any of the following crimes when
27 committed by one family or household member against another,
28 committed on or after July 1, 1993: Assault in the fourth degree,
29 coercion, stalking, reckless endangerment, criminal trespass in the
30 first degree, or violation of the provisions of a protection order or
31 no-contact order restraining the person or excluding the person from
32 a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

33 (ii) After having previously been convicted or found not guilty
34 by reason of insanity in this state or elsewhere of harassment when
35 committed by one family or household member against another,
36 committed on or after June 7, 2018;

37 (iii) During any period of time that the person is subject to a
38 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,
39 26.09, 26.10, (~~26.26~~) 26.26B, or 26.50 RCW that:

1 (A) Was issued after a hearing of which the person received
2 actual notice, and at which the person had an opportunity to
3 participate;

4 (B) Restrains the person from harassing, stalking, or threatening
5 an intimate partner of the person or child of the intimate partner or
6 person, or engaging in other conduct that would place an intimate
7 partner in reasonable fear of bodily injury to the partner or child;
8 and

9 (C) (I) Includes a finding that the person represents a credible
10 threat to the physical safety of the intimate partner or child; and

11 (II) By its terms, explicitly prohibits the use, attempted use,
12 or threatened use of physical force against the intimate partner or
13 child that would reasonably be expected to cause bodily injury;

14 (iv) After having previously been involuntarily committed for
15 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,
16 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
17 jurisdiction, unless his or her right to possess a firearm has been
18 restored as provided in RCW 9.41.047;

19 (v) After dismissal of criminal charges based on incompetency to
20 stand trial under RCW 10.77.088 when the court has made a finding
21 indicating that the defendant has a history of one or more violent
22 acts, unless his or her right to possess a firearm has been restored
23 as provided in RCW 9.41.047;

24 (vi) If the person is under eighteen years of age, except as
25 provided in RCW 9.41.042; and/or

26 (~~(vi)~~) (vii) If the person is free on bond or personal
27 recognizance pending trial, appeal, or sentencing for a serious
28 offense as defined in RCW 9.41.010.

29 (b) (a)(iii) of this subsection does not apply to a sexual
30 assault protection order under chapter 7.90 RCW if the order has been
31 modified pursuant to RCW 7.90.170 to remove any restrictions on
32 firearm purchase, transfer, or possession.

33 (c) Unlawful possession of a firearm in the second degree is a
34 class C felony punishable according to chapter 9A.20 RCW.

35 (3) Notwithstanding RCW 9.41.047 or any other provisions of law,
36 as used in this chapter, a person has been "convicted", whether in an
37 adult court or adjudicated in a juvenile court, at such time as a
38 plea of guilty has been accepted, or a verdict of guilty has been
39 filed, notwithstanding the pendency of any future proceedings
40 including but not limited to sentencing or disposition, post-trial or

1 post-fact-finding motions, and appeals. Conviction includes a
2 dismissal entered after a period of probation, suspension or deferral
3 of sentence, and also includes equivalent dispositions by courts in
4 jurisdictions other than Washington state. A person shall not be
5 precluded from possession of a firearm if the conviction has been the
6 subject of a pardon, annulment, certificate of rehabilitation, or
7 other equivalent procedure based on a finding of the rehabilitation
8 of the person convicted or the conviction or disposition has been the
9 subject of a pardon, annulment, or other equivalent procedure based
10 on a finding of innocence. Where no record of the court's disposition
11 of the charges can be found, there shall be a rebuttable presumption
12 that the person was not convicted of the charge.

13 (4)(a) Notwithstanding subsection (1) or (2) of this section, a
14 person convicted or found not guilty by reason of insanity of an
15 offense prohibiting the possession of a firearm under this section
16 other than murder, manslaughter, robbery, rape, indecent liberties,
17 arson, assault, kidnapping, extortion, burglary, or violations with
18 respect to controlled substances under RCW 69.50.401 and 69.50.410,
19 who received a probationary sentence under RCW 9.95.200, and who
20 received a dismissal of the charge under RCW 9.95.240, shall not be
21 precluded from possession of a firearm as a result of the conviction
22 or finding of not guilty by reason of insanity. Notwithstanding any
23 other provisions of this section, if a person is prohibited from
24 possession of a firearm under subsection (1) or (2) of this section
25 and has not previously been convicted or found not guilty by reason
26 of insanity of a sex offense prohibiting firearm ownership under
27 subsection (1) or (2) of this section and/or any felony defined under
28 any law as a class A felony or with a maximum sentence of at least
29 twenty years, or both, the individual may petition a court of record
30 to have his or her right to possess a firearm restored:

31 (i) Under RCW 9.41.047; and/or

32 (ii)(A) If the conviction or finding of not guilty by reason of
33 insanity was for a felony offense, after five or more consecutive
34 years in the community without being convicted or found not guilty by
35 reason of insanity or currently charged with any felony, gross
36 misdemeanor, or misdemeanor crimes, if the individual has no prior
37 felony convictions that prohibit the possession of a firearm counted
38 as part of the offender score under RCW 9.94A.525; or

39 (B) If the conviction or finding of not guilty by reason of
40 insanity was for a nonfelony offense, after three or more consecutive

1 years in the community without being convicted or found not guilty by
2 reason of insanity or currently charged with any felony, gross
3 misdemeanor, or misdemeanor crimes, if the individual has no prior
4 felony convictions that prohibit the possession of a firearm counted
5 as part of the offender score under RCW 9.94A.525 and the individual
6 has completed all conditions of the sentence.

7 (b) An individual may petition a court of record to have his or
8 her right to possess a firearm restored under (a) of this subsection
9 (4) only at:

10 (i) The court of record that ordered the petitioner's prohibition
11 on possession of a firearm; or

12 (ii) The superior court in the county in which the petitioner
13 resides.

14 (5) In addition to any other penalty provided for by law, if a
15 person under the age of eighteen years is found by a court to have
16 possessed a firearm in a vehicle in violation of subsection (1) or
17 (2) of this section or to have committed an offense while armed with
18 a firearm during which offense a motor vehicle served an integral
19 function, the court shall notify the department of licensing within
20 twenty-four hours and the person's privilege to drive shall be
21 revoked under RCW 46.20.265, unless the offense is the juvenile's
22 first offense in violation of this section and has not committed an
23 offense while armed with a firearm, an unlawful possession of a
24 firearm offense, or an offense in violation of chapter 66.44, 69.52,
25 69.41, or 69.50 RCW.

26 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed
27 or interpreted as preventing an offender from being charged and
28 subsequently convicted for the separate felony crimes of theft of a
29 firearm or possession of a stolen firearm, or both, in addition to
30 being charged and subsequently convicted under this section for
31 unlawful possession of a firearm in the first or second degree.
32 Notwithstanding any other law, if the offender is convicted under
33 this section for unlawful possession of a firearm in the first or
34 second degree and for the felony crimes of theft of a firearm or
35 possession of a stolen firearm, or both, then the offender shall
36 serve consecutive sentences for each of the felony crimes of
37 conviction listed in this subsection.

38 (7) Each firearm unlawfully possessed under this section shall be
39 a separate offense.

1 (8) For purposes of this section, "intimate partner" includes: A
2 spouse, a domestic partner, a former spouse, a former domestic
3 partner, a person with whom the restrained person has a child in
4 common, or a person with whom the restrained person has cohabitated
5 or is cohabitating as part of a dating relationship.

6 **Sec. 3.** RCW 9.41.047 and 2018 c 201 s 6001 are each amended to
7 read as follows:

8 (1)(a) At the time a person is convicted or found not guilty by
9 reason of insanity of an offense making the person ineligible to
10 possess a firearm, or at the time a person is committed by court
11 order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or
12 chapter 10.77 RCW for mental health treatment, or at the time that
13 charges are dismissed based on incompetency to stand trial under RCW
14 10.77.088 and the court makes a finding that the person has a history
15 of one or more violent acts, the convicting or committing court, or
16 court that dismisses charges, shall notify the person, orally and in
17 writing, that the person must immediately surrender any concealed
18 pistol license and that the person may not possess a firearm unless
19 his or her right to do so is restored by a court of record. For
20 purposes of this section a convicting court includes a court in which
21 a person has been found not guilty by reason of insanity.

22 (b) The (~~convicting or committing~~) court shall forward within
23 three judicial days after conviction (~~or~~), entry of the commitment
24 order, or dismissal of charges, a copy of the person's driver's
25 license or identicard, or comparable information, along with the date
26 of conviction or commitment, or date charges are dismissed, to the
27 department of licensing. When a person is committed by court order
28 under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter
29 10.77 RCW, for mental health treatment, or when a person's charges
30 are dismissed based on incompetency to stand trial under RCW
31 10.77.088 and the court makes a finding that the person has a history
32 of one or more violent acts, the (~~committing~~) court also shall
33 forward, within three judicial days after entry of the commitment
34 order, or dismissal of charges, a copy of the person's driver's
35 license, or comparable information, along with the date of commitment
36 or date charges are dismissed, to the national instant criminal
37 background check system index, denied persons file, created by the
38 federal Brady handgun violence prevention act (P.L. 103-159). The
39 petitioning party shall provide the court with the information

1 required. If more than one commitment order is entered under one
2 cause number, only one notification to the department of licensing
3 and the national instant criminal background check system is
4 required.

5 (2) Upon receipt of the information provided for by subsection
6 (1) of this section, the department of licensing shall determine if
7 the convicted or committed person, or the person whose charges are
8 dismissed based on incompetency to stand trial, has a concealed
9 pistol license. If the person does have a concealed pistol license,
10 the department of licensing shall immediately notify the license-
11 issuing authority which, upon receipt of such notification, shall
12 immediately revoke the license.

13 (3)(a) A person who is prohibited from possessing a firearm, by
14 reason of having been involuntarily committed for mental health
15 treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750,
16 chapter 10.77 RCW, or equivalent statutes of another jurisdiction, or
17 because the person's charges were dismissed based on incompetency to
18 stand trial under RCW 10.77.088 and the court made a finding that the
19 person has a history of one or more violent acts, may, upon
20 discharge, petition the superior court to have his or her right to
21 possess a firearm restored.

22 (b) The petition must be brought in the superior court that
23 ordered the involuntary commitment or dismissed the charges based on
24 incompetency to stand trial or the superior court of the county in
25 which the petitioner resides.

26 (c) Except as provided in (d) of this subsection, the court shall
27 restore the petitioner's right to possess a firearm if the petitioner
28 proves by a preponderance of the evidence that:

29 (i) The petitioner is no longer required to participate in court-
30 ordered inpatient or outpatient treatment;

31 (ii) The petitioner has successfully managed the condition
32 related to the commitment or incompetency;

33 (iii) The petitioner no longer presents a substantial danger to
34 himself or herself, or the public; and

35 (iv) The symptoms related to the commitment or incompetency are
36 not reasonably likely to recur.

37 (d) If a preponderance of the evidence in the record supports a
38 finding that the person petitioning the court has engaged in violence
39 and that it is more likely than not that the person will engage in
40 violence after his or her right to possess a firearm is restored, the

1 person shall bear the burden of proving by clear, cogent, and
2 convincing evidence that he or she does not present a substantial
3 danger to the safety of others.

4 (e) When a person's right to possess a firearm has been restored
5 under this subsection, the court shall forward, within three judicial
6 days after entry of the restoration order, notification that the
7 person's right to possess a firearm has been restored to the
8 department of licensing, the health care authority, and the national
9 instant criminal background check system index, denied persons file.

10 (4) No person who has been found not guilty by reason of insanity
11 may petition a court for restoration of the right to possess a
12 firearm unless the person meets the requirements for the restoration
13 of the right to possess a firearm under RCW 9.41.040(4)."

14 Correct the title.

EFFECT: Provides that a court that dismisses charges based on incompetency and finds that the person has a history of one or more violent acts must forward the person's identification information to the National Instant Criminal Background Check System (NICS). Makes conforming changes to incorporate these persons into the statute that requires courts to notify the Department of Licensing (DOL) and the NICS about persons disqualified from possessing firearms, and that requires the DOL to determine whether the person has a concealed pistol license that should be revoked.

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