

FINAL BILL REPORT

SB 5205

C 248 L 19
Synopsis as Enacted

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, King, Frockt, Zeiger, Pedersen, Das, Rolfes, Palumbo, Kuderer, Keiser, Wellman, Hunt, Mullet and Saldaña.

Senate Committee on Law & Justice
House Committee on Civil Rights & Judiciary

Background: Under federal law, it is unlawful for any person to sell, or otherwise dispose of, any firearm or ammunition to a person they know or have reasonable cause to believe, have been adjudicated as a mental defective or has been committed to any mental institution.

In Washington State, a person who has been involuntarily committed for treatment for a mental health disorder, or any other basis for involuntary commitment, loses their right to possess a firearm unless the person's right has been 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.

Involuntary Commitment of Criminal Defendants. A criminal defendant may be involuntarily committed for mental health treatment and placed in a facility for treatment related to a competency evaluation, competency restoration, or criminal insanity. An involuntary civil commitment, can also occur directly following dismissal of criminal charges based on the criminal defendant's incompetency to stand trial. A defendant who is found 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 their defense. Whenever there is reason to doubt the defendant's competency, the court delays further criminal proceedings for a competency evaluation.

If the court determines, following evaluation, a defendant is incompetent, a period of competency restoration treatment is permitted to restore the defendant to competency in all felony cases, and in all nonfelony cases which are classified as serious offenses. State law

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.

allows a number of options for competency restoration treatment, including treatment in a state hospital, other secure facility, or an outpatient setting.

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 the defendant be conditionally released for 90 days to receive outpatient treatment. If the court decides, 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 an evaluation of the defendant by a designated crisis responder (DCR) for possible commitment. If the DCR detains the defendant, then the person may lose their firearm rights again at the end of the 72 hours when the E&T files a 14-day commitment petition. If the DCR 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.

Restoring Firearm Rights. The superior court hears the case of a person who is prohibited from possessing a firearm and asks the court to restore their firearm rights. For a person whose prohibition comes from involuntary commitment, the person must file a restoration petition in the superior court that ordered the involuntary commitment, and must establish by a preponderance of evidence:

- 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.

History of one or more violent acts means violent acts committed during:

- the ten-year period of time prior to the filing of criminal charges; plus
- 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.

Summary: If the court finds a defendant incompetent to stand trial and dismisses nonfelony charges without committing the defendant for treatment, the court must make a finding whether the defendant has a history of one or more violent acts. Generally, a 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 recklessly creating an immediate risk of serious physical injury to another person. If the court finds a history of one or more violent acts, the person is barred from possessing a firearm until the court restores the right to possess a firearm. The court must notify the defendant verbally and in writing of the bar to firearm possession. The court must forward the defendant's identification information to the national Instant Criminal Background Check system (NICS) and to the Department of Licensing. The Department of Licensing must determine whether

the defendant has a concealed pistol licensed and take action as required. The bar remains in effect until a court restores the defendant's right to possess a firearm.

The person who has been prohibited from possessing a firearm after their nonfelony charge is dismissed based on their incompetency to stand trial may petition the superior court to have the right to possess a firearm restored. The person must prove each restoration requirement by a preponderance of evidence.

A person who violates a restraining order under the Parentage Act, or violates an order barring firearm possession after dismissal of nonfelony charges based on incompetency, commits the crime of second degree unlawful possession of a firearm. Unlawful possession of a firearm in the second degree is a Class C felony.

Votes on Final Passage:

Senate	30	17	
House	53	39	(House amended)
Senate	32	17	(Senate concurred)

Effective: July 28, 2019