

HOUSE BILL REPORT

ESB 6246

As Passed House - Amended:

February 27, 2024

Title: An act relating to the transmission of information relating to firearm prohibitions for persons committed for mental health treatment.

Brief Description: Concerning transmission of information relating to firearm prohibitions for persons committed for mental health treatment.

Sponsors: Senators Dhingra, Kuderer, Nobles, Saldaña, Valdez, Wellman and Wilson, C..

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/16/24, 2/21/24 [DPA].

Floor Activity:

Passed House: 2/27/24, 84-11.

Brief Summary of Engrossed Bill (As Amended by House)

- Requires a court to issue an order prohibiting a person from possessing firearms if felony charges against the person are dismissed based on incompetency to stand trial, and establishes a criminal penalty for a violation of this prohibition.
- Requires a court to send information relating to a person who is prohibited from possessing firearms based on a mental health commitment or detention, or based on incompetency to stand trial, to the criminal division of the county prosecutor's office.
- Provides that a court may not restore a petitioner's right to possess firearms lost based on a mental health commitment or detention, or based on incompetency to stand trial, if the petitioner is subject to an extreme risk protection order or an order to surrender and prohibit weapons.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Revises provisions governing disclosure of information by mental health service agencies.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass as amended. Signed by 7 members: Representatives Taylor, Chair; Farivar, Vice Chair; Entenman, Goodman, Peterson, Thai and Walen.

Minority Report: Without recommendation. Signed by 4 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno and Cheney.

Staff: Edie Adams (786-7180).

Background:

Involuntary Civil Commitment.

A person may be committed by a court for involuntary behavioral health treatment if the person, due to a mental health or substance use disorder, poses a likelihood of serious harm, is gravely disabled, or is in need of assisted outpatient treatment, and the person will not consent to voluntary treatment. If a designated crisis responder (DCR) finds a basis for commitment and that the person will not consent to voluntary treatment, the DCR may detain or petition a court to order detention of the person for up to 120 hours, excluding weekends and holidays. The person may be subsequently committed by a court for further behavioral health treatment for 14, 90, and successive 180-day periods if the person continues to meet civil commitment criteria and there is no less restrictive alternative course of treatment that is in the best interest of the person and the public.

Competency to Stand Trial.

A person is incompetent to stand trial if the person, as a result of a mental disease or defect, lacks the capacity to understand the nature of the criminal proceedings or to assist in his or her own defense. A person who is incompetent to stand trial may not be tried, convicted, or sentenced for a criminal offense as long as the incompetency continues. If the court finds the defendant is not competent to stand trial, the court must stay the criminal proceedings and, depending on the charged offense, either order a period of competency restoration treatment or dismiss the charges without prejudice.

If a defendant charged with a felony offense is found incompetent to stand trial, the court generally must order a period of competency restoration treatment not to exceed 90 days, depending on the charged crime, and may order subsequent competency restoration periods. For certain class C felonies, the court may dismiss charges and refer the defendant to an appropriate diversion program upon agreement of the parties without ordering a period

of competency restoration treatment. For a defendant charged with a nonfelony offense who is found incompetent to stand trial, the court may order a period of competency restoration treatment only if the offense is a serious nonfelony and the court finds a compelling state interest to order competency restoration treatment.

Loss of Firearm Rights.

Mental Health Detention or Commitment. Persons committed under the Involuntary Treatment Act (ITA) for involuntary mental health treatment for 14 days or longer lose the right to possess firearms until a court restores the person's firearm rights. In addition, a person loses the right to possess firearms for a period of six months if the person is detained for 120-hour evaluation and treatment because the person presents a likelihood of serious harm as the result of a mental disorder or substance use disorder, but is not subsequently committed for involuntary treatment.

Possession of a firearm by a person who is prohibited based on an involuntary commitment for mental health treatment constitutes the crime of Unlawful Possession of a Firearm in the second degree, a class C felony.

Incompetency to Stand Trial. Persons found incompetent to stand trial and committed for a period of competency restoration treatment are prohibited from possessing firearms until the right to possess firearms is restored by a court. If a court dismisses nonfelony charges against a defendant who is found incompetent to stand trial, the court must make a finding as to whether the defendant has a history of one or more violent acts. If the court makes such a finding, the defendant is barred from possessing firearms until a court restores the person's firearm rights.

Possession of a firearm by a person who is prohibited based on a commitment for competency restoration, or based on dismissal of nonfelony charges due to incompetency to stand trial, constitutes the crime of Unlawful Possession of a Firearm in the second degree, a class C felony.

Court Notifications Upon Loss of Firearm Rights. When a person loses the right to possess firearms based on an involuntary detention or commitment or dismissal of nonfelony criminal charges based on incompetency to stand trial, the court must send a copy of the person's driver's license, identicard, or comparable information to the Department of Licensing, the Washington State Patrol (WSP), and the National Instant Criminal Background Check System.

Restoration of Firearm Rights.

A person who has been involuntarily committed or detained for mental health treatment or had criminal charges dismissed based on incompetency to stand trial may petition a court for restoration of firearm rights. The person must show by a preponderance of the evidence that the person: is no longer required to participate in court-ordered treatment; has successfully managed the condition, and is unlikely to suffer a recurrence of symptoms

related to the commitment, detention, or incompetency; and does not present a substantial danger to self or the public. If the person engaged in violence and will likely engage in violence after restoration, the person must show by clear, cogent, and convincing evidence that the person does not present a substantial danger to the safety of others.

Release of Information by Mental Health Service Agencies.

Mental health service agencies must release certain information upon request to law enforcement officers, city or county jail personnel, DCRs, public health officers, therapeutic court personnel, and Department of Corrections personnel when requested for specified purposes and in the course of carrying out official duties. Information that must be disclosed includes: the fact, place, and date of an involuntary commitment and discharge from commitment; and information concerning a person who has been convicted or found not guilty by reason of insanity of a serious violent offense, or charged with a serious violent offense and charges were dismissed based on incompetency to stand trial. An agency's legal counsel may release the information on behalf of the agency.

Appropriate purposes for requesting the information include: completing presentence investigations or risk assessment reports, assessing a person's risk to the community or risk of harm to self or other when confined in a jail, or planning for and provision of supervision of an offender. The information may only be requested where there is a reasonable suspicion that the subject of the information either: has engaged in, or is likely to engage in, the commission of a crime or violation of community custody or parole; or is exhibiting signs of deterioration in mental functioning that may make the person appropriate for civil commitment.

Summary of Amended Bill:

A court must issue an order prohibiting a person from possessing firearms if felony charges against the person are dismissed based on incompetency to stand trial. The court must notify the person orally and in writing that the person must immediately surrender all firearms and any concealed pistol license to local law enforcement, and that the person may not possess a firearm unless the right is restored by the superior court that issued the order. Possession of a firearm by a person who has had felony charges dismissed based on incompetency to stand trial constitutes the crime of Unlawful Possession of a Firearm in the second degree, unless the person's right to possess a firearm has been restored.

When a person loses firearms rights based on an involuntary detention or commitment for mental health treatment or dismissal of charges based on incompetency to stand trial, the court must forward the person's identifying information to the criminal division of the county prosecutor in the county of commitment, or the county in which charges are dismissed or the initial detention petition was filed, as applicable. In addition, the information is transmitted to the WSP Firearms Background Check Program, rather than the WSP.

An additional requirement is added for restoration of firearm rights lost based on a commitment or detention for mental health treatment or a dismissal of charges based on incompetency to stand trial. The court may not restore the petitioner's firearm rights if there is an active extreme risk protection order or an order to surrender and prohibit weapons entered against the petitioner.

A county prosecutor or assistant attorney general who represents a mental health service agency for the purpose of involuntary commitment proceedings may release information on behalf of the mental health service agency. A mental health service agency may release information to city or county prosecutors for the purpose of carrying out their official duties. Assessing the need for an extreme risk protection order is added as an appropriate purpose for requesting information. Information may be requested when there is reasonable suspicion that the subject of the information is associated with a recent ITA detention or commitment order, or order of commitment or dismissal of charges based on incompetency to stand trial. Information received by a requestor may be shared with a prosecuting attorney who is carrying out official duties.

Appropriation: None.

Fiscal Note: Requested on February 21, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Many individuals who have been charged with a felony and found not competent are actually not being ordered into competency restoration treatment, and the case is just being dismissed. This means that individuals charged with a felony who are found not competent and ordered to restoration treatment lose their right to possess a firearm, but individuals who are charged with a felony and found not competent where the case is dismissed without restoration treatment continue to have firearms rights. The bill fixes that loophole to make sure that all individuals who have been charged with a felony and found to be not competent are treated the same way.

The bill addresses an additional loophole relating to transmission of information. When a person is civilly committed as being a danger to self or others and is ordered to surrender firearms, that information is not being transmitted to the criminal division of the prosecutor's office, so they are not in a position to effectuate that firearm surrender or file for an extreme risk protection order. The bill addresses this by requiring information on persons who have lost firearm rights to be sent to the criminal division of the prosecutor's office.

(Opposed) None.

Persons Testifying: Senator Manka Dhingra, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.