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**SENATE BILL 6491**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** Senators Hargrove and Long; by request of Department of Social and Health Services and Department of Veterans Affairs

Read first time 01/16/96. Referred to Committee on Law & Justice.

1 AN ACT Relating to amendments to the violence reduction act to  
2 ensure the right of persons who receive mental health treatment;  
3 amending RCW 9.41.040, 9.41.047, and 18.51.010; repealing RCW  
4 71.12.560; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 9.41.040 and 1995 c 129 s 16 (Initiative Measure No.  
7 159) are each amended to read as follows:

8 UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST AND SECOND DEGREE«  
9 OWNERSHIP, POSSESSION OF FIREARMS PROHIBITED FROM CERTAIN PERSONS.

10 (1)(a) A person, whether an adult or juvenile, is guilty of the crime  
11 of unlawful possession of a firearm in the first degree, if the person  
12 owns, has in his or her possession, or has in his or her control any  
13 firearm after having previously been convicted in this state or  
14 elsewhere of any serious offense as defined in this chapter,  
15 residential burglary, reckless endangerment in the first degree, any  
16 felony violation of the uniform controlled substances act, chapter  
17 69.50 RCW, classified as a class A or class B felony, or with a maximum  
18 sentence of at least ten years, or both, or equivalent statutes of

1 another jurisdiction, except as otherwise provided in subsection (3) or  
2 (4) of this section;

3 (b) A person, whether an adult or juvenile, is guilty of the crime  
4 of unlawful possession of a firearm in the second degree, if the person  
5 does not qualify under (a) of this subsection for the crime of unlawful  
6 possession of a firearm in the first degree and the person owns, has in  
7 his or her possession, or has in his or her control any firearm:

8 (i) After having previously been convicted of any remaining felony  
9 violation of the uniform controlled substances act, chapter 69.50 RCW,  
10 or equivalent statutes of another jurisdiction not specifically listed  
11 as prohibiting firearm possession under (a) of this subsection, any  
12 remaining felony in which a firearm was used or displayed and the  
13 felony is not specifically listed as prohibiting firearm possession  
14 under (a) of this subsection, any domestic violence offense enumerated  
15 in RCW 10.99.020(~~(+2)~~)(3), or any harassment offense enumerated in RCW  
16 9A.46.060, except as otherwise provided in subsection (3) or (4) of  
17 this section;

18 (ii) After having previously been convicted on three occasions  
19 within five years of driving a motor vehicle or operating a vessel  
20 while under the influence of intoxicating liquor or any drug, unless  
21 his or her right to possess a firearm has been restored as provided in  
22 RCW 9.41.047;

23 (iii) After having (~~previously~~) been involuntarily committed for  
24 (~~mental health~~) treatment of a mental disorder for a period exceeding  
25 fourteen days under RCW 71.05.320(~~(7)~~) or 71.34.090(~~(7, chapter 10.77~~  
26 ~~RCW)~~) or having been committed or detained pursuant to the criminal  
27 insanity procedures under RCW 10.77.090 or 10.77.110, or equivalent  
28 statutes of another jurisdiction, unless his or her right to possess a  
29 firearm has been restored as provided in RCW 9.41.047; and/or

30 (iv) If the person is under eighteen years of age, except as  
31 provided in RCW 9.41.042.

32 (2)(a) Unlawful possession of a firearm in the first degree is a  
33 class B felony, punishable under chapter 9A.20 RCW.

34 (b) Unlawful possession of a firearm in the second degree is a  
35 class C felony, punishable under chapter 9A.20 RCW.

36 (3) As used in this section, a person has been "convicted" at such  
37 time as a plea of guilty has been accepted or a verdict of guilty has  
38 been filed, notwithstanding the pendency of any future proceedings  
39 including but not limited to sentencing or disposition, post-trial or

1 post-factfinding motions, and appeals. A person shall not be precluded  
2 from possession of a firearm if the conviction has been the subject of  
3 a pardon, annulment, certificate of rehabilitation, or other equivalent  
4 procedure based on a finding of the rehabilitation of the person  
5 convicted or the conviction or disposition has been the subject of a  
6 pardon, annulment, or other equivalent procedure based on a finding of  
7 innocence.

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

24 (a) Under RCW 9.41.047; and/or

25 (b) After five or more consecutive years in the community without  
26 being convicted or currently charged with any felony, gross  
27 misdemeanor, or misdemeanor crimes, if the individual has no prior  
28 felony convictions that prohibit the possession of a firearm counted as  
29 part of the offender score under RCW 9.94A.360.

30 (5)(a) A person who has been committed by court order for treatment  
31 of mental disorder under RCW 71.05.320 or chapter 10.77 RCW, or  
32 equivalent statutes of another jurisdiction, may not possess, in any  
33 manner, a firearm as defined in RCW 9.41.010.

34 (b) At the time of involuntary commitment, the court shall  
35 specifically state to the person under (a) of this subsection and give  
36 the person notice in writing that the person is barred from possession  
37 of firearms.

38 (c) The secretary of social and health services shall develop  
39 appropriate rules to create a process under this subsection. The rules

1 must provide for the immediate restoration of the right to possess a  
2 firearm upon a showing in a court of competent jurisdiction that a  
3 person no longer is required to participate in an inpatient or  
4 outpatient treatment program, and is no longer required to take  
5 medication to treat any condition related to the commitment. Unlawful  
6 possession of a firearm under this subsection shall be punished as a  
7 class C felony under chapter 9A.20 RCW.

8 (6) In addition to any other penalty provided for by law, if a  
9 person under the age of eighteen years is found by a court to have  
10 possessed a firearm in a vehicle in violation of subsection (1) of this  
11 section or to have committed an offense while armed with a firearm  
12 during which offense a motor vehicle served an integral function, the  
13 court shall notify the department of licensing within twenty-four hours  
14 and the person's privilege to drive shall be revoked under RCW  
15 46.20.265.

16 ((+6)) (7) Nothing in chapter 129, Laws of 1995 shall ever be  
17 construed or interpreted as preventing an offender from being charged  
18 and subsequently convicted for the separate felony crimes of theft of  
19 a firearm or possession of a stolen firearm, or both, in addition to  
20 being charged and subsequently convicted under this section for  
21 unlawful possession of a firearm in the first or second degree.  
22 Notwithstanding any other law, if the offender is convicted under this  
23 section for unlawful possession of a firearm in the first or second  
24 degree and for the felony crimes of theft of a firearm or possession of  
25 a stolen firearm, or both, then the offender shall serve consecutive  
26 sentences for each of the felony crimes of conviction listed in this  
27 subsection.

28 ((+7)) (8) Each firearm unlawfully possessed under this section  
29 shall be a separate offense.

30 **Sec. 2.** RCW 9.41.047 and 1994 sp.s. c 7 s 404 are each amended to  
31 read as follows:

32 (1)((+a)) At the time a person is convicted of an offense making  
33 the person ineligible to possess a firearm, or at the time a person is  
34 committed by court order under RCW 71.05.320((7)) or 71.34.090((7—~~or~~  
35 ~~chapter 10.77 RCW for mental health treatment~~)) or is committed or  
36 detained under RCW 10.77.090 or 10.77.110, the convicting or committing  
37 court shall notify the person, orally and in writing, that the person

1 may not possess a firearm unless his or her right to do so is restored  
2 by a court of record.

3 The convicting or committing court also shall forward a copy of the  
4 person's driver's license or identicard, or comparable information, to  
5 the department of licensing, along with the date of conviction or  
6 commitment.

7 (2) Upon receipt of the information provided for by subsection (1)  
8 of this section, the department of licensing shall determine if the  
9 convicted or committed person has a concealed pistol license. If the  
10 person does have a concealed pistol license, the department of  
11 licensing shall immediately notify the license-issuing authority.

12 (3) A person who is prohibited from possessing a firearm by reason  
13 of having previously been convicted on three occasions of driving a  
14 motor vehicle or operating a vessel while under the influence of  
15 intoxicating liquor or any drug may, after five continuous years  
16 without further conviction for any alcohol-related offense, petition a  
17 court of record to have his or her right to possess a firearm restored.

18 (4)(a) A person who is prohibited from possessing a firearm, by  
19 reason of having been (~~either~~

20 ~~(ii))~~) involuntarily committed (~~for mental health treatment~~)  
21 under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent  
22 statutes of another jurisdiction, may, upon discharge, petition a court  
23 of record to have his or her right to possess a firearm restored.

24 (b) At a minimum, a petition under this subsection (4) shall  
25 include the following:

26 (i) The fact, date, and place of commitment;

27 (ii) The place of treatment;

28 (iii) The fact and date of release from commitment;

29 (iv) A certified copy of the most recent order, if one exists, of  
30 commitment, with the findings of fact and conclusions of law; and

31 (v) A statement by the person that he or she is no longer required  
32 to participate in an inpatient or outpatient treatment program, is no  
33 longer required to take medication to treat any condition related to  
34 the commitment, and does not present a substantial danger to himself or  
35 herself, to others, or to the public safety.

36 (c) A person petitioning the court under this subsection (4) shall  
37 bear the burden of proving by a preponderance of the evidence that the  
38 circumstances resulting in the commitment no longer exist and are not  
39 reasonably likely to recur.

1       **Sec. 3.** RCW 18.51.010 and 1983 c 236 s 1 are each amended to read  
2 as follows:

3       (1) "Nursing home" means any home, place or institution which  
4 operates or maintains facilities providing convalescent or chronic  
5 care, or both, for a period in excess of twenty-four consecutive hours  
6 for three or more patients not related by blood or marriage to the  
7 operator, who by reason of illness or infirmity, are unable properly to  
8 care for themselves. Convalescent and chronic care may include but not  
9 be limited to any or all procedures commonly employed in waiting on the  
10 sick, such as administration of medicines, preparation of special  
11 diets, giving of bedside nursing care, application of dressings and  
12 bandages, and carrying out of treatment prescribed by a duly licensed  
13 practitioner of the healing arts. It may also include care of mentally  
14 incompetent persons. It may also include community-based care.  
15 Nothing in this definition shall be construed to include general  
16 hospitals or other places which provide care and treatment for the  
17 acutely ill and maintain and operate facilities for major surgery or  
18 obstetrics, or both. Nothing in this definition shall be construed to  
19 include any boarding home, guest home, hotel or related institution  
20 which is held forth to the public as providing, and which is operated  
21 to give only board, room and laundry to persons not in need of medical  
22 or nursing treatment or supervision except in the case of temporary  
23 acute illness. The mere designation by the operator of any place or  
24 institution as a hospital, sanitarium, or any other similar name, which  
25 does not provide care for the acutely ill and maintain and operate  
26 facilities for major surgery or obstetrics, or both, shall not exclude  
27 such place or institution from the provisions of this chapter:  
28 PROVIDED, That any nursing home providing psychiatric treatment shall,  
29 with respect to patients receiving such treatment, comply with ((the  
30 ~~provisions of~~)) RCW ((~~71.12.560 and~~)) 71.12.570.

31       (2) "Person" means any individual, firm, partnership, corporation,  
32 company, association, or joint stock association, and the legal  
33 successor thereof.

34       (3) "Secretary" means the secretary of the department of social and  
35 health services.

36       (4) "Department" means the state department of social and health  
37 services.

38       (5) "Community-based care" means but is not limited to the  
39 following:

- 1 (a) Home delivered nursing services;
- 2 (b) Personal care;
- 3 (c) Day care;
- 4 (d) Nutritional services, both in-home and in a communal dining
- 5 setting;
- 6 (e) Habilitation care; and
- 7 (f) Respite care.

8 NEW SECTION. **Sec. 4.** RCW 71.12.560 and 1994 sp.s. c 7 s 441, 1974  
9 ex.s. c 145 s 1, 1973 1st ex.s. c 142 s 1, & 1959 c 25 s 71.12.560 are  
10 each repealed.

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