
SENATE BILL 5450

State of Washington

55th Legislature

1997 Regular Session

By Senators Wojahn, Deccio, Prentice, Thibaudeau, Kline, Fairley, Sheldon, Patterson, Brown, Spanel, McAuliffe, Snyder, Kohl, Winsley and Rasmussen

Read first time 01/27/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to domestic violence; amending RCW 9.41.040; and
2 prescribing penalties.

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

4 **Sec. 1.** RCW 9.41.040 and 1996 c 295 s 2 are each amended to read
5 as follows:

6 (1)(a) A person, whether an adult or juvenile, is guilty of the
7 crime of unlawful possession of a firearm in the first degree, if the
8 person owns, has in his or her possession, or has in his or her control
9 any firearm after having previously been convicted in this state or
10 elsewhere of any serious offense as defined in this chapter.

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

16 (i) After having previously been convicted in this state or
17 elsewhere of:

18 (A) Any felony not specifically listed as prohibiting firearm
19 possession under (a) of this subsection(~~(7- or)~~);

1 (B) Any of the following crimes when committed by one family or
2 household member against another, committed on or after July 1, 1993:
3 Assault in the fourth degree, coercion, stalking, reckless endangerment
4 in the second degree, criminal trespass in the first degree, or
5 violation of the provisions of a protection order or no-contact order
6 restraining the person or excluding the person from a residence (RCW
7 26.50.060, 26.50.070, 26.50.130, or 10.99.040); or

8 (C) Any of the following crimes when committed by one family or
9 household member against another, committed on or after the effective
10 date of this section: Criminal trespass in the second degree under RCW
11 9A.52.080, malicious mischief in the third degree under RCW 9A.48.090,
12 or violation of a restraining order under RCW 26.09.300;

13 (ii) After having previously been involuntarily committed for
14 mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77
15 RCW, or equivalent statutes of another jurisdiction, unless his or her
16 right to possess a firearm has been restored as provided in RCW
17 9.41.047;

18 (iii) If the person is under eighteen years of age, except as
19 provided in RCW 9.41.042; and/or

20 (iv) If the person is free on bond or personal recognizance pending
21 trial, appeal, or sentencing for a serious offense as defined in RCW
22 9.41.010.

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

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

27 (3) Notwithstanding RCW 9.41.047 or any other provisions of law, as
28 used in this chapter, a person has been "convicted", whether in an
29 adult court or adjudicated in a juvenile court, at such time as a plea
30 of guilty has been accepted, or a verdict of guilty has been filed,
31 notwithstanding the pendency of any future proceedings including but
32 not limited to sentencing or disposition, post-trial or post-
33 factfinding motions, and appeals. Conviction includes a dismissal
34 entered after a period of probation, suspension or deferral of
35 sentence, and also includes equivalent dispositions by courts in
36 jurisdictions other than Washington state. A person shall not be
37 precluded from possession of a firearm if the conviction has been the
38 subject of a pardon, annulment, certificate of rehabilitation, or other
39 equivalent procedure based on a finding of the rehabilitation of the

1 person convicted or the conviction or disposition has been the subject
2 of a pardon, annulment, or other equivalent procedure based on a
3 finding of innocence. Where no record of the court's disposition of
4 the charges can be found, there shall be a rebuttable presumption that
5 the person was not convicted of the charge.

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

22 (a) Under RCW 9.41.047; and/or

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

29 (ii) If the conviction was for a nonfelony offense, after three or
30 more consecutive years in the community without being convicted or
31 currently charged with any felony, gross misdemeanor, or misdemeanor
32 crimes, if the individual has no prior felony convictions that prohibit
33 the possession of a firearm counted as part of the offender score under
34 RCW 9.94A.360 and the individual has completed all conditions of the
35 sentence.

36 (5) In addition to any other penalty provided for by law, if a
37 person under the age of eighteen years is found by a court to have
38 possessed a firearm in a vehicle in violation of subsection (1) of this
39 section or to have committed an offense while armed with a firearm

1 during which offense a motor vehicle served an integral function, the
2 court shall notify the department of licensing within twenty-four hours
3 and the person's privilege to drive shall be revoked under RCW
4 46.20.265.

5 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed or
6 interpreted as preventing an offender from being charged and
7 subsequently convicted for the separate felony crimes of theft of a
8 firearm or possession of a stolen firearm, or both, in addition to
9 being charged and subsequently convicted under this section for
10 unlawful possession of a firearm in the first or second degree.
11 Notwithstanding any other law, if the offender is convicted under this
12 section for unlawful possession of a firearm in the first or second
13 degree and for the felony crimes of theft of a firearm or possession of
14 a stolen firearm, or both, then the offender shall serve consecutive
15 sentences for each of the felony crimes of conviction listed in this
16 subsection.

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

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