
HOUSE BILL 2742

State of Washington

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By Representatives Carrell, O'Brien, Lambert, Esser, Cairnes, Boldt, Mielke, Benson, Talcott, Barlean, Lisk, McMorris, Mulliken, Delvin, Sump and Fortunato

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1 AN ACT Relating to restoration of the right to possess a firearm;
2 amending RCW 9.41.040, 9.41.010, and 9.41.047; creating a new section;
3 prescribing penalties; and declaring an emergency.

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

5 **Sec. 1.** RCW 9.41.040 and 1997 c 338 s 47 are each amended to read
6 as follows:

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

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

17 (i) After having previously been convicted in this state or
18 elsewhere of any felony not specifically listed as prohibiting firearm
19 possession under (a) of this subsection, or any of the following crimes

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

7 (ii) After having previously been involuntarily committed for
8 mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77
9 RCW, or equivalent statutes of another jurisdiction, unless his or her
10 right to possess a firearm has been restored as provided in RCW
11 9.41.047;

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

14 (iv) If the person is free on bond or personal recognizance pending
15 trial, appeal, or sentencing for a serious offense as defined in RCW
16 9.41.010.

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

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

21 (3) Notwithstanding RCW 9.41.047 or any other provisions of law, as
22 used in this chapter, a person has been "convicted", whether in an
23 adult court or adjudicated in a juvenile court, at such time as a plea
24 of guilty has been accepted, or a verdict of guilty has been filed,
25 notwithstanding the pendency of any future proceedings including but
26 not limited to sentencing or disposition, post-trial or post-
27 factfinding motions, and appeals. Conviction includes a dismissal
28 entered after a period of probation, suspension or deferral of
29 sentence, and also includes equivalent dispositions by courts in
30 jurisdictions other than Washington state. A person shall not be
31 precluded from possession of a firearm if the conviction has been the
32 subject of a pardon, annulment, certificate of rehabilitation, or other
33 equivalent procedure based on a finding of the rehabilitation of the
34 person convicted or the conviction or disposition has been the subject
35 of a pardon, annulment, or other equivalent procedure based on a
36 finding of innocence. Where no record of the court's disposition of
37 the charges can be found, there shall be a rebuttable presumption that
38 the person was not convicted of the charge.

1 (4) Notwithstanding subsection (1) of this section, a person
2 convicted of an offense prohibiting the possession of a firearm under
3 this section other than murder, manslaughter, robbery, rape, indecent
4 liberties, arson, assault, kidnapping, extortion, burglary, or
5 violations with respect to controlled substances under RCW 69.50.401(a)
6 and 69.50.410, who received a probationary sentence under RCW 9.95.200,
7 and who received a dismissal of the charge under RCW 9.95.240, shall
8 not be precluded from possession of a firearm as a result of the
9 conviction.

10 (5) Notwithstanding any other provisions of this section, if a
11 person is prohibited from possession of a firearm under subsection (1)
12 of this section and has not previously been convicted of a sex offense
13 prohibiting firearm ownership under subsection (1) of this section
14 and/or any felony defined under any law as a class A felony or with a
15 maximum sentence of at least twenty years, or both, the individual may
16 petition a court of record to have his or her right to possess a
17 firearm restored:

18 (a) Under RCW 9.41.047; and/or

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

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

34 (iii) If the conviction was for an offense committed by an
35 individual under the age of eighteen who was armed with a firearm
36 during the commission of the offense, after ten or more consecutive
37 years in the community without being convicted or currently charged
38 with any felony, gross misdemeanor, or misdemeanor crimes, if the
39 individual has no prior felony convictions that prohibit the possession

1 of a firearm counted as part of the offender score under RCW 9.94A.360
2 and has completed all conditions of the sentence.

3 ((+5)) (6) In addition to any other penalty provided for by law,
4 if a person under the age of eighteen years is found by a court to have
5 possessed a firearm in a vehicle in violation of subsection (1) of this
6 section or to have committed an offense while armed with a firearm
7 during which offense a motor vehicle served an integral function, the
8 court shall notify the department of licensing within twenty-four hours
9 and the person's privilege to drive shall be revoked under RCW
10 46.20.265.

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

23 ((+7)) (8) Each firearm unlawfully possessed under this section
24 shall be a separate offense.

25 **Sec. 2.** RCW 9.41.010 and 1997 c 338 s 46 are each amended to read
26 as follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

29 (1) "Firearm" means a weapon or device from which a projectile or
30 projectiles may be fired by an explosive such as gunpowder.

31 (2) "Pistol" means any firearm with a barrel less than sixteen
32 inches in length, or is designed to be held and fired by the use of a
33 single hand.

34 (3) "Rifle" means a weapon designed or redesigned, made or remade,
35 and intended to be fired from the shoulder and designed or redesigned,
36 made or remade, and intended to use the energy of the explosive in a
37 fixed metallic cartridge to fire only a single projectile through a
38 rifled bore for each single pull of the trigger.

1 (4) "Short-barreled rifle" means a rifle having one or more barrels
2 less than sixteen inches in length and any weapon made from a rifle by
3 any means of modification if such modified weapon has an overall length
4 of less than twenty-six inches.

5 (5) "Shotgun" means a weapon with one or more barrels, designed or
6 redesigned, made or remade, and intended to be fired from the shoulder
7 and designed or redesigned, made or remade, and intended to use the
8 energy of the explosive in a fixed shotgun shell to fire through a
9 smooth bore either a number of ball shot or a single projectile for
10 each single pull of the trigger.

11 (6) "Short-barreled shotgun" means a shotgun having one or more
12 barrels less than eighteen inches in length and any weapon made from a
13 shotgun by any means of modification if such modified weapon has an
14 overall length of less than twenty-six inches.

15 (7) "Machine gun" means any firearm known as a machine gun,
16 mechanical rifle, submachine gun, or any other mechanism or instrument
17 not requiring that the trigger be pressed for each shot and having a
18 reservoir clip, disc, drum, belt, or other separable mechanical device
19 for storing, carrying, or supplying ammunition which can be loaded into
20 the firearm, mechanism, or instrument, and fired therefrom at the rate
21 of five or more shots per second.

22 (8) "Antique firearm" means a firearm or replica of a firearm not
23 designed or redesigned for using rim fire or conventional center fire
24 ignition with fixed ammunition and manufactured in or before 1898,
25 including any matchlock, flintlock, percussion cap, or similar type of
26 ignition system and also any firearm using fixed ammunition
27 manufactured in or before 1898, for which ammunition is no longer
28 manufactured in the United States and is not readily available in the
29 ordinary channels of commercial trade.

30 (9) "Loaded" means:

31 (a) There is a cartridge in the chamber of the firearm;

32 (b) Cartridges are in a clip that is locked in place in the
33 firearm;

34 (c) There is a cartridge in the cylinder of the firearm, if the
35 firearm is a revolver;

36 (d) There is a cartridge in the tube or magazine that is inserted
37 in the action; or

38 (e) There is a ball in the barrel and the firearm is capped or
39 primed if the firearm is a muzzle loader.

1 (10) "Dealer" means a person engaged in the business of selling
2 firearms at wholesale or retail who has, or is required to have, a
3 federal firearms license under 18 U.S.C. Sec. 923(a). A person who
4 does not have, and is not required to have, a federal firearms license
5 under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only
6 occasional sales, exchanges, or purchases of firearms for the
7 enhancement of a personal collection or for a hobby, or sells all or
8 part of his or her personal collection of firearms.

9 (11) (~~"Crime of violence" means:~~

10 ~~(a) Any of the following felonies, as now existing or hereafter~~
11 ~~amended: Any felony defined under any law as a class A felony or an~~
12 ~~attempt to commit a class A felony, criminal solicitation of or~~
13 ~~criminal conspiracy to commit a class A felony, manslaughter in the~~
14 ~~first degree, manslaughter in the second degree, indecent liberties if~~
15 ~~committed by forcible compulsion, kidnapping in the second degree,~~
16 ~~arson in the second degree, assault in the second degree, assault of a~~
17 ~~child in the second degree, extortion in the first degree, burglary in~~
18 ~~the second degree, residential burglary, and robbery in the second~~
19 ~~degree;~~

20 ~~(b) Any conviction for a felony offense in effect at any time prior~~
21 ~~to June 6, 1996, which is comparable to a felony classified as a crime~~
22 ~~of violence in (a) of this subsection; and~~

23 ~~(c) Any federal or out of state conviction for an offense~~
24 ~~comparable to a felony classified as a crime of violence under (a) or~~
25 ~~(b) of this subsection.~~

26 ~~(12))~~ "Serious offense" means any of the following felonies or a
27 felony attempt to commit any of the following felonies, as now existing
28 or hereafter amended:

29 (a) Any crime of violence, which means any of the following
30 felonies, as now existing or hereafter amended:

31 (i) Any felony defined under any law as a class A felony or an
32 attempt to commit a class A felony, criminal solicitation of or
33 criminal conspiracy to commit a class A felony, manslaughter in the
34 first degree, manslaughter in the second degree, indecent liberties if
35 committed by forcible compulsion, kidnapping in the second degree,
36 arson in the second degree, assault in the second degree, assault of a
37 child in the second degree, extortion in the first degree, burglary in
38 the second degree, residential burglary, and robbery in the second
39 degree;

1 (ii) Any conviction for a felony offense in effect at any time
2 prior to June 6, 1996, which is comparable to a felony classified as a
3 crime of violence in (a)(i) of this subsection; and

4 (iii) Any federal or out-of-state conviction for an offense
5 comparable to a felony classified as a crime of violence under (a)(i)
6 or (ii) of this subsection;

7 (b) Any felony violation of the uniform controlled substances act,
8 chapter 69.50 RCW, that is classified as a class B felony or that has
9 a maximum term of imprisonment of at least ten years;

10 (c) Child molestation in the second degree;

11 (d) Incest when committed against a child under age fourteen;

12 (e) Indecent liberties;

13 (f) Leading organized crime;

14 (g) Promoting prostitution in the first degree;

15 (h) Rape in the third degree;

16 (i) Drive-by shooting;

17 (j) Sexual exploitation;

18 (k) Vehicular assault;

19 (l) Vehicular homicide, when proximately caused by the driving of
20 any vehicle by any person while under the influence of intoxicating
21 liquor or any drug as defined by RCW 46.61.502, or by the operation of
22 any vehicle in a reckless manner;

23 (m) Any other class B felony offense with a finding of sexual
24 motivation, as "sexual motivation" is defined under RCW 9.94A.030;

25 (n) Any other felony with a deadly weapon verdict under RCW
26 9.94A.125; or

27 (o) Any felony offense in effect at any time prior to June 6, 1996,
28 that is comparable to a serious offense, or any federal or out-of-state
29 conviction for an offense that under the laws of this state would be a
30 felony classified as a serious offense.

31 (~~(13)~~) (12) "Law enforcement officer" includes a general
32 authority Washington peace officer as defined in RCW 10.93.020, or a
33 specially commissioned Washington peace officer as defined in RCW
34 10.93.020. "Law enforcement officer" also includes a limited authority
35 Washington peace officer as defined in RCW 10.93.020 if such officer is
36 duly authorized by his or her employer to carry a concealed pistol.

37 (~~(14)~~) (13) "Felony" means any felony offense under the laws of
38 this state or any federal or out-of-state offense comparable to a
39 felony offense under the laws of this state.

1 (~~(15)~~) (14) "Sell" refers to the actual approval of the delivery
2 of a firearm in consideration of payment or promise of payment of a
3 certain price in money.

4 (~~(16)~~) (15) "Barrel length" means the distance from the bolt face
5 of a closed action down the length of the axis of the bore to the crown
6 of the muzzle, or in the case of a barrel with attachments to the end
7 of any legal device permanently attached to the end of the muzzle.

8 (~~(17)~~) (16) "Family or household member" means "family" or
9 "household member" as used in RCW 10.99.020.

10 **Sec. 3.** RCW 9.41.047 and 1996 c 295 s 3 are each amended to read
11 as follows:

12 (1) At the time a person is convicted or found not guilty by reason
13 of insanity of an offense making the person ineligible to possess a
14 firearm, or at the time a person is committed by court order under RCW
15 71.05.320, 71.34.090, or chapter 10.77 RCW for mental health treatment,
16 the convicting or committing court shall notify the person, orally and
17 in writing, that the person must immediately surrender any concealed
18 pistol license and that the person may not possess a firearm unless his
19 or her right to do so is restored by a court of record. For purposes
20 of this section a convicting court includes a court in which a person
21 has been found not guilty by reason of insanity.

22 The convicting or committing court also shall forward a copy of the
23 person's driver's license or identicard, or comparable information, to
24 the department of licensing, along with the date of conviction or
25 commitment.

26 (2) Upon receipt of the information provided for by subsection (1)
27 of this section, the department of licensing shall determine if the
28 convicted or committed person has a concealed pistol license. If the
29 person does have a concealed pistol license, the department of
30 licensing shall immediately notify the license-issuing authority which,
31 upon receipt of such notification, shall immediately revoke the
32 license.

33 (3)(a) A person who is prohibited from possessing a firearm, by
34 reason of having been involuntarily committed for mental health
35 treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or
36 equivalent statutes of another jurisdiction may, upon discharge,
37 petition a court of record to have his or her right to possess a
38 firearm restored. At the time of commitment, the court shall

1 specifically state to the person that he or she is barred from
2 possession of firearms.

3 (b) The secretary of social and health services shall develop
4 appropriate rules to create an approval process under this subsection.
5 The rules must provide for the restoration of the right to possess a
6 firearm upon a showing in a court of competent jurisdiction that the
7 person is no longer required to participate in an inpatient or
8 outpatient treatment program, is no longer required to take medication
9 to treat any condition related to the commitment, and does not present
10 a substantial danger to himself or herself, others, or the public.
11 Unlawful possession of a firearm under this subsection shall be
12 punished as a class C felony under chapter 9A.20 RCW.

13 (c) A person petitioning the court under this subsection (3) shall
14 bear the burden of proving by a preponderance of the evidence that the
15 circumstances resulting in the commitment no longer exist and are not
16 reasonably likely to recur and by clear, cogent, and convincing
17 evidence that he or she does not present a substantial danger to the
18 safety of others.

19 (4) No person who has been found not guilty by reason of insanity
20 may petition a court for restoration of the right to possess a firearm
21 unless the person meets the requirements for the restoration of the
22 right to possess a firearm that would have applied under RCW
23 9.41.040(4) if the person had been found guilty of the crime.

24 NEW SECTION. Sec. 4. If any part of this act is found to be in
25 conflict with federal requirements, the conflicting part of this act is
26 hereby declared to be inoperative solely to the extent of the conflict,
27 and such finding or determination does not affect the operation of the
28 remainder of this act. Rules adopted under this act must meet federal
29 requirements.

30 NEW SECTION. Sec. 5. If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

34 NEW SECTION. Sec. 6. This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately.

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