

---

HOUSE BILL 3062

---

State of Washington                      56th Legislature                      2000 Regular Session

By Representatives Carrell, O'Brien, McDonald and Ballasiotes

Read first time 01/26/2000. Referred to Committee on Judiciary.

1            AN ACT Relating to establishing qualifications to reckless  
2 endangerment involving certain weapons; amending RCW 9A.36.050;  
3 creating a new section; and prescribing penalties.

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

5            NEW SECTION.    **Sec. 1.** (1) Parents of minors, and other persons who  
6 supervise or care for minors, have a duty to protect such minors. That  
7 duty is at its greatest when minors are very young, and the extent and  
8 nature of the duty changes as minors mature. As minors mature, they  
9 have an increasing duty to take responsibility for their own actions.

10            (2) The law has long recognized that minors below a certain age  
11 cannot be held criminally liable for their actions, but the law has  
12 also provided that as minors mature they become increasingly subject to  
13 such liability. Specifically, under RCW 9A.04.050:

14            (a) Minors under the age of eight are incapable of committing  
15 crimes;

16            (b) Minors ages eight through eleven are presumed to be incapable  
17 of committing crimes, but this presumption may be overcome by proof  
18 that a minor has sufficient capacity to understand his or her actions  
19 and to know if those actions are wrong; and

1 (c) Minors age twelve and older are capable of committing crimes.

2 (3) In the pursuit of justice it is essential that the duty of  
3 parents, and the maturity and capacity of minors, be appropriately  
4 evaluated and weighed in making decisions regarding criminal  
5 culpability.

6 (4) It is the intent of the legislature that in criminal matters  
7 arising under RCW 9A.36.050, careful consideration should be given to  
8 the following:

9 (a) The responsibilities of persons with a duty to supervise or  
10 care for any minor involved, such as the minor's parent, and the age  
11 and maturity of any minor involved. To the extent a minor lacks the  
12 maturity to take responsibility for his or her own actions, a person  
13 with a duty to supervise or care for the minor ought to bear a greater  
14 degree of responsibility for the actions of the minor. Conversely, to  
15 the extent a minor is mature enough to take responsibility and to be  
16 tried for a crime, a person with a duty to supervise or care for the  
17 minor ought to bear a lesser degree of responsibility for the actions  
18 of the minor;

19 (b) Maintaining a reasonable balance between an individual's  
20 constitutional right to self-protection and the individual's  
21 corresponding obligation to exercise that right in a responsible  
22 manner;

23 (c) Promoting public safety, maintaining public confidence in the  
24 criminal justice system, and upholding the right of victims and their  
25 families to see justice done. Where criminal conduct results in death  
26 or serious injury, prosecutors should clearly and concisely justify a  
27 decision not to prosecute in a particular case.

28 **Sec. 2.** RCW 9A.36.050 and 1997 c 338 s 45 are each amended to read  
29 as follows:

30 (1) A person is guilty of reckless endangerment when he or she  
31 recklessly:

32 (a) Engages in conduct ((not amounting to drive by shooting but))  
33 that creates a substantial risk of death or serious physical injury to  
34 another person; or

35 (b) Fails to engage in conduct and the failure creates a  
36 substantial risk of death or serious physical injury to another person.

37 (2) For purposes of this section, a person recklessly engages in  
38 conduct or recklessly fails to engage in conduct when he or she knows

1 of and disregards a substantial risk that death or serious physical  
2 injury to another person may occur and his or her disregard of such  
3 substantial risk through commission or omission is a gross deviation  
4 from what a reasonable person would do or would not do in the same  
5 situation.

6 (3) Reckless endangerment is a gross misdemeanor.

7 (4) If a charge of reckless endangerment is considered or brought  
8 under this section because a person stored or left a loaded firearm in  
9 a location where the person knew, or reasonably should have known, that  
10 a minor or mentally incompetent person was likely to gain access to the  
11 loaded firearm, whether or not a minor or mentally incompetent person  
12 actually obtained possession of the loaded firearm, subsections (5)  
13 through (12) of this section apply.

14 (5) It is not reckless endangerment under the circumstances  
15 described in subsection (4) of this section if:

16 (a) The minor or mentally incompetent person had access to the  
17 loaded firearm under the supervision of an adult; or

18 (b) The minor or mentally incompetent person had access to the  
19 loaded firearm as a result of an unlawful entry by any person; or

20 (c) The minor or mentally incompetent person had access to the  
21 loaded firearm as a result of an unlawful taking of the loaded firearm  
22 by any person; or

23 (d) The person alleged to have committed the offense had taken  
24 reasonable measures to prevent a minor or mentally incompetent person  
25 from gaining access to the loaded firearm, including but not limited  
26 to, securing the loaded firearm in a locked box, safe, or other locked  
27 storage space, or securing the loaded firearm with a lock or device  
28 that prevents the loaded firearm from discharging; or

29 (e) The minor had access to the loaded firearm in accordance with  
30 RCW 9.41.042.

31 (6)(a) In a prosecution for reckless endangerment under the  
32 circumstances described in subsection (4) of this section, it is an  
33 absolute defense if the defendant shows that the minor who had access  
34 to the loaded firearm knew that the possession of the loaded firearm  
35 could create a substantial risk of death or serious physical injury and  
36 that it would be wrong to create such a risk.

37 (b) This defense does not apply if:

38 (i) The defendant knew, or reasonably should have known:

39 (A) The minor was a person under the age of twelve; or

1 (B) The minor had previously been arrested or convicted for  
2 criminal behavior or had a criminal record; or

3 (C) The minor had a history of mental or psychological problems or  
4 had previously been committed or treated for mental or psychological  
5 problems; or

6 (D) The minor had been suspended or expelled from school based on  
7 violent acts or threats of violent acts by the minor; and

8 (ii) The defendant knew the minor had access to the loaded firearm.

9 (7)(a) The following mitigating factors must be considered in any  
10 decision regarding the sentencing of a person for reckless endangerment  
11 under the circumstances described in subsection (4) of this section:

12 (i) The minor who had access to the loaded firearm previously had  
13 been educated regarding the use, handling, and dangers of the loaded  
14 firearm;

15 (ii) The minor who had access to the loaded firearm had completed  
16 a hunter's or firearms safety course;

17 (iii) The minor or mentally incompetent person who had access to  
18 the loaded firearm did not actually take possession of the loaded  
19 firearm;

20 (iv) The minor or mentally incompetent person who took possession  
21 of the loaded firearm did so without the permission and against the  
22 direction of the person who had care and custody of the loaded firearm;

23 (v) If the minor or mentally incompetent person took possession of  
24 the loaded firearm, the minor or mentally incompetent person did not  
25 intend to discharge the loaded firearm and the loaded firearm was not  
26 discharged;

27 (vi) If the minor or mentally incompetent person took possession of  
28 the loaded firearm and the loaded firearm was discharged, the minor or  
29 mentally incompetent person did not intend for any person to be injured  
30 or property to be damaged and no person was injured or property was  
31 damaged;

32 (vii) The crime rate within the community and the impact of crime  
33 on the area was sufficient to cause a reasonable person to take  
34 precautions for his or her personal safety or the safety of his or her  
35 family;

36 (viii) The defendant, or another person who resides with the  
37 defendant, previously had been a victim of a crime of assault,  
38 kidnapping, criminal mistreatment, rape, harassment, arson, burglary,  
39 robbery, incest, or any other crime pertaining to domestic violence, or

1 any anticipatory offense pertaining to such crimes under the laws of  
2 this state or another state;

3 (ix) The defendant, or another person who resides with the  
4 defendant, previously had obtained a valid protection order issued by  
5 a court of this state or another state, including an injunction or  
6 other order related to domestic or family violence, harassment, sexual  
7 abuse, or stalking, for the purpose of preventing violent or  
8 threatening acts or harassment against or contact or communication with  
9 or physical proximity to another person;

10 (x) The minor or mentally incompetent person had access to the  
11 loaded firearm during a time of greater exposure to risk of personal  
12 safety, such as between the hours of dusk and dawn; and

13 (xi) The loaded firearm was the only loaded firearm in the  
14 vicinity, or was one of only a few loaded firearms in the vicinity,  
15 reasonably necessary to provide self-defense.

16 (b) Mitigating factors other than those listed in this subsection  
17 may be considered before making any decision regarding sentencing of a  
18 person for reckless endangerment under the circumstances described in  
19 subsection (4) of this section.

20 (8) If a death or serious injury occurs as a result of a violation  
21 of this section under the circumstances described in subsection (4) of  
22 this section, and the prosecuting attorney decides not to file charges,  
23 the prosecuting attorney shall issue written findings supporting the  
24 decision, and those findings are a public record.

25 (9) A violation of this section under the circumstances described  
26 in subsection (4) of this section is not a disqualifying domestic  
27 violence misdemeanor conviction under RCW 9.41.040(1)(b)(i).

28 (10)(a) The definitions in RCW 9.41.010 apply to this section  
29 unless the context clearly requires otherwise.

30 (b) "Minor" means a person under eighteen years of age unless the  
31 context clearly requires otherwise.

32 (c) "Mentally incompetent person" means a person who does not  
33 possess sufficient mind or reason to enable the person to comprehend  
34 the nature, terms, and effect of the particular act in which the person  
35 is engaged.

36 (11) Nothing in this section mandates how or where a firearm must  
37 be stored.

38 (12) Nothing in this section is intended or may be construed to  
39 limit a person's constitutional right to self-protection under the

1 Second Amendment to the United States Constitution or Article I,  
2 section 24 of the Washington state Constitution.

--- END ---