
SUBSTITUTE HOUSE BILL 1687

State of Washington

59th Legislature

2005 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Moeller, Talcott, O'Brien, Ericks, Lovick, Tom, Roberts, Appleton, Kagi, Hunter and Chase)

READ FIRST TIME 03/04/05.

1 AN ACT Relating to firearms; amending RCW 9.41.040 and 9.41.047;
2 creating a new section; and declaring an emergency.

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

4 **Sec. 1.** RCW 9.41.040 and 2003 c 53 s 26 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 or found not guilty
10 by reason of insanity in this state or elsewhere of any serious offense
11 as defined in this chapter.

12 (b) Unlawful possession of a firearm in the first degree is a class
13 B felony punishable according to chapter 9A.20 RCW.

14 (2)(a) A person, whether an adult or juvenile, is guilty of the
15 crime of unlawful possession of a firearm in the second degree, if the
16 person does not qualify under subsection (1) of this section for the
17 crime of unlawful possession of a firearm in the first degree and the
18 person owns, has in his or her possession, or has in his or her control
19 any firearm:

1 (i) After having previously been convicted or found not guilty by
2 reason of insanity in this state or elsewhere of any felony not
3 specifically listed as prohibiting firearm possession under subsection
4 (1) of this section, or any of the following crimes when committed by
5 one family or household member against another, committed on or after
6 July 1, 1993: Assault in the fourth degree, coercion, stalking,
7 reckless endangerment, criminal trespass in the first degree, or
8 violation of the provisions of a protection order or no-contact order
9 restraining the person or excluding the person from a residence (RCW
10 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

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

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

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

21 (b) Unlawful possession of a firearm in the second degree is a
22 class C felony punishable according to chapter 9A.20 RCW.

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

1 finding of innocence. Where no record of the court's disposition of
2 the charges can be found, there shall be a rebuttable presumption that
3 the person was not convicted of the charge.

4 (4) Notwithstanding subsection (1) or (2) of this section, a person
5 convicted of an offense prohibiting the possession of a firearm under
6 this section other than murder, manslaughter, robbery, rape, indecent
7 liberties, arson, assault, kidnapping, extortion, burglary, or
8 violations with respect to controlled substances under RCW 69.50.401
9 and 69.50.410, who received a probationary sentence under RCW 9.95.200,
10 and who received a dismissal of the charge under RCW 9.95.240, shall
11 not be precluded from possession of a firearm as a result of the
12 conviction. Notwithstanding any other provisions of this section, if
13 a person is prohibited from possession of a firearm under subsection
14 (1) or (2) of this section and has not previously been convicted of a
15 sex offense prohibiting firearm ownership under subsection (1) or (2)
16 of this section and/or any felony defined under any law as a class A
17 felony or with a maximum sentence of at least twenty years, or both,
18 the individual may petition a court of record to have his or her right
19 to possess a firearm restored:

20 (a) Under RCW 9.41.047; and/or

21 (b)(i) If the conviction was for a felony offense, after five or
22 more consecutive years in the community without being convicted or
23 currently charged with any felony, gross misdemeanor, or misdemeanor
24 crimes, if the individual has no prior felony convictions that prohibit
25 the possession of a firearm counted as part of the offender score under
26 RCW 9.94A.525; or

27 (ii) If the conviction was for a nonfelony offense, after three or
28 more consecutive years in the community without being convicted or
29 currently charged with any felony, gross misdemeanor, or misdemeanor
30 crimes, if the individual has no prior felony convictions that prohibit
31 the possession of a firearm counted as part of the offender score under
32 RCW 9.94A.525 and the individual has completed all conditions of the
33 sentence.

34 (5) In addition to any other penalty provided for by law, if a
35 person under the age of eighteen years is found by a court to have
36 possessed a firearm in a vehicle in violation of subsection (1) or (2)
37 of this section or to have committed an offense while armed with a
38 firearm during which offense a motor vehicle served an integral

1 function, the court shall notify the department of licensing within
2 twenty-four hours and the person's privilege to drive shall be revoked
3 under RCW 46.20.265.

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

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

18 **Sec. 2.** RCW 9.41.047 and 1996 c 295 s 3 are each amended to read
19 as follows:

20 (1) At the time a person is convicted or found not guilty by reason
21 of insanity of an offense making the person ineligible to possess a
22 firearm, or at the time a person is committed by court order under RCW
23 71.05.320, 71.34.090, or chapter 10.77 RCW for mental health treatment,
24 the convicting or committing court shall notify the person, orally and
25 in writing, that the person must immediately surrender any concealed
26 pistol license and that the person may not possess a firearm unless his
27 or her right to do so is restored by a court of record. For purposes
28 of this section a convicting court includes a court in which a person
29 has been found not guilty by reason of insanity.

30 The convicting or committing court also shall forward a copy of the
31 person's driver's license or identicard, or comparable information, to
32 the department of licensing, along with the date of conviction or
33 commitment.

34 (2) Upon receipt of the information provided for by subsection (1)
35 of this section, the department of licensing shall determine if the
36 convicted or committed person has a concealed pistol license. If the
37 person does have a concealed pistol license, the department of

1 licensing shall immediately notify the license-issuing authority which,
2 upon receipt of such notification, shall immediately revoke the
3 license.

4 (3)(a) A person who is prohibited from possessing a firearm, by
5 reason of having been involuntarily committed for mental health
6 treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or
7 equivalent statutes of another jurisdiction may, upon discharge,
8 petition a court of record to have his or her right to possess a
9 firearm restored. At the time of commitment, the court shall
10 specifically state to the person that he or she is barred from
11 possession of firearms.

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

22 (c) A person petitioning the court under this subsection (3) shall
23 bear the burden of proving by a preponderance of the evidence that the
24 circumstances resulting in the commitment no longer exist and are not
25 reasonably likely to recur. If a preponderance of the evidence in the
26 record supports a finding that the person petitioning the court has
27 engaged in violence and that it is more likely than not that the person
28 will engage in violence after his or her right to possess a firearm is
29 restored, the person shall bear the burden of proving by clear, cogent,
30 and convincing evidence that he or she does not present a substantial
31 danger to the safety of others.

32 (4) No person who has been found not guilty by reason of insanity
33 may petition a court for restoration of the right to possess a firearm
34 unless the person meets the requirements for the restoration of the
35 right to possess a firearm that would have applied under RCW
36 9.41.040(4) if the person had been found guilty of the crime.

1 NEW SECTION. **Sec. 3.** If any part of this act is found to be in
2 conflict with federal requirements, the conflicting part of this act is
3 hereby declared to be inoperative solely to the extent of the conflict,
4 and such finding or determination does not affect the operation of the
5 remainder of this act. Rules adopted under this act must meet federal
6 requirements.

7 NEW SECTION. **Sec. 4.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 immediately.

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