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HOUSE BILL 3095

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State of Washington                      60th Legislature                      2008 Regular Session

By Representatives Lantz, Ericks, Kagi, Pedersen, Green, Moeller,  
Goodman, Seaquist, Williams, and Ormsby

Read first time 01/22/08. Referred to Committee on Judiciary.

1            AN ACT Relating to provisions governing firearms possession by  
2 persons who have been involuntarily committed; and amending RCW  
3 9.41.040 and 9.41.047.

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

5            **Sec. 1.** RCW 9.41.040 and 2005 c 453 s 1 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 or found not guilty  
11 by reason of insanity in this state or elsewhere of any serious offense  
12 as defined in this chapter.

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

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

1 person owns, has in his or her possession, or has in his or her control  
2 any firearm:

3 (i) After having previously been convicted or found not guilty by  
4 reason of insanity in this state or elsewhere of any felony not  
5 specifically listed as prohibiting firearm possession under subsection  
6 (1) of this section, or any of the following crimes when committed by  
7 one family or household member against another, committed on or after  
8 July 1, 1993: Assault in the fourth degree, coercion, stalking,  
9 reckless endangerment, criminal trespass in the first degree, or  
10 violation of the provisions of a protection order or no-contact order  
11 restraining the person or excluding the person from a residence (RCW  
12 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

13 (ii) After having previously been involuntarily committed for  
14 mental health treatment under RCW 71.05.240, 71.05.320, (~~(71.34.090)~~)  
15 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of  
16 another jurisdiction, unless his or her right to possess a firearm has  
17 been restored as provided in RCW 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 (b) Unlawful possession of a firearm in the second degree is a  
24 class C felony punishable according to chapter 9A.20 RCW.

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

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

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

23 (a) Under RCW 9.41.047; and/or

24 (b)(i) If the conviction or finding of not guilty by reason of  
25 insanity was for a felony offense, after five or more consecutive years  
26 in the community without being convicted or found not guilty by reason  
27 of insanity or currently charged with any felony, gross misdemeanor, or  
28 misdemeanor crimes, if the individual has no prior felony convictions  
29 that prohibit the possession of a firearm counted as part of the  
30 offender score under RCW 9.94A.525; or

31 (ii) If the conviction or finding of not guilty by reason of  
32 insanity was for a nonfelony offense, after three or more consecutive  
33 years in the community without being convicted or found not guilty by  
34 reason of insanity or currently charged with any felony, gross  
35 misdemeanor, or misdemeanor crimes, if the individual has no prior  
36 felony convictions that prohibit the possession of a firearm counted as  
37 part of the offender score under RCW 9.94A.525 and the individual has  
38 completed all conditions of the sentence.

1 (5) In addition to any other penalty provided for by law, if a  
2 person under the age of eighteen years is found by a court to have  
3 possessed a firearm in a vehicle in violation of subsection (1) or (2)  
4 of this section or to have committed an offense while armed with a  
5 firearm during which offense a motor vehicle served an integral  
6 function, the court shall notify the department of licensing within  
7 twenty-four hours and the person's privilege to drive shall be revoked  
8 under RCW 46.20.265.

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

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

23 **Sec. 2.** RCW 9.41.047 and 2005 c 453 s 2 are each amended to read  
24 as follows:

25 (1) At the time a person is convicted or found not guilty by reason  
26 of insanity of an offense making the person ineligible to possess a  
27 firearm, or at the time a person is committed by court order under RCW  
28 71.05.240, 71.05.320, (~~(71.34.090)~~) 71.34.740, 71.34.750, or chapter  
29 10.77 RCW for mental health treatment, the convicting or committing  
30 court shall notify the person, orally and in writing, that the person  
31 must immediately surrender any concealed pistol license and that the  
32 person may not possess a firearm unless his or her right to do so is  
33 restored by a court of record. For purposes of this section a  
34 convicting court includes a court in which a person has been found not  
35 guilty by reason of insanity.

36 The convicting or committing court (~~(also)~~) shall forward on or  
37 before the next judicial day a copy of the person's driver's license or

1 identicard, or comparable information, (~~to the department of~~  
2 ~~licensing,~~) along with the date of conviction or commitment, to the  
3 department of licensing. When a person is committed by court order  
4 under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77  
5 RCW, for mental health treatment, the committing court also shall  
6 forward on or before the next judicial day a copy of the person's  
7 driver's license, or comparable information, along with the date of  
8 commitment, to the national instant criminal background check system  
9 index, denied persons file, created by the federal Brady handgun  
10 violence prevention act (P.L. 103-159).

11 (2) Upon receipt of the information provided for by subsection (1)  
12 of this section, the department of licensing shall determine if the  
13 convicted or committed person has a concealed pistol license. If the  
14 person does have a concealed pistol license, the department of  
15 licensing shall immediately notify the license-issuing authority which,  
16 upon receipt of such notification, shall immediately revoke the  
17 license.

18 (3)(a) A person who is prohibited from possessing a firearm, by  
19 reason of having been involuntarily committed for mental health  
20 treatment under RCW 71.05.240, 71.05.320, ((71.34.090)) 71.34.740,  
21 71.34.750, chapter 10.77 RCW, or equivalent statutes of another  
22 jurisdiction may, upon discharge, petition a court of record to have  
23 his or her right to possess a firearm restored. At the time of  
24 commitment, the court shall specifically state to the person that he or  
25 she is barred from possession of firearms.

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

36 (c) A person petitioning the court under this subsection (3) 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

1 reasonably likely to recur. If a preponderance of the evidence in the  
2 record supports a finding that the person petitioning the court has  
3 engaged in violence and that it is more likely than not that the person  
4 will engage in violence after his or her right to possess a firearm is  
5 restored, the person shall bear the burden of proving by clear, cogent,  
6 and convincing evidence that he or she does not present a substantial  
7 danger to the safety of others.

8 (d) When a person's right to possess a firearm has been restored  
9 under this subsection, the court shall forward, on or before the next  
10 judicial day, notification that the person's right to possess a firearm  
11 has been restored to the department of licensing and the national  
12 instant criminal background check system index, denied persons file.

13 (4) No person who has been found not guilty by reason of insanity  
14 may petition a court for restoration of the right to possess a firearm  
15 unless the person meets the requirements for the restoration of the  
16 right to possess a firearm under RCW 9.41.040(4).

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