
HOUSE BILL 1455

State of Washington

62nd Legislature

2011 Regular Session

By Representative McCune

Read first time 01/21/11. Referred to Committee on Judiciary.

1 AN ACT Relating to where an individual may petition to restore
2 firearm possession rights; and amending RCW 9.41.040 and 9.41.047.

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

4 **Sec. 1.** RCW 9.41.040 and 2009 c 293 s 1 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 71.05.240, 71.05.320, 71.34.740,
13 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
14 jurisdiction, unless his or her right to possess a firearm has been
15 restored as provided in RCW 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)(a) Notwithstanding subsection (1) or (2) of this section, a
5 person convicted or found not guilty by reason of insanity of an
6 offense prohibiting the possession of a firearm under this section
7 other than murder, manslaughter, robbery, rape, indecent liberties,
8 arson, assault, kidnapping, extortion, burglary, or violations with
9 respect to controlled substances under RCW 69.50.401 and 69.50.410, who
10 received a probationary sentence under RCW 9.95.200, and who received
11 a dismissal of the charge under RCW 9.95.240, shall not be precluded
12 from possession of a firearm as a result of the conviction or finding
13 of not guilty by reason of insanity. Notwithstanding any other
14 provisions of this section, if a person is prohibited from possession
15 of a firearm under subsection (1) or (2) of this section and has not
16 previously been convicted or found not guilty by reason of insanity of
17 a sex offense prohibiting firearm ownership under subsection (1) or (2)
18 of this section and/or any felony defined under any law as a class A
19 felony or with a maximum sentence of at least twenty years, or both,
20 the individual may petition a court of record to have his or her right
21 to possess a firearm restored:

22 ~~((a))~~ (i) Under RCW 9.41.047; and/or

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

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

1 (b) An individual may petition a court of record to have his or her
2 right to possess a firearm restored under (a) of this subsection (4)
3 only at:

4 (i) The court of record that ordered the petitioner's prohibition
5 on possession of a firearm; or

6 (ii) The superior court in the county in which the petitioner
7 resides.

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

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

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

30 **Sec. 2.** RCW 9.41.047 and 2009 c 293 s 2 are each amended to read
31 as follows:

32 (1)(a) At the time a person is convicted or found not guilty by
33 reason of insanity of an offense making the person ineligible to
34 possess a firearm, or at the time a person is committed by court order
35 under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77
36 RCW for mental health treatment, the convicting or committing court
37 shall notify the person, orally and in writing, that the person must

1 immediately surrender any concealed pistol license and that the person
2 may not possess a firearm unless his or her right to do so is restored
3 by a court of record. For purposes of this section a convicting court
4 includes a court in which a person has been found not guilty by reason
5 of insanity.

6 (b) The convicting or committing court shall forward within three
7 judicial days after conviction or entry of the commitment order a copy
8 of the person's driver's license or identicard, or comparable
9 information, along with the date of conviction or commitment, to the
10 department of licensing. When a person is committed by court order
11 under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77
12 RCW, for mental health treatment, the committing court also shall
13 forward, within three judicial days after entry of the commitment
14 order, a copy of the person's driver's license, or comparable
15 information, along with the date of commitment, to the national instant
16 criminal background check system index, denied persons file, created by
17 the federal Brady handgun violence prevention act (P.L. 103-159).

18 (2) Upon receipt of the information provided for by subsection (1)
19 of this section, the department of licensing shall determine if the
20 convicted or committed person has a concealed pistol license. If the
21 person does have a concealed pistol license, the department of
22 licensing shall immediately notify the license-issuing authority which,
23 upon receipt of such notification, shall immediately revoke the
24 license.

25 (3)(a) A person who is prohibited from possessing a firearm, by
26 reason of having been involuntarily committed for mental health
27 treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter
28 10.77 RCW, or equivalent statutes of another jurisdiction may, upon
29 discharge, petition the superior court to have his or her right to
30 possess a firearm restored.

31 (b) The petition (~~may~~) must be brought in the superior court that
32 ordered the involuntary commitment or the superior court of the county
33 in which the petitioner resides.

34 (c) Except as provided in (d) of this subsection, the court shall
35 restore the petitioner's right to possess a firearm if the petitioner
36 proves by a preponderance of the evidence that:

37 (i) The petitioner is no longer required to participate in court-
38 ordered inpatient or outpatient treatment;

1 (ii) The petitioner has successfully managed the condition related
2 to the commitment;

3 (iii) The petitioner no longer presents a substantial danger to
4 himself or herself, or the public; and

5 (iv) The symptoms related to the commitment are not reasonably
6 likely to recur.

7 (d) If a preponderance of the evidence in the record supports a
8 finding that the person petitioning the court has engaged in violence
9 and that it is more likely than not that the person will engage in
10 violence after his or her right to possess a firearm is restored, the
11 person shall bear the burden of proving by clear, cogent, and
12 convincing evidence that he or she does not present a substantial
13 danger to the safety of others.

14 (e) When a person's right to possess a firearm has been restored
15 under this subsection, the court shall forward, within three judicial
16 days after entry of the restoration order, notification that the
17 person's right to possess a firearm has been restored to the department
18 of licensing, the department of social and health services, and the
19 national instant criminal background check system index, denied persons
20 file.

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

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