
HOUSE BILL 2589

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Goodman, Ross, Hurst, Ladenburg, Kelley, Moscoso, and Green

Read first time 01/18/12. Referred to Committee on Judiciary.

1 AN ACT Relating to unlawful possession of a firearm in the first
2 degree; amending RCW 9.41.040; and prescribing penalties.

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

4 **Sec. 1.** RCW 9.41.040 and 2011 c 193 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 or unlawful possession of a firearm in the
12 second degree, other than unlawful possession of a firearm in the
13 second degree under subsection (2)(a)(i)(B) of this section.

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

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

1 crime of unlawful possession of a firearm in the first degree and the
2 person owns, has in his or her possession, or has in his or her control
3 any firearm:

4 (i) After having previously been convicted or found not guilty by
5 reason of insanity in this state or elsewhere of (A) any felony not
6 specifically listed as prohibiting firearm possession under subsection
7 (1) of this section, or (B) any of the following crimes when committed
8 by one family or household member against another, committed on or
9 after July 1, 1993: Assault in the fourth degree, coercion, stalking,
10 reckless endangerment, criminal trespass in the first degree, or
11 violation of the provisions of a protection order or no-contact order
12 restraining the person or excluding the person from a residence (RCW
13 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

14 (ii) After having previously been involuntarily committed for
15 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,
16 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
17 jurisdiction, unless his or her right to possess a firearm has been
18 restored as provided in RCW 9.41.047;

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

21 (iv) If the person is free on bond or personal recognizance pending
22 trial, appeal, or sentencing for a serious offense as defined in RCW
23 9.41.010.

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

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

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

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

24 (i) Under RCW 9.41.047; and/or

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

32 (B) If the conviction or finding of not guilty by reason of
33 insanity was for a nonfelony offense, after three or more consecutive
34 years in the community without being convicted or found not guilty by
35 reason of insanity or currently charged with any felony, gross
36 misdemeanor, or misdemeanor crimes, if the individual has no prior
37 felony convictions that prohibit the possession of a firearm counted as

1 part of the offender score under RCW 9.94A.525 and the individual has
2 completed all conditions of the sentence.

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

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

8 (ii) The superior court in the county in which the petitioner
9 resides.

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

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

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

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