

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1455

62nd Legislature
2011 Regular Session

Passed by the House April 13, 2011
Yeas 96 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 9, 2011
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1455** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 1455

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

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, 9.41.047, and
3 36.23.030.

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

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

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

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

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

25 **Sec. 3.** RCW 36.23.030 and 2002 c 30 s 1 are each amended to read
26 as follows:

27 The clerk of the superior court at the expense of the county shall
28 keep the following records:

29 (1) A record in which he or she shall enter all appearances and the
30 time of filing all pleadings in any cause;

31 (2) A docket in which before every session, he or she shall enter
32 the titles of all causes pending before the court at that session in
33 the order in which they were commenced, beginning with criminal cases,
34 noting in separate columns the names of the attorneys, the character of
35 the action, the pleadings on which it stands at the commencement of the
36 session. One copy of this docket shall be furnished for the use of the
37 court and another for the use of the members of the bar;

1 (3) A record for each session in which he or she shall enter the
2 names of witnesses and jurors, with time of attendance, distance of
3 travel, and whatever else is necessary to enable him or her to make out
4 a complete cost bill;

5 (4) A record in which he or she shall record the daily proceedings
6 of the court, and enter all verdicts, orders, judgments, and decisions
7 thereof, which may, as provided by local court rule, be signed by the
8 judge; but the court shall have full control of all entries in the
9 record at any time during the session in which they were made;

10 (5) An execution docket and also one for a final record in which he
11 or she shall make a full and perfect record of all criminal cases in
12 which a final judgment is rendered, and all civil cases in which by any
13 order or final judgment the title to real estate, or any interest
14 therein, is in any way affected, and such other final judgments,
15 orders, or decisions as the court may require;

16 (6) A record in which shall be entered all orders, decrees, and
17 judgments made by the court and the minutes of the court in probate
18 proceedings;

19 (7) A record of wills and bonds shall be maintained. Originals
20 shall be placed in the original file and shall be preserved or
21 duplicated pursuant to RCW 36.23.065;

22 (8) A record of letters testamentary, administration, and
23 guardianship in which all letters testamentary, administration, and
24 guardianship shall be recorded;

25 (9) A record of claims shall be entered in the appearance docket
26 under the title of each estate or case, stating the name of each
27 claimant, the amount of his or her claim and the date of filing of
28 such;

29 (10) A memorandum of the files, in which at least one page shall be
30 given to each estate or case, wherein shall be noted each paper filed
31 in the case, and the date of filing each paper;

32 (11) A record of the number of petitions filed for restoration of
33 the right to possess a firearm under chapter 9.41 RCW and the outcome
34 of the petitions;

35 (12) Such other records as are prescribed by law and required in
36 the discharge of the duties of his or her office.

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