

SB 6298 - H COMM AMD
By Committee on Judiciary

ADOPTED 02/27/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9.41.040 and 2017 c 233 s 4 are each amended to
4 read as follows:

5 (1)(a) A person, whether an adult or juvenile, is guilty of the
6 crime of unlawful possession of a firearm in the first degree, if the
7 person owns, has in his or her possession, or has in his or her
8 control any firearm after having previously been convicted or found
9 not guilty by reason of insanity in this state or elsewhere of any
10 serious offense as defined in this chapter.

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

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

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

29 (ii) After having previously been convicted or found not guilty
30 by reason of insanity in this state or elsewhere of harassment when
31 committed by one family or household member against another,
32 committed on or after the effective date of this section;

1 (iii) During any period of time that the person is subject to a
2 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,
3 26.09, 26.10, 26.26, or 26.50 RCW that:

4 (A) Was issued after a hearing of which the person received
5 actual notice, and at which the person had an opportunity to
6 participate;

7 (B) Restrains the person from harassing, stalking, or threatening
8 an intimate partner of the person or child of the intimate partner or
9 person, or engaging in other conduct that would place an intimate
10 partner in reasonable fear of bodily injury to the partner or child;
11 and

12 (C)(I) Includes a finding that the person represents a credible
13 threat to the physical safety of the intimate partner or child; and

14 (II) By its terms, explicitly prohibits the use, attempted use,
15 or threatened use of physical force against the intimate partner or
16 child that would reasonably be expected to cause bodily injury;

17 ~~((iii))~~ (iv) After having previously been involuntarily
18 committed for mental health treatment under RCW 71.05.240, 71.05.320,
19 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of
20 another jurisdiction, unless his or her right to possess a firearm
21 has been restored as provided in RCW 9.41.047;

22 ~~((iv))~~ (v) If the person is under eighteen years of age, except
23 as provided in RCW 9.41.042; and/or

24 ~~((v))~~ (vi) If the person is free on bond or personal
25 recognizance pending trial, appeal, or sentencing for a serious
26 offense as defined in RCW 9.41.010.

27 (b) (a)~~((ii))~~ (iii) of this subsection does not apply to a
28 sexual assault protection order under chapter 7.90 RCW if the order
29 has been modified pursuant to RCW 7.90.170 to remove any restrictions
30 on firearm purchase, transfer, or possession.

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

33 (3) Notwithstanding RCW 9.41.047 or any other provisions of law,
34 as used in this chapter, a person has been "convicted", whether in an
35 adult court or adjudicated in a juvenile court, at such time as a
36 plea of guilty has been accepted, or a verdict of guilty has been
37 filed, notwithstanding the pendency of any future proceedings
38 including but not limited to sentencing or disposition, post-trial or
39 post-fact-finding motions, and appeals. Conviction includes a
40 dismissal entered after a period of probation, suspension or deferral

1 of sentence, and also includes equivalent dispositions by courts in
2 jurisdictions other than Washington state. A person shall not be
3 precluded from possession of a firearm if the conviction has been the
4 subject of a pardon, annulment, certificate of rehabilitation, or
5 other equivalent procedure based on a finding of the rehabilitation
6 of the person convicted or the conviction or disposition has been the
7 subject of a pardon, annulment, or other equivalent procedure based
8 on a finding of innocence. Where no record of the court's disposition
9 of the charges can be found, there shall be a rebuttable presumption
10 that the person was not convicted of the charge.

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

29 (i) Under RCW 9.41.047; and/or

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

37 (B) If the conviction or finding of not guilty by reason of
38 insanity was for a nonfelony offense, after three or more consecutive
39 years in the community without being convicted or found not guilty by
40 reason of insanity or currently charged with any felony, gross

1 misdemeanor, or misdemeanor crimes, if the individual has no prior
2 felony convictions that prohibit the possession of a firearm counted
3 as part of the offender score under RCW 9.94A.525 and the individual
4 has completed all conditions of the sentence.

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

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

10 (ii) The superior court in the county in which the petitioner
11 resides.

12 (5) In addition to any other penalty provided for by law, if a
13 person under the age of eighteen years is found by a court to have
14 possessed a firearm in a vehicle in violation of subsection (1) or
15 (2) of this section or to have committed an offense while armed with
16 a firearm during which offense a motor vehicle served an integral
17 function, the court shall notify the department of licensing within
18 twenty-four hours and the person's privilege to drive shall be
19 revoked under RCW 46.20.265, unless the offense is the juvenile's
20 first offense in violation of this section and has not committed an
21 offense while armed with a firearm, an unlawful possession of a
22 firearm offense, or an offense in violation of chapter 66.44, 69.52,
23 69.41, or 69.50 RCW.

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

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

38 (8) For purposes of this section, "intimate partner" includes: A
39 spouse, a domestic partner, a former spouse, a former domestic
40 partner, a person with whom the restrained person has a child in

1 common, or a person with whom the restrained person has cohabitated
2 or is cohabitating as part of a dating relationship."

3 Correct the title.

EFFECT: Provides that the crime of unlawful possession of a
firearm based on a conviction for domestic violence harassment
applies to domestic violence harassment crimes committed on or after
the effective date of the act (rather than those committed on or
after July 1, 1993).

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