

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5256

65th Legislature
2017 Regular Session

Passed by the Senate March 8, 2017
Yeas 43 Nays 6

President of the Senate

Passed by the House April 6, 2017
Yeas 75 Nays 22

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5256** as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5256

Passed Legislature - 2017 Regular Session

State of Washington

65th Legislature

2017 Regular Session

By Senate Law & Justice (originally sponsored by Senators Fain, Pedersen, Zeiger, Palumbo, Miloscia, Frockt, Darneille, Chase, Kuderer, and Hunt)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to sexual assault protection orders; and amending
2 RCW 7.90.120, 7.90.121, 7.90.170, and 9.41.040.

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

4 **Sec. 1.** RCW 7.90.120 and 2013 c 74 s 3 are each amended to read
5 as follows:

6 (1)(a) An ex parte temporary sexual assault protection order
7 shall be effective for a fixed period not to exceed fourteen days. A
8 full hearing, as provided in this chapter, shall be set for not later
9 than fourteen days from the issuance of the temporary order or not
10 later than twenty-four days if service by publication or service by
11 mail is permitted. If the court permits service by publication or
12 service by mail, the court shall also reissue the ex parte temporary
13 protection order not to exceed another twenty-four days from the date
14 of reissuing the ex parte protection order. Except as provided in RCW
15 7.90.050, 7.90.052, or 7.90.053, the respondent shall be personally
16 served with a copy of the ex parte temporary sexual assault
17 protection order along with a copy of the petition and notice of the
18 date set for the hearing.

19 (b) Any ex parte temporary order issued under this section shall
20 contain the date and time of issuance and the expiration date and

1 shall be entered into a statewide judicial information system by the
2 clerk of the court within one judicial day after issuance.

3 (2) Except as otherwise provided in this section or RCW 7.90.150,
4 a final sexual assault protection order shall be effective for a
5 fixed period of time(~~(, not to exceed two years))~~ or be permanent.

6 (3) Any sexual assault protection order which would expire on a
7 court holiday shall instead expire at the close of the next court
8 business day.

9 (4) The practice of dismissing or suspending a criminal
10 prosecution in exchange for the issuance of a sexual assault
11 protection order undermines the purposes of this chapter. This
12 section shall not be construed as encouraging that practice.

13 **Sec. 2.** RCW 7.90.121 and 2013 c 74 s 4 are each amended to read
14 as follows:

15 (1) Any ex parte temporary or nonpermanent final sexual assault
16 protection order may be renewed one or more times, as required.

17 (2) The petitioner may apply for renewal of the order by filing a
18 motion for renewal at any time within the three months before the
19 order expires. The motion for renewal shall state the reasons why the
20 petitioner seeks to renew the protection order.

21 (~~(If the motion for renewal is uncontested and the petitioner~~
22 ~~seeks no modification of the order, the order may be renewed on the~~
23 ~~basis of the petitioner's motion or affidavit stating that there has~~
24 ~~been no material change in relevant circumstances since entry of the~~
25 ~~order and stating the reason for the requested renewal.))~~ (a) The
26 court shall grant the motion for renewal unless the respondent proves
27 by a preponderance of the evidence that there has been a material
28 change in circumstances such that the respondent is not likely to
29 engage in or attempt to engage in physical or nonphysical contact
30 with the petitioner when the order expires.

31 (b) For purposes of this subsection (3), a court shall determine
32 whether there has been a material change in circumstances by
33 considering only factors which address whether the respondent is
34 likely to engage in or attempt to engage in physical or nonphysical
35 contact with the petitioner when the order expires. The passage of
36 time and compliance with the existing protection order shall not,
37 alone, be sufficient to meet this burden of proof. The court may
38 renew the sexual assault protection order for another fixed time
39 period or may enter a permanent order as provided in this section.

1 (c) In determining whether there has been a material change in
2 circumstances, the court may consider the following unweighted
3 factors, and no inference is to be drawn from the order in which the
4 factors are listed:

5 (i) Whether the respondent has committed or threatened sexual
6 assault, domestic violence, stalking, or other violent acts since the
7 protection order was entered;

8 (ii) Whether the respondent has violated the terms of the
9 protection order and the time that has passed since the entry of the
10 order;

11 (iii) Whether the respondent has exhibited suicidal ideation or
12 attempts since the protection order was entered;

13 (iv) Whether the respondent has been convicted of criminal
14 activity since the protection order was entered;

15 (v) Whether the respondent has either acknowledged responsibility
16 for acts of sexual assault that resulted in entry of the protection
17 order or successfully completed sexual assault perpetrator treatment
18 or counseling since the protection order was entered;

19 (vi) Whether the respondent has a continuing involvement with
20 drug or alcohol abuse, if such abuse was a factor in the protection
21 order;

22 (vii) Whether the respondent or petitioner has relocated to an
23 area more distant from the other party, giving due consideration to
24 the fact that acts of sexual assault may be committed from any
25 distance such as via cybercrime;

26 (viii) Other factors relating to a material change in
27 circumstances.

28 (4)(a) If the motion is contested, upon receipt of the motion,
29 the court shall order that a hearing be held not later than fourteen
30 days from the date of the order.

31 (b) The court may schedule a hearing by telephone pursuant to
32 local court rule, to reasonably accommodate a disability, or in
33 exceptional circumstances to protect a petitioner from further
34 nonconsensual sexual conduct or nonconsensual sexual penetration. The
35 court shall require assurances of the petitioner's identity before
36 conducting a telephonic hearing.

37 (c) The respondent shall be personally served not less than five
38 court days prior to the hearing. If timely personal service cannot be
39 made, the court shall set a new hearing date and shall either require
40 additional attempts at obtaining personal service or permit service

1 by publication as provided in RCW 7.90.052 or service by mail as
2 provided in RCW 7.90.053. The court shall not require more than two
3 attempts at obtaining personal service and shall permit service by
4 publication or service by mail unless the petitioner requests
5 additional time to attempt personal service. If the court permits
6 service by publication or service by mail, the court shall set the
7 hearing date not later than twenty-four days from the date of the
8 order.

9 (5) Renewals may be granted only in open court.

10 **Sec. 3.** RCW 7.90.170 and 2013 c 74 s 9 are each amended to read
11 as follows:

12 (1) Upon ~~((receipt of))~~ a motion ~~((to))~~ with notice to all
13 parties and after a hearing, the court may terminate or modify the
14 terms of an existing sexual assault protection order, including terms
15 entered pursuant to RCW 9.41.800 related to firearms or other
16 dangerous weapons or to concealed pistol licenses.

17 (2)(a) A respondent's motion to terminate or modify a sexual
18 assault protection order must include a declaration setting forth
19 facts supporting the requested order for termination or modification.
20 The nonmoving parties to the proceeding may file opposing
21 declarations. The court shall deny the motion unless it finds that
22 adequate cause for hearing the motion is established by the
23 declarations. If the court finds that the respondent established
24 adequate cause, the court shall set a date for hearing the
25 respondent's motion.

26 (b) The court may terminate or modify the terms of a sexual
27 assault protection order, including terms entered pursuant to RCW
28 9.41.800 related to firearms or other dangerous weapons or to
29 concealed pistol licenses, if the respondent proves by a
30 preponderance of the evidence that there has been a material change
31 in circumstances such that the respondent is not likely to engage in
32 or attempt to engage in physical or nonphysical contact with the
33 persons protected by the protection order if the order is terminated
34 or modified. The petitioner bears no burden of proving that he or she
35 has a current reasonable fear of harm by the respondent.

36 (c) A respondent may file a motion to terminate or modify
37 pursuant to this section no more than once in every twelve-month
38 period that the order is in effect, starting from the date of the
39 order and continuing through any renewal.

1 (d) A court may require the respondent to pay the petitioner for
2 costs incurred in responding to a motion to terminate or modify
3 pursuant to this section, including reasonable attorneys' fees.

4 (3) The court shall order that a hearing on the motion for
5 termination or modification of the order be held not later than
6 fourteen days from the date of the order. The ((respondent))
7 nonmoving party shall be personally served not less than five days
8 before the hearing. If timely service cannot be made, the court shall
9 set a new hearing date and shall either require additional attempts
10 at obtaining personal service or permit service by publication as
11 provided in RCW 7.90.052 or service by mail as provided in RCW
12 7.90.053. If the court permits service by mail or service by
13 publication, the court shall set the new hearing date not later than
14 twenty-four days from the date of the order. ((If the order expires
15 because timely service cannot be made, the court shall grant an ex
16 parte order of protection as provided in RCW 7.90.110. The court may
17 modify the protection order for another fixed time period or may
18 enter a permanent order as provided in RCW 7.90.120.

19 ~~(2))~~ (4) In any situation where an order is terminated or
20 modified before its expiration date, the clerk of the court shall
21 forward on or before the next judicial day a true copy of the
22 modified order or the termination order to the appropriate law
23 enforcement agency specified in the modified or termination order.
24 Upon receipt of the order, the law enforcement agency shall promptly
25 enter it in the computer-based criminal intelligence information
26 system, or if the order is terminated, remove the order from the
27 computer-based criminal intelligence information system.

28 **Sec. 4.** RCW 9.41.040 and 2016 c 136 s 7 are each amended to read
29 as follows:

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

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

38 (2)(a) A person, whether an adult or juvenile, is guilty of the
39 crime of unlawful possession of a firearm in the second degree, if

1 the person does not qualify under subsection (1) of this section for
2 the crime of unlawful possession of a firearm in the first degree and
3 the person owns, has in his or her possession, or has in his or her
4 control any firearm:

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

15 (ii) During any period of time that the person is subject to a
16 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,
17 26.09, 26.10, 26.26, or 26.50 RCW that:

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

21 (B) Restrains the person from harassing, stalking, or threatening
22 an intimate partner of the person or child of the intimate partner or
23 person, or engaging in other conduct that would place an intimate
24 partner in reasonable fear of bodily injury to the partner or child;
25 and

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

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

31 (iii) After having previously been involuntarily committed for
32 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,
33 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
34 jurisdiction, unless his or her right to possess a firearm has been
35 restored as provided in RCW 9.41.047;

36 (iv) If the person is under eighteen years of age, except as
37 provided in RCW 9.41.042; and/or

38 (v) If the person is free on bond or personal recognizance
39 pending trial, appeal, or sentencing for a serious offense as defined
40 in RCW 9.41.010.

1 **(b) (a)(ii) of this subsection does not apply to a sexual assault**
2 **protection order under chapter 7.90 RCW if the order has been**
3 **modified pursuant to RCW 7.90.170 to remove any restrictions on**
4 **firearm purchase, transfer, or possession.**

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

7 (3) Notwithstanding RCW 9.41.047 or any other provisions of law,
8 as used in this chapter, a person has been "convicted", whether in an
9 adult court or adjudicated in a juvenile court, at such time as a
10 plea of guilty has been accepted, or a verdict of guilty has been
11 filed, notwithstanding the pendency of any future proceedings
12 including but not limited to sentencing or disposition, post-trial or
13 post-fact-finding motions, and appeals. Conviction includes a
14 dismissal entered after a period of probation, suspension or deferral
15 of sentence, and also includes equivalent dispositions by courts in
16 jurisdictions other than Washington state. A person shall not be
17 precluded from possession of a firearm if the conviction has been the
18 subject of a pardon, annulment, certificate of rehabilitation, or
19 other equivalent procedure based on a finding of the rehabilitation
20 of the person convicted or the conviction or disposition has been the
21 subject of a pardon, annulment, or other equivalent procedure based
22 on a finding of innocence. Where no record of the court's disposition
23 of the charges can be found, there shall be a rebuttable presumption
24 that the person was not convicted of the charge.

25 (4)(a) Notwithstanding subsection (1) or (2) of this section, a
26 person convicted or found not guilty by reason of insanity of an
27 offense prohibiting the possession of a firearm under this section
28 other than murder, manslaughter, robbery, rape, indecent liberties,
29 arson, assault, kidnapping, extortion, burglary, or violations with
30 respect to controlled substances under RCW 69.50.401 and 69.50.410,
31 who received a probationary sentence under RCW 9.95.200, and who
32 received a dismissal of the charge under RCW 9.95.240, shall not be
33 precluded from possession of a firearm as a result of the conviction
34 or finding of not guilty by reason of insanity. Notwithstanding any
35 other provisions of this section, if a person is prohibited from
36 possession of a firearm under subsection (1) or (2) of this section
37 and has not previously been convicted or found not guilty by reason
38 of insanity of a sex offense prohibiting firearm ownership under
39 subsection (1) or (2) of this section and/or any felony defined under
40 any law as a class A felony or with a maximum sentence of at least

1 twenty years, or both, the individual may petition a court of record
2 to have his or her right to possess a firearm restored:

3 (i) Under RCW 9.41.047; and/or

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

11 (B) If the conviction or finding of not guilty by reason of
12 insanity was for a nonfelony offense, after three or more consecutive
13 years in the community without being convicted or found not guilty by
14 reason of insanity or currently charged with any felony, gross
15 misdemeanor, or misdemeanor crimes, if the individual has no prior
16 felony convictions that prohibit the possession of a firearm counted
17 as part of the offender score under RCW 9.94A.525 and the individual
18 has completed all conditions of the sentence.

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

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

24 (ii) The superior court in the county in which the petitioner
25 resides.

26 (5) In addition to any other penalty provided for by law, if a
27 person under the age of eighteen years is found by a court to have
28 possessed a firearm in a vehicle in violation of subsection (1) or
29 (2) of this section or to have committed an offense while armed with
30 a firearm during which offense a motor vehicle served an integral
31 function, the court shall notify the department of licensing within
32 twenty-four hours and the person's privilege to drive shall be
33 revoked under RCW 46.20.265, unless the offense is the juvenile's
34 first offense in violation of this section and has not committed an
35 offense while armed with a firearm, an unlawful possession of a
36 firearm offense, or an offense in violation of chapter 66.44, 69.52,
37 69.41, or 69.50 RCW.

38 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed
39 or interpreted as preventing an offender from being charged and
40 subsequently convicted for the separate felony crimes of theft of a

1 firearm or possession of a stolen firearm, or both, in addition to
2 being charged and subsequently convicted under this section for
3 unlawful possession of a firearm in the first or second degree.
4 Notwithstanding any other law, if the offender is convicted under
5 this section for unlawful possession of a firearm in the first or
6 second degree and for the felony crimes of theft of a firearm or
7 possession of a stolen firearm, or both, then the offender shall
8 serve consecutive sentences for each of the felony crimes of
9 conviction listed in this subsection.

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

12 (8) For purposes of this section, "intimate partner" includes: A
13 spouse, a domestic partner, a former spouse, a former domestic
14 partner, a person with whom the restrained person has a child in
15 common, or a person with whom the restrained person has cohabitated
16 or is cohabitating as part of a dating relationship.

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