
SENATE BILL 5134

State of Washington

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By Senators Morton, Rasmussen, Wood, Haugen, Hochstatter, Newhouse, West, A. Anderson, Palmer and Winsley

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1 AN ACT Relating to possession of firearms; amending RCW 9.41.040
2 and 9.41.047; and reenacting and amending RCW 9.41.010.

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

4 **Sec. 1.** RCW 9.41.010 and 1994 1st sp.s. c 7 s 401 and 1994 c 121
5 s 1 are each reenacted and amended to read as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

8 (1) "Firearm" means a weapon or device from which a projectile may
9 be fired by an explosive such as gunpowder.

10 (2) "Pistol" means any firearm with a barrel less than twelve
11 inches in length, or is designed to be held and fired by the use of a
12 single hand.

13 (3) "Rifle" means a weapon designed or redesigned, made or remade,
14 and intended to be fired from the shoulder and designed or redesigned,
15 made or remade, and intended to use the energy of the explosive in a
16 fixed metallic cartridge to fire only a single projectile through a
17 rifled bore for each single pull of the trigger.

18 (4) "Short-barreled rifle" means a rifle having one or more barrels
19 less than sixteen inches in length and any weapon made from a rifle by

1 any means of modification if such modified weapon has an overall length
2 of less than twenty-six inches.

3 (5) "Shotgun" means a weapon with one or more barrels, designed or
4 redesigned, made or remade, and intended to be fired from the shoulder
5 and designed or redesigned, made or remade, and intended to use the
6 energy of the explosive in a fixed shotgun shell to fire through a
7 smooth bore either a number of ball shot or a single projectile for
8 each single pull of the trigger.

9 (6) "Short-barreled shotgun" means a shotgun having one or more
10 barrels less than eighteen inches in length and any weapon made from a
11 shotgun by any means of modification if such modified weapon has an
12 overall length of less than twenty-six inches.

13 (7) "Machine gun" means any firearm known as a machine gun,
14 mechanical rifle, submachine gun, or any other mechanism or instrument
15 not requiring that the trigger be pressed for each shot and having a
16 reservoir clip, disc, drum, belt, or other separable mechanical device
17 for storing, carrying, or supplying ammunition which can be loaded into
18 the firearm, mechanism, or instrument, and fired therefrom at the rate
19 of five or more shots per second.

20 (8) "Antique firearm" means a firearm or replica of a firearm not
21 designed or redesigned for using rim fire or conventional center fire
22 ignition with fixed ammunition and manufactured in or before 1898,
23 including any matchlock, flintlock, percussion cap, or similar type of
24 ignition system and also any firearm using fixed ammunition
25 manufactured in or before 1898, for which ammunition is no longer
26 manufactured in the United States and is not readily available in the
27 ordinary channels of commercial trade.

28 (9) "Loaded" means:

29 (a) There is a cartridge in the chamber of the firearm;

30 (b) Bullets are in a clip that is locked in place in the firearm;

31 (c) There is a cartridge in the cylinder of the firearm, if the
32 firearm is a revolver; or

33 (d) There is a cartridge in the tube, magazine, or other
34 compartment of the firearm.

35 (10) "Dealer" means a person engaged in the business of selling
36 firearms or ammunition at wholesale or retail who has, or is required
37 to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A
38 person who does not have, and is not required to have, a federal
39 firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that

1 person makes only occasional sales, exchanges, or purchases of firearms
2 for the enhancement of a personal collection or for a hobby, or sells
3 all or part of his or her personal collection of firearms.

4 (11) "Crime of violence" means:

5 (a) Any of the following felonies, as now existing or hereafter
6 amended: Any felony defined under any law as a class A felony or an
7 attempt to commit a class A felony, criminal solicitation of or
8 criminal conspiracy to commit a class A felony, manslaughter in the
9 first degree, manslaughter in the second degree, indecent liberties if
10 committed by forcible compulsion, rape in the second degree, kidnapping
11 in the second degree, arson in the second degree, assault in the second
12 degree, assault of a child in the second degree, extortion in the first
13 degree, burglary in the second degree, residential burglary, and
14 robbery in the second degree;

15 (b) Any conviction or adjudication for a felony offense in effect
16 at any time prior to July 1, 1976, which is comparable to a felony
17 classified as a crime of violence in (a) of this subsection; and

18 (c) Any federal or out-of-state conviction or adjudication for an
19 offense comparable to a felony classified as a crime of violence under
20 (a) or (b) of this subsection.

21 (12) "Serious offense" means any of the following felonies or a
22 felony attempt to commit any of the following felonies, as now existing
23 or hereafter amended:

24 (a) Any crime of violence;

25 (b) Child molestation in the second degree;

26 (c) Controlled substance homicide;

27 (d) Incest when committed against a child under age fourteen;

28 (e) Indecent liberties;

29 (f) Leading organized crime;

30 (g) Promoting prostitution in the first degree;

31 (h) Rape in the third degree;

32 (i) Sexual exploitation;

33 (j) Vehicular assault;

34 (k) Vehicular homicide, when proximately caused by the driving of
35 any vehicle by any person while under the influence of intoxicating
36 liquor or any drug as defined by RCW 46.61.502, or by the operation of
37 any vehicle in a reckless manner;

38 (l) Any other class B felony offense with a finding of sexual
39 motivation, as "sexual motivation" is defined under RCW 9.94A.030;

1 (m) Any other felony with a deadly weapon verdict under RCW
2 9.94A.125; or

3 (n) Any felony offense in effect at any time prior to July 1, 1994,
4 that is comparable to a serious offense, or any federal or out-of-state
5 conviction for an offense that under the laws of this state would be a
6 felony classified as a serious offense.

7 **Sec. 2.** RCW 9.41.040 and 1994 1st sp.s. c 7 s 402 are each amended
8 to read as follows:

9 (1) A person, whether an adult or juvenile, is guilty of the crime
10 of unlawful possession of a firearm if the person owns, has in his or
11 her possession, or has in his or her control any firearm:

12 (a) After having previously been convicted or adjudicated in this
13 state or elsewhere of a serious offense, a domestic violence offense
14 enumerated in RCW 10.99.020(2) committed on or after July 1, 1994, a
15 harassment offense (~~(enumerated in RCW 9A.46.060)~~) under RCW 9A.46.020,
16 or of a felony in which a firearm was used or displayed, except as
17 otherwise provided in subsection (3) or (4) of this section;

18 (b) After having previously been convicted or adjudicated of any
19 felony violation of the uniform controlled substances act, chapter
20 69.50 RCW, or equivalent statutes of another jurisdiction, except as
21 otherwise provided in subsection (3) or (4) of this section;

22 (c) After having previously been convicted or adjudicated on three
23 occasions within five years of driving a motor vehicle or operating a
24 vessel while under the influence of intoxicating liquor or any drug,
25 unless his or her right to possess a firearm has been restored as
26 provided in RCW 9.41.047; or

27 (~~(e)~~) (d) If the person is under eighteen years of age, except as
28 provided in RCW 9.41.042.

29 (2) Unlawful possession of a firearm is a class C felony,
30 punishable under chapter 9A.20 RCW.

31 (3) As used in this section, a person has been "convicted or
32 adjudicated" at such time as a plea of guilty has been accepted or a
33 verdict of guilty has been filed, notwithstanding the pendency of any
34 future proceedings including but not limited to sentencing or
35 disposition, post-trial or post-factfinding motions, and appeals. A
36 person shall not be precluded from possession of a firearm if the
37 conviction or adjudication has been the subject of a pardon, annulment,
38 certificate of rehabilitation, or other equivalent procedure based on

1 a finding of the rehabilitation of the person convicted or adjudicated
2 or the conviction or disposition has been the subject of a pardon,
3 annulment, or other equivalent procedure based on a finding of
4 innocence.

5 (4) Notwithstanding subsection (1) of this section, a person
6 convicted or adjudicated of an offense other than murder, manslaughter,
7 robbery, rape, indecent liberties, arson, assault, kidnapping,
8 extortion, burglary, or violations with respect to controlled
9 substances under RCW 69.50.401(a) and 69.50.410, who received a
10 probationary sentence under RCW 9.95.200, and who received a dismissal
11 of the charge under RCW 9.95.240, shall not be precluded from
12 possession of a firearm as a result of the conviction or adjudication.

13 (~~((6))~~)(5)(a) A person who has been committed by court order for
14 treatment of mental illness under RCW 71.05.320 or chapter 10.77 RCW,
15 or equivalent statutes of another jurisdiction, may not possess, in any
16 manner, a firearm as defined in RCW 9.41.010.

17 (b) At the time of commitment, the court shall specifically state
18 to the person under (a) of this subsection and give the person notice
19 in writing that the person is barred from possession of firearms.

20 (c) The secretary of social and health services shall develop
21 appropriate rules to create an approval process under this subsection.
22 The rules must provide for the immediate restoration of the right to
23 possess a firearm upon a showing in a court of competent jurisdiction
24 that a person no longer is required to participate in an inpatient or
25 outpatient treatment program, and is no longer required to take
26 medication to treat any condition related to the commitment. Unlawful
27 possession of a firearm under this subsection shall be punished as a
28 class C felony under chapter 9A.20 RCW.

29 (~~((5))~~) (6) In addition to any other penalty provided for by law,
30 if a person under the age of eighteen years is found by a court to have
31 possessed a firearm in a vehicle in violation of subsection (1) of this
32 section or to have committed an offense while armed with a firearm
33 during which offense a motor vehicle served an integral function, the
34 court shall notify the department of licensing within twenty-four hours
35 and the person's privilege to drive shall be revoked under RCW
36 46.20.265.

37 **Sec. 3.** RCW 9.41.047 and 1994 1st sp.s. c 7 s 404 are each amended
38 to read as follows:

1 (1)((~~a~~)) At the time a person is convicted or adjudicated of an
2 offense making the person ineligible to possess a firearm, or at the
3 time a person is committed by court order under RCW 71.05.320,
4 71.34.090, or chapter 10.77 RCW for mental health treatment, the
5 convicting, disposing, or committing court shall notify the person,
6 orally and in writing, that the person may not possess a firearm unless
7 his or her right to do so is restored by a court of record.

8 The convicting, disposing, or committing court also shall forward
9 a copy of the person's driver's license or identicard, or comparable
10 information, to the department of licensing, along with the date of
11 conviction, disposition, or commitment.

12 (2) Upon receipt of the information provided for by subsection (1)
13 of this section, the department of licensing shall determine if the
14 convicted, adjudicated, or committed person has a concealed pistol
15 license. If the person does have a concealed pistol license, the
16 department of licensing shall immediately notify the license-issuing
17 authority.

18 (3) Except as provided in RCW 9.41.040 (3) and (4):

19 (a) A person who is prohibited from possessing a firearm by reason
20 of having previously been convicted or adjudicated of a class A or B
21 felony shall not be allowed to petition for restoration of the right to
22 possess a firearm.

23 (b) A person who is prohibited from possessing a firearm by reason
24 of having previously been convicted or adjudicated of a crime not
25 referenced in (a) or (c) of this subsection may, after the expiration
26 of the following times, petition a court of record to have his or her
27 right to possess a firearm restored:

28 (i) For a class C felony or equivalent from another state: Ten
29 years;

30 (ii) For a gross misdemeanor or misdemeanor or equivalent from
31 another state: Five years.

32 (c) A person who is prohibited from possessing a firearm by reason
33 of having previously been convicted or adjudicated on three occasions
34 of driving a motor vehicle or operating a vessel while under the
35 influence of intoxicating liquor or any drug may, after five continuous
36 years without further conviction or adjudication for any alcohol-
37 related offense, petition a court of record to have his or her right to
38 possess a firearm restored.

1 (4)(a) A person who is prohibited from possessing a firearm, by
2 reason of having been ~~((either:~~
3 ~~(ii)))~~ involuntarily committed for mental health treatment under
4 RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent statutes of
5 another jurisdiction, may, upon discharge, petition a court of record
6 to have his or her right to possess a firearm restored.

7 (b) At a minimum, a petition under this subsection (4) shall
8 include the following:

9 (i) The fact, date, and place of commitment;

10 (ii) The place of treatment;

11 (iii) The fact and date of release from commitment;

12 (iv) A certified copy of the most recent order, if one exists, of
13 commitment, with the findings of fact and conclusions of law; and

14 (v) A statement by the person that he or she is no longer required
15 to participate in an inpatient or outpatient treatment program, is no
16 longer required to take medication to treat any condition related to
17 the commitment, and does not present a substantial danger to himself or
18 herself, to others, or to the public safety.

19 (c) A person petitioning the court under this subsection (4) shall
20 bear the burden of proving by a preponderance of the evidence that the
21 circumstances resulting in the commitment no longer exist and are not
22 reasonably likely to recur.

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