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SENATE BILL 5028

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State of Washington

54th Legislature

1995 Regular Session

By Senator Smith

Read first time 01/09/95. Referred to Committee on Law & Justice.

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

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

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

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

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

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

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

1 (4) "Short-barreled rifle" means a rifle having one or more barrels  
2 less than sixteen inches in length and any weapon made from a rifle by  
3 any means of modification if such modified weapon has an overall length  
4 of less than twenty-six inches.

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

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

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

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

30 (9) "Loaded" means:

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

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

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

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

37 (10) "Dealer" means a person engaged in the business of selling  
38 firearms or ammunition at wholesale or retail who has, or is required  
39 to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A

1 person who does not have, and is not required to have, a federal  
2 firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that  
3 person makes only occasional sales, exchanges, or purchases of firearms  
4 for the enhancement of a personal collection or for a hobby, or sells  
5 all or part of his or her personal collection of firearms.

6 (11) "Crime of violence" means:

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

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

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

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

26 (a) Any crime of violence;

27 (b) Child molestation in the second degree;

28 (c) Controlled substance homicide;

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

30 (e) Indecent liberties;

31 (f) Leading organized crime;

32 (g) Promoting prostitution in the first degree;

33 (h) Rape in the third degree;

34 (i) Sexual exploitation;

35 (j) Vehicular assault;

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

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

3 (m) Any other felony with a deadly weapon verdict under RCW  
4 9.94A.125; or

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

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

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

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

20 (b) After having previously been convicted or adjudicated of any  
21 felony violation of the uniform controlled substances act, chapter  
22 69.50 RCW, or equivalent statutes of another jurisdiction, except as  
23 otherwise provided in subsection (3) or (4) of this section;

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

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

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

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

1 years have elapsed since the date of conviction for a misdemeanor or  
2 gross misdemeanor, if five years have elapsed since the date of  
3 conviction for a class C felony, or if ten years have elapsed since the  
4 date of conviction for a class B felony, or if the conviction or  
5 adjudication has been the subject of a pardon, annulment, certificate  
6 of rehabilitation, or other equivalent procedure based on a finding of  
7 the rehabilitation of the person convicted or adjudicated or the  
8 conviction or disposition has been the subject of a pardon, annulment,  
9 or other equivalent procedure based on a finding of innocence.

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

18 (~~(+6)~~) (5)(a) A person who has been committed by court order for  
19 treatment of mental illness under RCW 71.05.320 or chapter 10.77 RCW,  
20 or equivalent statutes of another jurisdiction, may not possess, in any  
21 manner, a firearm as defined in RCW 9.41.010.

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

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

34 (~~(+5)~~) (6) In addition to any other penalty provided for by law,  
35 if a person under the age of eighteen years is found by a court to have  
36 possessed a firearm in a vehicle in violation of subsection (1) of this  
37 section or to have committed an offense while armed with a firearm  
38 during which offense a motor vehicle served an integral function, the  
39 court shall notify the department of licensing within twenty-four hours

1 and the person's privilege to drive shall be revoked under RCW  
2 46.20.265.

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

5 (1)~~((a))~~ At the time a person is convicted or adjudicated of an  
6 offense making the person ineligible to possess a firearm, or at the  
7 time a person is committed by court order under RCW 71.05.320,  
8 71.34.090, or chapter 10.77 RCW for mental health treatment, the  
9 convicting, disposing, or committing court shall notify the person,  
10 orally and in writing, that the person may not possess a firearm unless  
11 his or her right to do so is restored by a court of record. Failure to  
12 notify a person that he or she is ineligible to possess a firearm is  
13 not a defense to prosecution under RCW 9.41.040.

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

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, adjudicated, or committed person has a concealed pistol  
21 license. If the person does have a concealed pistol license, the  
22 department of licensing shall immediately notify the license-issuing  
23 authority.

24 (3) A person who is prohibited from possessing a firearm by reason  
25 of having previously been convicted or adjudicated on three occasions  
26 of driving a motor vehicle or operating a vessel while under the  
27 influence of intoxicating liquor or any drug may, after five continuous  
28 years without further conviction or adjudication for any alcohol-  
29 related offense, petition a court of record to have his or her right to  
30 possess a firearm restored.

31 (4)(a) A person who is prohibited from possessing a firearm, by  
32 reason of having been ~~((either:~~

33 ~~(ii)))~~ involuntarily committed for mental health treatment under  
34 RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent statutes of  
35 another jurisdiction, may, upon discharge, petition a court of record  
36 to have his or her right to possess a firearm restored.

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

1 (i) The fact, date, and place of commitment;  
2 (ii) The place of treatment;  
3 (iii) The fact and date of release from commitment;  
4 (iv) A certified copy of the most recent order, if one exists, of  
5 commitment, with the findings of fact and conclusions of law; and  
6 (v) A statement by the person that he or she is no longer required  
7 to participate in an inpatient or outpatient treatment program, is no  
8 longer required to take medication to treat any condition related to  
9 the commitment, and does not present a substantial danger to himself or  
10 herself, to others, or to the public safety.  
11 (c) A person petitioning the court under this subsection (4) shall  
12 bear the burden of proving by a preponderance of the evidence that the  
13 circumstances resulting in the commitment no longer exist and are not  
14 reasonably likely to recur.

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