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HOUSE BILL 1484

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State of Washington                      57th Legislature                      2001 Regular Session

By Representatives Carrell, Hurst, Benson and Boldt

Read first time 01/26/2001. Referred to Committee on Judiciary.

1            AN ACT Relating to firearms; amending RCW 9.41.040, 9.41.010,  
2 9.41.047, and 13.04.030; creating a new section; prescribing penalties;  
3 and declaring an emergency.

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

5            **Sec. 1.** RCW 9.41.040 and 1997 c 338 s 47 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 in this state or  
11 elsewhere of any serious offense as defined in this chapter.

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

17            (i) After having previously been convicted in this state or  
18 elsewhere of any felony not specifically listed as prohibiting firearm  
19 possession under (a) of this subsection, or any of the following crimes

1 when committed by one family or household member against another,  
2 committed on or after July 1, 1993: Assault in the fourth degree,  
3 coercion, stalking, reckless endangerment, criminal trespass in the  
4 first degree, or violation of the provisions of a protection order or  
5 no-contact order restraining the person or excluding the person from a  
6 residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

7 (ii) After having previously been involuntarily committed for  
8 mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77  
9 RCW, or equivalent statutes of another jurisdiction, unless his or her  
10 right to possess a firearm has been restored as provided in RCW  
11 9.41.047;

12 (iii) If the person is under eighteen years of age, except as  
13 provided in RCW 9.41.042; and/or

14 (iv) If the person is free on bond or personal recognizance pending  
15 trial, appeal, or sentencing for a serious offense as defined in RCW  
16 9.41.010.

17 (2)(a) Unlawful possession of a firearm in the first degree is a  
18 class B felony, punishable under chapter 9A.20 RCW.

19 (b) Unlawful possession of a firearm in the second degree is a  
20 class C felony, punishable under chapter 9A.20 RCW.

21 (3) Notwithstanding RCW 9.41.047 or any other provisions of law, as  
22 used in this chapter, a person has been "convicted", whether in an  
23 adult court or adjudicated in a juvenile court, at such time as a plea  
24 of guilty has been accepted, or a verdict of guilty has been filed,  
25 notwithstanding the pendency of any future proceedings including but  
26 not limited to sentencing or disposition, post-trial or post-  
27 factfinding motions, and appeals. Conviction includes a dismissal  
28 entered after a period of probation, suspension or deferral of  
29 sentence, and also includes equivalent dispositions by courts in  
30 jurisdictions other than Washington state. A person shall not be  
31 precluded from possession of a firearm if the conviction has been the  
32 subject of a pardon, annulment, certificate of rehabilitation, or other  
33 equivalent procedure based on a finding of the rehabilitation of the  
34 person convicted or the conviction or disposition has been the subject  
35 of a pardon, annulment, or other equivalent procedure based on a  
36 finding of innocence. Where no record of the court's disposition of  
37 the charges can be found, there shall be a rebuttable presumption that  
38 the person was not convicted of the charge.

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

10 (5) Notwithstanding any other provisions of this section, if a  
11 person is prohibited from possession of a firearm under subsection (1)  
12 of this section and has not previously been convicted of a sex offense  
13 prohibiting firearm ownership under subsection (1) of this section  
14 and/or any felony defined under any law as a class A felony or with a  
15 maximum sentence of at least twenty years, or both, the individual may  
16 petition a court of record to have his or her right to possess a  
17 firearm restored:

18 (a) Under RCW 9.41.047; and/or

19 (b)(i) Except as otherwise provided in (b)(iii) of this subsection,  
20 if the conviction was for a felony offense, after five or more  
21 consecutive years in the community without being convicted or currently  
22 charged with any felony, gross misdemeanor, or misdemeanor crimes, if  
23 the individual has no prior felony convictions that prohibit the  
24 possession of a firearm counted as part of the offender score under RCW  
25 9.94A.360; or

26 (ii) Except as otherwise provided in (b)(iii) of this subsection,  
27 if the conviction was for a nonfelony offense, after three or more  
28 consecutive years in the community without being convicted or currently  
29 charged with any felony, gross misdemeanor, or misdemeanor crimes, if  
30 the individual has no prior felony convictions that prohibit the  
31 possession of a firearm counted as part of the offender score under RCW  
32 9.94A.360 and the individual has completed all conditions of the  
33 sentence; or

34 (iii) If the conviction was for an offense committed by an  
35 individual under the age of eighteen who was armed with a firearm  
36 during the commission of the offense, after ten or more consecutive  
37 years in the community without being convicted or currently charged  
38 with any felony, gross misdemeanor, or misdemeanor crimes, if the  
39 individual has no prior felony convictions that prohibit the possession

1 of a firearm counted as part of the offender score under RCW 9.94A.360  
2 and has completed all conditions of the sentence.

3 ((+5)) (6) In addition to any other penalty provided for by law,  
4 if a person under the age of eighteen years is found by a court to have  
5 possessed a firearm in a vehicle in violation of subsection (1) of this  
6 section or to have committed an offense while armed with a firearm  
7 during which offense a motor vehicle served an integral function, the  
8 court shall notify the department of licensing within twenty-four hours  
9 and the person's privilege to drive shall be revoked under RCW  
10 46.20.265.

11 ((+6)) (7) Nothing in chapter 129, Laws of 1995 shall ever be  
12 construed or interpreted as preventing an offender from being charged  
13 and subsequently convicted for the separate felony crimes of theft of  
14 a firearm or possession of a stolen firearm, or both, in addition to  
15 being charged and subsequently convicted under this section for  
16 unlawful possession of a firearm in the first or second degree.  
17 Notwithstanding any other law, if the offender is convicted under this  
18 section for unlawful possession of a firearm in the first or second  
19 degree and for the felony crimes of theft of a firearm or possession of  
20 a stolen firearm, or both, then the offender shall serve consecutive  
21 sentences for each of the felony crimes of conviction listed in this  
22 subsection.

23 ((+7)) (8) Each firearm unlawfully possessed under this section  
24 shall be a separate offense.

25 **Sec. 2.** RCW 9.41.010 and 1997 c 338 s 46 are each amended to read  
26 as follows:

27 Unless the context clearly requires otherwise, the definitions in  
28 this section apply throughout this chapter.

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

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

34 (3) "Rifle" means a weapon designed or redesigned, made or remade,  
35 and intended to be fired from the shoulder and designed or redesigned,  
36 made or remade, and intended to use the energy of the explosive in a  
37 fixed metallic cartridge to fire only a single projectile through a  
38 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) Cartridges are in a clip that is locked in place in the  
33 firearm;

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

36 (d) There is a cartridge in the tube or magazine that is inserted  
37 in the action; or

38 (e) There is a ball in the barrel and the firearm is capped or  
39 primed if the firearm is a muzzle loader.

1 (10) "Dealer" means a person engaged in the business of selling  
2 firearms at wholesale or retail who has, or is required to have, a  
3 federal firearms license under 18 U.S.C. Sec. 923(a). A person who  
4 does not have, and is not required to have, a federal firearms license  
5 under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only  
6 occasional sales, exchanges, or purchases of firearms for the  
7 enhancement of a personal collection or for a hobby, or sells all or  
8 part of his or her personal collection of firearms.

9 (11) (~~"Crime of violence" means:~~

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

20 ~~(b) Any conviction for a felony offense in effect at any time prior~~  
21 ~~to June 6, 1996, which is comparable to a felony classified as a crime~~  
22 ~~of violence in (a) of this subsection; and~~

23 ~~(c) Any federal or out of state conviction for an offense~~  
24 ~~comparable to a felony classified as a crime of violence under (a) or~~  
25 ~~(b) of this subsection.~~

26 ~~(12))~~ "Serious offense" means any of the following felonies or a  
27 felony attempt to commit any of the following felonies, as now existing  
28 or hereafter amended:

29 (a) Any crime of violence, which means any of the following  
30 felonies, as now existing or hereafter amended:

31 (i) Any felony defined under any law as a class A felony or an  
32 attempt to commit a class A felony, criminal solicitation of or  
33 criminal conspiracy to commit a class A felony, manslaughter in the  
34 first degree, manslaughter in the second degree, indecent liberties if  
35 committed by forcible compulsion, kidnapping in the second degree,  
36 arson in the second degree, assault in the second degree, assault of a  
37 child in the second degree, extortion in the first degree, burglary in  
38 the second degree, residential burglary, and robbery in the second  
39 degree;

1        (ii) Any conviction for a felony offense in effect at any time  
2 prior to June 6, 1996, which is comparable to a felony classified as a  
3 crime of violence in (a)(i) of this subsection; and

4        (iii) Any federal or out-of-state conviction for an offense  
5 comparable to a felony classified as a crime of violence under (a)(i)  
6 or (ii) of this subsection;

7        (b) Any felony violation of the uniform controlled substances act,  
8 chapter 69.50 RCW, that is classified as a class B felony or that has  
9 a maximum term of imprisonment of at least ten years;

10        (c) Child molestation in the second degree;

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

12        (e) Indecent liberties;

13        (f) Leading organized crime;

14        (g) Promoting prostitution in the first degree;

15        (h) Rape in the third degree;

16        (i) Drive-by shooting;

17        (j) Sexual exploitation;

18        (k) Vehicular assault;

19        (l) Vehicular homicide, when proximately caused by the driving of  
20 any vehicle by any person while under the influence of intoxicating  
21 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
22 any vehicle in a reckless manner;

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

25        (n) Any other felony with a deadly weapon verdict under RCW  
26 9.94A.125; or

27        (o) Any felony offense in effect at any time prior to June 6, 1996,  
28 that is comparable to a serious offense, or any federal or out-of-state  
29 conviction for an offense that under the laws of this state would be a  
30 felony classified as a serious offense.

31        (~~(13)~~) (12) "Law enforcement officer" includes a general  
32 authority Washington peace officer as defined in RCW 10.93.020, or a  
33 specially commissioned Washington peace officer as defined in RCW  
34 10.93.020. "Law enforcement officer" also includes a limited authority  
35 Washington peace officer as defined in RCW 10.93.020 if such officer is  
36 duly authorized by his or her employer to carry a concealed pistol.

37        (~~(14)~~) (13) "Felony" means any felony offense under the laws of  
38 this state or any federal or out-of-state offense comparable to a  
39 felony offense under the laws of this state.

1       (~~(15)~~) (14) "Sell" refers to the actual approval of the delivery  
2 of a firearm in consideration of payment or promise of payment of a  
3 certain price in money.

4       (~~(16)~~) (15) "Barrel length" means the distance from the bolt face  
5 of a closed action down the length of the axis of the bore to the crown  
6 of the muzzle, or in the case of a barrel with attachments to the end  
7 of any legal device permanently attached to the end of the muzzle.

8       (~~(17)~~) (16) "Family or household member" means "family" or  
9 "household member" as used in RCW 10.99.020.

10       **Sec. 3.** RCW 9.41.047 and 1996 c 295 s 3 are each amended to read  
11 as follows:

12       (1) At the time a person is convicted or found not guilty by reason  
13 of insanity of an offense making the person ineligible to possess a  
14 firearm, or at the time a person is committed by court order under RCW  
15 71.05.320, 71.34.090, or chapter 10.77 RCW for mental health treatment,  
16 the convicting or committing court shall notify the person, orally and  
17 in writing, that the person must immediately surrender any concealed  
18 pistol license and that the person may not possess a firearm unless his  
19 or her right to do so is restored by a court of record. For purposes  
20 of this section a convicting court includes a court in which a person  
21 has been found not guilty by reason of insanity.

22       The convicting or committing court also shall forward a copy of the  
23 person's driver's license or identicard, or comparable information, to  
24 the department of licensing, along with the date of conviction or  
25 commitment.

26       (2) Upon receipt of the information provided for by subsection (1)  
27 of this section, the department of licensing shall determine if the  
28 convicted or committed person has a concealed pistol license. If the  
29 person does have a concealed pistol license, the department of  
30 licensing shall immediately notify the license-issuing authority which,  
31 upon receipt of such notification, shall immediately revoke the  
32 license.

33       (3)(a) A person who is prohibited from possessing a firearm, by  
34 reason of having been involuntarily committed for mental health  
35 treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or  
36 equivalent statutes of another jurisdiction may, upon discharge,  
37 petition a court of record to have his or her right to possess a  
38 firearm restored. At the time of commitment, the court shall



1 specifically state to the person that he or she is barred from  
2 possession of firearms.

3 (b) The secretary of social and health services shall develop  
4 appropriate rules to create an approval process under this subsection.  
5 The rules must provide for the restoration of the right to possess a  
6 firearm upon a showing in a court of competent jurisdiction that the  
7 person is no longer required to participate in an inpatient or  
8 outpatient treatment program, is no longer required to take medication  
9 to treat any condition related to the commitment, and does not present  
10 a substantial danger to himself or herself, others, or the public.  
11 Unlawful possession of a firearm under this subsection shall be  
12 punished as a class C felony under chapter 9A.20 RCW.

13 (c) A person petitioning the court under this subsection (3) shall  
14 bear the burden of proving by a preponderance of the evidence that the  
15 circumstances resulting in the commitment no longer exist and are not  
16 reasonably likely to recur and by clear, cogent, and convincing  
17 evidence that he or she does not present a substantial danger to the  
18 safety of others.

19 (4) No person who has been found not guilty by reason of insanity  
20 may petition a court for restoration of the right to possess a firearm  
21 unless the person meets the requirements for the restoration of the  
22 right to possess a firearm that would have applied under RCW  
23 9.41.040(4) if the person had been found guilty of the crime.

24 **Sec. 4.** RCW 13.04.030 and 2000 c 135 s 2 are each amended to read  
25 as follows:

26 (1) Except as provided in this section, the juvenile courts in this  
27 state shall have exclusive original jurisdiction over all proceedings:

28 (a) Under the interstate compact on placement of children as  
29 provided in chapter 26.34 RCW;

30 (b) Relating to children alleged or found to be dependent as  
31 provided in chapter 26.44 RCW and in RCW 13.34.030 through  
32 (~~13.34.170~~) 13.34.165;

33 (c) Relating to the termination of a parent and child relationship  
34 as provided in RCW 13.34.180 through 13.34.210;

35 (d) To approve or disapprove out-of-home placement as provided in  
36 RCW 13.32A.170;

1 (e) Relating to juveniles alleged or found to have committed  
2 offenses, traffic or civil infractions, or violations as provided in  
3 RCW 13.40.020 through 13.40.230, unless:

4 (i) The juvenile court transfers jurisdiction of a particular  
5 juvenile to adult criminal court pursuant to RCW 13.40.110;

6 (ii) The statute of limitations applicable to adult prosecution for  
7 the offense, traffic or civil infraction, or violation has expired;

8 (iii) The alleged offense or infraction is a traffic, fish,  
9 boating, or game offense, or traffic or civil infraction committed by  
10 a juvenile sixteen years of age or older and would, if committed by an  
11 adult, be tried or heard in a court of limited jurisdiction, in which  
12 instance the appropriate court of limited jurisdiction shall have  
13 jurisdiction over the alleged offense or infraction, and no guardian ad  
14 litem is required in any such proceeding due to the juvenile's age:

15 PROVIDED, That if such an alleged offense or infraction and an alleged  
16 offense or infraction subject to juvenile court jurisdiction arise out  
17 of the same event or incident, the juvenile court may have jurisdiction  
18 of both matters: PROVIDED FURTHER, That the jurisdiction under this  
19 subsection does not constitute "transfer" or a "decline" for purposes  
20 of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER,  
21 That courts of limited jurisdiction which confine juveniles for an  
22 alleged offense or infraction may place juveniles in juvenile detention  
23 facilities under an agreement with the officials responsible for the  
24 administration of the juvenile detention facility in RCW 13.04.035 and  
25 13.20.060;

26 (iv) The alleged offense is a traffic or civil infraction, a  
27 violation of compulsory school attendance provisions under chapter  
28 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has  
29 assumed concurrent jurisdiction over those offenses as provided in RCW  
30 13.04.0301; ((or))

31 (v) The juvenile is sixteen or seventeen years old and the alleged  
32 offense is:

33 (A) A serious violent offense as defined in RCW 9.94A.030;

34 (B) A violent offense as defined in RCW 9.94A.030 and the juvenile  
35 has a criminal history consisting of: (I) One or more prior serious  
36 violent offenses; (II) two or more prior violent offenses; or (III)  
37 three or more of any combination of the following offenses: Any class  
38 A felony, any class B felony, vehicular assault, or manslaughter in the

1 second degree, all of which must have been committed after the  
2 juvenile's thirteenth birthday and prosecuted separately;

3 (C) Robbery in the first degree, rape of a child in the first  
4 degree, or drive-by shooting, committed on or after July 1, 1997;

5 (D) Burglary in the first degree committed on or after July 1,  
6 1997, and the juvenile has a criminal history consisting of one or more  
7 prior felony or misdemeanor offenses; or

8 (~~(E) Any violent offense as defined in RCW 9.94A.030 committed on~~  
9 ~~or after July 1, 1997,~~)

10 (vi) The juvenile is at least twelve years of age and the juvenile  
11 is alleged to have been armed with a firearm.

12 In such a case the adult criminal court shall have exclusive  
13 original jurisdiction.

14 If the juvenile challenges the state's determination of the  
15 juvenile's criminal history under (e)(v) of this subsection, the state  
16 may establish the offender's criminal history by a preponderance of the  
17 evidence. If the criminal history consists of adjudications entered  
18 upon a plea of guilty, the state shall not bear a burden of  
19 establishing the knowing and voluntariness of the plea;

20 (f) Under the interstate compact on juveniles as provided in  
21 chapter 13.24 RCW;

22 (g) Relating to termination of a diversion agreement under RCW  
23 13.40.080, including a proceeding in which the divertee has attained  
24 eighteen years of age;

25 (h) Relating to court validation of a voluntary consent to an out-  
26 of-home placement under chapter 13.34 RCW, by the parent or Indian  
27 custodian of an Indian child, except if the parent or Indian custodian  
28 and child are residents of or domiciled within the boundaries of a  
29 federally recognized Indian reservation over which the tribe exercises  
30 exclusive jurisdiction;

31 (i) Relating to petitions to compel disclosure of information filed  
32 by the department of social and health services pursuant to RCW  
33 74.13.042; and

34 (j) Relating to judicial determinations and permanency planning  
35 hearings involving developmentally disabled children who have been  
36 placed in out-of-home care pursuant to a voluntary placement agreement  
37 between the child's parent, guardian, or legal custodian and the  
38 department of social and health services.

1 (2) The family court shall have concurrent original jurisdiction  
2 with the juvenile court over all proceedings under this section if the  
3 superior court judges of a county authorize concurrent jurisdiction as  
4 provided in RCW 26.12.010.

5 (3) The juvenile court shall have concurrent original jurisdiction  
6 with the family court over child custody proceedings under chapter  
7 26.10 RCW as provided for in RCW 13.34.155.

8 (4) A juvenile subject to adult superior court jurisdiction under  
9 subsection (1)(e)(i) through (v) of this section, who is detained  
10 pending trial, may be detained in a detention facility as defined in  
11 RCW 13.40.020 pending sentencing or a dismissal.

12 NEW SECTION. **Sec. 5.** If any part of this act is found to be in  
13 conflict with federal requirements, the conflicting part of this act is  
14 hereby declared to be inoperative solely to the extent of the conflict,  
15 and such finding or determination does not affect the operation of the  
16 remainder of this act. Rules adopted under this act must meet federal  
17 requirements.

18 NEW SECTION. **Sec. 6.** If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
23 preservation of the public peace, health, or safety, or support of the  
24 state government and its existing public institutions, and takes effect  
25 immediately.

--- END ---