

SSB 5256 - S AMD 133
By Senator Fain

ADOPTED 03/08/2017

1 On page 5, after line 27, insert the following:

2 "Sec. 4. RCW 9.41.040 and 2016 c 136 s 7 are each amended to
3 read as follows:

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

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

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

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

28 (ii) During any period of time that the person is subject to a
29 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,
30 26.09, 26.10, 26.26, or 26.50 RCW that:

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

1 (B) Restrains the person from harassing, stalking, or threatening
2 an intimate partner of the person or child of the intimate partner or
3 person, or engaging in other conduct that would place an intimate
4 partner in reasonable fear of bodily injury to the partner or child;
5 and

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

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

11 (iii) After having previously been involuntarily committed for
12 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,
13 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
14 jurisdiction, unless his or her right to possess a firearm has been
15 restored as provided in RCW 9.41.047;

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

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

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

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

27 (3) Notwithstanding RCW 9.41.047 or any other provisions of law,
28 as used in this chapter, a person has been "convicted", whether in an
29 adult court or adjudicated in a juvenile court, at such time as a
30 plea of guilty has been accepted, or a verdict of guilty has been
31 filed, notwithstanding the pendency of any future proceedings
32 including but not limited to sentencing or disposition, post-trial or
33 post-fact-finding motions, and appeals. Conviction includes a
34 dismissal entered after a period of probation, suspension or deferral
35 of sentence, and also includes equivalent dispositions by courts in
36 jurisdictions other than Washington state. A person shall not be
37 precluded from possession of a firearm if the conviction has been the
38 subject of a pardon, annulment, certificate of rehabilitation, or
39 other equivalent procedure based on a finding of the rehabilitation
40 of the person convicted or the conviction or disposition has been the

1 subject of a pardon, annulment, or other equivalent procedure based
2 on a finding of innocence. Where no record of the court's disposition
3 of the charges can be found, there shall be a rebuttable presumption
4 that the person was not convicted of the charge.

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

23 (i) Under RCW 9.41.047; and/or

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

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

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

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

6 (ii) The superior court in the county in which the petitioner
7 resides.

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

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

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

34 (8) For purposes of this section, "intimate partner" includes: A
35 spouse, a domestic partner, a former spouse, a former domestic
36 partner, a person with whom the restrained person has a child in
37 common, or a person with whom the restrained person has cohabitated
38 or is cohabitating as part of a dating relationship."

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1 On page 1, line 2 of the title, after "7.90.121," strike the
2 remainder of the title and insert "7.90.170, and 9.41.040."

EFFECT: Permits a court to modify firearms restrictions in a sexual assault protection order as provided in RCW 7.90.170.

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