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**SENATE BILL 6163**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senators Dhingra, Kuderer, Wellman, Pedersen, Darneille, Frockt, Rolfes, Stanford, and Wilson, C.

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1 AN ACT Relating to unlawful possession of firearms for persons  
2 free on bond or personal recognizance pending trial, appeal, or  
3 sentencing for felony charges under RCW 46.61.502(6) and  
4 46.61.504(6); and reenacting and amending RCW 9.41.040.

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

6 **Sec. 1.** RCW 9.41.040 and 2019 c 248 s 2, 2019 c 245 s 3, and  
7 2019 c 46 s 5003 are each reenacted and amended to read as follows:

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

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

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

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

11 (ii) After having previously been convicted or found not guilty  
12 by reason of insanity in this state or elsewhere of harassment when  
13 committed by one family or household member against another,  
14 committed on or after June 7, 2018;

15 (iii) 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, 26.26A, 26.26B, 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 the person protected under the order or child of the person or  
23 protected person, or engaging in other conduct that would place the  
24 protected person in reasonable fear of bodily injury to the protected  
25 person or child; and

26 (C) (I) Includes a finding that the person represents a credible  
27 threat to the physical safety of the protected person or child and by  
28 its terms explicitly prohibits the use, attempted use, or threatened  
29 use of physical force against the protected person or child that  
30 would reasonably be expected to cause bodily injury; or

31 (II) Includes an order under RCW 9.41.800 requiring the person to  
32 surrender all firearms and prohibiting the person from accessing,  
33 obtaining, or possessing firearms;

34 (iv) After having previously been involuntarily committed for  
35 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,  
36 71.34.750, chapter 10.77 RCW, or equivalent statutes of another  
37 jurisdiction, unless his or her right to possess a firearm has been  
38 restored as provided in RCW 9.41.047;

39 (v) After dismissal of criminal charges based on incompetency to  
40 stand trial under RCW 10.77.088 when the court has made a finding

1 indicating that the defendant has a history of one or more violent  
2 acts, unless his or her right to possess a firearm has been restored  
3 as provided in RCW 9.41.047;

4 (vi) If the person is under eighteen years of age, except as  
5 provided in RCW 9.41.042; and/or

6 (vii) If the person is free on bond or personal recognizance  
7 pending trial, appeal, or sentencing for a serious offense as defined  
8 in RCW 9.41.010 or for a felony charge under RCW 46.61.502(6) and  
9 46.61.504(6).

10 (b) (a)(iii) of this subsection does not apply to a sexual  
11 assault protection order under chapter 7.90 RCW if the order has been  
12 modified pursuant to RCW 7.90.170 to remove any restrictions on  
13 firearm purchase, transfer, or possession.

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

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

34 (4)(a) Notwithstanding subsection (1) or (2) of this section, a  
35 person convicted or found not guilty by reason of insanity of an  
36 offense prohibiting the possession of a firearm under this section  
37 other than murder, manslaughter, robbery, rape, indecent liberties,  
38 arson, assault, kidnapping, extortion, burglary, or violations with  
39 respect to controlled substances under RCW 69.50.401 and 69.50.410,  
40 who received a probationary sentence under RCW 9.95.200, and who

1 received a dismissal of the charge under RCW 9.95.240, shall not be  
2 precluded from possession of a firearm as a result of the conviction  
3 or finding of not guilty by reason of insanity. Notwithstanding any  
4 other provisions of this section, if a person is prohibited from  
5 possession of a firearm under subsection (1) or (2) of this section  
6 and has not previously been convicted or found not guilty by reason  
7 of insanity of a sex offense prohibiting firearm ownership under  
8 subsection (1) or (2) of this section and/or any felony defined under  
9 any law as a class A felony or with a maximum sentence of at least  
10 twenty years, or both, the individual may petition a court of record  
11 to have his or her right to possess a firearm restored:

12 (i) Under RCW 9.41.047; and/or

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

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

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

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

33 (ii) The superior court in the county in which the petitioner  
34 resides.

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

1 twenty-four hours and the person's privilege to drive shall be  
2 revoked under RCW 46.20.265, unless the offense is the juvenile's  
3 first offense in violation of this section and has not committed an  
4 offense while armed with a firearm, an unlawful possession of a  
5 firearm offense, or an offense in violation of chapter 66.44, 69.52,  
6 69.41, or 69.50 RCW.

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

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

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