
HOUSE BILL 2329

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By Representatives Campbell, Ballasiotes, Long, Chappell, Wineberry, Brough, Talcott, Van Luven, Brumsickle, Stevens, Schmidt, Wood, Forner, Schoesler, Padden, Dyer, Chandler, Mastin, Jones and Mielke

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1 AN ACT Relating to possession of firearms by committed persons;
2 amending RCW 9.41.070, 9.41.090, 71.05.450, 71.12.560, and 72.23.080;
3 reenacting and amending RCW 9.41.040; creating a new section; and
4 prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The need to regulate the possession of
7 pistols by persons who pose a danger to themselves and to others is
8 increasingly evident. The legislature finds that persons requiring
9 intensive mental health treatment are likely to pose a danger to
10 themselves and to others. The legislature further finds that
11 additional measures for limiting the possession of firearms by such
12 persons are necessary for the public health, safety, and welfare.

13 **Sec. 2.** RCW 9.41.040 and 1992 c 205 s 118 and 1992 c 168 s 2 are
14 each reenacted and amended to read as follows:

15 (1) A person is guilty of the crime of unlawful possession of a
16 short firearm or pistol, if, having previously been convicted or, as a
17 juvenile, adjudicated in this state or elsewhere of a crime of violence

1 or of a felony in which a firearm was used or displayed, the person
2 owns or has in his possession any short firearm or pistol.

3 (2) Unlawful possession of a short firearm or pistol shall be
4 punished as a class C felony under chapter 9A.20 RCW.

5 (3) As used in this section, a person has been "convicted or
6 adjudicated" at such time as a plea of guilty has been accepted or a
7 verdict of guilty has been filed, notwithstanding the pendency of any
8 future proceedings including but not limited to sentencing or
9 disposition, post-trial or post-factfinding motions, and appeals. A
10 person shall not be precluded from possession if the conviction or
11 adjudication has been the subject of a pardon, annulment, certificate
12 of rehabilitation, or other equivalent procedure based on a finding of
13 the rehabilitation of the person convicted or adjudicated or the
14 conviction or disposition has been the subject of a pardon, annulment,
15 or other equivalent procedure based on a finding of innocence.

16 (4) Except as provided in subsection (5) of this section, a person
17 is guilty of the crime of unlawful possession of a short firearm or
18 pistol if, after having been convicted or adjudicated of any felony
19 violation of the uniform controlled substances act, chapter 69.50 RCW,
20 or equivalent statutes of another jurisdiction, the person owns or has
21 in his or her possession or under his or her control any short firearm
22 or pistol.

23 (5) Notwithstanding subsection (1) of this section, a person
24 convicted of an offense other than murder, manslaughter, robbery, rape,
25 indecent liberties, arson, assault, kidnapping, extortion, burglary, or
26 violations with respect to controlled substances under RCW 69.50.401(a)
27 and 69.50.410, who received a probationary sentence under RCW 9.95.200,
28 and who received a dismissal of the charge under RCW 9.95.240, shall
29 not be precluded from ownership, possession, or control of a firearm as
30 a result of the conviction.

31 (6)(a) A person who has been committed by court order for treatment
32 of mental illness under RCW 71.05.320 or chapter 10.77 RCW, or
33 equivalent statutes of another jurisdiction or committed voluntarily
34 for a period exceeding fourteen days, may not possess, in any manner,
35 a firearm as defined in RCW 9.41.010. Unlawful possession of a firearm
36 under this subsection is a class C felony punishable under chapter
37 9A.20 RCW.

38 (b) At the expiration of fourteen days of treatment of a person
39 voluntarily committed, if the period of voluntary commitment is to

1 continue, the institution, hospital, or sanitarium shall specifically
2 state to the person voluntarily committed and give the person notice in
3 writing, that the person is barred from possession of a firearm as
4 defined by RCW 9.41.010.

5 (c) For a person prohibited by this subsection (6) from possessing
6 a firearm, the institution, hospital, or sanitarium providing the
7 mental health treatment shall immediately notify the department of
8 licensing of the person's name, residence, date of birth, sex, place of
9 birth, social security number, and date of admission to the
10 institution, hospital, or sanitarium. If the person has a concealed
11 pistol license, the department of licensing shall immediately notify
12 the issuing authority. Except as provided in this subsection (6)(c),
13 the department of licensing and the issuing authority shall hold the
14 information confidential, and shall use the information solely to
15 determine the person's eligibility to purchase or possess a firearm as
16 defined by RCW 9.41.010, or eligibility for a concealed pistol license.

17 (d) A person committed voluntarily may apply to the department of
18 licensing to have his or her right to possess a firearm restored. The
19 person voluntarily committed bears the burden of convincing the
20 department that: (i) He or she is not required to participate in an
21 inpatient or outpatient treatment program; (ii) he or she is not
22 required to take medication to treat a condition related to the
23 commitment; and (iii) he or she does not present a substantial danger
24 to himself or herself, or to other persons, and is unlikely to commit
25 felonious acts jeopardizing public safety. The director of the
26 department of licensing shall establish, by rule adopted under chapter
27 34.05 RCW, procedures for processing applications under this subsection
28 (6)(d).

29 A person committed voluntarily may bring a civil suit in a court of
30 competent jurisdiction to enjoin a wrongful refusal to restore the
31 person's right to possess a firearm.

32 (e) At the time of involuntary commitment, the court shall
33 specifically state to ((the)) a person ((under (a) of this subsection))
34 being committed under RCW 71.05.320 or chapter 10.77 RCW, and give the
35 person notice in writing, that the person is barred from possession of
36 ((firearms)) a firearm as defined by RCW 9.41.010.

37 ((c) The secretary of social and health services shall develop
38 appropriate rules to create an approval process under this subsection.
39 The rules must provide for the immediate restoration of the right to

1 ~~possess a firearm upon a showing in a court of competent jurisdiction~~
2 ~~that a person no longer is required to participate in an inpatient or~~
3 ~~outpatient treatment program, and is no longer required to take~~
4 ~~medication to treat any condition related to the commitment. Unlawful~~
5 ~~possession of a firearm under this subsection shall be punished as a~~
6 ~~class C felony under chapter 9A.20 RCW.)) (f) A person committed by
7 court order may petition a court of competent jurisdiction to have his
8 or her right to possess a firearm restored. The person committed by
9 court order bears the burden of proving by a preponderance of the
10 evidence that: (i) He or she is no longer required to participate in
11 an inpatient or outpatient treatment program; (ii) he or she is no
12 longer required to take medication to treat any condition related to
13 the commitment; and (iii) he or she does not present a substantial
14 danger to himself or herself, or to other persons, and is unlikely to
15 commit felonious acts jeopardizing public safety.~~

16 (g) At a minimum, the petition under (f) of this subsection must
17 include the following: (i) The fact, date, and place of involuntary
18 treatment; (ii) the fact and date of release from involuntary
19 commitment; (iii) a certified copy of the most recent order of
20 commitment with the findings of fact and conclusions of law; and (iv)
21 a statement by the person that he or she is no longer required to
22 participate in an inpatient or outpatient treatment program, is no
23 longer required to take medication to treat any condition related to
24 the commitment, and does not present a substantial danger to himself,
25 herself, others, or to the public safety.

26 **Sec. 3.** RCW 9.41.070 and 1992 c 168 s 1 are each amended to read
27 as follows:

28 (1) The judge of a court of record, the chief of police of a
29 municipality, or the sheriff of a county, shall within thirty days
30 after the filing of an application of any person issue a license to
31 such person to carry a pistol concealed on his or her person within
32 this state for four years from date of issue, for the purposes of
33 protection or while engaged in business, sport, or while traveling.
34 However, if the applicant does not have a valid permanent Washington
35 driver's license or Washington state identification card or has not
36 been a resident of the state for the previous consecutive ninety days,
37 the issuing authority shall have up to sixty days after the filing of

1 the application to issue a license. Such applicant's constitutional
2 right to bear arms shall not be denied, unless he or she:

3 (a) Is ineligible to own a pistol under the provisions of RCW
4 9.41.040; or

5 (b) Is under twenty-one years of age; or

6 (c) Is subject to a court order or injunction regarding firearms
7 pursuant to RCW 10.99.040, 10.99.045, or 26.09.060; or

8 (d) Is free on bond or personal recognizance pending trial, appeal,
9 or sentencing for a crime of violence; or

10 (e) Has an outstanding warrant for his or her arrest from any court
11 of competent jurisdiction for a felony or misdemeanor; or

12 (f) Has been ordered to forfeit a firearm under RCW 9.41.098(1)(d)
13 within one year before filing an application to carry a pistol
14 concealed on his or her person; or

15 (g) Has been convicted of any of the following offenses: Assault
16 in the third degree, indecent liberties, malicious mischief in the
17 first degree, possession of stolen property in the first or second
18 degree, or theft in the first or second degree. Any person who becomes
19 ineligible for a concealed pistol permit as a result of a conviction
20 for a crime listed in this subsection (1)(g) and then successfully
21 completes all terms of his or her sentence, as evidenced by a
22 certificate of discharge issued under RCW 9.94A.220 in the case of a
23 sentence under chapter 9.94A RCW, and has not again been convicted of
24 any crime and is not under indictment for any crime, may, one year or
25 longer after such successful sentence completion, petition the district
26 court for a declaration that the person is no longer ineligible for a
27 concealed pistol permit under this subsection (1)(g).

28 (2) The issuing authority shall check with the Washington state
29 patrol electronic data base, and with other law enforcement agencies or
30 resources as appropriate, to determine whether the applicant has been
31 convicted of a crime that would make him or her ineligible to own a
32 pistol under RCW 9.41.040 and therefore ineligible for a concealed
33 pistol license. The issuing authority also shall check with the
34 department of social and health services electronic data base, and with
35 other agencies or resources as appropriate, to determine whether the
36 applicant has been either voluntarily or involuntarily committed for
37 mental health treatment and is ineligible to own a pistol under RCW
38 9.41.040 and therefore ineligible for a concealed pistol license. This

1 subsection applies whether the applicant is applying for a new
2 concealed pistol license or to renew a concealed pistol license.

3 (3) Any person whose firearms rights have been restricted and who
4 has been granted relief from disabilities by the secretary of the
5 treasury under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C.
6 Sec. 921(a)(20) shall have his or her right to acquire, receive,
7 transfer, ship, transport, carry, and possess firearms in accordance
8 with Washington state law restored.

9 ((+3)) (4) The license shall be revoked by the issuing authority
10 immediately upon conviction of a crime which makes such a person
11 ineligible to own a pistol or upon the third conviction for a violation
12 of this chapter within five calendar years. Further, the issuing
13 authority shall revoke the license immediately upon receiving notice
14 the license holder is ineligible for a concealed pistol license under
15 RCW 9.41.040(6).

16 ((+4)) (5) Upon an order to forfeit a firearm under RCW
17 9.41.098(1)(d) the issuing authority shall:

- 18 (a) On the first forfeiture, revoke the license for one year;
19 (b) On the second forfeiture, revoke the license for two years;
20 (c) On the third or subsequent forfeiture, revoke the license for
21 five years.

22 Any person whose license is revoked as a result of a forfeiture of a
23 firearm under RCW 9.41.098(1)(d) may not reapply for a new license
24 until the end of the revocation period. The issuing authority shall
25 notify, in writing, the department of licensing upon revocation of a
26 license. The department of licensing shall record the revocation.

27 ((+5)) (6) The license shall be in triplicate, in form to be
28 prescribed by the department of licensing, and shall bear the name,
29 address, and description, fingerprints, and signature of the licensee,
30 and the licensee's driver's license number or state identification card
31 number if used for identification in applying for the license. The
32 license application shall contain a warning substantially as follows:

33 CAUTION: Although state and local laws do not differ, federal
34 law and state law on the possession of firearms differ. If you
35 are prohibited by federal law from possessing a firearm, you
36 may be prosecuted in federal court. A state license is not a
37 defense to a federal prosecution.

1 The license application shall contain a description of the major
2 differences between state and federal law and an explanation of the
3 fact that local laws and ordinances on firearms are preempted by state
4 law and must be consistent with state law. The application shall
5 contain questions about the applicant's place of birth, whether the
6 applicant is a United States citizen, and if not a citizen whether the
7 applicant has declared the intent to become a citizen and whether he or
8 she has been required to register with the state or federal government
9 and any identification or registration number, if applicable. The
10 applicant shall not be required to produce a birth certificate or other
11 evidence of citizenship. An applicant who is not a citizen shall
12 provide documentation showing resident alien status and the applicant's
13 intent to become a citizen. A person who makes a false statement
14 regarding citizenship on the application is guilty of a misdemeanor. A
15 person who is not a citizen of the United States, or has not declared
16 his or her intention to become a citizen shall meet the additional
17 requirements of RCW 9.41.170.

18 The original thereof shall be delivered to the licensee, the
19 duplicate shall within seven days be sent by registered mail to the
20 director of licensing and the triplicate shall be preserved for six
21 years, by the authority issuing said license.

22 ~~((+6))~~ (7) The fee for the original issuance of a four-year
23 license shall be ~~((twenty-three))~~ thirty-three dollars: PROVIDED, That
24 no other additional charges by any branch or unit of government shall
25 be borne by the applicant for the issuance of the license: PROVIDED
26 FURTHER, That the fee shall be distributed as follows:

27 (a) Four dollars shall be paid to the state general fund;

28 (b) Four dollars shall be paid to the agency taking the
29 fingerprints of the person licensed;

30 (c) ~~((Twelve))~~ Sixteen dollars shall be paid to the issuing
31 authority for the purpose of enforcing this chapter; ~~((and))~~

32 (d) Six dollars shall be paid to the department of social and
33 health services for the purpose of performing its duties under this
34 chapter; and

35 (e) Three dollars to the firearms range account in the general
36 fund.

37 ~~((+7))~~ (8) The fee for the renewal of such license shall be
38 ~~((fifteen))~~ twenty-five dollars: PROVIDED, That no other additional
39 charges by any branch or unit of government shall be borne by the

1 applicant for the renewal of the license: PROVIDED FURTHER, That the
2 fee shall be distributed as follows:

3 (a) Four dollars shall be paid to the state general fund;

4 (b) ~~((Eight))~~ Twelve dollars shall be paid to the issuing authority
5 for the purpose of enforcing this chapter; ~~((and))~~

6 (c) Six dollars shall be paid to the department of social and
7 health services for the purpose of performing its duties under this
8 chapter; and

9 (d) Three dollars to the firearms range account in the general
10 fund.

11 ~~((+8))~~ (9) Payment shall be by cash, check, or money order at the
12 option of the applicant. Additional methods of payment may be allowed
13 at the option of the issuing authority.

14 ~~((+9))~~ (10) A licensee may renew a license if the licensee applies
15 for renewal within ninety days before or after the expiration date of
16 the license. A license so renewed shall take effect on the expiration
17 date of the prior license. A licensee renewing after the expiration
18 date of the license must pay a late renewal penalty of ten dollars in
19 addition to the renewal fee specified in subsection ~~((+7))~~ (8) of this
20 section. The fee shall be distributed as follows:

21 (a) Three dollars shall be deposited in the state wildlife fund and
22 used exclusively for the printing and distribution of a pamphlet on the
23 legal limits of the use of firearms, firearms safety, and the
24 preemptive nature of state law. The pamphlet shall be given to each
25 applicant for a license; and

26 (b) Seven dollars shall be paid to the issuing authority for the
27 purpose of enforcing this chapter.

28 ~~((+10))~~ (11) Notwithstanding the requirements of subsections (1)
29 through ~~((+9))~~ (10) of this section, the chief of police of the
30 municipality or the sheriff of the county of the applicant's residence
31 may issue a temporary emergency license for good cause pending review
32 under subsection (1) of this section.

33 ~~((+11))~~ (12) A political subdivision of the state shall not modify
34 the requirements of this section or chapter, nor may a political
35 subdivision ask the applicant to voluntarily submit any information not
36 required by this section. A civil suit may be brought to enjoin a
37 wrongful refusal to issue a license or a wrongful modification of the
38 requirements of this section or chapter. The civil suit may be brought
39 in the county in which the application was made or in Thurston county

1 at the discretion of the petitioner. Any person who prevails against
2 a public agency in any action in the courts for a violation of this
3 chapter shall be awarded costs, including reasonable attorneys' fees,
4 incurred in connection with such legal action.

5 **Sec. 4.** RCW 9.41.090 and 1988 c 36 s 2 are each amended to read as
6 follows:

7 (1) In addition to the other requirements of this chapter, no
8 commercial seller shall deliver a pistol to the purchaser thereof
9 until:

10 (a) The purchaser produces a valid concealed pistol license and the
11 commercial seller has recorded the purchaser's name, license number,
12 and issuing agency, such record to be made in triplicate and processed
13 as provided in subsection (4) of this section; or

14 (b) The seller is notified in writing by the chief of police of the
15 municipality or the sheriff of the county that the purchaser meets the
16 requirements of RCW 9.41.040 and that the application to purchase is
17 granted. In determining whether the purchaser meets the requirements
18 of RCW 9.41.040, the chief of police or sheriff, or the designee of
19 either, shall check with the Washington state patrol electronic data
20 base, and with other law enforcement agencies or resources as
21 appropriate, to determine whether the applicant has been convicted of
22 a crime that would make him or her ineligible to own a pistol. The
23 chief of police or sheriff, or the designee of either, shall also check
24 with the department of social and health services electronic data base,
25 and with other agencies or resources as appropriate, to determine
26 whether the applicant is ineligible under RCW 9.41.040(6) to own a
27 pistol; or

28 (c) Five consecutive days including Saturday, Sunday, and holidays
29 have elapsed from the time of receipt of the application for the
30 purchase thereof as provided herein by the chief of police or sheriff
31 designated in subsection (4) of this section, and, when delivered, said
32 pistol shall be securely wrapped and shall be unloaded. However, if
33 the purchaser does not have a valid permanent Washington driver's
34 license or state identification card or has not been a resident of the
35 state for the previous consecutive ninety days, the waiting period
36 under this subsection (1)(c) shall be up to sixty days.

37 (2) In any case under subsection (1)(c) of this section where the
38 applicant has an outstanding warrant for his or her arrest from any

1 court of competent jurisdiction for a felony or misdemeanor, the seller
2 shall hold the delivery of the pistol until the warrant for arrest is
3 served and satisfied by appropriate court appearance. The local
4 jurisdiction for purposes of the sale shall confirm the existence of
5 outstanding warrants within seventy-two hours after notification of the
6 application to purchase a pistol is received. The local jurisdiction
7 shall also immediately confirm the satisfaction of the warrant on
8 request of the seller so that the hold may be released if the warrant
9 was for a crime other than a crime of violence.

10 (3) In any case where the chief or sheriff of the local
11 jurisdiction has reasonable grounds based on the following
12 circumstances: (a) Open criminal charges, (b) pending criminal
13 proceedings, (c) pending commitment proceedings, (d) an outstanding
14 warrant for a crime of violence, or (e) an arrest for a crime of
15 violence if the records of disposition have not yet been reported or
16 entered sufficiently to determine eligibility to purchase a pistol, the
17 local jurisdiction may hold the sale and delivery of the pistol beyond
18 five days up to thirty days in order to confirm existing records in
19 this state or elsewhere. After thirty days, the hold will be lifted
20 unless an extension of the thirty days is approved by a local district
21 court or municipal court for good cause shown. An applicant shall be
22 notified of each hold placed on the sale by local law enforcement and
23 of any application to the court for additional hold period to confirm
24 records or confirm the identity of the applicant.

25 (4) At the time of applying for the purchase of a pistol, the
26 purchaser shall sign in triplicate and deliver to the seller an
27 application containing his or her full name, address, place of birth,
28 and the date and hour of the application; the applicant's driver's
29 license number or state identification card number; and a description
30 of the weapon including, the make, model, caliber, and manufacturer's
31 number; and a statement that the purchaser is eligible to own a pistol
32 under RCW 9.41.040. The application shall contain a warning
33 substantially as follows:

34 CAUTION: Although state and local laws do not differ, federal
35 law and state law on the possession of firearms differ. If you
36 are prohibited by federal law from possessing a firearm, you
37 may be prosecuted in federal court. State permission to
38 purchase a firearm is not a defense to a federal prosecution.

1 The purchaser shall be given a copy of the department of fish and
2 wildlife pamphlet on the legal limits of the use of firearms, firearms
3 safety, and the fact that local laws and ordinances on firearms are
4 preempted by state law and must be consistent with state law.

5 The seller shall, by the end of the business day, sign and attach
6 his or her address and deliver the original of the application and such
7 other documentation as required under subsection (1) of this section to
8 the chief of police of the municipality or the sheriff of the county of
9 which the seller is a resident. The seller shall deliver the pistol to
10 the purchaser following the period of time specified in this section
11 unless the seller is notified in writing by the chief of police of the
12 municipality or the sheriff of the county, whichever is applicable,
13 denying the purchaser's application to purchase and the grounds
14 thereof. The application shall not be denied unless the purchaser
15 fails to meet the requirements specified in RCW 9.41.040. The chief of
16 police of the municipality or the county sheriff shall maintain a file
17 containing the original of the application to purchase a pistol.

18 **Sec. 5.** RCW 71.05.450 and 1973 1st ex.s. c 142 s 50 are each
19 amended to read as follows:

20 Competency shall not be determined or withdrawn by operation of, or
21 under the provisions of this chapter. Except as chapter 9.41 RCW may
22 limit the right of a person to purchase or possess a firearm or to
23 qualify for a concealed pistol license, no person shall be presumed
24 incompetent or lose any civil rights as a consequence of receiving
25 evaluation or treatment for mental disorder, either voluntarily or
26 involuntarily, or certification or commitment pursuant to this chapter
27 or any prior laws of this state dealing with mental illness. Any
28 person who leaves a public or private agency following evaluation or
29 treatment for mental disorder shall be given a written statement
30 setting forth the substance of this section.

31 **Sec. 6.** RCW 71.12.560 and 1974 ex.s. c 145 s 1 are each amended to
32 read as follows:

33 The person in charge of any private institution, hospital, or
34 sanitarium which is conducted for, or includes a department or ward
35 conducted for, the care and treatment of persons who are mentally ill
36 or deranged may receive therein as a voluntary patient any person
37 suffering from mental illness or derangement who is a suitable person

1 for care and treatment in the institution, hospital, or sanitarium, who
2 voluntarily makes a written application to the person in charge for
3 admission into the institution, hospital or sanitarium. (~~After six~~
4 ~~months of continuous inpatient treatment as a voluntary~~) At the
5 expiration of fourteen days of treatment of a patient voluntarily
6 committed in a private institution, hospital, or sanitarium, if the
7 period of voluntary commitment is to continue, the person in charge
8 shall forward to the office of the department of social and health
9 services a record of the voluntary patient showing the name, residence,
10 ((age)) date of birth, sex, place of birth, occupation, social security
11 number, marital status, date of admission to the institution, hospital,
12 or sanitarium, and such other information as may be required by rule of
13 the department of social and health services.

14 **Sec. 7.** RCW 72.23.080 and 1959 c 28 s 72.23.080 are each amended
15 to read as follows:

16 Any person received and detained in a state hospital (~~pursuant to~~
17 ~~RCW 72.23.070 shall be~~) under chapter 71.34 RCW is deemed a voluntary
18 patient and shall not suffer a loss of legal competency by reason of
19 his application and admission. Upon the admission of a voluntary
20 patient to a state hospital the superintendent shall immediately
21 forward to the department the record of such patient showing the name,
22 address, sex, ((age)) date of birth, place of birth, occupation, social
23 security number, date of admission, name of nearest relative, and such
24 other information as the department may from time to time require.

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