

SHB 2600 - S COMM AMD
By Committee on Judiciary

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 9.41.040 and 2003 c 53 s 26 are each amended to read
4 as follows:

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

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

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

19 (i) After having previously been convicted or found not guilty by
20 reason of insanity in this state or elsewhere of any felony not
21 specifically listed as prohibiting firearm possession under subsection
22 (1) of this section, or any of the following crimes when committed by
23 one family or household member against another, committed on or after
24 July 1, 1993: Assault in the fourth degree, coercion, stalking,
25 reckless endangerment, criminal trespass in the first degree, or
26 violation of the provisions of a protection order or no-contact order
27 restraining the person or excluding the person from a residence (RCW
28 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

29 (ii) After having previously been involuntarily committed for
30 mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77

1 RCW, or equivalent statutes of another jurisdiction, unless his or her
2 right to possess a firearm has been restored as provided in RCW
3 9.41.047;

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

6 (iv) If the person is free on bond or personal recognizance pending
7 trial, appeal, or sentencing for a serious offense as defined in RCW
8 9.41.010.

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

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

29 (4) Notwithstanding subsection (1) or (2) of this section, a person
30 convicted or found not guilty by reason of insanity of an offense
31 prohibiting the possession of a firearm under this section other than
32 murder, manslaughter, robbery, rape, indecent liberties, arson,
33 assault, kidnapping, extortion, burglary, or violations with respect to
34 controlled substances under RCW 69.50.401 and 69.50.410, who received
35 a probationary sentence under RCW 9.95.200, and who received a
36 dismissal of the charge under RCW 9.95.240, shall not be precluded from
37 possession of a firearm as a result of the conviction or finding of not

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

10 (a) Under RCW 9.41.047; and/or

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

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

26 (5) In addition to any other penalty provided for by law, if a
27 person under the age of eighteen years is found by a court to have
28 possessed a firearm in a vehicle in violation of subsection (1) or (2)
29 of this section or to have committed an offense while armed with a
30 firearm during which offense a motor vehicle served an integral
31 function, the court shall notify the department of licensing within
32 twenty-four hours and the person's privilege to drive shall be revoked
33 under RCW 46.20.265.

34 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed or
35 interpreted as preventing an offender from being charged and
36 subsequently convicted for the separate felony crimes of theft of a
37 firearm or possession of a stolen firearm, or both, in addition to

1 being charged and subsequently convicted under this section for
2 unlawful possession of a firearm in the first or second degree.
3 Notwithstanding any other law, if the offender is convicted under this
4 section for unlawful possession of a firearm in the first or second
5 degree and for the felony crimes of theft of a firearm or possession of
6 a stolen firearm, or both, then the offender shall serve consecutive
7 sentences for each of the felony crimes of conviction listed in this
8 subsection.

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

11 **Sec. 2.** RCW 9.41.047 and 1996 c 295 s 3 are each amended to read
12 as follows:

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

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

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

34 (3)(a) A person who is prohibited from possessing a firearm, by
35 reason of having been involuntarily committed for mental health
36 treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or

1 equivalent statutes of another jurisdiction may, upon discharge,
2 petition a court of record to have his or her right to possess a
3 firearm restored. At the time of commitment, the court shall
4 specifically state to the person that he or she is barred from
5 possession of firearms.

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

16 (c) A person petitioning the court under this subsection (3) shall
17 bear the burden of proving by a preponderance of the evidence that the
18 circumstances resulting in the commitment no longer exist and are not
19 reasonably likely to recur. If a preponderance of the evidence in the
20 record supports a finding that the person petitioning the court has
21 engaged in violence and that it is more likely than not that the person
22 will engage in violence after his or her right to possess a firearm is
23 restored, the person shall bear the burden of proving by clear, cogent,
24 and convincing evidence that he or she does not present a substantial
25 danger to the safety of others.

26 (4) No person who has been found not guilty by reason of insanity
27 may petition a court for restoration of the right to possess a firearm
28 unless the person meets the requirements for the restoration of the
29 right to possess a firearm under RCW 9.41.040(4).

30 **Sec. 3.** RCW 9.41.060 and 1998 c 253 s 2 are each amended to read
31 as follows:

32 The provisions of RCW 9.41.050 shall not apply to:

33 (1) Marshals, sheriffs, prison or jail wardens or their deputies,
34 or other law enforcement officers of this state or another state;

35 (2) Members of the armed forces of the United States or of the
36 national guard or organized reserves, when on duty;

1 (3) Officers or employees of the United States duly authorized to
2 carry a concealed pistol;

3 (4) Any person engaged in the business of manufacturing, repairing,
4 or dealing in firearms, or the agent or representative of the person,
5 if possessing, using, or carrying a pistol in the usual or ordinary
6 course of the business;

7 (5) Regularly enrolled members of any organization duly authorized
8 to purchase or receive pistols from the United States or from this
9 state;

10 (6) Regularly enrolled members of clubs organized for the purpose
11 of target shooting, when those members are at or are going to or from
12 their places of target practice;

13 (7) Regularly enrolled members of clubs organized for the purpose
14 of modern and antique firearm collecting, when those members are at or
15 are going to or from their collector's gun shows and exhibits;

16 (8) Any person engaging in a lawful outdoor recreational activity
17 such as hunting, fishing, camping, hiking, or horseback riding, only
18 if, considering all of the attendant circumstances, including but not
19 limited to whether the person has a valid hunting or fishing license,
20 it is reasonable to conclude that the person is participating in lawful
21 outdoor activities or is traveling to or from a legitimate outdoor
22 recreation area;

23 (9) Any person while carrying a pistol unloaded and in a closed
24 opaque case or secure wrapper; or

25 (10) Law enforcement officers retired for service or physical
26 disabilities, except for those law enforcement officers retired because
27 of mental or stress-related disabilities. This subsection applies only
28 to a retired officer who has: (a) Obtained documentation from a law
29 enforcement agency within Washington state from which he or she retired
30 that is signed by the agency's chief law enforcement officer and that
31 states that the retired officer was retired for service or physical
32 disability; and (b) not been convicted or found not guilty by reason of
33 insanity of a crime making him or her ineligible for a concealed pistol
34 license.

35 **Sec. 4.** RCW 9.41.075 and 1994 sp.s. c 7 s 408 are each amended to
36 read as follows:

1 (1) The license shall be revoked by the license-issuing authority
2 immediately upon:

3 (a) Discovery by the issuing authority that the person was
4 ineligible under RCW 9.41.070 for a concealed pistol license when
5 applying for the license or license renewal;

6 (b) Conviction of the licensee, or the licensee being found not
7 guilty by reason of insanity, of an offense, or commitment of the
8 licensee for mental health treatment, that makes a person ineligible
9 under RCW 9.41.040 to possess a firearm;

10 (c) Conviction of the licensee for a third violation of this
11 chapter within five calendar years; or

12 (d) An order that the licensee forfeit a firearm under RCW
13 9.41.098(1)(d).

14 (2)(a) Unless the person may lawfully possess a pistol without a
15 concealed pistol license, an ineligible person to whom a concealed
16 pistol license was issued shall, within fourteen days of license
17 revocation, lawfully transfer ownership of any pistol acquired while
18 the person was in possession of the license.

19 (b) Upon discovering a person issued a concealed pistol license was
20 ineligible for the license, the issuing authority shall contact the
21 department of licensing to determine whether the person purchased a
22 pistol while in possession of the license. If the person did purchase
23 a pistol while in possession of the concealed pistol license, if the
24 person may not lawfully possess a pistol without a concealed pistol
25 license, the issuing authority shall require the person to present
26 satisfactory evidence of having lawfully transferred ownership of the
27 pistol. The issuing authority shall require the person to produce the
28 evidence within fifteen days of the revocation of the license.

29 (3) When a licensee is ordered to forfeit a firearm under RCW
30 9.41.098(1)(d), the issuing authority shall:

31 (a) On the first forfeiture, revoke the license for one year;

32 (b) On the second forfeiture, revoke the license for two years; or

33 (c) On the third or subsequent forfeiture, revoke the license for
34 five years.

35 Any person whose license is revoked as a result of a forfeiture of
36 a firearm under RCW 9.41.098(1)(d) may not reapply for a new license
37 until the end of the revocation period.

1 (4) The issuing authority shall notify, in writing, the department
2 of licensing of the revocation of a license. The department of
3 licensing shall record the revocation.

4 NEW SECTION. **Sec. 5.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 6.** This act takes effect July 1, 2004."

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9 On page 1, line 1 of the title, after "firearms;" strike the
10 remainder of the title and insert "amending RCW 9.41.040, 9.41.047,
11 9.41.060, and 9.41.075; and providing an effective date."

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