
SENATE BILL 5131

State of Washington 59th Legislature 2005 Regular Session

By Senators Carrell, Mulliken, Kline, Swecker, Schoesler, Franklin, Benson, Kastama, Regala, Delvin, Kohl-Welles and Rasmussen

Read first time 01/14/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to firearms; and amending RCW 9.41.040, 9.41.047,
2 9.41.060, and 9.41.075.

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

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

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

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

14 (2)(a) A person, whether an adult or juvenile, is guilty of the
15 crime of unlawful possession of a firearm in the second degree, if the
16 person does not qualify under subsection (1) of this section for the
17 crime of unlawful possession of a firearm in the first degree and the
18 person owns, has in his or her possession, or has in his or her control
19 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 subsection
4 (1) of this section, or any of the following crimes when committed by
5 one family or household member against another, committed on or after
6 July 1, 1993: Assault in the fourth degree, coercion, stalking,
7 reckless endangerment, criminal trespass in the first degree, or
8 violation of the provisions of a protection order or no-contact order
9 restraining the person or excluding the person from a residence (RCW
10 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

11 (ii) After having previously been involuntarily committed for
12 mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77
13 RCW, or equivalent statutes of another jurisdiction, unless his or her
14 right to possess a firearm has been restored as provided in RCW
15 9.41.047;

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

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

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

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

1 finding of innocence. Where no record of the court's disposition of
2 the charges can be found, there shall be a rebuttable presumption that
3 the person was not convicted of the charge.

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

22 (a) Under RCW 9.41.047; and/or

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

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

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

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

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

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

25 (1) At the time a person is convicted or found not guilty by reason
26 of insanity of an offense making the person ineligible to possess a
27 firearm, or at the time a person is committed by court order under RCW
28 71.05.320, 71.34.090, or chapter 10.77 RCW for mental health treatment,
29 the convicting or committing court shall notify the person, orally and
30 in writing, that the person must immediately surrender any concealed
31 pistol license and that the person may not possess a firearm unless his
32 or her right to do so is restored by a court of record. For purposes
33 of this section a convicting court includes a court in which a person
34 has been found not guilty by reason of insanity.

35 The convicting or committing court also shall forward a copy of the
36 person's driver's license or identicard, or comparable information, to

1 the department of licensing, along with the date of conviction or
2 commitment.

3 (2) Upon receipt of the information provided for by subsection (1)
4 of this section, the department of licensing shall determine if the
5 convicted or committed person has a concealed pistol license. If the
6 person does have a concealed pistol license, the department of
7 licensing shall immediately notify the license-issuing authority which,
8 upon receipt of such notification, shall immediately revoke the
9 license.

10 (3)(a) A person who is prohibited from possessing a firearm, by
11 reason of having been involuntarily committed for mental health
12 treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or
13 equivalent statutes of another jurisdiction may, upon discharge,
14 petition a court of record to have his or her right to possess a
15 firearm restored. At the time of commitment, the court shall
16 specifically state to the person that he or she is barred from
17 possession of firearms.

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

28 (c) A person petitioning the court under this subsection (3) shall
29 bear the burden of proving by a preponderance of the evidence that the
30 circumstances resulting in the commitment no longer exist and are not
31 reasonably likely to recur. If a preponderance of the evidence in the
32 record supports a finding that the person petitioning the court has
33 engaged in violence and that it is more likely than not that the person
34 will engage in violence after his or her right to possess a firearm is
35 restored, the person shall bear the burden of proving by clear, cogent,
36 and convincing evidence that he or she does not present a substantial
37 danger to the safety of others.

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

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

7 The provisions of RCW 9.41.050 shall not apply to:

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

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

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

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

18 (5) Regularly enrolled members of any organization duly authorized
19 to purchase or receive pistols from the United States or from this
20 state;

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

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

27 (8) Any person engaging in a lawful outdoor recreational activity
28 such as hunting, fishing, camping, hiking, or horseback riding, only
29 if, considering all of the attendant circumstances, including but not
30 limited to whether the person has a valid hunting or fishing license,
31 it is reasonable to conclude that the person is participating in lawful
32 outdoor activities or is traveling to or from a legitimate outdoor
33 recreation area;

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

36 (10) Law enforcement officers retired for service or physical
37 disabilities, except for those law enforcement officers retired because

1 of mental or stress-related disabilities. This subsection applies only
2 to a retired officer who has: (a) Obtained documentation from a law
3 enforcement agency within Washington state from which he or she retired
4 that is signed by the agency's chief law enforcement officer and that
5 states that the retired officer was retired for service or physical
6 disability; and (b) not been convicted or found not guilty by reason of
7 insanity of a crime making him or her ineligible for a concealed pistol
8 license.

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

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

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

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

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

22 (d) An order that the licensee forfeit a firearm under RCW
23 9.41.098(1)(d).

24 (2)(a) Unless the person may lawfully possess a pistol without a
25 concealed pistol license, an ineligible person to whom a concealed
26 pistol license was issued shall, within fourteen days of license
27 revocation, lawfully transfer ownership of any pistol acquired while
28 the person was in possession of the license.

29 (b) Upon discovering a person issued a concealed pistol license was
30 ineligible for the license, the issuing authority shall contact the
31 department of licensing to determine whether the person purchased a
32 pistol while in possession of the license. If the person did purchase
33 a pistol while in possession of the concealed pistol license, if the
34 person may not lawfully possess a pistol without a concealed pistol
35 license, the issuing authority shall require the person to present
36 satisfactory evidence of having lawfully transferred ownership of the

1 pistol. The issuing authority shall require the person to produce the
2 evidence within fifteen days of the revocation of the license.

3 (3) When a licensee is ordered to forfeit a firearm under RCW
4 9.41.098(1)(d), the issuing authority shall:

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

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

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

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

12 (4) The issuing authority shall notify, in writing, the department
13 of licensing of the revocation of a license. The department of
14 licensing shall record the revocation.

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

--- END ---