
SENATE BILL 5635

State of Washington 59th Legislature 2005 Regular Session

By Senators Schoesler, Mulliken, Esser, Hargrove, Hewitt, Carrell, Stevens, Benson, Schmidt, Honeyford, McCaslin, Sheldon and Benton

Read first time 01/31/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to clarifying the process for restoration of the
2 right to possess firearms; amending RCW 9.41.040, 9.41.047, 9.41.070,
3 and 46.20.265; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature intends to clarify the
6 process for obtaining a certificate of rehabilitation in the
7 restoration of firearm possession rights in response to *State v.*
8 *Masangkay*, Docket Number 52096-2-1 (2004). In that case, the court
9 held that there was no provision in Washington statutes for issuance of
10 a certificate of rehabilitation. The legislature intends to clarify
11 the current procedure governing restoration of possession rights so
12 that a person may petition a court of record for a certificate of
13 rehabilitation.

14 **Sec. 2.** RCW 9.41.040 and 2003 c 53 s 26 are each amended to read
15 as follows:

16 (1)(a) A person, whether an adult or juvenile, is guilty of the
17 crime of unlawful possession of a firearm in the first degree, if the

1 person owns, has in his or her possession, or has in his or her control
2 any firearm after having previously been convicted in this state or
3 elsewhere of any serious offense as defined in this chapter.

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

6 (2)(a) A person, whether an adult or juvenile, is guilty of the
7 crime of unlawful possession of a firearm in the second degree, if the
8 person does not qualify under subsection (1) of this section for the
9 crime of unlawful possession of a firearm in the first degree and the
10 person owns, has in his or her possession, or has in his or her control
11 any firearm:

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

22 (ii) After having previously been involuntarily committed for
23 mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77
24 RCW, or equivalent statutes of another jurisdiction, unless his or her
25 right to possess a firearm has been restored as provided in RCW
26 9.41.047;

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

29 (iv) If the person is free on bond or personal recognizance pending
30 trial, appeal, or sentencing for a serious offense as defined in RCW
31 9.41.010.

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

34 (3) Notwithstanding RCW 9.41.047 or any other provisions of law, as
35 used in this chapter, a person has been "convicted", whether in an
36 adult court or adjudicated in a juvenile court, at such time as a plea
37 of guilty has been accepted, or a verdict of guilty has been filed,
38 notwithstanding the pendency of any future proceedings including but

1 not limited to sentencing or disposition, post-trial or post-
2 factfinding motions, and appeals. Conviction includes a dismissal
3 entered after a period of probation, suspension or deferral of
4 sentence, and also includes equivalent dispositions by courts in
5 jurisdictions other than Washington state. (~~(A person shall not be~~
6 ~~precluded from possession of a firearm if the conviction has been the~~
7 ~~subject of a pardon, annulment, certificate of rehabilitation, or other~~
8 ~~equivalent procedure based on a finding of the rehabilitation of the~~
9 ~~person convicted or the conviction or disposition has been the subject~~
10 ~~of a pardon, annulment, or other equivalent procedure based on a~~
11 ~~finding of innocence.)) Where no record of the court's disposition of
12 the charges can be found, there shall be a rebuttable presumption that
13 the person was not convicted of the charge.~~

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

30 ~~(a) Under RCW 9.41.047; and/or~~

31 ~~(b)(i) If the conviction was for a felony offense, after five or~~
32 ~~more consecutive years in the community without being convicted or~~
33 ~~currently charged with any felony, gross misdemeanor, or misdemeanor~~
34 ~~crimes, if the individual has no prior felony convictions that prohibit~~
35 ~~the possession of a firearm counted as part of the offender score under~~
36 ~~RCW 9.94A.525; or~~

37 ~~(ii) If the conviction was for a nonfelony offense, after three or~~
38 ~~more consecutive years in the community without being convicted or~~

1 ~~currently charged with any felony, gross misdemeanor, or misdemeanor~~
2 ~~crimes, if the individual has no prior felony convictions that prohibit~~
3 ~~the possession of a firearm counted as part of the offender score under~~
4 ~~RCW 9.94A.525 and the individual has completed all conditions of the~~
5 ~~sentence.~~

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

14 ((+6)) (5) Nothing in chapter 129, Laws of 1995 shall ever be
15 construed or interpreted as preventing an offender from being charged
16 and subsequently convicted for the separate felony crimes of theft of
17 a firearm or possession of a stolen firearm, or both, in addition to
18 being charged and subsequently convicted under this section for
19 unlawful possession of a firearm in the first or second degree.
20 Notwithstanding any other law, if the offender is convicted under this
21 section for unlawful possession of a firearm in the first or second
22 degree and for the felony crimes of theft of a firearm or possession of
23 a stolen firearm, or both, then the offender shall serve consecutive
24 sentences for each of the felony crimes of conviction listed in this
25 subsection.

26 ((+7)) (6) Each firearm unlawfully possessed under this section
27 shall be a separate offense.

28 **Sec. 3.** RCW 9.41.047 and 1996 c 295 s 3 are each amended to read
29 as follows:

30 (1) At the time a person is convicted of an offense making the
31 person ineligible to possess a firearm, or at the time a person is
32 committed by court order under RCW 71.05.320, 71.34.090, or chapter
33 10.77 RCW for mental health treatment, the convicting or committing
34 court shall notify the person, orally and in writing, that the person
35 must immediately surrender any concealed pistol license and that the
36 person may not possess a firearm unless his or her right to do so is

1 restored by a court of record pursuant to subsection (5) of this
2 section.

3 The convicting or committing court also shall forward a copy of the
4 person's driver's license or identicard, or comparable information, to
5 the department of licensing, along with the date of conviction or
6 commitment.

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

14 (3)(a) A person who is prohibited from possessing a firearm, by
15 reason of having been involuntarily committed for mental health
16 treatment under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or
17 equivalent statutes of another jurisdiction may, upon discharge,
18 petition a court of record to have his or her right to possess a
19 firearm restored pursuant to subsection (5) of this section. At the
20 time of commitment, the court shall specifically state to the person
21 that he or she is barred from possession of firearms.

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

32 (c) A person petitioning the court under this subsection (3) shall
33 bear the burden of proving by a preponderance of the evidence that the
34 circumstances resulting in the commitment no longer exist and are not
35 reasonably likely to recur.

36 (4) Notwithstanding RCW 9.41.040 (1) or (2), a person convicted of
37 an offense prohibiting the possession of a firearm under RCW 9.41.040
38 other than murder, manslaughter, robbery, rape, indecent liberties,

1 arson, assault, kidnapping, extortion, burglary, or violations with
2 respect to controlled substances under RCW 69.50.401 and 69.50.410, who
3 received a probationary sentence under RCW 9.95.200, and who received
4 a dismissal of the charge under RCW 9.95.240, shall not be precluded
5 from possession of a firearm as a result of the conviction.
6 Notwithstanding any other provisions of RCW 9.41.040, if a person is
7 prohibited from possession of a firearm under RCW 9.41.040 (1) or (2)
8 and has not previously been convicted of a sex offense prohibiting
9 firearm ownership under RCW 9.41.040 (1) or (2) and/or any felony
10 defined under any law as a class A felony or with a maximum sentence of
11 at least twenty years, or both, the individual may petition a court of
12 record pursuant to subsection (5) of this section to have his or her
13 right to possess a firearm restored:

14 (a) Under this section; and/or

15 (b)(i) If the conviction was for a felony offense, after five or
16 more consecutive years in the community without being convicted or
17 currently charged with any felony, gross misdemeanor, or misdemeanor
18 crimes, if the individual has no prior felony convictions that prohibit
19 the possession of a firearm counted as part of the offender score under
20 RCW 9.94A.525; or

21 (ii) If the conviction was for a nonfelony offense, after three or
22 more consecutive years in the community without being convicted or
23 currently charged with any felony, gross misdemeanor, or misdemeanor
24 crimes, if the individual has no prior felony convictions that prohibit
25 the possession of a firearm counted as part of the offender score under
26 RCW 9.94A.525 and the individual has completed all conditions of the
27 sentence.

28 (5) In order to have the right to possess a firearm restored under
29 this section, a person must petition a court of record for a
30 certificate of rehabilitation. The person must meet all requirements
31 of this section for restoration of the right to possess a firearm and
32 show by a preponderance of the evidence that he or she is no longer a
33 danger to himself or herself or to society.

34 (6) A person shall not be precluded from possession of a firearm if
35 the conviction has been the subject of a pardon, annulment, certificate
36 of rehabilitation, or other equivalent procedure based on a finding of
37 the rehabilitation of the person convicted or the conviction or

1 disposition has been the subject of a pardon, annulment, or other
2 equivalent procedure based on a finding of innocence.

3 **Sec. 4.** RCW 9.41.070 and 2002 c 302 s 703 are each amended to read
4 as follows:

5 (1) The chief of police of a municipality or the sheriff of a
6 county shall within thirty days after the filing of an application of
7 any person, issue a license to such person to carry a pistol concealed
8 on his or her person within this state for five years from date of
9 issue, for the purposes of protection or while engaged in business,
10 sport, or while traveling. However, if the applicant does not have a
11 valid permanent Washington driver's license or Washington state
12 identification card or has not been a resident of the state for the
13 previous consecutive ninety days, the issuing authority shall have up
14 to sixty days after the filing of the application to issue a license.
15 The issuing authority shall not refuse to accept completed applications
16 for concealed pistol licenses during regular business hours.

17 The applicant's constitutional right to bear arms shall not be
18 denied, unless:

19 (a) He or she is ineligible to possess a firearm under the
20 provisions of RCW 9.41.040 or 9.41.045;

21 (b) The applicant's concealed pistol license is in a revoked
22 status;

23 (c) He or she is under twenty-one years of age;

24 (d) He or she is subject to a court order or injunction regarding
25 firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045,
26 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060,
27 26.50.070, or 26.26.590;

28 (e) He or she is free on bond or personal recognizance pending
29 trial, appeal, or sentencing for a felony offense;

30 (f) He or she has an outstanding warrant for his or her arrest from
31 any court of competent jurisdiction for a felony or misdemeanor; or

32 (g) He or she has been ordered to forfeit a firearm under RCW
33 9.41.098(1)(e) within one year before filing an application to carry a
34 pistol concealed on his or her person.

35 No person convicted of a felony may have his or her right to
36 possess firearms restored or his or her privilege to carry a concealed

1 pistol restored, unless the person has been granted relief from
2 disabilities by the secretary of the treasury under 18 U.S.C. Sec.
3 925(c), or RCW (~~(9.41.040 (3) or (4))~~) 9.41.047 applies.

4 (2) The issuing authority shall check with the national crime
5 information center, the Washington state patrol electronic data base,
6 the department of social and health services electronic data base, and
7 with other agencies or resources as appropriate, to determine whether
8 the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess
9 a firearm and therefore ineligible for a concealed pistol license.
10 This subsection applies whether the applicant is applying for a new
11 concealed pistol license or to renew a concealed pistol license.

12 (3) Any person whose firearms rights have been restricted and who
13 has been granted relief from disabilities by the secretary of the
14 treasury under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C.
15 Sec. 921(a)(20)(A) shall have his or her right to acquire, receive,
16 transfer, ship, transport, carry, and possess firearms in accordance
17 with Washington state law restored except as otherwise prohibited by
18 this chapter.

19 (4) The license application shall bear the full name, residential
20 address, telephone number at the option of the applicant, date and
21 place of birth, race, gender, description, not more than two complete
22 sets of fingerprints, and signature of the licensee, and the licensee's
23 driver's license number or state identification card number if used for
24 identification in applying for the license. A signed application for
25 a concealed pistol license shall constitute a waiver of confidentiality
26 and written request that the department of social and health services,
27 mental health institutions, and other health care facilities release
28 information relevant to the applicant's eligibility for a concealed
29 pistol license to an inquiring court or law enforcement agency.

30 The application for an original license shall include two complete
31 sets of fingerprints to be forwarded to the Washington state patrol.

32 The license and application shall contain a warning substantially
33 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. A state license is not a
38 defense to a federal prosecution.

1 The license shall contain a description of the major differences
2 between state and federal law and an explanation of the fact that local
3 laws and ordinances on firearms are preempted by state law and must be
4 consistent with state law. The application shall contain questions
5 about the applicant's eligibility under RCW 9.41.040 to possess a
6 pistol, the applicant's place of birth, and whether the applicant is a
7 United States citizen. The applicant shall not be required to produce
8 a birth certificate or other evidence of citizenship. A person who is
9 not a citizen of the United States shall meet the additional
10 requirements of RCW 9.41.170 and produce proof of compliance with RCW
11 9.41.170 upon application. The license shall be in triplicate and in
12 a form to be prescribed by the department of licensing.

13 The original thereof shall be delivered to the licensee, the
14 duplicate shall within seven days be sent to the director of licensing
15 and the triplicate shall be preserved for six years, by the authority
16 issuing the license.

17 The department of licensing shall make available to law enforcement
18 and corrections agencies, in an on-line format, all information
19 received under this subsection.

20 (5) The nonrefundable fee, paid upon application, for the original
21 five-year license shall be thirty-six dollars plus additional charges
22 imposed by the Federal Bureau of Investigation that are passed on to
23 the applicant. No other state or local branch or unit of government
24 may impose any additional charges on the applicant for the issuance of
25 the license.

26 The fee shall be distributed as follows:

27 (a) Fifteen 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) Fourteen dollars shall be paid to the issuing authority for the
31 purpose of enforcing this chapter; and

32 (d) Three dollars to the firearms range account in the general
33 fund.

34 (6) The nonrefundable fee for the renewal of such license shall be
35 thirty-two dollars. No other branch or unit of government may impose
36 any additional charges on the applicant for the renewal of the license.

37 The renewal fee shall be distributed as follows:

38 (a) Fifteen dollars shall be paid to the state general fund;

1 (b) Fourteen dollars shall be paid to the issuing authority for the
2 purpose of enforcing this chapter; and

3 (c) Three dollars to the firearms range account in the general
4 fund.

5 (7) The nonrefundable fee for replacement of lost or damaged
6 licenses is ten dollars to be paid to the issuing authority.

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

10 (9) A licensee may renew a license if the licensee applies for
11 renewal within ninety days before or after the expiration date of the
12 license. A license so renewed shall take effect on the expiration date
13 of the prior license. A licensee renewing after the expiration date of
14 the license must pay a late renewal penalty of ten dollars in addition
15 to the renewal fee specified in subsection (6) of this section. The
16 fee shall be distributed as follows:

17 (a) Three dollars shall be deposited in the state wildlife fund and
18 used exclusively first for the printing and distribution of a pamphlet
19 on the legal limits of the use of firearms, firearms safety, and the
20 preemptive nature of state law, and subsequently the support of
21 volunteer instructors in the basic firearms safety training program
22 conducted by the department of fish and wildlife. The pamphlet shall
23 be given to each applicant for a license; and

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

26 (10) Notwithstanding the requirements of subsections (1) through
27 (9) of this section, the chief of police of the municipality or the
28 sheriff of the county of the applicant's residence may issue a
29 temporary emergency license for good cause pending review under
30 subsection (1) of this section. However, a temporary emergency license
31 issued under this subsection shall not exempt the holder of the license
32 from any records check requirement. Temporary emergency licenses shall
33 be easily distinguishable from regular licenses.

34 (11) A political subdivision of the state shall not modify the
35 requirements of this section or chapter, nor may a political
36 subdivision ask the applicant to voluntarily submit any information not
37 required by this section.

1 (12) A person who knowingly makes a false statement regarding
2 citizenship or identity on an application for a concealed pistol
3 license is guilty of false swearing under RCW 9A.72.040. In addition
4 to any other penalty provided for by law, the concealed pistol license
5 of a person who knowingly makes a false statement shall be revoked, and
6 the person shall be permanently ineligible for a concealed pistol
7 license.

8 (13) A person may apply for a concealed pistol license:

9 (a) To the municipality or to the county in which the applicant
10 resides if the applicant resides in a municipality;

11 (b) To the county in which the applicant resides if the applicant
12 resides in an unincorporated area; or

13 (c) Anywhere in the state if the applicant is a nonresident.

14 **Sec. 5.** RCW 46.20.265 and 2003 c 20 s 1 are each amended to read
15 as follows:

16 (1) In addition to any other authority to revoke driving privileges
17 under this chapter, the department shall revoke all driving privileges
18 of a juvenile when the department receives notice from a court pursuant
19 to RCW 9.41.040(~~(+5)~~) (4), 13.40.265, 66.44.365, 69.41.065, 69.50.420,
20 69.52.070, or a substantially similar municipal ordinance adopted by a
21 local legislative authority, or from a diversion unit pursuant to RCW
22 13.40.265. The revocation shall be imposed without hearing.

23 (2) The driving privileges of the juvenile revoked under subsection
24 (1) of this section shall be revoked in the following manner:

25 (a) Upon receipt of the first notice, the department shall impose
26 a revocation for one year, or until the juvenile reaches seventeen
27 years of age, whichever is longer.

28 (b) Upon receipt of a second or subsequent notice, the department
29 shall impose a revocation for two years or until the juvenile reaches
30 eighteen years of age, whichever is longer.

31 (c) Each offense for which the department receives notice shall
32 result in a separate period of revocation. All periods of revocation
33 imposed under this section that could otherwise overlap shall run
34 consecutively up to the juvenile's twenty-first birthday, and no period
35 of revocation imposed under this section shall begin before the
36 expiration of all other periods of revocation imposed under this

1 section or other law. Periods of revocation imposed consecutively
2 under this section shall not extend beyond the juvenile's twenty-first
3 birthday.

4 (3)(a) If the department receives notice from a court that the
5 juvenile's privilege to drive should be reinstated, the department
6 shall immediately reinstate any driving privileges that have been
7 revoked under this section if the minimum term of revocation as
8 specified in RCW 13.40.265(1)(c), 66.44.365(3), 69.41.065(3),
9 69.50.420(3), 69.52.070(3), or similar ordinance has expired, and
10 subject to subsection (2)(c) of this section.

11 (b) The juvenile may seek reinstatement of his or her driving
12 privileges from the department when the juvenile reaches the age of
13 twenty-one. A notice from the court reinstating the juvenile's driving
14 privilege shall not be required if reinstatement is pursuant to this
15 subsection.

16 (4)(a) If the department receives notice pursuant to RCW
17 13.40.265(2)(b) from a diversion unit that a juvenile has completed a
18 diversion agreement for which the juvenile's driving privileges were
19 revoked, the department shall reinstate any driving privileges revoked
20 under this section as provided in (b) of this subsection, subject to
21 subsection (2)(c) of this section.

22 (b) If the diversion agreement was for the juvenile's first
23 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department
24 shall not reinstate the juvenile's privilege to drive until the later
25 of ninety days after the date the juvenile turns sixteen or ninety days
26 after the juvenile entered into a diversion agreement for the offense.
27 If the diversion agreement was for the juvenile's second or subsequent
28 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department
29 shall not reinstate the juvenile's privilege to drive until the later
30 of the date the juvenile turns seventeen or one year after the juvenile
31 entered into the second or subsequent diversion agreement.

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