
SENATE BILL 6526

State of Washington 60th Legislature 2008 Regular Session

By Senators Kline, Tom, Pridemore, Swecker, and Kohl-Welles

Read first time 01/17/08. Referred to Committee on Judiciary.

1 AN ACT Relating to firearms possession by persons who are
2 involuntarily committed; and amending RCW 9.41.040 and 9.41.047.

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

4 **Sec. 1.** RCW 9.41.040 and 2005 c 453 s 1 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 71.05.240, 71.05.320, (~~(71.34.090)~~)
13 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of
14 another jurisdiction, unless his or her right to possess a firearm has
15 been restored as provided in RCW 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 2005 c 453 s 2 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 71.05.240, 71.05.320, (~~71.34.090~~) 71.34.740, 71.34.750, or chapter
29 10.77 RCW for mental health treatment, the convicting or committing
30 court shall notify the person, orally and in writing, that the person
31 must immediately surrender any concealed pistol license and that the
32 person may not possess a firearm unless his or her right to do so is
33 restored by a court of record. For purposes of this section a
34 convicting court includes a court in which a person has been found not
35 guilty by reason of insanity.

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

1 the department of licensing and to the national instant criminal
2 background check system index, denied persons files, along with the
3 date of conviction or commitment.

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

11 (3)(a) A person who is prohibited from possessing a firearm, by
12 reason of having been involuntarily committed for mental health
13 treatment under RCW 71.05.240, 71.05.320, (~~(71.34.090)~~) 71.34.740,
14 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
15 jurisdiction may, upon discharge, petition a court of record to have
16 his or her right to possess a firearm restored. At the time of
17 commitment, the court shall specifically state to the person that he or
18 she is barred from possession of firearms.

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

29 (c) A person petitioning the court under this subsection (3) shall
30 bear the burden of proving by a preponderance of the evidence that the
31 circumstances resulting in the commitment no longer exist and are not
32 reasonably likely to recur. If a preponderance of the evidence in the
33 record supports a finding that the person petitioning the court has
34 engaged in violence and that it is more likely than not that the person
35 will engage in violence after his or her right to possess a firearm is
36 restored, the person shall bear the burden of proving by clear, cogent,
37 and convincing evidence that he or she does not present a substantial
38 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).

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