

SHB 1840 - H AMD 660

By Representative Shea

ADOPTED 02/12/2014

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

3 "Sec. 1. RCW 9.41.040 and 2011 c 193 s 1 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) During any period of time that the person is subject to a

1 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,
2 26.09, 26.10, 26.26, or 26.50 RCW that:

3 (A) Was issued after a hearing of which the person received actual
4 notice, and at which the person had an opportunity to participate;

5 (B) Restrains the person from harassing, stalking, or threatening
6 an intimate partner of the person or child of the intimate partner or
7 person, or engaging in other conduct that would place an intimate
8 partner in reasonable fear of bodily injury to the partner or child;
9 and

10 (C)(I) Includes a finding that the person represents a credible
11 threat to the physical safety of the intimate partner or child; and

12 (II) By its terms, explicitly prohibits the use, attempted use, or
13 threatened use of physical force against the intimate partner or child
14 that would reasonably be expected to cause bodily injury;

15 (iii) After having previously been involuntarily committed for
16 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,
17 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
18 jurisdiction, unless his or her right to possess a firearm has been
19 restored as provided in RCW 9.41.047;

20 ~~((+iii+))~~ (iv) If the person is under eighteen years of age, except
21 as provided in RCW 9.41.042; and/or

22 ~~((+iv+))~~ (v) If the person is free on bond or personal recognizance
23 pending trial, appeal, or sentencing for a serious offense as defined
24 in RCW 9.41.010.

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

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

1 based on a finding of the rehabilitation of the person convicted or the
2 conviction or disposition has been the subject of a pardon, annulment,
3 or other equivalent procedure based on a finding of innocence. Where
4 no record of the court's disposition of the charges can be found, there
5 shall be a rebuttable presumption that the person was not convicted of
6 the charge.

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

25 (i) Under RCW 9.41.047; and/or

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

33 (B) If the conviction or finding of not guilty by reason of
34 insanity was for a nonfelony offense, after three or more consecutive
35 years in the community without being convicted or found not guilty by
36 reason of insanity or currently charged with any felony, gross
37 misdemeanor, or misdemeanor crimes, if the individual has no prior

1 felony convictions that prohibit the possession of a firearm counted as
2 part of the offender score under RCW 9.94A.525 and the individual has
3 completed all conditions of the sentence.

4 (b) An individual may petition a court of record to have his or her
5 right to possess a firearm restored under (a) of this subsection (4)
6 only at:

7 (i) The court of record that ordered the petitioner's prohibition
8 on possession of a firearm; or

9 (ii) The superior court in the county in which the petitioner
10 resides.

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

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

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

33 (8) For purposes of this section, "intimate partner" includes: A
34 spouse, a domestic partner, a former spouse, a former domestic partner,
35 a person with whom the restrained person has a child in common, or a
36 person with whom the restrained person has cohabitated or is
37 cohabitating as part of a dating relationship.

1 **Sec. 2.** RCW 9.41.800 and 2013 c 84 s 25 are each amended to read
2 as follows:

3 (1) Any court when entering an order authorized under chapter 7.92
4 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045,
5 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060,
6 26.50.070, or 26.26.590 shall, upon a showing by clear and convincing
7 evidence, that a party has: Used, displayed, or threatened to use a
8 firearm or other dangerous weapon in a felony, or previously committed
9 any offense that makes him or her ineligible to possess a firearm under
10 the provisions of RCW 9.41.040:

11 (a) Require the party to surrender any firearm or other dangerous
12 weapon;

13 (b) Require the party to surrender any concealed pistol license
14 issued under RCW 9.41.070;

15 (c) Prohibit the party from obtaining or possessing a firearm or
16 other dangerous weapon;

17 (d) Prohibit the party from obtaining or possessing a concealed
18 pistol license.

19 (2) Any court when entering an order authorized under chapter 7.92
20 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045,
21 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060,
22 26.50.070, or 26.26.590 may, upon a showing by a preponderance of the
23 evidence but not by clear and convincing evidence, that a party has:
24 Used, displayed, or threatened to use a firearm or other dangerous
25 weapon in a felony, or previously committed any offense that makes him
26 or her ineligible to possess a (~~pistol~~) firearm under the provisions
27 of RCW 9.41.040:

28 (a) Require the party to surrender any firearm or other dangerous
29 weapon;

30 (b) Require the party to surrender a concealed pistol license
31 issued under RCW 9.41.070;

32 (c) Prohibit the party from obtaining or possessing a firearm or
33 other dangerous weapon;

34 (d) Prohibit the party from obtaining or possessing a concealed
35 pistol license.

36 (3) During any period of time that the person is subject to a court
37 order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09,
38 26.10, 26.26, or 26.50 RCW that:

1 (a) Was issued after a hearing of which the person received actual
2 notice, and at which the person had an opportunity to participate;

3 (b) Restrains the person from harassing, stalking, or threatening
4 an intimate partner of the person or child of the intimate partner or
5 person, or engaging in other conduct that would place an intimate
6 partner in reasonable fear of bodily injury to the partner or child;
7 and

8 (c)(i) Includes a finding that the person represents a credible
9 threat to the physical safety of the intimate partner or child; and

10 (ii) By its terms, explicitly prohibits the use, attempted use, or
11 threatened use of physical force against the intimate partner or child
12 that would reasonably be expected to cause bodily injury, the court
13 shall:

14 (A) Require the party to surrender any firearm or other dangerous
15 weapon;

16 (B) Require the party to surrender a concealed pistol license
17 issued under RCW 9.41.070;

18 (C) Prohibit the party from obtaining or possessing a firearm or
19 other dangerous weapon; and

20 (D) Prohibit the party from obtaining or possessing a concealed
21 pistol license.

22 (4) The court may order temporary surrender of a firearm or other
23 dangerous weapon without notice to the other party if it finds, on the
24 basis of the moving affidavit or other evidence, that irreparable
25 injury could result if an order is not issued until the time for
26 response has elapsed.

27 ~~((+4))~~ (5) In addition to the provisions of subsections (1), (2),
28 and ~~((+3))~~ (4) of this section, the court may enter an order requiring
29 a party to comply with the provisions in subsection (1) of this section
30 if it finds that the possession of a firearm or other dangerous weapon
31 by any party presents a serious and imminent threat to public health or
32 safety, or to the health or safety of any individual.

33 ~~((+5))~~ (6) The requirements of subsections (1), (2), and ~~((+4))~~
34 (5) of this section may be for a period of time less than the duration
35 of the order.

36 ~~((+6))~~ (7) The court may require the party to surrender any
37 firearm or other dangerous weapon in his or her immediate possession or
38 control or subject to his or her immediate possession or control to the

1 sheriff of the county having jurisdiction of the proceeding, the chief
2 of police of the municipality having jurisdiction, or to the restrained
3 or enjoined party's counsel or to any person designated by the court.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.41 RCW
5 to read as follows:

6 All law enforcement agencies must develop policies and procedures
7 by January 1, 2015, regarding the acceptance, storage, and return of
8 weapons required to be surrendered under RCW 9.41.800.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.41 RCW
10 to read as follows:

11 By December 1, 2014, the administrative office of the courts shall
12 develop a proof of surrender and receipt pattern form to be used to
13 document that a respondent has complied with a requirement to surrender
14 firearms, dangerous weapons, and his or her concealed pistol license,
15 as ordered by a court under RCW 9.41.800. The administrative office of
16 the courts must also develop a declaration of nonsurrender pattern form
17 to document compliance when the respondent has no firearms, dangerous
18 weapons, or concealed pistol license.

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.41 RCW
20 to read as follows:

21 A party ordered to surrender firearms, dangerous weapons, and his
22 or her concealed pistol license under RCW 9.41.800 must file with the
23 clerk of the court a proof of surrender and receipt form or a
24 declaration of nonsurrender form within five judicial days of the entry
25 of the order.

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

30 NEW SECTION. **Sec. 7.** Section 5 of this act takes effect December
31 1, 2014."

32 Correct the title.

EFFECT: The amendment makes the following changes:

(1) Applies the provisions of the bill to stalking protection orders and stalking no-contact orders.

(2) Modifies language in the bill to conform with the language in similar provisions of federal law.

(3) Requires that, to apply the restrictions under the bill, an order must contain both a finding that the person represents a credible threat and terms prohibiting the restrained person from threatening or using physical force (rather than either such finding or terms).

(4) Makes technical changes to update expired dates and to replace a statute in an amendatory section that was amended by 2013 legislation.

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