

SHB 1840 - S COMM AMD
By Committee on Law & Justice

NOT CONSIDERED

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, 9A.46, 10.14, 10.99, 26.09,
2 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; and

5 (B)(I) Includes a finding that the person represents a credible
6 threat to the physical safety of an intimate partner of the person or
7 the child of an intimate partner of the person; and (II) by its terms,
8 restrains the person from causing physical harm or bodily injury to,
9 assaulting, sexually assaulting, molesting, harassing, threatening, or
10 stalking an intimate partner of the person or the child of an intimate
11 partner of the person;

12 (iii) After having previously been involuntarily committed for
13 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,
14 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
15 jurisdiction, unless his or her right to possess a firearm has been
16 restored as provided in RCW 9.41.047;

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

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

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

24 (3) Notwithstanding RCW 9.41.047 or any other provisions of law, as
25 used in this chapter, a person has been "convicted", whether in an
26 adult court or adjudicated in a juvenile court, at such time as a plea
27 of guilty has been accepted, or a verdict of guilty has been filed,
28 notwithstanding the pendency of any future proceedings including but
29 not limited to sentencing or disposition, post-trial or post-
30 factfinding motions, and appeals. Conviction includes a dismissal
31 entered after a period of probation, suspension or deferral of
32 sentence, and also includes equivalent dispositions by courts in
33 jurisdictions other than Washington state. A person shall not be
34 precluded from possession of a firearm if the conviction has been the
35 subject of a pardon, annulment, certificate of rehabilitation, or other
36 equivalent procedure based on a finding of the rehabilitation of the
37 person convicted or the conviction or disposition has been the subject
38 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)(a) Notwithstanding subsection (1) or (2) of this section, a
5 person convicted or found not guilty by reason of insanity of an
6 offense prohibiting the possession of a firearm under this section
7 other than murder, manslaughter, robbery, rape, indecent liberties,
8 arson, assault, kidnapping, extortion, burglary, or violations with
9 respect to controlled substances under RCW 69.50.401 and 69.50.410, who
10 received a probationary sentence under RCW 9.95.200, and who received
11 a dismissal of the charge under RCW 9.95.240, shall not be precluded
12 from possession of a firearm as a result of the conviction or finding
13 of not guilty by reason of insanity. Notwithstanding any other
14 provisions of this section, if a person is prohibited from possession
15 of a firearm under subsection (1) or (2) of this section and has not
16 previously been convicted or found not guilty by reason of insanity of
17 a sex offense prohibiting firearm ownership under subsection (1) or (2)
18 of this section and/or any felony defined under any law as a class A
19 felony or with a maximum sentence of at least twenty years, or both,
20 the individual may petition a court of record to have his or her right
21 to possess a firearm restored:

22 (i) Under RCW 9.41.047; and/or

23 (ii)(A) 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 (B) 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 (b) An individual may petition a court of record to have his or her
2 right to possess a firearm restored under (a) of this subsection (4)
3 only at:

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

6 (ii) The superior court in the county in which the petitioner
7 resides.

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

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

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

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

35 **Sec. 2.** RCW 9.41.800 and 2002 c 302 s 704 are each amended to read
36 as follows:

37 (1) Any court when entering an order authorized under RCW 7.90.090,

1 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060,
2 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590
3 shall, upon a showing by clear and convincing evidence, that a party
4 has: Used, displayed, or threatened to use a firearm or other
5 dangerous weapon in a felony, or previously committed any offense that
6 makes him or her ineligible to possess a firearm under the provisions
7 of RCW 9.41.040:

8 (a) Require the party to surrender any firearm or other dangerous
9 weapon;

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

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

14 (d) Prohibit the party from obtaining or possessing a concealed
15 pistol license.

16 (2) Any court when entering an order authorized under RCW 7.90.090,
17 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060,
18 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590
19 may, upon a showing by a preponderance of the evidence but not by clear
20 and convincing evidence, that a party has: Used, displayed, or
21 threatened to use a firearm or other dangerous weapon in a felony, or
22 previously committed any offense that makes him or her ineligible to
23 possess a (~~pistol~~) firearm under the provisions of RCW 9.41.040:

24 (a) Require the party to surrender any firearm or other dangerous
25 weapon;

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

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

30 (d) Prohibit the party from obtaining or possessing a concealed
31 pistol license.

32 (3) Any court when entering an order under chapter 7.90, 9A.46,
33 10.14, 10.99, 26.09, 26.10, 26.26, or 26.50 RCW that:

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

36 (b)(i) Includes a finding that the person represents a credible
37 threat to the physical safety of an intimate partner of the person as
38 defined in RCW 9.41.040 or the child of an intimate partner of the

1 person; and (ii) by its terms, restrains the party from causing
2 physical harm or bodily injury to, assaulting, sexually assaulting,
3 molesting, harassing, threatening, or stalking an intimate partner of
4 the person as defined in RCW 9.41.040 or a child of an intimate partner
5 of the person, shall:

6 (A) Require the party to surrender any firearm or other dangerous
7 weapon;

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

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

12 (D) Prohibit the party from obtaining or possessing a concealed
13 pistol license.

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

19 ~~((+4))~~ (5) In addition to the provisions of subsections (1), (2),
20 and ~~((+3))~~ (4) of this section, the court may enter an order requiring
21 a party to comply with the provisions in subsection (1) of this section
22 if it finds that the possession of a firearm or other dangerous weapon
23 by any party presents a serious and imminent threat to public health or
24 safety, or to the health or safety of any individual.

25 ~~((+5))~~ (6) The requirements of subsections (1), (2), and ~~((+4))~~
26 (5) of this section may be for a period of time less than the duration
27 of the order.

28 ~~((+6))~~ (7) The court may require the party to surrender any
29 firearm or other dangerous weapon in his or her immediate possession or
30 control or subject to his or her immediate possession or control to the
31 sheriff of the county having jurisdiction of the proceeding, the chief
32 of police of the municipality having jurisdiction, or to the restrained
33 or enjoined party's counsel or to any person designated by the court.

34 NEW SECTION. Sec. 3. A new section is added to chapter 9.41 RCW
35 to read as follows:

36 All law enforcement agencies must develop policies and procedures

1 by January 1, 2014, regarding the acceptance, storage, and return of
2 weapons required to be surrendered under RCW 9.41.800.

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

5 By December 1, 2013, the administrative office of the courts shall
6 develop a proof of surrender and receipt pattern form to be used to
7 document that a respondent has complied with a requirement to surrender
8 firearms, dangerous weapons, and his or her concealed pistol license,
9 as ordered by a court under RCW 9.41.800. The administrative office of
10 the courts must also develop a declaration of nonsurrender pattern form
11 to document compliance when the respondent has no firearms, dangerous
12 weapons, or concealed pistol license.

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

15 A party ordered to surrender firearms, dangerous weapons, and his
16 or her concealed pistol license under RCW 9.41.800 must file with the
17 clerk of the court a proof of surrender and receipt form or a
18 declaration of nonsurrender form within five judicial days of the entry
19 of the order.

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

24 NEW SECTION. **Sec. 7.** Section 5 of this act takes effect December
25 1, 2013."

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26 On page 1, line 2 of the title, after "orders;" strike the

1 remainder of the title and insert "amending RCW 9.41.040 and 9.41.800;
2 adding new sections to chapter 9.41 RCW; prescribing penalties; and
3 providing an effective date."

EFFECT: Narrows the category of court orders for which the court must require the restrained person to surrender his or her firearms, dangerous weapons, and concealed pistol license, and that subject the restrained person to a charge of unlawful possession of a firearm if he or she possesses a firearm while restrained: The order must contain both a finding that the restrained person represents a credible threat and terms prohibiting the restrained person from committing certain criminal acts (rather than either such a finding or terms).

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