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ENGROSSED SUBSTITUTE HOUSE BILL 1840

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State of Washington

63rd Legislature

2014 Regular Session

**By** House Judiciary (originally sponsored by Representatives Goodman, Hope, Hunter, Pedersen, Bergquist, Habib, Fey, Ryu, Jinkins, Pollet, and Tharinger)

READ FIRST TIME 02/22/13.

1           AN ACT Relating to firearms laws concerning persons subject to  
2 no-contact orders, protection orders, and restraining orders; amending  
3 RCW 9.41.040 and 9.41.800; adding new sections to chapter 9.41 RCW;  
4 prescribing penalties; and providing an effective date.

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

6           **Sec. 1.** RCW 9.41.040 and 2011 c 193 s 1 are each amended to read  
7 as follows:

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

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

16           (2)(a) A person, whether an adult or juvenile, is guilty of the  
17 crime of unlawful possession of a firearm in the second degree, if the  
18 person does not qualify under subsection (1) of this section for the

1 crime of unlawful possession of a firearm in the first degree and the  
2 person owns, has in his or her possession, or has in his or her control  
3 any firearm:

4 (i) After having previously been convicted or found not guilty by  
5 reason of insanity in this state or elsewhere of any felony not  
6 specifically listed as prohibiting firearm possession under subsection  
7 (1) of this section, or any of the following crimes when committed by  
8 one family or household member against another, committed on or after  
9 July 1, 1993: Assault in the fourth degree, coercion, stalking,  
10 reckless endangerment, criminal trespass in the first degree, or  
11 violation of the provisions of a protection order or no-contact order  
12 restraining the person or excluding the person from a residence (RCW  
13 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

14 (ii) During any period of time that the person is subject to a  
15 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,  
16 26.09, 26.10, 26.26, or 26.50 RCW that:

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

19 (B) Restrains the person from harassing, stalking, or threatening  
20 an intimate partner of the person or child of the intimate partner or  
21 person, or engaging in other conduct that would place an intimate  
22 partner in reasonable fear of bodily injury to the partner or child;  
23 and

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

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

29 (iii) After having previously been involuntarily committed for  
30 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,  
31 71.34.750, chapter 10.77 RCW, or equivalent statutes of another  
32 jurisdiction, unless his or her right to possess a firearm has been  
33 restored as provided in RCW 9.41.047;

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

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

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

3 (3) Notwithstanding RCW 9.41.047 or any other provisions of law, as  
4 used in this chapter, a person has been "convicted", whether in an  
5 adult court or adjudicated in a juvenile court, at such time as a plea  
6 of guilty has been accepted, or a verdict of guilty has been filed,  
7 notwithstanding the pendency of any future proceedings including but  
8 not limited to sentencing or disposition, post-trial or post-fact\_  
9 finding motions, and appeals. Conviction includes a dismissal entered  
10 after a period of probation, suspension or deferral of sentence, and  
11 also includes equivalent dispositions by courts in jurisdictions other  
12 than Washington state. A person shall not be precluded from possession  
13 of a firearm if the conviction has been the subject of a pardon,  
14 annulment, certificate of rehabilitation, or other equivalent procedure  
15 based on a finding of the rehabilitation of the person convicted or the  
16 conviction or disposition has been the subject of a pardon, annulment,  
17 or other equivalent procedure based on a finding of innocence. Where  
18 no record of the court's disposition of the charges can be found, there  
19 shall be a rebuttable presumption that the person was not convicted of  
20 the charge.

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

1 (i) Under RCW 9.41.047; and/or

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

9 (B) If the conviction or finding of not guilty by reason of  
10 insanity was for a nonfelony offense, after three or more consecutive  
11 years in the community without being convicted or found not guilty by  
12 reason of insanity or currently charged with any felony, gross  
13 misdemeanor, or misdemeanor crimes, if the individual has no prior  
14 felony convictions that prohibit the possession of a firearm counted as  
15 part of the offender score under RCW 9.94A.525 and the individual has  
16 completed all conditions of the sentence.

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

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

22 (ii) The superior court in the county in which the petitioner  
23 resides.

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

32 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed or  
33 interpreted as preventing an offender from being charged and  
34 subsequently convicted for the separate felony crimes of theft of a  
35 firearm or possession of a stolen firearm, or both, in addition to  
36 being charged and subsequently convicted under this section for  
37 unlawful possession of a firearm in the first or second degree.  
38 Notwithstanding any other law, if the offender is convicted under this

1 section for unlawful possession of a firearm in the first or second  
2 degree and for the felony crimes of theft of a firearm or possession of  
3 a stolen firearm, or both, then the offender shall serve consecutive  
4 sentences for each of the felony crimes of conviction listed in this  
5 subsection.

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

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

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

15 (1) Any court when entering an order authorized under chapter 7.92  
16 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045,  
17 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060,  
18 26.50.070, or 26.26.590 shall, upon a showing by clear and convincing  
19 evidence, that a party has: Used, displayed, or threatened to use a  
20 firearm or other dangerous weapon in a felony, or previously committed  
21 any offense that makes him or her ineligible to possess a firearm under  
22 the provisions of RCW 9.41.040:

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

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

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

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

31 (2) Any court when entering an order authorized under chapter 7.92  
32 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045,  
33 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060,  
34 26.50.070, or 26.26.590 may, upon a showing by a preponderance of the  
35 evidence but not by clear and convincing evidence, that a party has:  
36 Used, displayed, or threatened to use a firearm or other dangerous

1 weapon in a felony, or previously committed any offense that makes him  
2 or her ineligible to possess a (~~pistol~~) firearm under the provisions  
3 of RCW 9.41.040:

4 (a) Require the party to surrender any firearm or other dangerous  
5 weapon;

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

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

10 (d) Prohibit the party from obtaining or possessing a concealed  
11 pistol license.

12 (3) During any period of time that the person is subject to a court  
13 order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09,  
14 26.10, 26.26, or 26.50 RCW that:

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

17 (b) Restrains the person from harassing, stalking, or threatening  
18 an intimate partner of the person or child of the intimate partner or  
19 person, or engaging in other conduct that would place an intimate  
20 partner in reasonable fear of bodily injury to the partner or child;  
21 and

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

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

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; and

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

36 (4) The court may order temporary surrender of a firearm or other  
37 dangerous weapon without notice to the other party if it finds, on the

1 basis of the moving affidavit or other evidence, that irreparable  
2 injury could result if an order is not issued until the time for  
3 response has elapsed.

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

10 ~~((+5))~~ (6) The requirements of subsections (1), (2), and ~~((+4))~~  
11 (5) of this section may be for a period of time less than the duration  
12 of the order.

13 ~~((+6))~~ (7) The court may require the party to surrender any  
14 firearm or other dangerous weapon in his or her immediate possession or  
15 control or subject to his or her immediate possession or control to the  
16 sheriff of the county having jurisdiction of the proceeding, the chief  
17 of police of the municipality having jurisdiction, or to the restrained  
18 or enjoined party's counsel or to any person designated by the court.

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

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

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

26 By December 1, 2014, the administrative office of the courts shall  
27 develop a proof of surrender and receipt pattern form to be used to  
28 document that a respondent has complied with a requirement to surrender  
29 firearms, dangerous weapons, and his or her concealed pistol license,  
30 as ordered by a court under RCW 9.41.800. The administrative office of  
31 the courts must also develop a declaration of nonsurrender pattern form  
32 to document compliance when the respondent has no firearms, dangerous  
33 weapons, or concealed pistol license.

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

1        A party ordered to surrender firearms, dangerous weapons, and his  
2 or her concealed pistol license under RCW 9.41.800 must file with the  
3 clerk of the court a proof of surrender and receipt form or a  
4 declaration of nonsurrender form within five judicial days of the entry  
5 of the order.

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

10        NEW SECTION. **Sec. 7.** Section 5 of this act takes effect December  
11 1, 2014.

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