

CERTIFICATION OF ENROLLMENT

SENATE BILL 5205

Chapter 248, Laws of 2019

66th Legislature
2019 Regular Session

PERSONS INCOMPETENT TO STAND TRIAL--FIREARM POSSESSION

EFFECTIVE DATE: July 28, 2019

Passed by the Senate April 18, 2019
Yeas 32 Nays 17

KAREN KEISER

President of the Senate

Passed by the House April 10, 2019
Yeas 53 Nays 39

FRANK CHOPP

Speaker of the House of Representatives

Approved May 7, 2019 9:50 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5205** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

May 13, 2019

**Secretary of State
State of Washington**

SENATE BILL 5205

AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By Senators Dhingra, King, Frockt, Zeiger, Pedersen, Das, Rolfes, Palumbo, Kuderer, Keiser, Wellman, Hunt, Mullet, and Saldaña

Read first time 01/16/19. Referred to Committee on Law & Justice.

1 AN ACT Relating to provisions governing firearms possession by
2 persons who have been found incompetent to stand trial and who have a
3 history of one or more violent acts; amending RCW 10.77.088,
4 9.41.040, and 9.41.047; and prescribing penalties.

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

6 **Sec. 1.** RCW 10.77.088 and 2016 sp.s. c 29 s 411 are each amended
7 to read as follows:

8 (1)(a) If the defendant is charged with a nonfelony crime which
9 is a serious offense as identified in RCW 10.77.092 and found by the
10 court to be not competent, then the court:

11 (i) Shall commit the defendant to the custody of the secretary
12 who shall place such defendant in an appropriate facility of the
13 department for evaluation and treatment;

14 (ii) May alternatively order the defendant to undergo evaluation
15 and treatment at some other facility or provider as determined by the
16 department, or under the guidance and control of a professional
17 person. The facilities or providers may include community mental
18 health providers or other local facilities that contract with the
19 department and are willing and able to provide treatment under this
20 section. During the 2015-2017 fiscal biennium, the department may
21 contract with one or more cities or counties to provide competency

1 restoration services in a city or county jail if the city or county
2 jail is willing and able to serve as a location for competency
3 restoration services and if the secretary determines that there is an
4 emergent need for beds and documents the justification, including a
5 plan to address the emergency. Patients receiving competency
6 restoration services in a city or county jail must be physically
7 separated from other populations at the jail and restoration
8 treatment services must be provided as much as possible within a
9 therapeutic environment. The placement under (a) (i) and (ii) of this
10 subsection shall not exceed fourteen days in addition to any unused
11 time of the evaluation under RCW 10.77.060. The court shall compute
12 this total period and include its computation in the order. The
13 fourteen-day period plus any unused time of the evaluation under RCW
14 10.77.060 shall be considered to include only the time the defendant
15 is actually at the facility and shall be in addition to reasonable
16 time for transport to or from the facility;

17 (iii) May alternatively order that the defendant be placed on
18 conditional release for up to ninety days for mental health treatment
19 and restoration of competency; or

20 (iv) May order any combination of this subsection.

21 (b) If the court has determined or the parties agree that the
22 defendant is unlikely to regain competency, the court may dismiss the
23 charges without prejudice without ordering the defendant to undergo
24 restoration treatment, in which case the court shall order that the
25 defendant be referred for evaluation for civil commitment in the
26 manner provided in (c) of this subsection.

27 (c) (i) If the proceedings are dismissed under RCW 10.77.084 and
28 the defendant was on conditional release at the time of dismissal,
29 the court shall order the designated crisis responder within that
30 county to evaluate the defendant pursuant to chapter 71.05 RCW. The
31 evaluation may be conducted in any location chosen by the
32 professional.

33 (ii) If the defendant was in custody and not on conditional
34 release at the time of dismissal, the defendant shall be detained and
35 sent to an evaluation and treatment facility for up to seventy-two
36 hours, excluding Saturdays, Sundays, and holidays, for evaluation for
37 purposes of filing a petition under chapter 71.05 RCW. The seventy-
38 two hour period shall commence upon the next nonholiday weekday
39 following the court order and shall run to the end of the last
40 nonholiday weekday within the seventy-two-hour period.

1 (2) If the defendant is charged with a nonfelony crime that is
2 not a serious offense as defined in RCW 10.77.092((+)) and found by
3 the court to be not competent, the court may stay or dismiss
4 proceedings and detain the defendant for sufficient time to allow the
5 designated crisis responder to evaluate the defendant and consider
6 initial detention proceedings under chapter 71.05 RCW. The court must
7 give notice to all parties at least twenty-four hours before the
8 dismissal of any proceeding under this subsection, and provide an
9 opportunity for a hearing on whether to dismiss the proceedings.

10 (3) If at any time the court dismisses charges under subsection
11 (1) or (2) of this section, the court shall make a finding as to
12 whether the defendant has a history of one or more violent acts. If
13 the court so finds, the defendant is barred from the possession of
14 firearms until a court restores his or her right to possess a firearm
15 under RCW 9.41.047. The court shall state to the defendant and
16 provide written notice that the defendant is barred from the
17 possession of firearms and that the prohibition remains in effect
18 until a court restores his or her right to possess a firearm under
19 RCW 9.41.047.

20 **Sec. 2.** RCW 9.41.040 and 2018 c 234 s 1 are each amended to read
21 as follows:

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

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

30 (2)(a) A person, whether an adult or juvenile, is guilty of the
31 crime of unlawful possession of a firearm in the second degree, if
32 the person does not qualify under subsection (1) of this section for
33 the crime of unlawful possession of a firearm in the first degree and
34 the person owns, has in his or her possession, or has in his or her
35 control any firearm:

36 (i) After having previously been convicted or found not guilty by
37 reason of insanity in this state or elsewhere of any felony not
38 specifically listed as prohibiting firearm possession under
39 subsection (1) of this section, or any of the following crimes when

1 committed by one family or household member against another,
2 committed on or after July 1, 1993: Assault in the fourth degree,
3 coercion, stalking, reckless endangerment, criminal trespass in the
4 first degree, or violation of the provisions of a protection order or
5 no-contact order restraining the person or excluding the person from
6 a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

7 (ii) After having previously been convicted or found not guilty
8 by reason of insanity in this state or elsewhere of harassment when
9 committed by one family or household member against another,
10 committed on or after June 7, 2018;

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

14 (A) Was issued after a hearing of which the person received
15 actual notice, and at which the person had an opportunity to
16 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,
25 or threatened use of physical force against the intimate partner or
26 child that would reasonably be expected to cause bodily injury;

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

32 (v) After dismissal of criminal charges based on incompetency to
33 stand trial under RCW 10.77.088 when the court has made a finding
34 indicating that the defendant has a history of one or more violent
35 acts, unless his or her right to possess a firearm has been restored
36 as provided in RCW 9.41.047;

37 (vi) If the person is under eighteen years of age, except as
38 provided in RCW 9.41.042; and/or

1 (~~(vi)~~) (vii) If the person is free on bond or personal
2 recognizance pending trial, appeal, or sentencing for a serious
3 offense as defined in RCW 9.41.010.

4 (b) (a)(iii) of this subsection does not apply to a sexual
5 assault protection order under chapter 7.90 RCW if the order has been
6 modified pursuant to RCW 7.90.170 to remove any restrictions on
7 firearm purchase, transfer, or possession.

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

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

28 (4)(a) Notwithstanding subsection (1) or (2) of this section, a
29 person convicted or found not guilty by reason of insanity of an
30 offense prohibiting the possession of a firearm under this section
31 other than murder, manslaughter, robbery, rape, indecent liberties,
32 arson, assault, kidnapping, extortion, burglary, or violations with
33 respect to controlled substances under RCW 69.50.401 and 69.50.410,
34 who received a probationary sentence under RCW 9.95.200, and who
35 received a dismissal of the charge under RCW 9.95.240, shall not be
36 precluded from possession of a firearm as a result of the conviction
37 or finding of not guilty by reason of insanity. Notwithstanding any
38 other provisions of this section, if a person is prohibited from
39 possession of a firearm under subsection (1) or (2) of this section
40 and has not previously been convicted or found not guilty by reason

1 of insanity of a sex offense prohibiting firearm ownership under
2 subsection (1) or (2) of this section and/or any felony defined under
3 any law as a class A felony or with a maximum sentence of at least
4 twenty years, or both, the individual may petition a court of record
5 to have his or her right to possess a firearm restored:

6 (i) Under RCW 9.41.047; and/or

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

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

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

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

27 (ii) The superior court in the county in which the petitioner
28 resides.

29 (5) In addition to any other penalty provided for by law, if a
30 person under the age of eighteen years is found by a court to have
31 possessed a firearm in a vehicle in violation of subsection (1) or
32 (2) of this section or to have committed an offense while armed with
33 a firearm during which offense a motor vehicle served an integral
34 function, the court shall notify the department of licensing within
35 twenty-four hours and the person's privilege to drive shall be
36 revoked under RCW 46.20.265, unless the offense is the juvenile's
37 first offense in violation of this section and has not committed an
38 offense while armed with a firearm, an unlawful possession of a
39 firearm offense, or an offense in violation of chapter 66.44, 69.52,
40 69.41, or 69.50 RCW.

1 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed
2 or interpreted as preventing an offender from being charged and
3 subsequently convicted for the separate felony crimes of theft of a
4 firearm or possession of a stolen firearm, or both, in addition to
5 being charged and subsequently convicted under this section for
6 unlawful possession of a firearm in the first or second degree.
7 Notwithstanding any other law, if the offender is convicted under
8 this section for unlawful possession of a firearm in the first or
9 second degree and for the felony crimes of theft of a firearm or
10 possession of a stolen firearm, or both, then the offender shall
11 serve consecutive sentences for each of the felony crimes of
12 conviction listed in this subsection.

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

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

20 **Sec. 3.** RCW 9.41.047 and 2018 c 201 s 6001 are each amended to
21 read as follows:

22 (1)(a) At the time a person is convicted or found not guilty by
23 reason of insanity of an offense making the person ineligible to
24 possess a firearm, or at the time a person is committed by court
25 order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or
26 chapter 10.77 RCW for mental health treatment, or at the time that
27 charges are dismissed based on incompetency to stand trial under RCW
28 10.77.088 and the court makes a finding that the person has a history
29 of one or more violent acts, the convicting or committing court, or
30 court that dismisses charges, shall notify the person, orally and in
31 writing, that the person must immediately surrender any concealed
32 pistol license and that the person may not possess a firearm unless
33 his or her right to do so is restored by a court of record. For
34 purposes of this section a convicting court includes a court in which
35 a person has been found not guilty by reason of insanity.

36 (b) The (~~convicting or committing~~) court shall forward within
37 three judicial days after conviction (~~or~~), entry of the commitment
38 order, or dismissal of charges, a copy of the person's driver's
39 license or identicard, or comparable information, along with the date

1 of conviction or commitment, or date charges are dismissed, to the
2 department of licensing. When a person is committed by court order
3 under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter
4 10.77 RCW, for mental health treatment, or when a person's charges
5 are dismissed based on incompetency to stand trial under RCW
6 10.77.088 and the court makes a finding that the person has a history
7 of one or more violent acts, the (~~committing~~) court also shall
8 forward, within three judicial days after entry of the commitment
9 order, or dismissal of charges, a copy of the person's driver's
10 license, or comparable information, along with the date of commitment
11 or date charges are dismissed, to the national instant criminal
12 background check system index, denied persons file, created by the
13 federal Brady handgun violence prevention act (P.L. 103-159). The
14 petitioning party shall provide the court with the information
15 required. If more than one commitment order is entered under one
16 cause number, only one notification to the department of licensing
17 and the national instant criminal background check system is
18 required.

19 (2) Upon receipt of the information provided for by subsection
20 (1) of this section, the department of licensing shall determine if
21 the convicted or committed person, or the person whose charges are
22 dismissed based on incompetency to stand trial, has a concealed
23 pistol license. If the person does have a concealed pistol license,
24 the department of licensing shall immediately notify the license-
25 issuing authority which, upon receipt of such notification, shall
26 immediately revoke the license.

27 (3)(a) A person who is prohibited from possessing a firearm, by
28 reason of having been involuntarily committed for mental health
29 treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750,
30 chapter 10.77 RCW, or equivalent statutes of another jurisdiction, or
31 because the person's charges were dismissed based on incompetency to
32 stand trial under RCW 10.77.088 and the court made a finding that the
33 person has a history of one or more violent acts, may, upon
34 discharge, petition the superior court to have his or her right to
35 possess a firearm restored.

36 (b) The petition must be brought in the superior court that
37 ordered the involuntary commitment or dismissed the charges based on
38 incompetency to stand trial or the superior court of the county in
39 which the petitioner resides.

1 (c) Except as provided in (d) of this subsection, the court shall
2 restore the petitioner's right to possess a firearm if the petitioner
3 proves by a preponderance of the evidence that:

4 (i) The petitioner is no longer required to participate in court-
5 ordered inpatient or outpatient treatment;

6 (ii) The petitioner has successfully managed the condition
7 related to the commitment or incompetency;

8 (iii) The petitioner no longer presents a substantial danger to
9 himself or herself, or the public; and

10 (iv) The symptoms related to the commitment or incompetency are
11 not reasonably likely to recur.

12 (d) If a preponderance of the evidence in the record supports a
13 finding that the person petitioning the court has engaged in violence
14 and that it is more likely than not that the person will engage in
15 violence after his or her right to possess a firearm is restored, the
16 person shall bear the burden of proving by clear, cogent, and
17 convincing evidence that he or she does not present a substantial
18 danger to the safety of others.

19 (e) When a person's right to possess a firearm has been restored
20 under this subsection, the court shall forward, within three judicial
21 days after entry of the restoration order, notification that the
22 person's right to possess a firearm has been restored to the
23 department of licensing, the health care authority, and the national
24 instant criminal background check system index, denied persons file.

25 (4) No person who has been found not guilty by reason of insanity
26 may petition a court for restoration of the right to possess a
27 firearm unless the person meets the requirements for the restoration
28 of the right to possess a firearm under RCW 9.41.040(4).

Passed by the Senate April 18, 2019.

Passed by the House April 10, 2019.

Approved by the Governor May 7, 2019.

Filed in Office of Secretary of State May 13, 2019.

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