
HOUSE BILL 2685

State of Washington

54th Legislature

1996 Regular Session

By Representatives Sheahan and Costa; by request of Department of Social and Health Services and Department of Veterans Affairs

Read first time 01/16/96. Referred to Committee on Law & Justice.

1 AN ACT Relating to amendments to the violence reduction act to
2 ensure the right of persons who receive mental health treatment;
3 amending RCW 9.41.040, 9.41.047, and 18.51.010; repealing RCW
4 71.12.560; and prescribing penalties.

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

6 **Sec. 1.** RCW 9.41.040 and 1995 c 129 s 16 (Initiative Measure No.
7 159) are each amended to read as follows:

8 UNLAWFUL POSSESSION OF A FIREARM IN THE FIRST AND SECOND DEGREE«
9 OWNERSHIP, POSSESSION OF FIREARMS PROHIBITED FROM CERTAIN PERSONS.

10 (1)(a) A person, whether an adult or juvenile, is guilty of the crime
11 of unlawful possession of a firearm in the first degree, if the person
12 owns, has in his or her possession, or has in his or her control any
13 firearm after having previously been convicted in this state or
14 elsewhere of any serious offense as defined in this chapter,
15 residential burglary, reckless endangerment in the first degree, any
16 felony violation of the uniform controlled substances act, chapter
17 69.50 RCW, classified as a class A or class B felony, or with a maximum
18 sentence of at least ten years, or both, or equivalent statutes of

1 another jurisdiction, except as otherwise provided in subsection (3) or
2 (4) of this section;

3 (b) A person, whether an adult or juvenile, is guilty of the crime
4 of unlawful possession of a firearm in the second degree, if the person
5 does not qualify under (a) of this subsection for the crime of unlawful
6 possession of a firearm in the first degree and the person owns, has in
7 his or her possession, or has in his or her control any firearm:

8 (i) After having previously been convicted of any remaining felony
9 violation of the uniform controlled substances act, chapter 69.50 RCW,
10 or equivalent statutes of another jurisdiction not specifically listed
11 as prohibiting firearm possession under (a) of this subsection, any
12 remaining felony in which a firearm was used or displayed and the
13 felony is not specifically listed as prohibiting firearm possession
14 under (a) of this subsection, any domestic violence offense enumerated
15 in RCW 10.99.020(~~(+2)~~)(3), or any harassment offense enumerated in RCW
16 9A.46.060, except as otherwise provided in subsection (3) or (4) of
17 this section;

18 (ii) After having previously been convicted on three occasions
19 within five years of driving a motor vehicle or operating a vessel
20 while under the influence of intoxicating liquor or any drug, unless
21 his or her right to possess a firearm has been restored as provided in
22 RCW 9.41.047;

23 (iii) After having (~~previously~~) been involuntarily committed for
24 (~~mental health~~) treatment of a mental disorder for a period exceeding
25 fourteen days under RCW 71.05.320(~~(7)~~) or 71.34.090(~~(7, chapter 10.77~~
26 ~~RCW)~~) or having been committed or detained pursuant to the criminal
27 insanity procedures under RCW 10.77.090 or 10.77.110, or equivalent
28 statutes of another jurisdiction, unless his or her right to possess a
29 firearm has been restored as provided in RCW 9.41.047; and/or

30 (iv) If the person is under eighteen years of age, except as
31 provided in RCW 9.41.042.

32 (2)(a) Unlawful possession of a firearm in the first degree is a
33 class B felony, punishable under chapter 9A.20 RCW.

34 (b) Unlawful possession of a firearm in the second degree is a
35 class C felony, punishable under chapter 9A.20 RCW.

36 (3) As used in this section, a person has been "convicted" at such
37 time as a plea of guilty has been accepted or a verdict of guilty has
38 been filed, notwithstanding the pendency of any future proceedings
39 including but not limited to sentencing or disposition, post-trial or

1 post-factfinding motions, and appeals. A person shall not be precluded
2 from possession of a firearm if the conviction has been the subject of
3 a pardon, annulment, certificate of rehabilitation, or other equivalent
4 procedure based on a finding of the rehabilitation of the person
5 convicted or the conviction or disposition has been the subject of a
6 pardon, annulment, or other equivalent procedure based on a finding of
7 innocence.

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

24 (a) Under RCW 9.41.047; and/or

25 (b) After five or more consecutive years in the community without
26 being convicted or currently charged with any felony, gross
27 misdemeanor, or misdemeanor crimes, if the individual has no prior
28 felony convictions that prohibit the possession of a firearm counted as
29 part of the offender score under RCW 9.94A.360.

30 (5)(a) A person who has been committed by court order for treatment
31 of mental disorder under RCW 71.05.320 or chapter 10.77 RCW, or
32 equivalent statutes of another jurisdiction, may not possess, in any
33 manner, a firearm as defined in RCW 9.41.010.

34 (b) At the time of involuntary commitment, the court shall
35 specifically state to the person under (a) of this subsection and give
36 the person notice in writing that the person is barred from possession
37 of firearms.

38 (c) The secretary of social and health services shall develop
39 appropriate rules to create a process under this subsection. The rules

1 must provide for the immediate restoration of the right to possess a
2 firearm upon a showing in a court of competent jurisdiction that a
3 person no longer is required to participate in an inpatient or
4 outpatient treatment program, and is no longer required to take
5 medication to treat any condition related to the commitment. Unlawful
6 possession of a firearm under this subsection shall be punished as a
7 class C felony under chapter 9A.20 RCW.

8 (6) 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) of this
11 section or to have committed an offense while armed with a firearm
12 during which offense a motor vehicle served an integral function, the
13 court shall notify the department of licensing within twenty-four hours
14 and the person's privilege to drive shall be revoked under RCW
15 46.20.265.

16 ((+6)) (7) Nothing in chapter 129, Laws of 1995 shall ever be
17 construed or interpreted as preventing an offender from being charged
18 and subsequently convicted for the separate felony crimes of theft of
19 a 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)) (8) Each firearm unlawfully possessed under this section
29 shall be a separate offense.

30 **Sec. 2.** RCW 9.41.047 and 1994 sp.s. c 7 s 404 are each amended to
31 read as follows:

32 (1)((+a)) At the time a person is convicted of an offense making
33 the person ineligible to possess a firearm, or at the time a person is
34 committed by court order under RCW 71.05.320((7)) or 71.34.090((7-~~er~~
35 ~~chapter 10.77 RCW for mental health treatment~~)) or is committed or
36 detained under RCW 10.77.090 or 10.77.110, the convicting or committing
37 court shall notify the person, orally and in writing, that the person

1 may not possess a firearm unless his or her right to do so is restored
2 by a court of record.

3 The convicting or committing court also shall forward a copy of the
4 person's driver's license or identicard, or comparable information, to
5 the department of licensing, along with the date of conviction or
6 commitment.

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

12 (3) A person who is prohibited from possessing a firearm by reason
13 of having previously been convicted on three occasions of driving a
14 motor vehicle or operating a vessel while under the influence of
15 intoxicating liquor or any drug may, after five continuous years
16 without further conviction for any alcohol-related offense, petition a
17 court of record to have his or her right to possess a firearm restored.

18 (4)(a) A person who is prohibited from possessing a firearm, by
19 reason of having been (~~either~~

20 ~~(ii))~~) involuntarily committed (~~for mental health treatment~~)
21 under RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent
22 statutes of another jurisdiction, may, upon discharge, petition a court
23 of record to have his or her right to possess a firearm restored.

24 (b) At a minimum, a petition under this subsection (4) shall
25 include the following:

26 (i) The fact, date, and place of commitment;

27 (ii) The place of treatment;

28 (iii) The fact and date of release from commitment;

29 (iv) A certified copy of the most recent order, if one exists, of
30 commitment, with the findings of fact and conclusions of law; and

31 (v) A statement by the person that he or she is no longer required
32 to participate in an inpatient or outpatient treatment program, is no
33 longer required to take medication to treat any condition related to
34 the commitment, and does not present a substantial danger to himself or
35 herself, to others, or to the public safety.

36 (c) A person petitioning the court under this subsection (4) shall
37 bear the burden of proving by a preponderance of the evidence that the
38 circumstances resulting in the commitment no longer exist and are not
39 reasonably likely to recur.

1 **Sec. 3.** RCW 18.51.010 and 1983 c 236 s 1 are each amended to read
2 as follows:

3 (1) "Nursing home" means any home, place or institution which
4 operates or maintains facilities providing convalescent or chronic
5 care, or both, for a period in excess of twenty-four consecutive hours
6 for three or more patients not related by blood or marriage to the
7 operator, who by reason of illness or infirmity, are unable properly to
8 care for themselves. Convalescent and chronic care may include but not
9 be limited to any or all procedures commonly employed in waiting on the
10 sick, such as administration of medicines, preparation of special
11 diets, giving of bedside nursing care, application of dressings and
12 bandages, and carrying out of treatment prescribed by a duly licensed
13 practitioner of the healing arts. It may also include care of mentally
14 incompetent persons. It may also include community-based care.
15 Nothing in this definition shall be construed to include general
16 hospitals or other places which provide care and treatment for the
17 acutely ill and maintain and operate facilities for major surgery or
18 obstetrics, or both. Nothing in this definition shall be construed to
19 include any boarding home, guest home, hotel or related institution
20 which is held forth to the public as providing, and which is operated
21 to give only board, room and laundry to persons not in need of medical
22 or nursing treatment or supervision except in the case of temporary
23 acute illness. The mere designation by the operator of any place or
24 institution as a hospital, sanitarium, or any other similar name, which
25 does not provide care for the acutely ill and maintain and operate
26 facilities for major surgery or obstetrics, or both, shall not exclude
27 such place or institution from the provisions of this chapter:
28 PROVIDED, That any nursing home providing psychiatric treatment shall,
29 with respect to patients receiving such treatment, comply with ((the
30 ~~provisions of~~)) RCW ((~~71.12.560 and~~)) 71.12.570.

31 (2) "Person" means any individual, firm, partnership, corporation,
32 company, association, or joint stock association, and the legal
33 successor thereof.

34 (3) "Secretary" means the secretary of the department of social and
35 health services.

36 (4) "Department" means the state department of social and health
37 services.

38 (5) "Community-based care" means but is not limited to the
39 following:

- 1 (a) Home delivered nursing services;
- 2 (b) Personal care;
- 3 (c) Day care;
- 4 (d) Nutritional services, both in-home and in a communal dining
- 5 setting;
- 6 (e) Habilitation care; and
- 7 (f) Respite care.

8 NEW SECTION. **Sec. 4.** RCW 71.12.560 and 1994 sp.s. c 7 s 441, 1974
9 ex.s. c 145 s 1, 1973 1st ex.s. c 142 s 1, & 1959 c 25 s 71.12.560 are
10 each repealed.

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