
SENATE BILL 5028

State of Washington

54th Legislature

1995 Regular Session

By Senator Smith

Read first time 01/09/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to possession of firearms; amending RCW 9.41.040
2 and 9.41.047; reenacting and amending RCW 9.41.010; and prescribing
3 penalties.

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

5 **Sec. 1.** RCW 9.41.010 and 1994 1st sp.s. c 7 s 401 and 1994 c 121
6 s 1 are each reenacted and amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Firearm" means a weapon or device from which a projectile may
10 be fired by an explosive such as gunpowder.

11 (2) "Pistol" means any firearm with a barrel less than twelve
12 inches in length, or is designed to be held and fired by the use of a
13 single hand.

14 (3) "Rifle" means a weapon designed or redesigned, made or remade,
15 and intended to be fired from the shoulder and designed or redesigned,
16 made or remade, and intended to use the energy of the explosive in a
17 fixed metallic cartridge to fire only a single projectile through a
18 rifled bore for each single pull of the trigger.

1 (4) "Short-barreled rifle" means a rifle having one or more barrels
2 less than sixteen inches in length and any weapon made from a rifle by
3 any means of modification if such modified weapon has an overall length
4 of less than twenty-six inches.

5 (5) "Shotgun" means a weapon with one or more barrels, designed or
6 redesigned, made or remade, and intended to be fired from the shoulder
7 and designed or redesigned, made or remade, and intended to use the
8 energy of the explosive in a fixed shotgun shell to fire through a
9 smooth bore either a number of ball shot or a single projectile for
10 each single pull of the trigger.

11 (6) "Short-barreled shotgun" means a shotgun having one or more
12 barrels less than eighteen inches in length and any weapon made from a
13 shotgun by any means of modification if such modified weapon has an
14 overall length of less than twenty-six inches.

15 (7) "Machine gun" means any firearm known as a machine gun,
16 mechanical rifle, submachine gun, or any other mechanism or instrument
17 not requiring that the trigger be pressed for each shot and having a
18 reservoir clip, disc, drum, belt, or other separable mechanical device
19 for storing, carrying, or supplying ammunition which can be loaded into
20 the firearm, mechanism, or instrument, and fired therefrom at the rate
21 of five or more shots per second.

22 (8) "Antique firearm" means a firearm or replica of a firearm not
23 designed or redesigned for using rim fire or conventional center fire
24 ignition with fixed ammunition and manufactured in or before 1898,
25 including any matchlock, flintlock, percussion cap, or similar type of
26 ignition system and also any firearm using fixed ammunition
27 manufactured in or before 1898, for which ammunition is no longer
28 manufactured in the United States and is not readily available in the
29 ordinary channels of commercial trade.

30 (9) "Loaded" means:

31 (a) There is a cartridge in the chamber of the firearm;

32 (b) Bullets are in a clip that is locked in place in the firearm;

33 (c) There is a cartridge in the cylinder of the firearm, if the
34 firearm is a revolver; or

35 (d) There is a cartridge in the tube, magazine, or other
36 compartment of the firearm.

37 (10) "Dealer" means a person engaged in the business of selling
38 firearms or ammunition at wholesale or retail who has, or is required
39 to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A

1 person who does not have, and is not required to have, a federal
2 firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that
3 person makes only occasional sales, exchanges, or purchases of firearms
4 for the enhancement of a personal collection or for a hobby, or sells
5 all or part of his or her personal collection of firearms.

6 (11) "Crime of violence" means:

7 (a) Any of the following felonies, as now existing or hereafter
8 amended: Any felony defined under any law as a class A felony or an
9 attempt to commit a class A felony, criminal solicitation of or
10 criminal conspiracy to commit a class A felony, manslaughter in the
11 first degree, manslaughter in the second degree, indecent liberties if
12 committed by forcible compulsion, rape in the second degree, kidnapping
13 in the second degree, arson in the second degree, assault in the second
14 degree, assault of a child in the second degree, extortion in the first
15 degree, burglary in the second degree, residential burglary, and
16 robbery in the second degree;

17 (b) Any conviction or adjudication for a felony offense in effect
18 at any time prior to July 1, 1976, which is comparable to a felony
19 classified as a crime of violence in (a) of this subsection; and

20 (c) Any federal or out-of-state conviction or adjudication for an
21 offense comparable to a felony classified as a crime of violence under
22 (a) or (b) of this subsection.

23 (12) "Serious offense" means any of the following felonies or a
24 felony attempt to commit any of the following felonies, as now existing
25 or hereafter amended:

26 (a) Any crime of violence;

27 (b) Child molestation in the second degree;

28 (c) Controlled substance homicide;

29 (d) Incest when committed against a child under age fourteen;

30 (e) Indecent liberties;

31 (f) Leading organized crime;

32 (g) Promoting prostitution in the first degree;

33 (h) Rape in the third degree;

34 (i) Sexual exploitation;

35 (j) Vehicular assault;

36 (k) Vehicular homicide, when proximately caused by the driving of
37 any vehicle by any person while under the influence of intoxicating
38 liquor or any drug as defined by RCW 46.61.502, or by the operation of
39 any vehicle in a reckless manner;

1 (l) Any other class B felony offense with a finding of sexual
2 motivation, as "sexual motivation" is defined under RCW 9.94A.030;

3 (m) Any other felony with a deadly weapon verdict under RCW
4 9.94A.125; or

5 (n) Any felony offense in effect at any time prior to July 1, 1994,
6 that is comparable to a serious offense, or any federal or out-of-state
7 conviction for an offense that under the laws of this state would be a
8 felony classified as a serious offense.

9 **Sec. 2.** RCW 9.41.040 and 1994 1st sp.s. c 7 s 402 are each amended
10 to read as follows:

11 (1) A person, whether an adult or juvenile, is guilty of the crime
12 of unlawful possession of a firearm if the person owns, has in his or
13 her possession, or has in his or her control any firearm:

14 (a) After having previously been convicted or adjudicated in this
15 state or elsewhere of a serious offense, a domestic violence offense
16 enumerated in RCW 10.99.020(2) committed on or after July 1, 1994, a
17 harassment offense (~~(enumerated in RCW 9A.46.060)~~) under RCW 9A.46.020,
18 or of a felony in which a firearm was used or displayed, except as
19 otherwise provided in subsection (3) or (4) of this section;

20 (b) After having previously been convicted or adjudicated of any
21 felony violation of the uniform controlled substances act, chapter
22 69.50 RCW, or equivalent statutes of another jurisdiction, except as
23 otherwise provided in subsection (3) or (4) of this section;

24 (c) After having previously been convicted or adjudicated on three
25 occasions within five years of driving a motor vehicle or operating a
26 vessel while under the influence of intoxicating liquor or any drug,
27 unless his or her right to possess a firearm has been restored as
28 provided in RCW 9.41.047; or

29 (~~(e)~~) (d) If the person is under eighteen years of age, except as
30 provided in RCW 9.41.042.

31 (2) Unlawful possession of a firearm is a class C felony,
32 punishable under chapter 9A.20 RCW.

33 (3) As used in this section, a person has been "convicted or
34 adjudicated" at such time as a plea of guilty has been accepted or a
35 verdict of guilty has been filed, notwithstanding the pendency of any
36 future proceedings including but not limited to sentencing or
37 disposition, post-trial or post-factfinding motions, and appeals. A
38 person shall not be precluded from possession of a firearm if three

1 years have elapsed since the date of conviction for a misdemeanor or
2 gross misdemeanor, if five years have elapsed since the date of
3 conviction for a class C felony, or if ten years have elapsed since the
4 date of conviction for a class B felony, or if the conviction or
5 adjudication has been the subject of a pardon, annulment, certificate
6 of rehabilitation, or other equivalent procedure based on a finding of
7 the rehabilitation of the person convicted or adjudicated or the
8 conviction or disposition has been the subject of a pardon, annulment,
9 or other equivalent procedure based on a finding of innocence.

10 (4) Notwithstanding subsection (1) of this section, a person
11 convicted or adjudicated of an offense other than murder, manslaughter,
12 robbery, rape, indecent liberties, arson, assault, kidnapping,
13 extortion, burglary, or violations with respect to controlled
14 substances under RCW 69.50.401(a) and 69.50.410, who received a
15 probationary sentence under RCW 9.95.200, and who received a dismissal
16 of the charge under RCW 9.95.240, shall not be precluded from
17 possession of a firearm as a result of the conviction or adjudication.

18 (~~((+6))~~) (5)(a) A person who has been committed by court order for
19 treatment of mental illness under RCW 71.05.320 or chapter 10.77 RCW,
20 or equivalent statutes of another jurisdiction, may not possess, in any
21 manner, a firearm as defined in RCW 9.41.010.

22 (b) At the time of commitment, the court shall specifically state
23 to the person under (a) of this subsection and give the person notice
24 in writing that the person is barred from possession of firearms.

25 (c) The secretary of social and health services shall develop
26 appropriate rules to create an approval process under this subsection.
27 The rules must provide for the immediate restoration of the right to
28 possess a firearm upon a showing in a court of competent jurisdiction
29 that a person no longer is required to participate in an inpatient or
30 outpatient treatment program, and is no longer required to take
31 medication to treat any condition related to the commitment. Unlawful
32 possession of a firearm under this subsection shall be punished as a
33 class C felony under chapter 9A.20 RCW.

34 (~~((+5))~~) (6) In addition to any other penalty provided for by law,
35 if a person under the age of eighteen years is found by a court to have
36 possessed a firearm in a vehicle in violation of subsection (1) of this
37 section or to have committed an offense while armed with a firearm
38 during which offense a motor vehicle served an integral function, the
39 court shall notify the department of licensing within twenty-four hours

1 and the person's privilege to drive shall be revoked under RCW
2 46.20.265.

3 **Sec. 3.** RCW 9.41.047 and 1994 1st sp.s. c 7 s 404 are each amended
4 to read as follows:

5 (1)~~((a))~~ At the time a person is convicted or adjudicated of an
6 offense making the person ineligible to possess a firearm, or at the
7 time a person is committed by court order under RCW 71.05.320,
8 71.34.090, or chapter 10.77 RCW for mental health treatment, the
9 convicting, disposing, or committing court shall notify the person,
10 orally and in writing, that the person may not possess a firearm unless
11 his or her right to do so is restored by a court of record. Failure to
12 notify a person that he or she is ineligible to possess a firearm is
13 not a defense to prosecution under RCW 9.41.040.

14 The convicting, disposing, or committing court also shall forward
15 a copy of the person's driver's license or identicard, or comparable
16 information, to the department of licensing, along with the date of
17 conviction, disposition, or commitment.

18 (2) Upon receipt of the information provided for by subsection (1)
19 of this section, the department of licensing shall determine if the
20 convicted, adjudicated, or committed person has a concealed pistol
21 license. If the person does have a concealed pistol license, the
22 department of licensing shall immediately notify the license-issuing
23 authority.

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

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

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

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

1 (i) The fact, date, and place of commitment;
2 (ii) The place of treatment;
3 (iii) The fact and date of release from commitment;
4 (iv) A certified copy of the most recent order, if one exists, of
5 commitment, with the findings of fact and conclusions of law; and
6 (v) A statement by the person that he or she is no longer required
7 to participate in an inpatient or outpatient treatment program, is no
8 longer required to take medication to treat any condition related to
9 the commitment, and does not present a substantial danger to himself or
10 herself, to others, or to the public safety.
11 (c) A person petitioning the court under this subsection (4) shall
12 bear the burden of proving by a preponderance of the evidence that the
13 circumstances resulting in the commitment no longer exist and are not
14 reasonably likely to recur.

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