
SUBSTITUTE HOUSE BILL 3095

State of Washington

60th Legislature

2008 Regular Session

By House Judiciary (originally sponsored by Representatives Lantz, Ericks, Kagi, Pedersen, Green, Moeller, Goodman, Seaquist, Williams, and Ormsby)

READ FIRST TIME 02/11/08.

1 AN ACT Relating to provisions governing firearms possession by
2 persons who have been involuntarily committed; and amending RCW
3 9.41.040, 9.41.047, 71.05.230, 71.05.240, 71.05.300, 71.34.730, and
4 71.34.740.

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

6 **Sec. 1.** RCW 9.41.040 and 2005 c 453 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) After having previously been involuntarily committed for
15 mental health treatment under RCW 71.05.240, 71.05.320, (~~71.34.090~~)
16 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of
17 another jurisdiction, unless his or her right to possess a firearm has
18 been restored as provided in RCW 9.41.047;

19 (iii) If the person is under eighteen years of age, except as
20 provided in RCW 9.41.042; and/or

21 (iv) If the person is free on bond or personal recognizance pending
22 trial, appeal, or sentencing for a serious offense as defined in RCW
23 9.41.010.

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

26 (3) Notwithstanding RCW 9.41.047 or any other provisions of law, as
27 used in this chapter, a person has been "convicted", whether in an
28 adult court or adjudicated in a juvenile court, at such time as a plea
29 of guilty has been accepted, or a verdict of guilty has been filed,
30 notwithstanding the pendency of any future proceedings including but
31 not limited to sentencing or disposition, post-trial or post-
32 factfinding motions, and appeals. Conviction includes a dismissal
33 entered after a period of probation, suspension or deferral of
34 sentence, and also includes equivalent dispositions by courts in
35 jurisdictions other than Washington state. A person shall not be
36 precluded from possession of a firearm if the conviction has been the
37 subject of a pardon, annulment, certificate of rehabilitation, or other
38 equivalent procedure based on a finding of the rehabilitation of the

1 person convicted or the conviction or disposition has been the subject
2 of a pardon, annulment, or other equivalent procedure based on a
3 finding of innocence. Where no record of the court's disposition of
4 the charges can be found, there shall be a rebuttable presumption that
5 the person was not convicted of the charge.

6 (4) Notwithstanding subsection (1) or (2) of this section, a person
7 convicted or found not guilty by reason of insanity of an offense
8 prohibiting the possession of a firearm under this section other than
9 murder, manslaughter, robbery, rape, indecent liberties, arson,
10 assault, kidnapping, extortion, burglary, or violations with respect to
11 controlled substances under RCW 69.50.401 and 69.50.410, who received
12 a probationary sentence under RCW 9.95.200, and who received a
13 dismissal of the charge under RCW 9.95.240, shall not be precluded from
14 possession of a firearm as a result of the conviction or finding of not
15 guilty by reason of insanity. Notwithstanding any other provisions of
16 this section, if a person is prohibited from possession of a firearm
17 under subsection (1) or (2) of this section and has not previously been
18 convicted or found not guilty by reason of insanity of a sex offense
19 prohibiting firearm ownership under subsection (1) or (2) 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)(i) If the conviction or finding of not guilty by reason of
26 insanity was for a felony offense, after five or more consecutive years
27 in the community without being convicted or found not guilty by reason
28 of insanity or currently charged with any felony, gross misdemeanor, or
29 misdemeanor crimes, if the individual has no prior felony convictions
30 that prohibit the possession of a firearm counted as part of the
31 offender score under RCW 9.94A.525; or

32 (ii) If the conviction or finding of not guilty by reason of
33 insanity was for a nonfelony offense, after three or more consecutive
34 years in the community without being convicted or found not guilty by
35 reason of insanity or currently charged with any felony, gross
36 misdemeanor, or misdemeanor crimes, if the individual has no prior
37 felony convictions that prohibit the possession of a firearm counted as

1 part of the offender score under RCW 9.94A.525 and the individual has
2 completed all conditions of the sentence.

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

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

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

25 **Sec. 2.** RCW 9.41.047 and 2005 c 453 s 2 are each amended to read
26 as follows:

27 (1) At the time a person is convicted or found not guilty by reason
28 of insanity of an offense making the person ineligible to possess a
29 firearm, or at the time a person is committed by court order under RCW
30 71.05.240, 71.05.320, (~~71.34.090~~) 71.34.740, 71.34.750, or chapter
31 10.77 RCW for mental health treatment, the convicting or committing
32 court shall notify the person, orally and in writing, that the person
33 must immediately surrender any concealed pistol license and that the
34 person may not possess a firearm unless his or her right to do so is
35 restored by a court of record. For purposes of this section a
36 convicting court includes a court in which a person has been found not
37 guilty by reason of insanity.

1 The convicting or committing court (~~also~~) shall forward within
2 three judicial days after conviction or entry of the commitment order
3 a copy of the person's driver's license or identicard, or comparable
4 information, (~~to the department of licensing,~~) along with the date of
5 conviction or commitment, to the department of licensing. When a
6 person is committed by court order under RCW 71.05.240, 71.05.320,
7 71.34.740, 71.34.750, or chapter 10.77 RCW, for mental health
8 treatment, the committing court also shall forward, within three
9 judicial days after entry of the commitment order, a copy of the
10 person's driver's license, or comparable information, along with the
11 date of commitment, to the national instant criminal background check
12 system index, denied persons file, created by the federal Brady handgun
13 violence prevention act (P.L. 103-159).

14 (2) Upon receipt of the information provided for by subsection (1)
15 of this section, the department of licensing shall determine if the
16 convicted or committed person has a concealed pistol license. If the
17 person does have a concealed pistol license, the department of
18 licensing shall immediately notify the license-issuing authority which,
19 upon receipt of such notification, shall immediately revoke the
20 license.

21 (3)(a) A person who is prohibited from possessing a firearm, by
22 reason of having been involuntarily committed for mental health
23 treatment under RCW 71.05.240, 71.05.320, (~~71.34.090~~) 71.34.740,
24 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
25 jurisdiction may, upon discharge, petition (~~(a)~~) the superior court
26 (~~of record~~) to have his or her right to possess a firearm restored.
27 (~~At the time of commitment, the court shall specifically state to the~~
28 person that he or she is barred from possession of firearms.)

29 (b) The (~~secretary of social and health services shall develop~~
30 ~~appropriate rules to create an approval process under this subsection.~~
31 ~~The rules must provide for the restoration of the~~) petition may be
32 brought in the superior court that ordered the involuntary commitment
33 or the superior court of the county in which the petitioner resides.

34 (c) Except as provided in (d) of this subsection, the court shall
35 restore the petitioner's right to possess a firearm (~~upon a showing in~~
36 a court of competent jurisdiction that the person) if the petitioner
37 proves by a preponderance of the evidence that:

1 (i) The petitioner is no longer required to participate in ((an))
2 court-ordered inpatient or outpatient treatment ((program, is no longer
3 required to take medication to treat any));

4 (ii) The petitioner has successfully managed the condition related
5 to the commitment((, and does not));

6 (iii) The petitioner no longer presents a substantial danger to
7 himself or herself, ((others,)) or the public((. Unlawful possession
8 of a firearm under this subsection shall be punished as a class C
9 felony under chapter 9A.20 RCW.

10 ~~(c) A person petitioning the court under this subsection (3) shall~~
11 ~~bear the burden of proving by a preponderance of the evidence that the~~
12 ~~circumstances resulting in))~~ and

13 (iv) The symptoms related to the commitment ((no longer exist and))
14 are not reasonably likely to recur.

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

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

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

33 **Sec. 3.** RCW 71.05.230 and 2006 c 333 s 302 are each amended to
34 read as follows:

35 A person detained for seventy-two hour evaluation and treatment may
36 be detained for not more than fourteen additional days of involuntary
37 intensive treatment or ninety additional days of a less restrictive

1 alternative to involuntary intensive treatment. There shall be no fee
2 for filing petitions for fourteen days of involuntary intensive
3 treatment. A petition may only be filed if the following conditions
4 are met:

5 (1) The professional staff of the agency or facility providing
6 evaluation services has analyzed the person's condition and finds that
7 the condition is caused by mental disorder and either results in a
8 likelihood of serious harm, or results in the detained person being
9 gravely disabled and are prepared to testify those conditions are met;
10 and

11 (2) The person has been advised of the need for voluntary treatment
12 and the professional staff of the facility has evidence that he or she
13 has not in good faith volunteered; and

14 (3) The facility providing intensive treatment is certified to
15 provide such treatment by the department; and

16 (4) The professional staff of the agency or facility or the
17 designated mental health professional has filed a petition for fourteen
18 day involuntary detention or a ninety day less restrictive alternative
19 with the court. The petition must be signed either by two physicians
20 or by one physician and a mental health professional who have examined
21 the person. If involuntary detention is sought the petition shall
22 state facts that support the finding that such person, as a result of
23 mental disorder, presents a likelihood of serious harm, or is gravely
24 disabled and that there are no less restrictive alternatives to
25 detention in the best interest of such person or others. The petition
26 shall state specifically that less restrictive alternative treatment
27 was considered and specify why treatment less restrictive than
28 detention is not appropriate. If an involuntary less restrictive
29 alternative is sought, the petition shall state facts that support the
30 finding that such person, as a result of mental disorder, presents a
31 likelihood of serious harm, or is gravely disabled and shall set forth
32 the less restrictive alternative proposed by the facility; and

33 (5) A copy of the petition has been served on the detained person,
34 his or her attorney and his or her guardian or conservator, if any,
35 prior to the probable cause hearing; and

36 (6) The court at the time the petition was filed and before the
37 probable cause hearing has appointed counsel to represent such person
38 if no other counsel has appeared; and

1 (7) The petition reflects that the person was informed of the loss
2 of firearm rights if involuntarily committed; and

3 (8) The court has ordered a fourteen day involuntary intensive
4 treatment or a ninety day less restrictive alternative treatment after
5 a probable cause hearing has been held pursuant to RCW 71.05.240; and

6 (~~(+8)~~) (9) At the conclusion of the initial commitment period, the
7 professional staff of the agency or facility or the designated mental
8 health professional may petition for an additional period of either
9 ninety days of less restrictive alternative treatment or ninety days of
10 involuntary intensive treatment as provided in RCW 71.05.290; and

11 (~~(+9)~~) (10) If the hospital or facility designated to provide
12 outpatient treatment is other than the facility providing involuntary
13 treatment, the outpatient facility so designated has agreed to assume
14 such responsibility.

15 **Sec. 4.** RCW 71.05.240 and 1997 c 112 s 19 are each amended to read
16 as follows:

17 If a petition is filed for fourteen day involuntary treatment or
18 ninety days of less restrictive alternative treatment, the court shall
19 hold a probable cause hearing within seventy-two hours of the initial
20 detention of such person as determined in RCW 71.05.180. If requested
21 by the detained person or his or her attorney, the hearing may be
22 postponed for a period not to exceed forty-eight hours. The hearing
23 may also be continued subject to the conditions set forth in RCW
24 71.05.210 or subject to the petitioner's showing of good cause for a
25 period not to exceed twenty-four hours.

26 At the conclusion of the probable cause hearing, if the court finds
27 by a preponderance of the evidence that such person, as the result of
28 mental disorder, presents a likelihood of serious harm, or is gravely
29 disabled, and, after considering less restrictive alternatives to
30 involuntary detention and treatment, finds that no such alternatives
31 are in the best interests of such person or others, the court shall
32 order that such person be detained for involuntary treatment not to
33 exceed fourteen days in a facility certified to provide treatment by
34 the department. If the court finds that such person, as the result of
35 a mental disorder, presents a likelihood of serious harm, or is gravely
36 disabled, but that treatment in a less restrictive setting than

1 detention is in the best interest of such person or others, the court
2 shall order an appropriate less restrictive course of treatment for not
3 to exceed ninety days.

4 The court shall specifically state to such person and give such
5 person notice in writing that if involuntary treatment beyond the
6 fourteen day period or beyond the ninety days of less restrictive
7 treatment is to be sought, such person will have the right to a full
8 hearing or jury trial as required by RCW 71.05.310. The court shall
9 also state to the person and provide written notice that the person is
10 barred from the possession of firearms and that the prohibition remains
11 in effect until a court restores his or her right to possess a firearm
12 under RCW 9.41.047.

13 **Sec. 5.** RCW 71.05.300 and 2006 c 333 s 303 are each amended to
14 read as follows:

15 (1) The petition for ninety day treatment shall be filed with the
16 clerk of the superior court at least three days before expiration of
17 the fourteen-day period of intensive treatment. At the time of filing
18 such petition, the clerk shall set a time for the person to come before
19 the court on the next judicial day after the day of filing unless such
20 appearance is waived by the person's attorney, and the clerk shall
21 notify the designated mental health professional. The designated
22 mental health professional shall immediately notify the person
23 detained, his or her attorney, if any, and his or her guardian or
24 conservator, if any, the prosecuting attorney, and the regional support
25 network administrator, and provide a copy of the petition to such
26 persons as soon as possible. The regional support network
27 administrator or designee may review the petition and may appear and
28 testify at the full hearing on the petition.

29 (2) At the time set for appearance the detained person shall be
30 brought before the court, unless such appearance has been waived and
31 the court shall advise him or her of his or her right to be represented
32 by an attorney (~~and of~~), his or her right to a jury trial, and his or
33 her loss of firearm rights if involuntarily committed. If the detained
34 person is not represented by an attorney, or is indigent or is
35 unwilling to retain an attorney, the court shall immediately appoint an
36 attorney to represent him or her. The court shall, if requested,

1 appoint a reasonably available licensed physician, psychologist, or
2 psychiatrist, designated by the detained person to examine and testify
3 on behalf of the detained person.

4 (3) The court may, if requested, also appoint a professional person
5 as defined in RCW 71.05.020 to seek less restrictive alternative
6 courses of treatment and to testify on behalf of the detained person.
7 In the case of a (~~developmentally disabled~~) person with a
8 developmental disability who has been determined to be incompetent
9 pursuant to RCW (~~10.77.090(4)~~) 10.77.086, then the appointed
10 professional person under this section shall be a developmental
11 disabilities professional.

12 (4) The court shall also set a date for a full hearing on the
13 petition as provided in RCW 71.05.310.

14 **Sec. 6.** RCW 71.34.730 and 1995 c 312 s 54 are each amended to read
15 as follows:

16 (1) The professional person in charge of an evaluation and
17 treatment facility where a minor has been admitted involuntarily for
18 the initial seventy-two hour treatment period under this chapter may
19 petition to have a minor committed to an evaluation and treatment
20 facility for fourteen-day diagnosis, evaluation, and treatment.

21 If the professional person in charge of the treatment and
22 evaluation facility does not petition to have the minor committed, the
23 parent who has custody of the minor may seek review of that decision in
24 court. The parent shall file notice with the court and provide a copy
25 of the treatment and evaluation facility's report.

26 (2) A petition for commitment of a minor under this section shall
27 be filed with the superior court in the county where the minor is
28 residing or being detained.

29 (a) A petition for a fourteen-day commitment shall be signed either
30 by two physicians or by one physician and a mental health professional
31 who have examined the minor and shall contain the following:

32 (i) The name and address of the petitioner;

33 (ii) The name of the minor alleged to meet the criteria for
34 fourteen-day commitment;

35 (iii) The name, telephone number, and address if known of every
36 person believed by the petitioner to be legally responsible for the
37 minor;

1 (iv) A statement that the petitioner has examined the minor and
2 finds that the minor's condition meets required criteria for fourteen-
3 day commitment and the supporting facts therefor;

4 (v) A statement that the minor has been advised of the need for
5 voluntary treatment but has been unwilling or unable to consent to
6 necessary treatment;

7 (vi) A statement that the minor has been advised of the loss of
8 firearm rights if involuntarily committed;

9 (vii) A statement recommending the appropriate facility or
10 facilities to provide the necessary treatment; and

11 (~~(vii)~~) (viii) A statement concerning whether a less restrictive
12 alternative to inpatient treatment is in the best interests of the
13 minor.

14 (b) A copy of the petition shall be personally delivered to the
15 minor by the petitioner or petitioner's designee. A copy of the
16 petition shall be sent to the minor's attorney and the minor's parent.

17 **Sec. 7.** RCW 71.34.740 and 1985 c 354 s 8 are each amended to read
18 as follows:

19 (1) A commitment hearing shall be held within seventy-two hours of
20 the minor's admission, excluding Saturday, Sunday, and holidays, unless
21 a continuance is requested by the minor or the minor's attorney.

22 (2) The commitment hearing shall be conducted at the superior court
23 or an appropriate place at the facility in which the minor is being
24 detained.

25 (3) At the commitment hearing, the evidence in support of the
26 petition shall be presented by the county prosecutor.

27 (4) The minor shall be present at the commitment hearing unless the
28 minor, with the assistance of the minor's attorney, waives the right to
29 be present at the hearing.

30 (5) If the parents are opposed to the petition, they may be
31 represented at the hearing and shall be entitled to court-appointed
32 counsel if they are indigent.

33 (6) At the commitment hearing, the minor shall have the following
34 rights:

35 (a) To be represented by an attorney;

36 (b) To present evidence on his or her own behalf;

37 (c) To question persons testifying in support of the petition.

1 (7) In any fourteen-day commitment proceeding, the court record
2 shall reflect that the minor was informed of the loss of firearm rights
3 if involuntarily committed.

4 (8) If the minor has received medication within twenty-four hours
5 of the hearing, the court shall be informed of that fact and of the
6 probable effects of the medication.

7 ~~((+8+))~~ (9) Rules of evidence shall not apply in fourteen-day
8 commitment hearings.

9 ~~((+9+))~~ (10) For a fourteen-day commitment, the court must find by
10 a preponderance of the evidence that:

11 (a) The minor has a mental disorder and presents a "likelihood of
12 serious harm" or is "gravely disabled";

13 (b) The minor is in need of evaluation and treatment of the type
14 provided by the inpatient evaluation and treatment facility to which
15 continued inpatient care is sought or is in need of less restrictive
16 alternative treatment found to be in the best interests of the minor;
17 and

18 (c) The minor is unwilling or unable in good faith to consent to
19 voluntary treatment.

20 ~~((+10+))~~ (11) If the court finds that the minor meets the criteria
21 for a fourteen-day commitment, the court shall either authorize
22 commitment of the minor for inpatient treatment or for less restrictive
23 alternative treatment upon such conditions as are necessary. If the
24 court determines that the minor does not meet the criteria for a
25 fourteen-day commitment, the minor shall be released.

26 ~~((+11+))~~ (12) Nothing in this section prohibits the professional
27 person in charge of the evaluation and treatment facility from
28 releasing the minor at any time, when, in the opinion of the
29 professional person in charge of the facility, further inpatient
30 treatment is no longer necessary. The release may be subject to
31 reasonable conditions if appropriate.

32 Whenever a minor is released under this section, the professional
33 person in charge shall within three days, notify the court in writing
34 of the release.

35 ~~((+12+))~~ (13) A minor who has been committed for fourteen days
36 shall be released at the end of that period unless a petition for one

1 hundred eighty-day commitment is pending before the court.

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