

SB 6151 - H AMD 912

By Representative Rodne

1 On page 4, after line 9, insert the following:

2 "Sec. 3. RCW 9.41.040 and 2014 c 111 s 1 are each amended to
3 read as follows:

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

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

12 (2)(a) A person, whether an adult or juvenile, is guilty of the
13 crime of unlawful possession of a firearm in the second degree, if
14 the person does not qualify under subsection (1) of this section for
15 the crime of unlawful possession of a firearm in the first degree and
16 the person owns, has in his or her possession, or has in his or her
17 control any firearm:

18 (i) After having previously been convicted or found not guilty by
19 reason of insanity in this state or elsewhere of any felony not
20 specifically listed as prohibiting firearm possession under
21 subsection (1) of this section, or any of the following crimes when
22 committed by one family or household member against another,
23 committed on or after July 1, 1993: Assault in the fourth degree,
24 coercion, stalking, reckless endangerment, criminal trespass in the
25 first degree, or violation of the provisions of a protection order or
26 no-contact order restraining the person or excluding the person from
27 a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

28 (ii) Except as provided in RCW 9.41.800(8), during any period of
29 time that the person is subject to a court order issued under chapter
30 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09, 26.10, 26.26, or 26.50 RCW
31 that:

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

4 (B) Restrains the person from harassing, stalking, or threatening
5 an intimate partner of the person or child of the intimate partner or
6 person, or engaging in other conduct that would place an intimate
7 partner in reasonable fear of bodily injury to the partner or child;
8 and

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

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

14 (iii) After having previously been involuntarily committed for
15 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,
16 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
17 jurisdiction, unless his or her right to possess a firearm has been
18 restored as provided in RCW 9.41.047;

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

21 (v) If the person is free on bond or personal recognizance
22 pending trial, appeal, or sentencing for a serious offense as defined
23 in RCW 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,
27 as 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
29 plea of guilty has been accepted, or a verdict of guilty has been
30 filed, notwithstanding the pendency of any future proceedings
31 including but not limited to sentencing or disposition, post-trial or
32 post-fact-finding motions, and appeals. Conviction includes a
33 dismissal entered after a period of probation, suspension or deferral
34 of 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
38 other equivalent procedure based on a finding of the rehabilitation
39 of the person convicted or the conviction or disposition has been the
40 subject of a pardon, annulment, or other equivalent procedure based

1 on a finding of innocence. Where no record of the court's disposition
2 of the charges can be found, there shall be a rebuttable presumption
3 that the person was not convicted of the charge.

4 (4)(a) Notwithstanding subsection (1) or (2) of this section, a
5 person convicted or found not guilty by reason of insanity of an
6 offense prohibiting the possession of a firearm under this section
7 other than murder, manslaughter, robbery, rape, indecent liberties,
8 arson, assault, kidnapping, extortion, burglary, or violations with
9 respect to controlled substances under RCW 69.50.401 and 69.50.410,
10 who received a probationary sentence under RCW 9.95.200, and who
11 received a dismissal of the charge under RCW 9.95.240, shall not be
12 precluded from possession of a firearm as a result of the conviction
13 or finding of not guilty by reason of insanity. Notwithstanding any
14 other provisions of this section, if a person is prohibited from
15 possession of a firearm under subsection (1) or (2) of this section
16 and has not previously been convicted or found not guilty by reason
17 of insanity of a sex offense prohibiting firearm ownership under
18 subsection (1) or (2) of this section and/or any felony defined under
19 any law as a class A felony or with a maximum sentence of at least
20 twenty years, or both, the individual may petition a court of record
21 to have his or her right to possess a firearm restored:

22 (i) Under RCW 9.41.047; and/or

23 (ii)(A) If the conviction or finding of not guilty by reason of
24 insanity was for a felony offense, after five or more consecutive
25 years in the community without being convicted or found not guilty by
26 reason of insanity 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
29 as part of the offender score under RCW 9.94A.525; or

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

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

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

3 (ii) The superior court in the county in which the petitioner
4 resides.

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

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

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

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

32 **Sec. 4.** RCW 9.41.800 and 2014 c 111 s 2 are each amended to read
33 as follows:

34 (1) Any court when entering an order authorized under chapter
35 7.92 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045,
36 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060,
37 26.50.070, or 26.26.590 shall, upon a showing by clear and convincing
38 evidence, that a party has: Used, displayed, or threatened to use a
39 firearm or other dangerous weapon in a felony, or previously

1 committed any offense that makes him or her ineligible to possess a
2 firearm under the provisions of RCW 9.41.040:

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

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

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

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

11 (2) Any court when entering an order authorized under chapter
12 7.92 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045,
13 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060,
14 26.50.070, or 26.26.590 may, upon a showing by a preponderance of the
15 evidence but not by clear and convincing evidence, that a party has:
16 Used, displayed, or threatened to use a firearm or other dangerous
17 weapon in a felony, or previously committed any offense that makes
18 him or her ineligible to possess a firearm under the provisions of
19 RCW 9.41.040:

20 (a) Require the party to surrender any firearm or other dangerous
21 weapon;

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

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

26 (d) Prohibit the party from obtaining or possessing a concealed
27 pistol license.

28 (3) Except as provided in subsection (8) of this section, during
29 any period of time that the person is subject to a court order issued
30 under chapter 7.90, 7.92, 9A.46, 10.14, 10.99, 26.09, 26.10, 26.26,
31 or 26.50 RCW that:

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

35 (b) Restrains the person from harassing, stalking, or threatening
36 an intimate partner of the person or child of the intimate partner or
37 person, or engaging in other conduct that would place an intimate
38 partner in reasonable fear of bodily injury to the partner or child;
39 and

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

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

7 (A) Require the party to surrender any firearm or other dangerous
8 weapon;

9 (B) Require the party to surrender a concealed pistol license
10 issued under RCW 9.41.070;

11 (C) Prohibit the party from obtaining or possessing a firearm or
12 other dangerous weapon; and

13 (D) Prohibit the party from obtaining or possessing a concealed
14 pistol license.

15 (4) The court may order temporary surrender of a firearm or other
16 dangerous weapon without notice to the other party if it finds, on
17 the basis of the moving affidavit or other evidence, that irreparable
18 injury could result if an order is not issued until the time for
19 response has elapsed.

20 (5) In addition to the provisions of subsections (1), (2), and
21 (4) of this section, the court may enter an order requiring a party
22 to comply with the provisions in subsection (1) of this section if it
23 finds that the possession of a firearm or other dangerous weapon by
24 any party presents a serious and imminent threat to public health or
25 safety, or to the health or safety of any individual.

26 (6) The requirements of subsections (1), (2), and (5) of this
27 section may be for a period of time less than the duration of the
28 order, and must comply with subsection (8) of this section, when
29 applicable.

30 (7) The court may require the party to surrender any firearm or
31 other dangerous weapon in his or her immediate possession or control
32 or subject to his or her immediate possession or control to the
33 sheriff of the county having jurisdiction of the proceeding, the
34 chief of police of the municipality having jurisdiction, or to the
35 restrained or enjoined party's counsel or to any person designated by
36 the court.

37 (8)(a) A person prohibited from obtaining or possessing a
38 firearm, dangerous weapon, or concealed pistol license as a
39 consequence of the entry of a sexual assault protection order issued
40 under chapter 7.90 RCW may be so prohibited only until the expiration

1 date of the order or two years from the date the order is entered,
2 whichever date is earlier, unless otherwise prohibited by law.

3 (b) If the sexual assault protection order is in effect for
4 longer than two years, at the expiration of the two-year period
5 identified in (a) of this subsection, the prohibition against
6 obtaining or possessing a firearm, dangerous weapon, or concealed
7 pistol license may be extended for up to an additional two-year
8 period or the remainder of the time the order is in effect, whichever
9 is shorter, if the court finds by clear and convincing evidence that:

10 (i) The respondent has either: (A) Violated the terms of the
11 order by harassing, stalking, or threatening the person protected
12 under the order; or (B) engaged in other conduct that placed the
13 person protected under the order in reasonable fear of bodily injury;
14 and

15 (ii) The respondent continues to represent a credible threat to
16 the physical safety of the person protected under the order."

17 Correct the title.

EFFECT: (1) Limits the amount of time a person may be prohibited from obtaining or possessing a firearm, dangerous weapon, or concealed pistol license as a result of being restrained under a sexual assault protection order to two years, unless otherwise prohibited by law.

(2) Provides a process for renewal of the prohibition for up to an additional two years if certain criteria are met.

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