
SENATE BILL 6163

State of Washington

66th Legislature

2020 Regular Session

By Senators Dhingra, Kuderer, Wellman, Pedersen, Darneille, Frockt, Rolfes, Stanford, and Wilson, C.

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1 AN ACT Relating to unlawful possession of firearms for persons
2 free on bond or personal recognizance pending trial, appeal, or
3 sentencing for felony charges under RCW 46.61.502(6) and
4 46.61.504(6); and reenacting and amending RCW 9.41.040.

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

6 **Sec. 1.** RCW 9.41.040 and 2019 c 248 s 2, 2019 c 245 s 3, and
7 2019 c 46 s 5003 are each reenacted and amended to read 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
11 control any firearm after having previously been convicted or found
12 not guilty by reason of insanity in this state or elsewhere of any
13 serious offense as defined in this chapter.

14 (b) Unlawful possession of a firearm in the first degree is a
15 class 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
18 the person does not qualify under subsection (1) of this section for
19 the crime of unlawful possession of a firearm in the first degree and
20 the person owns, has in his or her possession, or has in his or her
21 control any firearm:

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

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

15 (iii) During any period of time that the person is subject to a
16 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,
17 26.09, 26.10, 26.26A, 26.26B, or 26.50 RCW that:

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

21 (B) Restrains the person from harassing, stalking, or threatening
22 the person protected under the order or child of the person or
23 protected person, or engaging in other conduct that would place the
24 protected person in reasonable fear of bodily injury to the protected
25 person or child; and

26 (C) (I) Includes a finding that the person represents a credible
27 threat to the physical safety of the protected person or child and by
28 its terms explicitly prohibits the use, attempted use, or threatened
29 use of physical force against the protected person or child that
30 would reasonably be expected to cause bodily injury; or

31 (II) Includes an order under RCW 9.41.800 requiring the person to
32 surrender all firearms and prohibiting the person from accessing,
33 obtaining, or possessing firearms;

34 (iv) After having previously been involuntarily committed for
35 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,
36 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
37 jurisdiction, unless his or her right to possess a firearm has been
38 restored as provided in RCW 9.41.047;

39 (v) After dismissal of criminal charges based on incompetency to
40 stand trial under RCW 10.77.088 when the court has made a finding

1 indicating that the defendant has a history of one or more violent
2 acts, unless his or her right to possess a firearm has been restored
3 as provided in RCW 9.41.047;

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

6 (vii) If the person is free on bond or personal recognizance
7 pending trial, appeal, or sentencing for a serious offense as defined
8 in RCW 9.41.010 or for a felony charge under RCW 46.61.502(6) and
9 46.61.504(6).

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

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

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

34 (4)(a) Notwithstanding subsection (1) or (2) of this section, a
35 person convicted or found not guilty by reason of insanity of an
36 offense prohibiting the possession of a firearm under this section
37 other than murder, manslaughter, robbery, rape, indecent liberties,
38 arson, assault, kidnapping, extortion, burglary, or violations with
39 respect to controlled substances under RCW 69.50.401 and 69.50.410,
40 who received a probationary sentence under RCW 9.95.200, and who

1 received a dismissal of the charge under RCW 9.95.240, shall not be
2 precluded from possession of a firearm as a result of the conviction
3 or finding of not guilty by reason of insanity. Notwithstanding any
4 other provisions of this section, if a person is prohibited from
5 possession of a firearm under subsection (1) or (2) of this section
6 and has not previously been convicted or found not guilty by reason
7 of insanity of a sex offense prohibiting firearm ownership under
8 subsection (1) or (2) of this section and/or any felony defined under
9 any law as a class A felony or with a maximum sentence of at least
10 twenty years, or both, the individual may petition a court of record
11 to have his or her right to possess a firearm restored:

12 (i) Under RCW 9.41.047; and/or

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

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

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

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

33 (ii) The superior court in the county in which the petitioner
34 resides.

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

1 twenty-four hours and the person's privilege to drive shall be
2 revoked under RCW 46.20.265, unless the offense is the juvenile's
3 first offense in violation of this section and has not committed an
4 offense while armed with a firearm, an unlawful possession of a
5 firearm offense, or an offense in violation of chapter 66.44, 69.52,
6 69.41, or 69.50 RCW.

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

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

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