
SENATE BILL 6298

State of Washington

65th Legislature

2018 Regular Session

By Senators Dhingra, Palumbo, Saldaña, Frockt, Mullet, Takko, Kuderer, Darneille, Chase, Rolfes, Cleveland, Carlyle, Wellman, Hasegawa, Ranker, Keiser, Billig, Nelson, McCoy, Lias, and Van De Wege

Read first time 01/11/18. Referred to Committee on Law & Justice.

1 AN ACT Relating to adding domestic violence harassment to the
2 list of offenses for which a person is prohibited from possessing a
3 firearm; and amending RCW 9.41.040.

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

5 **Sec. 1.** RCW 9.41.040 and 2017 c 233 s 4 are each amended to read
6 as follows:

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

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

15 (2)(a) A person, whether an adult or juvenile, is guilty of the
16 crime of unlawful possession of a firearm in the second degree, if
17 the person does not qualify under subsection (1) of this section for
18 the crime of unlawful possession of a firearm in the first degree and
19 the person owns, has in his or her possession, or has in his or her
20 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, harassment, or violation of the provisions of a
9 protection order or no-contact order restraining the person or
10 excluding the person from a residence (RCW 26.50.060, 26.50.070,
11 26.50.130, or 10.99.040);

12 (ii) During any period of time that the person is subject to a
13 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,
14 26.09, 26.10, 26.26, or 26.50 RCW that:

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

18 (B) Restrains the person from harassing, stalking, or threatening
19 an intimate partner of the person or child of the intimate partner or
20 person, or engaging in other conduct that would place an intimate
21 partner in reasonable fear of bodily injury to the partner or child;
22 and

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

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

28 (iii) After having previously been involuntarily committed for
29 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,
30 71.34.750, chapter 10.77 RCW, or equivalent statutes of another
31 jurisdiction, unless his or her right to possess a firearm has been
32 restored as provided in RCW 9.41.047;

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

35 (v) If the person is free on bond or personal recognizance
36 pending trial, appeal, or sentencing for a serious offense as defined
37 in RCW 9.41.010.

38 (b) (a)(ii) of this subsection does not apply to a sexual assault
39 protection order under chapter 7.90 RCW if the order has been

1 modified pursuant to RCW 7.90.170 to remove any restrictions on
2 firearm purchase, transfer, or possession.

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

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

23 (4)(a) Notwithstanding subsection (1) or (2) of this section, a
24 person convicted or found not guilty by reason of insanity of an
25 offense prohibiting the possession of a firearm under this section
26 other than murder, manslaughter, robbery, rape, indecent liberties,
27 arson, assault, kidnapping, extortion, burglary, or violations with
28 respect to controlled substances under RCW 69.50.401 and 69.50.410,
29 who received a probationary sentence under RCW 9.95.200, and who
30 received a dismissal of the charge under RCW 9.95.240, shall not be
31 precluded from possession of a firearm as a result of the conviction
32 or finding of not guilty by reason of insanity. Notwithstanding any
33 other provisions of this section, if a person is prohibited from
34 possession of a firearm under subsection (1) or (2) of this section
35 and has not previously been convicted or found not guilty by reason
36 of insanity of a sex offense prohibiting firearm ownership under
37 subsection (1) or (2) of this section and/or any felony defined under
38 any law as a class A felony or with a maximum sentence of at least
39 twenty years, or both, the individual may petition a court of record
40 to have his or her right to possess a firearm restored:

1 (i) Under RCW 9.41.047; and/or

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

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

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

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

22 (ii) The superior court in the county in which the petitioner
23 resides.

24 (5) In addition to any other penalty provided for by law, if a
25 person under the age of eighteen years is found by a court to have
26 possessed a firearm in a vehicle in violation of subsection (1) or
27 (2) of this section or to have committed an offense while armed with
28 a firearm during which offense a motor vehicle served an integral
29 function, the court shall notify the department of licensing within
30 twenty-four hours and the person's privilege to drive shall be
31 revoked under RCW 46.20.265, unless the offense is the juvenile's
32 first offense in violation of this section and has not committed an
33 offense while armed with a firearm, an unlawful possession of a
34 firearm offense, or an offense in violation of chapter 66.44, 69.52,
35 69.41, or 69.50 RCW.

36 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed
37 or interpreted as preventing an offender from being charged and
38 subsequently convicted for the separate felony crimes of theft of a
39 firearm or possession of a stolen firearm, or both, in addition to
40 being charged and subsequently convicted under this section for

1 unlawful possession of a firearm in the first or second degree.
2 Notwithstanding any other law, if the offender is convicted under
3 this section for unlawful possession of a firearm in the first or
4 second degree and for the felony crimes of theft of a firearm or
5 possession of a stolen firearm, or both, then the offender shall
6 serve consecutive sentences for each of the felony crimes of
7 conviction listed in this subsection.

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

10 (8) For purposes of this section, "intimate partner" includes: A
11 spouse, a domestic partner, a former spouse, a former domestic
12 partner, a person with whom the restrained person has a child in
13 common, or a person with whom the restrained person has cohabitated
14 or is cohabitating as part of a dating relationship.

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