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HOUSE BILL 2305

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State of Washington

66th Legislature

2020 Regular Session

By Representative Doglio

Prefiled 01/07/20.

1 AN ACT Relating to firearms laws concerning persons subject to  
2 vulnerable adult protection orders; amending RCW 74.34.130; and  
3 reenacting and amending RCW 9.41.800 and 9.41.040.

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

5 **Sec. 1.** RCW 9.41.800 and 2019 c 245 s 1 and 2019 c 46 s 5006 are  
6 each reenacted and amended to read as follows:

7 (1) Any court when entering an order authorized under chapter  
8 7.92 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045,  
9 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26B.020, 26.50.060,  
10 26.50.070, (~~or~~) 26.26A.470, 74.34.120, or 74.34.130 shall, upon a  
11 showing by clear and convincing evidence, that a party has: Used,  
12 displayed, or threatened to use a firearm or other dangerous weapon  
13 in a felony, or is ineligible to possess a firearm under the  
14 provisions of RCW 9.41.040:

15 (a) Require that the party immediately surrender all firearms and  
16 other dangerous weapons;

17 (b) Require that the party immediately surrender any concealed  
18 pistol license issued under RCW 9.41.070;

19 (c) Prohibit the party from accessing, obtaining, or possessing  
20 any firearms or other dangerous weapons;

1 (d) Prohibit the party from obtaining or possessing a concealed  
2 pistol license.

3 (2) Any court when entering an order authorized under chapter  
4 7.92 RCW, RCW 7.90.090, 9A.46.080, 10.14.080, 10.99.040, 10.99.045,  
5 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26B.020, 26.50.060,  
6 26.50.070, (~~(e)~~) 26.26A.470, 74.34.120, or 74.34.130 may, upon a  
7 showing by a preponderance of the evidence but not by clear and  
8 convincing evidence, that a party has: Used, displayed, or threatened  
9 to use a firearm or other dangerous weapon in a felony, or is  
10 ineligible to possess a firearm under the provisions of RCW 9.41.040:

11 (a) Require that the party immediately surrender all firearms and  
12 other dangerous weapons;

13 (b) Require that the party immediately surrender a concealed  
14 pistol license issued under RCW 9.41.070;

15 (c) Prohibit the party from accessing, obtaining, or possessing  
16 any firearms or other dangerous weapons;

17 (d) Prohibit the party from obtaining or possessing a concealed  
18 pistol license.

19 (3) During any period of time that the person is subject to a  
20 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,  
21 26.09, 26.10, 26.26A, 26.26B, (~~(e)~~) 26.50, or 74.34 RCW that:

22 (a) Was issued after a hearing of which the person received  
23 actual notice, and at which the person had an opportunity to  
24 participate;

25 (b) Restrains the person from harassing, stalking, or threatening  
26 an intimate partner of the person or child of the intimate partner or  
27 person, or engaging in other conduct that would place an intimate  
28 partner in reasonable fear of bodily injury to the partner or child;  
29 and

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

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

36 (A) Require that the party immediately surrender all firearms and  
37 other dangerous weapons;

38 (B) Require that the party immediately surrender a concealed  
39 pistol license issued under RCW 9.41.070;

1 (C) Prohibit the party from accessing, obtaining, or possessing  
2 any firearms or other dangerous weapons; and

3 (D) Prohibit the party from obtaining or possessing a concealed  
4 pistol license.

5 (4) The court may order temporary surrender of all firearms and  
6 other dangerous weapons, and any concealed pistol license, without  
7 notice to the other party if it finds, on the basis of the moving  
8 affidavit or other evidence, that irreparable injury could result if  
9 an order is not issued until the time for response has elapsed.

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

16 (6) The requirements of subsections (1), (2), and (5) of this  
17 section may be for a period of time less than the duration of the  
18 order.

19 (7) The court may require the party to surrender all firearms and  
20 other dangerous weapons in his or her immediate possession or control  
21 or subject to his or her immediate possession or control, and any  
22 concealed pistol license issued under RCW 9.41.070, to the local law  
23 enforcement agency. Law enforcement officers shall use law  
24 enforcement databases to assist in locating the respondent in  
25 situations where the protected person does not know where the  
26 respondent lives or where there is evidence that the respondent is  
27 trying to evade service.

28 (8) If the court enters a protection order, restraining order, or  
29 no-contact order that includes an order to surrender firearms,  
30 dangerous weapons, and any concealed pistol license under this  
31 section, the order must be served by a law enforcement officer.

32 **Sec. 2.** RCW 74.34.130 and 2007 c 312 s 6 are each amended to  
33 read as follows:

34 (1) The court may order relief as it deems necessary for the  
35 protection of the vulnerable adult, including, but not limited to the  
36 following:

37 ~~((1))~~ (a) Restraining respondent from committing acts of  
38 abandonment, abuse, neglect, or financial exploitation against the  
39 vulnerable adult;

1       ~~((2))~~ (b) Excluding the respondent from the vulnerable adult's  
2 residence for a specified period or until further order of the court;

3       ~~((3))~~ (c) Prohibiting contact with the vulnerable adult by  
4 respondent for a specified period or until further order of the  
5 court;

6       ~~((4))~~ (d) Prohibiting the respondent from knowingly coming  
7 within, or knowingly remaining within, a specified distance from a  
8 specified location;

9       ~~((5))~~ (e) Requiring an accounting by respondent of the  
10 disposition of the vulnerable adult's income or other resources;

11       ~~((6))~~ (f) Restraining the transfer of the respondent's and/or  
12 vulnerable adult's property for a specified period not exceeding  
13 ninety days; and

14       ~~((7))~~ (g) Requiring the respondent to pay a filing fee and  
15 court costs, including service fees, and to reimburse the petitioner  
16 for costs incurred in bringing the action, including a reasonable  
17 attorney's fee.

18       (2) In issuing the order, the court shall consider the provisions  
19 of RCW 9.41.800 and shall order the respondent to surrender, and  
20 prohibit the respondent from possessing, all firearms, dangerous  
21 weapons, and any concealed pistol license as required in RCW  
22 9.41.800.

23       (3) Any relief granted by an order for protection, other than a  
24 judgment for costs, shall be for a fixed period not to exceed five  
25 years. The clerk of the court shall enter any order for protection  
26 issued under this section into the judicial information system.

27       **Sec. 3.** RCW 9.41.040 and 2019 c 248 s 2, 2019 c 245 s 3, and  
28 2019 c 46 s 5003 are each reenacted and amended to read as follows:

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

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

37       (2)(a) A person, whether an adult or juvenile, is guilty of the  
38 crime of unlawful possession of a firearm in the second degree, if  
39 the person does not qualify under subsection (1) of this section for

1 the crime of unlawful possession of a firearm in the first degree and  
2 the person owns, has in his or her possession, or has in his or her  
3 control 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  
7 subsection (1) of this section, or any of the following crimes when  
8 committed by one family or household member against another,  
9 committed on or after July 1, 1993: Assault in the fourth degree,  
10 coercion, stalking, reckless endangerment, criminal trespass in the  
11 first degree, or violation of the provisions of a protection order or  
12 no-contact order restraining the person or excluding the person from  
13 a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

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

18 (iii) During any period of time that the person is subject to a  
19 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,  
20 26.09, 26.10, 26.26A, 26.26B, (~~or~~) 26.50, or 74.34 RCW that:

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

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

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

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

37 (iv) After having previously been involuntarily committed for  
38 mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740,  
39 71.34.750, chapter 10.77 RCW, or equivalent statutes of another

1 jurisdiction, unless his or her right to possess a firearm has been  
2 restored as provided in RCW 9.41.047;

3 (v) After dismissal of criminal charges based on incompetency to  
4 stand trial under RCW 10.77.088 when the court has made a finding  
5 indicating that the defendant has a history of one or more violent  
6 acts, unless his or her right to possess a firearm has been restored  
7 as provided in RCW 9.41.047;

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

10 (vii) If the person is free on bond or personal recognizance  
11 pending trial, appeal, or sentencing for a serious offense as defined  
12 in RCW 9.41.010.

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

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

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

37 (4)(a) Notwithstanding subsection (1) or (2) of this section, a  
38 person convicted or found not guilty by reason of insanity of an  
39 offense prohibiting the possession of a firearm under this section  
40 other than murder, manslaughter, robbery, rape, indecent liberties,

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

15 (i) Under RCW 9.41.047; and/or

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

23 (B) If the conviction or finding of not guilty by reason of  
24 insanity was for a nonfelony offense, after three 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 and the individual  
30 has completed all conditions of the sentence.

31 (b) An individual may petition a court of record to have his or  
32 her right to possess a firearm restored under (a) of this subsection  
33 (~~((4))~~) only at:

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

36 (ii) The superior court in the county in which the petitioner  
37 resides.

38 (5) In addition to any other penalty provided for by law, if a  
39 person under the age of eighteen years is found by a court to have  
40 possessed a firearm in a vehicle in violation of subsection (1) or

1 (2) of this section or to have committed an offense while armed with  
2 a firearm during which offense a motor vehicle served an integral  
3 function, the court shall notify the department of licensing within  
4 twenty-four hours and the person's privilege to drive shall be  
5 revoked under RCW 46.20.265, unless the offense is the juvenile's  
6 first offense in violation of this section and has not committed an  
7 offense while armed with a firearm, an unlawful possession of a  
8 firearm offense, or an offense in violation of chapter 66.44, 69.52,  
9 69.41, or 69.50 RCW.

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

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

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