
HOUSE BILL 1729

State of Washington 63rd Legislature 2013 Regular Session

By Representatives Warnick, Manweller, Ross, Angel, O'Ban, and Fagan

Read first time 02/06/13. Referred to Committee on Judiciary.

1 AN ACT Relating to prohibiting the possession of firearms by a
2 criminal street gang associate or member; amending RCW 9.41.040; and
3 prescribing penalties.

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

5 **Sec. 1.** RCW 9.41.040 and 2011 c 193 s 1 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 control
10 any firearm after having previously been convicted or found not guilty
11 by reason of insanity in this state or elsewhere of any serious offense
12 as defined in this chapter.

13 (b) Unlawful possession of a firearm in the first degree is a class
14 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 the
17 person does not qualify under subsection (1) of this section for the
18 crime of unlawful possession of a firearm in the first degree and the

1 person owns, has in his or her possession, or has in his or her control
2 any firearm:

3 (i) After having previously been convicted or found not guilty by
4 reason of insanity in this state or elsewhere of any felony not
5 specifically listed as prohibiting firearm possession under subsection
6 (1) of this section, or any of the following crimes when committed by
7 one family or household member against another, committed on or after
8 July 1, 1993: Assault in the fourth degree, coercion, stalking,
9 reckless endangerment, criminal trespass in the first degree, or
10 violation of the provisions of a protection order or no-contact order
11 restraining the person or excluding the person from a residence (RCW
12 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

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

18 (iii) If the person is a criminal street gang associate or member
19 as defined in RCW 9.94A.030;

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

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

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

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

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

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

25 (i) Under RCW 9.41.047; and/or

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

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

1 felony convictions that prohibit the possession of a firearm counted as
2 part of the offender score under RCW 9.94A.525 and the individual has
3 completed all conditions of the sentence.

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

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

9 (ii) The superior court in the county in which the petitioner
10 resides.

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

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

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

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