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**SUBSTITUTE HOUSE BILL 1840**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** House Judiciary (originally sponsored by Representatives Goodman, Hope, Hunter, Pedersen, Bergquist, Habib, Fey, Ryu, Jenkins, Pollet, and Tharinger)

READ FIRST TIME 02/22/13.

1       AN ACT Relating to firearms laws concerning persons subject to  
2 no-contact orders, protection orders, and restraining orders; amending  
3 RCW 9.41.040 and 9.41.800; adding new sections to chapter 9.41 RCW;  
4 prescribing penalties; and providing an effective date.

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

6       **Sec. 1.** RCW 9.41.040 and 2011 c 193 s 1 are each amended to read  
7 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 control  
11 any firearm after having previously been convicted or found not guilty  
12 by reason of insanity in this state or elsewhere of any serious offense  
13 as defined in this chapter.

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

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

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

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

19 (B)(I) Includes a finding that the person represents a credible  
20 threat to the physical safety of an intimate partner of the person or  
21 the child of an intimate partner of the person; or (II) by its terms,  
22 restrains the person from causing physical harm or bodily injury to,  
23 assaulting, sexually assaulting, molesting, harassing, threatening, or  
24 stalking an intimate partner of the person or the child of an intimate  
25 partner of the person;

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

31 ~~((+iii))~~ (iv) If the person is under eighteen years of age, except  
32 as provided in RCW 9.41.042; and/or

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

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

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

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

37 (i) Under RCW 9.41.047; and/or

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

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

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

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

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

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

31 (6) Nothing in chapter 129, Laws of 1995 shall ever be construed or  
32 interpreted as preventing an offender from being charged and  
33 subsequently convicted for the separate felony crimes of theft of a  
34 firearm or possession of a stolen firearm, or both, in addition to  
35 being charged and subsequently convicted under this section for  
36 unlawful possession of a firearm in the first or second degree.  
37 Notwithstanding any other law, if the offender is convicted under this  
38 section for unlawful possession of a firearm in the first or second

1 degree and for the felony crimes of theft of a firearm or possession of  
2 a stolen firearm, or both, then the offender shall serve consecutive  
3 sentences for each of the felony crimes of conviction listed in this  
4 subsection.

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

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

12 **Sec. 2.** RCW 9.41.800 and 2002 c 302 s 704 are each amended to read  
13 as follows:

14 (1) Any court when entering an order authorized under RCW 7.90.090,  
15 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060,  
16 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590  
17 shall, upon a showing by clear and convincing evidence, that a party  
18 has: Used, displayed, or threatened to use a firearm or other  
19 dangerous weapon in a felony, or previously committed any offense that  
20 makes him or her ineligible to possess a firearm under the provisions  
21 of RCW 9.41.040:

22 (a) Require the party to surrender any firearm or other dangerous  
23 weapon;

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

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

28 (d) Prohibit the party from obtaining or possessing a concealed  
29 pistol license.

30 (2) Any court when entering an order authorized under RCW 7.90.090,  
31 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060,  
32 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590  
33 may, upon a showing by a preponderance of the evidence but not by clear  
34 and convincing evidence, that a party has: Used, displayed, or  
35 threatened to use a firearm or other dangerous weapon in a felony, or  
36 previously committed any offense that makes him or her ineligible to  
37 possess a (~~pistol~~) firearm under the provisions of RCW 9.41.040:

1 (a) Require the party to surrender any firearm or other dangerous  
2 weapon;

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

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

7 (d) Prohibit the party from obtaining or possessing a concealed  
8 pistol license.

9 (3) Any court when entering an order under chapter 7.90, 9A.46,  
10 10.14, 10.99, 26.09, 26.10, 26.26, or 26.50 RCW that:

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

13 (b)(i) Includes a finding that the person represents a credible  
14 threat to the physical safety of an intimate partner of the person as  
15 defined in RCW 9.41.040 or the child of an intimate partner of the  
16 person; or (ii) by its terms, restrains the party from causing physical  
17 harm or bodily injury to, assaulting, sexually assaulting, molesting,  
18 harassing, threatening, or stalking an intimate partner of the person  
19 as defined in RCW 9.41.040 or a child of an intimate partner of the  
20 person, shall:

21 (A) Require the party to surrender any firearm or other dangerous  
22 weapon;

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

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

27 (D) Prohibit the party from obtaining or possessing a concealed  
28 pistol license.

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

34 ~~((+4))~~ (5) In addition to the provisions of subsections (1), (2),  
35 and ~~((+3))~~ (4) of this section, the court may enter an order requiring  
36 a party to comply with the provisions in subsection (1) of this section  
37 if it finds that the possession of a firearm or other dangerous weapon

1 by any party presents a serious and imminent threat to public health or  
2 safety, or to the health or safety of any individual.

3 ~~((+5+))~~ (6) The requirements of subsections (1), (2), and ~~((+4+))~~  
4 (5) of this section may be for a period of time less than the duration  
5 of the order.

6 ~~((+6+))~~ (7) The court may require the party to surrender any  
7 firearm or other dangerous weapon in his or her immediate possession or  
8 control or subject to his or her immediate possession or control to the  
9 sheriff of the county having jurisdiction of the proceeding, the chief  
10 of police of the municipality having jurisdiction, or to the restrained  
11 or enjoined party's counsel or to any person designated by the court.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.41 RCW  
13 to read as follows:

14 All law enforcement agencies must develop policies and procedures  
15 by January 1, 2014, regarding the acceptance, storage, and return of  
16 weapons required to be surrendered under RCW 9.41.800.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.41 RCW  
18 to read as follows:

19 By December 1, 2013, the administrative office of the courts shall  
20 develop a proof of surrender and receipt pattern form to be used to  
21 document that a respondent has complied with a requirement to surrender  
22 firearms, dangerous weapons, and his or her concealed pistol license,  
23 as ordered by a court under RCW 9.41.800. The administrative office of  
24 the courts must also develop a declaration of nonsurrender pattern form  
25 to document compliance when the respondent has no firearms, dangerous  
26 weapons, or concealed pistol license.

27 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.41 RCW  
28 to read as follows:

29 A party ordered to surrender firearms, dangerous weapons, and his  
30 or her concealed pistol license under RCW 9.41.800 must file with the  
31 clerk of the court a proof of surrender and receipt form or a  
32 declaration of nonsurrender form within five judicial days of the entry  
33 of the order.

1        NEW SECTION.    **Sec. 6.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

5        NEW SECTION.    **Sec. 7.**    Section 5 of this act takes effect December  
6 1, 2013.

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