
HOUSE BILL 1026

State of Washington

67th Legislature

2021 Regular Session

By Representatives Walen and Valdez

Prefiled 12/15/20.

1 AN ACT Relating to the restoration of the right to possess a
2 firearm; amending RCW 9.41.040 and 9.41.047; and adding a new section
3 to chapter 9.41 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.41 RCW
6 to read as follows:

7 (1) A person who is prohibited from possession of a firearm under
8 RCW 9.41.040 and who has not been convicted or found not guilty by
9 reason of insanity of a felony sex offense; a class A felony; a
10 felony offense in which a firearm was used, displayed, or threatened
11 to be used; or a felony offense with a maximum sentence of at least
12 20 years may petition a superior court to have his or her right to
13 possess a firearm restored if:

14 (a) The person is not required to file a petition as provided in
15 RCW 9.41.047;

16 (b) The person has spent three consecutive years, immediately
17 preceding the petition, in the community without being convicted or
18 found not guilty by reason of insanity of any felony, gross
19 misdemeanor, or misdemeanor crime if the person was convicted or
20 found not guilty by reason of insanity for a nonfelony offense;

1 (c) The person has spent five consecutive years, immediately
2 preceding the petition, in the community without being convicted or
3 found not guilty by reason of insanity of any felony, gross
4 misdemeanor, or misdemeanor crime if the person was convicted or
5 found not guilty by reason of insanity of a class C felony offense;

6 (d) The person has spent 10 consecutive years, immediately
7 preceding the petition, in the community without being convicted or
8 found not guilty by reason of insanity of any felony, gross
9 misdemeanor, or misdemeanor crime if the person was convicted or
10 found not guilty by reason of insanity of a class B felony offense;

11 (e) The person has no pending charges for any felony, gross
12 misdemeanor, or misdemeanor crime;

13 (f) The person has completed any and all sentencing conditions
14 for the underlying felony or misdemeanor conviction; and

15 (g) An extreme risk, domestic violence, stalking, or sexual
16 assault protection order has not been issued against the person in
17 the five years immediately preceding the petition.

18 (2) A person who has been convicted or found not guilty by reason
19 of insanity for a felony offense in which a firearm was used,
20 displayed, or threatened to be used and who otherwise meets the
21 requirements in subsection (1) of this section may petition a
22 superior court to have his or her right to possess a firearm restored
23 when the person has spent 10 consecutive years, immediately preceding
24 the petition, in the community without being convicted or found not
25 guilty by reason of insanity of any felony, gross misdemeanor, or
26 misdemeanor crime. The court may restore the person's right to
27 possess a firearm if the petitioner shows by a preponderance of the
28 evidence that the petitioner is sufficiently rehabilitated to warrant
29 restoration.

30 (3) (a) A petition for restoration of a person's right to possess
31 a firearm shall be made to:

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

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

36 (b) If a person has multiple convictions in different counties,
37 the person must provide notice to the prosecuting attorney in each
38 county where the convictions occurred.

1 **Sec. 2.** RCW 9.41.040 and 2020 c 29 s 4 are each amended to read
2 as follows:

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

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

11 (2)(a) A person, whether an adult or juvenile, is guilty of the
12 crime of unlawful possession of a firearm in the second degree, if
13 the person does not qualify under subsection (1) of this section for
14 the crime of unlawful possession of a firearm in the first degree and
15 the person owns, has in his or her possession, or has in his or her
16 control any firearm:

17 (i) After having previously been convicted or found not guilty by
18 reason of insanity in this state or elsewhere of any felony not
19 specifically listed as prohibiting firearm possession under
20 subsection (1) of this section, or any of the following crimes when
21 committed by one family or household member against another or by one
22 intimate partner against another, committed on or after July 1, 1993:
23 Assault in the fourth degree, coercion, stalking, reckless
24 endangerment, criminal trespass in the first degree, or violation of
25 the provisions of a protection order or no-contact order restraining
26 the person or excluding the person from a residence (RCW 26.50.060,
27 26.50.070, 26.50.130, or 10.99.040);

28 (ii) After having previously been convicted or found not guilty
29 by reason of insanity in this state or elsewhere of harassment when
30 committed by one family or household member against another or by one
31 intimate partner against another, committed on or after June 7, 2018;

32 (iii) During any period of time that the person is subject to a
33 court order issued under chapter 7.90, 7.92, 9A.46, 10.14, 10.99,
34 26.09, 26.10, 26.26A, 26.26B, or 26.50 RCW that:

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

38 (B) Restrains the person from harassing, stalking, or threatening
39 the person protected under the order or child of the person or
40 protected person, or engaging in other conduct that would place the

1 protected person in reasonable fear of bodily injury to the protected
2 person or child; and

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

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

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

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

21 (vi) If the person is under (~~eighteen~~) 18 years of age, except
22 as provided in RCW 9.41.042; and/or

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

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

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

32 (3) (~~Notwithstanding RCW 9.41.047 or any other provisions of~~
33 ~~law, as~~) As used in this chapter, a person has been "convicted,"
34 whether in an adult court or adjudicated in a juvenile court, at such
35 time as a plea of guilty has been accepted or a verdict of guilty has
36 been filed, notwithstanding the pendency of any future proceedings
37 including, but not limited to, sentencing or disposition, post-trial
38 or post-fact-finding motions, and appeals. Conviction includes a
39 dismissal entered after a period of probation, suspension, or
40 deferral of sentence, and also includes equivalent dispositions by

1 courts in jurisdictions other than Washington state. A person shall
2 not be precluded from possession of a firearm if the conviction has
3 been the subject of a pardon, annulment, certificate of
4 rehabilitation, or other equivalent procedure based on a finding of
5 the rehabilitation of the person convicted or the conviction or
6 disposition has been the subject of a pardon, annulment, or other
7 equivalent procedure based on a finding of innocence. Where no record
8 of the court's disposition of the charges can be found, there shall
9 be a rebuttable presumption that the person was not convicted of the
10 charge.

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

29 ~~(i) Under RCW 9.41.047; and/or~~

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

37 ~~(B) If the conviction or finding of not guilty by reason of
38 insanity was for a nonfelony offense, after three or more consecutive
39 years in the community without being convicted or found not guilty by
40 reason of insanity or currently charged with any felony, gross~~

1 ~~misdemeanor, or misdemeanor crimes, if the individual has no prior~~
2 ~~felony convictions that prohibit the possession of a firearm counted~~
3 ~~as part of the offender score under RCW 9.94A.525 and the individual~~
4 ~~has completed all conditions of the sentence.~~

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

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

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

12 (5) In addition to any other penalty provided for by law, if a
13 person under the age of ((eighteen)) 18 years is found by a court to
14 have possessed a firearm in a vehicle in violation of subsection (1)
15 or (2) of this section or to have committed an offense while armed
16 with a firearm during which offense a motor vehicle served an
17 integral function, the court shall notify the department of licensing
18 within ((twenty-four)) 24 hours and the person's privilege to drive
19 shall be revoked under RCW 46.20.265, unless the offense is the
20 juvenile's first offense in violation of this section and has not
21 committed an offense while armed with a firearm, an unlawful
22 possession of a firearm offense, or an offense in violation of
23 chapter 66.44, 69.52, 69.41, or 69.50 RCW.

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

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

38 (8) A person may petition to restore the right to possess a
39 firearm as provided in section 1 of this act.

1 **Sec. 3.** RCW 9.41.047 and 2020 c 302 s 60 are each amended to
2 read as follows:

3 (1)(a) At the time a person is convicted or found not guilty by
4 reason of insanity of an offense making the person ineligible to
5 possess a firearm, or at the time a person is committed by court
6 order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or
7 chapter 10.77 RCW for mental health treatment, or at the time that
8 charges are dismissed based on incompetency to stand trial under RCW
9 10.77.088 and the court makes a finding that the person has a history
10 of one or more violent acts, the ~~((convicting or committing court,~~
11 ~~or))~~ court ~~((that dismisses charges,))~~ shall notify the person,
12 orally and in writing, that the person must immediately surrender all
13 firearms and any concealed pistol license and that the person may not
14 possess a firearm unless his or her right to do so is restored by a
15 superior court ~~((of record))~~. ~~((For purposes of this section a~~
16 ~~convicting court includes a court in which a person has been found~~
17 ~~not guilty by reason of insanity.))~~

18 (b) The court shall forward within three judicial days after
19 conviction, finding of not guilty by reason of insanity, entry of the
20 commitment order, or dismissal of charges, a copy of the person's
21 driver's license or identicard, or comparable information such as
22 their name, address, and date of birth, along with the date of
23 conviction or commitment, or date charges are dismissed, to the
24 department of licensing. When a person is committed by court order
25 under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter
26 10.77 RCW, for mental health treatment, or when a person's charges
27 are dismissed based on incompetency to stand trial under RCW
28 10.77.088 and the court makes a finding that the person has a history
29 of one or more violent acts, the court also shall forward, within
30 three judicial days after entry of the commitment order, or dismissal
31 of charges, a copy of the person's driver's license, or comparable
32 information, along with the date of commitment or date charges are
33 dismissed, to the national instant criminal background check system
34 index, denied persons file, created by the federal Brady handgun
35 violence prevention act (P.L. 103-159) and to the Washington state
36 patrol. The petitioning party shall provide the court with the
37 information required. If more than one commitment order is entered
38 under one cause number, only one notification to the department of
39 licensing and the national instant criminal background check system
40 is required.

1 (2) Upon receipt of the information provided for by subsection
2 (1) of this section, the department of licensing shall determine if
3 the (~~convicted or committed~~) person(~~, or the person whose charges~~
4 ~~are dismissed based on incompetency to stand trial,~~) has a concealed
5 pistol license. If the person (~~does have~~) has a concealed pistol
6 license, the department of licensing shall immediately notify the
7 license-issuing authority which, upon receipt of such notification,
8 shall immediately revoke the license.

9 (3) (a) A person who is prohibited from possessing a firearm, by
10 reason of having been involuntarily committed for mental health
11 treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750,
12 chapter 10.77 RCW, or equivalent statutes of another jurisdiction, or
13 by reason of having been detained under RCW 71.05.150 or 71.05.153,
14 or because the person's charges were dismissed based on incompetency
15 to stand trial under RCW 10.77.088 and the court made a finding that
16 the person has a history of one or more violent acts, may, upon
17 discharge, petition the superior court to have his or her right to
18 possess a firearm restored.

19 (b) The petition must be brought in the superior court that
20 ordered the involuntary commitment or dismissed the charges based on
21 incompetency to stand trial or the superior court of the county in
22 which the petitioner resides.

23 (c) Except as provided in (d) and (e) of this subsection, the
24 court shall restore the petitioner's right to possess a firearm if
25 the petitioner proves by a preponderance of the evidence that:

26 (i) The petitioner is no longer required to participate in court-
27 ordered inpatient or outpatient treatment;

28 (ii) The petitioner has successfully managed the condition
29 related to the commitment or detention or incompetency;

30 (iii) The petitioner no longer presents a substantial danger to
31 himself or herself, or the public; and

32 (iv) The symptoms related to the commitment or detention or
33 incompetency are not reasonably likely to recur.

34 (d) If a preponderance of the evidence in the record supports a
35 finding that the person petitioning the court has engaged in violence
36 and that it is more likely than not that the person will engage in
37 violence after his or her right to possess a firearm is restored, the
38 person shall bear the burden of proving by clear, cogent, and
39 convincing evidence that he or she does not present a substantial
40 danger to the safety of others.

1 (e) If the petitioner seeks restoration after having been
2 detained under RCW 71.05.150 or 71.05.153, the state shall bear the
3 burden of proof to show, by a preponderance of the evidence, that the
4 petitioner does not meet the restoration criteria in (c) of this
5 subsection.

6 (f) When a person's right to possess a firearm has been restored
7 under this subsection, the court shall forward, within three judicial
8 days after entry of the restoration order, notification that the
9 person's right to possess a firearm has been restored to the
10 department of licensing with a copy of the person's driver's license
11 or identicard, or comparable identification such as their name,
12 address, and date of birth, the health care authority, and the
13 national instant criminal background check system index, denied
14 persons file. In the case of a person whose right to possess a
15 firearm has been suspended for six months as provided in RCW
16 71.05.182, the department of licensing shall forward notification of
17 the restoration order to the licensing authority, which, upon receipt
18 of such notification, shall immediately lift the suspension,
19 restoring the license.

20 (4) No person who has been found not guilty by reason of insanity
21 may petition a court for restoration of the right to possess a
22 firearm unless the person meets the requirements for the restoration
23 of the right to possess a firearm under (~~RCW 9.41.040(4)~~) section
24 1(1) (b) through (g) of this act.

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