

ESB 5561 - H AMD 1325

By Representative Hansen

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 9.41
4 RCW to read as follows:

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

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

13 (b) The person has spent five consecutive years, immediately
14 preceding the petition, in the community without being convicted or
15 found not guilty by reason of insanity of any felony, gross
16 misdemeanor, or misdemeanor crime;

17 (c) The person has no prior felony convictions that prohibit the
18 possession of a firearm counted as part of the offender score under
19 RCW 9.94A.525;

20 (d) The person has no pending charges for any felony, gross
21 misdemeanor, or misdemeanor crime;

22 (e) The person has completed any and all sentencing conditions
23 for the underlying felony or nonfelony conviction, excluding fees and
24 fines. The court may, for good cause, waive the requirement to
25 provide verification of completion of all sentencing conditions; and

26 (f) During the five years immediately preceding the petition, the
27 person has not been subject to an extreme risk, domestic violence,
28 stalking, or sexual assault full protection order issued against the
29 person.

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

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

3 (ii) The superior court in the county in which the petitioner
4 resides.

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

8 (3) For the purposes of this section, "full protection order" has
9 the same meaning as in RCW 7.105.010.

10 **Sec. 2.** RCW 9.41.040 and 2021 c 215 s 72 are each amended to
11 read as follows:

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

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

20 (2)(a) A person, whether an adult or juvenile, is guilty of the
21 crime of unlawful possession of a firearm in the second degree, if
22 the person does not qualify under subsection (1) of this section for
23 the crime of unlawful possession of a firearm in the first degree and
24 the person owns, has in his or her possession, or has in his or her
25 control any firearm:

26 (i) After having previously been convicted or found not guilty by
27 reason of insanity in this state or elsewhere of any felony not
28 specifically listed as prohibiting firearm possession under
29 subsection (1) of this section, or any of the following crimes when
30 committed by one family or household member against another or by one
31 intimate partner against another, committed on or after July 1, 1993:
32 Assault in the fourth degree, coercion, stalking, reckless
33 endangerment, criminal trespass in the first degree, or violation of
34 the provisions of a domestic violence protection order or no-contact
35 order restraining the person or excluding the person from a residence
36 (chapter 7.105 RCW, RCW 10.99.040, or any of the former RCW
37 26.50.060, 26.50.070, and 26.50.130);

38 (ii) After having previously been convicted or found not guilty
39 by reason of insanity in this state or elsewhere of harassment when

1 committed by one family or household member against another or by one
2 intimate partner against another, committed on or after June 7, 2018;

3 (iii) During any period of time that the person is subject to a
4 court order issued under chapter 7.105, 9A.46, 10.99, 26.09, 26.26A,
5 or 26.26B RCW or any of the former chapters 7.90, 7.92, 10.14, and
6 26.50 RCW that:

7 (A) Was issued after a hearing for which the person received
8 actual notice, and at which the person had an opportunity to
9 participate, whether the court then issues a full order or reissues a
10 temporary order. If the court enters an agreed order by the parties
11 without a hearing, such an order meets the requirements of this
12 subsection;

13 (B) Restrains the person from harassing, stalking, or threatening
14 the person protected under the order or child of the person or
15 protected person, or engaging in other conduct that would place the
16 protected person in reasonable fear of bodily injury to the protected
17 person or child; and

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

23 (II) Includes an order under RCW 9.41.800 requiring the person to
24 surrender all firearms and prohibiting the person from accessing,
25 having in his or her custody or control, possessing, purchasing,
26 receiving, or attempting to purchase or receive, firearms;

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

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

37 (vi) If the person is under 18 years of age, except as provided
38 in RCW 9.41.042; and/or

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

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

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

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

1 ~~years, or both, the individual may petition a court of record to have~~
2 ~~his or her right to possess a firearm restored:~~

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

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

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

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

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

24 ~~(ii) The superior court in the county in which the petitioner~~
25 ~~resides.)~~

26 (5) In addition to any other penalty provided for by law, if a
27 person under the age of 18 years is found by a court to have
28 possessed a firearm in a vehicle in violation of subsection (1) or
29 (2) of this section or to have committed an offense while armed with
30 a firearm during which offense a motor vehicle served an integral
31 function, the court shall notify the department of licensing within
32 24 hours and the person's privilege to drive shall be revoked under
33 RCW 46.20.265, unless the offense is the juvenile's first offense in
34 violation of this section and has not committed an offense while
35 armed with a firearm, an unlawful possession of a firearm offense, or
36 an offense in violation of chapter 66.44, 69.52, 69.41, or 69.50 RCW.

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

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

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

11 (8) A person may petition to restore the right to possess a
12 firearm as provided in RCW 9.41.047 and section 1 of this act.

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

15 (1)(a) At the time a person is convicted or found not guilty by
16 reason of insanity of an offense making the person ineligible to
17 possess a firearm, or at the time a person is committed by court
18 order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or
19 chapter 10.77 RCW for mental health treatment, or at the time that
20 charges are dismissed based on incompetency to stand trial under RCW
21 10.77.088 and the court makes a finding that the person has a history
22 of one or more violent acts, the ~~((convicting or committing court,~~
23 ~~or))~~ court ~~((that dismisses charges,))~~ shall notify the person,
24 orally and in writing, that the person must immediately surrender all
25 firearms and any concealed pistol license and that the person may not
26 possess a firearm unless his or her right to do so is restored by a
27 superior court ~~((of record. For purposes of this section a convicting~~
28 ~~court includes a court in which a person has been found not guilty by~~
29 ~~reason of insanity))~~.

30 (b) The court shall forward within three judicial days after
31 conviction, finding of not guilty by reason of insanity, entry of the
32 commitment order, or dismissal of charges, a copy of the person's
33 driver's license or identicard, or comparable information such as
34 ~~((their))~~ the person's name, address, and date of birth, along with
35 the date of conviction or commitment, or date charges are dismissed,
36 to the department of licensing. When a person is committed by court
37 order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or
38 chapter 10.77 RCW, for mental health treatment, or when a person's
39 charges are dismissed based on incompetency to stand trial under RCW

1 10.77.088 and the court makes a finding that the person has a history
2 of one or more violent acts, the court also shall forward, within
3 three judicial days after entry of the commitment order, or dismissal
4 of charges, a copy of the person's driver's license, or comparable
5 information, along with the date of commitment or date charges are
6 dismissed, to the national instant criminal background check system
7 index, denied persons file, created by the federal Brady handgun
8 violence prevention act (P.L. 103-159) and to the Washington state
9 patrol. The petitioning party shall provide the court with the
10 information required. If more than one commitment order is entered
11 under one cause number, only one notification to the department of
12 licensing and the national instant criminal background check system
13 is required.

14 (2) Upon receipt of the information provided for by subsection
15 (1) of this section, the department of licensing shall determine if
16 the (~~convicted or committed~~) person(~~, or the person whose charges~~
17 ~~are dismissed based on incompetency to stand trial,~~) has a concealed
18 pistol license. If the person (~~does have~~) has a concealed pistol
19 license, the department of licensing shall immediately notify the
20 license-issuing authority which, upon receipt of such notification,
21 shall immediately revoke the license.

22 (3)(a) A person who is prohibited from possessing a firearm, by
23 reason of having been involuntarily committed for mental health
24 treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750,
25 chapter 10.77 RCW, or equivalent statutes of another jurisdiction, or
26 by reason of having been detained under RCW 71.05.150 or 71.05.153,
27 or because the person's charges were dismissed based on incompetency
28 to stand trial under RCW 10.77.088 and the court made a finding that
29 the person has a history of one or more violent acts, may, upon
30 discharge, petition the superior court to have his or her right to
31 possess a firearm restored.

32 (b) The petition must be brought in the superior court that
33 ordered the involuntary commitment or dismissed the charges based on
34 incompetency to stand trial or the superior court of the county in
35 which the petitioner resides.

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

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

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

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

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

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

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

19 (f) When a person's right to possess a firearm has been restored
20 under this subsection, the court shall forward, within three judicial
21 days after entry of the restoration order, notification that the
22 person's right to possess a firearm has been restored to the
23 department of licensing with a copy of the person's driver's license
24 or identicard, or comparable identification such as ~~((their))~~ the
25 person's name, address, and date of birth, the health care authority,
26 and the national instant criminal background check system index,
27 denied persons file. In the case of a person whose right to possess a
28 firearm has been suspended for six months as provided in RCW
29 71.05.182, the department of licensing shall forward notification of
30 the restoration order to the licensing authority, which, upon receipt
31 of such notification, shall immediately lift the suspension,
32 restoring the license.

33 (4) No person who has been found not guilty by reason of insanity
34 may petition a court for restoration of the right to possess a
35 firearm unless the person meets the requirements for the restoration
36 of the right to possess a firearm under ~~((RCW 9.41.040(4)))~~ section
37 1(1) (b) through (f) of this act.

38 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2022."

1 Correct the title.

EFFECT: (1) For nonfelonies, increases the amount of time that a person must be free of any conviction or finding of not guilty by reason of insanity to five years (rather than three years) immediately preceding the petition.

(2) Reinstates the current law requirement that the person may not have any prior felony offenses that continue to count as part of the offender score under sentencing laws.

(3) Provides that the court, for good cause, may waive a requirement for the petitioner to provide verification of completion of all sentencing conditions.

(4) Requires that the petitioner has not been subject to certain full protection orders within the 5 years preceding the petition (rather than that specified protection orders have not been issued against the person in the 5 years preceding the petition). Defines "full protection" order to mean an order issued after notice to the respondent and an opportunity for a full hearing by the court.

(5) Removes the provision that established a ten-year crime free requirement for felonies that involve the use, display, or threatened use of a firearm, and that granted the court discretion to restore firearms rights in these cases if the petitioner shows sufficient rehabilitation.

--- END ---