
SUBSTITUTE HOUSE BILL 2420

State of Washington

54th Legislature

1996 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives McMorris, Sheahan, Thompson, Koster, Buck, Mastin, McMahan, Grant, Schoesler, Crouse, Chandler, Dyer, Smith, Campbell, Goldsmith, Radcliff, Boldt, Mulliken, Beeksma, Robertson, Morris, Fuhrman, L. Thomas, Sterk, D. Schmidt, Johnson, Chappell, Carrell, Hatfield, Sheldon, Sherstad, Stevens, Honeyford, Elliot, Huff, Van Luven, B. Thomas, Pennington, Kessler and Benton)

Read first time 02/02/96.

1 AN ACT Relating to possession of firearms; amending RCW 9.41.040,
2 9.41.070, 9.41.098, 9.41.800, and 9.41.047; reenacting and amending RCW
3 9.41.010 and 9.41.090; and prescribing penalties.

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

5 **Sec. 1.** RCW 9.41.010 and 1994 sp.s. c 7 s 401 and 1994 c 121 s 1
6 are each reenacted and amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

9 (1) "Firearm" means a weapon or device from which a projectile may
10 be fired by an explosive such as gunpowder.

11 (2) "Pistol" means any firearm with a barrel less than twelve
12 inches in length, or is designed to be held and fired by the use of a
13 single hand.

14 (3) "Rifle" means a weapon designed or redesigned, made or remade,
15 and intended to be fired from the shoulder and designed or redesigned,
16 made or remade, and intended to use the energy of the explosive in a
17 fixed metallic cartridge to fire only a single projectile through a
18 rifled bore for each single pull of the trigger.

1 (4) "Short-barreled rifle" means a rifle having one or more barrels
2 le than sixteen inches in length and any weapon made from a rifle by
3 any means of modification if such modified weapon has an overall length
4 of less than twenty-six inches.

5 (5) "Shotgun" means a weapon with one or more barrels, designed or
6 redesigned, made or remade, and intended to be fired from the shoulder
7 and designed or redesigned, made or remade, and intended to use the
8 energy of the explosive in a fixed shotgun shell to fire through a
9 smooth bore either a number of ball shot or a single projectile for
10 each single pull of the trigger.

11 (6) "Short-barreled shotgun" means a shotgun having one or more
12 barrels less than eighteen inches in length and any weapon made from a
13 shotgun by any means of modification if such modified weapon has an
14 overall length of less than twenty-six inches.

15 (7) "Machine gun" means any firearm known as a machine gun,
16 mechanical rifle, submachine gun, or any other mechanism or instrument
17 not requiring that the trigger be pressed for each shot and having a
18 reservoir clip, disc, drum, belt, or other separable mechanical device
19 for storing, carrying, or supplying ammunition which can be loaded into
20 the firearm, mechanism, or instrument, and fired therefrom at the rate
21 of five or more shots per second.

22 (8) "Antique firearm" means a firearm or replica of a firearm not
23 designed or redesigned for using rim fire or conventional center fire
24 ignition with fixed ammunition and manufactured in or before 1898,
25 including any matchlock, flintlock, percussion cap, or similar type of
26 ignition system and also any firearm using fixed ammunition
27 manufactured in or before 1898, for which ammunition is no longer
28 manufactured in the United States and is not readily available in the
29 ordinary channels of commercial trade.

30 (9) "Loaded" means:

31 (a) There is a cartridge in the chamber of the firearm;

32 (b) Bullets are in a clip that is locked in place in the firearm;

33 (c) There is a cartridge in the cylinder of the firearm, if the
34 firearm is a revolver; or

35 (d) There is a cartridge in the tube, magazine, or other
36 compartment of the firearm.

37 (10) "Dealer" means a person engaged in the business of selling
38 firearms or ammunition at wholesale or retail who has, or is required
39 to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A

1 person who does not have, and is not required to have, a federal
2 firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that
3 person makes only occasional sales, exchanges, or purchases of firearms
4 for the enhancement of a personal collection or for a hobby, or sells
5 all or part of his or her personal collection of firearms.

6 (11) "Crime of violence" means:

7 (a) Any of the following felonies, as now existing or hereafter
8 amended: Any felony defined under any law as a class A felony or an
9 attempt to commit a class A felony, criminal solicitation of or
10 criminal conspiracy to commit a class A felony, manslaughter in the
11 first degree, manslaughter in the second degree, indecent liberties if
12 committed by forcible compulsion, (~~rape in the second degree,~~)
13 kidnapping in the second degree, arson in the second degree, assault in
14 the second degree, assault of a child in the second degree, extortion
15 in the first degree, burglary in the second degree, residential
16 burglary, and robbery in the second degree;

17 (b) Any conviction for a felony offense in effect at any time prior
18 to (~~July 1, 1976~~) the effective date of this act, which is comparable
19 to a felony classified as a crime of violence in (a) of this
20 subsection; and

21 (c) Any federal or out-of-state conviction for an offense
22 comparable to a felony classified as a crime of violence under (a) or
23 (b) of this subsection.

24 (12) "Serious offense" means any of the following felonies or a
25 felony attempt to commit any of the following felonies, as now existing
26 or hereafter amended:

27 (a) Any crime of violence;

28 (b) Any felony violation of the uniform controlled substances act,
29 chapter 69.50 RCW, that is classified as a class B felony or that has
30 a maximum term of imprisonment of at least ten years;

31 (c) Child molestation in the second degree;

32 (~~(c) Controlled substance homicide;~~)

33 (d) Incest when committed against a child under age fourteen;

34 (e) Indecent liberties;

35 (f) Leading organized crime;

36 (g) Promoting prostitution in the first degree;

37 (h) Rape in the third degree;

38 (i) Reckless endangerment in the first degree;

39 (j) Sexual exploitation;

1 (~~(j)~~) (k) Vehicular assault;

2 (~~(k)~~) (l) Vehicular homicide, when proximately caused by the
3 driving of any vehicle by any person while under the influence of
4 intoxicating liquor or any drug as defined by RCW 46.61.502, or by the
5 operation of any vehicle in a reckless manner;

6 (~~(l)~~) (m) Any other class B felony offense with a finding of
7 sexual motivation, as "sexual motivation" is defined under RCW
8 9.94A.030;

9 (~~(m)~~) (n) Any other felony with a deadly weapon verdict under RCW
10 9.94A.125; or

11 (~~(n)~~) (o) Any felony offense in effect at any time prior to
12 (~~July 1, 1994,~~) the effective date of this act that is comparable to
13 a serious offense, or any federal or out-of-state conviction for an
14 offense that under the laws of this state would be a felony classified
15 as a serious offense.

16 (13) "Felony" means any felony offense under the laws of this state
17 or any federal or out-of-state offense comparable to a felony offense
18 under the laws of this state.

19 **Sec. 2.** RCW 9.41.040 and 1995 c 129 s 16 (Initiative Measure No.
20 159) are each amended to read as follows:

21 (1)(a) A person, whether an adult or juvenile, is guilty of the
22 crime of unlawful possession of a firearm in the first degree, if the
23 person owns, has in his or her possession, or has in his or her control
24 any firearm after having previously been convicted in this state or
25 elsewhere of any serious offense as defined in this chapter,
26 (~~residential burglary, reckless endangerment in the first degree, any~~
27 ~~felony violation of the Uniform Controlled Substances Act, chapter~~
28 ~~69.50 RCW, classified as a class A or class B felony, or with a maximum~~
29 ~~sentence of at least ten years, or both, or equivalent statutes of~~
30 ~~another jurisdiction,~~) except as otherwise provided in subsection (3)
31 or (4) of this section.

32 (b) A person, whether an adult or juvenile, is guilty of the crime
33 of unlawful possession of a firearm in the second degree, if the person
34 does not qualify under (a) of this subsection for the crime of unlawful
35 possession of a firearm in the first degree and the person owns, has in
36 his or her possession, or has in his or her control any firearm:

37 (i) After having previously been convicted in this state or
38 elsewhere of any (~~remaining~~) felony (~~violation of the Uniform~~

1 ~~Controlled Substances Act, chapter 69.50 RCW, or equivalent statutes of~~
2 ~~another jurisdiction not specifically listed as prohibiting firearm~~
3 ~~possession under (a) of this subsection, any remaining felony in which~~
4 ~~a firearm was used or displayed and the felony is not specifically~~
5 ~~listed as prohibiting firearm possession under (a) of this subsection,~~
6 ~~any domestic violence offense enumerated in RCW 10.99.020(2), or any~~
7 ~~harassment offense enumerated in RCW 9A.46.060, except as otherwise~~
8 ~~provided in subsection (3) or (4) of this section));~~

9 (ii) ~~((After having previously been convicted on three occasions~~
10 ~~within five years of driving a motor vehicle or operating a vessel~~
11 ~~while under the influence of intoxicating liquor or any drug, unless~~
12 ~~his or her right to possess a firearm has been restored as provided in~~
13 ~~RCW 9.41.047;~~

14 ~~(iii))~~ After having previously been involuntarily committed for
15 mental health treatment under RCW 71.05.320, 71.34.090, chapter 10.77
16 RCW, or equivalent statutes of another jurisdiction, unless his or her
17 right to possess a firearm has been restored as provided in RCW
18 9.41.047; and/or

19 ~~((iv))~~ (iii) If the person is under eighteen years of age, except
20 as provided in RCW 9.41.042.

21 (2)(a) Unlawful possession of a firearm in the first degree is a
22 class B felony, punishable under chapter 9A.20 RCW.

23 (b) Unlawful possession of a firearm in the second degree is a
24 class C felony, punishable under chapter 9A.20 RCW.

25 (3) As used in this section, a person has been "convicted" at such
26 time as a plea of guilty has been accepted or a verdict of guilty has
27 been filed, notwithstanding the pendency of any future proceedings
28 including but not limited to sentencing or disposition, post-trial or
29 post-factfinding motions, and appeals. A person shall not be precluded
30 from possession of a firearm if the conviction has been the subject of
31 a pardon, annulment, certificate of rehabilitation, or other equivalent
32 procedure based on a finding of the rehabilitation of the person
33 convicted or the conviction or disposition has been the subject of a
34 pardon, annulment, or other equivalent procedure based on a finding of
35 innocence.

36 (4) Notwithstanding subsection (1) of this section, a person
37 convicted of an offense prohibiting the possession of a firearm under
38 this section other than murder, manslaughter, robbery, rape, indecent
39 liberties, arson, assault, kidnapping, extortion, burglary, or

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

13 (a) Under RCW 9.41.047; and/or

14 (b) After five or more consecutive years in the community without
15 being convicted or currently charged with any felony, gross
16 misdemeanor, or misdemeanor crimes, if the individual has no prior
17 felony convictions that prohibit the possession of a firearm counted as
18 part of the offender score under RCW 9.94A.360.

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

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

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

3 **Sec. 3.** RCW 9.41.070 and 1995 c 351 s 1 are each amended to read
4 as follows:

5 (1) The chief of police of a municipality or the sheriff of a
6 county shall within thirty days after the filing of an application of
7 any person, issue a license to such person to carry a pistol concealed
8 on his or her person within this state for five years from date of
9 issue, for the purposes of protection or while engaged in business,
10 sport, or while traveling. However, if the applicant does not have a
11 valid permanent Washington driver's license or Washington state
12 identification card or has not been a resident of the state for the
13 previous consecutive ninety days, the issuing authority shall have up
14 to sixty days after the filing of the application to issue a license.
15 The issuing authority shall not refuse to accept completed applications
16 for concealed pistol licenses during regular business hours.

17 The applicant's constitutional right to bear arms shall not be
18 denied, unless:

19 (a) He or she is ineligible to possess a firearm under the
20 provisions of RCW 9.41.040 or 9.41.045;

21 (b) The applicant's concealed pistol license is in a revoked
22 status;

23 (c) He or she is under twenty-one years of age;

24 (d) He or she is subject to a court order or injunction regarding
25 firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045,
26 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.26.137,
27 26.50.060, or 26.50.070;

28 (e) He or she is free on bond or personal recognizance pending
29 trial, appeal, or sentencing for a (~~serious~~) felony offense;

30 (f) He or she has an outstanding warrant for his or her arrest from
31 any court of competent jurisdiction for a felony or misdemeanor;

32 (g) He or she has been ordered to forfeit a firearm under RCW
33 9.41.098(1)(e) within one year before filing an application to carry a
34 pistol concealed on his or her person; or

35 (~~(h) ((i) He or she has been convicted of any crime against a child
36 or other person listed in RCW 43.43.830(5)).~~

37 (~~(ii) Except as provided in (h)(iii) of this subsection, any person
38 who becomes ineligible for a concealed pistol license as a result of a~~

1 conviction for a crime listed in (h)(i) of this subsection and then
2 successfully completes all terms of his or her sentence, as evidenced
3 by a certificate of discharge issued under RCW 9.94A.220 in the case of
4 a sentence under chapter 9.94A RCW, and has not again been convicted
5 of any crime and is not under indictment for any crime, may, one year
6 or longer after such successful sentence completion, petition a court
7 of record for a declaration that the person is no longer ineligible for
8 a concealed pistol license under (h)(i) of this subsection.

9 (iii)) No person convicted of a ((serious offense as defined in
10 RCW 9.41.010)) felony may have his or her right to possess firearms
11 restored or his or her privilege to carry a concealed pistol restored,
12 unless the person has been granted relief from disabilities by the
13 secretary of the treasury under 18 U.S.C. Sec. 925(c), or RCW 9.41.040
14 (3) or (4) applies.

15 (2) The issuing authority shall check with the national crime
16 information center, the Washington state patrol electronic data base,
17 the department of social and health services electronic data base, and
18 with other agencies or resources as appropriate, to determine whether
19 the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess
20 a firearm and therefore ineligible for a concealed pistol license.
21 This subsection applies whether the applicant is applying for a new
22 concealed pistol license or to renew a concealed pistol license.

23 (3) Any person whose firearms rights have been restricted and who
24 has been granted relief from disabilities by the secretary of the
25 treasury under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C.
26 Sec. 921(a)(20)(A) shall have his or her right to acquire, receive,
27 transfer, ship, transport, carry, and possess firearms in accordance
28 with Washington state law restored except as otherwise prohibited by
29 this chapter.

30 (4) The license application shall bear the full name, residential
31 address, telephone number at the option of the applicant, date and
32 place of birth, race, gender, description, not more than two complete
33 sets of fingerprints, and signature of the licensee, and the licensee's
34 driver's license number or state identification card number if used for
35 identification in applying for the license. A signed application for
36 a concealed pistol license shall constitute a waiver of confidentiality
37 and written request that the department of social and health services,
38 mental health institutions, and other health care facilities release

1 information relevant to the applicant's eligibility for a concealed
2 pistol license to an inquiring court or law enforcement agency.

3 The application for an original license shall include two complete
4 sets of fingerprints to be forwarded to the Washington state patrol.

5 The license and application shall contain a warning substantially
6 as follows:

7 CAUTION: Although state and local laws do not differ, federal
8 law and state law on the possession of firearms differ. If you
9 are prohibited by federal law from possessing a firearm, you
10 may be prosecuted in federal court. A state license is not a
11 defense to a federal prosecution.

12 The license shall contain a description of the major differences
13 between state and federal law and an explanation of the fact that local
14 laws and ordinances on firearms are preempted by state law and must be
15 consistent with state law. The application shall contain questions
16 about the applicant's eligibility under RCW 9.41.040 to possess a
17 pistol, the applicant's place of birth, and whether the applicant is a
18 United States citizen. The applicant shall not be required to produce
19 a birth certificate or other evidence of citizenship. A person who is
20 not a citizen of the United States shall meet the additional
21 requirements of RCW 9.41.170 and produce proof of compliance with RCW
22 9.41.170 upon application. The license shall be in triplicate and in
23 a form to be prescribed by the department of licensing.

24 The original thereof shall be delivered to the licensee, the
25 duplicate shall within seven days be sent by registered mail to the
26 director of licensing and the triplicate shall be preserved for six
27 years, by the authority issuing the license.

28 The department of licensing shall make available to law enforcement
29 and corrections agencies, in an on-line format, all information
30 received under this subsection.

31 (5) The nonrefundable fee, paid upon application, for the original
32 five-year license shall be thirty-six dollars plus additional charges
33 imposed by the Federal Bureau of Investigation that are passed on to
34 the applicant. No other state or local branch or unit of government
35 may impose any additional charges on the applicant for the issuance of
36 the license.

37 The fee shall be distributed as follows:

38 (a) Fifteen dollars shall be paid to the state general fund;

1 (b) Four dollars shall be paid to the agency taking the
2 fingerprints of the person licensed;

3 (c) Fourteen dollars shall be paid to the issuing authority for the
4 purpose of enforcing this chapter; and

5 (d) Three dollars to the firearms range account in the general
6 fund.

7 (6) The fee for the renewal of such license shall be thirty-two
8 dollars. No other branch or unit of government may impose any
9 additional charges on the applicant for the renewal of the license.

10 The renewal fee shall be distributed as follows:

11 (a) Fifteen dollars shall be paid to the state general fund;

12 (b) Fourteen dollars shall be paid to the issuing authority for the
13 purpose of enforcing this chapter; and

14 (c) Three dollars to the firearms range account in the general
15 fund.

16 (7) The fee for replacement of lost or damaged licenses is ten
17 dollars to be paid to the issuing authority.

18 (8) Payment shall be by cash, check, or money order at the option
19 of the applicant. Additional methods of payment may be allowed at the
20 option of the issuing authority.

21 (9) A licensee may renew a license if the licensee applies for
22 renewal within ninety days before or after the expiration date of the
23 license. A license so renewed shall take effect on the expiration date
24 of the prior license. A licensee renewing after the expiration date of
25 the license must pay a late renewal penalty of ten dollars in addition
26 to the renewal fee specified in subsection (6) of this section. The
27 fee shall be distributed as follows:

28 (a) Three dollars shall be deposited in the state wildlife fund and
29 used exclusively for the printing and distribution of a pamphlet on the
30 legal limits of the use of firearms, firearms safety, and the
31 preemptive nature of state law. The pamphlet shall be given to each
32 applicant for a license; and

33 (b) Seven dollars shall be paid to the issuing authority for the
34 purpose of enforcing this chapter.

35 (10) Notwithstanding the requirements of subsections (1) through
36 (9) of this section, the chief of police of the municipality or the
37 sheriff of the county of the applicant's residence may issue a
38 temporary emergency license for good cause pending review under
39 subsection (1) of this section.

1 (11) A political subdivision of the state shall not modify the
2 requirements of this section or chapter, nor may a political
3 subdivision ask the applicant to voluntarily submit any information not
4 required by this section.

5 (12) A person who knowingly makes a false statement regarding
6 citizenship or identity on an application for a concealed pistol
7 license is guilty of false swearing under RCW 9A.72.040. In addition
8 to any other penalty provided for by law, the concealed pistol license
9 of a person who knowingly makes a false statement shall be revoked, and
10 the person shall be permanently ineligible for a concealed pistol
11 license.

12 (13) A person may apply for a concealed pistol license:

13 (a) To the municipality or to the county in which the applicant
14 resides if the applicant resides in a municipality;

15 (b) To the county in which the applicant resides if the applicant
16 resides in an unincorporated area; or

17 (c) Anywhere in the state if the applicant is a nonresident.

18 **Sec. 4.** RCW 9.41.098 and 1994 sp.s. c 7 s 414 are each amended to
19 read as follows:

20 (1) The superior courts and the courts of limited jurisdiction of
21 the state may order forfeiture of a firearm which is proven to be:

22 (a) Found concealed on a person not authorized by RCW 9.41.060 or
23 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute
24 defense to forfeiture if the person possessed a valid Washington
25 concealed pistol license within the preceding two years and has not
26 become ineligible for a concealed pistol license in the interim.
27 Before the firearm may be returned, the person must pay the past due
28 renewal fee and the current renewal fee;

29 (b) Commercially sold to any person without an application as
30 required by RCW 9.41.090;

31 (c) Found in the possession of a person prohibited from possessing
32 the firearm under RCW 9.41.040;

33 (d) Found in the possession or under the control of a person at the
34 time the person committed or was arrested for committing a ((serious
35 offense)) felony or committing a nonfelony crime in which a firearm was
36 used or displayed ((or a felony violation of the Uniform Controlled
37 Substances Act, chapter 69.50 RCW));

1 (e) Found concealed on a person who is in any place in which a
2 concealed pistol license is required, and who is under the influence of
3 any drug or under the influence of intoxicating liquor, as defined in
4 chapter 46.61 RCW;

5 (f) Found in the possession of a person free on bail or personal
6 recognizance pending trial, appeal, or sentencing for a ((serious
7 offense)) felony or for a nonfelony crime in which a firearm was used
8 or displayed, except that violations of Title 77 RCW shall not result
9 in forfeiture under this section;

10 (g) Found in the possession of a person found to have been mentally
11 incompetent while in possession of a firearm when apprehended or who is
12 thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

13 (h) Known to have been used or displayed by a person in the
14 violation of a proper written order of a court of general jurisdiction;
15 or

16 (i) Known to have been used in the commission of a ((serious
17 offense)) felony or of a nonfelony crime in which a firearm was used or
18 displayed ((or a felony violation of the Uniform Controlled Substances
19 Act, chapter 69.50 RCW)).

20 (2) Upon order of forfeiture, the court in its discretion may order
21 destruction of any forfeited firearm. A court may temporarily retain
22 forfeited firearms needed for evidence.

23 (a) Except as provided in (b), (c), and (d) of this subsection,
24 firearms that are: (i) Judicially forfeited and no longer needed for
25 evidence; or (ii) forfeited due to a failure to make a claim under RCW
26 63.32.010 or 63.40.010; may be disposed of in any manner determined by
27 the local legislative authority. Any proceeds of an auction or trade
28 may be retained by the legislative authority. This subsection (2)(a)
29 applies only to firearms that come into the possession of the law
30 enforcement agency after June 30, 1993, and applies only if the law
31 enforcement agency has complied with (b) of this subsection.

32 By midnight, June 30, 1993, every law enforcement agency shall
33 prepare an inventory, under oath, of every firearm that has been
34 judicially forfeited, has been seized and may be subject to judicial
35 forfeiture, or that has been, or may be, forfeited due to a failure to
36 make a claim under RCW 63.32.010 or 63.40.010.

37 (b) Except as provided in (c) of this subsection, of the
38 inventoried firearms a law enforcement agency shall destroy illegal

1 firearms, may retain a maximum of ten percent of legal forfeited
2 firearms for agency use, and shall either:

3 (i) Comply with the provisions for the auction of firearms in RCW
4 9.41.098 that were in effect immediately preceding May 7, 1993; or

5 (ii) Trade, auction, or arrange for the auction of, rifles and
6 shotguns. In addition, the law enforcement agency shall either trade,
7 auction, or arrange for the auction of, short firearms, or shall pay a
8 fee of twenty-five dollars to the state treasurer for every short
9 firearm neither auctioned nor traded, to a maximum of fifty thousand
10 dollars. The fees shall be accompanied by an inventory, under oath, of
11 every short firearm listed in the inventory required by (a) of this
12 subsection, that has been neither traded nor auctioned. The state
13 treasurer shall credit the fees to the firearms range account
14 established in RCW 77.12.720. All trades or auctions of firearms under
15 this subsection shall be to licensed dealers. Proceeds of any auction
16 less costs, including actual costs of storage and sale, shall be
17 forwarded to the firearms range account established in RCW 77.12.720.

18 (c) Antique firearms and firearms recognized as curios, relics, and
19 firearms of particular historical significance by the United States
20 treasury department bureau of alcohol, tobacco, and firearms are exempt
21 from destruction and shall be disposed of by auction or trade to
22 licensed dealers.

23 (d) Firearms in the possession of the Washington state patrol on or
24 after May 7, 1993, that are judicially forfeited and no longer needed
25 for evidence, or forfeited due to a failure to make a claim under RCW
26 63.35.020, must be disposed of as follows: (i) Firearms illegal for
27 any person to possess must be destroyed; (ii) the Washington state
28 patrol may retain a maximum of ten percent of legal firearms for agency
29 use; and (iii) all other legal firearms must be auctioned or traded to
30 licensed dealers. The Washington state patrol may retain any proceeds
31 of an auction or trade.

32 (3) The court shall order the firearm returned to the owner upon a
33 showing that there is no probable cause to believe a violation of
34 subsection (1) of this section existed or the firearm was stolen from
35 the owner or the owner neither had knowledge of nor consented to the
36 act or omission involving the firearm which resulted in its forfeiture.

37 (4) A law enforcement officer of the state or of any county or
38 municipality may confiscate a firearm found to be in the possession of
39 a person under circumstances specified in subsection (1) of this

1 section. After confiscation, the firearm shall not be surrendered
2 except: (a) To the prosecuting attorney for use in subsequent legal
3 proceedings; (b) for disposition according to an order of a court
4 having jurisdiction as provided in subsection (1) of this section; or
5 (c) to the owner if the proceedings are dismissed or as directed in
6 subsection (3) of this section.

7 **Sec. 5.** RCW 9.41.800 and 1994 sp.s. c 7 s 430 are each amended to
8 read as follows:

9 (1) Any court when entering an order authorized under RCW
10 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060,
11 26.10.040, 26.10.115, 26.26.130, 26.26.137, 26.50.060, or 26.50.070
12 shall, upon a showing by clear and convincing evidence, that a party
13 has: Used, displayed, or threatened to use a firearm or other
14 dangerous weapon in a (~~serious offense~~) felony, or previously
15 committed any offense that makes him or her ineligible to possess a
16 firearm under the provisions of RCW 9.41.040:

17 (a) Require the party to surrender any firearm or other dangerous
18 weapon;

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

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

23 (d) Prohibit the party from obtaining or possessing a concealed
24 pistol license.

25 (2) Any court when entering an order authorized under RCW
26 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060,
27 26.10.040, 26.10.115, 26.26.130, 26.26.137, 26.50.060, or 26.50.070
28 may, upon a showing by a preponderance of the evidence but not by clear
29 and convincing evidence, that a party has: Used, displayed, or
30 threatened to use a firearm or other dangerous weapon in a (~~serious
31 offense~~) felony, or previously committed any offense that makes him or
32 her ineligible to possess a pistol under the provisions of RCW
33 9.41.040:

34 (a) Require the party to surrender any firearm or other dangerous
35 weapon;

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

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

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

5 (3) The court may order temporary surrender of a firearm or other
6 dangerous weapon without notice to the other party if it finds, on the
7 basis of the moving affidavit or other evidence, that irreparable
8 injury could result if an order is not issued until the time for
9 response has elapsed.

10 (4) In addition to the provisions of subsections (1), (2), and (3)
11 of this section, the court may enter an order requiring a party to
12 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 any
14 party presents a serious and imminent threat to public health or
15 safety, or to the health or safety of any individual.

16 (5) The requirements of subsections (1), (2), and (4) of this
17 section may be for a period of time less than the duration of the
18 order.

19 (6) The court may require the party to surrender any firearm or
20 other dangerous weapon in his or her immediate possession or control or
21 subject to his or her immediate possession or control to the sheriff of
22 the county having jurisdiction of the proceeding or to the restrained
23 or enjoined party's counsel or to any person designated by the court.

24 **Sec. 6.** RCW 9.41.047 and 1994 sp.s. c 7 s 404 are each amended to
25 read as follows:

26 (1)((~~a~~)) At the time a person is convicted of an offense making
27 the person ineligible to possess a firearm, or at the time a person is
28 committed by court order under RCW 71.05.320, 71.34.090, or chapter
29 10.77 RCW for mental health treatment, the convicting or committing
30 court shall notify the person, orally and in writing, that the person
31 must immediately surrender any concealed pistol license and that the
32 person may not possess a firearm unless his or her right to do so is
33 restored by a court of record.

34 The convicting or committing court also shall forward a copy of the
35 person's driver's license or identicard, or comparable information, to
36 the department of licensing, along with the date of conviction or
37 commitment.

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

8 (3) (~~A person who is prohibited from possessing a firearm by~~
9 ~~reason of having previously been convicted on three occasions of~~
10 ~~driving a motor vehicle or operating a vessel while under the influence~~
11 ~~of intoxicating liquor or any drug may, after five continuous years~~
12 ~~without further conviction for any alcohol-related offense, petition a~~
13 ~~court of record to have his or her right to possess a firearm restored.~~

14 (4)) (a) A person who is prohibited from possessing a firearm, by
15 reason of having been ((either:

16 (ii))) involuntarily committed for mental health treatment under
17 RCW 71.05.320, 71.34.090, chapter 10.77 RCW, or equivalent statutes of
18 another jurisdiction, may, upon discharge, petition a court of record
19 to have his or her right to possess a firearm restored.

20 (b) At a minimum, a petition under this subsection ((4)) (3)
21 shall include the following:

22 (i) The fact, date, and place of commitment;

23 (ii) The place of treatment;

24 (iii) The fact and date of release from commitment;

25 (iv) A certified copy of the most recent order, if one exists, of
26 commitment, with the findings of fact and conclusions of law; and

27 (v) A statement by the person that he or she is no longer required
28 to participate in an inpatient or outpatient treatment program, is no
29 longer required to take medication to treat any condition related to
30 the commitment, and does not present a substantial danger to himself or
31 herself, to others, or to the public safety.

32 (c) A person petitioning the court under this subsection ((4))
33 (3) shall bear the burden of proving by a preponderance of the evidence
34 that the circumstances resulting in the commitment no longer exist and
35 are not reasonably likely to recur.

36 **Sec. 7.** RCW 9.41.090 and 1994 sp.s. c 7 s 410 and 1994 c 264 s 1
37 are each reenacted and amended to read as follows:

1 (1) In addition to the other requirements of this chapter, no
2 dealer may deliver a pistol to the purchaser thereof until:

3 (a) The purchaser produces a valid concealed pistol license and the
4 dealer has recorded the purchaser's name, license number, and issuing
5 agency, such record to be made in triplicate and processed as provided
6 in subsection (5) of this section. For purposes of this subsection
7 (1)(a), a "valid concealed pistol license" does not include a temporary
8 emergency license, and does not include any license issued before July
9 1, 1994, unless the issuing agency conducted a records search for
10 disqualifying crimes under RCW 9.41.070 at the time of issuance;

11 (b) The dealer is notified in writing by the chief of police or the
12 sheriff of the jurisdiction in which the purchaser resides that the
13 purchaser is eligible to possess a pistol under RCW 9.41.040 and that
14 the application to purchase is approved by the chief of police or
15 sheriff; or

16 (c) Five business days, meaning days on which state offices are
17 open, have elapsed from the time of receipt of the application for the
18 purchase thereof as provided herein by the chief of police or sheriff
19 designated in subsection (5) of this section, and, when delivered, the
20 pistol shall be securely wrapped and shall be unloaded. However, if
21 the purchaser does not have a valid permanent Washington driver's
22 license or state identification card or has not been a resident of the
23 state for the previous consecutive ninety days, the waiting period
24 under this subsection (1)(c) shall be up to sixty days.

25 (2)(a) Except as provided in (b) of this subsection, in determining
26 whether the purchaser meets the requirements of RCW 9.41.040, the chief
27 of police or sheriff, or the designee of either, shall check with the
28 national crime information center, the Washington state patrol
29 electronic data base, the department of social and health services
30 electronic data base, and with other agencies or resources as
31 appropriate, to determine whether the applicant is ineligible under RCW
32 9.41.040 to possess a firearm.

33 (b) Once the system is established, a dealer shall use the national
34 instant criminal background check system, provided for by the Brady
35 Handgun Control Act (H.R. 1025, 103rd Cong., 1st Sess. (1993)), to make
36 criminal background checks of applicants to purchase firearms.
37 However, a chief of police or sheriff, or a designee of either, shall
38 continue to check the department of social and health services'
39 electronic data base and with other agencies or resources as

1 appropriate, to determine whether applicants are ineligible under RCW
2 9.41.040 to possess a firearm.

3 (3) In any case under subsection (1)(c) of this section where the
4 applicant has an outstanding warrant for his or her arrest from any
5 court of competent jurisdiction for a felony or misdemeanor, the dealer
6 shall hold the delivery of the pistol until the warrant for arrest is
7 served and satisfied by appropriate court appearance. The local
8 jurisdiction for purposes of the sale shall confirm the existence of
9 outstanding warrants within seventy-two hours after notification of the
10 application to purchase a pistol is received. The local jurisdiction
11 shall also immediately confirm the satisfaction of the warrant on
12 request of the dealer so that the hold may be released if the warrant
13 was for an offense other than an offense making a person ineligible
14 under RCW 9.41.040 to possess a pistol.

15 (4) In any case where the chief or sheriff of the local
16 jurisdiction has reasonable grounds based on the following
17 circumstances: (a) Open criminal charges, (b) pending criminal
18 proceedings, (c) pending commitment proceedings, (d) an outstanding
19 warrant for an offense making a person ineligible under RCW 9.41.040 to
20 possess a pistol, or (e) an arrest for an offense making a person
21 ineligible under RCW 9.41.040 to possess a pistol, if the records of
22 disposition have not yet been reported or entered sufficiently to
23 determine eligibility to purchase a pistol, the local jurisdiction may
24 hold the sale and delivery of the pistol beyond five days up to thirty
25 days in order to confirm existing records in this state or elsewhere.
26 After thirty days, the hold will be lifted unless an extension of the
27 thirty days is approved by a local district court or municipal court
28 for good cause shown. An applicant shall be notified of each hold
29 placed on the sale by local law enforcement and of any application to
30 the court for additional hold period to confirm records or confirm the
31 identity of the applicant.

32 (5) At the time of applying for the purchase of a pistol, the
33 purchaser shall sign in triplicate and deliver to the dealer an
34 application containing his or her full name, street address, date and
35 place of birth, race, and gender; the date and hour of the application;
36 the applicant's driver's license number or state identification card
37 number; a description of the pistol including the make, model, caliber
38 and manufacturer's number; and a statement that the purchaser is
39 eligible to possess a pistol under RCW 9.41.040.

1 The application shall contain a warning substantially as follows:

2 CAUTION: Although state and local laws do not differ, federal
3 law and state law on the possession of firearms differ. If you
4 are prohibited by federal law from possessing a firearm, you
5 may be prosecuted in federal court. State permission to
6 purchase a firearm is not a defense to a federal prosecution.

7 The purchaser shall be given a copy of the department of fish and
8 wildlife pamphlet on the legal limits of the use of firearms, firearms
9 safety, and the fact that local laws and ordinances on firearms are
10 preempted by state law and must be consistent with state law.

11 The dealer shall, by the end of the business day, sign and attach
12 his or her address and deliver the original of the application and such
13 other documentation as required under subsection (1) of this section to
14 the chief of police of the municipality or the sheriff of the county of
15 which the purchaser is a resident. The dealer shall deliver the pistol
16 to the purchaser following the period of time specified in this section
17 unless the dealer is notified in writing by the chief of police of the
18 municipality or the sheriff of the county, whichever is applicable,
19 denying the purchaser's application to purchase and the grounds
20 thereof. The application shall not be denied unless the purchaser is
21 not eligible to possess a pistol under RCW 9.41.040.

22 The chief of police of the municipality or the sheriff of the
23 county shall retain or destroy applications to purchase a pistol in
24 accordance with the requirements of 18 U.S.C. Sec. 922.

25 (6) A person who knowingly makes a false statement regarding
26 identity or eligibility requirements on the application to purchase a
27 pistol is guilty of false swearing under RCW 9A.72.040.

28 (7) This section does not apply to sales to licensed dealers for
29 resale or to the sale of antique firearms.

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