
SUBSTITUTE HOUSE BILL 1978

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Sheahan, Mitchell and O'Brien; by request of Washington State Patrol)

Read first time 03/05/97.

1 AN ACT Relating to disposal of firearms; and amending RCW 9.41.098.

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

3 **Sec. 1.** RCW 9.41.098 and 1996 c 295 s 10 are each amended to read
4 as follows:

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

7 (a) Found concealed on a person not authorized by RCW 9.41.060 or
8 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute
9 defense to forfeiture if the person possessed a valid Washington
10 concealed pistol license within the preceding two years and has not
11 become ineligible for a concealed pistol license in the interim.
12 Before the firearm may be returned, the person must pay the past due
13 renewal fee and the current renewal fee;

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

16 (c) In the possession of a person prohibited from possessing the
17 firearm under RCW 9.41.040 or 9.41.045;

1 (d) In the possession or under the control of a person at the time
2 the person committed or was arrested for committing a felony or
3 committing a nonfelony crime in which a firearm was used or displayed;

4 (e) In the possession of a person who is in any place in which a
5 concealed pistol license is required, and who is under the influence of
6 any drug or under the influence of intoxicating liquor, as defined in
7 chapter 46.61 RCW;

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

13 (g) In the possession of a person found to have been mentally
14 incompetent while in possession of a firearm when apprehended or who is
15 thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

16 (h) Used or displayed by a person in the violation of a proper
17 written order of a court of general jurisdiction; or

18 (i) Used in the commission of a felony or of a nonfelony crime in
19 which a firearm was used or displayed.

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.

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

36 (b) Except as provided in (c) of this subsection, of the
37 inventoried firearms a law enforcement agency shall destroy illegal
38 firearms, may retain a maximum of ten percent of legal forfeited
39 firearms for agency use, and shall either:

1 (i) Comply with the provisions for the auction of firearms in RCW
2 9.41.098 that were in effect immediately preceding May 7, 1993; or
3 (ii) Trade, auction, or arrange for the auction of, rifles and
4 shotguns. In addition, the law enforcement agency shall either trade,
5 auction, or arrange for the auction of, short firearms, or shall pay a
6 fee of twenty-five dollars to the state treasurer for every short
7 firearm neither auctioned nor traded, to a maximum of fifty thousand
8 dollars. The fees shall be accompanied by an inventory, under oath, of
9 every short firearm listed in the inventory required by (a) of this
10 subsection, that has been neither traded nor auctioned. The state
11 treasurer shall credit the fees to the firearms range account
12 established in RCW 77.12.720. All trades or auctions of firearms under
13 this subsection shall be to licensed dealers. Proceeds of any auction
14 less costs, including actual costs of storage and sale, shall be
15 forwarded to the firearms range account established in RCW 77.12.720.

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

21 (d) Firearms in the possession of the Washington state patrol on or
22 after May 7, 1993, that are judicially forfeited and no longer needed
23 for evidence, or forfeited due to a failure to make a claim under RCW
24 63.35.020, must be disposed of as follows: (i) Firearms illegal for
25 any person to possess must be destroyed; (ii) the Washington state
26 patrol may retain a maximum of ten percent of legal firearms for agency
27 use; and (iii) all other legal firearms (~~must~~) may be either
28 auctioned or traded to licensed dealers, or if the following criteria
29 are met, destroyed: (A) The firearm was offered for auction or trade
30 and the offer was not accepted; and (B) the firearm is unsafe or
31 inoperative. The Washington state patrol may retain any proceeds of an
32 auction or trade.

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

38 (4) A law enforcement officer of the state or of any county or
39 municipality may confiscate a firearm found to be in the possession of

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

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