
HOUSE BILL 2442

State of Washington 56th Legislature 2000 Regular Session

By Representatives O'Brien, Kagi, Constantine and Edmonds

Read first time 01/13/2000. Referred to Committee on Judiciary.

1 AN ACT Relating to confiscation and forfeiture of firearms of
2 persons arrested for certain alcohol-related offenses; and amending RCW
3 9.41.098.

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

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

7 (1) The superior courts and the courts of limited jurisdiction of
8 the state may order forfeiture of a firearm (~~(which)~~) that is proven to
9 be:

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

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

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

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

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

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

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

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

20 (i) Used in the commission of a felony or of a nonfelony crime in
21 which a firearm was used or displayed; or

22 (j) In the possession of a person arrested for violating RCW
23 46.61.502, 46.61.503, 46.61.504, 46.61.520(1)(a), or 46.61.522(1)(b).

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

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

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

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

5 (i) Comply with the provisions for the auction of firearms in RCW
6 9.41.098 that were in effect immediately preceding May 7, 1993; or

7 (ii) Trade, auction, or arrange for the auction of, rifles and
8 shotguns. In addition, the law enforcement agency shall either trade,
9 auction, or arrange for the auction of, short firearms, or shall pay a
10 fee of twenty-five dollars to the state treasurer for every short
11 firearm neither auctioned nor traded, to a maximum of fifty thousand
12 dollars. The fees shall be accompanied by an inventory, under oath, of
13 every short firearm listed in the inventory required by (a) of this
14 subsection, that has been neither traded nor auctioned. The state
15 treasurer shall credit the fees to the firearms range account
16 established in RCW ((77.12.720)) 79A.25.210. All trades or auctions of
17 firearms under this subsection shall be to licensed dealers. Proceeds
18 of any auction less costs, including actual costs of storage and sale,
19 shall be forwarded to the firearms range account established in RCW
20 ((77.12.720)) 79A.25.210.

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

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

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

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

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