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HOUSE BILL 1966

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State of Washington

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By Representatives Morton, Riley, Edmondson, Haugen, Basich, Mielke, Kremen, Brumsickle, Holland, Neher, Chandler, Sheldon, Rayburn, Lisk, Fuhrman, P. Johnson, Zellinsky, R. Johnson, Broback, D. Sommers, Ballard, Bowman, Ludwig, Tate and Brough.

Read first time February 15, 1991. Referred to Committee on Judiciary.

1 AN ACT Relating to authorizing law enforcement agencies to trade  
2 surplus firearms to licensed dealers in exchange for police equipment;  
3 and amending RCW 9.41.098.

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

5 **Sec. 1.** RCW 9.41.098 and 1989 c 222 s 8 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 is proven to be:

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

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

3 (c) Found in the possession or under the control of a person at the  
4 time the person committed or was arrested for committing a crime of  
5 violence or a crime in which a firearm was used or displayed or a  
6 felony violation of the uniform controlled substances act, chapter  
7 69.50 RCW;

8 (d) Found concealed on a person who is in any place in which a  
9 concealed pistol license is required, and who is under the influence of  
10 any drug or under the influence of intoxicating liquor, having 0.10  
11 grams or more of alcohol per two hundred ten liters of breath or 0.10  
12 percent or more by weight of alcohol in the person's blood, as shown by  
13 analysis of the person's breath, blood, or other bodily substance;

14 (e) Found in the possession of a person prohibited from possessing  
15 the firearm under RCW 9.41.040;

16 (f) Found in the possession of a person free on bail or personal  
17 recognizance pending trial, appeal, or sentencing for a crime of  
18 violence or a crime in which a firearm was used or displayed, except  
19 that violations of Title 77 RCW shall not result in forfeiture under  
20 this section;

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

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

27 (i) Known to have been used in the commission of a crime of  
28 violence or a crime in which a firearm was used or displayed or a  
29 felony violation of the uniformed controlled substances act, chapter  
30 69.50 RCW.

1 (2) Upon order of forfeiture, the court in its discretion shall  
2 order destruction of any firearm that is illegal for any person to  
3 possess. All firearms legal for citizen possession that are judicially  
4 forfeited or forfeited due to failure to make a claim under RCW  
5 63.32.010, 63.40.010, or 63.35.020 shall be either submitted for  
6 auction to commercial sellers once a year or traded to a licensed  
7 dealer in exchange for other police firearms or equipment, if the  
8 (~~submitting~~) law enforcement agency has accumulated at least ten  
9 firearms authorized for sale.

10 (a) Law enforcement agencies may conduct joint auctions for the  
11 purpose of maximizing efficiency. A maximum of ten percent of such  
12 firearms may be retained for use by local law enforcement agencies and  
13 the Washington state patrol. Before submission for auction, a court  
14 may temporarily retain forfeited firearms if needed for evidence. The  
15 proceeds from any sale shall be divided as follows: The local  
16 jurisdiction and the Washington state patrol shall retain its costs,  
17 including actual costs of storage and sale, and shall forward the  
18 remainder to the state department of wildlife for use in its firearms  
19 training program pursuant to RCW 77.32.155.

20 (b) Law enforcement agencies that choose to trade forfeited  
21 firearms that are legal to possess may exchange those firearms for  
22 departmental service weapons, other firearms, or police equipment used  
23 for law enforcement purposes. When forfeited firearms are exchanged  
24 for equipment, the agency shall retain all of the proceeds.

25 (c) If a firearm is delivered to a law enforcement agency and the  
26 agency no longer requires use of the firearm, the agency shall dispose  
27 of the firearm by either auction or trade as provided by this  
28 subsection. The public auctioning agency and licensed dealer shall, as  
29 a minimum, maintain a record of all forfeited firearms by manufacturer,  
30 model, caliber, serial number, date and circumstances of forfeiture,

1 and final disposition. The records shall be open to public inspection  
2 and copying.

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

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