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HOUSE BILL 1978

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Sheahan, Mitchell and O'Brien; by request of Washington State Patrol

Read first time 02/17/97. Referred to Committee on Law & Justice.

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 destroyed, at the discretion  
29 of the chief of the Washington state patrol. The Washington state  
30 patrol may retain any proceeds of an auction or trade.

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

36 (4) A law enforcement officer of the state or of any county or  
37 municipality may confiscate a firearm found to be in the possession of  
38 a person under circumstances specified in subsection (1) of this  
39 section. After confiscation, the firearm shall not be surrendered

1 except: (a) To the prosecuting attorney for use in subsequent legal  
2 proceedings; (b) for disposition according to an order of a court  
3 having jurisdiction as provided in subsection (1) of this section; or  
4 (c) to the owner if the proceedings are dismissed or as directed in  
5 subsection (3) of this section.

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