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HOUSE BILL 1193

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State of Washington

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By Representatives Anderson, Sommers, Thibaudeau, Rust, J. Kohl, G. Cole, Appelwick, Leonard, Karahalios, Johanson, Shin, Roland, L. Johnson, Wang, Locke and Finkbeiner

Read first time 01/20/93. Referred to Committee on Judiciary.

1 AN ACT Relating to disposal of forfeited firearms; and amending RCW  
2 9.41.098.

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

4 **Sec. 1.** RCW 9.41.098 and 1989 c 222 s 8 are each amended to read  
5 as follows:

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

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

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

17 (c) Found in the possession or under the control of a person at the  
18 time the person committed or was arrested for committing a crime of  
19 violence or a crime in which a firearm was used or displayed or a

1 felony violation of the uniform controlled substances act, chapter  
2 69.50 RCW;

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

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

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

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

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

22 (i) Known to have been used in the commission of a crime of  
23 violence or a crime in which a firearm was used or displayed or a  
24 felony violation of the uniformed controlled substances act, chapter  
25 69.50 RCW.

26 (2) Upon order of forfeiture, the court in its discretion shall  
27 order destruction of ~~((any))~~ the firearm ~~((that is illegal for any  
28 person to possess))~~ unless the local government has provided by  
29 ordinance for auction as follows. All firearms legal for citizen  
30 possession that are judicially forfeited or forfeited due to failure to  
31 make a claim under RCW 63.32.010, 63.40.010, or 63.35.020 ~~((shall))~~ may  
32 be submitted for auction to commercial sellers once a year if the  
33 submitting agency has accumulated at least ten firearms authorized for  
34 sale. Law enforcement agencies may conduct joint auctions for the  
35 purpose of maximizing efficiency. A maximum of ten percent of such  
36 firearms may be retained for use by local law enforcement agencies and  
37 the Washington state patrol. Before submission for destruction or  
38 auction, a court may temporarily retain forfeited firearms if needed  
39 for evidence. The proceeds from any sale shall be divided as follows:

1 The local jurisdiction and the Washington state patrol shall retain its  
2 costs, including actual costs of storage and sale, and shall forward  
3 the remainder to the state department of wildlife for use in its  
4 firearms training program pursuant to RCW 77.32.155.

5 If a firearm is delivered to a law enforcement agency and the  
6 agency no longer requires use of the firearm, the agency shall dispose  
7 of the firearm (~~((by auction))~~) as provided by this subsection. The  
8 (~~((public auctioning))~~) law enforcement agency shall, as a minimum,  
9 maintain a record of all forfeited firearms by manufacturer, model,  
10 caliber, serial number, date and circumstances of forfeiture, and final  
11 disposition. The records shall be open to public inspection and  
12 copying.

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

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

27 (5) This section shall apply to all forfeited firearms in the  
28 possession of a law enforcement agency, regardless of when the firearms  
29 came into the possession of the law enforcement agency.

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