

SHB 1010 - S COMM AMD

By Committee on Law & Justice

1 Strike everything after the enacting clause and insert the  
2 following:

3 **"Sec. 1.** RCW 9.41.098 and 2016 1st sp.s. c 29 s 281 are each  
4 amended to read 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  
9 absolute defense to forfeiture if the person possessed a valid  
10 Washington concealed pistol license within the preceding two years  
11 and has not become ineligible for a concealed pistol license in the  
12 interim. Before the firearm may be returned, the person must pay the  
13 past due 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;

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

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

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

31 (g) In the possession of a person found to have been mentally  
32 incompetent while in possession of a firearm when apprehended or who

1 is thereafter committed pursuant to chapter 10.77 RCW or committed  
2 for mental health treatment under chapter 71.05 RCW;

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

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

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

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

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

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

27 (i) Comply with the provisions for the auction of firearms in  
28 (~~RCW 9.41.098~~) this section that were in effect immediately  
29 preceding May 7, 1993; or

30 (ii) Trade, auction, or arrange for the auction of, rifles and  
31 shotguns. In addition, the law enforcement agency shall either trade,  
32 auction, or arrange for the auction of, short firearms, or shall pay  
33 a fee of twenty-five dollars to the state treasurer for every short  
34 firearm neither auctioned nor traded, to a maximum of fifty thousand  
35 dollars. The fees shall be accompanied by an inventory, under oath,  
36 of every short firearm listed in the inventory required by (a) of  
37 this subsection, that has been neither traded nor auctioned. The  
38 state treasurer shall credit the fees to the firearms range account  
39 established in RCW 79A.25.210. All trades or auctions of firearms  
40 under this subsection shall be to licensed dealers. Proceeds of any

1 auction less costs, including actual costs of storage and sale, shall  
2 be forwarded to the firearms range account established in RCW  
3 79A.25.210.

4 (c) Antique firearms and firearms recognized as curios, relics,  
5 and firearms of particular historical significance by the United  
6 States treasury department bureau of alcohol, tobacco, firearms, and  
7 explosives are exempt from destruction and shall be disposed of by  
8 auction or trade to licensed dealers.

9 (d) Firearms in the possession of the Washington state patrol  
10 (~~on or after May 7, 1993,~~) that are judicially forfeited and no  
11 longer needed for evidence, or forfeited due to a failure to make a  
12 claim under RCW 63.35.020, must be disposed of as follows: (i)  
13 Firearms illegal for any person to possess must be destroyed; (ii)  
14 the Washington state patrol may retain a maximum of ten percent of  
15 legal firearms for agency use; and (iii) all other legal firearms  
16 must be auctioned or traded to licensed dealers or destroyed. The  
17 Washington state patrol may retain any proceeds of an auction or  
18 trade. Not later than six months after the effective date of this  
19 section, the Washington state patrol shall develop and have in place  
20 policies addressing the criteria for determining when forfeited  
21 firearms should be destroyed.

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

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

37 NEW SECTION. Sec. 2. A new section is added to chapter 43.43  
38 RCW to read as follows:

1       Beginning November 1, 2021, and each year thereafter, the  
2 Washington state patrol shall submit to the governor and the  
3 appropriate committees of the legislature a report detailing the  
4 number of firearms forfeited to the agency, the method of disposition  
5 pursuant to RCW 9.41.098 and agency policy, and the cost and proceeds  
6 of the disposition."

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7       On page 1, line 2 of the title, after "patrol;" strike the  
8 remainder of the title and insert "amending RCW 9.41.098; and adding  
9 a new section to chapter 43.43 RCW."

EFFECT: Requires the WSP to submit an annual report to the  
Governor and the Legislature detailing the number of forfeited  
firearms, the method of disposition, and the cost and proceeds of the  
disposition.

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