
HOUSE BILL 1671

State of Washington

66th Legislature

2019 Regular Session

By Representatives Dolan, Klippert, Irwin, Lovick, Appleton, Ortiz-Self, Sells, Chapman, Cody, Doglio, and Macri

Read first time 01/28/19. Referred to Committee on Civil Rights & Judiciary.

1 AN ACT Relating to court orders governing holding and disposition
2 of confiscated firearms by law enforcement agencies; 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 2016 sp.s. c 29 s 281 are each amended
6 to read 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
11 absolute defense to forfeiture if the person possessed a valid
12 Washington concealed pistol license within the preceding two years
13 and has not become ineligible for a concealed pistol license in the
14 interim. Before the firearm may be returned, the person must pay the
15 past due renewal fee and the current renewal fee;

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

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

20 (d) In the possession or under the control of a person at the
21 time the person committed or was arrested for committing a felony or

1 committing a nonfelony crime in which a firearm was used or
2 displayed;

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

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

12 (g) In the possession of a person found to have been mentally
13 incompetent while in possession of a firearm when apprehended or who
14 is thereafter committed pursuant to chapter 10.77 RCW or committed
15 for mental health treatment under chapter 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
21 order destruction of any forfeited firearm. A court may temporarily
22 retain 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
26 RCW 63.32.010 or 63.40.010; may be disposed of in any manner
27 determined by the local legislative authority. Any proceeds of an
28 auction or trade may be retained by the legislative authority. This
29 subsection (2)(a) applies only to firearms that come into the
30 possession of the law 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
35 to 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
2 ((RCW 9.41.098)) this section that were in effect immediately
3 preceding May 7, 1993; or

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

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

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

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

38 (4) A law enforcement officer of the state or of any county or
39 municipality may confiscate a firearm found to be in the possession
40 of a person under circumstances specified in subsection (1) of this

1 section. After confiscation, the firearm shall not be surrendered
2 except: (a) To the prosecuting attorney for use in subsequent legal
3 proceedings; (b) for disposition according to an order of a court
4 having jurisdiction as provided in subsection (1) of this section; or
5 (c) to the owner if the proceedings are dismissed or as directed in
6 subsection (3) of this section. A court shall not order a confiscated
7 firearm to be held by a law enforcement agency beyond the conclusion
8 of proceedings in which the firearm is needed for evidentiary
9 purposes. Once related proceedings are concluded and the firearm is
10 no longer needed for evidentiary purposes, a law enforcement agency
11 shall dispose of the firearm in accordance with standards provided in
12 RCW 9.41.345, 63.32.010, and 63.40.010.

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