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**SUBSTITUTE HOUSE BILL 2021**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** House Civil Rights & Judiciary (originally sponsored by Representatives Senn, Walen, Berry, Fitzgibbon, Ryu, Duerr, Ramel, Reed, Ormsby, Peterson, Callan, Macri, Gregerson, Farivar, Alvarado, Lekanoff, Doglio, Riccelli, Reeves, Wylie, Santos, Hackney, and Pollet)

READ FIRST TIME 01/23/24.

1 AN ACT Relating to the disposition of privately owned firearms in  
2 the custody of state or local government entities or law enforcement  
3 agencies; 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 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 or to museums or historical  
23 societies. For the purposes of this subsection (2)(c), "museum or  
24 historical society" means the same as in RCW 63.26.010 and is  
25 designated as a nonprofit organization under section 501(c)(3) of the  
26 internal revenue code.

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

37 (e)(i) Any firearms in the possession of a state or local  
38 government entity or law enforcement agency that are obtained through  
39 a firearm buy-back program conducted by the entity or agency must be  
40 destroyed except as provided in (e)(ii) or (c) of this subsection.

1 (ii) A state or local government entity or law enforcement agency  
2 conducting a firearm buy-back program may establish procedures for:  
3 Returning relinquished firearms that are determined to be stolen to  
4 the rightful owners of the firearms; and determining whether any  
5 relinquished firearms have been used in the commission of a crime and  
6 retaining and storing such firearms until no longer needed for law  
7 enforcement investigation or evidence purposes.

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

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

23 (5) For purposes of this section, "destroy" means the melting or  
24 shredding of all parts of a firearm that were attached to the firearm  
25 at the time the firearm came into the possession of the state or  
26 local government entity or law enforcement agency, including, but not  
27 limited to, the frame or receiver, barrel, bolt, and grip, as  
28 applicable, and any accessories or attachments including, but not  
29 limited to, any sight, scope, silencer, or suppressor, as applicable.

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