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**HOUSE BILL 1134**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Representatives Berry and Senn

Prefiled 01/08/21.

1 AN ACT Relating to the disposition of forfeited firearms by the  
2 Washington state patrol; and amending RCW 9.41.098.

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

4 **Sec. 1.** RCW 9.41.098 and 2016 1st sp.s. c 29 s 281 are each  
5 amended to read 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  
10 absolute defense to forfeiture if the person possessed a valid  
11 Washington concealed pistol license within the preceding two years  
12 and has not become ineligible for a concealed pistol license in the  
13 interim. Before the firearm may be returned, the person must pay the  
14 past due 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) In the possession of a person prohibited from possessing the  
18 firearm under RCW 9.41.040 or 9.41.045;

19 (d) In the possession or under the control of a person at the  
20 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~~) 10 percent of legal  
39 forfeited 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~~)) \$25 to the state treasurer for every  
8 short firearm neither auctioned nor traded, to a maximum of ((~~fifty~~  
9 ~~thousand dollars~~)) \$50,000. The fees shall be accompanied by an  
10 inventory, under oath, of every short firearm listed in the inventory  
11 required by (a) of this subsection, that has been neither traded nor  
12 auctioned. The state treasurer shall credit the fees to the firearms  
13 range account established in RCW 79A.25.210. All trades or auctions  
14 of firearms under this subsection shall be to licensed dealers.  
15 Proceeds of any auction less costs, including actual costs of storage  
16 and sale, shall be forwarded to the firearms range account  
17 established in RCW 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  
24 ((~~on or after May 7, 1993,~~)) that are judicially forfeited and no  
25 longer needed for evidence, or forfeited due to a failure to make a  
26 claim under RCW 63.35.020, must be disposed of as follows: (i)  
27 Firearms illegal for any person to possess must be destroyed; (ii)  
28 the Washington state patrol may retain a maximum of ((~~ten~~)) 10  
29 percent of legal firearms for agency use; and (iii) all other legal  
30 firearms must be auctioned or traded to licensed dealers or  
31 destroyed. The Washington state patrol may retain any proceeds of an  
32 auction or trade. Not later than six months after the effective date  
33 of this section, the Washington state patrol shall develop and have  
34 in place policies addressing the criteria for determining when  
35 forfeited firearms should be destroyed.

36 (3) The court shall order the firearm returned to the owner upon  
37 a showing that there is no probable cause to believe a violation of  
38 subsection (1) of this section existed or the firearm was stolen from  
39 the owner or the owner neither had knowledge of nor consented to the

1 act or omission involving the firearm which resulted in its  
2 forfeiture.

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

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