

# FINAL BILL REPORT

## SSB 5405

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Synopsis as Enacted

**Brief Description:** Providing procedures for judicial orders concerning distraint of personal property.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Carrell, Kline and McCaslin).

**Senate Committee on Judiciary**

**House Committee on Judiciary**

**Background:** Replevin is a personal action taken to recover possession of goods unlawfully taken. In a replevin action, a judge has the authority to issue an order awarding possession of the property being contested to the plaintiff and directing the sheriff to put the plaintiff in possession of the property. The order also contains a notice to the defendant that, if deemed necessary, the sheriff is directed to break and enter a building or enclosure to obtain possession of the property if it is concealed in the building or enclosure.

A party, in whose favor a judgment of a court has been rendered, may have an execution, garnishment, or other legal process issued for the collection or enforcement of the judgment at any time within 10 years from entry of the judgment or the filing of the judgment in Washington state. When any judgment of a court of this state requires the payment of money or the delivery of real or personal property, it may be enforced by execution. All property, real and personal, of the judgment debtor, that is not exempted by law, is liable to execution. The writ of execution must be issued in the name of the state of Washington, and among other things, be directed to the sheriff of the county in which the property is situated. When the writ of execution is against the property of the judgment debtor, the sheriff will set the date of sale and serve notice of this on the debtor.

There is concern that the statutes governing execution of judgments do not contain language similar to the replevin statutes directing the sheriff, if deemed necessary, to break and enter a building or enclosure to obtain possession of the property. In one example, an attorney had an order which allowed the sheriff to break and enter in the same manner as a replevin. A lawsuit ensued in federal court in Seattle and Judge Dwyer ruled against King County, finding that there is no statutory authority for a judge to order a break and enter in the statutes governing the execution of judgments.

**Summary:** The sheriff, to whom a writ of execution is directed and delivered, has discretion to execute the writ without delay. If the property at issue is personal property that is concealed in a building or enclosure, the sheriff has the authority to publicly demand delivery of the property. If the property is not relinquished and if the order of execution states, the sheriff has the authority to cause the building or enclosure to be broken open and to take possession of the property.

**Votes on Final Passage:**

Senate	47	0
House	95	2

**Effective:** July 22, 2007