

SENATE BILL REPORT

SB 5479

As of February 15, 2013

Title: An act relating to establishing a process for voluntary temporary safekeeping of firearms with law enforcement agencies.

Brief Description: Establishing a process for voluntary temporary safekeeping of firearms with law enforcement agencies.

Sponsors: Senators Keiser, Kohl-Welles, Darneille, Nelson and Kline.

Brief History:

Committee Activity: Law & Justice: 2/15/13.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: Washington does not have a statutory provision authorizing law enforcement to receive firearms for voluntary safekeeping.

The court may order forfeiture of firearms:

- found concealed on a person not authorized to carry a concealed pistol;
- commercially sold to any person without an application;
- in the possession of a person prohibited from possessing the firearm;
- in the possession or under the control of a person at the time the person committed or was arrested for committing a felony or committing a nonfelony crime in which a firearm was used or displayed;
- in the possession of a person who is in any place in which a concealed pistol license is required, and who is under the influence of any drug or under the influence of intoxicating liquor;
- in the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a felony or for a nonfelony crime in which a firearm was used or displayed;
- in the possession of a person found to have been mentally incompetent while in possession of a firearm when apprehended or who is thereafter committed;
- used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or

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- used in the commission of a felony or of a nonfelony crime in which the firearm was used or displayed.

Upon order of forfeiture, the court in its discretion may order destruction of any forfeited firearm.

A court may temporarily retain forfeited firearms needed for evidence. Firearms judicially forfeited and no longer needed for evidence or forfeited due to a failure to make a claim may be disposed of in any manner determined by the local legislative authority. Any proceeds of an auction or trade may be retained by the legislative authority.

Summary of Bill: A chief of police or a sheriff may receive and take into custody, for the purposes of temporary safekeeping, any firearm:

- of a person who voluntarily requests to surrender a firearm, if the person appears in person to surrender the firearm and provides written attestation of the voluntary surrender; or
- of a person whose family member, friend, or mental health professional appears in person and provides written attestation, that the owner of the firearm voluntarily surrenders the firearm for temporary safekeeping.

The family member, friend, or mental health professional must sign under penalty of perjury that the owner of the firearm has voluntarily surrendered the firearm. A person who knowingly makes a false statement regarding the voluntariness of the firearm surrender is guilty of false swearing. The law enforcement agency may inquire into and require the provision of identifying information regarding the owner of the firearm before taking the firearm into custody.

The surrendered firearm may be held by the law enforcement agency for a period of up to and including 30 days. The law enforcement agency must provide notice to any person surrendering their firearm that the firearm may be held for up to 30 days, after which a person must retrieve the firearm or make a new attestation of surrender for temporary safekeeping. It is in the discretion of the law enforcement agency whether and when to return a firearm surrendered sooner than 30 days.

A firearm may only be reclaimed by the legal owner of the firearm. Any firearm not claimed within 60 days after the completion of the last 30-day safekeeping period may be disposed of in accordance with agency policy for disposition of firearms.

Before returning any voluntarily surrendered firearm, the chief of police or the sheriff must conduct a criminal history background check in accordance with agency policy regarding return and transfer of firearms, to determine whether the applicant is ineligible to possess a firearm, or is prohibited from possessing a firearm under federal law. The chief of police or the sheriff has the authority to collect a nonrefundable fee of up to \$50 for the background check, which must be paid upon return of the firearm. The firearm must not be returned to anyone who is found to be prohibited from possessing a firearm under state or federal law.

The chief of police, the sheriff, their employees, or units of local government and its employees, are immune from civil liability for damages for any discretionary decision to take or refuse to take into custody any firearm, or to return or refuse to return any firearm.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Law enforcement agencies are reluctant to take firearms for safekeeping without very clear authority to do so. This bill ties up the loose ends and helps provide law enforcement with the clear authority and the protections they need. Problems can sometimes be avoided if people, who realize that they are having a mental health episode, have the safe option of voluntarily and temporarily storing their firearms with a law enforcement agency.

Persons Testifying: PRO: Senator Keizer, prime sponsor; George Delgado, Des Moines Police Department.