

# HOUSE BILL REPORT

## HB 1731

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to creating a protocol for the return of firearms in the possession of law enforcement agencies.

**Brief Description:** Creating a protocol for the return of firearms in the possession of law enforcement agencies.

**Sponsors:** Representatives Ormsby, Riccelli, Walkinshaw, Fitzgibbon and Jinkins.

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 2/10/15, 2/19/15 [DPS].

#### **Brief Summary of Substitute Bill**

- Requires law enforcement agencies to establish a protocol for notifying family or household members when a privately owned firearm is being returned to a person and to comply with certain requirements before returning the firearm.
- Prohibits public disclosure of notification information and provides public agencies, officials, and employees with limited immunity for damages based on the release of, or failure to release, information related to the notification system.
- Provides that a person who knowingly makes a request for notification based on false information is guilty of a gross misdemeanor.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

**Staff:** Edie Adams (786-7180).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:**

Law enforcement agencies may obtain possession of privately owned firearms in accordance with laws authorizing firearms seizure or requiring the surrender of firearms. There are various statutes authorizing seizure and forfeiture of property, including firearms, due to the property's connection with criminal activity. In addition, there are statutes that specifically authorize the forfeiture or surrender of firearms in certain cases.

The firearm forfeiture statute allows law enforcement officers to seize, and courts to order forfeiture, of firearms under a number of circumstances, including if the firearm is proven to be: concealed on a person without a concealed pistol license or found in the possession of a person prohibited from possessing firearms; in the possession of a person at the time of the commission of or arrest for a felony, or while criminal charges are pending; in the possession of a person who was mentally incompetent when apprehended; or used in the commission of certain crimes. Firearms seized under this statute must be returned if the court finds there is no probable cause to believe a violation occurred or if the criminal proceedings are dismissed.

Under the firearm surrender statute, a person who is subject to a protection order, no-contact order, or restraining order may be required to surrender his or her firearms or dangerous weapons while the order is in place. If the person to be restrained has used or threatened to use a firearm in the commission of a felony, or is otherwise disqualified from having a firearm, the court either may or must require the person to surrender his or her firearms, dangerous weapons, and concealed pistol license, depending on the evidence presented. In addition, the court must order surrender of firearms where the order is issued after notice and an opportunity to be heard and meets certain other factors, including that the order finds that the restrained person is a credible threat to the physical safety of an intimate partner or the child of an intimate partner or the person and, by its terms, restrains the person from using or threatening physical force against an intimate partner or child.

A person may surrender his or her firearm to the local law enforcement agency, the restrained persons' counsel, or another person designated by the court. Law enforcement agencies are required to have policies and procedures regarding acceptance, storage, and return of firearms and weapons required to be surrendered.

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**Summary of Substitute Bill:**

Law enforcement agencies must establish a notification protocol to allow a family or household member to use an incident or case number to request notification before the return of a privately owned firearm to the person from whom it was obtained or to that person's representative. The notification may be made by telephone, electronic mail, text message, or other method that provides notification without delay. The agency may provide one notification if it is returning more than one firearm to the person. A law enforcement agency must not release the notification information to any party other than a family or household member who has an incident or case number and who has requested notification.

Notification information is not subject to public disclosure under the Public Records Act.

A law enforcement agency must take a number of steps before returning a privately owned firearm. The law enforcement agency must confirm that the firearm is being returned to the person from whom it was obtained, or the person's authorized representative, and that the person is eligible to possess a firearm. The law enforcement agency must provide notification within one business day to a family or household member who has requested notification prior to the return of the firearm. The law enforcement agency may not return the firearm until 72 hours have elapsed from the time the notification to a family member has been provided. If no request for notification was made, the law enforcement agency must not return the firearm until 24 hours have elapsed since the agency obtained the firearm. Once all notification and other requirements are met, the law enforcement agency must release the firearm as soon as is practicable.

Public agencies, officials, and employees are immune from civil liability for damages based on the release of, or failure to release, information related to the notification system as long as the release or failure to release was without gross negligence.

A person who knowingly makes a request for notification based on false information may be liable for the gross misdemeanor crime of Making a False or Misleading Statement to a Public Servant.

**Substitute Bill Compared to Original Bill:**

Notification to a family or household member must be made within one business day, and the law enforcement agency must ensure that 72 hours have elapsed from the time notification was provided (rather than received) before returning the firearm. The wait period where no notification was requested is changed to 24 hours from the time the firearm was obtained, and a law enforcement agency must release the firearm as soon as practicable once notification and other requirements are met. Notification information is not subject to public disclosure and may only be released to the family or household member requesting notification. Public agency immunity is limited to damages based on the release of, or failure to release, information related to the notification system. Criminal liability is established for a person who knowingly makes a request for notification based on false information.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This legislation is named the Sheena Henderson Act because it responds to a tragedy that resulted in our community. The incident involved a situation where law enforcement had to return a firearm to a person who had threatened suicide, and then that

person murdered his wife and killed himself. If the wife had received notification the firearm was being returned, she could have taken steps to protect herself. Law enforcement officers who go into suicide or domestic violence situations have no authority to retain a firearm once the situation is alleviated. A family notification process will provide better public safety for our communities and the individuals directly impacted by these incidents.

We support the concept behind the bill but have concerns with some of the provisions. The automated system is a concern. In addition, the wait period should run from when the notification is sent, rather than when it is received.

(With concerns) The basic concept behind the bill is fine but there are concerns with the details. The concerns relate to due process and confidentiality issues. Requiring a 72-hour waiting period when no notification has been requested does not make sense because the agency has already determined that the firearm can be returned. The bill allows broader release of the information than to just family members, and that is not what this bill is about. Confidentiality provisions should be added.

(Opposed) The 72-hour delay is arbitrary. It is unconstitutional to hold a person's property without justification for such a long period of time. These records will be open to the public and could be used by anti-gun groups to publish lawful gun owners' addresses. Notification should not be given to the general public. The notification system should not be automated because that will make it vulnerable to mistake or hacking.

**Persons Testifying:** (In support) Representative Ormsby, prime sponsor; Gary Kennison; Kristen Otoupalik; and Mitch Barker, Washington Association of Sheriffs and Police Chiefs.

(With concerns) Brian Judy, National Rifle Association.

(Opposed) Kerry Hooks, Liberty Watch of Washington; and William E. Burris, Gun Owners Action League.

**Persons Signed In To Testify But Not Testifying:** None.