

HOUSE BILL REPORT

SSB 5381

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: Senate Committee on Law & Justice (originally sponsored by Senators Billig, Frockt, Pedersen, Kohl-Welles, Rolfes, Liias, Nelson, Fraser, Cleveland, McCoy and McAuliffe).

Brief History:

Committee Activity:

Judiciary: 3/17/15, 3/26/15 [DPA].

Brief Summary of Substitute Bill (As Amended by Committee)

- 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 information provided by a family or household member who makes a request for notification of the return of a firearm.
- 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.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 12 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Stokesbary and Walkinshaw.

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.

Minority Report: Do not pass. Signed by 1 member: Representative Shea, Assistant Ranking Minority Member.

Staff: Edie Adams (786-7180).

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.

Summary of Amended 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 provide notification to any party other than a family or household member who has an incident or case number and who has requested notification or to another criminal justice agency. The information provided by a family or household member who has requested notification, including the existence of a request for notification, 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; confirm that the person is eligible to possess a firearm; ensure that the firearm is not otherwise required to be held in custody or otherwise prohibited from being released; and ensure that 24 hours have elapsed from the time the firearm was obtained. If a firearm must be held in custody or is otherwise prohibited from being released, the law enforcement agency must provide written notice to the person requesting return of the firearm stating the reason for the hold within five business days of the request.

If a family or household member has requested to be notified of the return of a firearm, the law enforcement agency must provide the notification within one business day of verifying that all other requirements for return of the firearm are met and must hold the firearm in custody for 72 hours from the time notification is provided. Once all notification and other requirements for return of the firearm are met, the law enforcement agency must release the firearm without unnecessary delay to the individual from whom it was obtained or that person's authorized representative.

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.

Amended Bill Compared to Substitute Bill:

Additional requirements for the release of notification information and return of a firearm are added. A law enforcement agency is allowed to provide notification information to other criminal justice agencies. The information that is not subject to disclosure is the information provided by the family or household member, including the existence of a request for notification. Before returning a firearm, the law enforcement agency must also ensure that the firearm is not otherwise required to be held in custody or otherwise prohibited from being released, and if the firearm must be held, the law enforcement agency must send a written notification of the reason for the hold to the person from whom the firearm was obtained. The notification to a family member must occur within one business day of verifying that all other requirements for return of the firearm have been met. Once all requirements for return of the firearm are met, the law enforcement agency must return the firearm without unnecessary delay.

Appropriation: None.

Fiscal Note: Available on original bill.

Effective Date of Amended 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 results from a tragic event in Spokane, but there is a statewide need to address the process for return of a firearm, especially after a diffused suicide situation. If the family in the Spokane tragedy had known the firearm was being returned, they could have made a safety plan. The legislation is not about holding the firearm, it is about notifying family members so they can protect themselves. This tragic incident has had devastating impacts not just on a family, but also on friends, coworkers, and the community. This tragedy could have been prevented if the family had been told the firearm was being returned. Many stakeholders have worked hard on the legislation to create a process that will help make communities safer and give peace of mind to families who are going through crisis situations. This is common sense legislation that will save lives without impeding gun rights. It serves a public good while protecting everyone's rights. It is appropriate that this information is exempt from public disclosure. There were concerns with the original confidentiality language which would have made it problematic to have the information disclosed into evidence if an untoward event were to happen.

(In support with amendment(s)) We support the concept and intent behind this legislation. There have been extensive negotiations to make sure the language is airtight so that we can avoid this type of situation in the future but still protect people's Second Amendment rights. We are still working on the language of the legislation but are hopeful that an agreement will be nailed down soon.

(Opposed) None.

Persons Testifying: (In support) Senator Billig, prime sponsor; Gary Kennison; Kristen Otopalik; Susan Cary; and Rowland Thompson, Allied Daily Newspapers.

(In support with amendment(s)) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.