

# SENATE BILL REPORT

## SB 5381

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As of February 10, 2015

**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:** Senators Billig, Frockt, Pedersen, Kohl-Welles, Rolfes, Liias, Nelson, Fraser, Cleveland, McCoy and McAuliffe.

**Brief History:**

**Committee Activity:** Law & Justice: 2/09/15.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Staff:** Aldo Melchiori (786-7439)

**Background:** Superior courts and courts of limited jurisdiction can order forfeiture of a pistol found concealed on a person not authorized to carry a concealed pistol. The weapon may be returned if the person possessed a valid concealed pistol license (CPL) within the preceding two years and has not become ineligible for a CPL in the interim.

Other circumstances under which the court may order forfeiture of a firearm are when the firearm:

- was commercially sold to any person without an application;
- is in the possession of a person prohibited from possessing the firearm;
- is 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 non-felony crime in which a firearm was used or displayed;
- is in the possession of a person who is in any place in which a CPL is required, and who is under the influence of any drug or under the influence of intoxicating liquor;
- is in the possession of a person free on bail or personal recognizance pending trial, appeal, or sentencing for a felony or for a non-felony crime in which a firearm was used or displayed;
- is 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;

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- is used or displayed by a person in the violation of a proper written order of a court of general jurisdiction; or
- is used in the commission of a felony or of a non-felony crime in which a firearm was used or displayed.

The firearm may be returned to the owner if the court finds that there was no probable cause to believe that one of these circumstances existed or the firearm was stolen from the true owner or the owner had no knowledge of nor consented to the act that resulted in the forfeiture.

A law enforcement officer may confiscate a firearm found to be in the possession of a person under the same circumstances. After confiscation, the firearm must not be surrendered except to the prosecuting attorney for use in subsequent legal proceedings, for disposition according to an order of a court; or to the owner if the proceedings are dismissed.

**Summary of Bill:** Law enforcement agencies must develop notification protocols that allow family or household members to request notification before a firearm is returned to the person from whom it was obtained or to an authorized representative. Notification can be by telephone, email, text message, or other methods that avoid unnecessary delay. One notification can be given if the law enforcement agency is returning more than one firearm to the same individual. Public and government agencies, officials, and employees are immune from civil liability for the release or the failure to release information related to the notification system as long as the release was without gross negligence.

Before a law enforcement agency returns a privately owned firearm, the agency must:

- confirm that the firearm is returned to the person from whom it was obtained or to an authorized representative;
- confirm that the person to whom the firearm is returned is eligible to possess it;
- provide notice to family or household members who have requested notification of the firearm return; and
- ensure that 72 hours have elapsed since the person from whom the firearm was obtained requested its return or from the time notice was received by the person requesting notification.

**Appropriation:** None.

**Fiscal Note:** Available.

**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: There is a gap in time when a firearm can be released without notifying those who may fear for their safety. There is currently no avenue for law enforcement to notify family members when a firearm is going to be released by law enforcement. Family members need to be able to take appropriate actions to ensure their safety and protect themselves.

CON: The state should not be holding an individual's firearms without a criminal charge or a commitment. These notices should be exempt from the Public Records Act. Under current law, these firearms cannot be transferred to a personal representative without a background check. The state's mental health system has weaknesses.

OTHER: Creating an automated system similar to that used to notify other crime victims would be a better solution. The policy of this bill is good, but the details need work. The law enforcement agencies should not receive immunity for mistakes. The 72-hour notice period should start when the notice is given, not when it is received.

**Persons Testifying:** PRO: Senator Billig, prime sponsor; Gary Kennison, Kristen Otoupalik, citizens.

CON: Phil Watson, Citizens Committee for the Right to Keep and Bear Arms.

OTHER: James McMahan, WA Assn. of Sheriffs and Police Chiefs; Brian Judy, National Rifle Assn.; Phil Shave, WA Arms Collectors.