

# SENATE BILL REPORT

## SB 5143

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As Reported by Senate Committee On:  
Law & Justice, January 24, 2019

**Title:** An act relating to the authorized removal, safekeeping, and return of firearms and ammunition by law enforcement during and after domestic violence incidents.

**Brief Description:** Concerning the authorized removal, safe keeping, and return of firearms and ammunition by law enforcement during and after domestic violence incidents. **[Revised for 1st Substitute:** Concerning the authorized removal, safekeeping, and return of firearms and ammunition by law enforcement during and after domestic violence incidents.]

**Sponsors:** Senators Dhingra, Wellman, Das, Keiser, Palumbo, Darneille, Kuderer and Saldaña.

**Brief History:**

**Committee Activity:** Law & Justice: 1/21/19, 1/24/19 [DPS, DNP].

**Brief Summary of First Substitute Bill**

- Requires law enforcement to seize firearms or ammunition the officer has reasonable grounds to believe were used, or threatened to be used, in the commission of a domestic violence offense.
- Authorizes law enforcement to seize firearms or ammunition in plain sight, or discovered pursuant to a lawful search, when the officer has probable cause to believe a domestic violence crime was committed.
- Prohibits a firearm seized in connection with a domestic violence call from being returned to an owner unless five business days have elapsed since the firearm was obtained.

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**SENATE COMMITTEE ON LAW & JUSTICE**

**Majority Report:** That Substitute Senate Bill No. 5143 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

**Minority Report:** Do not pass.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

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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.*

**Staff:** Shani Bauer (786-7468)

**Background:** Generally, a law enforcement officer is authorized to confiscate a firearm that is in the possession, custody, or control of a person who committed or is in the process of committing a crime. Once confiscated, the firearm may only be surrendered to the prosecuting attorney for use in legal proceedings, for disposition if the court orders forfeiture of the firearm, or to the owner if the proceedings are dismissed or the court orders return of the firearm.

Each law enforcement agency is required to have a notification protocol that allows a family or household member to request notification when the agency returns a privately owned firearm to the individual from whom it was obtained. Prior to returning a privately owned firearm, the law enforcement agency must:

- confirm the identity of the owner of the firearm who is seeking to claim it;
- confirm the individual to whom the firearm will be returned is eligible to possess a firearm under Washington law;
- ensure the firearm is not otherwise required to be held in custody; and
- ensure that 24 hours have elapsed from the time the firearm was obtained by law enforcement.

If the firearm cannot be returned, the law enforcement agency must provide written notice to the requesting individual within five business days of the request and specify the reason the firearm must be held in custody. If a family member has requested notification of the return of a firearm, law enforcement must hold the firearm in custody for 72 hours from the time the notification has been provided.

**Summary of Bill (First Substitute):** When a law enforcement officer responds to a domestic violence call and has probable cause to believe that a crime has been committed, to the extent feasible and otherwise allowed by law, the officer must seize all firearms and ammunition the officer has reasonable grounds to believe were used, or threatened to be used, in the commission of the offense and may seize all firearms and ammunition in plain sight or discovered pursuant to a lawful search.

Before returning any firearm or ammunition to the owner or individual from whom the firearm or ammunition was obtained, law enforcement must follow protocols in law including those providing for notice to family members and verification of eligibility. A firearm seized in connection with a domestic violence call may only be returned after five business days have elapsed from the time the firearm was obtained.

Local governments are immune from civil liability for damages arising out of the seizure or failure to seize a firearm, unless it is shown the officer or agency acted with gross negligence or in bad faith.

The statute addressing law enforcement responsibilities when responding to a domestic violence complaint is divided into three statutes to separately address:

- law enforcement duties at the time of responding to the domestic violence situation;
- law enforcement training related to the handling of domestic violence situations; and
- reports and recordkeeping of domestic violence incidents.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):** A law enforcement officer responding to a domestic violence call who has probable cause to believe a crime has been committed, must seize any firearms used or threatened to be used in the commission of the offense to the extent feasible and otherwise allowed by law. Local governments are immune from civil liability for damages arising out of the seizure or failure to seize a firearm unless the officer or agency acted with gross negligence or in bad faith.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: More than half of all women murdered with guns were killed by intimate partners or family. When a gun is present, the risk of homicide increases by 500 percent. This bill would require law enforcement responding to a domestic violence call to remove firearms only when they have probable cause to believe that a crime has been committed. This bill is about protecting the community—especially those at a high risk of experiencing family related violence.

The combination of domestic violence and firearms is deadly and almost all domestic violence homicides involve a firearm. The most dangerous time for a victim is when trying to leave a relationship and immediately following arrest. The best thing we can do to protect the victim is to remove the guns from the home. It is imperative to give the victim time to process what has happened and file for a protective order.

The presence of guns also threatens the safety of law enforcement officers. This bill would protect law enforcement by allowing them to seize firearms on the front end rather than requiring them to return to the home at some future time to confiscate them.

CON: When police confiscate a gun it is not well taken care of and is likely to get damaged. This bill does not recognize that many of these circumstances involve substance abuse. We would be better off dedicating resources to getting people help. The goals of this legislation are well meaning, but the law can be abused due to the lack of due process. It is easy to obtain a restraining order which at least gives some degree of due process. If an officer believes a person to be dangerous and worthy of having their weapons removed, the officer should arrest the individual. Weapons in sight may actually include a firearm belonging to the victim. The officer may be seizing the victim's only means of self defense.

People who have the desire to do acts of violence will do so by any means necessary. If the situation is dangerous enough to consider stripping a person of their second amendment rights without due process, the situation is dire enough to arrest the individual.

**Persons Testifying:** PRO: Senator Manka Dhingra, Prime Sponsor; David Martin, King County Prosecuting Attorney Office; Ray Miller, citizen; Rory Graves, citizen; Dorothy Kim, Seattle Police Department; Sundae Delgado, citizen; Paula Barnes, citizen.

CON: Mike Silvers, Pink Pistols Seattle; Jonathan Conley, citizen; Ira Moser, citizen; Daniel Rybicki, citizen; Ed Snydsman, citizen; Natasha Gunia, citizen.

**Persons Signed In To Testify But Not Testifying:** PRO: Tamaso Johnson, Washington Coalition Against Domestic Violence; Tom DuHamel, citizen; Nyla Fritz, citizen; Sandy Brown, citizen; Catherine Person, citizen; Kathleen Grady, citizen; Penny Sweet, Mayor, City of Kirkland; Jaime Worthington, Alliance for Gun Responsibility.

CON: Sharyn Hinchcliffe, Pink Pistols Seattle; Bea Christophersen, citizen; Erik Firm, citizen; James Affeld, citizen; Mary Wilkes, citizen; Cole Ballard, citizen; Ernest Rodriguez, citizen; Donn Pratt, citizen; Aaron Cooper, citizen; Amelia Silverman, citizen; Jimmy Martin, citizen; David Reynolds, citizen; Simon McFarlane, citizen.

OTHER: James McMahan, Washington Association Sheriffs and Police Chiefs.