

# SENATE BILL REPORT

## SB 6402

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As Reported by Senate Committee On:  
Law & Justice, January 30, 2020

**Title:** An act relating to the use of a stolen firearm.

**Brief Description:** Concerning the use of a stolen firearm.

**Sponsors:** Senators Rivers, Padden, Wilson, L., Schoesler and Becker.

**Brief History:**

**Committee Activity:** Law & Justice: 1/20/20, 1/30/20 [DPS].

### Brief Summary of First Substitute Bill

- Creates a new crime for the unlawful use of a stolen firearm.
- Classifies the new crime as a class B felony ranked as a seriousness level VII.
- Exempts the new crime from firearm sentencing enhancements.
- Requires an element of knowledge that the firearm is stolen.
- Prohibits the defendant from being convicted of both unlawful use of a stolen firearm and also unlawful possession of a stolen firearm.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 6402 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

**Staff:** Tim Ford (786-7423)

**Background:** Unlawful Possession of a Stolen Firearm. Unlawful possession of a stolen firearm is a class B felony. A person is guilty of possessing a stolen firearm if they possess, carry, deliver, sell, or are in control of a stolen firearm. An element of the crime of possessing stolen property is the possessor must know the property is stolen.

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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.*

Sentencing for Felony Crimes. Most criminal felonies in Washington State are ranked. A ranked felony is a felony listed on a table which can be found in statutory law, and which assigns or ranks the felony a seriousness level. Crimes like aggravated murder are ranked with the highest seriousness level of XVI, while crimes like malicious mischief are ranked with the lowest seriousness level of I.

The felony ranking allows a court to determine a sentence range for confinement of the convicted offender as punishment. The sentence ranges are determined using a sentencing grid, which can also be found in statutory law, and applies the seriousness level on the vertical axis of the grid and the offender score on the horizontal axis of the grid. The offender score axis on the grid ranges from 0-9+, and each individual offender's score will depend on five factors:

- the number of prior convictions
- the relationship between prior offenses and the current offense
- other current convictions
- the offender's community custody status at the time the offense was committed, and
- the length of the offender's crime free behavior between offenses.

A seriousness level of XVI is subject to a life sentence without parole for offenders at or over the age of 18 and a sentence of 25 years to life for offenders under the age of 18. A seriousness level of I is subject to a sentence range of 0-60 days for an offender with no prior convictions.

Unlawful possession of a stolen firearm is ranked with a seriousness level of VII. Applied on the sentencing grid for an offender with the lowest offender score of zero will result in a sentencing range of 18-20 months of confinement.

Sentencing Enhancements. Additional times must be added to the standard sentence range if the offender was armed with a firearm. Firearm enhancements are applied for certain crimes specified in statutory law by class:

- five years enhancement for class A felonies;
- three years enhancement for class B felonies; or
- eighteen months for class C felonies.

Firearm enhancements must be doubled if the offender was previously sentenced for any deadly weapon enhancement. All firearm enhancements are mandatory, must be served in total confinement, and run consecutively to all other sentencing provisions.

Firearm enhancements do not apply to the following crimes:

- possession of a machine gun or bump-fire stock;
- possessing a stolen firearm;
- drive-by shooting, theft of a firearm;
- unlawful possession of a firearm in the first and second degree; and
- use of a machine gun or bump-fire stock in a felony.

**Summary of Bill (First Substitute):** The crime of unlawful use of a stolen firearm is created. It is unlawful for a person, in the commission or furtherance of a felony, to

discharge a stolen firearm or to menace or threaten another person with a stolen firearm. The new crime is a class B felony. It is a ranked crime with a seriousness level of VII. Firearm sentencing enhancements do not apply. A defendant may not be convicted of both unlawful use and also unlawful possession of a stolen firearm. An element of the crime requires that a person know the firearm is stolen.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):**

- Adds a knowledge element—a person must know a firearm is stolen to have committed the offense, and lack of knowledge is a defense to any charge.
- Exempts the new crime from firearm enhancement sentencing.
- Clarifies that for the same offense, a person cannot be convicted of both unlawful use of a stolen firearm, and unlawful possession of a stolen firearm.
- Ranks the crime as a seriousness level VII, which gives a sentence range of 18-20 months for an offender with an offender score of zero.
- Makes the offense a class B felony.

**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: This bill arose from a constituent in my district and their parents were brutally slain in Washington State by an individual with an illegal firearm. Legal gun owners are taking every step to keep their firearms safe. However, criminals will use illegal firearms in the commission of a crime. A Department of Justice survey of prison inmates found that about one in five state and federal prisoners reported that they had possessed or carried a firearm when they committed the offense for which they are imprisoned. Fewer than 1 in 50 had got their gun from a legal source. We need to do better.

Stolen firearms make up the vast majority of firearms used in violent acts and these bills give law enforcement and prosecutors vital tools to restrict the flow of illegal weapons into the hands of criminals. These bills do not criminalize petty offenses but focus on offenders who put people's lives at risk. As a gun owner I am responsible for using and storing my firearms in a safe manner. This bill would hold those who steal or use guns to commit violent acts responsible for their actions.

CON: I do not support any of these laws. I feel like we have plenty of laws on the books. If the prosecutors are not able to prosecute people for stealing items they are clearly allowing loopholes and lawyers to create problems for society. The Constitution and the laws on our side we should be allowed to defend ourselves at all costs.

**Persons Testifying:** PRO: Brian Keelean, Washington State Rifle and Pistol Association; Mike Badgley, citizen; Mario Reillo, citizen.

CON: Adam Davison, citizen; Nathan Mckey, citizen; Philip Shave, citizen.

**Persons Signed In To Testify But Not Testifying:** PRO: Sharyn Hinchcliffe, Pink Pistols Seattle/Tacoma; Daniel Mitchell, Sporting Systems; James Barrick, citizen; Christine Price, citizen; Curtis Bingham, WAGuns; James Barrick, WAGuns; Jerry Bentler, citizen; David Westhaver, citizen; Tony Payauys, citizen; Jane Milhans, citizen; Daniel Smallwood, citizen.

CON: Ira Moser, citizen; Van Byington, citizen.