

# HOUSE BILL REPORT

## SHB 1225

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### As Amended by the Senate

**Title:** An act relating to establishing policies and requirements regarding law enforcement response to domestic violence incidents to enhance the safety of domestic violence victims, families, and officers.

**Brief Description:** Establishing policies and requirements regarding law enforcement response to domestic violence incidents to enhance the safety of domestic violence victims, families, and officers.

**Sponsors:** House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Jinkins, Peterson, Thai, Morgan, Macri, Senn, Appleton, Frame, Kloba, Doglio, Pollet, Hudgins, Valdez, Lovick, Lekanoff, Walen, Bergquist, Stanford, Slatter, Tarleton, Wylie, Tharinger, Fey, Gregerson and Goodman).

#### **Brief History:**

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

Civil Rights & Judiciary: 1/22/19, 2/1/19 [DPS].

##### **Floor Activity:**

Passed House: 3/5/19, 60-38.

Senate Amended.

Passed Senate: 4/11/19, 27-20.

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

- Establishes requirements for law enforcement officers when responding to domestic violence calls, including standards for removal of firearms and ammunition upon probable cause to believe a crime was committed, and protocols for inquiring of the victim regarding the abuser's access to and past use of firearms.
- Provides that a firearm seized in connection with a domestic violence call may not be returned to the owner or person from whom it was obtained until five business days have elapsed since the firearm was obtained.
- Requires a court to consider all information in a domestic violence incident report regarding the defendant's possession of and access to firearms, and allows the court to include a firearm prohibition as a condition of release and order the defendant to surrender all firearms upon release.

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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.*

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## HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Goodman, Hansen, Kilduff, Kirby, Orwall, Valdez and Walen.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Dufault, Assistant Ranking Minority Member; Graham, Klippert, Shea and Ybarra.

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

### **Background:**

Laws governing domestic violence offenses establish a number of requirements for law enforcement officers when they respond to a domestic violence call. Generally, a law enforcement officer is required to arrest a person 18 years of age or older if the officer has probable cause to believe that the person has assaulted a family or household member within the four hours preceding arrest. The officer is required to arrest the person whom the officer believes is the primary physical aggressor.

A law enforcement officer responding to a domestic violence call must take a complete offense report, including the officer's disposition of the case, which gets forwarded to the appropriate prosecutor within 10 days after the report is made. Law enforcement agencies must make and maintain records of all incidents of domestic violence.

The officer must also advise victims of all reasonable means to prevent further abuse, including providing information about shelters or services in the community, and providing notice of the legal rights and remedies available. The notice must include a statement that notifies victims of the ability to file a criminal complaint and file a petition for a civil protection order to restrain the abuser from further acts of abuse and other relief.

Law enforcement officers are authorized by statute to confiscate firearms under a number of circumstances, including if the firearm was used or threatened to be used in the commission of an offense. Confiscated firearms may only be surrendered to the prosecutor for use as evidence 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.

Legislation enacted in 2015 established a process relating to the return of private firearms in the custody of a law enforcement agency. 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. A law enforcement agency may not return a private firearm until the agency determines the person is eligible to possess a firearm and at least 24 hours have elapsed from the time the firearm was obtained. If a family or household member has requested notification, the agency must hold the firearm in custody for 72 hours from the time the notification is provided.

### **Summary of Substitute Bill:**

A law enforcement officer who responds to a domestic violence incident and has probable cause to believe a crime was committed must remove all firearms and ammunition the officer has reasonable grounds to believe were used or threatened to be used in the commission of the offense. In addition, the law enforcement officer must request consent to remove all firearms to which the alleged abuser has access until a judicial officer has heard the matter.

The peace officer must inquire of the victim if there are firearms or ammunition in the home, if the alleged abuser has access to any other firearms located off-site, and whether the alleged abuser has a concealed pistol license. The officer's inquiry must also cover other circumstances involving a firearm, such as whether the alleged abuser has kept a firearm in plain sight in a coercive manner or has threatened use of a firearm in the past.

The peace officer must document all information about firearms and concealed pistol licenses in the incident report, which must be coded to indicate the presence of or access to firearms so that personal recognizance screeners, prosecutors, and judicial officers are able to address the heightened risk to victim, family, and peace officer safety due to the alleged abuser's access to firearms.

The notice of legal rights that a law enforcement officer must give to a victim of domestic violence must include information on the ability to seek an order requiring the abuser to surrender any firearms and concealed pistol license and prohibiting the abuser from possessing or accessing firearms or a concealed pistol license for the duration of the order.

A law enforcement agency that has custody of firearms or ammunition taken from the scene of a domestic violence incident must comply with state law procedures for the return of firearms, including providing a family or household member with notification if requested and conducting a background check before return of the firearms or ammunition. A firearm seized in connection with a domestic violence incident may not be returned sooner than five business days from the time the firearm was obtained. Public officials, employees, and agencies are not liable for damages arising out of the seizure of a firearm unless the official, employee, or agency acted with gross negligence or in bad faith.

Public agencies, officials, and employees, as well as local governmental units and their employees, are immune from civil liability for damages arising out of the seizure of a firearm unless it is shown the official, employee, or agency acted with gross negligence or in bad faith.

A court, when considering the release of a defendant charged with a domestic violence offense, must consider all information in the incident report concerning the defendant's possession of and access to firearms and whether firearms were removed at the time of the incident. The court may include a firearm prohibition as a condition of release and order the defendant to surrender all firearms to a law enforcement agency upon release.

The statute addressing the responsibilities of law enforcement officers relating to domestic violence offenses is reorganized into three separate statutes addressing officer duties when responding to a domestic violence call, domestic violence training requirements officers, and requirements relating to records and reports of domestic violence incidents.

## **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment adds a requirement that a law enforcement officer responding to a domestic violence call must also seize any firearm in plain sight or discovered pursuant to a lawful search. The Senate amendment provides that public agencies, employees, and officials, and local governmental entities and their employees, are immune from civil liability also for the failure to seize a firearm (not just for seizure of a firearm) unless the person or entity acted with gross negligence or in bad faith.

**Appropriation:** None.

**Fiscal Note:** Available.

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

### **Staff Summary of Public Testimony:**

(In support) There are many compelling reasons why firearms should be temporarily removed until a judicial hearing. Women are 11 times more likely to be murdered with a firearm in the United States than in other high income countries. Women are fatally shot every 16 hours by an intimate partner. The highest time of risk for a domestic violence victim is at separation, with 45 percent of homicides occurring within 90 days of separation, most within the first few days.

The Washington State Institute for Public Policy found that domestic violence is the single greatest predictor of any future criminal act. Firearms are used more often than all other weapons combined in domestic violence homicides in Washington. Between 1997 and 2014, 55 percent of domestic violence homicides were committed with firearms. Negative consequences from domestic violence are felt by children who see or hear the abuse, and more police fatalities occur when responding to domestic violence incidents.

This bill will enhance protections for victims and law enforcement in domestic violence situations. The safest time to remove firearms in a domestic violence case is when the abuser is in the police car, not days or weeks later after the person has been released. There is a very dangerous gap between the time of arrest and service of the court order to surrender weapons. This is the most dangerous time for the victim. Temporary removal is an important tool that can result in an incredible reduction of risk for victims. The most troubling and dangerous situation for officers is a domestic violence call. Officers are three times more likely to be murdered responding to a domestic violence call than a "shots fired" call. Removal of firearms is critical to keep lethality rates low. The bill follows the best practices set in 18 other states by allowing officers to remove firearms at the scene while providing due process.

The story of gun crime in America is not one of people breaking into homes, or drive by shootings, or even mass shootings; it is husbands shooting wives. That is the number one story of gun violence. This bill will unquestionably save lives. In a domestic violence situation, the presence of a firearm makes it five times more likely that a woman will get killed. It is too easy for abusers to maintain easy access to firearms during the particularly

risky period following an arrest. This bill will help protect potential victims of gun violence, officers, and communities.

(Opposed) Law enforcement officers can already remove firearms at a domestic violence scene. This bill would require officers to seize all firearms to which the alleged abuser has access. There is no discretion, so this would include seizure of the victim's firearm. This could create unintended consequences. If victims' firearms are taken, they would not be able to protect themselves from future harm. The bill attempts to write into law some procedures and actions that are often best determined by the officers at the scene.

The bill codifies the dangerous assumption that the complaining party is the actual victim. There are some people who are falsely accused of abuse. The officer becomes prosecutor, judge, and jury making decisions to remove firearms prior to a determination of who is the guilty party. This could result in a person's due process rights being taken away through false accusations. The bill will not help victims who live in constant fear even with restraining orders in place. This bill just creates an illusion of safety. The reality is that the abuser will use any means necessary when there is an intent to harm.

Guns do not kill people; people through intent and will make a decision to take a life. The bill denies Second Amendment rights without a criminal conviction or any due process. If an individual is intent on causing harm they can still do so without a firearm. More assaults are committed with knives, fists, and other weapons. The bill is clear that the officer has to take all firearms including the victim's firearm, which would leave the victim defenseless.

The bill removes discretion away from the responding officer and creates a one-size-fits-all solution. If firearms are not used in the event, or if the incident involves a less serious offense like malicious mischief, then it seems egregious to take all firearms in the house.

**Persons Testifying:** (In support) Representative Jenkins, prime sponsor; Chris Anderson, Seattle City Attorney's Office; Adrian Diaz, Seattle Police Department; Sundae Delgado; Jim Pugel; Tamaso Johnson, Washington Coalition Against Domestic Violence; and Kevin Brannon.

(Opposed) Phil Shave; Bea Christophersen; Sharyn Hinchcliffe, Pink Pistols Seattle; Ira Moser; and Chris Spieth.

**Persons Signed In To Testify But Not Testifying:** Trese Todd; Catherine Person; Bharat Shyam; James McMahan; Brendan Blevins; Vicki Johnson; Kevin Cassady; and Christian Riley.