

# SENATE BILL REPORT

## SHB 1225

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As Passed Senate - Amended, April 11, 2019

**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:** Passed House: 3/05/19, 60-38.

**Committee Activity:** Law & Justice: 4/01/19, 4/02/19 [DPA, DNP].

**Floor Activity:**

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

### Brief Summary of Bill (As Amended by Senate)

- 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 victim inquiry protocols regarding the abuser's access to and past use of firearms.
- 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.
- Requires the court to consider information in a domestic violence incident report when considering the release of a defendant charged with a domestic violence offense and whether to issue a no-contact order.

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### SENATE COMMITTEE ON LAW & JUSTICE

*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.*

**Majority Report:** Do pass as amended.

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

**Minority Report:** Do not pass.

Signed by Senators Padden, Ranking Member; Holy.

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

**Background:** Generally, a law enforcement officer is authorized to confiscate a firearm 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.

When considering the release of a defendant charged with a domestic violence offense, the court must determine whether to issue or extend a no-contact order. As part of a no-contact order, the court may require a person to surrender any firearms or concealed pistol license and prohibit the party from obtaining or possessing a firearm or concealed pistol license for the duration of the order upon a showing that the person represents a credible threat to the physical safety of the intimate partner or child.

**Summary of Amended Bill:** When a law enforcement officer responds to a domestic violence call and has probable cause to believe a crime has been committed, 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;
- seize all firearms in plain sight or discovered pursuant to a lawful search; and
- request consent to take temporary custody of any firearms and ammunition to which the alleged abuser has access until a judicial officer has heard the matter.

Upon questioning, the officer must separate the parties and ask the victim if there are any firearms or ammunition in the home owned or possessed by either party, if the alleged abuser has access to any firearm off-site, and whether the alleged abuser has an active concealed pistol license. The officer should inquire as to circumstances other than the immediate incident, such as whether the alleged abuser has kept a firearm in plain sight in a manner that is coercive, has threatened use of firearms in the past, or has additional firearms in a vehicle or other location. The officer may use a pictorial display of common firearms to assist the victim in identifying firearms.

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

Before returning any firearm or ammunition to the owner or individual from whom the firearm or ammunition was obtained, law enforcement must comply with state law procedures including providing a family or household member with notification if requested and conducting a background check to verify firearm eligibility. A firearm seized in connection with a domestic violence call may only be returned after five business days have passed from the time the firearm was obtained.

The notice of legal rights 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.

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

When considering the release of a defendant charged with a domestic violence offense and whether to issue a no-contact order, the court 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 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.

**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 Substitute House Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The goal of this bill is straight forward, to reduce the heightened risk to everyone in domestic violence situations by requiring that the firearm be removed. Firearms have a devastating impact in the hands of domestic violence perpetrators. In the United States, a woman is shot by her intimate partner every 16 hours. The presence of a gun means that the victim is five times more likely to be murdered and 50 women are shot to death by a partner every month.

WSIPP has found that DV is the single biggest predictor of future criminal acts. In fact, it is the single biggest predictor of violent crime of any kind.

People often argue that the firearm could be owned by the victim. However, there is no evidence that maintaining firearm availability in a DV situation increases firearm safety for anyone.

Abusers intent on killing an intimate partner often kill others who happen to be at the scene. Voters have now approved three major gun initiatives by an overwhelming majority. DV offenders who have access to firearms are at great risk to partners, families, law enforcement, and the public. This bill will enhance safety for all of those involved.

The period directly following arrest is the most dangerous. We can and should do more to protect victims during this time period. A dangerous gap exists in law that only allows officers to seize firearms when ordered by a protection order. This still allows the abuser to have access in between arrest and when the protection order is put into place.

DV calls are some of the most dangerous for law enforcement. This bill will allow law enforcement to seize firearms at the time of the incident rather than requiring them to return to the scene later at a heightened risk to law enforcement and victims.

**Persons Testifying:** PRO: Representative Laurie Jenkins, Prime Sponsor; David Martin, King County Prosecuting Attorney's Office; Catherine Person, citizen; Pam Crone, Washington State Coalition Against Domestic Violence; Adrian Diaz, Assistant Chief, Seattle Police Department; Logan Rysemus, citizen; Bekcy Houghton, citizen; Chris Anderson, Seattle City Attorney's Office.

**Persons Signed In To Testify But Not Testifying:** No one.