



**House
Legislative
Analysis
Section**

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**DESTRUCTION OF FORFEITED
FIREARMS**

**House Bill 5816 as enrolled
Public Act 496 of 1996
Second Analysis (12-18-96)**

**Sponsor: Rep. Greg Kaza
Committee: Conservation, Environment
and Great Lakes**

THE APPARENT PROBLEM:

As with any item of personal property, firearms are occasionally the subject of theft. Often these stolen weapons are recovered by law enforcement officials when the weapons are used in the commission of a crime and as such are subject to forfeiture.

Under state law, the Department of State Police has the authority to destroy certain forfeited property, including firearms. However, wherever possible, the department should be expected to make every reasonable effort to return the property to its rightful owner. Unfortunately, in some cases, for whatever reasons, the rightful owner is never notified that his or her property has been found or that the property is scheduled to be destroyed, or the notification of the pending destruction is not provided in a timely fashion. Legislation has been introduced to deal with this problem by requiring the Department of State Police to make a concerted effort to find the owner of a firearm before having it destroyed.

THE CONTENT OF THE BILL:

Under the Michigan Penal Code (MCL 750.239), a firearm that has been used in violation of the provisions of the penal code is forfeited to the state and is turned over to the commissioner of the state police for disposal. (This currently means that the vast majority of these weapons are melted down.)

House Bill 5816 would place restrictions on a police agency (defined in the bill as one or more of the following: the Department of State Police, a county sheriff's department, a police department or public safety department of a local unit of government, or a police department or public safety department of a college or university) that recovered or confiscated a firearm during the course of its duties. The agency would be required to attempt to determine the identity of the rightful owner of a confiscated firearm and to notify him or her of the agency's possession of and intent to destroy the weapon.

Before a forfeited gun could be disposed of, the police agency that had recovered or confiscated the gun would be required to determine whether the firearm had a known legal owner and whether the gun had been stolen. In its attempt to determine whether the firearm had a known legal owner, the police agency would be required to review information contained in the law enforcement information network (LEIN) and the agency's stolen property reports. If the police agency found that the serial number had been removed from the gun, the agency would be required to forward the gun to the Department of State Police or to a forensic laboratory for serial number restoration so the rightful owner could be determined. If the police agency determined that the firearm had been stolen, the police agency would be required to notify the agency that had reported the firearm stolen and, at the end of the criminal case that involved the firearm's confiscation, return the firearm to that agency.

After the gun had been turned over to the police agency that had reported the gun stolen, the agency would be required provide for the gun's return or disposal in accordance with the provisions of the bill. The agency would also be required to notify the legal owner that it had his or her gun. The notification would have to be made by certified mail sent to the owner's last known address, or by personal contact with the owner. If the owner of the gun was not alleged to have been involved in the violation that led to the gun's forfeiture or did not knowingly allow the gun to be possessed illegally, the notification would have to be provided at the conclusion of the criminal case and at least 90 days prior to the disposal of the gun.

After having been notified of the police agency's possession of his or her gun, the owner of the gun could assert a claim to the firearm within the notification period prior to its disposal. If the owner claimed the gun and the police agency determined that the owner had not been involved in the violation for which the gun was seized,

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the police agency would be required to return the gun to the owner within 30 days of the owner's claim. However, the police agency could refuse to return the firearm if the owner were prohibited by state or federal law from possessing a firearm.

If the police agency either refused to return a gun that had been claimed by its owner or failed to return it within 30 days after it had been claimed, the person claiming an ownership interest in the gun could petition the circuit court for the return of the gun. The police agency would be prohibited from disposing of a forfeited firearm until the 30-day period had expired or, if a petition had been filed in court, until the court permitted it.

A police agency would have no more than one year after the conclusion of the criminal case in which the firearm was involved and expiration of the applicable appeal period to turn confiscated firearms over to the Department of State Police. However, before turning the gun over to the department, the police agency would be required to make a reasonable effort to contact the gun's owner to determine whether he or she intended to claim it.

Finally, the bill would require a police agency that seized a firearm to exercise reasonable care to protect the firearm from loss or damage while the firearm was in its custody.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, there could be an indeterminate cost increase to the department dependent upon the number of guns sent to the department for serial number restoration. In addition, the bill would increase cost to local units for administrative costs for registration searches and return of firearms to their legal owners. (12-19-96)

ARGUMENTS:

For:

The bill will provide an avenue for citizens to regain private property that has been seized by law enforcement officials. When a gun is stolen from its rightful owner and then is used in a crime, the Department of State Police should not be allowed to destroy the weapon without first giving the rightful owner an opportunity to reclaim his or her property. The bill will leave the investigation of whether a firearm has been stolen and whether there is a known rightful owner to the investigating law enforcement agency that confiscated the weapon. This is appropriate and adds little extra work for police agencies, since determination of the status - stolen or not - of personal property involved in a crime is

already part of the normal course of police investigation of a crime. The bill places responsibility for informing the legal owner of the impending destruction of his or her property on the police agency that reported the theft of the firearm, because that agency is most likely to be capable of easily contacting the firearm's lawful owner. In addition, since the police agency that reported the theft of the firearm is likely to be the local police agency for the legal owner of the firearm, that agency will be the most convenient place for the legal owner of the firearm to go in order to reclaim his or her firearm before it is destroyed.

Against:

A number of questions are raised, but not answered, by the bills: What sort of claim must a gun owner make to trigger the requirement that the police return the weapon to him or her? Would a telephone call be sufficient? Or must the claim be made in writing? Would the claimant have to produce appropriate identification and/or proof of ownership to validate his or her claim? Or would his or her word suffice? What does the notification given to the gun owner have to contain? Must it indicate that the gun is scheduled to be destroyed and when? Will it inform the owner that he or she is entitled to reclaim the gun and explain he or she can reclaim the gun?

Is it fair to provide a different standard for the return of a person's gun who is alleged to have been involved in the crime from which the forfeiture of the gun arose? Doesn't this essentially punish a person for having merely been accused of a crime in spite of the fact that he or she may well be found not guilty? Who will determine whether the owner "knowingly" allowed the firearm to be possessed illegally?

Is it appropriate for the police agency to make the determination of whether the firearm owner was "involved" in the violation for which the firearm was seized, or should such a determination be left to the courts? What standards will be used in making such a determination? A preponderance of the evidence? Beyond a reasonable doubt? What sort of evidence will be examined in making this determination? Will a hearing be held? Will the owner be entitled to representation? It could be argued that since the owner stands to lose his or her property, he or she at least deserves some degree of due process.

Response:

The differing standard for a person alleged to have been involved in the crime leading to the gun's forfeiture is justified, not as a punishment for his or her status as an accused, but because the person is already aware that the police have seized the weapon in question. Since the police seized the weapon from the owner directly, it is assumed that he or she will not need as lengthy a

notification period as those who are not aware that the police have taken possession of their weapons.

Against:

The protections offered by the bill are at best illusory since the bill does not provide any penalty should the police agency fail to inform the owner that he or she could reclaim his or her firearm. As a result, there is no recourse for a gun owner if a police agency fails to obey the requirements of the bill and either destroys or damages a citizen's firearm.

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.