



**House
Legislative
Analysis
Section**

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**DESTRUCTION OF FORFEITED
FIREARMS**

**House Bill 5813 (Substitute H-2)
House Bill 5816 with committee amendment
First Analysis (9-25-96)**

**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 BILLS:

House Bills 5813 and 5816 would require the Department of State Police to determine the identity of the rightful owner of a firearm confiscated in a criminal act, notify him or her of the department's possession of and intent to destroy the weapon, and delineate the manner by which the department could dispose of forfeited firearms.

House Bill 5813 would amend the Handgun Licensure Act (MCL 28.421 et al.) to regulate the manner in which the Department of State Police may dispose of firearms forfeited under the Michigan Penal Code or the Handgun Licensure Act. Under the bill, before a gun that was subject to forfeiture could be disposed of, the department would be required to determine whether the firearm had been stolen and who was the rightful owner of the firearm through examination of all of the relevant records including, but not limited to, the law enforcement information network (LEIN) and stolen property reports.

The bill would then require the state police to inform the firearm's owner of the department's intent to dispose of the gun in writing at least 30 days prior to the disposal. However, if the owner of the gun was not alleged to have been involved in the violation that led to the gun's forfeiture, the notification would have to be provided at least 90 days prior to the disposal of the gun. In either case, notification would have to be made by certified mail sent to the owner's last known address.

After having been notified of the department's intent to dispose of the firearm, 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 department determined that the owner had not been involved in the violation for which the gun had been seized, the department would be required to return the gun to the owner within 30 days of the owner's claim. If the department 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 department could not dispose 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 to do so. The bill would also restrict the manner in which the Department of State Police could dispose of seized firearms. Specifically, firearms that had historical value could be donated to public museums, while firearms that were suitable for law enforcement purposes could be donated to a law enforcement agency, and all other firearms would have to be destroyed. Donations of firearms to museums or law enforcement agencies would have to be made in compliance with state and federal law and the number of firearms donated to a single entity could be limited by the department. If the department destroyed a gun in violation of the bill's provisions then the owner would be allowed to bring a civil suit against

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the department for the fair market value of the gun that had been destroyed.

House Bill 5816 would amend the Michigan Penal Code (MCL 750.239) to require that a firearm forfeited under the provisions of the penal code would have to be disposed of in accordance with the provisions of the Handgun Licensure Act as amended by House Bill 5813.

The bills are tie-barred to each other.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills could increase state costs. If appraisal of weapons is required to establish historical value, this could increase costs for the Department of State Police. Other indeterminate cost increases could be incurred as well. (9-20-96)

ARGUMENTS:

For:

These bills 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. These bills place the responsibility for determining the gun's lawful ownership and informing the owner of the impending destruction of his or her property on the department. The department is required to inform the owner that his or her gun is scheduled for destruction and provide him or her with reasonable opportunity to reclaim the gun before it is destroyed.

Against:

The bills will require the department to duplicate responsibilities that are better left with the investigating law enforcement agencies. The investigation of whether a firearm has been stolen and who is its rightful owner, is and should be carried on by the agency that confiscated the weapon. It is part of the normal course of police investigation of a crime to determine the status - stolen or not - of personal property involved in a crime. To require that the department re-determine the property's status is, at best, a waste of resources.

Response:

Reportedly, amendments are being drafted to deal with this issue.

Against:

The Governmental Immunity Act sets forth the specific circumstances under which governmental agencies and/or employees may be subject to civil lawsuits. Since that act contains no provisions to allow for a civil action against the Department of State Police for failing to inform a gun owner that his or her gun was to be destroyed, the department would be immune from such an action. Thus, without amending the Governmental Immunity Act to allow for civil liability under such circumstances, the language of the bills purporting to allow such lawsuits would likely have no effect.

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?

Is it fair to provide only 30 days notice for a person who has been accused of a crime, while allowing 90 days for people who have not been so accused? 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, by giving them 60 days less notice?

What if the firearm in question was involved in a shooting or some other crime and is part of an ongoing investigation? Must the police return the gun, even if it is needed for the criminal investigation?

Response:

There is no need for concern that owners would be reclaiming guns that the police needed as evidence in an ongoing case. An owner of a forfeited weapon would not be notified until the weapon was scheduled to be destroyed, and presumably the police would not be seeking to destroy a gun they still needed as evidence in a criminal trial.

Additionally, the shorter notification time frame for those persons accused of a crime is justified, not as a punishment for their status as an accused, but because they are already aware that the police have seized the weapon in question. Since the police seized the weapon from them directly, it is assumed that they will not need as lengthy a notification period as those who are not aware that the police have taken possession of the weapon.

POSITIONS:

The Department of State Police supports the concept of the bills, but opposes the current version. (9-25-96)

Michigan United Conservation Clubs supports the bills. (9-25-96)

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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.