

SENATE BILL REPORT

SB 6440

As Reported By Senate Committee On:
Judiciary, January 19, 2006

Title: An act relating to judicial orders concerning distraint of personal property.

Brief Description: Providing procedures for judicial orders concerning distraint of personal property.

Sponsors: Senators Kline and Johnson.

Brief History:

Committee Activity: Judiciary: 1/19/06 [DP].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.

Signed by Senators Kline, Chair; Weinstein, Vice Chair; Johnson, Ranking Minority Member; Carrell, Esser, Hargrove, McCaslin, Rasmussen and Thibaudeau.

Staff: Lidia Mori (786-7755)

Background: Replevin is a personal action taken to recover possession of goods unlawfully taken. In a replevin action, a judge has the authority to issue an order awarding possession of the property being contested to the plaintiff and directing the sheriff to put the plaintiff in possession of the property. The order also contains a notice to the defendant that, if deemed necessary, the sheriff is directed to break and enter a building or enclosure to obtain possession of the property if it is concealed in the building or enclosure.

A party in whose favor a judgment of a court has been rendered may have an execution, garnishment, or other legal process issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment or the filing of the judgment in Washington state. When any judgment of a court of this state requires the payment of money or the delivery of real or personal property, it may be enforced by execution. All property, real and personal, of the judgment debtor, that is not exempted by law, is liable to execution. The writ of execution must be issued in the name of the state of Washington, and among other things, be directed to the sheriff of the county in which the property is situated. When the writ of execution is against the property of the judgment debtor, the sheriff will set the date of sale and serve notice of this on the debtor. There is concern that the statutes governing execution of judgments do not contain similar language as in the replevin statutes directing the sheriff, if deemed necessary, to break and enter a building or enclosure to obtain possession of the property. In one example, an attorney had an order which allowed the Sheriff to break and enter in the same manner as a replevin. A lawsuit ensued in federal court in Seattle and Judge Dwyer ruled against King County, finding that there is no statutory authority for a judge to order a break and enter in the statutes governing the execution of judgments.

Summary of Bill: The sheriff, to whom a writ of execution is directed and delivered, is required to execute the writ without delay. If the property at issue is personal property and it is concealed in a building or enclosure, the sheriff is directed to publicly demand delivery of the property. If it is not relinquished, and if the order of execution states, the sheriff has the authority to cause the building or enclosure to be broken open and to take possession of the property.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: In the statutes pertaining to execution of judgments, there is no authority for a judge to issue an order directing a sheriff to break and enter a building in order to take possession of property. A King County case made this very clear. This has been an issue that has been coming to a head the last few years. This bill also takes liability away from the sheriffs who perform the task of breaking and entering.

Testimony Against: None.

Who Testified: PRO: Craig Adams, Pierce County Sheriff; Michael Shaw, Pierce County.