

By: Moody

H.B. No. 3977

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the emergency detention of certain persons with a
3 mental illness or cognitive disability and the scope of an order for
4 psychoactive medication for certain patients under court-ordered
5 mental health services.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Article [18.191](#), Code of Criminal Procedure, is
8 amended by amending Subsections (a), (b), (f), (g), and (h) to read
9 as follows:

10 (a) A law enforcement officer who seizes a firearm from a
11 person taken into custody under Section [573.001](#) or [573.012](#), Health
12 and Safety Code, and not in connection with an offense involving the
13 use of a weapon or an offense under Chapter [46](#), Penal Code, shall
14 immediately provide the person a written copy of the receipt for the
15 firearm and a written notice of the procedure for the return of a
16 firearm under this article.

17 (b) The law enforcement agency holding a firearm subject to
18 disposition under this article shall, as soon as possible, but not
19 later than the 15th day after the date the person is taken into
20 custody under Section [573.001](#) or [573.012](#), Health and Safety Code,
21 provide written notice of the procedure for the return of a firearm
22 under this article to the last known address of the person's closest
23 immediate family member as identified by the person or reasonably
24 identifiable by the law enforcement agency, sent by certified mail,

1 return receipt requested. The written notice must state the date by
2 which a request for the return of the firearm must be submitted to
3 the law enforcement agency as provided by Subsection (h).

4 (f) A person who receives notice under Subsection (e) may
5 dispose of the person's firearm by:

6 (1) releasing the firearm to the person's designee,
7 if:

8 (A) the law enforcement agency holding the
9 firearm conducts a check of state and national criminal history
10 record information and verifies that the designee may lawfully
11 possess a firearm under 18 U.S.C. Section 922(g);

12 (B) the person provides to the law enforcement
13 agency a copy of a notarized statement releasing the firearm to the
14 designee; and

15 (C) the designee provides to the law enforcement
16 agency an affidavit confirming that the designee:

17 (i) will not allow access to the firearm by
18 the person who was taken into custody under Section [573.001](#) or
19 [573.012](#), Health and Safety Code, at any time during which the person
20 may not lawfully possess a firearm under 18 U.S.C. Section 922(g);
21 and

22 (ii) acknowledges the responsibility of the
23 designee and no other person to verify whether the person has
24 reestablished the person's eligibility to lawfully possess a
25 firearm under 18 U.S.C. Section 922(g); or

26 (2) releasing the firearm to the law enforcement
27 agency holding the firearm, for disposition under Subsection (h).

1 (g) If a firearm subject to disposition under this article
2 is wholly or partly owned by a person other than the person taken
3 into custody under Section [573.001](#) or [573.012](#), Health and Safety
4 Code, the law enforcement agency holding the firearm shall release
5 the firearm to the person claiming a right to or interest in the
6 firearm after:

7 (1) the person provides an affidavit confirming that
8 the person:

9 (A) wholly or partly owns the firearm;

10 (B) will not allow access to the firearm by the
11 person who was taken into custody under Section [573.001](#) or [573.012](#),
12 Health and Safety Code, at any time during which that person may not
13 lawfully possess a firearm under 18 U.S.C. Section 922(g); and

14 (C) acknowledges the responsibility of the
15 person and no other person to verify whether the person who was
16 taken into custody under Section [573.001](#) or [573.012](#), Health and
17 Safety Code, has reestablished the person's eligibility to lawfully
18 possess a firearm under 18 U.S.C. Section 922(g); and

19 (2) the law enforcement agency holding the firearm
20 conducts a check of state and national criminal history record
21 information and verifies that the person claiming a right to or
22 interest in the firearm may lawfully possess a firearm under 18
23 U.S.C. Section 922(g).

24 (h) If a person to whom written notice is provided under
25 Subsection (b) or another lawful owner of a firearm subject to
26 disposition under this article does not submit a written request to
27 the law enforcement agency for the return of the firearm before the

1 121st day after the date the law enforcement agency holding the
2 firearm provides written notice under Subsection (b), the law
3 enforcement agency may have the firearm sold by a person who is a
4 licensed firearms dealer under 18 U.S.C. Section 923. The proceeds
5 from the sale of a firearm under this subsection shall be given to
6 the owner of the seized firearm, less the cost of administering this
7 subsection. An unclaimed firearm that was seized from a person
8 taken into custody under Section [573.001](#) or [573.012](#), Health and
9 Safety Code, may not be destroyed or forfeited to the state.

10 SECTION 2. Section [573.012](#), Health and Safety Code, is
11 amended by amending Subsections (a) and (h-1) and adding
12 Subsections (d-1), (h-2), and (h-3) to read as follows:

13 (a) Except as provided by Subsection (h) or (h-2), an
14 applicant for emergency detention must present the application
15 personally to a judge or magistrate. The judge or magistrate shall
16 examine the application and may interview the applicant. Except as
17 provided by Subsection (g), the judge of a court with probate
18 jurisdiction by administrative order may provide that the
19 application must be:

- 20 (1) presented personally to the court; or
21 (2) retained by court staff and presented to another
22 judge or magistrate as soon as is practicable if the judge of the
23 court is not available at the time the application is presented.

24 (d-1) A peace officer may immediately seize any firearm
25 found in the possession of a person for whom a warrant has been
26 issued under Subsection (d). Article [18.191](#), Code of Criminal
27 Procedure, applies to the disposition of a firearm seized by a peace

1 officer in accordance with this subsection.

2 (h-1) After the presentation of an application under
3 Subsection (h) or (h-2), the judge or magistrate may transmit a
4 warrant to the applicant:

5 (1) electronically, if a digital signature, as defined
6 by Article 2.26, Code of Criminal Procedure, is transmitted with
7 the document; or

8 (2) by e-mail with the warrant attached as a secure
9 document in a portable document format (PDF), if the identifiable
10 legal signature of the judge or magistrate is transmitted with the
11 document.

12 (h-2) If the person who is the subject of an application for
13 emergency detention is receiving care in a hospital or other
14 facility operated by a local mental health authority, a judge or
15 magistrate may permit an applicant who is a licensed physician
16 assistant, nurse practitioner, or nonphysician mental health
17 professional to present an application in the manner provided by
18 Subsection (h).

19 (h-3) In this section, "nonphysician mental health
20 professional" means:

21 (A) a psychologist licensed to practice in this
22 state and designated as a health-service provider;

23 (B) a registered nurse with a master's or
24 doctoral degree in psychiatric nursing;

25 (C) a licensed clinical social worker; or

26 (D) a licensed professional counselor licensed
27 to practice in this state.

1 SECTION 3. Section 574.106, Health and Safety Code, is
2 amended by adding Subsection (a-2) to read as follows:

3 (a-2) An order under Subsection (a) includes the authority
4 to take a patient's blood sample to conduct medically necessary
5 laboratory tests to ensure that a psychoactive medication is being
6 safely administered.

7 SECTION 4. This Act takes effect September 1, 2021.