

BILL ANALYSIS

H.B. 2293
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Law Enforcement
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law, when a law enforcement officer seizes a weapon from a defendant, and the prosecutor does not file a weapons charge, the weapon must be returned to the defendant. This situation might occur if a person is found in possession of both a weapon and a large amount of narcotics, in which case the prosecutor may opt to charge the person with the drug offense but not the weapons offense. The magistrate is required to return the weapon under such circumstances. However, if the person to whom the weapon is returned is an ex-convict, his or her possession of the weapon is a felony offense under current law.

House Bill 2293 addresses this issue by authorizing a magistrate to order a weapon to be destroyed or forfeited to the state for use by the law enforcement agency holding the weapon, if the magistrate determines that returning the weapon would cause a person to violate the law.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

House Bill 2293 amends Article 18.19(c) of the Code of Criminal Procedure to provide that if a magistrate determines that returning a weapon to the person found in possession of the weapon would cause that person to violate Section 46.04 of the Penal Code, the magistrate must order the weapon destroyed or forfeited to the state for use by the law enforcement agency holding the weapon.

The bill amends Article 18.19(e) of the Code of Criminal Procedure by providing that a magistrate shall order the destruction of a weapon seized, or forfeiture to the state, in a case involving the use of a weapon, within 61 days of an order of deferred adjudication. The bill also provides that if the magistrate fails to so order in entering an order of deferred adjudication, the law enforcement agency holding the weapon may request an order of destruction or forfeiture.

The bill provides that the change in law made by this Act is prospective from the effective date.

EFFECTIVE DATE

September 1, 2005