

By: Castro

H.B. No. 705

A BILL TO BE ENTITLED

AN ACT

relating to the disposition of seized weapons.

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

SECTION 1. Articles 18.19(c), (d), and (e), Code of Criminal Procedure, are amended to read as follows:

(c) If there is no prosecution or conviction for an offense involving the weapon seized, the magistrate to whom the seizure was reported shall, before the 61st day after the date the magistrate determines that there will be no prosecution or conviction, notify in writing the person found in possession of the weapon that the person is entitled to the weapon upon written request to the magistrate. The magistrate shall order the weapon returned to the person found in possession before the 61st day after the date the magistrate receives a request from the person. If the weapon is not requested before the 61st day after the date of notification, the magistrate shall, before the 121st day after the date of notification, order the weapon destroyed or forfeited to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory designated by the magistrate. If the magistrate does not order the return, destruction, or forfeiture of the weapon within the applicable period prescribed by this subsection, the law enforcement agency holding the weapon may request an order of destruction or forfeiture of the weapon from the magistrate.

1 (d) A person either convicted or receiving deferred
2 adjudication under Chapter 46, Penal Code, is entitled to the
3 weapon seized upon request to the court in which the person was
4 convicted or placed on deferred adjudication. However, the court
5 entering the judgment shall order the weapon destroyed or forfeited
6 to the state for use by the law enforcement agency holding the
7 weapon or by a county forensic laboratory designated by the court
8 if:

9 (1) the person does not request the weapon before the
10 61st day after the date of the judgment of conviction or the order
11 placing the person on deferred adjudication;

12 (2) the person has been previously convicted under
13 Chapter 46, Penal Code;

14 (3) the weapon is one defined as a prohibited weapon
15 under Chapter 46, Penal Code;

16 (4) the offense for which the person is convicted or
17 receives deferred adjudication was committed in or on the premises
18 of a playground, school, video arcade facility, or youth center, as
19 those terms are defined by Section 481.134, Health and Safety Code;
20 or

21 (5) the court determines based on the prior criminal
22 history of the defendant or based on the circumstances surrounding
23 the commission of the offense that possession of the seized weapon
24 would pose a threat to the community or one or more individuals.

25 (e) If the person found in possession of a weapon is
26 convicted of an offense involving the use of the weapon, before the
27 61st day after the date of conviction the court entering judgment of

1 conviction shall order destruction of the weapon or forfeiture to
2 the state for use by the law enforcement agency holding the weapon
3 or by a county forensic laboratory designated by the court. If the
4 court entering judgment of conviction does not order the
5 destruction or forfeiture of the weapon within the period
6 prescribed by this subsection, the law enforcement agency holding
7 the weapon may request an order of destruction or forfeiture of the
8 weapon from a magistrate.

9 SECTION 2. The change in law made by this Act applies only
10 to the disposition of a weapon seized on or after the effective date
11 of this Act. The disposition of a weapon seized before the effective
12 date of this Act is covered by the law in effect when the weapon was
13 seized, and the former law is continued in effect for that purpose.

14 SECTION 3. This Act takes effect September 1, 2005.