

1-1 By: Castro (Senate Sponsor - Zaffirini) H.B. No. 705
1-2 (In the Senate - Received from the House March 29, 2005;
1-3 March 30, 2005, read first time and referred to Committee on
1-4 Criminal Justice; May 18, 2005, reported favorably by the
1-5 following vote: Yeas 5, Nays 0; May 18, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the disposition of seized weapons.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Articles 18.19(c), (d), and (e), Code of
1-11 Criminal Procedure, are amended to read as follows:

1-12 (c) If there is no prosecution or conviction for an offense
1-13 involving the weapon seized, the magistrate to whom the seizure was
1-14 reported shall, before the 61st day after the date the magistrate
1-15 determines that there will be no prosecution or conviction, notify
1-16 in writing the person found in possession of the weapon that the
1-17 person is entitled to the weapon upon written request to the
1-18 magistrate. The magistrate shall order the weapon returned to the
1-19 person found in possession before the 61st day after the date the
1-20 magistrate receives a request from the person. If the weapon is not
1-21 requested before the 61st day after the date of notification, the
1-22 magistrate shall, before the 121st day after the date of
1-23 notification, order the weapon destroyed or forfeited to the state
1-24 for use by the law enforcement agency holding the weapon or by a
1-25 county forensic laboratory designated by the magistrate. If the
1-26 magistrate does not order the return, destruction, or forfeiture of
1-27 the weapon within the applicable period prescribed by this
1-28 subsection, the law enforcement agency holding the weapon may
1-29 request an order of destruction or forfeiture of the weapon from the
1-30 magistrate.

1-31 (d) A person either convicted or receiving deferred
1-32 adjudication under Chapter 46, Penal Code, is entitled to the
1-33 weapon seized upon request to the court in which the person was
1-34 convicted or placed on deferred adjudication. However, the court
1-35 entering the judgment shall order the weapon destroyed or forfeited
1-36 to the state for use by the law enforcement agency holding the
1-37 weapon or by a county forensic laboratory designated by the court
1-38 if:

1-39 (1) the person does not request the weapon before the
1-40 61st day after the date of the judgment of conviction or the order
1-41 placing the person on deferred adjudication;

1-42 (2) the person has been previously convicted under
1-43 Chapter 46, Penal Code;

1-44 (3) the weapon is one defined as a prohibited weapon
1-45 under Chapter 46, Penal Code;

1-46 (4) the offense for which the person is convicted or
1-47 receives deferred adjudication was committed in or on the premises
1-48 of a playground, school, video arcade facility, or youth center, as
1-49 those terms are defined by Section 481.134, Health and Safety Code;
1-50 or

1-51 (5) the court determines based on the prior criminal
1-52 history of the defendant or based on the circumstances surrounding
1-53 the commission of the offense that possession of the seized weapon
1-54 would pose a threat to the community or one or more individuals.

1-55 (e) If the person found in possession of a weapon is
1-56 convicted of an offense involving the use of the weapon, before the
1-57 61st day after the date of conviction the court entering judgment of
1-58 conviction shall order destruction of the weapon or forfeiture to
1-59 the state for use by the law enforcement agency holding the weapon
1-60 or by a county forensic laboratory designated by the court. If the
1-61 court entering judgment of conviction does not order the
1-62 destruction or forfeiture of the weapon within the period
1-63 prescribed by this subsection, the law enforcement agency holding
1-64 the weapon may request an order of destruction or forfeiture of the

2-1 weapon from a magistrate.

2-2 SECTION 2. The change in law made by this Act applies only
2-3 to the disposition of a weapon seized on or after the effective date
2-4 of this Act. The disposition of a weapon seized before the effective
2-5 date of this Act is covered by the law in effect when the weapon was
2-6 seized, and the former law is continued in effect for that purpose.

2-7 SECTION 3. This Act takes effect September 1, 2005.

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