

By: Woolley

H.B. No. 3242

A BILL TO BE ENTITLED

AN ACT

relating to procedures for the disposition of certain weapons seized by a law enforcement agency.

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

SECTION 1. Article 18.19, Code of Criminal Procedure, is amended to read as follows:

Art. 18.19. DISPOSITION OF SEIZED WEAPONS. (a) A law enforcement agency that seizes a weapon [~~Weapons seized~~] in connection with an offense involving the use of a weapon or an offense under Chapter 46, Penal Code, or that seizes a weapon from a person taken into custody under Section 573.001, Health and Safety Code, [~~Chapter 46~~] shall hold the weapon and provide for a disposition of the weapon in accordance with this article [~~be held by the law enforcement agency making the seizure, subject to the following provisions,~~] unless the weapon:

(1) [~~the weapon~~] is a prohibited weapon listed in Section 46.05, [~~identified in~~] Penal Code [~~Chapter 46~~], in which event the disposition of the weapon is governed by Article 18.18 [~~of this code applies~~]; or

(2) [~~the weapon~~] is alleged to be stolen property, in which event the disposition of the weapon is governed by Chapter 47 [~~of this code applies~~].

(b) When a weapon subject to disposition under [~~described in Paragraph (a) of~~] this article is seized, and the seizure is not

1 made pursuant to a search or arrest warrant, the law enforcement
2 officer [~~person~~] seizing the weapon [~~same~~] shall prepare and
3 deliver to a magistrate a written inventory of each weapon seized.
4 Regardless of whether a seizure of one or more weapons occurs
5 pursuant to a search or arrest warrant, the law enforcement officer
6 shall provide written notice to the magistrate if any of the weapons
7 are seized from a person taken into custody under Section 573.001,
8 Health and Safety Code.

9 (c) If there is no prosecution or conviction for an offense
10 involving the weapon seized, the magistrate to whom the seizure was
11 reported shall, before the 61st day after the date the magistrate
12 determines that there will be no prosecution or conviction, notify
13 in writing the person found in possession of the weapon that, except
14 as otherwise provided by this subsection, the person is entitled to
15 a return of the seized weapon if, before the 61st day after the date
16 of the notification, the person submits a [~~upon~~] written request to
17 the magistrate for the return of the weapon. Unless the weapon was
18 seized from a person taken into custody under Section 573.001,
19 Health and Safety Code, the [~~The~~] magistrate shall order the weapon
20 returned to the person found in possession before the 61st day after
21 the date the magistrate receives a written request from the person.
22 If the weapon was seized from a person taken into custody under
23 Section 573.001, Health and Safety Code, the magistrate shall
24 determine, before the 61st day after the date the magistrate
25 receives the person's written request, whether the return of the
26 weapon to the person poses a substantial risk of serious harm to the
27 person or to any other individual or member of the community. If

1 the magistrate determines that the return of the weapon does not
2 pose a substantial risk as described by this subsection, the
3 magistrate shall order that the weapon promptly be returned to the
4 person.

5 (c-1) If a person to whom written notice is provided under
6 Subsection (c) does not submit a written request to the magistrate
7 for the return of the weapon [is not requested] before the 61st day
8 after the date of notification, or if the magistrate determines in
9 accordance with Subsection (c) that the return of the weapon to the
10 person poses a substantial risk as described by that subsection,
11 the magistrate shall, before the 121st day after the date of
12 notification, order the weapon destroyed or forfeited to the state
13 for use by the law enforcement agency holding the weapon or by a
14 county forensic laboratory designated by the magistrate. If the
15 magistrate does not order the return, destruction, or forfeiture of
16 the weapon within the applicable period prescribed by this
17 subsection, the law enforcement agency holding the weapon may
18 request an order of destruction or forfeiture of the weapon from the
19 magistrate.

20 (d) If the [A] person found in possession of a weapon is
21 placed on [either convicted or receiving] deferred adjudication for
22 an offense involving the use of the weapon or is convicted of or
23 placed on deferred adjudication for an offense under Chapter 46,
24 Penal Code, not involving the use of the weapon, the person is
25 entitled to a return of the seized weapon on a written [seized upon]
26 request to the court in which the person was convicted or placed on
27 deferred adjudication, as applicable. However, the court entering

1 the judgment of conviction or order placing the person on deferred
2 adjudication shall order the weapon destroyed or forfeited to the
3 state for use by the law enforcement agency holding the weapon or by
4 a county forensic laboratory designated by the court if:

5 (1) the person does not submit a written request for
6 the return of [~~request~~] the weapon before the 61st day after the
7 date of the judgment of conviction or the order placing the person
8 on deferred adjudication;

9 (2) the person has been previously convicted of an
10 offense involving the use of a weapon or an offense under Chapter
11 46, Penal Code;

12 (3) the weapon is [~~one defined as~~] a prohibited weapon
13 listed in Section 46.05 [~~under Chapter 46~~], Penal Code;

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

19 (5) the court determines based on the person's prior
20 criminal history [~~of the defendant~~] or based on the circumstances
21 surrounding the commission of the offense that the person's
22 possession of the seized weapon would pose a threat to the community
23 or one or more individuals.

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

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

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

15 SECTION 3. This Act takes effect September 1, 2011.