

## BILL ANALYSIS

Senate Research Center

S.B. 1189  
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### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Peace officers are often dispatched to calls involving a person in a mental crisis. On occasion, these incidents involve persons who are in possession of a firearm at the time of their crisis. The individual in crisis may be suicidal, delusional, psychotic, and a danger to self or other persons.

If the person is believed to be a danger to self or others, he or she is detained under an emergency detention order, pursuant to the Health and Safety Code, and taken to a hospital for a mental health evaluation. Because of the severity of the illness, often there are no criminal charges filed on these individuals.

If the person in crisis had a firearm on their person or in their immediate control, officers will often take custody of the firearm and place it in the police property room for safekeeping. This is primarily the case when the person in crisis is in a public place and there is no safe place to leave the firearm.

If the person is court-ordered into in-patient psychiatric treatment, then the person is subsequently prohibited by Federal firearm laws from possessing a firearm. If the person is precluded from possessing a firearm due to in-patient treatment, then the law enforcement agency cannot return the weapon. Currently, there is no requirement that police agencies be informed of the outcome of the emergency mental health evaluation. Additionally, there is no state law that directs the law enforcement agency on how to dispose of the firearm so the agency must rely on the word of the person when they retrieve the person's firearm.

In situations where the firearm is on or about the person in crisis, peace officers have a duty to secure the weapon and place it in the police property room. Although, this is accepted as providing the "community caretaking" function on the part of the police, there is no wording in current law that gives police the legal authority to confiscate the firearm in these incidents, to secure the firearm until a determination is made on the person's mental stability, or to return the firearm if appropriate.

Chapter 573.001 (Apprehension by Peace Officer Without Warrant), Health and Safety Code, currently allows peace officers to take a person in custody without a warrant, when the officer believes the person is in a mental health crisis and a danger to themselves or others. State law only addresses the procedures for the disposition of weapons seized in connection with an offense involving the use of a weapon or an offense under Chapter 46 (Weapons), Penal Code. State law does not address the disposition of weapons confiscated by peace officers from those persons in a mental health crisis who are detained under an emergency detention order and subsequently taken for an emergency mental health evaluation.

S.B. 1189 amends Chapter 573.001, Health and Safety Code, by incorporating language that specifically authorizes peace officers to hold any firearm found on or about a person who is in a mental health crisis, is determined to be a danger to self or others, and is being detained and transported for an emergency mental health evaluation. Additionally, S.B. 1189 adds Article 18.191, Code of Criminal Procedure, to provide law enforcement with the necessary time to conduct follow-up investigations of the person taken for an emergency evaluation to determine whether the case was dismissed or the person was court ordered into in-patient psychiatric treatment. This bill requires the concerned courts of each county to verify for the investigating law enforcement agency if the person received court ordered in-patient psychiatric treatment, so

that the agency will know whether or not it is permissible to return the firearm. Article 18.191 also includes procedures for law enforcement agencies to return the weapon to the owner or other potential party.

As proposed, S.B. 1189 amends current law relating to the disposition of certain firearms seized by a law enforcement agency.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 573.001, Health and Safety Code, by adding Subsection (g), as follows:

(g) Authorizes a peace officer who takes a person into custody under Subsection (a) (relating to a peace officer taking a person into custody without a warrant) to immediately seize any firearm found in possession of the person. Requires the peace officer, after seizing a firearm under this subsection, to comply with the requirements of Article 18.191, Code of Criminal Procedure.

(h) Requires a peace officer, absent exigent circumstances or if a warrant is otherwise not required as a matter of law, to obtain a warrant before conducting a search or seizure for any firearms not found on or in the immediate control of the person being detained.

SECTION 2. Amends Chapter 18, Code of Criminal Procedure, by adding Article 18.191, as follows:

Art. 18.191. DISPOSITION OF FIREARM SEIZED FROM CERTAIN PERSONS WITH MENTAL ILLNESS. (a) Requires a law enforcement officer who seizes a firearm from a person taken into custody under Section 573.001 (Apprehension by Peace Officer Without Warrant), Health and Safety Code, and not in connection with an offense involving the use of a weapon or an offense under Chapter 46 (Weapons), Penal Code, to immediately provide the person a written copy of the receipt for the firearm and a written notice of the procedure for the return of a firearm under this article and promptly deliver to a magistrate a written notice and inventory of each firearm seized.

(b) Requires the law enforcement agency holding a firearm subject to disposition under this article to, as soon as possible, but not later than the 15th day after the date the person is taken into custody under Section 573.001, Health and Safety Code, provide written notice of the procedure for the return of a firearm under this article to the last known address of the person's closest immediate family member as identified by the person or reasonably identifiable by the law enforcement agency, sent by certified mail, return receipt requested. Requires the law enforcement agency to deliver a copy of the written notice to the magistrate. Requires that the written notice state the date by which a request for the return of the firearm is required to be submitted to the magistrate as provided by Subsection (h).

(c) Requires the law enforcement agency holding the firearm, not later than the 30th day after the date a firearm subject to disposition under this article is seized, to contact the court in the county having jurisdiction to order commitment under Chapter 574 (Court-Ordered Mental Health Services), Health and Safety Code, and request the disposition of the case. Requires the clerk of the court, not later than the 30th day after the date of this request, to advise the requesting agency whether the person taken into custody was released under Section 573.023 (Release from Emergency Detention), Health and Safety Code, or was ordered to receive inpatient mental health services under Section 574.034 (Order for

Temporary Mental Health Services) or 574.035 (Order for Extended Mental Health Services), Health and Safety Code.

(d) Requires the law enforcement agency, not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was released under Section 573.023, Health and Safety Code, to:

(1) conduct a check of state and national criminal history record information to verify whether the person may lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) provide written notice to the person by certified mail that the firearm may be returned to the person on verification under Subdivision (1) that the person may lawfully possess the firearm.

(e) Requires the law enforcement agency, not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code, to provide written notice to the person by certified mail that the person: is prohibited from owning, possessing, or purchasing a firearm under 18 U.S.C. Section 922(g)(4); is authorized to petition the court that entered the commitment order for relief from the firearms disability under Section 574.088 (Relief from Disabilities in Mental Health Cases), Health and Safety Code; and is authorized to dispose of the firearm in the manner provided by Subsection (f).

(f) Authorizes a person who receives notice under Subsection (e) to dispose of the person's firearm by:

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

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

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

(C) the designee provides to the law enforcement agency an affidavit confirming that the designee will not allow access to the firearm by the person who was taken into custody under Section 573.001, Health and Safety Code, at any time during which the person may not lawfully possess a firearm under 18 U.S.C. Section 922(g) and acknowledges the responsibility of the designee and no other person to verify whether the person has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); or

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

(g) Requires the law enforcement agency holding the firearm, if a firearm subject to disposition under this article is wholly or partly owned by a person other than the person taken into custody under Section 573.001, Health and Safety Code, to release the firearm to the person claiming a right to or interest in the firearm after:

(1) the person provides an affidavit confirming that the person wholly or partly owns the firearm; will not allow access to the firearm by the person

who was taken into custody under Section 573.001, Health and Safety Code, at any time during which that person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and acknowledges the responsibility of the person and no other person to verify whether the person who was taken into custody under Section 573.001, Health and Safety Code, has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); and

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

(h) Requires the law enforcement agency, if a person to whom written notice is provided under Subsection (b) or another lawful owner of a firearm subject to disposition under this article does not submit a written request to the magistrate for the return of the firearm before the 121st day after the date the law enforcement agency holding the firearm provides written notice under Subsection (b), to request the magistrate to order the sale of the firearm under this subsection. Authorizes the magistrate, after notice and a hearing, to order the sale of the firearm by a person who is a licensed firearms dealer under 18 U.S.C. Section 923 and who is selected by the law enforcement agency holding the firearm. Requires that the proceeds from the sale of a firearm under this subsection be given to the owner of the seized firearm, less the cost of administering this subsection. Prohibits an unclaimed firearm that was seized from a person taken into custody under Section 573.001, Health and Safety Code, from being destroyed or forfeited to the state.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2013.