

By: Perry, et al.

H.B. No. 1421

A BILL TO BE ENTITLED

AN ACT

relating to the disposition of certain seized weapons.

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

SECTION 1. Article 18.19, Code of Criminal Procedure, is amended by amending Subsections (c), (d), and (e) and adding Subsection (d-1) 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, sold at public sale by the law enforcement agency holding the weapon or by an auctioneer licensed under Chapter 1802, Occupations Code, 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, sale, or forfeiture of the weapon within the applicable period prescribed by

1 this subsection, the law enforcement agency holding the weapon may
2 request an order of destruction, sale, or forfeiture of the weapon
3 from the magistrate. Only a firearms dealer licensed under 18
4 U.S.C. Section 923 may purchase a weapon at public sale under this
5 subsection. Proceeds from the sale of a seized weapon under this
6 subsection shall be transferred, after the deduction of court costs
7 to which a district court clerk is entitled under Article 59.05(f),
8 followed by the deduction of auction costs, to the law enforcement
9 agency holding the weapon.

10 (d) A person either convicted or receiving deferred
11 adjudication under Chapter 46, Penal Code, is entitled to the
12 weapon seized upon request to the court in which the person was
13 convicted or placed on deferred adjudication. However, the court
14 entering the judgment shall order the weapon destroyed, sold at
15 public sale by the law enforcement agency holding the weapon or by
16 an auctioneer licensed under Chapter 1802, Occupations Code, or
17 forfeited to the state for use by the law enforcement agency holding
18 the weapon or by a county forensic laboratory designated by the
19 court if:

20 (1) the person does not request the weapon before the
21 61st day after the date of the judgment of conviction or the order
22 placing the person on deferred adjudication;

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

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

27 (4) the offense for which the person is convicted or

1 receives deferred adjudication was committed in or on the premises
2 of a playground, school, video arcade facility, or youth center, as
3 those terms are defined by Section 481.134, Health and Safety Code;
4 or

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

9 (d-1) Only a firearms dealer licensed under 18 U.S.C.
10 Section 923 may purchase a weapon at public sale under Subsection
11 (d). Proceeds from the sale of a seized weapon under Subsection (d)
12 shall be transferred, after the deduction of court costs to which a
13 district court clerk is entitled under Article 59.05(f), followed
14 by the deduction of auction costs, to the law enforcement agency
15 holding the weapon.

16 (e) If the person found in possession of a weapon is
17 convicted of an offense involving the use of the weapon, before the
18 61st day after the date of conviction the court entering judgment of
19 conviction shall order destruction of the weapon, sale at public
20 sale by the law enforcement agency holding the weapon or by an
21 auctioneer licensed under Chapter 1802, Occupations Code, or
22 forfeiture to the state for use by the law enforcement agency
23 holding the weapon or by a county forensic laboratory designated by
24 the court. If the court entering judgment of conviction does not
25 order the destruction, sale, or forfeiture of the weapon within the
26 period prescribed by this subsection, the law enforcement agency
27 holding the weapon may request an order of destruction, sale, or

1 forfeiture of the weapon from a magistrate. Only a firearms dealer
2 licensed under 18 U.S.C. Section 923 may purchase a weapon at public
3 sale under this subsection. Proceeds from the sale of a seized
4 weapon under this subsection shall be transferred, after the
5 deduction of court costs to which a district court clerk is entitled
6 under Article 59.05(f), followed by the deduction of auction costs,
7 to the law enforcement agency holding the weapon.

8 SECTION 2. This Act takes effect September 1, 2013.