

By: Fletcher

H.B. No. 3673

A BILL TO BE ENTITLED

AN ACT

relating to the disposition of certain firearms seized by a law enforcement agency.

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

SECTION 1. Section 573.001, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) A peace officer who takes a person into custody under Subsection (a) may immediately seize any firearm found in possession of the person. After seizing a firearm under this subsection, the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure.

(h) Absent exigent circumstances or if a warrant is otherwise not required as a matter of law, a peace officer must 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. Chapter 18, Code of Criminal Procedure, is amended by adding Article 18.191 to read as follows:

Art. 18.191. DISPOSITION OF FIREARM SEIZED FROM CERTAIN PERSONS WITH MENTAL ILLNESS. (a) A law enforcement officer who seizes a firearm from a person taken into custody under Section 573.001, Health and Safety Code, and not in connection with an offense involving the use of a weapon or an offense under Chapter 46, Penal Code, shall immediately upon arrival at the appropriate

1 facility in accordance with Section 573.001, Health and Safety
2 Code, provide the person a written copy of the receipt for the
3 firearm and a written notice of the procedure for the return of a
4 firearm under this article.

5 (b) The law enforcement agency holding a firearm subject to
6 disposition under this article shall, as soon as possible, but not
7 later than the 15th day after the date the person is taken into
8 custody under Section 573.001, Health and Safety Code, provide
9 written notice of the procedure for the return of a firearm under
10 this article to the last known address of the person detained or the
11 person's closest immediate family member as identified and
12 requested by the person detained or reasonably identifiable by the
13 law enforcement agency, sent by certified mail, return receipt
14 requested. The law enforcement agency shall deliver a copy of the
15 written notice along with an inventory of each firearm seized to a
16 magistrate in that county having jurisdiction to order commitment
17 under Chapter 574, Health and Safety Code. The written notice must
18 state the date by which a request for the return of the firearm must
19 be submitted to the magistrate as provided by Subsection (h).

20 (c) Not later than the 30th day after the date a firearm
21 subject to disposition under this article is seized, the law
22 enforcement agency holding the firearm shall contact the court in
23 the county having jurisdiction to order commitment under Chapter
24 574, Health and Safety Code, and request the disposition of the
25 case. Not later than the 30th day after the date of this request,
26 the clerk of the court shall advise the requesting agency whether
27 the person taken into custody was released under Section 573.023,

1 Health and Safety Code, or was ordered to receive inpatient mental
2 health services under Section 574.034 or 574.035, Health and Safety
3 Code.

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

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

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

16 (e) Not later than the 30th day after the date the clerk of
17 the court informs a law enforcement agency holding a firearm
18 subject to disposition under this article that the person taken
19 into custody was ordered to receive inpatient mental health
20 services under Section 574.034 or 574.035, Health and Safety Code,
21 the law enforcement agency shall provide written notice to the
22 person by certified mail that the person:

23 (1) is prohibited from owning, possessing, or
24 purchasing a firearm under 18 U.S.C. Section 922(g)(4);

25 (2) may petition the court that entered the commitment
26 order for relief from the firearms disability under Section
27 574.088, Health and Safety Code; and

1 (3) may dispose of the firearm in the manner provided
2 by Subsection (f).

3 (f) A person who receives notice under Subsection (e) may
4 dispose of the person's firearm by:

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

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

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

14 (C) the designee provides to the law enforcement
15 agency an affidavit confirming that the designee:

16 (i) will not allow access to the firearm by
17 the person who was taken into custody under Section 573.001, Health
18 and Safety Code, at any time during which the person may not
19 lawfully possess a firearm under 18 U.S.C. Section 922(g); and

20 (ii) acknowledges the responsibility of the
21 designee and no other person to verify whether the person has
22 reestablished the person's eligibility to lawfully possess a
23 firearm under 18 U.S.C. Section 922(g); or

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

26 (g) If a firearm subject to disposition under this article
27 is wholly or partly owned by a person other than the person taken

1 into custody under Section 573.001, Health and Safety Code, the law
2 enforcement agency holding the firearm shall release the firearm to
3 the person claiming a right to or interest in the firearm after:

4 (1) the person provides an affidavit confirming that
5 the person:

6 (A) wholly or partly owns the firearm;

7 (B) will not allow access to the firearm by the
8 person who was taken into custody under Section 573.001, Health and
9 Safety Code, at any time during which that person may not lawfully
10 possess a firearm under 18 U.S.C. Section 922(g); and

11 (C) acknowledges the responsibility of the
12 person and no other person to verify whether the person who was
13 taken into custody under Section 573.001, Health and Safety Code,
14 has reestablished the person's eligibility to lawfully possess a
15 firearm under 18 U.S.C. Section 922(g); and

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

21 (h) If a person to whom written notice is provided under
22 Subsection (b) or another lawful owner of a firearm subject to
23 disposition under this article does not submit a written request to
24 the magistrate for the return of the firearm before the 121st day
25 after the date the law enforcement agency holding the firearm
26 provides written notice under Subsection (b), the law enforcement
27 agency shall request the magistrate to order the sale of the firearm

1 under this subsection. After notice and a hearing, the magistrate
2 may order the sale of the firearm by a person who is a licensed
3 firearms dealer under 18 U.S.C. Section 923 and who is selected by
4 the law enforcement agency holding the firearm. The proceeds from
5 the sale of a firearm under this subsection shall be given to the
6 owner of the seized firearm, less the cost of administering this
7 subsection. An unclaimed firearm that was seized from a person
8 taken into custody under Section 573.001, Health and Safety Code,
9 may not be destroyed or forfeited to the state.

10 SECTION 3. The change in law made by this Act applies only
11 to the disposition of a firearm that is seized by a law enforcement
12 agency on or after the effective date of this Act. The disposition
13 of a firearm that was seized by a law enforcement agency before the
14 effective date of this Act is covered by the law in effect when the
15 firearm was seized, and the former law is continued in effect for
16 that purpose.

17 SECTION 4. This Act takes effect September 1, 2013.