

By: Huffman
(Fletcher)

S.B. No. 1189

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.

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 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.

(b) The law enforcement agency holding a firearm subject to disposition under this article shall, as soon as possible, but not later than the 15th day after the date the person is taken into

1 custody under Section 573.001, Health and Safety Code, provide
2 written notice of the procedure for the return of a firearm under
3 this article to the last known address of the person's closest
4 immediate family member as identified by the person or reasonably
5 identifiable by the law enforcement agency, sent by certified mail,
6 return receipt requested. The written notice must state the date by
7 which a request for the return of the firearm must be submitted to
8 the law enforcement agency as provided by Subsection (h).

9 (c) Not later than the 30th day after the date a firearm
10 subject to disposition under this article is seized, the law
11 enforcement agency holding the firearm shall contact the court in
12 the county having jurisdiction to order commitment under Chapter
13 574, Health and Safety Code, and request the disposition of the
14 case. Not later than the 30th day after the date of this request,
15 the clerk of the court shall advise the requesting agency whether
16 the person taken into custody was released under Section 573.023,
17 Health and Safety Code, or was ordered to receive inpatient mental
18 health services under Section 574.034 or 574.035, Health and Safety
19 Code.

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

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

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

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

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

14 (2) may petition the court that entered the commitment
15 order for relief from the firearms disability under Section
16 574.088, Health and Safety Code; and

17 (3) may dispose of the firearm in the manner provided
18 by Subsection (f).

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

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

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

27 (B) the person provides to the law enforcement

1 agency a copy of a notarized statement releasing the firearm to the
2 designee; and

3 (C) the designee provides to the law enforcement
4 agency an affidavit confirming that the designee:

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

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

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

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

20 (1) the person provides an affidavit confirming that
21 the person:

22 (A) wholly or partly owns the firearm;

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

27 (C) acknowledges the responsibility of the

1 person and no other person to verify whether the person who was
2 taken into custody under Section 573.001, Health and Safety Code,
3 has reestablished the person's eligibility to lawfully possess a
4 firearm under 18 U.S.C. Section 922(g); and

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

10 (h) If a person to whom written notice is provided under
11 Subsection (b) or another lawful owner of a firearm subject to
12 disposition under this article does not submit a written request to
13 the law enforcement agency for the return of the firearm before the
14 121st day after the date the law enforcement agency holding the
15 firearm provides written notice under Subsection (b), the law
16 enforcement agency may have the firearm sold by a person who is a
17 licensed firearms dealer under 18 U.S.C. Section 923. The proceeds
18 from the sale of a firearm under this subsection shall be given to
19 the owner of the seized firearm, less the cost of administering this
20 subsection. An unclaimed firearm that was seized from a person
21 taken into custody under Section 573.001, Health and Safety Code,
22 may not be destroyed or forfeited to the state.

23 SECTION 3. The change in law made by this Act applies only
24 to the disposition of a firearm that is seized by a law enforcement
25 agency on or after the effective date of this Act. The disposition
26 of a firearm that was seized by a law enforcement agency before the
27 effective date of this Act is covered by the law in effect when the

1 firearm was seized, and the former law is continued in effect for
2 that purpose.

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