

By: Huffman

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.

(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:

1 (1) immediately provide the person a written copy of
2 the receipt for the firearm and a written notice of the procedure
3 for the return of a firearm under this article; and

4 (2) promptly deliver to a magistrate a written notice
5 and inventory of each firearm seized.

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

18 (c) Not later than the 30th day after the date a firearm
19 subject to disposition under this article is seized, the law
20 enforcement agency holding the firearm shall contact the court in
21 the county having jurisdiction to order commitment under Chapter
22 574, Health and Safety Code, and request the disposition of the
23 case. Not later than the 30th day after the date of this request,
24 the clerk of the court shall advise the requesting agency whether
25 the person taken into custody was released under Section 573.023,
26 Health and Safety Code, or was ordered to receive inpatient mental
27 health services under Section 574.034 or 574.035, Health and Safety

1 Code.

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

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

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

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

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

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

26 (3) may dispose of the firearm in the manner provided
27 by Subsection (f).

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

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

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

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

12 (C) the designee provides to the law enforcement
13 agency an affidavit confirming that the designee:

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

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

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

24 (g) If a firearm subject to disposition under this article
25 is wholly or partly owned by a person other than the person taken
26 into custody under Section 573.001, Health and Safety Code, the law
27 enforcement agency holding the firearm shall release the firearm to

1 the person claiming a right to or interest in the firearm after:

2 (1) the person provides an affidavit confirming that
3 the person:

4 (A) wholly or partly owns the firearm;

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

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

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

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

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

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

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