

1-1 By: Huffman S.B. No. 1189
 1-2 (In the Senate - Filed March 6, 2013; March 12, 2013, read
 1-3 first time and referred to Committee on Criminal Justice;
 1-4 April 22, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 0; April 22, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1189 By: Huffman

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the disposition of certain firearms seized by a law
 1-20 enforcement agency.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 573.001, Health and Safety Code, is
 1-23 amended by adding Subsection (g) to read as follows:

1-24 (g) A peace officer who takes a person into custody under
 1-25 Subsection (a) may immediately seize any firearm found in
 1-26 possession of the person. After seizing a firearm under this
 1-27 subsection, the peace officer shall comply with the requirements of
 1-28 Article 18.191, Code of Criminal Procedure.

1-29 SECTION 2. Chapter 18, Code of Criminal Procedure, is
 1-30 amended by adding Article 18.191 to read as follows:

1-31 Art. 18.191. DISPOSITION OF FIREARM SEIZED FROM CERTAIN
 1-32 PERSONS WITH MENTAL ILLNESS. (a) A law enforcement officer who
 1-33 seizes a firearm from a person taken into custody under Section
 1-34 573.001, Health and Safety Code, and not in connection with an
 1-35 offense involving the use of a weapon or an offense under Chapter
 1-36 46, Penal Code, shall immediately provide the person a written copy
 1-37 of the receipt for the firearm and a written notice of the procedure
 1-38 for the return of a firearm under this article.

1-39 (b) The law enforcement agency holding a firearm subject to
 1-40 disposition under this article shall, as soon as possible, but not
 1-41 later than the 15th day after the date the person is taken into
 1-42 custody under Section 573.001, Health and Safety Code, provide
 1-43 written notice of the procedure for the return of a firearm under
 1-44 this article to the last known address of the person's closest
 1-45 immediate family member as identified by the person or reasonably
 1-46 identifiable by the law enforcement agency, sent by certified mail,
 1-47 return receipt requested. The written notice must state the date by
 1-48 which a request for the return of the firearm must be submitted to
 1-49 the law enforcement agency as provided by Subsection (h).

1-50 (c) Not later than the 30th day after the date a firearm
 1-51 subject to disposition under this article is seized, the law
 1-52 enforcement agency holding the firearm shall contact the court in
 1-53 the county having jurisdiction to order commitment under Chapter
 1-54 574, Health and Safety Code, and request the disposition of the
 1-55 case. Not later than the 30th day after the date of this request,
 1-56 the clerk of the court shall advise the requesting agency whether
 1-57 the person taken into custody was released under Section 573.023,
 1-58 Health and Safety Code, or was ordered to receive inpatient mental
 1-59 health services under Section 574.034 or 574.035, Health and Safety
 1-60 Code.

2-1 (d) Not later than the 30th day after the date the clerk of
 2-2 the court informs a law enforcement agency holding a firearm
 2-3 subject to disposition under this article that the person taken
 2-4 into custody was released under Section 573.023, Health and Safety
 2-5 Code, the law enforcement agency shall:

2-6 (1) conduct a check of state and national criminal
 2-7 history record information to verify whether the person may
 2-8 lawfully possess a firearm under 18 U.S.C. Section 922(g); and

2-9 (2) provide written notice to the person by certified
 2-10 mail that the firearm may be returned to the person on verification
 2-11 under Subdivision (1) that the person may lawfully possess the
 2-12 firearm.

2-13 (e) Not later than the 30th day after the date the clerk of
 2-14 the court informs a law enforcement agency holding a firearm
 2-15 subject to disposition under this article that the person taken
 2-16 into custody was ordered to receive inpatient mental health
 2-17 services under Section 574.034 or 574.035, Health and Safety Code,
 2-18 the law enforcement agency shall provide written notice to the
 2-19 person by certified mail that the person:

2-20 (1) is prohibited from owning, possessing, or
 2-21 purchasing a firearm under 18 U.S.C. Section 922(g)(4);

2-22 (2) may petition the court that entered the commitment
 2-23 order for relief from the firearms disability under Section
 2-24 574.088, Health and Safety Code; and

2-25 (3) may dispose of the firearm in the manner provided
 2-26 by Subsection (f).

2-27 (f) A person who receives notice under Subsection (e) may
 2-28 dispose of the person's firearm by:

2-29 (1) releasing the firearm to the person's designee,
 2-30 if:

2-31 (A) the law enforcement agency holding the
 2-32 firearm conducts a check of state and national criminal history
 2-33 record information and verifies that the designee may lawfully
 2-34 possess a firearm under 18 U.S.C. Section 922(g);

2-35 (B) the person provides to the law enforcement
 2-36 agency a copy of a notarized statement releasing the firearm to the
 2-37 designee; and

2-38 (C) the designee provides to the law enforcement
 2-39 agency an affidavit confirming that the designee:

2-40 (i) will not allow access to the firearm by
 2-41 the person who was taken into custody under Section 573.001, Health
 2-42 and Safety Code, at any time during which the person may not
 2-43 lawfully possess a firearm under 18 U.S.C. Section 922(g); and

2-44 (ii) acknowledges the responsibility of the
 2-45 designee and no other person to verify whether the person has
 2-46 reestablished the person's eligibility to lawfully possess a
 2-47 firearm under 18 U.S.C. Section 922(g); or

2-48 (2) releasing the firearm to the law enforcement
 2-49 agency holding the firearm, for disposition under Subsection (h).

2-50 (g) If a firearm subject to disposition under this article
 2-51 is wholly or partly owned by a person other than the person taken
 2-52 into custody under Section 573.001, Health and Safety Code, the law
 2-53 enforcement agency holding the firearm shall release the firearm to
 2-54 the person claiming a right to or interest in the firearm after:

2-55 (1) the person provides an affidavit confirming that
 2-56 the person:

2-57 (A) wholly or partly owns the firearm;

2-58 (B) will not allow access to the firearm by the
 2-59 person who was taken into custody under Section 573.001, Health and
 2-60 Safety Code, at any time during which that person may not lawfully
 2-61 possess a firearm under 18 U.S.C. Section 922(g); and

2-62 (C) acknowledges the responsibility of the
 2-63 person and no other person to verify whether the person who was
 2-64 taken into custody under Section 573.001, Health and Safety Code,
 2-65 has reestablished the person's eligibility to lawfully possess a
 2-66 firearm under 18 U.S.C. Section 922(g); and

2-67 (2) the law enforcement agency holding the firearm
 2-68 conducts a check of state and national criminal history record
 2-69 information and verifies that the person claiming a right to or

3-1 interest in the firearm may lawfully possess a firearm under 18
3-2 U.S.C. Section 922(g).

3-3 (h) If a person to whom written notice is provided under
3-4 Subsection (b) or another lawful owner of a firearm subject to
3-5 disposition under this article does not submit a written request to
3-6 the law enforcement agency for the return of the firearm before the
3-7 121st day after the date the law enforcement agency holding the
3-8 firearm provides written notice under Subsection (b), the law
3-9 enforcement agency may have the firearm sold by a person who is a
3-10 licensed firearms dealer under 18 U.S.C. Section 923. The proceeds
3-11 from the sale of a firearm under this subsection shall be given to
3-12 the owner of the seized firearm, less the cost of administering this
3-13 subsection. An unclaimed firearm that was seized from a person
3-14 taken into custody under Section 573.001, Health and Safety Code,
3-15 may not be destroyed or forfeited to the state.

3-16 SECTION 3. The change in law made by this Act applies only
3-17 to the disposition of a firearm that is seized by a law enforcement
3-18 agency on or after the effective date of this Act. The disposition
3-19 of a firearm that was seized by a law enforcement agency before the
3-20 effective date of this Act is covered by the law in effect when the
3-21 firearm was seized, and the former law is continued in effect for
3-22 that purpose.

3-23 SECTION 4. This Act takes effect September 1, 2013.

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