86R7942 GCB-D

By:  Watson S.B. No. 1945

A BILL TO BE ENTITLED

AN ACT

relating to a court's authority to temporarily restrict the ability of a proposed patient for court-ordered mental health services to possess a firearm.

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

SECTION 1.  Article 18.191, Code of Criminal Procedure, is amended by amending Subsections (c) and (d) and adding Subsection (d-1) to read as follows:

(c)  Not later than the 30th day after the date a firearm subject to disposition under this article is seized, the law enforcement agency holding the firearm shall contact the court in the county having jurisdiction to order commitment under Chapter 574, Health and Safety Code, and request the disposition of the case.  Not later than the 30th day after the date of this request, the clerk of the court shall advise the requesting agency:

(1)  whether the person taken into custody was released under Section 573.023, Health and Safety Code, or was ordered to receive outpatient mental health services or inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code; and

(2)  whether the person is subject to a temporary firearm restriction ordered under Section 574.0335, Health and Safety Code.

(d)  Except as provided by Subsection (d-1), not [~~Not~~] later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was released under Section 573.023, Health and Safety Code, the law enforcement agency shall:

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

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

(d-1)  If the clerk of court informs a law enforcement agency holding a firearm subject to disposition under this article that the person is subject to a temporary firearm restriction ordered under Section 574.0335, Health and Safety Code, the law enforcement agency shall hold the firearm until the expiration of the 90-day period of the restriction. Not later than 30 days before the expiration of the 90-day period of the restriction, the law enforcement agency shall conduct the verification required under Subsection (d)(1) and provide the notice described by Subsection (d)(2). If the law enforcement agency verifies that the person lawfully may possess a firearm, the firearm may be returned to the person on expiration of the 90-day period of the restriction. A law enforcement agency may return a firearm to a person who lawfully may possess a firearm before the expiration of the 90-day period if the person provides a copy of an order showing the court granted the person's appeal of the restriction, in accordance with Section 574.0335(b), Health and Safety Code.

SECTION 2.  Subchapter C, Chapter 574, Health and Safety Code, is amended by adding Section 574.0335 to read as follows:

Sec. 574.0335.  ORDER IMPOSING TEMPORARY FIREARM RESTRICTION. (a) The judge may issue an order prohibiting the owning, possessing, or purchasing of a firearm for a period of 90 days by a proposed patient who is ordered to receive court-ordered outpatient mental health services under Section 574.034 or 574.035, or who does not otherwise meet the applicable criteria for court-ordered mental health services and is released under Section 574.033, if the court finds by clear and convincing evidence that the proposed patient's possession of a firearm would present a substantial risk of serious harm to the proposed patient's self or to others.

(b)  A person may appeal a temporary firearm restriction imposed on the person under this section not sooner than 30 days after the date the order is imposed. The court shall hold a hearing to consider the appeal and shall remove the restriction unless the court finds by clear and convincing evidence that the person's possession of a firearm continues to pose a substantial risk of serious harm to the person's self or to others.

(c)  If the court denies a person's appeal, the temporary firearm restriction shall continue, and the person may not make a subsequent appeal of the restriction for the remainder of the 90-day period for which the restriction is imposed.

SECTION 3.  (a) The change in law made by this Act to Article 18.191, Code of Criminal Procedure, applies only to the disposition of a firearm seized by a law enforcement agency on or after the effective date of this Act.

(b)  The change in law made by this Act in adding Section 574.0335, Health and Safety Code, applies to a hearing held under that chapter on or after the effective date of this Act, regardless of whether conduct of a proposed patient that is a subject of the hearing occurred before the effective date of this Act.

SECTION 4.  This Act takes effect September 1, 2019.