87R11246 EAS-D

By:  Moody H.B. No. 3977

A BILL TO BE ENTITLED

AN ACT

relating to the emergency detention of certain persons with a mental illness or cognitive disability and the scope of an order for psychoactive medication for certain patients under court-ordered mental health services.

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 (a), (b), (f), (g), and (h) to read as follows:

(a)  A law enforcement officer who seizes a firearm from a person taken into custody under Section 573.001 or 573.012, 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 custody under Section 573.001 or 573.012, Health and Safety Code, provide written notice of the procedure for the return of a firearm under this article to the last known address of the person's closest immediate family member as identified by the person or reasonably identifiable by the law enforcement agency, sent by certified mail, return receipt requested. The written notice must state the date by which a request for the return of the firearm must be submitted to the law enforcement agency as provided by Subsection (h).

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

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

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

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

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

(i)  will not allow access to the firearm by the person who was taken into custody under Section 573.001 or 573.012, Health and Safety Code, at any time during which the person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

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

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

(g)  If a firearm subject to disposition under this article is wholly or partly owned by a person other than the person taken into custody under Section 573.001 or 573.012, Health and Safety Code, the law enforcement agency holding the firearm shall release the firearm to the person claiming a right to or interest in the firearm after:

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

(A)  wholly or partly owns the firearm;

(B)  will not allow access to the firearm by the person who was taken into custody under Section 573.001 or 573.012, Health and Safety Code, at any time during which that person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(C)  acknowledges the responsibility of the person and no other person to verify whether the person who was taken into custody under Section 573.001 or 573.012, Health and Safety Code, has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); and

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

(h)  If a person to whom written notice is provided under Subsection (b) or another lawful owner of a firearm subject to disposition under this article does not submit a written request to the law enforcement agency for the return of the firearm before the 121st day after the date the law enforcement agency holding the firearm provides written notice under Subsection (b), the law enforcement agency may have the firearm sold by a person who is a licensed firearms dealer under 18 U.S.C. Section 923. The proceeds from the sale of a firearm under this subsection shall be given to the owner of the seized firearm, less the cost of administering this subsection. An unclaimed firearm that was seized from a person taken into custody under Section 573.001 or 573.012, Health and Safety Code, may not be destroyed or forfeited to the state.

SECTION 2.  Section 573.012, Health and Safety Code, is amended by amending Subsections (a) and (h-1) and adding Subsections (d-1), (h-2), and (h-3) to read as follows:

(a)  Except as provided by Subsection (h) or (h-2), an applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsection (g), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1)  presented personally to the court; or

(2)  retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(d-1)  A peace officer may immediately seize any firearm found in the possession of a person for whom a warrant has been issued under Subsection (d). Article 18.191, Code of Criminal Procedure, applies to the disposition of a firearm seized by a peace officer in accordance with this subsection.

(h-1)  After the presentation of an application under Subsection (h) or (h-2), the judge or magistrate may transmit a warrant to the applicant:

(1)  electronically, if a digital signature, as defined by Article 2.26, Code of Criminal Procedure, is transmitted with the document; or

(2)  by e-mail with the warrant attached as a secure document in a portable document format (PDF), if the identifiable legal signature of the judge or magistrate is transmitted with the document.

(h-2)  If the person who is the subject of an application for emergency detention is receiving care in a hospital or other facility operated by a local mental health authority, a judge or magistrate may permit an applicant who is a licensed physician assistant, nurse practitioner, or nonphysician mental health professional to present an application in the manner provided by Subsection (h).

(h-3)  In this section, "nonphysician mental health professional" means:

(A)  a psychologist licensed to practice in this state and designated as a health-service provider;

(B)  a registered nurse with a master's or doctoral degree in psychiatric nursing;

(C)  a licensed clinical social worker; or

(D)  a licensed professional counselor licensed to practice in this state.

SECTION 3.  Section 574.106, Health and Safety Code, is amended by adding Subsection (a-2) to read as follows:

(a-2)  An order under Subsection (a) includes the authority to take a patient's blood sample to conduct medically necessary laboratory tests to ensure that a psychoactive medication is being safely administered.

SECTION 4.  This Act takes effect September 1, 2021.