

- SUBJECT:** Disposition of certain firearms seized by a law enforcement agency
- COMMITTEE:** Homeland Security and Public Safety — favorable, without amendment
- VOTE:** 9 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Kleinschmidt, Lavender, Sheets, Simmons
- 0 nays
- SENATE VOTE:** On final passage, April 25 — 28-0
- WITNESSES:** (*On House companion bill, HB 3673:*)  
For — Guy Herman, Probate Court of Travis County; Michael Lee and Lawrence Pate, Houston Police Department; (*Registered, but did not testify:* Donald Baker, Kristina Thompson, and James Turner, Austin Police Department; James Jones, San Antonio Police Department; Jacques Ntonme, Texas Appleseed; Timothy Smetzer; Charlah Woodard, Texas Crisis Intervention Training Association)
- Against — None
- On — (*Registered, but did not testify:* JD Robertson, Texas Rangers)
- BACKGROUND:** Health and Safety Code, sec. 573.001 allows a peace officer to take a person into custody without a warrant if the officer has reason to believe — and does believe — that the person is mentally ill and that because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained.
- DIGEST:** SB 1189 would amend Health and Safety Code, sec. 573.001 to allow a peace officer to seize any firearm found in possession of a person taken into custody under that section.
- The bill would provide for disposition of weapons seized in this circumstance. A peace officer who seized a weapon under sec. 573.001 and not in connection with any offense would be required to immediately provide the person from whom the firearm was seized a written copy of the receipt for the firearm and written notice of the procedure for return of

a firearm under the bill.

Not later than the 30th day after the firearm was seized, the law enforcement agency holding the firearm would be required to contact the court with jurisdiction over the person and request the disposition of the case. The clerk of the court would have to advise the requesting agency of the disposition no later than 30 days after the date of the request. Law enforcement would then proceed based on the disposition no later than 30 days after receiving this response.

If the person was released, the law enforcement agency would need to conduct a check of state and criminal history record information to verify whether the person could lawfully possess a firearm. Upon this verification, the law enforcement agency would provide written notice to the person by certified mail that the firearm could be returned. The person would need to submit a written request for return of the firearm before the 121st day after the written notice was provided by the law enforcement agency. Otherwise, the law enforcement agency could dispose of the firearm.

If the person was ordered to receive inpatient mental health care, the agency would need to provide written notice to the person by certified mail that the person:

- was prohibited from owning, possessing, or purchasing a firearm;
- could petition the court ordering the commitment for relief from this prohibition; and
- could dispose of the firearm by releasing it to law enforcement for disposition or by releasing it to a designated person.

The firearm could only be released to a designee of the person from whom it was seized if:

- the law enforcement agency holding the weapon conducted a check of state and national criminal history record information to verify whether the designee could lawfully possess a firearm;
- the person provided a notarized statement releasing the firearm to the designee; and
- the designee provided an affidavit to the law enforcement agency confirming that the designee would not allow access to the firearm by the person at any time during which the person could not

lawfully possess a firearm and acknowledged that the designee alone had the responsibility to verify whether the person had reestablished eligibility to possess a firearm.

If the firearm seized was wholly or partly owned by a person other than the person taken into custody, the law enforcement agency would be required to release the firearm to the person claiming a right to the firearm after conducting a check of the claiming person's state and national criminal history record information to verify whether he or she could lawfully possess a firearm and the claiming person provided an affidavit confirming that he or she:

- wholly or partly owned the firearm;
- would not allow access to the firearm by the person who was taken into custody at any time during which that person could not lawfully possess a firearm; and
- acknowledged that the claiming person alone had the responsibility to verify whether the person taken into custody had reestablished eligibility to possess a firearm.

If the law enforcement agency holding a firearm seized under the bill was required or permitted to dispose of the firearm, the law enforcement agency could have the firearm sold by a federally licensed firearms dealer. The proceeds from the sale would be given to the owner of the seized firearm, less the cost of administering the procedures under the bill. An unclaimed firearm that was seized under the bill could not be destroyed or forfeited to the state.

The bill would take effect September 1, 2013 and would apply only to a weapon seized on or after that date.

**SUPPORTERS  
SAY:**

SB 1189 would provide necessary guidelines and procedures for disposition of weapons seized from a person in a mental crisis. There currently is no procedure for disposition of these weapons, and law enforcement must rely on the word of the person retrieving a firearm that he or she may lawfully possess it. The bill would provide the proper channels and guidelines to ensure that law enforcement was informed of the disposition of a person's case and did not return a firearm to a person who may not lawfully possess it. The bill also would expressly allow a peace officer to seize these weapons in the first place. Although it has been accepted as an implied power of law enforcement under their existing

“community caretaking” function, this bill would explicitly clarify such a power.

The bill would ensure that the person whose weapon was seized under the bill at least retained the value of the weapon by requiring that the weapon be resold if it was unclaimed. If the weapon were destroyed or forfeited, there would be no way to return the monetary proceeds for the value of the gun to the person from whom it was seized.

**OPPONENTS  
SAY:**

SB 1189 should provide disposition options for unclaimed weapons other than resale of the gun through a firearms dealer. Weapons seized in the commission of a crime may be destroyed or donated to the state and the same options should be available for weapons seized under this bill.