

## **BILL ANALYSIS**

Senate Research Center  
83R2446 AJZ-D

S.B. 343  
By: Estes  
Criminal Justice  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Current law provides that, when the police confiscate a weapon as part of an arrest or at a crime scene, the police department must either use it or destroy it, unless the weapon is alleged to have been stolen. If the weapon is alleged to have been stolen, the lawful owner has 30 days to reclaim it following the conviction of its thief. If the police are unable to find the lawful owner or the lawful owner fails to claim the weapon, it may be used by the department, destroyed, or auctioned.

This bill expands the options presently available to a police department wishing to dispose of a firearm that has been confiscated but which is not believed to have been stolen. In addition to allowing the police to destroy the gun or use it for their own purposes, this bill would amend Article 18.19 of the Texas Code of Criminal Procedure to give the police the option to auction the gun to a federally licensed firearm dealer. The police department would be able to spend the proceeds in any way it saw fit.

As proposed, S.B. 343 amends current law relating to the disposition of certain seized weapons.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 18.19, Code of Criminal Procedure, by amending Subsections (c), (d), and (e) and adding Subsection (d-1), as follows:

(c) Requires the magistrate to order the weapon returned to the person found in possession before the 61st day after the date the magistrate receives a request from a person. Requires that the magistrate, if the weapon is not requested before the 61st day after the date of notification, before the 121st day after the date of notification, order the weapon destroyed, sold at public sale by the law enforcement agency holding the weapon or by an auctioneer licensed under Chapter 1802 (Auctioneers), Occupations Code, or forfeited to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory designated by the magistrate. Authorizes the law enforcement agency holding the weapon, if the magistrate does not order the return, destruction, sale, or forfeiture of the weapon within the applicable period prescribed by this subsection, to request an order of destruction, sale, or forfeiture of the weapon from the magistrate. Provides that only a firearms dealer licensed under 18 U.S.C. Section 923 may purchase a weapon at a public sale under this subsection. Requires that proceeds from the sale of a seized weapon under this subsection be transferred, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f) (relating to forfeiture and court costs), followed by the deduction of auction costs, to the law enforcement agency holding the weapon.

(d) Requires the court entering the judgment to order the weapon destroyed, sold at public sale by the law enforcement agency holding the weapon or by an auctioneer licensed under Chapter 1802, Occupations Code, or forfeited to the state for use by the

law enforcement agency holding the weapon or by a county forensic laboratory designated by the court if certain conditions are met.

(d-1) Authorizes only a firearms dealer licensed under 18 U.S.C. Section 923 to purchase a weapon at public sale under Subsection (d). Requires that proceeds from the sale of a seized weapon under Subsection (d) be transferred, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), followed by the deduction of auction costs, to the law enforcement agency holding the weapon.

(e) Requires the court entering judgment of conviction, if the person found in possession of a weapon is convicted of an offense involving the use of the weapon, before the 61st day after the date of conviction to order destruction of the weapon, sale at public sale by the law enforcement agency holding the weapon or by an auctioneer licensed under Chapter 1802, Occupations Code, or forfeiture to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory designated by the court. Authorizes the law enforcement agency holding the weapon, if the court entering judgment of conviction does not order the destruction, sale, or forfeiture of the weapon within the period prescribed by this subsection, to request an order of destruction, sale, or forfeiture of the weapon from a magistrate. Authorizes only a firearms dealer licensed under 18 U.S.C. Section 923 to purchase a weapon at public sale under this subsection. Requires that proceeds from the sale of a seized weapon under this subsection be transferred, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), followed by the deduction of auction costs, to the law enforcement agency holding the weapon.

SECTION 2. Effective date: upon passage or September 1, 2013.