

## **BILL ANALYSIS**

Senate Research Center

S.B. 1944  
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Criminal Justice  
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As Filed

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

S.B. 1189, 83rd Legislature, Regular Session, 2013, established a mechanism by which a firearm may be seized from a person taken into custody pursuant to an emergency mental health warrant. It also establishes a mechanism for the return of the firearm to the owner if the owner is released under Section 573.023 (Release from Emergency Detention), Health and Safety Code, after a determination that the person does not suffer from a mental disorder. If the person is found to be suffering from a qualifying mental disorder, the firearm is tendered to a co-owner or their designee. Specific procedures must be followed in either case, including a complete background check on any person to whom a firearm is delivered.

If a person is found to have a disqualifying mental disorder, the person is entitled to challenge the finding in court. If the person prevails in court, thus setting aside the finding of a disqualifying mental disorder, they may be released from custody pursuant to Section 574.028 (Release from Detention), rather than Section 574.023. Although such findings are relatively rare and few people are released under Section 574.028, this section was not addressed in S.B. 1189. Thus, both law enforcement agencies and gun owners are left without a mechanism to seek return of the firearms without a court order.

S.B. 1944 closes this loophole by applying the same procedures for return of firearms to people who are released from custody pursuant to Section 574.028, as is applicable to those released under 574.023. Neither S.B. 1944 nor S.B. 1189 require or even allow the return of a firearm to a person who has been diagnosed with a mental disorder that disqualifies the person from possessing a firearm under state or federal laws.

As proposed, S.B. 1944 amends current law relating to the disposition of certain firearms seized by a law enforcement agency.

### **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 Articles 18.191(c) and (d), Code of Criminal Procedure, as follows:

(c) Requires the clerk of the court, not later than the 30th day after the date of this request, to advise the requesting agency whether the person taken into custody was released under Section 573.023 (Release from Emergency Detention) or 574.028 (Release from Detention), Health and Safety Code, or was ordered to receive inpatient mental health services under Section 574.034 (Order from Temporary Mental Health Services) or 574.035 (Order for Extended Mental Health Services), Health and Safety Code. Makes no further change to this subsection.

(d) Requires the law enforcement agency, 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 or 574.028, Health and Safety Code, to perform certain enumerated tasks. Makes no further change to this subsection.

SECTION 2. Effective date: September 1, 2015.