

Disposition of Seized Weapons

Seizure of Weapons (Art. 18.19(a), Code of Criminal Procedure)

Weapons seized in connection with an offense involving the use of a weapon or an offense under Chapter 46 of the Penal Code (offenses involving weapons) are to be held by the law enforcement agency making the seizure unless:

- The weapon is a prohibited weapon under Chapter 46, in which case the disposition of the weapons is controlled by Art. 18.18 of the Code of Criminal Procedure; or
- The weapon is alleged to be stolen, in which case Chapter 47 of the Code of Criminal Procedure applies.

Inventory (Art. 18.19(b))

If a weapon to which Art. 18.19 applies is seized and the seizure is not pursuant to a search or arrest warrant, then the person seizing it must prepare and deliver to a magistrate an inventory of each weapon seized.

Notice and Order by Magistrate (Art. 18.19(c))

If there is no prosecution or conviction for an offense involving the weapon that was seized, then the magistrate to whom the seizure was reported must notify the person found in possession of the weapon that the person is entitled to the weapon upon written request to the magistrate.

The magistrate has to send this **notice** before the **61st day after the magistrate determines that there will be no prosecution or conviction.**

The magistrate must **order the weapon returned** to the person found in possession of the weapon before the **61st day after the date the magistrate receives a request from the person.**

If the weapon is not requested before the 61st day after the date of notification, the magistrate shall:

- order the weapon destroyed,
- sold at public sale by the law enforcement agency holding the weapon or by an auctioneer 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.

The magistrate must issue this order before the 121st day after the date of the notification.

If the magistrate does not order the return, destruction, sale, or forfeiture of the weapon within the time periods above, then the law enforcement agency holding the weapon may request an order of destruction, sale or forfeiture of the weapon from the magistrate.

Only a licensed firearms dealer may purchase a weapon at public sale.

Person Convicted or Receiving Deferred Under Chapter 46

A person who is convicted or receives deferred adjudication under Chapter 46 of the Penal Code is entitled to the seized weapon **upon request to the court in which the person was convicted or placed on deferred adjudication**. But the court entering the judgment must order the weapon destroyed 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:

- the person does not request the weapon before the 61st day after the date of the judgment of conviction or the order placing the person on deferred adjudication;
- the person has been previously convicted under Chapter 46, Penal Code;
- the weapon is one defined as a prohibited weapon under Chapter 46, Penal Code;
- the offense for which the person is convicted or receives deferred adjudication was committed in or on the premises of a playground, school, video arcade facility, or youth center; or
- the court determines based on the prior criminal history of the defendant or based on the circumstances surrounding the commission of the offense that possession of the seized weapon would pose a threat to the community or one or more individuals.

This request must be made by the defendant to the trial court in which he or she was convicted. It is not a request to the magistrate (which only applies if the person is not prosecuted for an offense involving the weapon).

Disposition of Firearms Seized from Certain Persons with Mental Illness (Art. 18.191, Code of Criminal Procedure)

If a law enforcement officer takes a person into custody under Health & Safety Code § 573.001 (apprehension of a mentally ill person without a warrant), and not in connection with an offense involving the use of a weapon or an offense under Chapter 46 of the Penal Code, then the officer must immediately provide the person with a written copy of the receipt for the firearm and a written notice of the procedure for the return of the firearm.

As soon as possible but not later than the 15th day after the person is taken into custody under H&S Code § 573.001, the law enforcement agency holding the firearm must also provide a written notice of the procedure for the return of the firearm to the last known address of the person's closest immediate family member as identified by the person or by the law enforcement agency, sent by certified mail, return receipt requested. The notice must state the date by which a request for return of the firearm must be submitted to the law enforcement agency (120 days).

The law enforcement agency must contact the court not later than the 30th day after the date the firearm is seized and request the disposition of the case. Not later than the 30th day after that

request the clerk of the court must inform the law enforcement agency whether the person was released or ordered to receive inpatient mental health services.

Not later than the 30th day after the court informs the law enforcement agency that the person was released, the law enforcement agency must conduct a check of state and national criminal history record information to verify whether the person may lawfully possess a firearm, and provide written notice to the person by certified mail that the firearm may be returned to the person upon verification that the person may lawfully possess a firearm.

If the clerk of the court informs the law enforcement agency that the person was ordered to receive inpatient mental health services, then not later than the 30th day after that date the law enforcement agency must provide written notice to the person by certified mail stating that the person: (1) is prohibited from owning, possessing or purchasing a firearm; (2) may petition the court that entered the commitment order for relief from the firearms disability under H&S Code § 574.088; and (3) may dispose of the firearm by releasing the firearm to a designee after certain procedures are followed or by releasing the firearm to the law enforcement agency.

If a firearm is wholly or partly owned by someone other than the person who was taken into custody, the law enforcement agency must release the firearm to that person after (1) the person provides an affidavit confirming that he wholly or partly owns the firearm, that he will not allow the person taken into custody to have access to the firearm while he may not lawfully possess it, and that he acknowledges responsibility for verifying whether the person taken into custody has re-established his eligibility to lawfully possess the firearm; and (2) the law enforcement agency conducts a check of state and national criminal history record information to verify that the person may lawfully possess a firearm.

If the person to whom law enforcement sent the notice concerning the procedure for return of the firearm (i.e. the closest immediate family member) or another lawful owner of the firearm does not submit a written request for the return of the firearm before the 121st day after the date the law enforcement provided the written notice, then the law enforcement agency may have the firearm sold by a licensed firearms dealer. The proceeds of the sale are to be given to the owner of the firearm less the cost of administering the sale.