

SUBJECT: Disposition of certain seized weapons in criminal cases

COMMITTEE: Public Safety — favorable, without amendment

VOTE: 7 ayes — B. Turner, Keel, Berman, Driver, Hupp, Isett, Villarreal
0 nays
2 absent — Gutierrez, P. King

WITNESSES: For — Kolene Dean, Texas Association of Property and Evidence Inventory Technicians and Hurst Police Department; Paul Szendrey, Texas Association of Property and Evidence Inventory Technicians
Against — None

BACKGROUND: Code of Criminal Procedure, art. 18.19 establishes guidelines for the disposition of seized weapons. A law enforcement agency must hold a weapon seized in connection with a weapons violation unless the weapon is prohibited under Penal Code, ch. 46, or alleged to be stolen. If there is no prosecution or conviction for the offense, the magistrate to whom the seizure was reported must notify the person found in possession that he is entitled to the weapon upon request to the court. If the weapon is not requested within 60 days, the magistrate must order the weapon destroyed or forfeited to the law enforcement agency holding the weapon.

If there is a conviction or deferred adjudication for the offense, the convicted person is entitled to the seized weapon upon request to the law enforcement agency holding the weapon. The court must order the weapon destroyed or forfeited to the law enforcement agency holding the weapon if the convicted person does not request the weapon within 60 days of the conviction or has been convicted of a weapons offense in the past, if the weapon is prohibited, or if the offense took place on a playground, at a school, or in a video arcade or youth center.

If a weapon is prohibited and there is a conviction, the court must order the weapon to be destroyed or forfeited to the law enforcement agency that seized it. If there is no conviction, a magistrate must order, on a motion by the law enforcement agency that made the seizure, destruction or forfeiture of

the weapon to the law enforcement agency unless the person from whom the weapon was seized can show why it should not be destroyed or forfeited. If a seized weapon is alleged to be stolen, the law enforcement agency must hold the weapon subject to order of the court.

Seized weapons are held in law enforcement storage facilities for confiscated property, commonly known as property rooms.

DIGEST:

HB 2184 would provide that a person convicted of or receiving deferred adjudication for a weapons offense would be entitled to the weapon upon request to the court in which the person was convicted or placed on deferred adjudication, instead of upon request to the law enforcement agency holding the weapon. The court would have to order the weapon destroyed, forfeited, or returned to the owner if:

- ! the person did not request the weapon's return before the 61st day after the date of conviction or the order placing the person on deferred adjudication;
- ! the person had been convicted previously of a weapons violation;
- ! the weapon was prohibited; or
- ! the violation was committed on a playground, at a school, in a video arcade, or youth center.

If the court did not order the release, destruction, or forfeiture of the weapon within the prescribed time period, the law enforcement agency holding the weapon could ask the court for an order to destroy or forfeit the weapon.

This bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

Law enforcement property rooms in Texas are overwhelmed by stockpiled weapons, which are one of the most difficult items to dispose. Currently, there is no set period in which the court must act to order the disposition of a weapon. Without a time limit, if the court does not order disposition, the law enforcement agency winds up holding the weapon indefinitely, resulting in excessive stockpiles of weapons.

Current law regarding the disposition of seized weapons is unnecessarily burdensome and provides an unclear and sometimes indefinite time frame under which courts and magistrates must work. A convicted person is

entitled to the seized weapon upon request to a law enforcement agency, but only the court that heard the case knows the decision of the judge regarding the disposition of the weapon. Allowing a person to petition the court rather than the agency would simplify the process and put the burden upon the defendant authorize the release of the weapon, rather than requiring the agency to check with the court regarding the request.

The bill's author plans to offer a floor amendment that, among other things, would remove from the bill the court's authority to return the seized weapon to the owner if the owner had been convicted or placed on deferred adjudication.

OPPONENTS
SAY:

HB 2184 inappropriately could allow the return of a weapon to a person who had been convicted of a weapons violation, who possessed a prohibited weapon, or who had committed a weapons offense in a place where children congregated. Protecting the lives and safety of Texans should have priority over clearing out law enforcement storage space.

NOTES:

The author plans to offer a floor amendment that would:

- ! delete the provision that the court could order a weapon returned to the owner if the owner had been convicted or had been placed on deferred adjudication;
- ! require that, if there was no prosecution or conviction, the magistrate to whom the weapon's seizure was reported would have to notify the person found in possession, within 60 days after the magistrate determined that there would be no prosecution or conviction, that the person was entitled to the weapon upon written request to the magistrate;
- ! require the magistrate to order the weapon returned to the person found in possession within 60 days after receiving a request from a person if there was no prosecution or conviction;
- ! require the magistrate to order the weapon destroyed or forfeited within 120 days after notifying the owner, if there was no prosecution or conviction; and

- ! authorize the law enforcement agency holding the weapon to ask the magistrate for an order to destroy or forfeit the weapon if the magistrate did not order the return, destruction, or forfeiture within the prescribed period in a case in which there was no prosecution or conviction.