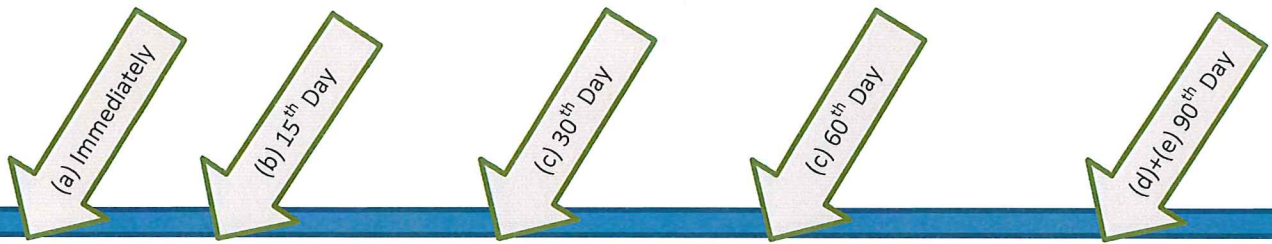




OFFICE OF THE DIRECTOR OF POLICE  
THE UNIVERSITY OF TEXAS SYSTEM  
TRAINING BULLETIN 13  
MENTALLY ILL AND SEIZED FIREARMS  
JULY 30, 2015



**TIMELINE FOR DISPOSITION OF FIREARM SEIZED FROM CERTAIN PERSONS WITH MENTAL ILLNESS**



- (a) A LAW ENFORCEMENT OFFICER WHO SEIZES A FIREARM UNDER *Texas Health and Safety Code* §573.001 **SHALL IMMEDIATELY** provide:
- 1) written copy of receipt for firearm
  - 2) written notice of procedure for return of the firearm
- (b) **AS SOON AS POSSIBLE BUT NOT LATER THAN THE 15<sup>TH</sup> DAY**, provide written notice of procedure for return of the firearm to the last known address of the person's closest immediate family member by certified mail, return receipt requested. Notice must state the date by which a request for the return of the firearm must be submitted to the law enforcement agency as provided in Subsection (h). (*This date must be before the 121<sup>st</sup> day after the date the law enforcement agency holding the firearm provided written notice under Subsection (b).*)
- (c) **NOT LATER THAN 30<sup>TH</sup> DAY AFTER the firearm was seized**, the law enforcement agency is required to contact the applicable court of commitment jurisdiction to request disposition of the case.
- (c) **NOT LATER THAN THE 30<sup>TH</sup> DAY AFTER C ABOVE**, the clerk of court shall advise the law enforcement agency if the person taken into custody was released under 573.023 or was ordered to receive in patient services under 574.034 or 574.035.
- (d) **NOT LATER THAN THE 30<sup>th</sup> DAY AFTER** the clerk of the court informs the law enforcement agency that the person was released under Section 573.023, the law enforcement agency shall:
- (1) Conduct a state and national criminal history record search to verify whether the person may lawfully possess a firearm under 18 USC 922(g); and

(2) Provide written notice to the person by certified mail that the firearm may be returned to the person on verification of Subdivision (1) that the person may lawfully possess the firearm.

(e) **NOT LATER THAN THE 30<sup>TH</sup> DAY AFTER** the clerk of the court informs the law enforcement agency that the person was ordered to receive inpatient mental health services under 574.034 or 574.035, the agency shall provide written notice to the person by certified mail that the person:

(1) is prohibited from owning, possessing, or purchasing a firearm under 18 USC 922(g)(4);

(2) may petition the court that entered the commitment order for relief from the firearms disability under Section 574.088, Health and Safety Code; and

(3) may dispose of the firearm in the manner provided by Subsection (f).

(f) If a person to whom written notice is provided under Subsection (b) or another lawful owner of a firearm subject to disposition under this article does not submit a written request to the law enforcement agency for the return of the firearm **BEFORE THE 121<sup>ST</sup> DAY AFTER AGENCY PROVIDES WRITTEN NOTICE UNDER SUBSECTION (b) ABOVE**, the law enforcement agency may have the firearm sold by a person who is a licensed firearms dealer under 18 U.S.C. Section 923. An unclaimed firearm that was seized from a person taken into custody under Section 573.001, HSC, may not be destroyed or forfeited to the state.

*Texas Code of Criminal Procedure Article 18.191.*

**DISPOSITION OF FIREARM SEIZED FROM CERTAIN PERSONS WITH MENTAL ILLNESS**

(a) A law enforcement officer who seizes a firearm from a person taken into custody under Section 573.001, Health and Safety Code, (*Apprehension by Peace Officer Without Warrant*) and not in connection with an offense involving the use of a weapon or an offense under Chapter 46, Penal Code, shall **immediately** provide the person a written copy of the receipt for the firearm and a written notice of the procedure for the return of a firearm under this article.

(b) The law enforcement agency holding a firearm subject to disposition under this article shall, as soon as possible, but not later than the 15th day after the date the person is taken into custody under Section 573.001, Health and Safety Code, provide written notice of the procedure for the return of a firearm to the last known address of the person's closest immediate family member as identified by the person or reasonably identifiable by the law enforcement agency, sent by certified mail, return receipt requested. The written notice must state the date by which a request for the return of the firearm must be submitted to the law enforcement agency as provided by Subsection (h).

(c) Not later than the 30th day after the date a firearm subject to disposition under this article is seized, the law enforcement agency holding the firearm shall contact the court in the county having jurisdiction to order commitment under Chapter 574, Health and Safety Code, and request the disposition of the case. Not later than the 30th day after the date of this request, the clerk of the court shall advise the requesting agency whether the person taken into custody was released under Section 573.023, Health and Safety Code, (Release from Emergency Detention) or was ordered to receive inpatient mental health services under Section 574.034 (Order for Temporary Mental Health Services) or 574.035, (Order for Extended Mental Health Services) Health and Safety Code.

(d) 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, Health and Safety Code, the law enforcement agency shall:

- (1) conduct a check of state and national criminal history record information to verify whether the person may lawfully possess a firearm under 18 U.S.C. Section 922(g); and
- (2) provide written notice to the person by certified mail that the firearm may be returned to the person on verification under Subdivision (1) that the person may lawfully possess the firearm.

(e) 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 ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code, the law enforcement agency shall provide written notice to the person by certified mail that the person:

- (1) is prohibited from owning, possessing, or purchasing a firearm under 18 U.S.C. Section 922(g)(4);
- (2) may petition the court that entered the commitment order for relief from the firearms disability under Section 574.088, Health and Safety Code; and
- (3) may dispose of the firearm in the manner provided by Subsection (f).



(f) A person who receives notice under Subsection (e) may dispose of the person's firearm by:

- (1) releasing the firearm to the person's designee, if:
  - (A) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the designee may lawfully possess a firearm under 18 U.S.C. Section 922(g);
  - (B) the person provides to the law enforcement agency a copy of a notarized statement releasing the firearm to the designee; and
  - (C) the designee provides to the law enforcement agency an affidavit confirming that the designee:
    - (i) will not allow access to the firearm by the person who was taken into custody under Section 573.001, Health and Safety Code, at any time during which the person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and
    - (ii) acknowledges the responsibility of the designee and no other person to verify whether the person has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); or
- (2) releasing the firearm to the law enforcement agency holding the firearm, for disposition under Subsection (h).

(g) If a firearm subject to disposition under this article is wholly or partly owned by a person other than the person taken into custody under Section 573.001, Health and Safety Code, the law enforcement agency holding the firearm shall release the firearm to the person claiming a right to or interest in the firearm after:

- (1) the person provides an affidavit confirming that the person:
  - (A) wholly or partly owns the firearm;
  - (B) will not allow access to the firearm by the person who was taken into custody under Section 573.001, Health and Safety Code, at any time during which that person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and
  - (C) acknowledges the responsibility of the person and no other person to verify whether the person who was taken into custody under Section 573.001, Health and Safety Code, has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); and
- (2) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the person claiming a right to or interest in the firearm may lawfully possess a firearm under 18 U.S.C. Section 922(g).

(h) If a person to whom written notice is provided under Subsection (b) or another lawful owner of a firearm subject to disposition under this article does not submit a written request to the law enforcement agency for the return of the firearm before the 121st day after the date the law enforcement agency holding the firearm provides written notice under Subsection (b), the law enforcement agency may have the firearm sold by a person who is a licensed firearms dealer under 18 U.S.C. Section 923. The proceeds from the sale of a firearm under this subsection shall be given to the owner of the seized firearm, less the cost of administering this subsection. An unclaimed firearm that was seized from a person taken into custody under Section 573.001, Health and Safety Code, may not be destroyed or forfeited to the state.

*Texas Health and Safety Code § 573.001*  
**APPREHENSION BY PEACE OFFICER WITHOUT WARRANT.**

- (a) A peace officer, without a warrant, may take a person into custody if the officer:
- (1) has reason to believe and does believe that:
    - (A) the person is mentally ill; and
    - (B) 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; and
  - (2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.
- (b) A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:
- (1) the person's behavior; or
  - (2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.
- (c) The peace officer may form the belief that the person meets the criteria for apprehension:
- (1) from a representation of a credible person; or
  - (2) on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.
- (d) A peace officer who takes a person into custody under Subsection (a) shall immediately transport the apprehended person to:
- (1) the nearest appropriate inpatient mental health facility; or
  - (2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.
- (e) A jail or similar detention facility may not be deemed suitable except in an extreme emergency.
- (f) A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

Text of subsection as added by Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 1

- (g) A peace officer who takes a person into custody under Subsection (a) shall immediately inform the person orally in simple, nontechnical terms:
- (1) of the reason for the detention; and
  - (2) that a staff member of the facility will inform the person of the person's rights within 24 hours after the time the person is admitted to a facility, as provided by Section 573.025(b).

Text of subsection as added by Acts 2013, 83rd Leg., R.S., Ch. 776 (S.B. 1189), Sec. 1

- (g) A peace officer who takes a person into custody under Subsection (a) may immediately seize any firearm found in possession of the person. After seizing a firearm under this subsection, the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure.

*Texas Health and Safety Code § 573.023*  
**RELEASE FROM EMERGENCY DETENTION**

(a) A person apprehended by a peace officer or transported for emergency detention under Subchapter A or detained under Subchapter B shall be released on completion of the preliminary examination unless the person is admitted to a facility under Section 573.022.

(b) A person admitted to a facility under Section 573.022 shall be released if the facility administrator determines at any time during the emergency detention period that one of the criteria prescribed by Section 573.022(2) no longer applies.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 692, Sec. 8, eff. Sept. 1, 2003.

***Texas Health and Safety Code §574.088***  
**RELIEF FROM DISABILITIES IN MENTAL HEALTH CASES.**

(a) A person who is furloughed or discharged from court-ordered mental health services may petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.

(b) In determining whether to grant relief, the court must hear and consider evidence about:

- (1) the circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);
- (2) the person's mental history;
- (3) the person's criminal history; and
- (4) the person's reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

- (1) the person is no longer likely to act in a manner dangerous to public safety; and
- (2) removing the person's disability to purchase a firearm is in the public interest.

Added by Acts 2009, 81st Leg., R.S., Ch. 950 (H.B. 3352), Sec. 2, eff. September 1, 2009.



**18 U.S. Code § 922 Unlawful Acts**

**(g) It shall be unlawful for any person—**

- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- (2) who is a fugitive from justice;
- (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
- (4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
- (5) who, being an alien—
  - (A) is illegally or unlawfully in the United States; or
  - (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(26)));
- (6) who has been discharged from the Armed Forces under dishonorable conditions;
- (7) who, having been a citizen of the United States, has renounced his citizenship;
- (8) who is subject to a court order that—
  - (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
  - (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
  - (C)
    - (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
    - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.