

- SUBJECT:** Photographic evidence and oversight of hearings in property crime cases
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Gallego, Fletcher, Hodge, Kent, Miklos, Moody, Pierson, Vaught, Vo
- 0 nays
- 2 absent — Christian, Riddle
- WITNESSES:** For — Jana McCown, Williamson County District Attorney; (*Registered, but did not testify*: Laura Andersen, San Antonio Police Department; John Chancellor, Texas Police Chiefs Association; Katrina Daniels, Bexar County District Attorney's Office)
- Against — None
- BACKGROUND:** Under Code of Criminal Procedure, art. 38.34 a photograph of alleged stolen property is admissible as evidence, as is the property itself. "Property" is defined as any tangible personal property offered for sale or lease by a person engaged in the business of selling goods or services to buyers.
- Under Code of Criminal Procedure, art. 47.02, a judge of any court in which the trial of any criminal action for theft or any other illegal acquisition of property is pending may, upon hearing, direct property to be restored to a person, if it is proved to the judge that the person is a true owner of the property alleged to have been stolen, and it is in the possession of a peace officer.
- Upon written consent of the prosecutor, a magistrate with jurisdiction in the county in which the criminal action is pending may hold a hearing to determine the right of possession of property subject to the Certificate of Title Act of the Transportation Code, even if a criminal action is pending.
- Because photographs are allowed to be used as evidence only in some property crimes, and only judges are permitted to oversee property

hearings, a backlog exists, causing a lengthy wait for stolen property to be returned to owners.

DIGEST:

HB 796 would amend Code of Criminal Procedure, art. 38.34 by expanding the definition of “property” to mean any tangible personal property, thereby allowing a photograph to be used as evidence in any property theft case.

Upon written consent of the prosecutor, any magistrate with jurisdiction in the county in which a criminal action for theft or illegal acquisition of property was pending could hold a hearing to determine the right of possession of property, and direct the property to be restored to a person, if it was proved that the person was a true owner of the allegedly stolen property and that the property was under the control of a peace officer.

The provision of the Code of Criminal Procedure, art. 47.02 allowing a magistrate to oversee a hearing related to property subject to the Certificate of Title Act would be eliminated.

The bill would take effect September 1, 2009, and would apply only to criminal actions filed on or after that date.