

BILL ANALYSIS

Senate Research Center

H.B. 837
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Criminal Justice
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Engrossed

DIGEST

Currently, Article 47.02, Code of Criminal Procedure, sets forth the procedure to be followed, with criminal action pending, for the disposition of property which a law enforcement officer has seized with the belief that the property is stolen. Under the current law, a district judge, county judge, statutory county judge, justice of the peace, or municipal judge may, as magistrate, conduct a hearing to determine who has superior right to possession of the property. The present language, however, provides that the action must be done by the judge who has jurisdiction over the criminal case. Considering the large caseloads of these judges, this requirement sometimes delays the return of the property and adds to the duties they already have.

H.B. 837 would allow the court in which the trial is pending to authorize any magistrate to hold the property disposition hearing and, upon decision and using the same satisfying test of proof, restore the property to the rightful owner. Appropriate allowances would be made to ensure property availability for purposes of prosecution.

PURPOSE

As proposed, H.B. 837 allows the court in which the trial is pending to authorize any magistrate to hold a property disposition hearing regarding property that may have been stolen and, upon decision and using the same satisfying test of proof, restore the property to the rightful owner.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 47.02, Code of Criminal Procedure, to authorize the court in which the trial is pending to authorize any magistrate to hold the hearing described by Subsection (b). Authorizes the magistrate, if at the hearing the magistrate determines that any person is the true owner of the property, to direct the peace officer to restore to property to the owner, subject to a requirement that the person make the property available to the court if necessary for evidentiary purposes. Makes conforming changes.

SECTION 2. Effective date: September 1, 1997.

SECTION 3. Emergency clause.