

BILL ANALYSIS

Senate Research Center
81R3523 PEP-F

H.B. 796
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Criminal Justice
5/18/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 796 amends current law relating to the disposition of property alleged to have been illegally acquired and to the use of the photographic evidence of that property in a criminal action.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 38.34, Code of Criminal Procedure, as follows:

Art. 38.34. PHOTOGRAPHIC EVIDENCE IN THEFT CASES. (a) Redefines "property."

(b)-(c) Makes nonsubstantive changes.

(d) Provides that the defendant's rights of discovery and inspection of tangible physical evidence are satisfied if a photograph of the property, rather than tangible property, is made available to the defendant by the state on order of any court having jurisdiction over the cause. Makes a nonsubstantive change.

SECTION 2. Amends Article 47.02, Code of Criminal Procedure, as follows:

Art. 47.02. RESTORED ON TRIAL. (a) Requires the court trying the case, on the trial of any criminal action for theft or any other offense involving the illegal acquisition of property, rather than the illegal acquisition of property which is by law a penal offense, to order the property to be restored to the person appearing by the proof to be the owner of the property, rather than same. Makes nonsubstantive changes.

(b) Authorizes any magistrate having jurisdiction in the county in which a criminal action for theft or any other offense involving the illegal acquisition of property is pending, on written consent of the prosecuting attorney, rather than authorizing the judge of any court in which the trial of any criminal action for theft or any other illegal acquisition of property which is by law a penal offense is pending, likewise, to hold a hearing, rather than upon a hearing, to determine the right to possession of the property. Authorizes the magistrate, if it is proved to the satisfaction of the magistrate, rather than judge of said court, that any person is a true owner of the property alleged to have been stolen, and the property is under the control, rather than in possession, of a peace officer, to by written order, direct the property to be restored to that person, rather than such owner. Deletes existing text relating to the authorization of any magistrate having jurisdiction in the county in which the criminal action is pending, as to property subject to the Certificate of Title Act (Chapter 501, Transportation Code), to hold a hearing to determine the right to possession of the property, even if a criminal action is pending, upon written consent of the prosecuting attorney. Makes nonsubstantive changes.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.