

1-1 By: Perry S.B. No. 1125
1-2 (In the Senate - Filed March 5, 2021; March 18, 2021, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 12, 2021, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 12, 2021,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Whitmire	X		
1-10	Huffman	X		
1-11	Bettencourt	X		
1-12	Birdwell		X	
1-13	Hinojosa	X		
1-14	Miles	X		
1-15	Nichols	X		

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1125 By: Bettencourt

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the disposition of certain controlled substance
1-20 property and plants seized by or forfeited to a law enforcement
1-21 agency.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 481.151, Health and Safety Code, is
1-24 amended by adding Subdivisions (2-a) and (2-b) to read as follows:

1-25 (2-a) "Crime laboratory" has the meaning assigned by
1-26 Article 38.35, Code of Criminal Procedure.

1-27 (2-b) "Criminal justice agency" has the meaning
1-28 assigned by Section 411.082, Government Code, and includes a local
1-29 government corporation described by Section 411.0011 of that code.

1-30 SECTION 2. The heading to Section 481.152, Health and
1-31 Safety Code, is amended to read as follows:

1-32 Sec. 481.152. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY
1-33 DESTRUCTION OR OTHER DISPOSITION OF CONTROLLED SUBSTANCE PLANTS.

1-34 SECTION 3. Section 481.152(d), Health and Safety Code, is
1-35 amended to read as follows:

1-36 (d) If a controlled substance plant is seized and forfeited
1-37 under this section, a court may order the disposition of the plant
1-38 under Section 481.159, or the department, a criminal justice
1-39 agency, or a peace officer may summarily destroy the property under
1-40 the rules of the department or dispose of the property in lieu of
1-41 destruction as provided by Section 481.161.

1-42 SECTION 4. The heading to Section 481.153, Health and
1-43 Safety Code, is amended to read as follows:

1-44 Sec. 481.153. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY
1-45 DESTRUCTION OR OTHER DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY.

1-46 SECTION 5. Section 481.153(b), Health and Safety Code, is
1-47 amended to read as follows:

1-48 (b) If an item of controlled substance property is seized
1-49 and forfeited under this section, a court may order the disposition
1-50 of the property under Section 481.159, or the department, a
1-51 criminal justice agency, or a peace officer may summarily destroy
1-52 the property under the rules of the department or dispose of the
1-53 property in lieu of destruction as provided by Section 481.161.

1-54 SECTION 6. Sections 481.159(a) and (i), Health and Safety
1-55 Code, are amended to read as follows:

1-56 (a) If a district court orders the forfeiture of a
1-57 controlled substance property or plant under Chapter 59, Code of
1-58 Criminal Procedure, or under this code, the court shall also order a
1-59 law enforcement agency or a criminal justice agency to which the law
1-60 enforcement agency transferred the property or plant for analysis

2-1 and storage to:

2-2 (1) retain the property or plant for [~~its~~] official
2-3 law enforcement purposes, including use in the investigation of
2-4 offenses under this code;

2-5 (2) deliver the property or plant to a government
2-6 agency for official purposes;

2-7 (3) deliver the property or plant to a person
2-8 authorized by the court to receive it;

2-9 (4) deliver the property or plant to a person
2-10 authorized by the director to receive it; or

2-11 (5) destroy the property or plant that is not
2-12 otherwise disposed of in the manner prescribed by this subchapter.

2-13 (i) If a controlled substance property or plant seized under
2-14 this chapter was forfeited to an agency for the purpose of
2-15 destruction or disposition under Section 481.161 in lieu of
2-16 destruction or for any purpose other than investigation, the
2-17 property or plant may not be used in an investigation unless a
2-18 district court orders disposition under this section and permits
2-19 the use of the property or plant in the investigation.

2-20 SECTION 7. The heading to Section 481.160, Health and
2-21 Safety Code, is amended to read as follows:

2-22 Sec. 481.160. DISPOSITION [~~DESTRUCTION~~] OF EXCESS
2-23 QUANTITIES.

2-24 SECTION 8. Sections 481.160(a), (c), and (d), Health and
2-25 Safety Code, are amended to read as follows:

2-26 (a) If a controlled substance property or plant is forfeited
2-27 under this code or under Chapter 59, Code of Criminal Procedure, the
2-28 law enforcement agency that seized the property or plant or to which
2-29 the property or plant is forfeited or a criminal justice agency to
2-30 which the law enforcement agency transferred the property or plant
2-31 for analysis and storage may summarily destroy the property or
2-32 plant without a court order, or otherwise dispose of the property or
2-33 plant in lieu of destruction in accordance with Section 481.161,
2-34 before the disposition of a case arising out of the forfeiture if
2-35 the agency ensures that:

2-36 (1) at least five random and representative samples
2-37 are taken from the total amount of the property or plant and a
2-38 sufficient quantity is preserved to provide for discovery by
2-39 parties entitled to discovery;

2-40 (2) photographs are taken that reasonably depict the
2-41 total amount of the property or plant; and

2-42 (3) the gross weight or liquid measure of the property
2-43 or plant is determined, either by actually weighing or measuring
2-44 the property or plant or by estimating its weight or measurement
2-45 after making dimensional measurements of the total amount seized.

2-46 (c) A representative sample, photograph, or record made
2-47 under this section is admissible in civil or criminal proceedings
2-48 in the same manner and to the same extent as if the total quantity of
2-49 the suspected controlled substance property or plant was offered in
2-50 evidence, regardless of whether the remainder of the property or
2-51 plant has been destroyed or otherwise disposed of. An inference or
2-52 presumption of spoliation does not apply to a property or plant
2-53 destroyed or otherwise disposed of under this section.

2-54 (d) If hazardous waste, residuals, contaminated glassware,
2-55 associated equipment, or by-products from illicit chemical
2-56 laboratories or similar operations that create a health or
2-57 environmental hazard or are not capable of being safely stored are
2-58 forfeited, those items may be disposed of under Subsection (a) or
2-59 may be seized by and summarily forfeited to a law enforcement agency
2-60 and destroyed by the [a] law enforcement agency or by a criminal
2-61 justice agency to which the law enforcement agency transferred the
2-62 items for analysis and storage without a court order before the
2-63 disposition of a case arising out of the forfeiture if current
2-64 environmental protection standards are followed.

2-65 SECTION 9. Subchapter E, Chapter 481, Health and Safety
2-66 Code, is amended by adding Section 481.161 to read as follows:

2-67 Sec. 481.161. DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY
2-68 OR PLANT IN LIEU OF DESTRUCTION. (a) Controlled substance property
2-69 or plants subject to summary destruction or ordered destroyed by a

3-1 court may be disposed of in accordance with this section.

3-2 (b) A law enforcement agency or criminal justice agency may
3-3 transfer the controlled substance property or plants to a crime
3-4 laboratory to be used for the purposes of laboratory research,
3-5 testing results validation, and training of analysts.

3-6 (c) The crime laboratory to which the controlled substance
3-7 property or plants are transferred under Subsection (b) shall
3-8 destroy or otherwise properly dispose of any unused quantities of
3-9 the controlled substance property or plants.

3-10 (d) This section does not apply to evidence described by
3-11 Section 481.160(d).

3-12 (e) The director may adopt rules to implement this section.

3-13 SECTION 10. The change in law made by this Act applies to
3-14 the disposition of evidence on or after the effective date of this
3-15 Act, regardless of whether the evidence was seized or forfeited
3-16 before, on, or after that date.

3-17 SECTION 11. This Act takes effect September 1, 2021.

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