

By: Cunningham

H.B. No. 1104

A BILL TO BE ENTITLED

AN ACT

relating to a waiver of the preservation of evidence and the return of a seized weapon in a criminal case.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.51 to read as follows:

Art. 38.51. WAIVER OF PRESERVATION OF EVIDENCE AND RETURN OF SEIZED WEAPON. (a) Notwithstanding any other law, after a defendant enters a plea of guilty or nolo contendere in accordance with Article 27.13 or 27.14, as applicable, the defendant, acting with counsel, may knowingly, intelligently, and voluntarily waive the defendant's right to:

(1) the preservation of evidence under Articles 38.43 and 38.50; and

(2) request the return of any seized weapon under Article 18.19.

(b) A waiver under this article must be executed in substantially the following written form:

WAIVER OF PRESERVATION OF EVIDENCE AND RETURN OF SEIZED WEAPON

I, _____ (defendant's name), defendant in _____ (case number), joined by my counsel, waive the right to the preservation of any and all evidence collected in this case and the right to request the return of any seized weapon, as provided below.

1 I understand that under Article 38.43, Code of Criminal
2 Procedure, evidence known to contain biological material must be
3 preserved until I die, complete my sentence or term of community
4 supervision or juvenile probation, or am released on parole,
5 mandatory supervision, or juvenile probation, and that I, my
6 counsel, and the court would have 90 days to object to the planned
7 destruction of that evidence.

8 I understand that under Article 38.50, Code of Criminal
9 Procedure, I have the right to have any toxicological evidence
10 collected in this case preserved until I complete my sentence, term
11 of community supervision, or juvenile commitment or supervision
12 period.

13 I fully understand that scientific testing of any biological
14 or toxicological evidence being preserved under Article 38.43 or
15 38.50, Code of Criminal Procedure, could establish the identity of
16 the person who committed the offense in this case, or exclude me as
17 a person who could have committed the offense. I agree that testing
18 of that evidence is unnecessary because I am criminally responsible
19 for the offense charged.

20 I waive my right to receive notice of and object to the
21 planned destruction of that evidence.

22 I also waive the right to request the return of any seized
23 weapon under Article 18.19, Code of Criminal Procedure.

24 I agree that, as specified under Article 18.19, Code of
25 Criminal Procedure, or other law, all evidence collected in this
26 case, including firearms or other weapons, may be:

27 (1) returned to a person claiming a right to or

1 interest in the evidence, other than myself;

2 (2) used for law enforcement purposes;

3 (3) sold by law enforcement; or

4 (4) destroyed.

5 (c) If the court determines that the waiver described by
6 Subsection (b) was knowingly, intelligently, and voluntarily
7 given, the court shall enter an order stating that, as specified
8 under Article 18.19 or other law and at any date occurring on or
9 after the 30th day after the date of the order, all evidence
10 collected in the case, including firearms or other weapons, shall
11 be:

12 (1) returned to a person claiming a right to or
13 interest in the evidence, other than the defendant;

14 (2) used for law enforcement purposes;

15 (3) sold by law enforcement; or

16 (4) destroyed.

17 SECTION 2. This Act takes effect September 1, 2023.