

AN ACT

relating to the seizure of property by law enforcement, the treatment of that property in a criminal proceeding, and the forfeiture of certain criminal contraband.

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

SECTION 1. Articles 2.21(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) At any time during or after a criminal proceeding, the court reporter shall release for safekeeping any firearm or contraband received as an exhibit in that proceeding to:

(1) the sheriff; or

(2) in a county with a population of 500,000 or more, the law enforcement agency that collected, seized, or took possession of the firearm or contraband or produced the firearm or contraband at the proceeding [~~for safekeeping any firearm or contraband received by the court as an exhibit in that proceeding~~].

(c) The sheriff or the law enforcement agency, as applicable, shall receive and hold the exhibits consisting of firearms or contraband and release them only to the person or persons authorized by the court in which such exhibits have been received or dispose of them as provided by Chapter 18 [~~of this code~~].

SECTION 2. Article 18.09, Code of Criminal Procedure, is amended to read as follows:

Art. 18.09. SHALL SEIZE ACCUSED AND PROPERTY. When the

1 property which the officer is directed to search for and seize is
2 found he shall take possession of the same and carry it before the
3 magistrate. He shall also arrest any person whom he is directed to
4 arrest by the warrant and immediately take such person before the
5 magistrate. For purposes of this chapter, "seizure," in the
6 context of property, means the restraint of property, whether by
7 physical force or by a display of an officer's authority, and
8 includes the collection of property or the act of taking possession
9 of property.

10 SECTION 3. Article 59.01(8), Code of Criminal Procedure, is
11 amended to read as follows:

12 (8) "Seizure" means the restraint of property by a
13 peace officer under Article 59.03(a) or (b) of this code, whether
14 the officer restrains the property by physical force or by a display
15 of the officer's authority, and includes the collection of property
16 or the act of taking possession of property.

17 SECTION 4. Article 59.01(2), Code of Criminal Procedure, as
18 amended by Section 2.141, Chapter 198, Section 17, Chapter 257, and
19 Section 3, Chapter 649, Acts of the 78th Legislature, Regular
20 Session, 2003, is reenacted and amended to read as follows:

21 (2) "Contraband" means property of any nature,
22 including real, personal, tangible, or intangible, that is:

23 (A) used in the commission of:

24 (i) any first or second degree felony under
25 the Penal Code;

26 (ii) any felony under Section 15.031(b),
27 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,

31, 32, 33, 33A, or 35, Penal Code; or

(iii) any felony under The Securities Act
(Article 581-1 et seq., Vernon's Texas Civil Statutes);

(B) used or intended to be used in the commission
of:

(i) any felony under Chapter 481, Health
and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health
and Safety Code;

(iii) a felony under Chapter 153, Finance
Code;

(iv) any felony under Chapter 34, Penal
Code;

(v) a Class A misdemeanor under Subchapter
B, Chapter 365, Health and Safety Code, if the defendant has been
previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 152, Finance
Code; ~~or~~

(vii) any felony under Chapter 31, 32, or
37, Penal Code, that involves the state Medicaid program, or any
felony under Chapter 36, Human Resources Code; or

(viii) a Class B misdemeanor under Section
35.60 ~~[35.58]~~, Business & Commerce Code;

(C) the proceeds gained from the commission of a
felony listed in Paragraph (A) or (B) of this subdivision, a
misdemeanor listed in Paragraph (B)(viii) ~~[(B)(vii)]~~ of this
subdivision, or a crime of violence; or

1 (D) acquired with proceeds gained from the
2 commission of a felony listed in Paragraph (A) or (B) of this
3 subdivision, a misdemeanor listed in Paragraph (B)(viii)
4 [~~(B)(vii)~~] of this subdivision, or a crime of violence.

5 SECTION 5. The change in law made by Section 4 of this Act
6 applies only to the forfeiture of contraband used in the commission
7 of an offense under Section 20.05, Penal Code, committed on or after
8 the effective date of this Act. Forfeiture of contraband used in
9 the commission of an offense under Section 20.05, Penal Code,
10 committed before the effective date of this Act is covered by the
11 law in effect when the offense was committed, and the former law is
12 continued in effect for that purpose. For purposes of this section,
13 an offense is committed before the effective date of this Act if any
14 element of the offense occurs before that date.

15 SECTION 6. This Act takes effect September 1, 2005.

H.B. No. 1048

President of the Senate

Speaker of the House

I certify that H.B. No. 1048 was passed by the House on May 3, 2005, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1048 on May 24, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1048 on May 28, 2005, by a non-record vote.

Chief Clerk of the House

H.B. No. 1048

I certify that H.B. No. 1048 was passed by the Senate, with amendments, on May 20, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1048 on May 28, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor