

BILL ANALYSIS

H.B. 796
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

When stolen property is recovered, there is a specific legal process that must be followed in order for the property to be returned to the rightful owner. This process consists of a property hearing to determine who is the rightful owner and retention of the property to be used as evidence in a criminal hearing. This means that it takes a long time for a person to have stolen personal property returned when it is found. Currently, only judges in the appropriate jurisdiction have the authority to oversee these property hearings. If magistrates are also allowed to hold such a hearing, the number of authorities permitted to hold a property hearing will be increased. A magistrate is not required to have all of the qualifications of a judge, but is still fully capable of hearing cases of this kind. This increase will reduce the backlog that exists with these cases and allow property to be returned sooner.

Currently, a photo of the stolen property can be used as evidence during a criminal prosecution only if property is stolen from people engaged in the business of selling goods or services to buyers. The proposed change extends the law to cover all people and the property that they personally own, which would release the actual item from possession of the court and allow the rightful owner to have it back before the completion of the case.

H.B. 796 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 to hold a hearing to determine the right to possession of the property and to direct that the property be restored to the true owner. The bill authorizes photographs of the stolen property to be used as evidence in place of the tangible item during criminal prosecution cases.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 796 amends the Code of Criminal Procedure to authorize 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 to hold a hearing to determine the right to possession of the property and to direct by written order that the property be restored to the true owner. The bill requires that a magistrate have written consent of the prosecuting attorney to hold the hearing and issue the order. The bill removes language authorizing only the judge of the court in which the trial of any criminal action for such an offense is pending to hold the hearing and issue the order. The bill removes language that restricts a magistrate's authority to hold a hearing to determine the right to possession of stolen property to a criminal action relating to property subject to the Certificate of Title Act. The bill redefines "property" for purposes of provisions relating to photographic evidence in theft cases as any tangible personal property rather than as tangible personal property offered for sale or lease by a person engaged in the business of selling goods or services to buyers.

EFFECTIVE DATE

September 1, 2009.