

## **BILL ANALYSIS**

C.S.H.B. 1713  
By: Lozano  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Commonly reported incidents in South Texas known as "ram and runs" often result in property damage, specifically gate and fence destruction. These incidents commonly occur when a peace officer or border patrol agent pursues a vehicle suspected of carrying undocumented immigrants and the vehicle runs off the road. These chases can cause significant economic damages to cattle ranchers, as the gates and fences damaged by the vehicle must be repaired immediately at high costs to prevent cattle from wandering off the land. C.S.H.B. 1713 seeks to provide certain counties with a mechanism for reimbursing property owners for damages to gates and fences incurred by the commission of certain criminal offenses.

### **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**

C.S.H.B. 1713 amends the Code of Criminal Procedure to require the sale proceeds of certain abandoned or unclaimed property that is seized by a peace officer during an investigation of an offense of smuggling of persons, evading arrest or detention, or trafficking of persons alleged to have occurred in certain counties with specified populations to be deposited, after deducting the reasonable expense of keeping and disposing of the property, in a fund in the treasury of the county in which the offense occurred. The bill authorizes a county to which the bill's provisions apply to use money in the fund only to reimburse a property owner in the county for all or any portion of damages to a gate or fence located on property owned by the person if the property is located in the county and the damage was the result of the commission of one of those offenses. The bill authorizes such a county to require a property owner to submit an application and provide information requested by the county to be eligible for such reimbursement.

C.S.H.B. 1713 requires a magistrate in such a county in which an offense of smuggling of persons, evading arrest or detention, or trafficking of persons occurred to order seized property that is a motor vehicle used in such an offense to be delivered to the purchasing agent of the county in which the offense occurred or to the county sheriff if the county has no purchasing agent. The bill requires the county purchasing agent or sheriff to sell the property and deposit the sale proceeds, after deducting the reasonable expense of keeping and disposing of the property, in a fund in the treasury of the county in which the offense occurred. The bill authorizes the purchasing agent or sheriff, when offering a property for sale, to decline the bid and reoffer the property for sale if the purchasing agent or sheriff considers any bid to be insufficient. The bill requires any proceeds or money seized under provisions relating to the disposition of certain contraband to be deposited in a fund in the treasury of the county in which the related offense occurred and limits the use of the money in the fund to reimbursement of a property owner as described under the bill's provisions. The bill authorizes a county to require a property owner to submit an application and provide information requested by the county to be eligible for such reimbursement.

C.S.H.B. 1713 authorizes a judge who grants community supervision to a defendant convicted of an offense of smuggling of persons, evading arrest or detention, or trafficking of persons that occurred in such a county to require the defendant to pay a \$15 fee and requires the judge to deposit any such fee in a fund in the treasury of the county in which the offense occurred and to which the bill's provisions apply, to be used only for reimbursement purposes as provided by the bill's provisions.

C.S.H.B. 1713 amends the Government Code to make a conforming change.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1713 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Article 18.17, Code of Criminal Procedure, is amended by adding Subsection (k) to read as follows:

(k)(1) This subsection applies to any property described by Subsection (a) that is seized by a peace officer during the investigation of an offense under Section 20.05 or 38.04, Penal Code, or any offense under Chapter 20A, Penal Code.

(2) Notwithstanding any other provision of this article, the sale proceeds of property described by Subdivision (1) shall be deposited, after deducting the reasonable expense of keeping and disposing of the property, in a fund in the treasury of the county in which the offense occurred.

(3) A county may use money in the fund only to reimburse a property owner in the county for all or any portion of damages to a gate or fence located on property owned by the person if:

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Article 18.17, Code of Criminal Procedure, is amended by adding Subsection (k) to read as follows:

(k)(1) This subsection applies to any property described by Subsection (a) that is seized by a peace officer during the investigation of an offense under Section 20.05 or 38.04, Penal Code, or any offense under Chapter 20A, Penal Code, alleged to have occurred in a county with a population of:

(A) 40,000 or more but less than 41,000;

(B) 32,000 or more but less than 32,300;

(C) 31,000 or more but less than 32,000;

(D) 22,000 or more but less than 22,150;

(E) 11,000 or more but less than 11,600;

(F) 650 or more but less than 800;

(G) 300 or more but less than 600; or

(H) less than 8,000 and that is adjacent to a county described by Paragraph (G).

(2) Notwithstanding any other provision of this article, the sale proceeds of property described by Subdivision (1) shall be deposited, after deducting the reasonable expense of keeping and disposing of the property, in a fund in the treasury of the county in which the offense occurred.

(3) A county to which this subsection applies may use money in the fund only to reimburse a property owner in the county for all or any portion of damages to a gate or fence located on property owned by the person if:

- (A) the property is located in the county; and
- (B) the damage was the result of the commission of an offense listed in Subdivision (1).
- (4) A county may require a property owner to submit an application and provide information requested by the county in order to be eligible for reimbursement under this subsection.

SECTION 2. Article 18.18, Code of Criminal Procedure, is amended by amending Subsections (f) and (g) and adding Subsections (f-1), (f-2), and (f-3) to read as follows:

(f) If a person timely appears to show cause why the property or proceeds should not be destroyed or forfeited, the magistrate shall conduct a hearing on the issue and determine the nature of property or proceeds and the person's interest therein. Unless the person proves by a preponderance of the evidence that the property or proceeds is not gambling equipment, altered gambling equipment, gambling paraphernalia, gambling device, gambling proceeds, prohibited weapon, obscene device or material, child pornography, criminal instrument, scanning device or re-encoder, or dog-fighting equipment and that the person [he] is entitled to possession, the magistrate shall dispose of the property or proceeds in accordance with Subsection [Paragraph] (a), (f-1), or (f-2) [of this article].

(f-1) If the property is used in an offense under Section 20.05 or 38.04, Penal Code, or any offense under Chapter 20A, Penal Code, and the property is a motor vehicle, the magistrate shall order the property be delivered to the purchasing agent of the

- (A) the property is located in the county; and
- (B) the damage was the result of the commission of an offense listed in Subdivision (1).
- (4) A county to which this subsection applies may require a property owner to submit an application and provide information requested by the county in order to be eligible for reimbursement under this subsection.

SECTION 2. Article 18.18, Code of Criminal Procedure, is amended by amending Subsections (f) and (g) and adding Subsection (f-1) to read as follows:

(f) If a person timely appears to show cause why the property or proceeds should not be destroyed or forfeited, the magistrate shall conduct a hearing on the issue and determine the nature of property or proceeds and the person's interest therein. Unless the person proves by a preponderance of the evidence that the property or proceeds is not gambling equipment, altered gambling equipment, gambling paraphernalia, gambling device, gambling proceeds, prohibited weapon, obscene device or material, child pornography, criminal instrument, scanning device or re-encoder, or dog-fighting equipment and that the person [he] is entitled to possession, the magistrate shall dispose of the property or proceeds in accordance with Subsection [Paragraph] (a) or, if applicable, Subsection (f-1) [of this article].

(f-1)(1) This subsection applies only to a county with a population of:  
(A) 40,000 or more but less than 41,000;  
(B) 32,000 or more but less than 32,300;  
(C) 31,000 or more but less than 32,000;  
(D) 22,000 or more but less than 22,150;  
(E) 11,000 or more but less than 11,600;  
(F) 650 or more but less than 800;  
(G) 300 or more but less than 600; or  
(H) less than 8,000 and that is adjacent to a county described by Paragraph (G).

(2) If the property is used in an offense under Section 20.05 or 38.04, Penal Code, or any offense under Chapter 20A, Penal Code, and the property is a motor vehicle, the magistrate shall order the property be delivered to the purchasing agent of the

county in which the offense occurred, or the sheriff of the county if the county has no purchasing agent. The county purchasing agent or sheriff shall sell the property and deposit the sale proceeds, after deducting the reasonable expense of keeping and disposing of the property, in a fund in the treasury of the county in which the offense occurred. When offering the property for sale, if the purchasing agent or sheriff considers any bid to be insufficient, the agent or sheriff may decline the bid and reoffer the property for sale.

(f-2) Any proceeds or money seized under this article shall be deposited in a fund described by Subsection (f-1) in the county in which the offense occurred.

(f-3)(1) A county may use money in the fund described by Subsection (f-1) only to reimburse a property owner in the county for all or any portion of damages to a gate or fence located on property owned by the person if:

(A) the property is located in the county; and

(B) the damage was the result of an offense under Section 20.05 or 38.04, Penal Code, or any offense under Chapter 20A, Penal Code.

(2) A county may require a property owner to submit an application and provide information requested by the county in order to be eligible for reimbursement under this subsection.

(g) For purposes of this article:

(1) "criminal instrument" has the meaning defined in the Penal Code;

(2) "gambling device or equipment, altered gambling equipment or gambling paraphernalia" has the meaning defined in the Penal Code;

(3) "prohibited weapon" has the meaning defined in the Penal Code;

(4) "dog-fighting equipment" means:

(A) equipment used for training or handling a fighting dog, including a harness, treadmill, cage, decoy, pen, house for keeping a fighting dog, feeding apparatus, or training pen;

(B) equipment used for transporting a fighting dog, including any automobile, or other vehicle, and its appurtenances which are intended to be used as a vehicle for transporting a fighting dog;

(C) equipment used to promote or advertise

county in which the offense occurred, or the sheriff of the county if the county has no purchasing agent. The county purchasing agent or sheriff shall sell the property and deposit the sale proceeds, after deducting the reasonable expense of keeping and disposing of the property, in a fund in the treasury of the county in which the offense occurred. When offering the property for sale, if the purchasing agent or sheriff considers any bid to be insufficient, the agent or sheriff may decline the bid and reoffer the property for sale.

(3) Any proceeds or money seized under this article shall be deposited in a fund described by Subdivision (2) in the county in which the offense occurred.

(4) A county may use money in the fund described by Subdivision (2) only to reimburse a property owner in the county for all or any portion of damages to a gate or fence located on property owned by the person if:

(A) the property is located in the county; and

(B) the damage was the result of an offense under Section 20.05 or 38.04, Penal Code, or any offense under Chapter 20A, Penal Code.

(5) A county may require a property owner to submit an application and provide information requested by the county in order to be eligible for reimbursement under Subdivision (4).

(g) For purposes of this article:

(1) "criminal instrument" has the meaning defined in the Penal Code;

(2) "gambling device or equipment, altered gambling equipment or gambling paraphernalia" has the meaning defined in the Penal Code;

(3) "prohibited weapon" has the meaning defined in the Penal Code;

(4) "dog-fighting equipment" means:

(A) equipment used for training or handling a fighting dog, including a harness, treadmill, cage, decoy, pen, house for keeping a fighting dog, feeding apparatus, or training pen;

(B) equipment used for transporting a fighting dog, including any automobile, or other vehicle, and its appurtenances which are intended to be used as a vehicle for transporting a fighting dog;

(C) equipment used to promote or advertise

an exhibition of dog fighting, including a printing press or similar equipment, paper, ink, or photography equipment; or  
(D) a dog trained, being trained, or intended to be used to fight with another dog;  
(5) "obscene device" and "obscene" have the meanings assigned by Section 43.21, Penal Code;  
(6) "re-encoder" has the meaning assigned by Section 522.001, Business & Commerce Code;  
(7) "scanning device" has the meaning assigned by Section 522.001, Business & Commerce Code; ~~and~~  
(8) "obscene material" and "child pornography" include digital images and the media and equipment on which those images are stored; and  
(9) "motor vehicle" has the meaning assigned by Section 501.002, Transportation Code.

SECTION 3. Section 19, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h) If a judge grants community supervision to a defendant convicted of an offense under Section 20.05 or 38.04, Penal Code, or any offense under Chapter 20A, Penal Code, the judge may require the defendant to pay a fee of \$15. The judge shall deposit any fee received under this subsection in the fund described by Article 18.17(k) in the treasury of the county in which the offense occurred, to be used as provided by that article.

SECTION 4. Section 102.021, Government Code, is amended to read as follows:  
Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL

an exhibition of dog fighting, including a printing press or similar equipment, paper, ink, or photography equipment; or  
(D) a dog trained, being trained, or intended to be used to fight with another dog;  
(5) "obscene device" and "obscene" have the meanings assigned by Section 43.21, Penal Code;  
(6) "re-encoder" has the meaning assigned by Section 522.001, Business & Commerce Code;  
(7) "scanning device" has the meaning assigned by Section 522.001, Business & Commerce Code; ~~and~~  
(8) "obscene material" and "child pornography" include digital images and the media and equipment on which those images are stored; and  
(9) "motor vehicle" has the meaning assigned by Section 501.002, Transportation Code.

SECTION 3. Section 19, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h)(1) This subsection applies only to a county with a population of:  
(A) 40,000 or more but less than 41,000;  
(B) 32,000 or more but less than 32,300;  
(C) 31,000 or more but less than 32,000;  
(D) 22,000 or more but less than 22,150;  
(E) 11,000 or more but less than 11,600;  
(F) 650 or more but less than 800;  
(G) 300 or more but less than 600; or  
(H) less than 8,000 and that is adjacent to a county described by Paragraph (G).  
(2) If a judge grants community supervision to a defendant convicted of an offense under Section 20.05 or 38.04, Penal Code, or any offense under Chapter 20A, Penal Code, that occurred in a county to which this subsection applies, the judge may require the defendant to pay a fee of \$15. The judge shall deposit any fee received under this subsection in the fund described by Article 18.17(k) in the treasury of the county in which the offense occurred, to be used as provided by that article.

SECTION 4. Section 102.021, Government Code, is amended to read as follows:  
Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL

PROCEDURE. A person convicted of an offense shall pay the following under the Code of Criminal Procedure, in addition to all other costs:

- (1) court cost on conviction of any offense, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle (Art. 102.0045, Code of Criminal Procedure) . . . \$4;
- (2) a fee for services of prosecutor (Art. 102.008, Code of Criminal Procedure) . . . \$25;
- (3) fees for services of peace officer:
  - (A) issuing a written notice to appear in court for certain violations (Art. 102.011, Code of Criminal Procedure) . . . \$5;
  - (B) executing or processing an issued arrest warrant, capias, or capias pro fine (Art. 102.011, Code of Criminal Procedure) . . . \$50;
  - (C) summoning a witness (Art. 102.011, Code of Criminal Procedure) . . . \$5;
  - (D) serving a writ not otherwise listed (Art. 102.011, Code of Criminal Procedure) . . . \$35;
  - (E) taking and approving a bond and, if necessary, returning the bond to courthouse (Art. 102.011, Code of Criminal Procedure) . . . \$10;
  - (F) commitment or release (Art. 102.011, Code of Criminal Procedure) . . . \$5;
  - (G) summoning a jury (Art. 102.011, Code of Criminal Procedure) . . . \$5;
  - (H) attendance of a prisoner in habeas corpus case if prisoner has been remanded to custody or held to bail (Art. 102.011, Code of Criminal Procedure) . . . \$8 each day;
  - (I) mileage for certain services performed (Art. 102.011, Code of Criminal Procedure) . . . \$0.29 per mile; and
  - (J) services of a sheriff or constable who serves process and attends examining trial in certain cases (Art. 102.011, Code of Criminal Procedure) . . . not to exceed \$5;
- (4) services of a peace officer in conveying a witness outside the county (Art. 102.011, Code of Criminal Procedure) . . . \$10 per day or part of a day, plus actual necessary travel expenses;
- (5) overtime of peace officer for time spent testifying in the trial or traveling to or from testifying in the trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;
- (6) court costs on an offense relating to

PROCEDURE. A person convicted of an offense shall pay the following under the Code of Criminal Procedure, in addition to all other costs:

- (1) court cost on conviction of any offense, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle (Art. 102.0045, Code of Criminal Procedure) . . . \$4;
- (2) a fee for services of prosecutor (Art. 102.008, Code of Criminal Procedure) . . . \$25;
- (3) fees for services of peace officer:
  - (A) issuing a written notice to appear in court for certain violations (Art. 102.011, Code of Criminal Procedure) . . . \$5;
  - (B) executing or processing an issued arrest warrant, capias, or capias pro fine (Art. 102.011, Code of Criminal Procedure) . . . \$50;
  - (C) summoning a witness (Art. 102.011, Code of Criminal Procedure) . . . \$5;
  - (D) serving a writ not otherwise listed (Art. 102.011, Code of Criminal Procedure) . . . \$35;
  - (E) taking and approving a bond and, if necessary, returning the bond to courthouse (Art. 102.011, Code of Criminal Procedure) . . . \$10;
  - (F) commitment or release (Art. 102.011, Code of Criminal Procedure) . . . \$5;
  - (G) summoning a jury (Art. 102.011, Code of Criminal Procedure) . . . \$5;
  - (H) attendance of a prisoner in habeas corpus case if prisoner has been remanded to custody or held to bail (Art. 102.011, Code of Criminal Procedure) . . . \$8 each day;
  - (I) mileage for certain services performed (Art. 102.011, Code of Criminal Procedure) . . . \$0.29 per mile; and
  - (J) services of a sheriff or constable who serves process and attends examining trial in certain cases (Art. 102.011, Code of Criminal Procedure) . . . not to exceed \$5;
- (4) services of a peace officer in conveying a witness outside the county (Art. 102.011, Code of Criminal Procedure) . . . \$10 per day or part of a day, plus actual necessary travel expenses;
- (5) overtime of peace officer for time spent testifying in the trial or traveling to or from testifying in the trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;
- (6) court costs on an offense relating to

rules of the road, when offense occurs within a school crossing zone (Art. 102.014, Code of Criminal Procedure) . . . \$25;

(7) court costs on an offense of passing a school bus (Art. 102.014, Code of Criminal Procedure) . . . \$25;

(8) court costs on an offense of truancy or contributing to truancy (Art. 102.014, Code of Criminal Procedure) . . . \$20;

(9) cost for visual recording of intoxication arrest before conviction (Art. 102.018, Code of Criminal Procedure) . . . \$15;

(10) cost of certain evaluations (Art. 102.018, Code of Criminal Procedure) . . . actual cost;

(11) additional costs attendant to certain intoxication convictions under Chapter 49, Penal Code, for emergency medical services, trauma facilities, and trauma care systems (Art. 102.0185, Code of Criminal Procedure) . . . \$100;

(12) additional costs attendant to certain child sexual assault and related convictions, for child abuse prevention programs (Art. 102.0186, Code of Criminal Procedure) . . . \$100;

(13) court cost for DNA testing for certain felonies (Art. 102.020(a)(1), Code of Criminal Procedure) . . . \$250;

(14) court cost for DNA testing for the offense of public lewdness or indecent exposure (Art. 102.020(a)(2), Code of Criminal Procedure) . . . \$50;

(15) court cost for DNA testing for certain felonies (Art. 102.020(a)(3), Code of Criminal Procedure) . . . \$34;

(16) if required by the court, a restitution fee for costs incurred in collecting restitution installments and for the compensation to victims of crime fund (Art. 42.037, Code of Criminal Procedure) . . . \$12;

(17) if directed by the justice of the peace or municipal court judge hearing the case, court costs on conviction in a criminal action (Art. 45.041, Code of Criminal Procedure) . . . part or all of the costs as directed by the judge; ~~and~~

(18) costs attendant to convictions under Chapter 49, Penal Code, and under Chapter 481, Health and Safety Code, to help fund drug court programs established under Chapter 469, Health and Safety Code (Art. 102.0178, Code of Criminal Procedure) . . . \$60; and

rules of the road, when offense occurs within a school crossing zone (Art. 102.014, Code of Criminal Procedure) . . . \$25;

(7) court costs on an offense of passing a school bus (Art. 102.014, Code of Criminal Procedure) . . . \$25;

(8) court costs on an offense of truancy or contributing to truancy (Art. 102.014, Code of Criminal Procedure) . . . \$20;

(9) cost for visual recording of intoxication arrest before conviction (Art. 102.018, Code of Criminal Procedure) . . . \$15;

(10) cost of certain evaluations (Art. 102.018, Code of Criminal Procedure) . . . actual cost;

(11) additional costs attendant to certain intoxication convictions under Chapter 49, Penal Code, for emergency medical services, trauma facilities, and trauma care systems (Art. 102.0185, Code of Criminal Procedure) . . . \$100;

(12) additional costs attendant to certain child sexual assault and related convictions, for child abuse prevention programs (Art. 102.0186, Code of Criminal Procedure) . . . \$100;

(13) court cost for DNA testing for certain felonies (Art. 102.020(a)(1), Code of Criminal Procedure) . . . \$250;

(14) court cost for DNA testing for the offense of public lewdness or indecent exposure (Art. 102.020(a)(2), Code of Criminal Procedure) . . . \$50;

(15) court cost for DNA testing for certain felonies (Art. 102.020(a)(3), Code of Criminal Procedure) . . . \$34;

(16) if required by the court, a restitution fee for costs incurred in collecting restitution installments and for the compensation to victims of crime fund (Art. 42.037, Code of Criminal Procedure) . . . \$12;

(17) if directed by the justice of the peace or municipal court judge hearing the case, court costs on conviction in a criminal action (Art. 45.041, Code of Criminal Procedure) . . . part or all of the costs as directed by the judge; ~~and~~

(18) costs attendant to convictions under Chapter 49, Penal Code, and under Chapter 481, Health and Safety Code, to help fund drug court programs established under Chapter 469, Health and Safety Code (Art. 102.0178, Code of Criminal Procedure) . . . \$60; and

(19) a fee to reimburse property owners for damage resulting from an offense under Section 20.05 or 38.04, Penal Code, or any offense under Chapter 20A, Penal Code (Sec. 19(h), Art. 42.12, Code of Criminal Procedure) . . . \$15.

SECTION 5. Section 19(h), Article 42.12, Code of Criminal Procedure, as added by this Act, applies only to a defendant initially placed on community supervision on or after the effective date of this Act. A defendant initially placed on community supervision before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2013.

(19) a fee to reimburse property owners **in certain counties** for damage resulting from an offense under Section 20.05 or 38.04, Penal Code, or any offense under Chapter 20A, Penal Code (Sec. 19(h), Art. 42.12, Code of Criminal Procedure) . . . \$15.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.