

By: West

S.B. No. 1439

A BILL TO BE ENTITLED

AN ACT

relating to property and evidence technicians.

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

SECTION 1. Title 10, Occupations Code, is amended by adding Chapter 1705 to read as follows:

CHAPTER 1705. PROPERTY AND EVIDENCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1705.001. SHORT TITLE. This chapter may be cited as the Texas Act for Property and Evidence (TAPE).

Sec. 1705.002. EVIDENCE TECHNICIANS. In this section:

(1) "Evidence" means any item that tends to prove or disprove that a criminal act occurred or can prove or disprove guilt or innocence.

(2) "Evidence technician" means a person employed by or serving a law enforcement agency who receives, preserves, stores, disposes of, and accounts for any and all property or evidence that comes into the agency's possession. The term includes a property control officer, property attendant, or property specialist.

(3) "Property" means any item submitted to a law enforcement agency's property room that does not have evidentiary value or is not related to or alleged to be related to any criminal act.

Sec. 1705.003. EVIDENCE TECHNICIAN CERTIFICATION. (a)

1 This state or a political subdivision of this state may not appoint  
2 or employ a person to act as an evidence technician unless the  
3 person has had, or intends to complete not later than the first  
4 anniversary of the date of the person's appointment or employment,  
5 at least eight hours of evidence technician training as determined  
6 by the commission.

7 (b) The commission shall accredit an evidence technician  
8 training program that fulfills the minimum requirements  
9 established by commission rule. The commission shall adopt rules  
10 providing for the accreditation of an evidence technician training  
11 program developed and taught by the Texas Association of Property  
12 and Evidence Inventory Technicians, the Department of Public  
13 Safety, an institution of higher education, including a junior  
14 college, community college, or technical school, or any other  
15 entity approved by the commission.

16 (c) A person who completes an accredited training program  
17 under this section may submit evidence of satisfactory completion  
18 of an accredited evidence technician training program and request a  
19 written acknowledgment from the commission. On a determination by  
20 the commission that the person meets the minimum requirements for  
21 an evidence technician, the commission shall issue the written  
22 acknowledgment to the person.

23 (d) A person performing the duties of an evidence technician  
24 and serving under permanent appointment on and before September 1,  
25 2013, is not required to meet the requirements of this section as a  
26 condition of continued employment.

27 (e) Notwithstanding this section, a person may be appointed

1 or serve as an evidence technician on a temporary or probationary  
2 basis or may perform the duties of an evidence technician in an  
3 emergency.

4 (f) A person appointed on a temporary or probationary basis  
5 after September 1, 2013, who does not satisfactorily complete an  
6 accredited evidence technician training program before the first  
7 anniversary of the date the person is originally appointed shall be  
8 removed from the position. The person's temporary or probationary  
9 appointment may not be extended for more than one year except that  
10 not earlier than the first anniversary of the date the person is  
11 removed under this subsection, the employing agency may petition  
12 the commission for reinstatement of the person to temporary or  
13 probationary employment.

14 Sec. 1705.004. PREVENTING CONSEQUENCES OF THEFT. (a) Any  
15 person, other than a peace officer, under this section, has a right  
16 to prevent the consequences of theft by seizing any personal  
17 property that has been stolen and bringing it, with the person  
18 suspected of committing the theft, if that person can be taken,  
19 before a magistrate for examination, or delivering the property and  
20 the person suspected of committing the theft to a peace officer for  
21 that purpose.

22 (b) To justify a seizure under this section, there must be  
23 reasonable grounds to believe the property is stolen, and the  
24 seizure must be openly made and the proceedings must be completed  
25 within 72 hours.

26 (c) If the proceedings are not conducted within the  
27 prescribed time frame set forth in Subsection (b), the property

1 shall be returned to the person from whom it was seized.

2 Sec. 1705.005. DISPOSITION OF ABANDONED OR UNCLAIMED  
3 PROPERTY. (a) All unclaimed or abandoned personal property of  
4 every kind, other than contraband subject to forfeiture under  
5 Chapter 59, Code of Criminal Procedure, and whiskey, wine, and  
6 beer, seized by any peace officer in this state which is not held as  
7 evidence to be used in any pending case and has not been ordered  
8 destroyed or returned to the person entitled to possession of the  
9 property by a magistrate, which remains unclaimed for a period of 30  
10 days, shall be delivered for disposition to a person designated by  
11 the municipality or the purchasing agent of the county in which the  
12 property was seized. If a peace officer of a municipality seizes  
13 the property, the peace officer shall deliver the property to a  
14 person designated by the municipality. Proceeds from the sale of  
15 the property through public auction shall be deposited in the  
16 treasury designated for use by the contributing agency. If any  
17 other peace officer seizes the property, the peace officer shall  
18 deliver the property to the purchasing agent of the county. If the  
19 county has no purchasing agent, then such property shall be  
20 disposed of by the sheriff of the county.

21 (b) The county purchasing agent, the person designated by  
22 the municipality, or the sheriff of the county shall mail notice to  
23 the last known address of the owner of the property by certified  
24 mail. The notice shall describe the property being held, give the  
25 name and address of the officer holding such property, and state  
26 that if the owner does not claim the property within 90 days from  
27 the date of the notice, the property will be disposed of and the

1 proceeds deposited in the treasury designated for use by the  
2 contributing agency.

3 (c) If the property has a fair market value of \$500 or more  
4 and the owner or the address of the owner is unknown, the person  
5 designated by the municipality, the county purchasing agent, or the  
6 sheriff shall cause to be published once in a paper of general  
7 circulation in the municipality or county a notice containing a  
8 general description of the property held, the name of the owner if  
9 known, the name and address of the officer holding the property, and  
10 a statement that if the owner does not claim the property within 90  
11 days from the date of the publication, the property will be disposed  
12 of and, after deducting the reasonable expense of keeping the  
13 property and the costs of the disposition, the proceeds placed in  
14 the treasury of the municipality or county disposing of the  
15 property. If the property has a fair market value of less than \$500  
16 and the owner or the address of the owner is unknown, the person  
17 designated by the municipality, the county purchasing agent, or the  
18 sheriff may sell or donate the property. The person designated by  
19 the municipality, the purchasing agent, or the sheriff shall  
20 deposit the sale proceeds in the treasury of the applicable  
21 municipality or county.

22 (d) The sale under this section of any property that has a  
23 fair market value of \$500 or more shall be preceded by a notice  
24 published once at least 14 days prior to the date of the sale in a  
25 newspaper of general circulation in the municipality or county  
26 where the sale is to take place, stating the general description of  
27 the property, the name of the owner if known, and the date and place

1 that the sale will occur. This subsection does not require  
2 disposition by sale.

3 (e) The real owner of any property disposed of shall have  
4 the right to file a claim to the proceeds with the commissioners  
5 court of the county or with the governing body of the municipality  
6 in which the disposition took place. A claim by the real owner must  
7 be filed not later than the 30th day after the date of disposition.  
8 If the claim is allowed by the commissioners court or the governing  
9 body of the municipality, the municipal or county treasurer shall  
10 pay the owner the funds paid into the treasury of the municipality  
11 or county as proceeds of the disposition. If the claim is denied by  
12 the commissioners court or the governing body, or if the court or  
13 body fails to act upon such claim within 90 days, the claimant may  
14 file suit against the municipal or county treasurer in a court of  
15 competent jurisdiction in the county, and if the claimant presents  
16 sufficient proof of ownership, recover judgment against the  
17 municipality or county for the recovery of the proceeds of the  
18 disposition.

19 (f) In this section:

20 (1) "Person designated by a municipality" means an  
21 officer or employee of a municipality who is designated by the  
22 municipality to be primarily responsible for the disposition of  
23 property under this section.

24 (2) "Property held as evidence" means property related  
25 to a charge that has been filed or to a matter that is being  
26 investigated for the filing of a charge.

27 (g) If the provisions of this section have been met and the

1 property is scheduled for disposition, the municipal or county law  
2 enforcement agency that originally seized the property may request  
3 and have the property converted to agency use. The agency at any  
4 time may transfer the property to another municipal or county law  
5 enforcement agency for the use of that agency. The agency last  
6 using the property shall return the property to the person  
7 designated by the municipality, county purchasing agent, or sheriff  
8 for disposition when the agency has completed the intended use of  
9 the property.

10 (h) If the abandoned or unclaimed personal property is  
11 money, the person designated by the municipality, the county  
12 purchasing agent, or the sheriff of the county, as appropriate,  
13 may, after giving notice under Subsection (b) or (c), deposit the  
14 money in the treasury of the municipality or county giving the  
15 notice.

16 (i) While offering the property for sale under this section,  
17 if a person designated by a municipality, county purchasing agent,  
18 or sheriff considers any bid insufficient, the person, agent, or  
19 sheriff may decline the bid and reoffer the property for sale.

20 (j) Chapters 72, 74, 75, and 76, Property Code, do not apply  
21 to unclaimed or abandoned property to which this section applies.

22 Sec. 1705.006. DISPOSITION OF GAMBLING PARAPHERNALIA,  
23 PROHIBITED WEAPONS, CRIMINAL INSTRUMENTS, AND OTHER CONTRABAND.

24 (a) Following the final conviction of a person for possession of a  
25 gambling device or equipment, altered gambling equipment, or  
26 gambling paraphernalia, or for an offense involving a criminal  
27 instrument, an obscene device or material, child pornography, or a

1 scanning device or re-encoder, the court entering the judgment of  
2 conviction shall order that the machine, device, gambling equipment  
3 or gambling paraphernalia, instrument, obscene device or material,  
4 child pornography, or scanning device or re-encoder be destroyed or  
5 forfeited to the state. Not later than the 30th day after the final  
6 conviction of a person for an offense involving a prohibited  
7 weapon, the court entering the judgment of conviction on its own  
8 motion, on the motion of the prosecuting attorney in the case, or on  
9 the motion of the law enforcement agency initiating the complaint  
10 after notice to the prosecuting attorney in the case if the  
11 prosecutor fails to move for the order, shall order that the  
12 prohibited weapon be destroyed or forfeited to the law enforcement  
13 agency that initiated the complaint. If the court fails to enter  
14 the order within the time required by this subsection, any  
15 magistrate in the county in which the offense occurred may enter the  
16 order. Following the final conviction of a person for an offense  
17 involving dog fighting, the court entering the judgment of  
18 conviction shall order that any dog-fighting equipment be destroyed  
19 or forfeited to the state. Destruction of dogs, if necessary, must  
20 be carried out by a veterinarian licensed in this state or, if one  
21 is not available, by trained personnel of a humane society or an  
22 animal shelter. If forfeited, the court shall order the contraband  
23 delivered to the state, any political subdivision of the state, or  
24 any state institution or agency. If gambling proceeds were seized,  
25 the court shall order them forfeited to the state and shall transmit  
26 them to the grand jury of the county in which they were seized for  
27 use in investigating alleged violations of the Penal Code, or to the



1 state, any political subdivision of the state, or any state  
2 institution or agency.

3 (b) If there is no prosecution or conviction following  
4 seizure, the magistrate to whom the return was made shall notify in  
5 writing the person found in possession of the alleged gambling  
6 device or equipment, altered gambling equipment or gambling  
7 paraphernalia, gambling proceeds, prohibited weapon, obscene  
8 device or material, child pornography, scanning device or  
9 re-encoder, criminal instrument, or dog-fighting equipment to show  
10 cause why the property seized should not be destroyed or the  
11 proceeds forfeited. The magistrate, on the motion of the law  
12 enforcement agency seizing a prohibited weapon, shall order the  
13 weapon destroyed or forfeited to the law enforcement agency seizing  
14 the weapon, unless a person shows cause as to why the prohibited  
15 weapon should not be destroyed or forfeited. A law enforcement  
16 agency shall make a motion under this section in a timely manner  
17 after the time at which the agency is informed in writing by the  
18 attorney representing the state that no prosecution will arise from  
19 the seizure.

20 (c) The magistrate shall include in the notice a detailed  
21 description of the property seized and the total amount of alleged  
22 gambling proceeds, the name of the person found in possession, the  
23 address where the property or proceeds were seized, and the date and  
24 time of the seizure.

25 (d) The magistrate shall send the notice by registered or  
26 certified mail, return receipt requested, to the person found in  
27 possession at the address where the property or proceeds were

1 seized. If no one was found in possession, or the possessor's  
2 address is unknown, the magistrate shall post the notice on the  
3 courthouse door.

4 (e) Any person interested in the alleged gambling device or  
5 equipment, altered gambling equipment or gambling paraphernalia,  
6 gambling proceeds, prohibited weapon, obscene device or material,  
7 child pornography, scanning device or re-encoder, criminal  
8 instrument, or dog-fighting equipment seized must appear before the  
9 magistrate on the 20th day following the date the notice was mailed  
10 or posted. Failure to timely appear forfeits any interest the  
11 person may have in the property or proceeds seized, and no person  
12 after failing to timely appear may contest destruction or  
13 forfeiture.

14 (f) If a person timely appears to show cause why the  
15 property or proceeds should not be destroyed or forfeited, the  
16 magistrate shall conduct a hearing on the issue and determine the  
17 nature of the property or proceeds and the person's interest  
18 therein. Unless the person proves by a preponderance of the  
19 evidence that the property or proceeds are not gambling equipment,  
20 altered gambling equipment, gambling paraphernalia, a gambling  
21 device, gambling proceeds, a prohibited weapon, an obscene device  
22 or material, child pornography, a criminal instrument, a scanning  
23 device or re-encoder, or dog-fighting equipment and that the person  
24 is entitled to possession, the magistrate shall dispose of the  
25 property or proceeds in accordance with Subsection (a).

26 (g) In this section:

27 (1) "Criminal instrument," "gambling device or

1 equipment, altered gambling equipment, or gambling paraphernalia,  
2 and "prohibited weapon" have the meanings assigned by the Penal  
3 Code.

4 (2) "Dog-fighting equipment" means:

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

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

13 (C) equipment used to promote or advertise an  
14 exhibition of dog fighting, including a printing press or similar  
15 equipment, paper, ink, or photography equipment; or

16 (D) a dog trained, being trained, or intended to  
17 be used to fight with another dog.

18 (3) "Obscene device" and "obscene" have the meanings  
19 assigned by Section 43.21, Penal Code.

20 (4) "Re-encoder" has the meaning assigned by Section  
21 35.60, Business & Commerce Code.

22 (5) "Scanning device" has the meaning assigned by  
23 Section 35.60, Business & Commerce Code.

24 (6) "Obscene material" and "child pornography"  
25 include digital images and the media and equipment on which those  
26 images are stored.

27 (h) A provider of an electronic communication service or of

1 a remote computing service to the public may not be held liable for  
2 an offense involving obscene material or child pornography under  
3 this section due to any action taken in good faith in providing that  
4 service.

5 Sec. 1705.007. DISPOSITION OF EXPLOSIVE WEAPONS AND  
6 CHEMICAL DISPENSING DEVICES. (a) After seizure of an explosive  
7 weapon or chemical dispensing device, as these terms are defined in  
8 Section 46.01, Penal Code, a peace officer or a person acting at the  
9 direction of a peace officer shall:

10 (1) photograph the weapon in the position where it is  
11 recovered before touching or moving it;

12 (2) record the identification designations printed on  
13 a weapon if the markings are intact;

14 (3) if the weapon can be moved, move it to an isolated  
15 area in order to lessen the danger to the public;

16 (4) if possible, retain a portion of a wrapper or other  
17 packaging materials connected to the weapon;

18 (5) retain a small portion of the explosive material  
19 and submit the material to a laboratory for chemical analysis;

20 (6) separate and retain components associated with the  
21 weapon such as fusing and triggering mechanisms if those mechanisms  
22 are not hazardous in themselves;

23 (7) destroy the remainder of the weapon in a safe  
24 manner;

25 (8) at the time of destruction, photograph the  
26 destruction process and make careful observations of the  
27 characteristics of the destruction;

1           (9) after destruction, inspect the disposal site and  
2 photograph the site to record the destructive characteristics of  
3 the weapon; and

4           (10) retain components of the weapon and records of  
5 the destruction for use as evidence in court proceedings.

6           (b) Representative samples, photographs, and records made  
7 pursuant to this section are admissible in civil or criminal  
8 proceedings in the same manner and to the same extent as if the  
9 explosive weapon were offered in evidence, regardless of whether or  
10 not the remainder of the weapon has been destroyed. No inference or  
11 presumption of spoliation applies to weapons destroyed pursuant to  
12 this section.

13           Sec. 1705.008. DEPOSIT OF MONEY PENDING DISPOSITION. (a)  
14 If money is seized by a law enforcement agency in connection with a  
15 violation of Chapter 47, Penal Code, the state or the political  
16 subdivision of the state that employs the law enforcement agency  
17 may deposit the money in an interest-bearing bank account in the  
18 jurisdiction of the agency that made seizure or in the county in  
19 which the money was seized until a final judgment is rendered  
20 concerning the violation.

21           (b) If a final judgment is rendered concerning a violation  
22 of Chapter 47, Penal Code, money seized in connection with the  
23 violation that has been placed in an interest-bearing bank account  
24 shall be distributed according to this chapter, with any interest  
25 being distributed in the same manner and used for the same purpose  
26 as the principal.

27           Sec. 1705.009. DISPOSITION OF SEIZED WEAPONS. (a) Weapons

1 seized in connection with an offense involving the use of a weapon  
2 or an offense under Chapter 46, Penal Code, shall be held by the law  
3 enforcement agency making the seizure, subject to the following  
4 provisions, unless:

5 (1) the weapon is a prohibited weapon identified in  
6 Chapter 46, Penal Code, in which event Section 1705.006 applies; or

7 (2) the weapon is alleged to be stolen property, in  
8 which event Chapter 47, Code of Criminal Procedure, applies.

9 (b) When a weapon described in Subsection (a) is seized, and  
10 the seizure is not made pursuant to a search or arrest warrant, the  
11 person seizing the weapon shall prepare and deliver to a magistrate  
12 a written inventory of each weapon seized.

13 (c) If there is no prosecution or conviction for an offense  
14 involving the weapon seized, the magistrate to whom the seizure was  
15 reported shall, before the 61st day after the date the magistrate  
16 determines that there will be no prosecution or conviction, notify  
17 in writing the person found in possession of the weapon that the  
18 person is entitled to the weapon upon written request to the  
19 magistrate. The magistrate shall order the weapon returned to the  
20 person found in possession before the 61st day after the date the  
21 magistrate receives a request from the person. If the weapon is not  
22 requested before the 61st day after the date of notification, the  
23 magistrate shall, before the 121st day after the date of  
24 notification, order the weapon destroyed or forfeited to the state  
25 for use by the law enforcement agency holding the weapon or by a  
26 county forensic laboratory designated by the magistrate. If the  
27 magistrate does not order the return, destruction, or forfeiture of

1 the weapon within the applicable period prescribed by this  
2 subsection, the law enforcement agency holding the weapon may  
3 request an order of destruction or forfeiture of the weapon from the  
4 magistrate.

5 (d) A person either convicted or receiving deferred  
6 adjudication under Chapter 46, Penal Code, is entitled to the  
7 weapon seized upon request to the court in which the person was  
8 convicted or placed on deferred adjudication. However, the court  
9 entering the judgment shall order the weapon destroyed or forfeited  
10 to the state for use by the law enforcement agency holding the  
11 weapon or by a county forensic laboratory designated by the court  
12 if:

13 (1) the person does not request the weapon before the  
14 61st day after the date of the judgment of conviction or the order  
15 placing the person on deferred adjudication;

16 (2) the person has been previously convicted under  
17 Chapter 46, Penal Code;

18 (3) the weapon is a prohibited weapon as provided by  
19 Section 46.05, Penal Code;

20 (4) the offense for which the person is convicted or  
21 receives deferred adjudication was committed in or on the premises  
22 of a playground, school, video arcade facility, or youth center, as  
23 those terms are defined by Section 481.134, Health and Safety Code;  
24 or

25 (5) the court determines based on the prior criminal  
26 history of the defendant or based on the circumstances surrounding  
27 the commission of the offense that possession of the seized weapon

1 would pose a threat to the community or one or more individuals.

2 (e) If the person found in possession of a weapon is  
3 convicted of an offense involving the use of the weapon, before the  
4 61st day after the date of conviction the court entering judgment of  
5 conviction shall order destruction of the weapon or forfeiture to  
6 the state for use by the law enforcement agency holding the weapon  
7 or by a county forensic laboratory designated by the court. If the  
8 court entering judgment of conviction does not order the  
9 destruction or forfeiture of the weapon within the period  
10 prescribed by this subsection, the law enforcement agency holding  
11 the weapon may request an order of destruction or forfeiture of the  
12 weapon from a magistrate.

13 Sec. 1705.010. DUTY OF CLERKS. (a) In a criminal  
14 proceeding, a clerk of the district or county court shall:

15 (1) receive and file all papers;

16 (2) receive all exhibits at the conclusion of the  
17 proceeding;

18 (3) issue all process; and

19 (4) perform all other duties imposed on the clerk by  
20 law.

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

24 (1) the sheriff; or

25 (2) in a county with a population of 500,000 or more,  
26 the law enforcement agency that collected, seized, or took  
27 possession of the firearm or contraband or produced the firearm or



1 contraband at the proceeding.

2 (c) The sheriff or the law enforcement agency, as  
3 applicable, shall receive and hold the exhibits consisting of  
4 firearms or contraband and release them only to the person or  
5 persons authorized by the court in which such exhibits have been  
6 received or dispose of them as provided by this chapter.

7 (d) In this section, "eligible exhibit" means an exhibit  
8 filed with the clerk that:

9 (1) is not a firearm or contraband;

10 (2) has not been ordered by the court to be returned to  
11 its owner; and

12 (3) is not an exhibit in another pending criminal  
13 action.

14 (e) An eligible exhibit may be disposed of as provided by  
15 this section:

16 (1) on or after the first anniversary of the date on  
17 which a conviction becomes final in the case, if the case is a  
18 misdemeanor or a felony for which the sentence imposed by the court  
19 is five years or less; or

20 (2) on or after the second anniversary of the date on  
21 which a conviction becomes final in the case, if the case is an  
22 offense, other than a capital felony, for which the sentence  
23 imposed by the court is greater than five years.

24 (f) A clerk in a county with a population of 1.7 million or  
25 more may dispose of an eligible exhibit on the date provided by  
26 Subsection (e) if on that date the clerk has not received a request  
27 for the exhibit from either the attorney representing the state in

1 the case or the attorney representing the defendant.

2 (g) A clerk in a county with a population of less than 1.7  
3 million must provide written notice by mail to the attorney  
4 representing the state in the case and the attorney representing  
5 the defendant before disposing of an eligible exhibit.

6 (h) The notice under Subsection (g) of this section must:

7 (1) describe the eligible exhibit;

8 (2) give the name and address of the court holding the  
9 exhibit; and

10 (3) state that the eligible exhibit will be disposed  
11 of unless a written request is received by the clerk before the 31st  
12 day after the date of notice.

13 (i) If a request is not received by a clerk covered by  
14 Subsection (g) of this section before the 31st day after the date of  
15 notice, the clerk may dispose of the eligible exhibit.

16 (j) If a request is timely received, the clerk shall deliver  
17 the eligible exhibit to the person making the request if the court  
18 determines the requestor is the owner of the eligible exhibit.

19 Sec. 1705.011. EVIDENCE CONTAINING BIOLOGICAL MATERIAL.

20 (a) In this section, "biological evidence" means:

21 (1) the contents of a sexual assault examination kit;

22 or

23 (2) any item that contains blood, semen, hair, saliva,  
24 skin tissue, fingernail scrapings, bone, bodily fluids, or any  
25 other identifiable biological material that was collected as part  
26 of an investigation of an alleged felony offense or conduct  
27 constituting a felony offense that might reasonably be used to:

1           (A) establish the identity of the person  
2 committing the offense or engaging in the conduct constituting the  
3 offense; or

4           (B) exclude a person from the group of persons  
5 who could have committed the offense or engaged in the conduct  
6 constituting the offense.

7           (b) This section applies to a governmental or public entity  
8 or an individual, including a law enforcement agency, prosecutor's  
9 office, court, public hospital, or crime laboratory, that is  
10 charged with the collection, storage, preservation, analysis, or  
11 retrieval of biological evidence.

12           (c) An entity or individual described by Subsection (b)  
13 shall ensure that biological evidence collected pursuant to an  
14 investigation or prosecution of a felony offense or conduct  
15 constituting a felony offense is retained and preserved:

16           (1) for not less than 40 years, or until the applicable  
17 statute of limitations has expired, if there is an unapprehended  
18 actor associated with the offense; or

19           (2) in a case in which a defendant has been convicted,  
20 placed on deferred adjudication community supervision, or  
21 adjudicated as having engaged in delinquent conduct and there are  
22 no additional unapprehended actors associated with the offense:

23           (A) until the inmate is executed, dies, or is  
24 released on parole, if the defendant is convicted of a capital  
25 felony;

26           (B) until the defendant dies, completes the  
27 defendant's sentence, or is released on parole or mandatory

1 supervision, if the defendant is sentenced to a term of confinement  
2 or imprisonment in the Texas Department of Criminal Justice;

3 (C) until the defendant completes the  
4 defendant's term of community supervision, including deferred  
5 adjudication community supervision, if the defendant is placed on  
6 community supervision;

7 (D) until the defendant dies, completes the  
8 defendant's sentence, or is released on parole, mandatory  
9 supervision, or juvenile probation, if the defendant is committed  
10 to the Texas Juvenile Justice Department; or

11 (E) until the defendant completes the  
12 defendant's term of juvenile probation, including a term of  
13 community supervision upon transfer of supervision to a criminal  
14 court, if the defendant is placed on juvenile probation.

15 (d) The attorney representing the state, clerk, or other  
16 officer in possession of biological evidence described by  
17 Subsection (a) may destroy the evidence, but only if the attorney,  
18 clerk, or officer by mail notifies the defendant, the last attorney  
19 of record for the defendant, and the convicting court of the  
20 decision to destroy the evidence and a written objection is not  
21 received by the attorney, clerk, or officer from the defendant,  
22 attorney of record, or court before the 91st day after the later of  
23 the following dates:

24 (1) the date on which the attorney representing the  
25 state, clerk, or other officer receives proof that the defendant  
26 received notice of the planned destruction of evidence; or

27 (2) the date on which notice of the planned

1 destruction of evidence is mailed to the last attorney of record for  
2 the defendant.

3 (e) To the extent of any conflict, this section controls  
4 over Section 1705.010.

5 (f) The Department of Public Safety shall adopt standards  
6 and rules authorizing a county with a population less than 100,000  
7 to ensure the preservation of biological evidence by promptly  
8 delivering the evidence to the Department of Public Safety for  
9 storage in accordance with Section 411.053, Government Code, and  
10 department rules.

11 (g) The Department of Public Safety shall adopt standards  
12 and rules, consistent with best practices, relating to a person  
13 described by Subsection (b), that specify the manner of collection,  
14 storage, preservation, and retrieval of biological evidence.

15 (h) A person described by Subsection (b) may solicit and  
16 accept gifts, grants, donations, and contributions to support the  
17 collection, storage, preservation, retrieval, and destruction of  
18 biological evidence.

19 Sec. 1705.012. ANALYSIS OF SEXUAL ASSAULT EVIDENCE. (a)  
20 This section applies only to physical evidence of a sexual assault  
21 with respect to an active criminal case.

22 (b) A law enforcement agency that receives sexual assault  
23 evidence collected under this chapter or other law shall submit  
24 that evidence to a public accredited crime laboratory for analysis  
25 not later than the 30th day after the date on which that evidence  
26 was received.

27 (c) A person who submits sexual assault evidence to a public

1 accredited crime laboratory under this section or other law shall  
2 provide the following signed, written certification with each  
3 submission: "This evidence is being submitted by (name of person  
4 making submission) in connection with a criminal investigation."

5 (d) If sufficient personnel and resources are available, a  
6 public accredited crime laboratory as soon as practicable shall  
7 complete its analysis of sexual assault evidence submitted under  
8 this section or other law.

9 (e) To ensure the expeditious completion of analyses, the  
10 department and other applicable public accredited crime  
11 laboratories may contract with private accredited crime  
12 laboratories as appropriate to perform those analyses, subject to  
13 the necessary quality assurance reviews by the public accredited  
14 crime laboratories.

15 (f) The failure of a law enforcement agency to submit sexual  
16 assault evidence within the period required by this section does  
17 not affect the authority of:

18 (1) the agency to submit the evidence to an accredited  
19 crime laboratory for analysis; or

20 (2) an accredited crime laboratory to analyze the  
21 evidence or provide the results of that analysis to appropriate  
22 persons.

23 (g) On the request of any appropriate person and after an  
24 evidence collection kit containing biological evidence has been  
25 analyzed by an accredited crime laboratory and any necessary  
26 quality assurance reviews have been performed, the department shall  
27 compare the DNA profile obtained from the biological evidence with

1 DNA profiles maintained in:

2 (1) state databases, including the DNA database  
3 maintained under Subchapter G, Chapter 411, Government Code, if the  
4 amount and quality of the analyzed sample meet the requirements of  
5 the state database comparison policies; and

6 (2) the CODIS DNA database established by the Federal  
7 Bureau of Investigation, if the amount and quality of the analyzed  
8 sample meet the requirements of the bureau's CODIS comparison  
9 policies.

10 Sec. 1705.013. BEVERAGE DELIVERED TO COMMISSION. Any  
11 alcoholic beverage, its container, and its packaging which has been  
12 seized by a peace officer, as provided in Section 103.03, Alcoholic  
13 Beverage Code, may be disposed of by the agency seizing the items or  
14 may be delivered to the commission for immediate public or private  
15 sale in the manner determined by the commission.

16 Sec. 1705.014. BEVERAGE OF ILLICIT MANUFACTURE OR UNFIT FOR  
17 CONSUMPTION. (a) The commission or local agency may not sell  
18 alcoholic beverages seized by a peace officer, as provided in  
19 Section 1705.013, that are unfit for public consumption or are of  
20 illicit manufacture.

21 (b) An alcoholic beverage is unfit for public consumption  
22 if:

23 (1) the manufacturer or wholesaler of the beverage  
24 determines that the beverage is inappropriate for sale to a  
25 consumer;

26 (2) the beverage is damaged; or

27 (3) the code date affixed by the manufacturer to the

1 beverage has expired.

2 (c) If the commission or local agency determines that a  
3 seized alcoholic beverage is unfit for public consumption or is of  
4 illicit manufacture, the commission or local agency shall destroy  
5 the beverage.

6 Sec. 1705.015. SALE OF BEER. (a) Any beer, its container,  
7 or its packaging which is seized under the terms of this chapter  
8 shall be disposed of in accordance with this section.

9 (b) On notification that beer has been seized, the  
10 commission or local agency shall promptly notify a holder of a  
11 general, local, or branch distributor's license who handles the  
12 brand of beer seized and who operates in the county in which it was  
13 seized. If the beer was seized in a dry area, the commission or  
14 local agency shall notify either the general, local, or branch  
15 distributor who handles the brand operating nearest the area or the  
16 manufacturer brewing the beer. The commission or local agency, as  
17 appropriate, and the distributor or manufacturer shall jointly  
18 determine whether the beer is in a salable condition.

19 (c) If the beer is determined not to be in a salable  
20 condition, the commission or local agency shall immediately destroy  
21 it. If it is determined to be in a salable condition, it shall be  
22 offered for sale to the distributor or manufacturer. If offered to  
23 a distributor, the beer shall be sold at the distributor's cost  
24 price less any state taxes which have been paid on the beer. If the  
25 beer is offered to a manufacturer, it shall be sold at the  
26 manufacturer's cost price to its nearest distributor, less any  
27 state taxes which have been paid on the beer. A distributor or



1 manufacturer that purchases beer under this subsection is  
2 responsible for the costs of transporting the beer. Local agencies  
3 may donate the beer to distributors or manufacturers. Local  
4 agencies may collect any charges incurred as a result of the  
5 seizure, and storage or warehousing charges necessarily incurred as  
6 a result of the seizure shall be added to the cost price.

7 (d) If the distributor or manufacturer does not exercise the  
8 right to purchase salable beer or to purchase returnable bottles,  
9 containers, or packages at the applicable deposit price before the  
10 11th day after the date items are offered to the distributor or  
11 manufacturer, the commission shall sell the beer, bottles,  
12 containers, or packages at public or private sale as provided in  
13 this chapter. Local agencies shall dispose of the beer, bottles,  
14 containers, or packages as provided for in this chapter.

15 Sec. 1705.016. SALE OF LIQUOR. (a) Any liquor, its  
16 container, or its packaging which is seized under the terms of this  
17 chapter shall be disposed of in accordance with this section.

18 (b) On notification that liquor has been seized, the  
19 commission or local agency shall promptly notify a holder of a  
20 wholesaler's permit, a general class B wholesaler's permit, or a  
21 local class B wholesaler's permit who handles the brand of liquor  
22 seized and who operates in the county in which it was seized. If the  
23 liquor was seized in a dry area, the commission or local agency  
24 shall notify the wholesaler who handles the brand seized who  
25 operates nearest the area. The commission or local agency, as  
26 appropriate, and the wholesaler shall jointly determine whether the  
27 liquor is in a salable condition.

1       (c) If the liquor is determined not to be in a salable  
2 condition, the commission or local agency shall immediately destroy  
3 it. If it is determined to be in a salable condition, it shall first  
4 be offered for sale to the wholesaler notified at the wholesaler's  
5 cost price plus any storage or warehousing charges necessarily  
6 incurred as a result of the seizure.

7       (d) If the wholesaler does not exercise the right to  
8 purchase salable liquor, containers, or packages at the price  
9 specified in this section before the 11th day after the date items  
10 are offered to the wholesaler, the commission shall sell the  
11 liquor, container, or packages at public or private sale, as  
12 provided in this chapter. The local agency shall destroy the  
13 liquor, container, or packages as provided in this chapter.

14       Sec. 1705.017. EXERCISE OF DISCRETION IN CASE OF MISTAKE.  
15 This chapter shall not be construed as preventing the commission  
16 from exercising its discretion if illicit alcoholic beverages are  
17 seized as the result of an accidental shipment or other reasonable  
18 mistake. Under those circumstances, the commission may issue  
19 orders and make disposition of the alcoholic beverages as it finds  
20 just and reasonable.

21       Sec. 1705.018. PROCEEDS FROM SALE. (a) The proceeds from  
22 the sale of seized alcoholic beverages, containers, and packaging  
23 shall be placed in escrow in a suspense account established by the  
24 commission for that purpose, pending the outcome of a forfeiture  
25 suit under this chapter.

26       (b) Proceeds in escrow which are not forfeited to the state  
27 as a result of the suit shall be refunded to the alleged violator.

1 If alcoholic beverages are illegally seized and sold, the person  
2 legally entitled to possession of the beverages at the time of the  
3 seizure may recover from the state the fair market value of the  
4 beverages, with the reimbursement paid out of the proceeds held in  
5 escrow from the sale and, if the funds are insufficient, from the  
6 confiscated liquor fund.

7 Sec. 1705.019. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY  
8 DESTRUCTION OF CONTROLLED SUBSTANCE PROPERTY. (a) Controlled  
9 substance property that is manufactured, delivered, or possessed in  
10 violation of Chapter 481, Health and Safety Code, is subject to  
11 seizure and summary forfeiture to the state.

12 (b) If an item of controlled substance property is seized  
13 and forfeited under this section, a court may order the disposition  
14 of the property under Section 481.159, Health and Safety Code, or  
15 the department or a peace officer may summarily destroy the  
16 property under the rules of the department.

17 Sec. 1705.020. RULES. (a) The director may adopt  
18 reasonable rules and procedures, not inconsistent with the  
19 provisions of this chapter, concerning:

20 (1) summary forfeiture and summary destruction of  
21 controlled substance property or plants;

22 (2) establishment and operation of a secure storage  
23 area;

24 (3) delegation by a law enforcement agency head of the  
25 authority to access a secure storage area; and

26 (4) minimum tolerance for and the circumstances of  
27 loss or destruction during an investigation.

1        (b) The rules for the destruction of controlled substance  
2 property or plants must require:

3            (1) not less than two witnesses of the destruction of  
4 the property or plants;

5            (2) the preparation of an inventory of the property or  
6 plants destroyed; and

7            (3) the preparation of a statement that contains the  
8 names of the witnesses of the destruction and the details of the  
9 destruction.

10        (c) A document prepared under a rule adopted under this  
11 section must be completed, retained, and made available for  
12 inspection by the director.

13        Sec. 1705.021. DISPOSITION OF CONTROLLED SUBSTANCE  
14 PROPERTY OR PLANT. (a) If a district court orders the forfeiture  
15 of a controlled substance property or plant under this chapter the  
16 court shall also order a law enforcement agency to:

17            (1) retain the property or plant for its official  
18 purposes, including use in the investigation of offenses under this  
19 code;

20            (2) deliver the property or plant to a government  
21 agency for official purposes;

22            (3) deliver the property or plant to a person  
23 authorized by the court to receive it;

24            (4) deliver the property or plant to a person  
25 authorized by the director to receive it for a purpose described by  
26 Section 481.065(a), Health and Safety Code; or

27            (5) destroy the property or plant.

1       (b) The district court may not require the department to  
2 receive, analyze, or retain a controlled substance property or  
3 plant forfeited to a law enforcement agency other than the  
4 department.

5       (c) In order to ensure that a controlled substance property  
6 or plant is not diluted, substituted, diverted, or tampered with  
7 while being used in the investigation of offenses under the Health  
8 and Safety Code, law enforcement agencies using the property or  
9 plant for this purpose shall:

10           (1) employ a qualified individual to conduct  
11 qualitative and quantitative analyses of the property or plant  
12 before and after its use in an investigation;

13           (2) maintain the property or plant in a secure storage  
14 area accessible only to the law enforcement agency head and the  
15 individual responsible for analyzing, preserving, and maintaining  
16 security over the property or plant; and

17           (3) maintain a log documenting:

18                   (A) the date of issue, date of return, type,  
19 amount, and concentration of property or plant used in an  
20 investigation; and

21                   (B) the signature and the printed or typed name  
22 of the peace officer to whom the property or plant was issued and  
23 the signature and the printed or typed name of the individual  
24 issuing the property or plant.

25       (d) A law enforcement agency may contract with another law  
26 enforcement agency to provide security that complies with  
27 Subsection (c) for controlled substance property or plants.

1       (e) A law enforcement agency may adopt a written policy with  
2 more stringent requirements than those required by Subsection (c).  
3 The director may enter and inspect, in accordance with Section  
4 481.181, Health and Safety Code, a location at which an agency  
5 maintains records or controlled substance property or plants as  
6 required by this section.

7       (f) If a law enforcement agency uses a controlled substance  
8 property or plant in the investigation of an offense under the  
9 Health and Safety Code and the property or plant has been  
10 transported across state lines before the forfeiture, the agency  
11 shall cooperate with a federal agency in the investigation if  
12 requested to do so by the federal agency.

13       (g) Under the rules of the department, a law enforcement  
14 agency head may grant to another person access to a secure storage  
15 facility under Subsection (c)(2).

16       (h) A county, justice, or municipal court may order  
17 forfeiture of a controlled substance property or plant, unless the  
18 lawful possession of and title to the property or plant can be  
19 ascertained. If the court determines that a person had lawful  
20 possession of and title to the controlled substance property or  
21 plant before it was seized, the court shall order the controlled  
22 substance property or plant returned to the person, if the person so  
23 desires. The court may only order the destruction of a controlled  
24 substance property or plant that is not otherwise disposed of in the  
25 manner prescribed by Section 1705.022.

26       (i) If a controlled substance property or plant seized under  
27 this chapter was forfeited to an agency for the purpose of

1 destruction or for any purpose other than investigation, the  
2 property or plant may not be used in an investigation unless a  
3 district court orders disposition under this section and permits  
4 the use of the property or plant in the investigation.

5 Sec. 1705.022. DESTRUCTION OF EXCESS QUANTITIES. (a) If a  
6 controlled substance property or plant is forfeited under the  
7 Health and Safety Code or this chapter, the law enforcement agency  
8 that seized the property or plant or to which the property or plant  
9 is forfeited may summarily destroy the property or plant without a  
10 court order before the disposition of a case arising out of the  
11 forfeiture if the agency ensures that:

12 (1) at least five random and representative samples  
13 are taken from the total amount of the property or plant and a  
14 sufficient quantity is preserved to provide for discovery by  
15 parties entitled to discovery;

16 (2) photographs are taken that reasonably depict the  
17 total amount of the property or plant; and

18 (3) the gross weight or liquid measure of the property  
19 or plant is determined, either by actually weighing or measuring  
20 the property or plant or by estimating its weight or measurement  
21 after making dimensional measurements of the total amount seized.

22 (b) If the property consists of a single container of  
23 liquid, taking and preserving one representative sample complies  
24 with Subsection (a)(1).

25 (c) A representative sample, photograph, or record made  
26 under this section is admissible in civil or criminal proceedings  
27 in the same manner and to the same extent as if the total quantity of

1 the suspected controlled substance property or plant was offered in  
2 evidence, regardless of whether the remainder of the property or  
3 plant has been destroyed. An inference or presumption of  
4 spoliation does not apply to a property or plant destroyed under  
5 this section.

6 (d) If hazardous waste, residuals, contaminated glassware,  
7 associated equipment, or by-products from illicit chemical  
8 laboratories or similar operations are unsafe or are forfeited,  
9 those items may be disposed of under Subsection (a) or may be seized  
10 and summarily forfeited and destroyed by a law enforcement agency  
11 without a court order before the disposition of a case arising out  
12 of the forfeiture if current environmental protection standards are  
13 followed.

14 (e) A law enforcement agency seizing and destroying or  
15 disposing of materials described in Subsection (d) shall ensure  
16 that photographs are taken that reasonably depict the total amount  
17 of the materials seized and the manner in which the materials were  
18 physically arranged or positioned before seizure.

19 Sec. 1705.023. POLICY REGARDING DESTRUCTION. Each  
20 laboratory and law enforcement agency shall adopt a policy  
21 regarding the destruction of items under this chapter. The policy  
22 must include standardized handling and destruction procedures. The  
23 policy must require that for each item destroyed:

24 (1) before destruction, notice must be provided to the  
25 appropriate attorney representing the state;

26 (2) the destruction must be performed by appropriately  
27 trained individuals by use of an incinerator or other suitable



1 method of destruction;

2 (3) at least two individuals must witness the  
3 destruction;

4 (4) the item must be subjected to appropriate  
5 laboratory analysis before destruction; and

6 (5) all documentation related to the destruction must  
7 be maintained in a readily accessible format for not less than two  
8 years following the date of destruction.

9 Sec. 1705.024. CHAIN OF CUSTODY AFFIDAVIT. (a) A chain of  
10 custody affidavit that complies with this section is admissible in  
11 evidence on behalf of the state or the defendant to establish the  
12 chain of custody of physical evidence without the necessity of any  
13 person in the chain of custody personally appearing in court.

14 (b) This section does not limit the right of a party to  
15 summon a witness or to introduce admissible evidence relevant to  
16 the chain of custody.

17 (c) A chain of custody affidavit under this section must  
18 contain the following information stated under oath:

19 (1) the affiant's name and address;

20 (2) a description of the item of evidence and its  
21 container, if any, obtained by the affiant;

22 (3) the name of the affiant's employer on the date the  
23 affiant obtained custody of the physical evidence;

24 (4) the date and method of receipt and the name of the  
25 person from whom or location from which the item of physical  
26 evidence was received;

27 (5) the date and method of transfer and the name of the

1 person to whom or location to which the item of physical evidence  
2 was transferred; and

3 (6) a statement that the item of evidence was  
4 transferred in essentially the same condition as received except  
5 for any minor change resulting from field or laboratory testing  
6 procedures.

7 (d) Not later than the 20th day before the trial begins in a  
8 proceeding in which a chain of custody affidavit under this section  
9 is to be introduced, the affidavit must be filed with the clerk of  
10 the court and a copy must be provided by fax, hand delivery, or  
11 certified mail, return receipt requested, to the opposing party.  
12 The affidavit is not admissible under Section 1 if, not later than  
13 the 10th day before the trial begins, the opposing party files a  
14 written objection to the use of the affidavit with the clerk of the  
15 court and provides a copy of the objection by fax, hand delivery, or  
16 certified mail, return receipt requested, to the offering party.

17 (e) A chain of custody affidavit is sufficient for purposes  
18 of this section if it uses the following form or if it otherwise  
19 substantially complies with this section:

20 CHAIN OF CUSTODY AFFIDAVIT

21 BEFORE ME, the undersigned authority, personally appeared  
22 \_\_\_\_\_, who being by me duly sworn, stated  
23 as follows:

24 My name is \_\_\_\_\_. I am of sound mind, over the age of 18  
25 years, capable of making this affidavit, and personally acquainted  
26 with the facts stated in this affidavit.

27 My address is \_\_\_\_\_.

1 On the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, I was employed by  
2 \_\_\_\_\_.

3 On that date, I came into possession of the physical evidence  
4 described as follows: (description of evidence)

5 I received the physical evidence from \_\_\_\_\_ (name of  
6 person or description of location) on the \_\_\_ day of \_\_\_\_\_,  
7 20\_\_\_, by \_\_\_\_\_ (method of receipt).

8 This physical evidence was in a container described and  
9 marked as follows: (description of container)

10 I transferred the physical evidence to \_\_\_\_\_ (name of  
11 person or description of location) on the \_\_\_ day of \_\_\_\_\_,  
12 20\_\_\_, by \_\_\_\_\_ (method of delivery).

13 During the time that the physical evidence was in my custody,  
14 I did not make any changes or alterations to the condition of the  
15 physical evidence except for those resulting from field or  
16 laboratory testing procedures, and the physical evidence or a  
17 representative sample of the physical evidence was transferred in  
18 essentially the same condition as received.

19 \_\_\_\_\_  
20 Affiant

21 SWORN TO AND SUBSCRIBED before me on the \_\_\_ day of  
22 \_\_\_\_\_, 20\_\_\_.

23 \_\_\_\_\_  
24 Notary Public, State of Texas

25 SECTION 2. (a) The Department of Public Safety of the  
26 State of Texas, in adopting the initial standards and rules  
27 required by Section 1705.011, Occupations Code, as added by this

1 Act, shall consult with:

2 (1) large, medium, and small law enforcement agencies;

3 (2) law enforcement associations;

4 (3) scientific experts in the collection,  
5 preservation, storage, and retrieval of biological evidence; and

6 (4) organizations engaged in the development of law  
7 enforcement policy, such as:

8 (A) the National Institute of Standards and  
9 Technology of the United States Commerce Department;

10 (B) the Texas District and County Attorneys  
11 Association;

12 (C) the Texas Criminal Defense Lawyers  
13 Association;

14 (D) the Texas Association of Property and  
15 Evidence Inventory Technicians; and

16 (E) other organizations in this state that  
17 represent clients pursuing claims of innocence based on  
18 post-conviction biological evidence.

19 (b) The Department of Public Safety of the State of Texas  
20 shall adopt the standards and rules required by Section 1705.011,  
21 Occupations Code, as added by this Act, not later than September 1,  
22 2014.

23 SECTION 3. This Act takes effect September 1, 2013.