By:  Perry S.B. No. 1125

(In the Senate - Filed March 5, 2021; March 18, 2021, read first time and referred to Committee on Criminal Justice; April 12, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 0; April 12, 2021, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Whitmire        X

Huffman         X

Bettencourt     X

Birdwell                  X

Hinojosa        X

Miles           X

Nichols         X

COMMITTEE SUBSTITUTE FOR S.B. No. 1125 By:  Bettencourt

A BILL TO BE ENTITLED

AN ACT

relating to the disposition of certain controlled substance property and plants seized by or forfeited to a law enforcement agency.

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

SECTION 1.  Section 481.151, Health and Safety Code, is amended by adding Subdivisions (2-a) and (2-b) to read as follows:

(2-a)  "Crime laboratory" has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(2-b)  "Criminal justice agency" has the meaning assigned by Section 411.082, Government Code, and includes a local government corporation described by Section 411.0011 of that code.

SECTION 2.  The heading to Section 481.152, Health and Safety Code, is amended to read as follows:

Sec. 481.152.  SEIZURE, SUMMARY FORFEITURE, AND SUMMARY DESTRUCTION OR OTHER DISPOSITION OF CONTROLLED SUBSTANCE PLANTS.

SECTION 3.  Section 481.152(d), Health and Safety Code, is amended to read as follows:

(d)  If a controlled substance plant is seized and forfeited under this section, a court may order the disposition of the plant under Section 481.159, or the department, a criminal justice agency, or a peace officer may summarily destroy the property under the rules of the department or dispose of the property in lieu of destruction as provided by Section 481.161.

SECTION 4.  The heading to Section 481.153, Health and Safety Code, is amended to read as follows:

Sec. 481.153.  SEIZURE, SUMMARY FORFEITURE, AND SUMMARY DESTRUCTION OR OTHER DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY.

SECTION 5.  Section 481.153(b), Health and Safety Code, is amended to read as follows:

(b)  If an item of controlled substance property is seized and forfeited under this section, a court may order the disposition of the property under Section 481.159, or the department, a criminal justice agency, or a peace officer may summarily destroy the property under the rules of the department or dispose of the property in lieu of destruction as provided by Section 481.161.

SECTION 6.  Sections 481.159(a) and (i), Health and Safety Code, are amended to read as follows:

(a)  If a district court orders the forfeiture of a controlled substance property or plant under Chapter 59, Code of Criminal Procedure, or under this code, the court shall also order a law enforcement agency or a criminal justice agency to which the law enforcement agency transferred the property or plant for analysis and storage to:

(1)  retain the property or plant for [~~its~~] official law enforcement purposes, including use in the investigation of offenses under this code;

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

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

(4)  deliver the property or plant to a person authorized by the director to receive it; or

(5)  destroy the property or plant that is not otherwise disposed of in the manner prescribed by this subchapter.

(i)  If a controlled substance property or plant seized under this chapter was forfeited to an agency for the purpose of destruction or disposition under Section 481.161 in lieu of destruction or for any purpose other than investigation, the property or plant may not be used in an investigation unless a district court orders disposition under this section and permits the use of the property or plant in the investigation.

SECTION 7.  The heading to Section 481.160, Health and Safety Code, is amended to read as follows:

Sec. 481.160.  DISPOSITION [~~DESTRUCTION~~] OF EXCESS QUANTITIES.

SECTION 8.  Sections 481.160(a), (c), and (d), Health and Safety Code, are amended to read as follows:

(a)  If a controlled substance property or plant is forfeited under this code or under Chapter 59, Code of Criminal Procedure, the law enforcement agency that seized the property or plant or to which the property or plant is forfeited or a criminal justice agency to which the law enforcement agency transferred the property or plant for analysis and storage may summarily destroy the property or plant without a court order, or otherwise dispose of the property or plant in lieu of destruction in accordance with Section 481.161, before the disposition of a case arising out of the forfeiture if the agency ensures that:

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

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

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

(c)  A representative sample, photograph, or record made under this section is admissible in civil or criminal proceedings in the same manner and to the same extent as if the total quantity of the suspected controlled substance property or plant was offered in evidence, regardless of whether the remainder of the property or plant has been destroyed or otherwise disposed of. An inference or presumption of spoliation does not apply to a property or plant destroyed or otherwise disposed of under this section.

(d)  If hazardous waste, residuals, contaminated glassware, associated equipment, or by-products from illicit chemical laboratories or similar operations that create a health or environmental hazard or are not capable of being safely stored are forfeited, those items may be disposed of under Subsection (a) or may be seized by and summarily forfeited to a law enforcement agency and destroyed by the [~~a~~] law enforcement agency or by a criminal justice agency to which the law enforcement agency transferred the items for analysis and storage without a court order before the disposition of a case arising out of the forfeiture if current environmental protection standards are followed.

SECTION 9.  Subchapter E, Chapter 481, Health and Safety Code, is amended by adding Section 481.161 to read as follows:

Sec. 481.161.  DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT IN LIEU OF DESTRUCTION. (a) Controlled substance property or plants subject to summary destruction or ordered destroyed by a court may be disposed of in accordance with this section.

(b)  A law enforcement agency or criminal justice agency may transfer the controlled substance property or plants to a crime laboratory to be used for the purposes of laboratory research, testing results validation, and training of analysts.

(c)  The crime laboratory to which the controlled substance property or plants are transferred under Subsection (b) shall destroy or otherwise properly dispose of any unused quantities of the controlled substance property or plants.

(d)  This section does not apply to evidence described by Section 481.160(d).

(e)  The director may adopt rules to implement this section.

SECTION 10.  The change in law made by this Act applies to the disposition of evidence on or after the effective date of this Act, regardless of whether the evidence was seized or forfeited before, on, or after that date.

SECTION 11.  This Act takes effect September 1, 2021.

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