

By: Cunningham

H.B. No. 2180

A BILL TO BE ENTITLED

AN ACT

relating to a waiver of the preservation of evidence and the return of a seized weapon in a criminal case.

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

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.51 to read as follows:

Art. 38.51. WAIVER OF PRESERVATION OF EVIDENCE AND RETURN OF SEIZED WEAPON. (a) Notwithstanding any other law, after a defendant enters a plea of guilty or nolo contendere in accordance with Article 27.13 or 27.14, as applicable, the defendant, acting with counsel, may knowingly, intelligently, and voluntarily waive the defendant's right to:

(1) the preservation of evidence under Article 38.50;  
and

(2) request the return of any seized weapon under Article 18.19.

(b) A waiver under this article must be executed in substantially the following written form:

WAIVER OF PRESERVATION OF EVIDENCE AND RETURN OF SEIZED WEAPON

I, \_\_\_\_\_ (defendant's name), defendant in \_\_\_\_\_ (case number), joined by my counsel, waive the right to the preservation of evidence collected in this case and the right to request the return of any seized weapon, as provided below.

1 I understand that under Article 38.50, Code of Criminal  
2 Procedure, I would otherwise have the right to have any  
3 toxicological evidence collected in this case preserved until I  
4 complete my sentence, term of community supervision, or juvenile  
5 commitment or supervision period.

6 However, I waive my right to receive notice of and object to  
7 the planned destruction of that evidence.

8 I also waive the right to request the return of any seized  
9 weapon under Article 18.19, Code of Criminal Procedure.

10 I agree that, as specified under Article 18.19, Code of  
11 Criminal Procedure, or other law, all evidence collected in this  
12 case, including firearms or other weapons, may be:

13 (1) returned to a person claiming a right to or  
14 interest in the evidence, other than myself;

15 (2) used for law enforcement purposes;

16 (3) sold by law enforcement; or

17 (4) destroyed.

18 (c) If the court determines that the waiver described by  
19 Subsection (b) was knowingly, intelligently, and voluntarily  
20 given, the court shall enter an order stating that, as specified  
21 under Article 18.19 or other law and at any date occurring on or  
22 after the 120th day after the date of the order, all evidence  
23 collected in the case, including firearms or other weapons, shall  
24 be:

25 (1) returned to a person claiming a right to or  
26 interest in the evidence, other than the defendant;

27 (2) used for law enforcement purposes;

1           (3) sold by law enforcement; or

2           (4) destroyed.

3           (d) A defendant may revoke the waiver under this article  
4 until the 120th day after the date of the order.

5           (e) An attorney representing the state may not request that  
6 a defendant give a waiver under this article as part of a plea  
7 bargain agreement.

8           (f) Notwithstanding any other provision of this article, a  
9 crime laboratory, as defined by Article 38.35, may preserve any  
10 evidence or work product derived from evidence that the crime  
11 laboratory considers necessary to comply with accreditation  
12 requirements, laboratory policy, or applicable scientific  
13 standards.

14           (g) Notwithstanding any other provision of this article, a  
15 waiver executed under this article is void and unenforceable  
16 unless:

17               (1) the waiver is made in writing, in open court before  
18 a judge as part of the record and recorded by the court reporter,  
19 and signed by both the defendant and the defendant's attorney;

20               (2) the waiver is executed not earlier than the 120th  
21 day after the date the defendant enters a plea of guilty or no  
22 contendere;

23               (3) the defendant receives and signs an admonishment  
24 in plain language stating:

25               "Waiving your right to the preservation of evidence may  
26 severely limit your ability to win an appeal or seek  
27 post-conviction relief. It may result in the destruction of

1 evidence that could have helped prove your innocence. Once  
2 destroyed, that evidence cannot be recovered."; and

3 (4) the defendant's attorney certifies in writing that  
4 the waiver was made freely, voluntarily, and without coercion, and  
5 that the defendant was fully advised of the consequences of waiving  
6 the preservation of evidence.

7 (h) Evidence may not be destroyed or disposed of until after  
8 the 120th day after the date of the order.

9 (i) A waiver under this article may not be requested,  
10 required, or included as part of any plea agreement or plea bargain  
11 negotiation.

12 SECTION 2. This Act takes effect September 1, 2025.