

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