

CHAPTER 860

S.B. No. 590

AN ACT

relating to the disposition of stolen property.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Articles 47.01, 47.01a, 47.03, 47.04, 47.05, and 47.09, Code of Criminal Procedure, are amended to read as follows:

Art. 47.01. SUBJECT TO ORDER OF COURT. An officer who comes into custody of property alleged to have been stolen must hold it subject to the order of the proper court, *except that if the officer recovers, within 14 days from the date it was reported stolen, property which is subject to the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), then the officer need not hold the property subject to the order of the proper court but may release the property to the owner, as shown on the certificate of title [or magistrate].*

Art. 47.01a. RESTORATION WHEN NO TRIAL IS PENDING. (a) If a criminal action relating to allegedly stolen property is not pending, a *district judge, county court judge, statutory county court judge, or justice of the peace having jurisdiction in the county in which the property is held or a municipal judge having jurisdiction in the municipality [magistrate of the county or city]* in which the property is being held may hold a hearing to determine the right to possession of the property, upon the petition of an interested person, a county, a city, or the state. The court [magistrate] shall:

(1) order the property delivered to whoever has the superior right to possession, *without conditions; or*

(2) *on the filing of a written motion before trial by an attorney representing the state, order the property delivered to whoever has the superior right to possession, subject to the condition that the property be made available to the prosecuting authority should it be needed in future prosecutions; or*

(3) *order[, or the magistrate may remand] the property awarded to the custody of the peace officer, pending resolution of criminal investigations regarding the property.*

(b) If it is shown in a hearing that probable cause exists to believe that the property was acquired by theft or by another manner that makes its acquisition an offense and that the identity of the actual owner of the property cannot be determined, the court [magistrate] shall order the peace officer to:

(1) deliver the property to a government agency for official purposes;

(2) deliver the property to a person authorized by Article 18.17 of this code to receive and dispose of the property; or

(3) destroy the property.

(c) At a hearing under Subsection (a) of this article, any interested person may present evidence showing that the property was not acquired by theft or another offense or that the person is entitled to possess the property. At the hearing, hearsay evidence is admissible.

(d) *Venue for a hearing under this article is in any justice, county, statutory county, or district court in the county in which the property is seized or in any municipal court in any municipality in which the property is seized, except that the court may transfer venue to a court in another county on the motion of any interested party.*

Art. 47.03. SCHEDULE. When an officer seizes property alleged to have been stolen, he shall immediately file a schedule of the same, and its value, with the [magistrate or] court having jurisdiction of the case, certifying that the property has been seized by him, and the reason therefor. *The officer shall notify the court of the names and addresses of each party known to the officer who has a claim to possession of the seized property.*

Art. 47.04. RESTORED TO OWNER. Upon an examining trial, if it is proven to the satisfaction of the court [magistrate] that any person is the true owner of property alleged to have been stolen, and which is in possession of a peace officer, *the court [he] may upon motion by the state, by written order direct the property to be restored to such owner subject to the*

conditions that such property shall be made available to the state or by order of any court having jurisdiction over the offense to be used for evidentiary purposes.

Art. 47.05. BOND REQUIRED. If the court [~~magistrate~~] has any doubt as to the ownership of the property, the court [~~he~~] may require a bond of the claimant for its re-delivery in case it should thereafter be shown not to belong to such claimant; or the court [~~he~~] may, in its [~~his~~] discretion, direct the property to be retained by the sheriff until further orders as to its possession. Such bond shall be in a sum equal to the value of the property, with sufficient security, payable to and approved by the county judge of the county in which the property is in custody. Such bond shall be filed in the office of the county clerk of such county, and in case of a breach thereof may be sued upon in such county by any claimant of the property; or by the county treasurer of such county.

Art. 47.09. CLAIMANT TO PAY CHARGES. The claimant of the property, before he shall be entitled to have the same delivered to him, shall pay all reasonable charges for the safekeeping of the same while in the custody of the law, which charges shall be verified by the affidavit of the officer claiming the same, and determined by the [~~magistrate of a~~] court having jurisdiction thereof. If said charges are not paid, the property shall be sold as under execution; and the proceeds of sale, after the payment of said charges and costs of sale, paid to the owner of such property.

SECTION 2. Chapter 47, Code of Criminal Procedure, is amended by adding Article 47.12 to read as follows:

Art. 47.12. APPEAL. (a) Appeals from a hearing in a district court, county court, or statutory county court under Article 47.01a of this code shall be heard by a court of appeals. The appeal is governed by the applicable rules of procedure for appeals of civil cases to a court of appeals.

(b) Appeals from a hearing in a municipal court or justice court under Article 47.01a of this code shall be heard by a county court or statutory county court. The appeal is governed by the applicable rules of procedure for appeals for civil cases in justice courts to a county court or statutory county court.

(c) Only an interested person who appears at a hearing under this article may appeal, and such person must give an oral notice of appeal at the conclusion of the hearing and must post an appeal bond by the end of the next business day, exclusive of Saturdays, Sundays, and legal holidays.

(d) The court may require an appeal bond, in an amount determined appropriate by the court, but not to exceed twice the value of the property. The bond shall be made payable to the party who was awarded possession at the hearing, with sufficient sureties approved by the court, and conditioned that appellant will prosecute his appeal to conclusion.

SECTION 3. The change in the law made by this Act applies only to property alleged to have been stolen that comes into the custody of a peace officer on or after the effective date of this Act. Property alleged to have been stolen that comes into the custody of an officer before that date is subject to the law in effect when the property came into the custody of the officer, and the former law is continued in effect for that purpose.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on March 25, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 25, 1993, by a viva-voce vote; passed the House, with amendments, on May 22, 1993, by a non-record vote.

Approved June 18, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.