

CODE OF CRIMINAL PROCEDURE
TITLE 1. CODE OF CRIMINAL PROCEDURE
CHAPTER 18. SEARCH WARRANTS

Art. 18.01. SEARCH WARRANT. (a) A "search warrant" is a written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before such magistrate or commanding him to search for and photograph a child and to deliver to the magistrate any of the film exposed pursuant to the order.

(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. Except as provided by Article 18.011, the affidavit becomes public information when the search warrant for which the affidavit was presented is executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

(b-1)(1) For purposes of this article, a magistrate may consider information communicated by telephone or other reliable electronic means in determining whether to issue a search warrant. The magistrate may examine an applicant for a search warrant and any person on whose testimony the application is based. The applicant or other person must be placed under oath before the examination.

(2) If an applicant for a search warrant attests to the contents of an affidavit submitted by reliable electronic means, the magistrate must acknowledge the attestation in writing on the affidavit. If the magistrate considers additional testimony or exhibits, the magistrate must:

(A) ensure that the testimony is recorded verbatim by an electronic recording device, by a court reporter, or in writing;

(B) ensure that any recording or reporter's notes

are transcribed and that the transcription is certified as accurate and is preserved;

(C) sign, certify the accuracy of, and preserve any other written record; and

(D) ensure that the exhibits are preserved.

(3) An applicant for a search warrant who submits information as authorized by this subsection must prepare a proposed duplicate original of the warrant and must read or otherwise transmit its contents verbatim to the magistrate. A magistrate must enter into an original search warrant the contents of a proposed duplicate original that are read to the magistrate. If the applicant transmits the contents by reliable electronic means, the transmission received by the magistrate may serve as the original search warrant.

(4) The magistrate may modify a search warrant that is submitted as described by Subdivision (3). If the magistrate modifies the warrant, the magistrate must:

(A) transmit the modified version to the applicant by reliable electronic means; or

(B) file the modified original and direct the applicant to modify the proposed duplicate original accordingly.

(5) A magistrate who issues a search warrant for which information is provided by telephone or reliable electronic means must:

(A) sign the original documents;

(B) enter the date and time of issuance on the warrant; and

(C) transmit the warrant by reliable electronic means to the applicant or direct the applicant to sign the judge's name and enter the date and time on the duplicate original.

(6) Evidence obtained pursuant to a search warrant for which information was provided in accordance with this subsection is not subject to suppression on the ground that issuing the warrant in compliance with this subsection was unreasonable under the circumstances, absent a finding of bad faith.

(c) A search warrant may not be issued under Article 18.02(a)(10) unless the sworn affidavit required by Subsection (b)

sets forth sufficient facts to establish probable cause: (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched. Except as provided by Subsections (d), (i), and (j), only a judge of a municipal court of record or a county court who is an attorney licensed by the State of Texas, a statutory county court judge, a district court judge, a judge of the Court of Criminal Appeals, including the presiding judge, a justice of the Supreme Court of Texas, including the chief justice, or a magistrate with jurisdiction over criminal cases serving a district court may issue warrants under Article 18.02(a)(10).

(d) Only the specifically described property or items set forth in a search warrant issued under Article 18.02(a)(10) or property, items or contraband enumerated in Article 18.02(a)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (12) may be seized. A subsequent search warrant may be issued pursuant to Article 18.02(a)(10) to search the same person, place, or thing subjected to a prior search under Article 18.02(a)(10) only if the subsequent search warrant is issued by a judge of a district court, a court of appeals, the court of criminal appeals, or the supreme court.

(e) A search warrant may not be issued under Article 18.02(a)(10) to search for and seize property or items that are not described in Article 18.02(a)(1), (2), (3), (4), (5), (6), (7), (8), or (9) and that are located in an office of a newspaper, news magazine, television station, or radio station, and in no event may property or items not described in Article 18.02(a)(1), (2), (3), (4), (5), (6), (7), (8), or (9) be legally seized in any search pursuant to a search warrant of an office of a newspaper, news magazine, television station, or radio station.

(f) A search warrant may not be issued pursuant to Article 18.021 of this code unless the sworn affidavit required by Subsection (b) of this article sets forth sufficient facts to establish probable cause:

(1) that a specific offense has been committed;

(2) that a specifically described person has been a victim of the offense;

(3) that evidence of the offense or evidence that a particular person committed the offense can be detected by photographic means; and

(4) that the person to be searched for and photographed is located at the particular place to be searched.

(g) A search warrant may not be issued under Article 18.02(a)(12) unless the sworn affidavit required by Subsection (b) of this article sets forth sufficient facts to establish probable cause that a specific felony offense has been committed and that the specifically described property or items that are to be searched for or seized constitute contraband as defined in Article 59.01 of this code and are located at or on the particular person, place, or thing to be searched.

(h) Except as provided by Subsection (i) of this article, a warrant under Article 18.02(a)(12) may only be issued by:

(1) a judge of a municipal court of record who is an attorney licensed by the state;

(2) a judge of a county court who is an attorney licensed by the state; or

(3) a judge of a statutory county court, district court, the court of criminal appeals, or the supreme court.

(i) In a county that does not have a municipal court of record with a courtroom located in that county and a judge who is an attorney licensed by the state, a county court judge who is an attorney licensed by the state, or a statutory county court judge, any magistrate may issue a search warrant under Article 18.02(a)(10) or (12). This subsection is not applicable to a subsequent search warrant under Article 18.02(a)(10).

(j) Any magistrate who is an attorney licensed by this state may issue a search warrant under Article 18.02(a)(10) to collect a blood specimen from a person who:

(1) is arrested for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code; and

(2) refuses to submit to a breath or blood alcohol

test.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 982, ch. 399, Sec. 2(E), eff. Jan. 1, 1974; Acts 1977, 65th Leg., p. 640, ch. 237, Sec. 1, eff. May 25, 1977.

Sec. (c) amended by Acts 1979, 66th Leg., p. 1124, ch. 536, Sec. 1, eff. June 11, 1979; Sec. (e) added by Acts 1979, 66th Leg., p. 1076, ch. 505, Sec. 1, eff. Sept. 1, 1979; Sec. (a) amended by Acts 1981, 67th Leg., p. 759, ch. 289, Sec. 3, eff. Sept. 1, 1981; Sec. (b) amended by Acts 1981, 67th Leg., p. 2789, ch. 755, Sec. 1, eff. Sept. 1, 1981; Sec. (f) added by Acts 1981, 67th Leg., p. 759, ch. 289, Sec. 4, eff. Sept. 1, 1981; Sec. (c) amended by Acts 1987, 70th Leg., ch. 686, Sec. 1, eff. Sept. 1, 1987; Secs. (g) and (h) added by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 2, eff. Oct. 18, 1989; Secs. (c), (h) amended by and Sec. (i) added by Acts 1991, 72nd Leg., ch. 73, Sec. 1, eff. May 9, 1991; Secs. (c), (d), (i) amended by Acts 1995, 74th Leg., ch. 670, Sec. 1, eff. Sept. 1, 1995; Subsecs. (c), (h) amended by Acts 1997, 75th Leg., ch. 604, Sec. 1, eff. Sept. 1, 1997; Subsec. (b) amended by Acts 1999, 76th Leg., ch. 167, Sec. 1, eff. Aug. 30, 1999; Subsec. (d) amended by Acts 1999, 76th Leg., ch. 1469, Sec. 1, eff. June 19, 1999; Subsec. (i) amended by Acts 2001, 77th Leg., ch. 1395, Sec. 1, eff. June 16, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 355 (S.B. [244](#)), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 748 (H.B. [3131](#)), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1348 (S.B. [328](#)), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 66 (S.B. [483](#)), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 683 (H.B. [326](#)), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 174 (H.B. [3237](#)), Sec. 1, eff. May 26, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1035 (H.B. [1727](#)), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 4.004, eff. September 1, 2019.

Art. 18.011. SEALING OF AFFIDAVIT. (a) An attorney representing the state in the prosecution of felonies may request a district judge or the judge of an appellate court to seal an affidavit presented under Article 18.01(b). The judge may order the affidavit sealed if the attorney establishes a compelling state interest in that:

(1) public disclosure of the affidavit would jeopardize the safety of a victim, witness, or confidential informant or cause the destruction of evidence; or

(2) the affidavit contains information obtained from a court-ordered wiretap that has not expired at the time the attorney representing the state requests the sealing of the affidavit.

(b) An order sealing an affidavit under this section expires on the 31st day after the date on which the search warrant for which the affidavit was presented is executed. After an original order sealing an affidavit is issued under this article, an attorney representing the state in the prosecution of felonies may request, and a judge may grant, before the 31st day after the date on which the search warrant for which the affidavit was presented is executed, on a new finding of compelling state interest, one 30-day extension of the original order.

(c) On the expiration of an order issued under Subsection (b) and any extension, the affidavit must be unsealed.

(d) An order issued under this section may not:

(1) prohibit the disclosure of information relating to the contents of a search warrant, the return of a search warrant, or the inventory of property taken pursuant to a search warrant; or

(2) affect the right of a defendant to discover the contents of an affidavit.

Added by Acts 2007, 80th Leg., R.S., Ch. 355 (S.B. 244), Sec. 2, eff. September 1, 2007.

Art. 18.02. GROUNDS FOR ISSUANCE. (a) A search warrant may be issued to search for and seize:

- (1) property acquired by theft or in any other manner which makes its acquisition a penal offense;
- (2) property specially designed, made, or adapted for or commonly used in the commission of an offense;
- (3) arms and munitions kept or prepared for the purposes of insurrection or riot;
- (4) weapons prohibited by the Penal Code;
- (5) gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;
- (6) obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;
- (7) a drug, controlled substance, immediate precursor, chemical precursor, or other controlled substance property, including an apparatus or paraphernalia kept, prepared, or manufactured in violation of the laws of this state;
- (8) any property the possession of which is prohibited by law;
- (9) implements or instruments used in the commission of a crime;
- (10) property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense;
- (11) persons;
- (12) contraband subject to forfeiture under Chapter 59 of this code;
- (13) electronic customer data held in electronic storage, including the contents of and records and other information related to a wire communication or electronic communication held in electronic storage; or
- (14) a cellular telephone or other wireless communications device, subject to Article 18.0215.

(b) For purposes of Subsection (a)(13):

- (1) "Electronic communication" and "wire communication" have the meanings assigned by Article 18A.001.
- (2) "Electronic customer data" and "electronic

storage" have the meanings assigned by Article [18B.001](#).

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 982, ch. 399, Sec. 2(E), eff. Jan. 1, 1974; Acts 1977, 65th Leg., p. 640, ch. 237, Sec. 2, eff. May 25, 1977; Amended by Acts 1981, 67th Leg., p. 2790, ch. 755, Sec. 5, eff. Sept. 1, 1981; Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 3, eff. Oct. 18, 1989; Acts 2003, 78th Leg., ch. 1099, Sec. 16, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1289 (H.B. [2268](#)), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. [1396](#)), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. [2931](#)), Sec. 3.03, eff. January 1, 2019.

Art. 18.021. ISSUANCE OF SEARCH WARRANT TO PHOTOGRAPH INJURED CHILD. (a) A search warrant may be issued to search for and photograph a child who is alleged to be the victim of the offenses of injury to a child as prohibited by Section [22.04](#), Penal Code; sexual assault of a child as prohibited by Section [22.011\(a\)](#), Penal Code; aggravated sexual assault of a child as prohibited by Section [22.021](#), Penal Code; or continuous sexual abuse of young child or children as prohibited by Section [21.02](#), Penal Code.

(b) The officer executing the warrant may be accompanied by a photographer who is employed by a law enforcement agency and who acts under the direction of the officer executing the warrant. The photographer is entitled to access to the child in the same manner as the officer executing the warrant.

(c) In addition to the requirements of Subdivisions (1), (4), and (5) of Article [18.04](#) of this code, a warrant issued under this article shall identify, as near as may be, the child to be located and photographed, shall name or describe, as near as may be, the place or thing to be searched, and shall command any peace officer of the proper county to search for and cause the child to be photographed.

(d) After having located and photographed the child, the peace officer executing the warrant shall take possession of the

exposed film and deliver it forthwith to the magistrate. The child may not be removed from the premises on which he or she is located except under Subchapters A and B, Chapter 262, Family Code.

(e) A search warrant under this section shall be executed by a peace officer of the same sex as the alleged victim or, if the officer is not of the same sex as the alleged victim, the peace officer must be assisted by a person of the same sex as the alleged victim. The person assisting an officer under this subsection must be acting under the direction of the officer and must be with the alleged victim during the taking of the photographs.

Added by Acts 1981, 67th Leg., p. 758, ch. 289, Sec. 2, eff. Sept. 1, 1981. Subsec. (a) amended by Acts 1983, 68th Leg., p. 5319, ch. 977, Sec. 8, eff. Sept. 1, 1983; Subsec. (d) amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.01, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.11, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 690 (H.B. 644), Sec. 2, eff. September 1, 2015.

Art. 18.0215. ACCESS TO CELLULAR TELEPHONE OR OTHER WIRELESS COMMUNICATIONS DEVICE. (a) A peace officer may not search a person's cellular telephone or other wireless communications device, pursuant to a lawful arrest of the person without obtaining a warrant under this article.

(b) A warrant under this article may be issued only by a judge in the same judicial district as the site of:

(1) the law enforcement agency that employs the peace officer, if the cellular telephone or other wireless communications device is in the officer's possession; or

(2) the likely location of the telephone or device.

(c) A judge may issue a warrant under this article only on the application of a peace officer. An application must be written and signed and sworn to or affirmed before the judge. The application must:

(1) state the name, department, agency, and address of the applicant;

(2) identify the cellular telephone or other wireless communications device to be searched;

(3) state the name of the owner or possessor of the telephone or device to be searched;

(4) state the judicial district in which:

(A) the law enforcement agency that employs the peace officer is located, if the telephone or device is in the officer's possession; or

(B) the telephone or device is likely to be located; and

(5) state the facts and circumstances that provide the applicant with probable cause to believe that:

(A) criminal activity has been, is, or will be committed; and

(B) searching the telephone or device is likely to produce evidence in the investigation of the criminal activity described in Paragraph (A).

(d) Notwithstanding any other law, a peace officer may search a cellular telephone or other wireless communications device without a warrant if:

(1) the owner or possessor of the telephone or device consents to the search;

(2) the telephone or device is reported stolen by the owner or possessor; or

(3) the officer reasonably believes that:

(A) the telephone or device is in the possession of a fugitive from justice for whom an arrest warrant has been issued for committing a felony offense; or

(B) there exists an immediate life-threatening situation, as defined by Article [18A.201](#).

(e) A peace officer must apply for a warrant to search a cellular telephone or other wireless communications device as soon as practicable after a search is conducted under Subsection (d)(3)(A) or (B). If the judge finds that the applicable situation under Subsection (d)(3)(A) or (B) did not occur and declines to issue the warrant, any evidence obtained is not admissible in a criminal action.

Added by Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 2, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.04, eff. January 1, 2019.

Art. 18.03. SEARCH WARRANT MAY ORDER ARREST. If the facts presented to the magistrate under Article 18.02 of this chapter also establish the existence of probable cause that a person has committed some offense under the laws of this state, the search warrant may, in addition, order the arrest of such person.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 983, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Art. 18.04. CONTENTS OF WARRANT. A search warrant issued under this chapter, Chapter 18A, or Chapter 18B shall be sufficient if it contains the following requisites:

(1) that it run in the name of "The State of Texas";

(2) that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched;

(3) that it command any peace officer of the proper county to search forthwith the person, place, or thing named;

(4) that it be dated and signed by the magistrate; and

(5) that the magistrate's name appear in clearly legible handwriting or in typewritten form with the magistrate's signature.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 983, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 690 (H.B. 644), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.05, eff. January 1, 2019.

Art. 18.05. WARRANTS FOR FIRE, HEALTH, AND CODE INSPECTIONS.

(a) Except as provided by Subsection (e) of this article, a search

warrant may be issued to a fire marshal, health officer, or code enforcement official of the state or of any county, city, or other political subdivision for the purpose of allowing the inspection of any specified premises to determine the presence of a fire or health hazard or unsafe building condition or a violation of any fire, health, or building regulation, statute, or ordinance.

(b) A search warrant may not be issued under this article except upon the presentation of evidence of probable cause to believe that a fire or health hazard or violation or unsafe building condition is present in the premises sought to be inspected.

(c) In determining probable cause, the magistrate is not limited to evidence of specific knowledge, but may consider any of the following:

- (1) the age and general condition of the premises;
- (2) previous violations or hazards found present in the premises;
- (3) the type of premises;
- (4) the purposes for which the premises are used; and
- (5) the presence of hazards or violations in and the general condition of premises near the premises sought to be inspected.

(d) Each city or county may designate one or more code enforcement officials for the purpose of being issued a search warrant as authorized by Subsection (a) of this article. A political subdivision other than a city or county may designate not more than one code enforcement official for the purpose of being issued a search warrant as authorized by Subsection (a) of this article only if the political subdivision routinely inspects premises to determine whether there is a fire or health hazard or unsafe building condition or a violation of fire, health, or building regulation, statute, or ordinance.

(e) A search warrant may not be issued under this article to a code enforcement official of a county with a population of 3.3 million or more for the purpose of allowing the inspection of specified premises to determine the presence of an unsafe building condition or a violation of a building regulation, statute, or ordinance.

Added as art. 18.011 by Acts 1969, 61st Leg., p. 1623, ch. 502, Sec.

1, eff. Sept. 1, 1969. Amended by Acts 1973, 63rd Leg., p. 983, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Amended by Acts 1989, 71st Leg., ch. 382, Sec. 1, eff. Aug. 28, 1989.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 769 (H.B. [3558](#)), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. [2702](#)), Sec. 7, eff. September 1, 2011.

Art. 18.06. EXECUTION OF WARRANTS. (a) A peace officer to whom a search warrant is delivered shall execute the warrant without delay and forthwith return the warrant to the proper magistrate. A search warrant issued under Article [18B.354](#) must be executed in the manner provided by Article [18B.355](#) not later than the 11th day after the date of issuance. In all other cases, a search warrant must be executed within three days from the time of its issuance. A warrant issued under this chapter, Chapter [18A](#), or Chapter [18B](#) shall be executed within a shorter period if so directed in the warrant by the magistrate.

(b) On searching the place ordered to be searched, the officer executing the warrant shall present a copy of the warrant to the owner of the place, if he is present. If the owner of the place is not present but a person who is present is in possession of the place, the officer shall present a copy of the warrant to the person. Before the officer takes property from the place, he shall prepare a written inventory of the property to be taken. He shall legibly endorse his name on the inventory and present a copy of the inventory to the owner or other person in possession of the property. If neither the owner nor a person in possession of the property is present when the officer executes the warrant, the officer shall leave a copy of the warrant and the inventory at the place.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 983, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Sec. (b) amended by Acts 1981, 67th Leg., p. 2789, ch. 755, Sec. 2, eff. Sept. 1, 1981.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1289 (H.B. [2268](#)), Sec. 2, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. [2931](#)), Sec. 3.06, eff. January 1, 2019.

Art. 18.065. EXECUTION OF WARRANT ISSUED BY DISTRICT JUDGE FOR DNA SPECIMEN.

(a) A warrant issued by the judge of a district court under Article [18.02](#)(a)(10) to collect a DNA specimen from a person for the purpose of connecting that person to an offense may be executed in any county in this state.

(b) This article does not apply to a warrant issued by a justice of the peace, judge, or other magistrate other than a judge of a district court.

Added by Acts 2015, 84th Leg., R.S., Ch. 1063 (H.B. [2185](#)), Sec. 1, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. [4170](#)), Sec. 4.005, eff. September 1, 2019.

Art. 18.07. DAYS ALLOWED FOR WARRANT TO RUN. (a) The period allowed for the execution of a search warrant, exclusive of the day of its issuance and of the day of its execution, is:

(1) 15 whole days if the warrant is issued solely to search for and seize specimens from a specific person for DNA analysis and comparison, including blood and saliva samples;

(2) 10 whole days if the warrant is issued under Article [18B.354](#); or

(3) three whole days if the warrant is issued for a purpose other than that described by Subdivision (1) or (2).

(b) The magistrate issuing a search warrant under this chapter, Chapter [18A](#), or Chapter [18B](#) shall endorse on the search warrant the date and hour of its issuance.

(c) If a warrant is issued to search for and seize data or information contained in or on a computer, disk drive, flash drive, cellular telephone, or other electronic, communication, or data

storage device, the warrant is considered to have been executed within the time allowed under Subsection (a) if the device was seized before the expiration of the time allowed. Notwithstanding any other law, any data or information contained in or on a device seized may be recovered and analyzed after the expiration of the time allowed under Subsection (a).

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 761 (S.B. 743), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 772 (H.B. 1891), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1289 (H.B. 2268), Sec. 3, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.07, eff. January 1, 2019.

Art. 18.08. POWER OF OFFICER EXECUTING WARRANT. In the execution of a search warrant, the officer may call to his aid any number of citizens in this county, who shall be bound to aid in the execution of the same.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Art. 18.09. SHALL SEIZE ACCUSED AND PROPERTY. When the property which the officer is directed to search for and seize is found he shall take possession of the same and carry it before the magistrate. He shall also arrest any person whom he is directed to arrest by the warrant and immediately take such person before the magistrate. For purposes of this chapter, "seizure," in the context of property, means the restraint of property, whether by physical force or by a display of an officer's authority, and includes the collection of property or the act of taking possession of property.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Amended by:

Acts 2005, 79th Leg., Ch. 1026 (H.B. 1048), Sec. 2, eff. September 1, 2005.

Art. 18.095. SEIZURE OF CIRCUIT BOARD OF GAMBLING DEVICE, EQUIPMENT, OR PARAPHERNALIA. For purposes of this chapter, an officer directed under a search warrant to search for and seize a gambling device or equipment, altered gambling equipment, or gambling paraphernalia in the discretion of the officer may:

(1) seize only the programmable main circuit board of the device, equipment, or paraphernalia if that circuit board is designed as a subassembly or essential part of the device, equipment, or paraphernalia to provide the information necessary for the device, equipment, or paraphernalia to operate as a gambling device or equipment, altered gambling equipment, or gambling paraphernalia;

(2) carry the circuit board before the magistrate; and

(3) retain custody of the circuit board as the property seized pursuant to the warrant as required under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 898 (H.B. 358), Sec. 1, eff. September 1, 2009.

Art. 18.10. HOW RETURN MADE. Not later than three whole days after executing a search warrant, the officer shall return the search warrant. Upon returning the search warrant, the officer shall state on the back of the same, or on some paper attached to it, the manner in which the warrant has been executed. The officer shall also deliver to the magistrate a copy of the inventory of the property taken into his possession under the warrant. The failure of an officer to make a timely return of an executed search warrant or to submit an inventory of the property taken into the officer's possession under the warrant does not bar the admission of evidence under Article 38.23. The officer who seized the property shall retain custody of it until the magistrate issues an order directing the manner of safekeeping the property. The property may not be removed from the county in which it was seized without an order

approving the removal, issued by a magistrate in the county in which the warrant was issued; provided, however, nothing herein shall prevent the officer, or his department, from forwarding any item or items seized to a laboratory for scientific analysis.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Amended by Acts 1981, 67th Leg., p. 2789, ch. 755, Sec. 3, eff. Sept. 1, 1981.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 174 (H.B. [3237](#)), Sec. 2, eff. May 26, 2017.

Art. 18.11. CUSTODY OF PROPERTY FOUND. Property seized pursuant to a search warrant shall be kept as provided by the order of a magistrate issued in accordance with Article [18.10](#) of this code.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Amended by Acts 1981, 67th Leg., p. 2789, ch. 755, Sec. 4, eff. Sept. 1, 1981.

Art. 18.12. MAGISTRATE SHALL INVESTIGATE. The magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony as in other examinations before him.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Art. 18.13. SHALL DISCHARGE DEFENDANT. If the magistrate be not satisfied, upon investigation, that there was good ground for the issuance of the warrant, he shall discharge the defendant and order restitution of the property taken from him, except for criminal instruments. In such case, the criminal instruments shall be kept by the sheriff subject to the order of the proper court.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Art. 18.14. EXAMINING TRIAL. The magistrate shall proceed to deal with the accused as in other cases before an examining court if he is satisfied there was good ground for issuing the warrant. Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 984, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Art. 18.15. CERTIFY RECORD TO PROPER COURT. The magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall certify the same and deliver them to the clerk of the court having jurisdiction of the case, before the next term of said court, and accompany the same with all the original papers relating thereto, including the certified schedule of the property seized. Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 985, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Art. 18.16. PREVENTING CONSEQUENCES OF THEFT. Any person has a right to prevent the consequences of theft by seizing any personal property that has been stolen and bringing it, with the person suspected of committing the theft, if that person can be taken, before a magistrate for examination, or delivering the property and the person suspected of committing the theft to a peace officer for that purpose. To justify a seizure under this article, there must be reasonable ground to believe the property is stolen, and the seizure must be openly made and the proceedings had without delay. Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 985, ch. 399, Sec. 2(E), eff. Jan. 1, 1974. Amended by Acts 2001, 77th Leg., ch. 109, Sec. 2, eff. Sept. 1, 2001.

Art. 18.17. DISPOSITION OF ABANDONED OR UNCLAIMED PROPERTY.

Text of subsection effective until September 01, 2021

(a) All unclaimed or abandoned personal property of every kind, other than contraband subject to forfeiture under Chapter 59 of this code and whiskey, wine and beer, seized by any peace officer in the State of Texas which is not held as evidence to be used in any pending case and has not been ordered destroyed or returned to the

person entitled to possession of the same by a magistrate, which shall remain unclaimed for a period of 30 days shall be delivered for disposition to a person designated by the municipality or the purchasing agent of the county in which the property was seized. If a peace officer of a municipality seizes the property, the peace officer shall deliver the property to a person designated by the municipality. If any other peace officer seizes the property, the peace officer shall deliver the property to the purchasing agent of the county. If the county has no purchasing agent, then such property shall be disposed of by the sheriff of the county.

Text of subsection effective on September 01, 2021

(a) All unclaimed or abandoned personal property of every kind, other than contraband subject to forfeiture under Chapter 59 and whiskey, wine and malt beverages, seized by any peace officer in the State of Texas which is not held as evidence to be used in any pending case and has not been ordered destroyed or returned to the person entitled to possession of the same by a magistrate, which shall remain unclaimed for a period of 30 days shall be delivered for disposition to a person designated by the municipality or the purchasing agent of the county in which the property was seized. If a peace officer of a municipality seizes the property, the peace officer shall deliver the property to a person designated by the municipality. If any other peace officer seizes the property, the peace officer shall deliver the property to the purchasing agent of the county. If the county has no purchasing agent, then such property shall be disposed of by the sheriff of the county.

(b) The county purchasing agent, the person designated by the municipality, or the sheriff of the county, as the case may be, shall mail a notice to the last known address of the owner of such property by certified mail. Such notice shall describe the property being held, give the name and address of the officer holding such property, and shall state that if the owner does not claim such property within 90 days from the date of the notice such property will be disposed of and the proceeds, after deducting the reasonable expense of keeping such property and the costs of the disposition, placed in the treasury of the municipality or county giving the notice.

(c) If the property has a fair market value of \$500 or more and the owner or the address of the owner is unknown, the person designated by the municipality, the county purchasing agent, or the sheriff, as the case may be, shall cause to be published once in a paper of general circulation in the municipality or county a notice containing a general description of the property held, the name of the owner if known, the name and address of the officer holding such property, and a statement that if the owner does not claim such property within 90 days from the date of the publication such property will be disposed of and the proceeds, after deducting the reasonable expense of keeping such property and the costs of the disposition, placed in the treasury of the municipality or county disposing of the property. If the property has a fair market value of less than \$500 and the owner or the address of the owner is unknown, the person designated by the municipality, the county purchasing agent, or the sheriff may sell or donate the property. The person designated by the municipality, the purchasing agent, or the sheriff shall deposit the sale proceeds, after deducting the reasonable expense of keeping the property and costs of the sale, in the treasury of the municipality or county selling or donating the property.

(d) The sale under this article of any property that has a fair market value of \$500 or more shall be preceded by a notice published once at least 14 days prior to the date of such sale in a newspaper of general circulation in the municipality or county where the sale is to take place, stating the general description of the property, the names of the owner if known, and the date and place that such sale will occur. This article does not require disposition by sale.

(d-1) Notwithstanding Subsection (a), (b), (c), or (d), if property described by Subsection (a), other than money, is seized by a peace officer at the time the owner of the property is arrested for an offense punishable as a Class C misdemeanor, the law enforcement agency may provide notice to the owner at the time the owner is taken into or released from custody. On receiving the notice, the owner must sign the notice and attach a thumbprint to the notice. The notice must include:

- (1) a description of the property being held;
- (2) the address where the property is being held; and
- (3) a statement that if the owner does not claim the property before the 31st day after the date the owner is released from custody, the property will be disposed of and the proceeds of the property, after deducting the reasonable expense of keeping and disposing of the property, will be placed in the treasury of the municipality or county providing the notice.

(d-2) If the property for which notice is provided under Subsection (d-1) is not claimed by the owner before the 31st day after the date the owner is released from custody, the law enforcement agency holding the property shall deliver the property for disposition to a person designated by the municipality or to the purchasing agent or sheriff of the county in which the property was seized, as applicable. The person designated by the municipality, the purchasing agent, or the sheriff may sell or donate the property without mailing or publishing an additional notice as required by Subsection (b), (c), or (d). The sale proceeds, after deducting the reasonable expense of keeping and disposing of the property, must be deposited in the treasury of the municipality or county disposing of the property.

(e) The real owner of any property disposed of shall have the right to file a claim to the proceeds with the commissioners court of the county or with the governing body of the municipality in which the disposition took place. A claim by the real owner must be filed not later than the 30th day after the date of disposition. If the claim is allowed by the commissioners court or the governing body of the municipality, the municipal or county treasurer shall pay the owner such funds as were paid into the treasury of the municipality or county as proceeds of the disposition. If the claim is denied by the commissioners court or the governing body or if said court or body fails to act upon such claim within 90 days, the claimant may sue the municipal or county treasurer in a court of competent jurisdiction in the county, and upon sufficient proof of ownership, recover judgment against such municipality or county for the recovery of the proceeds of the disposition.

(f) For the purposes of this article:

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

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

(g) If the provisions of this section have been met and the property is scheduled for disposition, the municipal or county law enforcement agency that originally seized the property may request and have the property converted to agency use. The agency at any time may transfer the property to another municipal or county law enforcement agency for the use of that agency. The agency last using the property shall return the property to the person designated by the municipality, county purchasing agent, or sheriff, as the case may be, for disposition when the agency has completed the intended use of the property.

(h) If the abandoned or unclaimed personal property is money, the person designated by the municipality, the county purchasing agent, or the sheriff of the county, as appropriate, may, after giving notice under Subsection (b) or (c) of this article, deposit the money in the treasury of the municipality or county giving notice without conducting the sale as required by Subsection (d) of this article.

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

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

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1967, 60th Leg., p. 1737, ch. 659, Sec. 15, eff. Aug. 27, 1967; Acts 1973, 63rd Leg., p. 985, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Amended by Acts 1987, 70th Leg., ch. 1002, Sec. 1, eff. Sept. 1, 1987; Subsec. (a) amended by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 4, eff. Oct. 18, 1989; Subsec. (g) amended by Acts 1991, 72nd Leg., ch. 254, Sec. 1, eff. June 5, 1991. Amended by Acts 1993,

73rd Leg., ch. 157, Sec. 1, eff. Sept. 1, 1993; Subsecs. (c), (d) amended by Acts 1993, 73rd Leg., ch. 321, Sec. 3, eff. May 28, 1993; Subsec. (f) amended by Acts 1993, 73rd Leg., ch. 321, Sec. 2, eff. May 28, 1993; Subsec. (h) added by Acts 1993, 73rd Leg., ch. 321, Sec. 1, eff. May 28, 1993; Subsec. (i) added by Acts 1993, 73rd Leg., ch. 321, Sec. 4, eff. May 28, 1993; Subsec. (c) amended by Acts 1995, 74th Leg., ch. 76, Sec. 3.01, eff. Sept. 1, 1995; Subsec. (d) amended by Acts 1995, 74th Leg., ch. 76, Sec. 3.02, eff. Sept. 1, 1995; Subsec. (f) amended by Acts 1995, 74th Leg., ch. 76, Sec. 3.03, eff. Sept. 1, 1995; Subsec. (h) amended by Acts 1995, 74th Leg., ch. 76, Sec. 3.04, eff. Sept. 1, 1995; Subsec. (i) amended by Acts 1995, 74th Leg., ch. 76, Sec. 3.05, eff. Sept. 1, 1995; Subsec. (j) added by Acts 2001, 77th Leg., ch. 402, Sec. 18, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 81 (S.B. [367](#)), Sec. 1, eff. May 18, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. [1545](#)), Sec. 387, eff. September 1, 2021.

Art. 18.18. DISPOSITION OF GAMBLING PARAPHERNALIA, PROHIBITED WEAPON, CRIMINAL INSTRUMENT, AND OTHER CONTRABAND. (a) Following the final conviction of a person for possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia, for an offense involving a criminal instrument, for an offense involving an obscene device or material, for an offense involving child pornography, or for an offense involving a scanning device or re-encoder, the court entering the judgment of conviction shall order that the machine, device, gambling equipment or gambling paraphernalia, instrument, obscene device or material, child pornography, or scanning device or re-encoder be destroyed or forfeited to the state. Not later than the 30th day after the final conviction of a person for an offense involving a prohibited weapon, the court entering the judgment of conviction on its own motion, on the motion of the prosecuting attorney in the case, or on the motion of the law enforcement agency initiating the complaint on notice to the prosecuting attorney in

the case if the prosecutor fails to move for the order shall order that the prohibited weapon be destroyed or forfeited to the law enforcement agency that initiated the complaint. If the court fails to enter the order within the time required by this subsection, any magistrate in the county in which the offense occurred may enter the order. Following the final conviction of a person for an offense involving dog fighting, the court entering the judgment of conviction shall order that any dog-fighting equipment be destroyed or forfeited to the state. Destruction of dogs, if necessary, must be carried out by a veterinarian licensed in this state or, if one is not available, by trained personnel of a humane society or an animal shelter. If forfeited, the court shall order the contraband delivered to the state, any political subdivision of the state, or to any state institution or agency. If gambling proceeds were seized, the court shall order them forfeited to the state and shall transmit them to the grand jury of the county in which they were seized for use in investigating alleged violations of the Penal Code, or to the state, any political subdivision of the state, or to any state institution or agency.

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

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

(d) The magistrate shall send the notice by registered or certified mail, return receipt requested, to the person found in possession at the address where the property or proceeds were seized. If no one was found in possession, or the possessor's address is unknown, the magistrate shall post the notice on the courthouse door.

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

(f) If a person timely appears to show cause why the property or proceeds should not be destroyed or forfeited, the magistrate shall conduct a hearing on the issue and determine the nature of property or proceeds and the person's interest therein. Unless the person proves by a preponderance of the evidence that the property or proceeds is not gambling equipment, altered gambling equipment, gambling paraphernalia, gambling device, gambling proceeds, prohibited weapon, obscene device or material, child pornography, criminal instrument, scanning device or re-encoder, or dog-fighting equipment and that he is entitled to possession, the magistrate shall dispose of the property or proceeds in accordance with Paragraph (a) of this article.

(g) For purposes of this article:

(1) "criminal instrument" has the meaning defined in the Penal Code;

(2) "gambling device or equipment, altered gambling

equipment or gambling paraphernalia" has the meaning defined in the Penal Code;

(3) "prohibited weapon" has the meaning defined in the Penal Code;

(4) "dog-fighting equipment" means:

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

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

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

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

(5) "obscene device" and "obscene" have the meanings assigned by Section [43.21](#), Penal Code;

(6) "re-encoder" has the meaning assigned by Section [522.001](#), Business & Commerce Code;

(7) "scanning device" has the meaning assigned by Section [522.001](#), Business & Commerce Code; and

(8) "obscene material" and "child pornography" include digital images and the media and equipment on which those images are stored.

(h) No provider of an electronic communication service or of a remote computing service to the public shall be held liable for an offense involving obscene material or child pornography under this section on account of any action taken in good faith in providing that service.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 986, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Subsecs. (a), (b), (e), (f), (g) amended by Acts 1983, 68th Leg., pp. 1611, ch. 305, Sec. 2, 3, eff. Sept. 1, 1983. Amended by Acts 1983, 68th Leg., p. 1899, ch. 351, Sec. 1, eff. Sept. 1, 1983;

Subsec. (a) amended by Acts 1987, 70th Leg., ch. 980, Sec. 1, eff. Sept. 1, 1987; Subsecs. (g)(4), (g)(6) amended by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(6), eff. Sept. 1, 1987; Subsecs. (a), (b) amended by Acts 1993, 73rd Leg., ch. 157, Sec. 2, eff. Sept. 1, 1993; Subsecs. (f), (g) amended by Acts 2003, 78th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2003; Subsecs. (a), (b), (e), (f), (g) amended by Acts 2003, 78th Leg., ch. 649, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 522 (H.B. [839](#)), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 522 (H.B. [839](#)), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.13, eff. April 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. [3167](#)), Sec. 17.002(1), eff. September 1, 2007.

Art. 18.181. DISPOSITION OF EXPLOSIVE WEAPONS AND CHEMICAL DISPENSING DEVICES. (a) After seizure of an explosive weapon or chemical dispensing device, as these terms are defined in Section [46.01](#), Penal Code, a peace officer or a person acting at the direction of a peace officer shall:

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

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

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

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

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

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

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

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

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

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

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

Added by Acts 1983, 68th Leg., p. 4832, ch. 852, Sec. 5, eff. Sept. 1, 1983.

Art. 18.182. DISPOSITION OF ITEM BEARING COUNTERFEIT MARK.

(a) In this article, "counterfeit mark" and "protected mark" have the meanings assigned by Section 32.23, Penal Code.

(b) Following the conviction or placement on deferred adjudication community supervision of a person for an offense under Section 32.23, Penal Code, the court entering the judgment of conviction or order of deferred adjudication community supervision shall order that any item bearing or identified by a counterfeit mark seized in connection with the offense be:

(1) forfeited to the owner of the protected mark, if prior to an order disposing of property under this article the owner of the protected mark requests the return of the item; or

(2) destroyed.

Added by Acts 2019, 86th Leg., R.S., Ch. 949 (S.B. 1164), Sec. 1, eff. September 1, 2019.

Art. 18.183. DEPOSIT OF MONEY PENDING DISPOSITION. (a) If money is seized by a law enforcement agency in connection with a violation of Chapter 47, Penal Code, the state or the political

subdivision of the state that employs the law enforcement agency may deposit the money in an interest-bearing bank account in the jurisdiction of the agency that made seizure or in the county in which the money was seized until a final judgment is rendered concerning the violation.

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

Added by Acts 1987, 70th Leg., ch. 167, Sec. 4.02(a), eff. Sept. 1, 1987. Renumbered from art. 18.182 by Acts 1989, 71st Leg., ch. 2, Sec. 16.01(6), eff. Aug. 28, 1989.

Art. 18.19. DISPOSITION OF SEIZED WEAPONS. (a) Weapons seized in connection with an offense involving the use of a weapon or an offense under Penal Code Chapter 46 shall be held by the law enforcement agency making the seizure, subject to the following provisions, unless:

(1) the weapon is a prohibited weapon identified in Penal Code Chapter 46, in which event Article 18.18 of this code applies; or

(2) the weapon is alleged to be stolen property, in which event Chapter 47 of this code applies.

(b) When a weapon described in Paragraph (a) of this article is seized, and the seizure is not made pursuant to a search or arrest warrant, the person seizing the same shall prepare and deliver to a magistrate a written inventory of each weapon seized.

(c) If there is no prosecution or conviction for an offense involving the weapon seized, the magistrate to whom the seizure was reported shall, before the 61st day after the date the magistrate determines that there will be no prosecution or conviction, notify in writing the person found in possession of the weapon that the person is entitled to the weapon upon written request to the magistrate. The magistrate shall order the weapon returned to the person found in possession before the 61st day after the date the

magistrate receives a request from the person. If the weapon is not requested before the 61st day after the date of notification, the magistrate shall, before the 121st day after the date of notification, order the weapon destroyed, sold at public sale by the law enforcement agency holding the weapon or by an auctioneer licensed under Chapter 1802, Occupations Code, or forfeited to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory designated by the magistrate. If the magistrate does not order the return, destruction, sale, or forfeiture of the weapon within the applicable period prescribed by this subsection, the law enforcement agency holding the weapon may request an order of destruction, sale, or forfeiture of the weapon from the magistrate. Only a firearms dealer licensed under 18 U.S.C. Section 923 may purchase a weapon at public sale under this subsection. Proceeds from the sale of a seized weapon under this subsection shall be transferred, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), followed by the deduction of auction costs, to the law enforcement agency holding the weapon.

(d) A person either convicted or receiving deferred adjudication under Chapter 46, Penal Code, is entitled to the weapon seized upon request to the court in which the person was convicted or placed on deferred adjudication. However, the court entering the judgment shall order the weapon destroyed, sold at public sale by the law enforcement agency holding the weapon or by an auctioneer licensed under Chapter 1802, Occupations Code, or forfeited to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory designated by the court if:

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

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

(3) the weapon is one defined as a prohibited weapon under Chapter 46, Penal Code;

(4) the offense for which the person is convicted or

receives deferred adjudication was committed in or on the premises of a playground, school, video arcade facility, or youth center, as those terms are defined by Section 481.134, Health and Safety Code; or

(5) the court determines based on the prior criminal history of the defendant or based on the circumstances surrounding the commission of the offense that possession of the seized weapon would pose a threat to the community or one or more individuals.

(d-1) Only a firearms dealer licensed under 18 U.S.C. Section 923 may purchase a weapon at public sale under Subsection (d). Proceeds from the sale of a seized weapon under Subsection (d) shall be transferred, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), followed by the deduction of auction costs, to the law enforcement agency holding the weapon.

(e) If the person found in possession of a weapon is convicted of an offense involving the use of the weapon, before the 61st day after the date of conviction the court entering judgment of conviction shall order destruction of the weapon, sale at public sale by the law enforcement agency holding the weapon or by an auctioneer licensed under Chapter 1802, Occupations Code, or forfeiture to the state for use by the law enforcement agency holding the weapon or by a county forensic laboratory designated by the court. If the court entering judgment of conviction does not order the destruction, sale, or forfeiture of the weapon within the period prescribed by this subsection, the law enforcement agency holding the weapon may request an order of destruction, sale, or forfeiture of the weapon from a magistrate. Only a firearms dealer licensed under 18 U.S.C. Section 923 may purchase a weapon at public sale under this subsection. Proceeds from the sale of a seized weapon under this subsection shall be transferred, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), followed by the deduction of auction costs, to the law enforcement agency holding the weapon.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 987, ch. 399, Sec. 2(E), eff. Jan. 1, 1974.

Amended by Acts 1987, 70th Leg., ch. 980, Sec. 2, eff. Sept. 1,

1987. Subsec. (d) amended by Acts 1993, 73rd Leg., ch. 157, Sec. 3, eff. Sept. 1, 1993; amended by Acts 1995, 74th Leg., ch. 318, Sec. 46(a), eff. Sept. 1, 1995; Subsecs. (c) to (e) amended by Acts 2001, 77th Leg., ch. 1083, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 509 (H.B. 705), Sec. 1, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 178 (H.B. 1421), Sec. 1, eff. September 1, 2013.

Art. 18.191. DISPOSITION OF FIREARM SEIZED FROM CERTAIN PERSONS WITH MENTAL ILLNESS. (a) A law enforcement officer who seizes a firearm from a person taken into custody under Section 573.001, Health and Safety Code, and not in connection with an offense involving the use of a weapon or an offense under Chapter 46, Penal Code, shall immediately provide the person a written copy of the receipt for the firearm and a written notice of the procedure for the return of a firearm under this article.

(b) The law enforcement agency holding a firearm subject to disposition under this article shall, as soon as possible, but not later than the 15th day after the date the person is taken into custody under Section 573.001, Health and Safety Code, provide written notice of the procedure for the return of a firearm under this article to the last known address of the person's closest immediate family member as identified by the person or reasonably identifiable by the law enforcement agency, sent by certified mail, return receipt requested. The written notice must state the date by which a request for the return of the firearm must be submitted to the law enforcement agency as provided by Subsection (h).

(c) Not later than the 30th day after the date a firearm subject to disposition under this article is seized, the law enforcement agency holding the firearm shall contact the court in the county having jurisdiction to order commitment under Chapter 574, Health and Safety Code, and request the disposition of the case. Not later than the 30th day after the date of this request, the clerk of the court shall advise the requesting agency whether the person taken into custody was released under Section 573.023,

Health and Safety Code, or was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code.

(d) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was released under Section 573.023, Health and Safety Code, the law enforcement agency shall:

(1) conduct a check of state and national criminal history record information to verify whether the person may lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) provide written notice to the person by certified mail that the firearm may be returned to the person on verification under Subdivision (1) that the person may lawfully possess the firearm.

(e) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code, the law enforcement agency shall provide written notice to the person by certified mail that the person:

(1) is prohibited from owning, possessing, or purchasing a firearm under 18 U.S.C. Section 922(g)(4);

(2) may petition the court that entered the commitment order for relief from the firearms disability under Section 574.088, Health and Safety Code; and

(3) may dispose of the firearm in the manner provided by Subsection (f).

(f) A person who receives notice under Subsection (e) may dispose of the person's firearm by:

(1) releasing the firearm to the person's designee, if:

(A) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the designee may lawfully possess a firearm under 18 U.S.C. Section 922(g);

(B) the person provides to the law enforcement agency a copy of a notarized statement releasing the firearm to the designee; and

(C) the designee provides to the law enforcement agency an affidavit confirming that the designee:

(i) will not allow access to the firearm by the person who was taken into custody under Section 573.001, Health and Safety Code, at any time during which the person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(ii) acknowledges the responsibility of the designee and no other person to verify whether the person has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); or

(2) releasing the firearm to the law enforcement agency holding the firearm, for disposition under Subsection (h).

(g) If a firearm subject to disposition under this article is wholly or partly owned by a person other than the person taken into custody under Section 573.001, Health and Safety Code, the law enforcement agency holding the firearm shall release the firearm to the person claiming a right to or interest in the firearm after:

(1) the person provides an affidavit confirming that the person:

(A) wholly or partly owns the firearm;

(B) will not allow access to the firearm by the person who was taken into custody under Section 573.001, Health and Safety Code, at any time during which that person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(C) acknowledges the responsibility of the person and no other person to verify whether the person who was taken into custody under Section 573.001, Health and Safety Code, has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the person claiming a right to or interest in the firearm may lawfully possess a firearm under 18 U.S.C. Section 922(g).

(h) If a person to whom written notice is provided under Subsection (b) or another lawful owner of a firearm subject to disposition under this article does not submit a written request to the law enforcement agency for the return of the firearm before the 121st day after the date the law enforcement agency holding the firearm provides written notice under Subsection (b), the law enforcement agency may have the firearm sold by a person who is a licensed firearms dealer under 18 U.S.C. Section 923. The proceeds from the sale of a firearm under this subsection shall be given to the owner of the seized firearm, less the cost of administering this subsection. An unclaimed firearm that was seized from a person taken into custody under Section 573.001, Health and Safety Code, may not be destroyed or forfeited to the state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 776 (S.B. 1189), Sec. 2, eff. September 1, 2013.

Art. 18.22. TESTING CERTAIN DEFENDANTS OR CONFINED PERSONS FOR COMMUNICABLE DISEASES.

Text of subsection as amended by Acts 2015, 84th Leg., R.S., Ch. 736 (H.B. 1595), Sec. 2

(a) A person who is arrested for a misdemeanor or felony and who during the commission of that offense or the arrest, during a judicial proceeding or initial period of confinement following the arrest, or during the person's confinement after a conviction or adjudication resulting from the arrest causes the person's bodily fluids to come into contact with a peace officer, a magistrate, or an employee of a correctional facility where the person is confined shall, at the direction of the court having jurisdiction over the arrested person, undergo a medical procedure or test designed to show or help show whether the person has a communicable disease. The court may direct the person to undergo the procedure or test on its own motion or on the request of the peace officer, magistrate, or correctional facility employee. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or

test. Notwithstanding any other law, the person performing the procedure or test shall make the test results available to the local health authority, and the local health authority shall notify the peace officer, magistrate, or correctional facility employee, as appropriate, of the test result. The state may not use the fact that a medical procedure or test was performed on a person under this article, or use the results of the procedure or test, in any criminal proceeding arising out of the alleged offense.

Text of subsection as amended by Acts 2015, 84th Leg., R.S., Ch.

1278 (S.B. 1574), Sec. 1

(a) A person who is arrested for a misdemeanor or felony and who during the commission of that offense or an arrest following the commission of that offense causes an emergency response employee or volunteer, as defined by Section 81.003, Health and Safety Code, to come into contact with the person's bodily fluids shall, at the direction of the court having jurisdiction over the arrested person, undergo a medical procedure or test designed to show or help show whether the person has a communicable disease. The court may direct the person to undergo the procedure or test on its own motion or on the request of the emergency response employee or volunteer. If the person refuses to submit voluntarily to the procedure or test, the court shall require the person to submit to the procedure or test. Notwithstanding any other law, the person performing the procedure or test shall make the test results available to the local health authority and the designated infection control officer of the entity that employs or uses the services of the affected emergency response employee or volunteer, and the local health authority or the designated infection control officer of the affected employee or volunteer shall notify the emergency response employee or volunteer of the test result. The state may not use the fact that a medical procedure or test was performed on a person under this article, or use the results of the procedure or test, in any criminal proceeding arising out of the alleged offense.

(b) Testing under this article shall be conducted in

accordance with written infectious disease control protocols adopted by the Department of State Health Services that clearly establish procedural guidelines that provide criteria for testing and that respect the rights of the arrested person and the peace officer, magistrate, or correctional facility employee.

(c) Nothing in this article authorizes a court to release a test result to a person other than a person specifically authorized by this article, and Section 81.103(d), Health and Safety Code, does not authorize that disclosure.

(d) In this article, "correctional facility" means:

(1) any place described by Section 1.07(a)(14), Penal Code; or

(2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Added by Acts 2001, 77th Leg., ch. 1480, Sec. 2, eff. Sept. 1, 2001; Subsec. (a) amended by Acts 2003, 78th Leg., ch. 1250, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 736 (H.B. 1595), Sec. 1, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 736 (H.B. 1595), Sec. 2, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 1, eff. September 1, 2015.

Art. 18.23. EXPENSES FOR MOTOR VEHICLE TOWED AND STORED FOR CERTAIN PURPOSES. (a) A law enforcement agency that directs the towing and storage of a motor vehicle for an evidentiary or examination purpose shall pay the cost of the towing and storage.

(b) Subsection (a) applies whether the motor vehicle is taken to or stored on property that is:

(1) owned or operated by the law enforcement agency; or

(2) owned or operated by another person who provides storage services to the law enforcement agency, including:

(A) a governmental entity; and

(B) a vehicle storage facility, as defined by Section 2303.002, Occupations Code.

(c) Subsection (a) does not require a law enforcement agency to pay the cost of:

(1) towing or storing a motor vehicle for a purpose that is not an evidentiary or examination purpose, including towing or storing a vehicle that has been abandoned, illegally parked, in an accident, or recovered after being stolen; or

(2) storing a motor vehicle after the date the law enforcement agency authorizes the owner or operator of the property to which the vehicle was taken or on which the vehicle is stored to release the vehicle to the vehicle's owner.

(d) This subsection applies only to a motor vehicle taken to or stored on property described by Subsection (b)(2). After a law enforcement agency authorizes the release of a motor vehicle held for an evidentiary or examination purpose, the owner or operator of the storage property may not refuse to release the vehicle to the vehicle's owner because the law enforcement agency has not paid the cost of the towing and storage.

(e) Subchapter J, Chapter 2308, Occupations Code, does not apply to a motor vehicle directed by a law enforcement agency to be towed and stored for an evidentiary or examination purpose.

Added by Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 3.01, eff. September 1, 2007.

Art. 18.24. BODY CAVITY SEARCH DURING TRAFFIC STOP. (a) In this article, "body cavity search" means an inspection that is conducted of a person's anal or vaginal cavity in any manner, but the term does not include a pat-down.

(b) Notwithstanding any other law, a peace officer may not conduct a body cavity search of a person during a traffic stop unless the officer first obtains a search warrant pursuant to this chapter authorizing the body cavity search.

Added by Acts 2015, 84th Leg., R.S., Ch. 997 (H.B. 324), Sec. 1,

eff. September 1, 2015.