

- SUBJECT:** Notice for abandoned or unclaimed property seized during arrests
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody, Schaefer, Toth  
0 nays  
1 absent — Burnam
- WITNESSES:** For — Jose Rosas, Houston Police Department; (*Registered, but did not testify*: Mark Clark, Houston Police Officers' Union; Al Luna, City of Houston; TJ Patterson, City of Fort Worth; Steven Tays, Bexar County Criminal District Attorney's Office)  
  
Against — None  
  
On — John Dahill, Texas Conference of Urban Counties
- BACKGROUND:** Code of Criminal Procedure, art. 18.17 governs the disposition of abandoned or unclaimed property. The property covered by the section includes all unclaimed or abandoned personal property seized by any peace officer, other than:
- contraband subject to forfeiture;
  - whiskey, wine, and beer;
  - property held in evidence to be used in a pending case; and
  - property that has been ordered destroyed or returned to the person entitled to its possession.
- A person authorized by the municipality or county to hold the property delivered by the peace officer is required to mail a notice to the last known address of the owner of the property.
- If the property has a fair market value of \$500 or more and the identity or address of the owner is unknown, the person holding the property is required to publish notice in a newspaper. The notice must state, among other things, that if the owner does not claim the property within 90 days the property will be disposed of and the proceeds, after deducting

reasonable expenses, will be placed in the treasury of the municipality or county disposing of the property.

If the property valued at \$500 or more is disposed of by sale, it must be preceded by further notice in a newspaper published 14 days before the date of sale. The notice must generally describe the property, state the owner's name if known, and state the date and place of sale.

For property valued at less than \$500 for which the identity or address of the owner is unknown, the person may sell or donate the property without notice, with any proceeds placed in the treasury of the municipality or county.

**DIGEST:**

CSHB 884 would allow a law enforcement agency to provide notice to the owner of seized property under Code of Criminal Procedure, art. 18.17 at the time the owner was taken into or released from custody. The bill would apply only to property, other than money, that was seized by a peace officer at the time the owner of the property was arrested for a class C misdemeanor (maximum fine of \$500). The owner would be required to sign the notice and attach a thumbprint to it. The notice would include:

- a description of the property being held;
- the address where the property was being held; and
- a statement that if the owner did not claim the property within 30 days of being released from custody, the property would be disposed of and the proceeds of the property would be placed in the treasury of the municipality or county providing the notice.

If the property described by the notice was not claimed by the owner in the time specified, the law enforcement agency holding the property would be required to deliver the property to a person authorized by the municipality or county to hold the property. That person could sell or donate the property without mailing or publishing any additional notice. The sale proceeds, after deducting the reasonable expense of keeping and disposing of the property, would be deposited in the treasury of the municipality or county disposing of the property.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013, and would apply only to personal property seized or taken into custody on or after the effective date.

SUPPORTERS  
SAY:

CSHB 884 would help provide more efficient and direct notice to property owners whose property had been seized. Mailing and posting in the newspaper are inefficient methods, and often the owner of the property is never properly notified. People whose property is seized during arrest for a class C misdemeanor often are transient and may not still live at their last address of record. Tracking down the identity and address of property owners costs law enforcement agencies unnecessary time and resources. It is particularly unnecessary in situations where the property owner is in custody and can be notified in person immediately and efficiently.

The bill also would improve notification and identification procedures by requiring a fingerprint. Current notice provisions do not involve biometric matching to ensure that the person arrested is the same person who receives the notice or retrieves the property. With the addition of the thumbprint requirement, law enforcement agencies would be able to ensure that notice was given and property retrieved by its true owner.

The 30-day limit would be a reasonable period in which to allow property owners to retrieve their property. Current law provides a 30-day time limit for all property for which notice is not given. Because the nature of the notice created by this bill would be faster and more direct than existing notice provisions that require 90 days, the shorter time period is merited and reasonable. A person receiving this notice upon being released from custody could immediately retrieve his or her property.

The 30-day time limit under this notice also would allow agencies to dispose of property more quickly, reducing the cost and hassle of storage. Property divisions of local and county jails are overflowing with bulky abandoned property of very little value, such as shopping carts, abandoned bicycles, and old backpacks. Often, owners do not wish to retrieve this property and leave it for the law enforcement agency to dispose of, which clutters storage and increases costs.

The bill is permissive and would allow local law enforcement agencies to provide notice in Spanish if they saw a need for it. The bill contains no language requirements, and every entity affected would be able to determine the most appropriate language in which to provide notice to the property owner.

OPPONENTS

CSHB 884 would unnecessarily limit the ability of some property owners

**SAY:** to retrieve their property before it was disposed. Under current law, every notice provision gives property owners 90 days from the date of notice to recover their property. Reducing the time to 30 days only for this type of notice would deprive some people of the additional time they might need to retrieve their property, particularly if they lived elsewhere or had no reliable transportation.

**OTHER  
OPPONENTS  
SAY:** CSHB 884 should include provisions for providing notice in Spanish. Many communities in Texas have large Spanish-speaking populations, and everyone should have the opportunity to understand the notice they are receiving. Because this notice would be provided during the custody process — often in the same location or near to where the property is being held — it would be in the best interests of the law enforcement agency and the property owner to provide notice in Spanish if needed to ensure the efficiency of the notice process.

**NOTES:** CSHB 884 differs from the bill as filed in that the committee substitute would:

- require a thumbprint from the owner of the property;
- change the beginning of the 30-day time period from the date the notice was signed to the date the owner of the property was released from custody; and
- change language about peace officers holding the property to refer more broadly to law enforcement agencies.

A similar bill, SB 367 by Whitmire, was passed by the Senate by a vote of 30-0 on March 27 and was reported favorably by the House Committee on Criminal Jurisprudence on April 23.

A similar bill, HB 2857 by Wu, was referred to the House Committee on Criminal Jurisprudence on March 19.