

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1439  
By: West  
Criminal Justice  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Texas has numerous statutes related to evidence collection, preservation, storage, disposition, and destruction, in addition to statutes that address abandoned and unclaimed property. These statutes are not centrally located, but can be found within the chapters of the Code of Criminal Procedure, Health and Safety Code, Alcohol and Beverage Code, Occupations Code, and Texas Administrative Code. Even if familiar with state law, some of these statutes can be difficult to locate quickly. For example, state codes on the disposal of abandoned or unclaimed property and the statutory time limits involved are in Chapter 18, Code of Criminal Procedure, under the title "Search Warrants."

The goal of S.B.1439 is to place all statutes related to evidence and abandoned and unclaimed property into one location in state code. Personnel turnover in evidence rooms is high and training is limited. Justice is best served when law enforcement and the court system have the tools and procedures at their immediate disposal to be certain that all practices relating to evidentiary and general property are followed. This will help to ensure that the integrity of every item in law enforcement custody remains intact.

Under S.B. 1439, existing evidence statutes are not amended. However, new language contained in S.B. 1439 will create a training and certification process for all law enforcement personnel assigned to receive, store and process property held in police evidence rooms.

S.B. 1616, 82nd Legislature, Regular Session, 2011, established the first statewide standard for the collection, analysis, preservation, storage, and destruction of biological evidence. This was a major step to ensure that the integrity of biological evidence remains intact while in the custody of law enforcement or other authorized personnel. But without properly trained evidence technicians, all other evidence standards could be compromised.

As proposed, S.B. 1439 amends current law relating to property and evidence technicians.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commission [not defined in bill] in SECTION 1 (Section 1705.003, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the director [not defined in bill] in SECTION 1 (Section 1705.020, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 1 (Section 1705.011, Occupations Code) and SECTION 2 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 10, Occupations Code, by adding Chapter 1705, as follows:

#### CHAPTER 1705. PROPERTY AND EVIDENCE

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1705.001. SHORT TITLE. Authorizes this chapter to be cited as the Texas Act for Property and Evidence (TAPE).

Sec. 1705.002. EVIDENCE TECHNICIANS. Defines "evidence," "evidence technician," and "property" in this section.

Sec. 1705.003. EVIDENCE TECHNICIAN CERTIFICATION. (a) Prohibits this state or a political subdivision of this state from appointing or employing a person to act as an evidence technician unless the person has had, or intends to complete not later than the first anniversary of the date of the person's appointment or employment, at least eight hours of evidence technician training as determined by the commission.

(b) Requires the commission to accredit an evidence technician training program that fulfills the minimum requirements established by commission rule. Requires the commission to adopt rules providing for the accreditation of an evidence technician training program developed and taught by the Texas Association of Property and Evidence Inventory Technicians, the Department of Public Safety of the State of Texas (DPS), an institution of higher education, including a junior college, community college, or technical school, or any other entity approved by the commission.

(c) Authorizes a person who completes an accredited training program under this section to submit evidence of satisfactory completion of an accredited evidence technician training program and request a written acknowledgment from the commission. Requires the commission, on a determination by the commission that the person meets the minimum requirements for an evidence technician, to issue the written acknowledgment to the person.

(d) Provides that a person performing the duties of an evidence technician and serving under permanent appointment on and before September 1, 2013, is not required to meet the requirements of this section as a condition of continued employment.

(e) Authorizes a person, notwithstanding this section, to be appointed or serve as an evidence technician on a temporary or probationary basis or to perform the duties of an evidence technician in an emergency.

(f) Requires a person appointed on a temporary or probationary basis after September 1, 2013, who does not satisfactorily complete an accredited evidence technician training program before the first anniversary of the date the person is originally appointed to be removed from the position. Prohibits the person's temporary or probationary appointment from being extended for more than one year except that not earlier than the first anniversary of the date the person is removed under this subsection, the employing agency is authorized to petition the commission for reinstatement of the person to temporary or probationary employment.

Sec. 1705.004. PREVENTING CONSEQUENCES OF THEFT. (a) Provides that any person, other than a peace officer, under this section, 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.

(b) Requires there to be reasonable grounds to believe the property is stolen to justify a seizure under this section, and requires the seizure to be openly made and the proceedings to be completed within 72 hours.

(c) Requires the property, if the proceedings are not conducted within the prescribed time frame set forth in Subsection (b), to be returned to the person from whom it was seized.

Sec. 1705.005. DISPOSITION OF ABANDONED OR UNCLAIMED PROPERTY. (a) Requires all unclaimed or abandoned personal property of every kind, other than contraband subject to forfeiture under Chapter 59 (Forfeiture of Contraband), Code of Criminal Procedure, and whiskey, wine, and beer, seized by any peace officer in this state 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 property by a magistrate, which remains unclaimed for a period of 30 days, to be delivered for disposition to a person designated by the municipality or the purchasing agent of the county in which the property was seized. Requires the peace officer, if a peace officer of a municipality seizes the property, to deliver the property to a person designated by the municipality. Requires that proceeds from the sale of the property through public auction be deposited in the treasury designated for use by the contributing agency. Requires the peace officer, if any other peace officer seizes the property, to deliver the property to the purchasing agent of the county. Requires such property, if the county has no purchasing agent, to be disposed of by the sheriff of the county.

(b) Requires the county purchasing agent, the person designated by the municipality, or the sheriff of the county to mail notice to the last known address of the owner or the property by certified mail. Requires the notice to describe the property being held, give the name and address of the officer holding such property, and state that if the owner does not claim the property within 90 days from the date of the notice, the property will be disposed of and the proceeds deposited in the treasury designated for use by the contributing agency.

(c) Requires the person designated by the municipality, the county purchasing agent, or the sheriff, if the property has a fair market value of \$600 or more and the owner or the address of the owner is unknown, to 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 the property, and a statement that if the owner does not claim the property within 90 days from the date of the publication, the property will be disposed of and, after deducting the reasonable expense of keeping the property and the costs of the disposition, the proceeds placed in the treasury of the municipality or county disposing of the property. Authorizes the person designated by the municipality, the county purchasing agent, or the sheriff, if the property has a fair market value of less than \$500 and the owner or the address of the owner is unknown, to sell or donate the property. Requires the person designated by the municipality, the purchasing agent, or the sheriff to deposit the sale proceeds in the treasury of the applicable municipality or county.

(d) Requires the sale under this section of any property that has a fair market value of \$500 or more to be preceded by a notice published once at least 14 days prior to the date of the 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 name of the owner if known, and the date and place that the sale will occur. Provides that this subsection does not require disposition by sale.

(e) Requires the real owner of any property disposed of to 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. Requires a claim by the real owner to be filed not later than the 30th day after the date of disposition. Requires the municipal or county treasurer, if the claim is allowed by the commissioners court or the governing body of the municipality, to pay the owner the funds paid into the treasury of the municipality or county as proceeds of the disposition. Authorizes the claimant, if the claim is denied by the

commissioners court or the governing body, or if the court or body fails to act upon such claim within 90 days, to file suit against the municipal or county treasurer in a court of competent jurisdiction in the county, and if the claimant presents sufficient proof of ownership, recover judgment against the municipality or county for the recovery of the proceeds of the disposition.

(f) Defines "person designated by a municipality" and "property held as evidence" in this section.

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

(h) Authorizes the person designated by the municipality, the county purchasing agent, or the sheriff of the county, as appropriate, if the abandoned or unclaimed personal property is money, to, after giving notice under Subsection (b) or (c), deposit the money in the treasury of the municipality or county giving the notice.

(i) Authorizes the person, agent, or sheriff, while offering the property for sale under this section, to decline the bid and reoffer the property for sale, if a person designated by a municipality, county purchasing agent, or sheriff considers any bid insufficient.

(j) Provides that Chapters 72 (Abandonment of Personal Property), 74 (Report, Delivery, and Claims Process), 75 (Texas Minerals), and 76 (Report, Delivery, and Claims Process for Certain Property), Property Code, do not apply to unclaimed or abandoned property to which this section applies.

Sec. 1705.006. DISPOSITION OF GAMBLING PARAPHERNALIA, PROHIBITED WEAPONS, CRIMINAL INSTRUMENTS, AND OTHER CONTRABAND. (a) Requires the court entering the judgment of conviction, following the final conviction of a person for possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia, or for an offense involving a criminal instrument, an obscene device or material, child pornography, or a scanning device or re-encoder, to 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. Requires 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 after notice to the prosecuting attorney in the case if the prosecutor fails to move for the order, not later than the 30th day after the final conviction of a person for an offense involving a prohibited weapon, to order that the prohibited weapon be destroyed or forfeited to the law enforcement agency that initiated the complaint. Authorizes any magistrate in the county in which the offense occurred, if the court fails to enter the order within the time required by this subsection, to enter the order. Requires the court entering the judgment of conviction, following the final conviction of a person for an offense involving dog fighting, to order that any dog-fighting equipment be destroyed or forfeited to the state. Requires the destruction of dogs, if necessary, to 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. Requires the court, if forfeited, to order the contraband delivered to the state, any political subdivision of the state, or any state institution or agency. Requires the court, if gambling proceeds were seized, to order them forfeited to the state and to 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 any state institution or agency.

(b) Requires the magistrate to whom the return was made, if there is no prosecution or conviction following seizure, to 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. Requires the magistrate, on the motion of the law enforcement agency seizing a prohibited weapon, to 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. Requires a law enforcement agency to 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) Requires the magistrate to 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) Requires the magistrate to 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. Requires the magistrate, if no one was found in possession, or the possessor's address is unknown, to post the notice on the courthouse door.

(e) Requires 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 to appear before the magistrate on the 20th day following the date the notice was mailed or posted. Provides that failure to timely appear forfeits any interest the person to have in the property or proceeds seized, and no person after failing to timely appear is authorized to contest destruction or forfeiture.

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

(g) Defines "criminal instrument," "gambling device or equipment, altered gambling equipment, or gambling paraphernalia," "prohibited weapon," "dog-fighting equipment," "obscene device," "obscene," "re-encoder," "scanning device," "obscene material, and "child pornography" in this section.

(h) Prohibits a provider of an electronic communication service or of a remote computing service to the public from being held liable for an offense involving obscene material or child pornography under this section due to any action taken in good faith in providing that service.

Sec. 1705.007. DISPOSITION OF EXPLOSIVE WEAPONS AND CHEMICAL DISPENSING DEVICES. (a) Requires a peace officer or a person acting at the direction

of a peace officer, after seizure of an explosive weapon or chemical dispensing device, as these terms are defined in Section 46.01 (Definitions), Penal Code, to:

- (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) Provides that representative samples, photographs, and records made pursuant to this section 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. Provides that no inference or presumption of spoliation applies to weapons destroyed pursuant to this section.

Sec. 1705.008. DEPOSIT OF MONEY PENDING DISPOSITION. (a) Authorizes the state or the political subdivision of the state that employs the law enforcement agency, if money is seized by a law enforcement agency in connection with a violation of Chapter 47 (Gambling), Penal Code, to 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) Requires money seized in connection with the violation that has been placed in an interest-bearing bank account, if a final judgment is rendered concerning a violation of Chapter 47, Penal Code, to be distributed according to this chapter, with any interest being distributed in the same manner and used for the same purpose as the principal.

Sec. 1705.009. DISPOSITION OF SEIZED WEAPONS. (a) Requires weapons seized in connection with an offense involving the use of a weapon or an offense under Chapter 46 (Weapons), Penal Code, to 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 Chapter 46, Penal Code, in which event Section 1705.006 applies; or

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

(b) Requires the person seizing the weapon, when a weapon described in Subsection (a) is seized, and the seizure is not made pursuant to a search or arrest warrant, to prepare and deliver to a magistrate a written inventory of each weapon seized.

(c) Requires the magistrate to whom the seizure was reported, if there is no prosecution or conviction for an offense involving the weapon seized, to 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. Requires the magistrate to 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. Requires the magistrate, if the weapon is not requested before the 61st day after the date of notification, to before the 121st day after the date of notification, order the weapons destroyed 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. Authorizes the law enforcement agency holding the weapon, if the magistrate does not order the return, destruction, or forfeiture of the weapon within the applicable period prescribed by this subsection, to request an order of destruction or forfeiture of the weapon from the magistrate.

(d) Provides that a person either convicted or receiving deferred adjudication under Chapter 46, Penal Code, is entitled to the weapon seized upon request of the court in which the person was convicted or placed on deferred adjudication. Requires the court entering the plea, to order the weapon destroyed 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 a prohibited weapon as provided by Section 46.05 (Prohibited Weapons), 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 (Drug-Free Zones), 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.

(e) Requires the court entering judgment of conviction to, before the 61st day after the date of conviction, if the person found in possession of a weapon is convicted of an offense involving the use of the weapon, order destruction of the weapon 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. Authorizes the law enforcement agency holding the weapon, if the court entering judgment of conviction does not order the destruction or forfeiture of the weapon

within the period prescribed by this subsection, to request an order of destruction or forfeiture of the weapon from a magistrate.

Sec. 1705.010. DUTY OF CLERKS. (a) Requires a clerk of the district or county court, in a criminal proceeding, to receive and file all papers, receive all exhibits at the conclusion of the proceeding, issue all process, and perform all other duties imposed on the clerk by law.

(b) Requires the court reporter, at any time during or after a criminal proceeding, to release for safekeeping any firearm or contraband received as an exhibit in that proceeding to the sheriff or, in a county with a population of 500,000 or more, the law enforcement agency that collected, seized, or took possession of the firearm or contraband or produced the firearm or contraband at the proceeding.

(c) Requires the sheriff or the law enforcement agency, as applicable, to receive and hold the exhibits consisting of firearms or contraband and release them only to the person or persons authorized by the court in which such exhibits have been received or dispose of them as provided by this chapter.

(d) Defines "eligible exhibit" in this section.

(e) Authorizes an eligible exhibit to be disposed of as provided by this section:

(1) on or after the first anniversary of the date on which a conviction becomes final in the case, if the case is a misdemeanor or a felony for which the sentence imposed by the court is five years or less; or

(2) on or after the second anniversary of the date on which a conviction becomes final in the case, if the case is an offense, other than a capital felony, for which the sentence imposed by the court is greater than five years.

(f) Authorizes a clerk in a county with a population of 1.7 million or more to dispose of an eligible exhibit on the date provided by Subsection (e) if on that date the clerk has not received a request for the exhibit from either the attorney representing the state in the case or the attorney representing the defendant.

(g) Requires a clerk in a county with a population of less than 1.7 million to provide written notice by mail to the attorney representing the state in the case and the attorney representing the defendant before disposing of an eligible exhibit.

(h) Requires the notice under Subsection (g) of this section to set forth certain information.

(i) Authorizes the clerk, if a request is not received by a clerk covered by Subsection (g) of this section before the 31st day after the date of notice, to dispose of the eligible exhibit.

(j) Requires the clerk, if a request is timely received, to deliver the eligible exhibit to the person making the request if the court determines the requestor is the owner of the eligible exhibit.

Sec. 1705.011. EVIDENCE CONTAINING BIOLOGICAL MATERIAL. (a) Defines "biological evidence" in this section.

(b) Provides that this section applies to a governmental or public entity or an individual, including a law enforcement agency, prosecutor's office, court, public hospital, or crime laboratory, that is charged with the collection, storage, preservation, analysis, or retrieval of biological evidence.

(c) Requires an entity or individual described by Subsection (b) to ensure that biological evidence collected pursuant to an investigation or prosecution of a felony offense or conduct constituting a felony offense is retained and preserved:

(1) for not less than 40 years, or until the applicable statute of limitations has expired, if there is an unapprehended actor associated with the offense; or

(2) in a case in which a defendant has been convicted, placed on deferred adjudication community supervision, or adjudicated as having engaged in delinquent conduct and there are no additional unapprehended actors associated with the offense:

(A) until the inmate is executed, dies, or is released on parole, if the defendant is convicted of a capital felony;

(B) until the defendant dies, completes the defendant's sentence, or is released on parole or mandatory supervision, if the defendant is sentenced to a term of confinement or imprisonment in the Texas Department of Criminal Justice;

(C) until the defendant completes the defendant's term of community supervision, including deferred adjudication community supervision, if the defendant is placed on community supervision;

(D) until the defendant dies, completes the defendant's sentence, or is released on parole, mandatory supervision, or juvenile probation, if the defendant is committed to the Texas Juvenile Justice Department; or

(E) until the defendant completes the defendant's term of juvenile probation, including a term of community supervision upon transfer of supervision to a criminal court, if the defendant is placed on juvenile probation.

(d) Authorizes the attorney representing the state, clerk, or other officer in possession of biological evidence described by Subsection (a) to destroy the evidence, but only if the attorney, clerk, or officer by mail notifies the defendant, the last attorney of record for the defendant, and the convicting court of the decision to destroy the evidence and a written objection is not received by the attorney, clerk, or officer from the defendant, attorney of record, or court before the 91st day after the later of the following dates:

(1) the date on which the attorney representing the state, clerk, or other officer receives proof that the defendant received notice of the planned destruction of evidence; or

(2) the date on which notice of the planned destruction of evidence is mailed to the last attorney of record for the defendant.

(e) Provides that to the extent of any conflict, this section controls over Section 1705.010.

(f) Requires DPS to adopt standards and rules authorizing a county with a population less than 100,000 to ensure the preservation of biological evidence by promptly delivering the evidence to DPS for storage in accordance with Section 411.053 (Preservation of Evidence Containing Biological Material), Government Code, and department rules.

(g) Requires DPS to adopt standards and rules, consistent with best practices, relating to a person described by Subsection (b), that specify the manner of collection, storage, preservation, and retrieval of biological evidence.

(h) Authorizes a person described by Subsection (b) to solicit and accept gifts, grants, donations, and contributions to support the collection, storage, preservation, retrieval, and destruction of biological evidence.

Sec. 1705.012. ANALYSIS OF SEXUAL ASSAULT EVIDENCE. (a) Provides that this section applies only to physical evidence of a sexual assault with respect to an active criminal case.

(b) Requires a law enforcement agency that receives sexual assault evidence collected under this chapter or other law to submit that evidence to a public accredited crime laboratory for analysis not later than the 30th day after the date on which the evidence was received.

(c) Requires a person who submits sexual assault evidence to a public accredited crime laboratory under this section or other law to provide the following signed, written certification with each submission: "This evidence is being submitted by (name of person making submission) in connection with a criminal investigation."

(d) Requires a public accredited crime laboratory as soon as practicable, if sufficient personnel and resources are available, to complete its analysis of sexual assault evidence submitted under this section or other law.

(e) Authorize the department and other applicable public accredited crime laboratories, to ensure the expeditious completion of analyses, to contract with private accredited crime laboratories as appropriate to perform those analyses, subject to the necessary quality assurance reviews by the public accredited crime laboratories.

(f) Provides that the failure of a law enforcement agency to submit sexual assault evidence within the period required by this section does not affect the authority of the agency to submit the evidence to an accredited crime laboratory for analysis or an accredited crime laboratory to analyze the evidence or provide the results of that analysis to appropriate persons.

(g) Requires the department, on the request of any appropriate person and after an evidence collection kit containing biological evidence has been analyzed by an accredited crime laboratory and any necessary quality assurance reviews have been performed, to compare the DNA profile obtained from the biological evidence with DNA profiles maintained in:

(1) state databases, including the DNA database maintained under Subchapter G (DNA Database System), Chapter 411 (Department of Public Safety of the State of Texas), Government Code, if the amount and quality of the analyzed sample meet the requirements of the state database comparison policies; and

(2) the CODIS DNA database established by the Federal Bureau of Investigation, if the amount and quality of the analyzed sample meet the requirements of the bureau's CODIS comparison policies.

Sec. 1705.013. BEVERAGE DELIVERED TO COMMISSION. Authorizes any alcoholic beverage, its container, and its packaging which has been seized by a peace officer, as provided in Section 103.03 (Seizure of Illicit Beverages, Etc.), Alcoholic Beverage Code, to be disposed of by the agency seizing the items or to be delivered to the commission for immediate public or private sale in the manner determined by the commission.

Sec. 1705.014. BEVERAGE OF ILLICIT MANUFACTURE OR UNFIT FOR CONSUMPTION. (a) Prohibits the commission or local agency from selling alcoholic beverages seized by a peace officer, as provided in Section 1705.013, that are unfit for public consumption or are of illicit manufacture.

(b) Provides that an alcoholic beverage is unfit for public consumption if the manufacturer or wholesaler of the beverage determines that the beverage is inappropriate for sale to a consumer, the beverage is damaged, or the code date affixed by the manufacturer to the beverage has expired.

(c) Requires the commission or local agency, if the commission or local agency determines that a seized alcoholic beverage is unfit for public consumption or is of illicit manufacture, to destroy the beverage.

Sec. 1705.015. SALE OF BEER. (a) Requires any beer, its container, or its packaging which is seized under the terms of this chapter to be disposed of in accordance with this section.

(b) Requires the commission or local agency, on notification that beer has been seized, to promptly notify a holder of a general, local, or branch distributor's license who handles the brand of beer seized and who operates in the county in which it was seized. Requires the commission or local agency, if the beer was seized in a dry area, to notify either the general, local, or branch distributor who handles the brand operating nearest the area or the manufacturer brewing the beer. Requires the commission or local agency, as appropriate, and the distributor or manufacturer to jointly determine whether the beer is in a salable condition.

(c) Requires the commission or local agency, if the beer is determined not to be in a salable condition, to immediately destroy it. Requires it, if it is determined to be in a salable condition, to be offered for sale to the distributor or manufacturer. Requires the beer, if offered to a distributor, to be sold at the distributor's cost price less any state taxes which have been paid on the beer. Requires it, if the beer is offered to a manufacturer, to be sold at the manufacturer's cost price to its nearest distributor, less any state taxes which have been paid on the beer. Provides that a distributor or manufacturer that purchases beer under this subsection is responsible for the costs of transporting the beer. Authorizes local agencies to donate the beer to distributors or manufacturers. Authorizes local agencies to collect any charges incurred as a result of the seizure, and requires storage or warehousing charges necessarily incurred as a result of the seizure to be added to the cost price.

(d) Requires the commission, if the distributor or manufacturer does not exercise the right to purchase salable beer or to purchase returnable bottles, containers, or packages at the applicable deposit price before the 11th day after the date items are offered to the distributor or manufacturer, to sell the beer, bottles, containers, or packages at public or private sale as provided in this chapter. Requires local agencies to dispose of the beer, bottles, containers, or packages as provided for in this chapter.

Sec. 1705.016. SALE OF LIQUOR. (a) Requires any liquor, its container, or its packaging which is seized under the terms of this chapter to be disposed of in accordance with this section.

(b) Requires the commission or local agency, on notification that liquor has been seized, to promptly notify a holder of a wholesaler's permit, a general class B wholesaler's permit, or a local class B wholesaler's permit who handles the brand of liquor seized and who operates in the county in which it was seized. Requires the commission or local agency, if the liquor was seized in a dry area, to notify the wholesaler who handles the brand seized who operates nearest the area.

Requires the commission or local agency, as appropriate, and the wholesaler to jointly determine whether the liquor is in a salable condition.

(c) Requires the commission or local agency, if the liquor is determined not to be in a salable condition, to immediately destroy it. Requires it, if it is determined to be in a salable condition, to first be offered for sale to the wholesaler notified at the wholesaler's cost price plus any storage or warehousing charges necessarily incurred as a result of the seizure.

(d) Requires the commission, if the wholesaler does not exercise the right to purchase saleable liquor, containers, or packages at the price specified in this section before the 11th day after the date items are offered to the wholesaler, to sell the liquor, container, or packages at public or private sale, as provided in this chapter. Requires the local agency to destroy the liquor, container, or packages as provided in this chapter.

Sec. 1705.017. EXERCISE OF DISCRETION IN CASE OF MISTAKE. Prohibits this chapter from being construed as preventing the commission from exercising its discretion if illicit alcoholic beverages are seized as the result of an accidental shipment or other reasonable mistake. Authorizes the commission, under those circumstances, to issue orders and make disposition of the alcoholic beverages as it finds just and reasonable.

Sec. 1705.017. EXERCISE OF DISCRETION IN CASE OF MISTAKE. Prohibits this chapter from being construed as preventing the commission from exercising its discretion if illicit alcoholic beverages are seized as the result of an accidental shipment or other reasonable mistake. Authorizes the commission, under those circumstances, to issue orders and make disposition of the alcoholic beverages as it finds just and reasonable.

Sec. 1705.018. PROCEEDS FROM SALE. (a) Requires the proceeds from the sale of seized alcoholic beverages, containers, and packaging to be placed in escrow in a suspense account established by the commission for that purpose, pending the outcome of a forfeiture suit under this chapter.

(b) Requires proceeds in escrow which are not forfeited to the state as a result of the suit to be refunded to the alleged violator. Authorizes the person legally entitled to possession of the beverages at the time of the seizure, if alcoholic beverages are illegally seized and sold, to recover from the state the fair market value of the beverages, with the reimbursement paid out of the proceeds held in escrow from the sale and, if the funds are insufficient, from the confiscated liquor fund.

Sec. 1705.019. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY DESTRUCTION OF CONTROLLED SUBSTANCE PROPERTY. (a) Provides that controlled substance property that is manufactured, delivered, or possessed in violation of Chapter 481, Health and Safety Code, is subject to seizure and summary forfeiture to the state.

(b) Authorizes a court, if an item of controlled substance property is seized and forfeited under this section, to order the disposition of the property under Section 481.159 (Disposition of Controlled Substance Property or Plant), Health and Safety Code, or authorizes the department or a peace officer to summarily destroy the property under the rules of the department.

Sec. 1705.020. RULES. (a) Authorizes the director to adopt reasonable rules and procedures, not inconsistent with the provisions of this chapter, concerning:

(1) summary forfeiture and summary destruction of controlled substance property or plants;

(2) establishment and operation of a secure storage area;

(3) delegation by a law enforcement agency head of the authority to access a secure storage area; and

(4) minimum tolerance for and the circumstances of loss or destruction during an investigation.

(b) Requires the rules for the destruction of controlled substance property or plants to require:

(1) not less than two witnesses of the destruction of the property or plants;

(2) the preparation of an inventory of the property or plants destroyed; and

(3) the preparation of a statement that contains the names of the witnesses of the destruction and the details of the destruction.

(c) Requires a document prepared under a rule adopted under this section to be completed, retained, and made available for inspection by the director.

Sec. 1705.021. DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT. (a) Requires the court, if a district court orders the forfeiture of a controlled substance property or plant under this chapter, to:

(1) retain the property or plant for its official purposes, including use in the investigation of offenses under this code;

(2) deliver the property or plant to a government agency for official purposes;

(3) deliver the property or plant to a person authorized by the court to receive it;

(4) deliver the property or plant to a person authorized by the director to receive it for a purpose described by Section 481.065(a) (relating to the authorization of director of DPS to authorize the possession, distribution, planting, and cultivation of controlled substances for certain purposes), Health and Safety Code; or

(5) destroy the property or plant.

(b) Prohibits the district court from requiring the department to receive, analyze, or retain a controlled substance property or plant forfeited to a law enforcement agency other than the department.

(c) Requires law enforcement agencies using the property or plant for this purpose, in order to ensure that a controlled substance property or plant is not diluted, substituted, diverted, or tampered with while being used in the investigation of offenses under the Health and Safety Code, to:

(1) employ a qualified individual to conduct qualitative and quantitative analyses of the property or plant before and after its use in an investigation;

(2) maintain the property or plant in a secure storage area accessible only to the law enforcement agency head and the individual responsible for analyzing, preserving, and maintaining security over the property or plant; and

(3) maintain a log documenting the date of issue, date of return, type, amount, and concentration of property or plant used in an investigation; and the signature and the printed or typed name of the peace officer to whom the property or plant was issued and the signature and the printed or typed name of the individual issuing the property or plant.

(d) Authorizes a law enforcement agency to contract with another law enforcement agency to provide security that complies with Subsection (c) for controlled substance property or plants.

(e) Authorizes a law enforcement agency to adopt a written policy with more stringent requirements than those required by Subsection (c). The director may enter and inspect, in accordance with Section 481.181 (Inspections), Health and Safety Code, a location at which an agency maintains records or controlled substance property or plants as required by this section.

(f) Requires the agency, if a law enforcement agency uses a controlled substance property or plant in the investigation of an offense under the Health and Safety Code and the property or plant has been transported across state lines before the forfeiture, to cooperate with a federal agency in the investigation if requested to do so by the federal agency.

(g) Authorizes a law enforcement agency head, under the rules of the department, to grant to another person access to a secure storage facility under Subsection (c)(2).

(h) Authorizes a county, justice, or municipal court to order forfeiture of a controlled substance property or plant, unless the lawful possession of and title to the property or plant can be ascertained. Requires the court, if the court determines that a person had lawful possession of and title to the controlled substance property or plant before it was seized, to order the controlled substance property or plant returned to the person, if the person so desires. Authorizes the court to only order the destruction of a controlled substance property or plant that is not otherwise disposed of in the manner prescribed by Section 1705.022.

(i) Prohibits the property or plant, if a controlled substance property or plant seized under this chapter was forfeited to an agency for the purpose of destruction or for any purpose other than investigation, from being used in an investigation unless a district court orders disposition under this section and permits the use of the property or plant in the investigation.

Sec. 1705.022. DESTRUCTION OF EXCESS QUANTITIES. (a) Authorizes the law enforcement agency that seized the property or plant or to which the property or plant is forfeited, if a controlled substance property or plant is forfeited under the Health and Safety Code or this chapter, to summarily destroy the property or plant without a court order before the disposition of a case arising out of the forfeiture if the agency ensures that:

(1) at least five random and representative samples are taken from the total amount of the property or plant and a sufficient quantity is preserved to provide for discovery by parties entitled to discovery;

(2) photographs are taken that reasonably depict the total amount of the property or plant; and

(3) the gross weight or liquid measure of the property or plant is determined, either by actually weighing or measuring the property or plant or by estimating its weight or measurement after making dimensional measurements of the total amount seized.

(b) Provides that taking and preserving one representative sample complies with Subsection (a)(1), if the property consists of a single container of liquid.

(c) Provides that a representative sample, photograph, or record made under this section is admissible in civil or criminal proceedings in the same manner and to the same extent as if the total quantity of the suspected controlled substance property or plant was offered in evidence, regardless of whether the remainder of the property or plant has been destroyed. Provides that an inference or presumption of spoliation does not apply to a property or plant destroyed under this section.

(d) Authorizes hazardous waste, residuals, contaminated glassware, associated equipment, or by-products from illicit chemical laboratories or similar operations, if those items are unsafe or are forfeited, to be disposed of under Subsection (a) or are authorized to be seized and summarily forfeited and destroyed by a law enforcement agency without a court order before the disposition of a case arising out of the forfeiture if current environmental protection standards are followed.

(e) Requires a law enforcement agency seizing and destroying or disposing of materials described in Subsection (d) to ensure that photographs are taken that reasonably depict the total amount of the materials seized and the manner in which the materials were physically arranged or positioned before seizure.

Sec. 1705.023. POLICY REGARDING DESTRUCTION. Requires each laboratory and law enforcement agency to adopt a policy regarding the destruction of items under this chapter. Requires the policy to include standardized handling and destruction procedures. Requires the policy to require that each item destroyed:

(1) before destruction, notice must be provided to the appropriate attorney representing the state;

(2) the destruction must be performed by appropriately trained individuals by use of an incinerator or other suitable method of destruction;

(3) at least two individuals must witness the destruction;

(4) the item must be subjected to appropriate laboratory analysis before destruction; and

(5) all documentation related to the destruction must be maintained in a readily accessible format for not less than two years following the date of destruction.

Sec. 1705.024. CHAIN OF CUSTODY AFFIDAVIT. (a) Provides that a chain of custody affidavit that complies with this section is admissible in evidence on behalf of the state or the defendant to establish the chain of custody of physical evidence without the necessity of any person in the chain of custody personally appearing in court.

(b) Provides that this section does not limit the right of a party to summon a witness or to introduce admissible evidence relevant to the chain of custody.

(c) Requires a chain of custody affidavit under this section to contain the following information stated under oath:

(1) the affiant's name and address;

(2) a description of the item of evidence and its container, if any, obtained by the affiant;

(3) the name of the affiant's employer on the date the affiant obtained custody of the physical evidence;

(4) the date and method of receipt and the name of the person from whom or location from which the item of physical evidence was received;

(5) the date and method of transfer and the name of the person to whom or location to which the item of physical evidence was transferred; and

(6) a statement that the item of evidence was transferred in essentially the same condition as received except for any minor change resulting from field or laboratory testing procedures.

(d) Requires the affidavit, not later than the 20th day before the trial begins in a proceeding in which a chain of custody affidavit under this section is to be introduced, to be filed with the clerk of the court and requires a copy to be provided by fax, hand delivery, or certified mail, return receipt requested, to the opposing party. Provides that the affidavit is not admissible under Section 1 if, not later than the 10th day before the trial begins, the opposing party files a written objection to the use of the affidavit with the clerk of the court and provides a copy of the objection by fax, hand delivery, or certified mail, return receipt requested, to the offering party.

(e) Provides that a chain of custody affidavit is sufficient for purposes of this section if it uses the following form or if it otherwise substantially complies with this section. Sets forth language for the chain of custody affidavit form.

SECTION 2. (a) Requires DPS, in adopting the initial standards and rules required by Section 1705.011, Occupations Code, as added by this Act, to consult with:

(1) large, medium, and small law enforcement agencies;

(2) law enforcement associations;

(3) scientific experts in the collection, preservation, storage, and retrieval of biological evidence; and

(4) organizations engaged in the development of law enforcement policy, such as:

(A) the National Institute of Standards and Technology of the United States Commerce Department;

(B) the Texas District and County Attorneys Association;

(C) the Texas Criminal Defense Lawyers Association;

(D) the Texas Association of Property and Evidence Inventory Technicians; and

(E) other organizations in this state that represent clients pursuing claims of innocence based on post-conviction biological evidence.

(b) Requires DPS to adopt the standards and rules required by Section 1705.011, Occupations Code, as added by this Act, not later than September 1, 2014.

SECTION 3. Effective date: September 1, 2013.