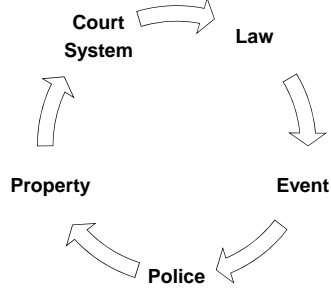


An Overview of Property Hearings

Presented by
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"Property intellect" Course Objectives

- › Identify relevant statutes relating to the disposition of property by a magistrate
- › Summarize hearing procedures related to the disposition of property under these statutes, including appeals
- › Recognize issues and requirements for the disposition of property, including special issues involving weapons, personal property, automobiles, motorcycles, and trailers

Two Main Considerations

- 1. Nature of the Seizure:
 - Pursuant to Search Warrant
 - Abandoned or Unclaimed Property
 - Stolen Property
- 2. Posture of the Case
 - Investigation/Pre-Filing
 - Case Filed/Pending
 - Post-Conviction

Chapter 18, Search Warrants
Texas Code of Criminal Procedure

- › Describes the procedure surrounding the issuance, seizure and disposition of property pursuant to a search warrant
- › Once seizure effectuated and inventory must be made and presented the magistrate who signed the warrant and the officer “shall retain custody of it until the magistrate issues an order directing the manner of safekeeping the property” [Art. 18.10, CCP]

Chapter 18, Search Warrants
Texas Code of Criminal Procedure

- › “The magistrate...shall proceed to try the questions arising upon the same, and shall take testimony...” [Art. 18.12, CCP]
- › If magistrate “...not satisfied that there was good ground for the issuance of the warrant” defendant shall be discharged and given restitution of property seized [Art. 18.13, CCP]

“While article 18.13 allows the property’s return at a post-charge stage,” article 18.12 grants the “magistrate to whom return was made” jurisdiction to return property seized by warrant “pending arrest and charge or indictment.”

–In re Cornyn, 27 S.W.3d 327, 334-335 (Tex. App.-Houston [1st Dist.] 2000, no pet.)

“[J]urisdiction over seized property extends to different courts at different times and for different purposes: for example, . . . to the judge of the court in which the indictment is presented, for any matter concerning the property”

–In re Cornyn, 27 S.W.3d 327, 336 (Tex. App.-Houston [1st Dist.] 2000, no pet.)

“We hold that Code of Criminal Procedure article 18.12:(1) provides a remedy, including return of property, for persons whose property is seized under a search warrant *before the owner’s arrest and charge* and (2) extends jurisdiction for this purpose to the magistrate to whom return was made (or another judge sitting for that magistrate).”

–In re Cornyn, 27 S.W.3d 327, 336 (Tex. App.-Houston [1st Dist.] 2000, no pet.)
(emphasis added)

Chapter 18, Search Warrants
Texas Code of Criminal Procedure

- › **Custody of Property Found** --Art. 18.11
- › **Disposition of Abandoned or Unclaimed Property** --Art. 18.17
- › **Disposition of Gambling Paraphernalia, Prohibited Weapon, Criminal Instrument, and other Contraband** --Art. 18.18
- › **Disposition of Seized Weapons** --Art. 18.19
- › **Disposition of Firearm Seized from Certain Persons with Mental Illness** --Art. 18.191

Reality of Searches and Seizures

- › **Many magistrates don't have a system in place for filing and keeping track of inventories**
- › **Criminal case filing process varies**
- › **Seized Weapons, Gambling Paraphernalia, Prohibited Weapon, Criminal Instrument, Other Contraband:**
Ch. 18 gives the responsibility to notify the person found in possession to the same magistrate to whom the seizure was reported when there will be no prosecution or conviction

Reality of Searches and Seizures

****EVIDENCE RETENTION POLICIES VARY****

Chapter 47, Disposition of Stolen Property
Texas Code of Criminal Procedure

- > **Jurisdiction based solely on jurisdiction as a criminal magistrate and not as a court with civil jurisdiction**
- > **Venue lies in the municipality where property seized and may be transferred to a court in another county on motion of interested party**
- > **Authority of the municipal judge as a magistrate is limited to seized property located within the boundaries of the municipality**

--Art. 47.01a, CCP

Chapter 47, Disposition of Stolen Property
Texas Code of Criminal Procedure

- > **Subject to Order of Court** --Art. 47.01
- > **Restoration When No Trial Pending** --Art. 47.01a
- > **Restored on Trial** --Art. 47.02
- > **Schedule** --Art. 47.03
- > **Restored to Owner** --Art. 47.04
- > **Bond Required** --Art. 47.06
- > **Claimant to Pay Charges** --Art. 47.09
- > **Appeal** --Art. 47.12

Property Hearing Process
No Trial Pending

1. **Petition Filed (*criminal action involving property not pending*)** [Art. 47.01a(a)]:
 - Any interested party may petition for right to possession including a county, a city or the state
 - A peace officer is an "interested party" since the State has a superior right to possession

Property Hearing Process
No Trial Pending

- 2. **Notice of Date and Time—Certified Mail**
 - Statute Silent as to Court's obligation, BUT
 - Property interest at stake
 - Due process interests
 - Judge's ethical adjudicative responsibilities
[See Canon 3B(8), Code of Judicial Conduct]
- 3. **Conduct Hearing**

Property Hearing Process
No Trial Pending

- 4. **Post-Hearing Orders**
 - a. **Order property to whoever has superior right to possession:**
 - (1) Without conditions [Art. 47.01a(a)(1)]; OR
 - (2) Subject to the conditions-- if needed in future prosecutions, available to State (motion req'd)
[Art. 47.01a(a)(2)]
 - b. **Order property awarded to custody of peace officer, pending resolution of investigation**
[Art. 47.01a(a)(3)]

Property Hearing Process
No Trial Pending

- (Post-Hearing Orders--Cont'd)
- c. **If acquired by theft or other manner making it an offense, and identity of actual owner cannot be determined, order peace officer to:**
 - (1) Deliver to governmental agency for official purposes [Art. 47.01a(b)(1)];
 - (2) Deliver to person authorized by Art. 18, CCP for disposal [Art. 47.01a(b)(2)]; or
 - (3) Destroy the property [Art. 47.01a(b)(3)].

Property Hearing Process
No Trial Pending

- 7. Appeals under Art. 47.01(a):
 - To county court or statutory county court
 - Rules of procedure for appeals for civil cases applies
 - a. Notice required at conclusion of hearing
 - see *Phillips v State*, 77 S.W.3d 465 (Tex. App.—Houston [1st Dist.] 2002); *White v State*, 930 S.W.2d 673 (Tex. App.—Waco 1996)
 - b. Only parties who appear have standing and must post bond by end of next business day
 - c. Bond may not exceed 2x value of property, payable to party awarded possession

Property Hearings
Restoration Upon Trial/Trial Pending

- 1. Jurisdiction [Art. 47.02, CCP]:
 - a. Trial court: post-adjudication of theft or illegal acquisition of property case;
 - b. Trial court where case is pending;
 - c. With any magistrate having jurisdiction in county where criminal action pending subject to Chapter, 501 T.C. (Texas Certificate of Title Act) and consent of prosecuting attorney
- 2. Conduct Hearing

Property Hearings
Restoration Upon Trial/Trial Pending

- 3. Post-Hearing Orders
 - a. Upon trial: Trial court shall order property restored to person appearing on presentation of proof to be owner
 - if not claimed w/n 30 days of conviction of person who illegally acquired, disposal pursuant to Art. 18.17
 - Real owner of property sold pursuant to Art. 47.06 may recover such property under Art. 18.17

Property Hearings
Restoration Upon Trial/Trial Pending

(Post-Hearing Orders--Cont'd)

- b. **Trial Pending: Judge, upon proof, may award property in possession of peace officer to true owner, by written order** [Art. 47.02]
- c. **When Doubt Remains, Court may require:**
 - (1) **Bond for Redelivery**
 - (2) **Sheriff retains property until further orders** [Art. 47.05]
- d. **Claimant to pay charges for safekeeping, verified by officer claiming that charges are owed**

Property Hearings
Restoration Upon Trial/Trial Pending

4. **Appeals—No appeals authorized under Art. 47.02**

Property Hearings
Practical Matters

- **Court shall order property delivered to whomever has superior right and make orders as facts require** [Art. 47.01a(a)(1)]
- **If no interested parties appear after proper notice, Court may presume:**
 - a. **No valid claim to possession by parties**
 - b. **Abandoned claim to possession**
 - c. **Do not wish to assert claim**

Property Hearings
Practical Matters

- Possession may be awarded to law enforcement agency if no interested party proves up
- If no interested parties appear, but officer appears with knowledge of another interested party since scheduling:
 - a. Request amended inventory including party
 - b. Reset; and
 - c. Notify all interested parties of hearing

Property Hearings
Practical Matters

- When true owner of stolen motor vehicle is unknown and no lien holders to be found:
 - a. Officer should proceed to file a seizure case;
 - b. Court should notify respondent (person from whom seized, if any), of right to appear at hearing and assert claim of possession
- Conduct hearing to ensure all interested parties are heard, and can be accomplished by a Q&A from judge
- Burden of Proof: “Preponderance of the Evidence”
[Upjohn Co. v Freeman, 847 S.W.2d 589 (Tex.App.—Dallas 1992, no writ)]

Property Hearings
Practical Matters

- Rules of Evidence: In hearings conducted when no trial is pending, hearsay evidence is admissible [Art. 47.01a(c)]
- Art. 47.02 does not address admissibility of hearsay statements upon trial or when trial is pending

Seized Weapons

- › Seized weapons in connection with an offense involving the use of a weapon or an offense under Chapter 46 of the Penal Code (other than prohibited and stolen weapons) must be disposed of pursuant to CCP Art. 18.19.
- › An inventory of weapons seized (other than seized pursuant to warrant) is required to be delivered to magistrate [CCP Art. 18.19(b)]
- › If no prosecution or conviction, notice is required to same magistrate to whom the seizure was reported [CCP Art. 18.19(c)]

Abandoned/Unclaimed Vehicles

- › Article 18.17 of the Code of Criminal Procedure as amended by H.B. No. 2187, does not require peace officers employed by a state institution of higher learning to deliver abandoned and unclaimed property to the county purchasing agent where the governing board of the state institution of higher learning has promulgated rules and regulations for the disposition of such property pursuant to the provisions of sections 51.203 and 51.213 of the Education Code. [Tx Att'y General Opinion JM-841]

Firearm Seizure...Mental Illness

- › Seizure pursuant to Health & Safety Code Sec. 573.001
- › No inpatient MR services—May possess if clears check under 18 U.S.C. 922(g)
- › Inpatient MR services under HSC Sec. 574.032/574.035—Prohibited under 18 U.S.C. Sec. 922(g)(4), BUT
 - May petition commitment court (County/District) for relief
 - Make request through law enforcement agency to release to designee

Online

- > Texas Association of Property Evidence and Inventory Technicians -- www.tapeit.net

- > "Nations Largest Online Investigation System" -- www.leadsonline.com

- > Online Police Auctions & More-- www.PropertyRoom.com

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Stolen products: America's "most wanted" gifts

Consumer Reports News, November 26, 2008 10:37 AM

Nothing says happy holidays like getting a hot gift from someone special. No, I'm not referring to a pair of ugly boots or the latest incarnation of the iPhone. We're talking 'hot' as in stolen, snatched, hid off the back of a truck. But before you sic the authorities on us, rest assured it's legal. Honest. We may be tightwads, but we're not crooks.

Curiosity got the better of me recently when I received an e-mail from Cher Murphy, a publicist for PropertyRoom.com, an eBay-like Web site, founded by a former Long Island N.Y., police detective, that auctions off goods seized by law-enforcement. More than more than 1,500 of the nation's police departments use the site to dispose of pricier booty clogging up their storage facilities, including the LAPD and NYCPD. You'll find bargains on everything and anything for sale from coats, artwork, and signed sports memorabilia, to cars, electronics, and jewelry. Looking for a diamond-studded gold Rolex watch? They've got it. How about a Nikon camera, Ford Crown Victoria, or some 'bass oyster'? They've got sale, too, as are coffee, homebrewing, prosthetic limbs, even 'jaws of life' devices to free accident victims of run-car wrecks.

When I first heard about PropertyRoom, the concept felt like a bit uneasy, and the jury's still out in my mind. Most of the merchandise up for auction was confiscated as a result of criminal activity -- burglaries, auto theft, drugs, shopping, and credit-card fraud. I wondered how much effort the police put into trying to find the rightful owners. How do you find out if that fine expensive camera equipment was stolen and auctioned off without law-enforcement trying to track me down first?

Murphy assured me that both law-enforcement and PropertyRoom by rights to reunite people with their stolen property if there's an identifying mark or serial number. Over the years, PropertyRoom has returned things like a limousine, college ring, custom racing bicycle, and Fender Stratocaster guitar to their rightful owners.

Though the rules vary by state, police agencies will generally retain seized or forfeited property for 90 to 120 days before selling it off. The additional 90 days to auction the goods off is a glaring lac, an expense that tended to drive the same buyers over and over, Murphy says. PropertyRoom opens the process to a much broader audience, obviously, and generates more revenue for local governments. PropertyRoom gets a cut of

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