

## CODE OF CRIMINAL PROCEDURE

## TITLE 1. CODE OF CRIMINAL PROCEDURE

## CHAPTER 47. DISPOSITION OF STOLEN PROPERTY

Art. 47.01. SUBJECT TO ORDER OF COURT. (a) Except as provided by Subsection (b), an officer who comes into custody of property alleged to have been stolen shall hold it subject to the order of the proper court only if the ownership of the property is contested or disputed.

(b) An officer who comes into custody of property governed by Chapter 371, Finance Code, that is alleged to have been stolen shall hold the property subject to the order of the proper court regardless of whether the ownership of the property is contested or disputed.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1993, 73rd Leg., ch. 860, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 62, Sec. 3.07, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 752, Sec. 1, eff. Sept. 1, 2001.

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

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

(2) on the filing of a written motion before trial by an attorney representing the state, order the property delivered to whoever has the superior right to possession, subject to the

condition that the property be made available to the prosecuting authority should it be needed in future prosecutions; or

(3) order the property awarded to the custody of the peace officer, pending resolution of criminal investigations regarding the property.

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

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

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

(3) destroy the property.

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

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

Added by Acts 1977, 65th Leg., p. 2034, ch. 813, Sec. 1, eff. Aug. 29, 1977.

Amended by Acts 1987, 70th Leg., ch. 548, Sec. 1, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 860, Sec. 1, eff. Aug. 30, 1993; Subsec. (a) amended by Acts 1995, 74th Leg., ch. 184, Sec. 3, eff. May 23, 1995.

Art. 47.02. RESTORED ON TRIAL. (a) On the trial of any criminal action for theft or any other offense involving the illegal acquisition of property, the court trying the case shall order the property to be restored to the person appearing by the proof to be the owner of the property.

(b) On written consent of the prosecuting attorney, any magistrate having jurisdiction in the county in which a criminal action for theft or any other offense involving the illegal acquisition of property is pending may hold a hearing to determine the right to possession of the property. If it is proved to the satisfaction of the magistrate that any person is a true owner of the property alleged to have been stolen, and the property is under the control of a peace officer, the magistrate may, by written order, direct the property to be restored to that person.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1997, 75th Leg., ch. 1415, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 613 (H.B. 796), Sec. 2, eff. September 1, 2009.

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

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1993, 73rd Leg., ch. 860, Sec. 1, eff. Aug. 30, 1993.

Art. 47.04. RESTORED TO OWNER. Upon an examining trial, if it is proven to the satisfaction of the court that any person is the true owner of property alleged to have been stolen, and which is in possession of a peace officer, the court may upon motion by the state, by written order direct the property to be restored to such owner subject to the conditions that such property shall be made available to the state or by order of any court having jurisdiction over the offense to be used for evidentiary purposes.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1993, 73rd Leg., ch. 860, Sec. 1, eff. Aug. 30, 1993.

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

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1993, 73rd Leg., ch. 860, Sec. 1, eff. Aug. 30, 1993.

Art. 47.06. PROPERTY SOLD. If the property is not claimed within 30 days from the conviction of the person accused of illegally acquiring it, the same procedure for its disposition as set out in Article [18.17](#) of this Code shall be followed.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1987, 70th Leg., ch. 66, Sec. 2, eff. May 6, 1987.

Art. 47.07. OWNER MAY RECOVER. The real owner of the property sold under the provisions of Article [47.06](#) may recover such property under the same terms as prescribed in Subsection (e) of Article [18.17](#) of this Code.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1987, 70th Leg., ch. 66, Sec. 2, eff. May 6, 1987.

Art. 47.08. WRITTEN INSTRUMENT. If the property is a written instrument, it shall be deposited with the county clerk of the county where the proceedings are had, subject to the claim of any person who may establish his right thereto. The claimant of any such written instrument shall file his written sworn claim thereto with the county judge. If such judge be satisfied that such claimant is the real owner of the written instrument, the same shall be delivered to him. The county judge may, in his discretion, require a bond of such claimant, as in other cases of property claimed under any provision of this Chapter, and may also before such delivery require the written instrument to be recorded in the minutes of his court.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

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

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Amended by Acts 1993, 73rd Leg., ch. 860, Sec. 1, eff. Aug. 30, 1993.

Art. 47.10. CHARGES OF OFFICER. When property is sold, and the proceeds of sale are ready to be paid into the county treasury, the amount of expenses for keeping the same and the costs of sale shall be determined by the county judge. The account thereof shall be in writing and verified by the officer claiming the same, with the approval of the county judge thereto for the amount allowed and shall be filed in the office of the county treasurer at the time of paying into his hands the balance of the proceeds of such sale.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

Art. 47.11. SCOPE OF CHAPTER. Each provision of this Chapter relating to stolen property applies as well to property acquired in any manner which makes the acquisition a penal offense.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

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

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

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

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

Added by Acts 1993, 73rd Leg., ch. 860, Sec. 2, eff. Aug. 30, 1993.