

**SUBJECT:** Seizure and disposition of unlawful fishing devices and other contraband

**COMMITTEE:** State Recreational Resources — committee substitute recommended

**VOTE:** 7 ayes — Cook, Alexander, J. Davis, Ellis, Homer, Hope, Ritter  
0 nays  
2 absent — Kuempel, Crownover

**WITNESSES:** For — None  
Against — None  
On — Boyd Kennedy and David Sinclair, Texas Parks and Wildlife Department

**BACKGROUND:** Parks and Wildlife Code, sec. 12.1105 requires a warden or other peace officer to seize without warrant a seine, net, trawl, trap, or other device that is in or on the water or aboard a vessel in violation of state laws or regulations. If no person is charged with an offense in connection with this seizure, the warden or peace officer must provide notice of the seizure to a county judge or a judge of a county court at law of the county where the seizure occurred.

**DIGEST:** CSHB 1828 would authorize a warden or other peace officer to notify a justice court, in addition to a county judge or a judge of a county court at law, about the seizure of unlawful fishing devices or contraband property.

The bill also would add a new section to Parks and Wildlife Code, chapter 62, allowing a court to destroy or forfeit any weapon or other personal property used by a person convicted of hunting from a vehicle, hunting at night, or hunting with a light. Any forfeited property would go to the Texas Parks and Wildlife Department (TPWD), which could use, sell, or destroy it. If TPWD sold the property, the proceeds would have to be deposited in the department's game, fish, and water safety account. This section would not apply to a vehicle, aircraft, or vessel.

CSHB 1828 would take effect September 1, 1999, and the provisions for disposition of seized property would apply only to an offense committed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1828 would allow justice of the peace (JP) courts to hear illegal fishing cases that involve seized property and would allow the seizure of property in three instances of poaching. Both would be limited but necessary changes to the law.

The bill would list JP courts among the courts that can hear cases involving seized property used for illegal fishing offenses such as leaving a net or trawl in the water. This practice can be very harmful to marine life. County courts and district courts have crowded dockets and are not always in a convenient location to hear such cases. However, the choice of courts would be left up to the law enforcement official. If JP courts could handle these illegal fishing cases, it would help lighten the load for county and district courts while serving the public in a timely and accessible manner. Any JP court decision could be appealed to the county court for an entirely new trial.

CSHB 1828 also would allow the seizure of property in cases of poaching that occur at night, with a light, or from a vehicle. The provisions for seizure and disposition proposed in this bill are reasonable considering the destructive nature of such offenses. This authority would not extend to boats, vehicles, or aircrafts. The property seized in these cases likely would be items of small value such as a net, a gun, or a fishing trap. If the court forfeited the property used in an offense by a convicted poacher, TPWD could sell the property and place the proceeds in the game, fish, and water safety account, which contributes to TPWD operations.

**OPPONENTS  
SAY:**

CSHB 1828 would grant too much authority to justices of the peace, who receive some training but do not necessarily have law degrees. Although county and district courts may have crowded dockets, they are best equipped to deal with contraband and seized property. JP courts have limited duties for a reason and should not handle cases that might involve valuable property or property that is important for an individual's livelihood.

These kinds of small, special-case exceptions make the law very hard to interpret and apply consistently. If a law should be made regarding what courts may hear cases involving property seizure, it should be made across the

board for all instances of illegal fishing. Similarly, weapons should be confiscated in all instances of poaching. Making special provisions for a certain kind of poaching could send the message that poaching on private property without the owner's consent is not as bad as hunting from a vehicle.

**NOTES:**

The original bill would have allowed the court to forfeit confiscated property to TPWD if the property was contraband, regardless of whether the person was convicted of an offense. The committee substitute added the requirement that the property be used in committing an offense by the person convicted of that offense. The substitute also added the section regarding the disposition of seized property.