

SUBJECT: Seizing evidence not listed in an evidentiary search warrant

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Hinojosa, Dunnam, Green, Nixon, Talton

0 nays

4 absent — Garcia, Keel, Smith, Wise

WITNESSES: For — None

Against — None

On — Rob Kepple, Texas District and County Attorneys Association

BACKGROUND: Code of Criminal Procedure, art. 18.01(c) prohibits certain types of search warrants, often called evidentiary search warrants, from being issued unless a sworn affidavit sets forth facts that establish probable cause that a specific offense has been committed; that the specifically described property or items to be searched for or seized are evidence of that offense or that a particular person committed the offense; and that the property or items are located at or on the person, place, or thing being searched. Evidentiary search warrants may be issued only by judges of municipal courts of record or of county courts who are licensed attorneys, by statutory county courts, district courts, the Court of Criminal Appeals, and the Supreme Court.

Evidentiary search warrants, described by art. 18.02(10), can be for property or items, except for personal writings by the accused, constituting evidence tending to show that a particular person committed an offense.

Art. 18.01(d) allows only specifically described property or items listed in an evidentiary search warrant or property or items enumerated in art. 18.02, subdivisions 1 through 9, to be seized. Subdivisions 1 through 9 include property acquired by theft or another crime; property specifically designed or commonly used in the commission of an offense; arms and munitions kept for an insurrection or riot; prohibited weapons; gambling devices or equipment; certain obscene materials; drugs illegally prepared or manufactured; property

that is illegal to possess; and implements or instruments used in committing a crime.

Art. 18.02 also contains subdivision 11 for persons and subdivision 12 for contraband subject to forfeiture under chapter 59.

DIGEST: HB 3229 would amend Code of Criminal Procedure, art. 18.01(d) to allow only specifically described property, items, persons, or contraband set forth and described in a search warrant to be seized.

The bill would eliminate a reference to evidentiary search warrants that allows only specifically described property or items set forth in the evidentiary search warrant or things enumerated in subdivisions 1 through 9 to be seized.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS SAY: HB 3229 is intended to update language dealing with search warrant authority to reflect previous additions to art. 18.02. The intent is to add persons and contraband to the list of items that can be seized under an evidentiary search warrant even if not listed in the warrant. Adding these items to the list would help make it clear to judges and law enforcement authorities what can be seized if not listed in an evidentiary search warrant.

OPPONENTS SAY: HB 3229 as written would unwisely alter the search warrant authorizations so that if a warrant were issued under the grounds listed in art. 18.02, only items listed in the warrant could be seized. This would be a restriction of current law that allows law enforcement officers to seize things outside of their warrant if certain criteria are met.

NOTES: Rep. Capelo plans to amend the bill to leave in the reference to evidentiary search warrants and to state that only specifically described property or items set forth in an evidentiary search warrant or property, items, persons, or contraband listed in subdivisions 1 through 9 and subdivisions 11 and 12 could be seized.