

BILL ANALYSIS

C.S.S.B. 1529
By: Whitmire
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The current forfeiture laws do not provide for accountability and penalties as they relate to criminal asset forfeiture, disposition of proceeds, and property from criminal asset forfeiture. Past actions of law enforcement agents and prosecutors in Tenaha, Texas, provide an excellent example of a good law enforcement tool being abused. More than 140 people were pulled over and stripped of their cars, cash, jewelry, and other valuables, thus constituting highway robbery. Preventing a prosecutor from obtaining a waiver on property until notice of the civil suit has been appropriately filed would prevent waivers from being obtained by law enforcement or prosecutors during or immediately after traffic stops.

C.S.S.B. 1529 makes changes in law relating to criminal asset forfeiture, the disposition of proceeds and property from criminal asset forfeiture, and accountability for that disposition; providing civil penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Article 59.03(d), Code of Criminal Procedure, to prohibit any peace officer, including the peace officer who seizes the property, from requesting, requiring, or in any manner inducing any person who asserts an interest in or right to the property, to execute a document purporting to waive the person's interest in or rights to property seized under this chapter, rather than prohibiting a peace officer who seizes property under this chapter from at the time of seizure requesting, requiring, or in any manner including any person, including a person who asserts an interest in or right to the property seized, to execute a document purporting to waive the person's interest in or rights to the property.

SECTION 2. Amends Article 59.03, Code of Criminal Procedure, by adding Subsection (e), as follows:

(e) Prohibits an attorney representing the state, at any time before notice is filed under Article 59.04(b) (relating to commencement of a forfeiture proceeding), from requesting, requiring, or in any manner inducing any person, including a person who asserts an interest in or right to the property seized under this chapter, to execute a document purporting to waive the person's interest in or rights to the property.

SECTION 3. Amends Article 59.06, Code of Criminal Procedure, by amending Subsections (d) and (g), and by adding Subsections (c-1), (d-1) and (d-2), as follows:

(c-1) Requires that any post-judgment interest from money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, that are deposited in an interest-bearing bank account under Subsection (c) (relating to money being deposited in certain funds) be used for the same purpose as the principal.

(d) Provides that expenditures are subject to the audit and enforcement provisions established under this chapter, rather than the audit provisions established under this article.

(d-1) Prohibits the head of a law enforcement agency or an attorney representing the state from using proceeds or property received under this chapter for certain purposes. Deletes existing text prohibiting the head of the agency or attorney representing the state from using existence of an award to increase a salary, expense, or allowance for an employee of the attorney or agency who is budgeted by the commissioners court or governing body unless the commissioners court or governing body first approves the expenditure.

(d-2) Authorizes the head of a law enforcement agency or an attorney representing the state to use as an official purpose of the agency or attorney proceeds or property received under this chapter to make a donation to an entity that assists in certain law enforcement activities.

(g) (1) Requires that the audit be completed on a form provided by the attorney general and include a detailed report and explanation of all expenditures, including salaries and overtime pay, officer training, investigative equipment and supplies, and other items. Requires that certified copies of the audit be delivered by the law enforcement agency or attorney representing the state to the attorney general, rather than the office of the comptroller of public accounts (comptroller) and the attorney general, not later than the 60th day after the date on which the annual period that is the subject of the audit ends. Makes nonsubstantive changes.

(2) Makes no changes to this subdivision.

(3) Requires the comptroller, on notice under Subdivision 2 (relating to the delivery of a copy of an audit to the attorney general within a certain time period and attorney general notice to the comptroller of an agency's failure to do so), rather than this subdivision, to perform the audit otherwise required by Subdivision (1).

SECTION 4. Amends Chapter 59, Code of Criminal Procedure, by adding Articles 59.061 and 59.062, as follows:

Art. 59.061. AUDITS AND INVESTIGATIONS. (a) Authorizes the state auditor at any time to perform an audit or conduct an investigation, in accordance with this article and Chapter 321 (State Auditor), Government Code, related to the seizure, forfeiture, receipt and specific expenditure of proceeds and property received under this chapter.

(b) Entitles the state auditor at any time to access any book, account, voucher, confidential or nonconfidential report, or other record of information, including electronic data, maintained under Article 59.06, except that if the release of the applicable information is restricted under state or federal law, the state auditor is authorized to access the information only with the approval of a court or federal administrative agency, as appropriate.

(c) Requires the state auditor, if the results of an audit or investigation under this article indicate that a law enforcement agency or attorney representing the state has violated or is violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter, to promptly notify the attorney general for the purpose of initiating appropriate enforcement proceedings under Article 59.062.

Art. 59.062. ENFORCEMENT. (a) Authorizes the attorney general, in the name of the state, to institute in a district court in Travis County or in a county served by the law enforcement agency or attorney representing the state, as applicable, a suit for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, if the results of an audit or investigation under this chapter indicate that the law enforcement

agency or attorney representing the state has violated or is violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter.

(b) Requires the district court, on application for injunctive relief and after a finding that a law enforcement agency or attorney representing the state is violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter, to grant the injunctive relief the facts may warrant, without requirement for bond.

(c) Provides that a law enforcement agency or attorney representing the state who commits a violation described by Subsection (a) is liable to the state for a civil penalty in an amount not to exceed \$100,000 as determined by the district court to be appropriated for the nature and seriousness of the violation. Requires the court, in determining an appropriate penalty for the violation, to consider certain factors.

(d) Authorizes the attorney general, if the attorney general brings suit under this article and an injunction is granted or a civil penalty is imposed, to recover reasonable expenses, court costs, investigative costs, and attorney's fees.

(e) Requires a law enforcement agency or attorney representing the state ordered to pay, notwithstanding any other provision of this article, a civil penalty, expense, cost, or fee under this article to make the payment out of money available in any fund established by the agency or attorney, as applicable, for the purpose of administering proceeds or property received under this chapter. Requires the agency or attorney, if sufficient money is not available to make payment in full at the time the court enters an order requiring payment, to continue to make payments out of money available in any fund described by this subsection until the payment is made in full.

(f) Requires that a civil penalty collected under this article be deposited to the credit of the drug court account in the general revenue fund to help fund drug court programs established under Chapter 469 (Drug Court Programs), Health and Safety Code.

SECTION 5. Makes application of the changes in law made by this Act to Article 59.03, Code of Criminal Procedure, prospective.

SECTION 6. Provides that the changes in law made by this Act to Article 59.06, Code of Criminal Procedure, except as provided by Section 7 of this Act, apply to the disposition or use on or after the effective date of this Act of proceeds or property received by a law enforcement agency or attorney representing the state under Chapter 59, Code of Criminal Procedure, regardless of whether the receipt of the proceeds or property occurred before, on, or after the effective date of this Act.

SECTION 7. Provides that the changes in law made by this Act in amending Article 59.06(g), Code of Criminal Procedure, and adding Articles 59.061 and 59.062, Code of Criminal Procedure, apply to any audit performed on or after the effective date of this Act.

SECTION 8. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 3. Under (d-1)(3) from the original is split into (3)(A) and (3)(B). The original language is wholly within (3)(A) and the substitute adds (3)(B) with language taken from (d-

2)(3). The change was purely technical in nature to move the language to the right area of the provision.

Under (d-1)(5), "previously" deleted in reference to expenditures approved by the commissioner's court. Also under (d-1)(5)(A) the substitute removes limiting language on which elections are referenced.

As referenced above, in (d-2)(3), language is removed that is reinserted into (d-1)(3)(B) for technical purposes.

SECTION 4. Amends Art. 59.061 in section (c) to include intent to violate provisions of this chapter. Also amends Art. 59.062 to reference Art. 59.061 and add identical intent language from section (c) of Art. 59.061 above.

Adds section (g) to SECTION 4, allowing for immunity from liability under this Act if the actor (agency or attorney) acted in reasonable good faith.