

1-1 By: Whitmire S.B. No. 1529
1-2 (In the Senate - Filed March 9, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 14, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 14, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1529 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to criminal asset forfeiture, the disposition of proceeds
1-11 and property from criminal asset forfeiture, and accountability for
1-12 that disposition; providing civil penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subsection (d), Article 59.03, Code of Criminal
1-15 Procedure, is amended to read as follows:

1-16 (d) A person in the possession of property at the time a
1-17 peace officer seizes the property under this chapter may at the time
1-18 of seizure assert the person's interest in or right to the property.
1-19 Any peace officer, including the [A] peace officer who seizes the
1-20 property, [under this chapter] may not [at the time of seizure]
1-21 request, require, or in any manner induce any person, including a
1-22 person who asserts an interest in or right to the property [seized],
1-23 to execute a document purporting to waive the person's interest in
1-24 or rights to [the] property seized under this chapter.

1-25 SECTION 2. Article 59.03, Code of Criminal Procedure, is
1-26 amended by adding Subsection (e) to read as follows:

1-27 (e) At any time before notice is filed under Article
1-28 59.04(b), an attorney representing the state may not request,
1-29 require, or in any manner induce any person, including a person who
1-30 asserts an interest in or right to property seized under this
1-31 chapter, to execute a document purporting to waive the person's
1-32 interest in or rights to the property.

1-33 SECTION 3. Article 59.06, Code of Criminal Procedure, is
1-34 amended by adding Subsections (c-1), (d-1), and (d-2) and amending
1-35 Subsections (d) and (g) to read as follows:

1-36 (c-1) Any postjudgment interest from money, securities,
1-37 negotiable instruments, stocks or bonds, or things of value, or
1-38 proceeds from the sale of those items, that are deposited in an
1-39 interest-bearing bank account under Subsection (c) shall be used
1-40 for the same purpose as the principal.

1-41 (d) Proceeds awarded under this chapter to a law enforcement
1-42 agency or to the attorney representing the state may be spent by the
1-43 agency or the attorney after a budget for the expenditure of the
1-44 proceeds has been submitted to the commissioners court or governing
1-45 body of the municipality. The budget must be detailed and clearly
1-46 list and define the categories of expenditures, but may not list
1-47 details that would endanger the security of an investigation or
1-48 prosecution. Expenditures are subject to the audit and enforcement
1-49 provisions established under this chapter [article]. A
1-50 commissioners court or governing body of a municipality may not use
1-51 the existence of an award to offset or decrease total salaries,
1-52 expenses, and allowances that the agency or the attorney receives
1-53 from the commissioners court or governing body at or after the time
1-54 the proceeds are awarded.

1-55 (d-1) The head of a law enforcement [the] agency or an
1-56 attorney representing the state may not use proceeds or property
1-57 received under this chapter to:

1-58 (1) contribute to a political campaign;

1-59 (2) make a donation to any entity, except as provided
1-60 by Subsection (d-2);

1-61 (3) pay expenses related to the training or education
1-62 of any member of the judiciary;

1-63 (4) purchase alcoholic beverages;

2-1 (5) make any expenditure not previously approved by
2-2 the commissioners court or governing body of the municipality, as
2-3 applicable, if the head of a law enforcement agency or attorney
2-4 representing the state holds an elective office and:

2-5 (A) the deadline for filing an application for a
2-6 place on the ballot as a candidate for reelection to that office in
2-7 the general primary election or, for an office elected at a
2-8 nonpartisan election, in the general election has passed and the
2-9 person did not file an application for a place on that ballot; or

2-10 (B) during the person's current term of office,
2-11 the person was a candidate in a primary, general, or runoff election
2-12 for reelection to that office and was not the prevailing candidate
2-13 in that election; or

2-14 (6) ~~[the existence of an award to]~~ increase a salary,
2-15 expense, or allowance for an employee of the law enforcement agency
2-16 or attorney representing the state ~~[or agency]~~ who is budgeted by
2-17 the commissioners court or governing body of the municipality
2-18 unless the commissioners court or governing body first approves the
2-19 increase ~~[expenditure]~~.

2-20 (d-2) The head of a law enforcement agency or an attorney
2-21 representing the state may use as an official purpose of the agency
2-22 or attorney proceeds or property received under this chapter to
2-23 make a donation to an entity that assists in:

2-24 (1) the detection, investigation, or prosecution of:

2-25 (A) criminal offenses; or

2-26 (B) instances of abuse, as defined by Section
2-27 261.001, Family Code;

2-28 (2) the provision of:

2-29 (A) mental health, drug, or rehabilitation
2-30 services; or

2-31 (B) services for victims or witnesses of criminal
2-32 offenses or instances of abuse described by Subdivision (1); or

2-33 (3) the provision of training or education related to
2-34 duties or services described by Subdivision (1) or (2), subject to
2-35 any generally applicable restrictions on travel expenses
2-36 established by the commissioners court or governing body of the
2-37 municipality, as applicable.

2-38 (g)(1) All law enforcement agencies and attorneys
2-39 representing the state who receive proceeds or property under this
2-40 chapter shall account for the seizure, forfeiture, receipt, and
2-41 specific expenditure of all the ~~[such]~~ proceeds and property in an
2-42 audit, which is to be performed annually by the commissioners court
2-43 or governing body of a municipality, as appropriate. The annual
2-44 period of the audit for a law enforcement agency is the fiscal year
2-45 of the appropriate county or municipality and the annual period for
2-46 an attorney representing the state is the state fiscal year. The
2-47 audit ~~must~~ ~~[shall]~~ be completed on a form provided by the attorney
2-48 general and must include a detailed report and explanation of all
2-49 expenditures, including salaries and overtime pay, officer
2-50 training, investigative equipment and supplies, and other items.
2-51 Certified copies of the audit shall be delivered by the law
2-52 enforcement agency or attorney representing the state to ~~[the~~
2-53 ~~comptroller's office and]~~ the attorney general not later than the
2-54 60th day after the date on which the annual period that is the
2-55 subject of the audit ends.

2-56 (2) If a copy of the audit is not delivered to the
2-57 attorney general within the period required by Subdivision (1),
2-58 within five days after the end of the period the attorney general
2-59 shall notify the law enforcement agency or the attorney
2-60 representing the state of that fact. On a showing of good cause,
2-61 the attorney general may grant an extension permitting the agency
2-62 or attorney to deliver a copy of the audit after the period required
2-63 by Subdivision (1) and before the 76th day after the date on which
2-64 the annual period that is the subject of the audit ends. If the law
2-65 enforcement agency or the attorney representing the state fails to
2-66 establish good cause for not delivering the copy of the audit within
2-67 the period required by Subdivision (1) or fails to deliver a copy of
2-68 an audit within the extension period, the attorney general shall
2-69 notify the comptroller of that fact.

3-1 (3) On notice under Subdivision (2) [~~this~~
3-2 ~~subdivision~~], the comptroller shall perform the audit otherwise
3-3 required by Subdivision (1). At the conclusion of the audit, the
3-4 comptroller shall forward a copy of the audit to the attorney
3-5 general. The law enforcement agency or attorney representing the
3-6 state is liable to the comptroller for the costs of the comptroller
3-7 in performing the audit.

3-8 SECTION 4. Chapter 59, Code of Criminal Procedure, is
3-9 amended by adding Articles 59.061 and 59.062 to read as follows:

3-10 Art. 59.061. AUDITS AND INVESTIGATIONS. (a) The state
3-11 auditor may at any time perform an audit or conduct an
3-12 investigation, in accordance with this article and Chapter 321,
3-13 Government Code, related to the seizure, forfeiture, receipt, and
3-14 specific expenditure of proceeds and property received under this
3-15 chapter.

3-16 (b) The state auditor is entitled at any time to access any
3-17 book, account, voucher, confidential or nonconfidential report, or
3-18 other record of information, including electronic data, maintained
3-19 under Article 59.06, except that if the release of the applicable
3-20 information is restricted under state or federal law, the state
3-21 auditor may access the information only with the approval of a court
3-22 or federal administrative agency, as appropriate.

3-23 (c) If the results of an audit or investigation under this
3-24 article indicate that a law enforcement agency or attorney
3-25 representing the state has violated or is violating a provision of
3-26 this chapter relating to the disposition of proceeds or property
3-27 received under this chapter, the state auditor shall promptly
3-28 notify the attorney general for the purpose of initiating
3-29 appropriate enforcement proceedings under Article 59.062.

3-30 Art. 59.062. ENFORCEMENT. (a) In the name of the state,
3-31 the attorney general may institute in a district court in Travis
3-32 County or in a county served by the law enforcement agency or
3-33 attorney representing the state, as applicable, a suit for
3-34 injunctive relief, to recover a civil penalty, or for both
3-35 injunctive relief and a civil penalty if the results of an audit or
3-36 investigation under this chapter indicate that the law enforcement
3-37 agency or attorney representing the state has violated or is
3-38 violating a provision of this chapter relating to the disposition
3-39 of proceeds or property received under this chapter.

3-40 (b) On application for injunctive relief and a finding that
3-41 the law enforcement agency or attorney representing the state is
3-42 violating a provision of this chapter relating to the disposition
3-43 of proceeds or property received under this chapter, the district
3-44 court shall grant the injunctive relief the facts may warrant,
3-45 without requirement for bond.

3-46 (c) A law enforcement agency or attorney representing the
3-47 state who commits a violation described by Subsection (a) is liable
3-48 to the state for a civil penalty in an amount not to exceed \$100,000
3-49 as determined by the district court to be appropriate for the nature
3-50 and seriousness of the violation. In determining an appropriate
3-51 penalty for the violation, the court shall consider:

3-52 (1) any previous violations committed by the agency or
3-53 attorney;

3-54 (2) the seriousness of the violation, including the
3-55 nature, circumstances, extent, and gravity of the violation;

3-56 (3) the demonstrated good faith of the agency or
3-57 attorney; and

3-58 (4) the amount necessary to deter future violations.

3-59 (d) If the attorney general brings a suit under this article
3-60 and an injunction is granted or a civil penalty is imposed, the
3-61 attorney general may recover reasonable expenses, court costs,
3-62 investigative costs, and attorney's fees.

3-63 (e) Notwithstanding any other provision of this article, a
3-64 law enforcement agency or attorney representing the state ordered
3-65 to pay a civil penalty, expense, cost, or fee under this article
3-66 shall make the payment out of money available in any fund
3-67 established by the agency or attorney, as applicable, for the
3-68 purpose of administering proceeds or property received under this
3-69 chapter. If sufficient money is not available to make payment in

4-1 full at the time the court enters an order requiring payment, the
4-2 agency or attorney shall continue to make payments out of money
4-3 available in any fund described by this subsection until the
4-4 payment is made in full.

4-5 (f) A civil penalty collected under this article shall be
4-6 deposited to the credit of the drug court account in the general
4-7 revenue fund to help fund drug court programs established under
4-8 Chapter 469, Health and Safety Code.

4-9 SECTION 5. The changes in law made by this Act in amending
4-10 Article 59.03, Code of Criminal Procedure, apply only to property
4-11 seized on or after the effective date of this Act. Property seized
4-12 before the effective date of this Act is covered by the law in
4-13 effect when the property was seized, and the former law is continued
4-14 in effect for that purpose. For purposes of this section, property
4-15 was seized before the effective date of this Act if any portion of
4-16 the property was seized before that date.

4-17 SECTION 6. Except as provided by Section 7 of this Act, the
4-18 changes in law made by this Act in amending Article 59.06, Code of
4-19 Criminal Procedure, apply to the disposition or use, on or after the
4-20 effective date of this Act, of proceeds or property received by a
4-21 law enforcement agency or attorney representing the state under
4-22 Chapter 59, Code of Criminal Procedure, regardless of whether the
4-23 receipt of the proceeds or property occurred before, on, or after
4-24 the effective date of this Act.

4-25 SECTION 7. The changes in law made by this Act in amending
4-26 Subsection (g), Article 59.06, Code of Criminal Procedure, and
4-27 adding Articles 59.061 and 59.062, Code of Criminal Procedure,
4-28 apply to any audit performed on or after the effective date of this
4-29 Act.

4-30 SECTION 8. This Act takes effect September 1, 2009.

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