

## **BILL ANALYSIS**

H.B. 2856  
By: Gallego  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Current law allows a district attorney to appear at a roadside search and obtain a waiver for property seized at the stop location before any court case or criminal charges have been filed. This practice has enabled a district attorney to use this confiscated property and funds for non law enforcement purposes, including the purchasing of alcohol for office parties. In 2010, a district judge and district attorney were convicted for abuse of assets acquired through the current asset forfeiture provisions.

This bill will prohibit a prosecutor from obtaining a waiver during or immediately after a traffic stop until notice of a civil suit has been appropriately filed. The bill also establishes a list of authorized uses for appropriately seized assets, as well as a list of prohibited uses. For example, asset proceeds may not be used for political campaigns, the purchase of alcohol, or to pay for judicial training and education or salary increases for an employee of a law enforcement agency. Authorized uses include, among others, a donation to an entity that provides mental health, drug, or rehabilitation services. Proceeds not previously approved in a budget may not be used by an official upon retirement or loss of an election for that office.

The bill also sets forth accountability procedures, including audits, designed to ensure the appropriate handling and use of seized assets.

As proposed, H.B. 2856 amends current law relating to criminal asset forfeiture, the disposition of proceeds and property from criminal asset forfeiture, and accountability for that disposition and provides 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, Code of Criminal Procedure, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Prohibits any peace officer, including the peace officer who seizes the property, from, rather than prohibits a peace officer who seizes property under this chapter from at the time of seizure, requesting, requiring, or in any manner inducing any person, including a 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. Makes nonsubstantive and conforming changes.

(e) Prohibits an attorney representing the state, at any time before notice is filed under Article 59.04(b) (relating to the 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 property seized under this chapter, to execute a document purporting to waive the person's interest in or rights to the property.

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

(c-2) Requires any postjudgment 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 depositing of certain items pursuant to a local agreement between the attorney representing the state and law enforcement agencies) to 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 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, rather than from using the existence of an award, to:

(1) contribute to a political campaign;

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

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

(4) pay any travel expenses related to attendance at training or education seminars if the expenses violate generally applicable restrictions established by the commissioners court or governing body of the municipality, as applicable;

(5) purchase alcoholic beverages;

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

(A) the deadline for filing an application for a place on the ballot as a candidate for reelection to that office in the general primary election has passed and the person did not file an application for a place on that ballot; or

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

(7) increase a salary, expense, or allowance for an employee of the law enforcement agency or attorney representing the state who is budgeted by the commissioners court or governing body of the municipality unless the commissioners court or governing body first approves the increase, rather than the expenditure.

Makes nonsubstantive and conforming changes.

(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:

(1) the detection, investigation, or prosecution of criminal offenses, or instances of abuse, as defined by Section 261.001 (Definitions), Family Code;

(2) the provision of mental health, drug, or rehabilitation services, or services for victims or witnesses of criminal offenses or instances of abuse described by Subdivision (1); or

(3) the provision of training or education related to duties or services described by Subdivision (1) or (2).

(g)(1) Requires all law enforcement agencies and attorneys representing the state who receive proceeds or property under this chapter to account for the seizure, forfeiture, receipt, and specific expenditure of all the proceeds, rather than all such proceeds, and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. Provides that the annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the state fiscal year. Requires that the audit be completed on a form provided by the attorney general (OAG) and that it 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 OAG, rather than the Office of the Comptroller of Public Accounts and the OAG, not later than the 60th day after the date on which the annual period that is the subject of the audit ends.

(2) Makes no changes to this subdivision.

(3) Creates this subdivision from existing text. Makes a nonsubstantive change

SECTION 3. 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 (Disposition of Forfeited Property), except that if the release of the applicable information is restricted under state or federal law, the state auditor may access the information only with the approval of a court or federal administrative agency, as appropriate.

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

Art. 59.062. ENFORCEMENT. (a) Authorizes OAG, 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 Article 59.061 indicate that the law enforcement agency or attorney representing the state has knowingly violated or is knowingly 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 a finding that the law enforcement agency or attorney representing the state is knowingly 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 knowingly 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 appropriate for the nature and seriousness of the violation. Requires the court, in determining an appropriate penalty for the violation, to consider:

- (1) any previous violations committed by the agency or attorney;
- (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (3) the demonstrated good faith of the agency or attorney; and
- (4) the amount necessary to deter future violations.

(d) Authorizes the attorney general, if the attorney general brings a 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 a civil penalty, expense, cost, or fee under this article, notwithstanding any other provision of 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.

(g) Provides that a law enforcement agency or attorney representing the state is immune from liability under this article if the agency or attorney reasonably relied on:

- (1) the advice, consent, or approval of an entity that conducts an audit of the agency or attorney under this chapter; or
- (2) a written opinion of the attorney general relating to:
  - (A) the statute or other provision of law the agency or attorney is alleged to have knowingly violated; or
  - (B) a fact situation that is substantially similar to the fact situation in which the agency or attorney is involved.

SECTION 4. Makes application of Article 59.03, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 5. Provides that, except as provided by Section 6 of this Act, the changes in law made by this Act in amending Article 59.06, Code of Criminal Procedure, 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 6. Makes application of Article 59.06(g), Code of Criminal Procedure, as amended by this Act, and Articles 59.061 and 59.062, Code of Criminal Procedure, as added by this Act, prospective.

**EFFECTIVE DATE**

Effective date: September 1, 2011.