

By: Williams

S.B. No. 1701

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to procedures for and evidence that may be presented at a  
3 criminal asset forfeiture hearing and to the forfeiture of  
4 substitute assets under certain circumstances.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Article 59.05, Code of Criminal Procedure, is  
7 amended by adding Subsections (b-1) and (b-2) and amending  
8 Subsection (e) to read as follows:

9 (b-1) A rebuttable presumption that property is subject to  
10 forfeiture is established if the state shows by a preponderance of  
11 the evidence that:

12 (1) the conduct giving rise to the forfeiture  
13 occurred; and

14 (2) the conduct giving rise to the forfeiture is the  
15 only likely source of the property subject to forfeiture or  
16 provides the only likely explanation for that property.

17 (b-2) In a hearing conducted under this article, a court may  
18 not suppress evidence solely because the evidence was acquired  
19 pursuant to a search or seizure that violated the rights of the  
20 owner or interest holder under the Constitution of the United  
21 States or of the State of Texas.

22 (e) (1) It is the intention of the legislature that asset  
23 forfeiture is remedial in nature and not a form of punishment.

24 (2) If the court finds that all or any part of the

1 property is subject to forfeiture, the judge shall forfeit the  
2 property to the state, with the attorney representing the state as  
3 the agent for the state, except that if the court finds that the  
4 nonforfeitable interest of an interest holder in the property is  
5 valued in an amount greater than or substantially equal to the  
6 present value of the property, the court shall order the property  
7 released to the interest holder.

8           (3) If the court finds that the nonforfeitable  
9 interest of an interest holder is valued in an amount substantially  
10 less than the present value of the property and that the property is  
11 subject to forfeiture, the court shall order the property forfeited  
12 to the state with the attorney representing the state acting as the  
13 agent of the state, and making necessary orders to protect the  
14 nonforfeitable interest of the interest holder.

15           (4) The court may order the forfeiture of any other  
16 property of a person that otherwise is not subject to forfeiture  
17 under this article if the court finds that property of the person  
18 that has been forfeited under this subsection, as a result of an act  
19 or omission of the person:

20                   (A) cannot be located on exercise of due  
21 diligence;

22                   (B) has been transferred, conveyed, or sold to or  
23 deposited with a third party;

24                   (C) has been placed beyond the jurisdiction of  
25 the court;

26                   (D) has been substantially diminished in value;

27 or

1                   (E) has been commingled with other property and  
2 cannot be separated without difficulty.

3                   (5) In ordering the forfeiture of substitute assets  
4 under Subdivision (4), the court may not order the forfeiture of  
5 property with a value greater than the value of the property  
6 originally ordered forfeited by the court.

7                   (6) On final judgment of forfeiture, the attorney  
8 representing the state shall dispose of the property in the manner  
9 required by Article 59.06 of this code.

10                  SECTION 2. (a) The change in law made by this Act in adding  
11 Articles 59.05(b-1) and (b-2), Code of Criminal Procedure, applies  
12 only to a forfeiture proceeding that begins on or after the  
13 effective date of this Act. A forfeiture proceeding that begins  
14 before the effective date of this Act is governed by the law in  
15 effect on the date the proceeding begins, and the former law is  
16 continued in effect for that purpose.

17                  (b) The change in law made by this Act in amending Article  
18 59.05(e), Code of Criminal Procedure, authorizes a court to order  
19 the forfeiture of substitute assets for any property originally  
20 ordered forfeited by the court, regardless of whether the original  
21 order of forfeiture occurred before, on, or after the effective  
22 date of this Act.

23                  SECTION 3. This Act takes effect September 1, 2011.