

1-1 By: Williams S.B. No. 1701  
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read  
1-3 first time and referred to Committee on Transportation and Homeland  
1-4 Security; March 31, 2011, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;  
1-6 March 31, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1701 By: Williams  
1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to a criminal asset forfeiture hearing in which substitute  
1-11 assets are forfeited under certain circumstances.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsection (e), Article 59.05, Code of Criminal  
1-14 Procedure, is amended to read as follows:

1-15 (e)(1) It is the intention of the legislature that asset  
1-16 forfeiture is remedial in nature and not a form of punishment.

1-17 (2) If the court finds that all or any part of the  
1-18 property is subject to forfeiture, the judge shall forfeit the  
1-19 property to the state, with the attorney representing the state as  
1-20 the agent for the state, except that if the court finds that the  
1-21 nonforfeitable interest of an interest holder in the property is  
1-22 valued in an amount greater than or substantially equal to the  
1-23 present value of the property, the court shall order the property  
1-24 released to the interest holder.

1-25 (3) If the court finds that the nonforfeitable  
1-26 interest of an interest holder is valued in an amount substantially  
1-27 less than the present value of the property and that the property is  
1-28 subject to forfeiture, the court shall order the property forfeited  
1-29 to the state with the attorney representing the state acting as the  
1-30 agent of the state, and making necessary orders to protect the  
1-31 nonforfeitable interest of the interest holder.

1-32 (4) The court may order the forfeiture of any other  
1-33 property of a person that otherwise is not subject to forfeiture  
1-34 under this article if the court finds that property of the person  
1-35 that has been forfeited under this subsection, as a result of an act  
1-36 or omission of the person:

1-37 (A) cannot be located on exercise of due  
1-38 diligence;

1-39 (B) has been transferred, conveyed, or sold to or  
1-40 deposited with a third party;

1-41 (C) has been placed beyond the jurisdiction of  
1-42 the court;

1-43 (D) has been substantially diminished in value;  
1-44 or

1-45 (E) has been commingled with other property and  
1-46 cannot be separated without difficulty.

1-47 (5) In ordering the forfeiture of substitute assets  
1-48 under Subdivision (4), the court may not order the forfeiture of  
1-49 property with a value greater than the value of the property  
1-50 originally ordered forfeited by the court.

1-51 (6) On final judgment of forfeiture, the attorney  
1-52 representing the state shall dispose of the property in the manner  
1-53 required by Article 59.06 of this code.

1-54 SECTION 2. The change in law made by this Act in amending  
1-55 Subsection (e), Article 59.05, Code of Criminal Procedure,  
1-56 authorizes a court to order the forfeiture of substitute assets for  
1-57 any property originally ordered forfeited by the court, regardless  
1-58 of whether the original order of forfeiture occurred before, on, or  
1-59 after the effective date of this Act.

1-60 SECTION 3. This Act takes effect September 1, 2011.

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