

BILL ANALYSIS

H.B. 2992
By: Harrison
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under Chapter 59, Code of Criminal Procedure, law enforcement agencies are empowered to use the state's civil courts to sue for the forfeiture of property, even in the absence of a criminal conviction or when there is no arrest of the property owner. The Interim Report submitted by the House Committee on Criminal Justice Reform in January 2023 recommended that the "Legislature should expand reporting requirements and require the tracking of county level data on civil forfeitures." The report found "this information should be easily accessible and not require months of paperwork and public information requests to obtain." H.B. 2992 addresses the inadequate data reporting on cases involving asset forfeiture by requiring the submission of certain information in these cases by law enforcement agencies and attorneys representing the state to the Office of the Attorney General and by providing for public access to this information.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Office of the Attorney General in SECTION 3 of this bill.

ANALYSIS

H.B. 2992 amends the Code of Criminal Procedure to require the Office of the Attorney General (OAG) to establish and maintain a case tracking system to collect and organize data regarding property seized or forfeited as contraband under statutory provisions governing the seizure and forfeiture of contraband or under an agreement with the federal government. The bill requires the OAG to assign the responsibility for submitting the required information to appropriate state or local law enforcement agencies or state's attorneys. The bill requires the law enforcement agency that seized such property or the state's attorney in the forfeiture proceeding, as assigned by the OAG, to submit the following information to the case tracking system, to the extent the information is available or applicable:

- the name of the agency that seized the property, or the name of the agency with primary responsibility for seizing the property, if more than one agency was involved in the seizure;
- the date of the seizure;
- a description of the property seized;
- the location of the seizure;
- if the seizure occurred on a highway, the direction of the traffic flow;
- an estimated value of the property seized;
- the alleged offense that gave rise to the seizure;
- if charges were filed in relation to the seizure:

- the offense charged;
- the criminal case number;
- the court in which the charges were filed; and
- the disposition of the charges;
- whether forfeiture is sought under federal law, and if so:
 - whether a joint task force consisting of state or local law enforcement officers and federal law enforcement officers collaborated on the seizure; and
 - whether a federal law enforcement agency asserted jurisdiction over a seizure made by a state or local law enforcement agency without involvement in the seizure by the federal law enforcement agency;
- the civil case number of the forfeiture proceeding and the court in which the forfeiture proceeding was filed;
- whether an owner or interest holder of the seized property filed a claim or counterclaim in the forfeiture proceeding, and if so, whether the owner or interest holder was the person from whom the property was seized, an innocent owner, a creditor, or another party;
- whether an owner or interest holder of the seized property defaulted in the forfeiture proceeding;
- whether there was a settlement agreement in the forfeiture proceeding;
- the date of the forfeiture order;
- whether the seized property:
 - was fully or partially returned to the person from whom the property was seized;
 - was sold or donated;
 - was destroyed;
 - was retained by a law enforcement agency or attorney representing the state; or
 - is pending disposition;
- the date of final disposition of the seized property;
- the amount of attorney's fees awarded to an owner or interest holder of the seized property;
- an estimate of the total costs to:
 - store the seized or forfeited property;
 - pay for law enforcement officers' and personnel salaries for work performed in relation to the forfeiture proceeding;
 - pay the attorney representing the state for work performed in relation to the forfeiture proceeding; and
 - sell or dispose of the forfeited property;
- if property was retained by a law enforcement agency or state's attorney, the purpose for which the property was used;
- the total market value of the forfeited property, including currency, proceeds from the sale of property, and distributions received from the federal government; and
- the total market value of the forfeited property that was retained by the state, destroyed, sold, or donated.

H.B. 2992 prohibits a law enforcement agency or state's attorney, if the property seized or forfeited was alcohol or a controlled substance or drug paraphernalia as defined by the Texas Controlled Substances Act, from submitting information describing the property seized, the total market value of the forfeited property, and the total market value of the forfeited property that was retained by the state, destroyed, sold, or donated. The bill authorizes the law enforcement agency or state's attorney, if property was seized from a confidential informant, to delay submitting the required information for any period in which the informant continues to cooperate with the agency or attorney. The bill repeals the requirement for a law enforcement agency or state's attorney that did not seize any property during the annual audit period of the county commissioners court or governing body of a municipality to file a report with the OAG stating that no property was seized during that period. The bill requires such a law enforcement agency or state's attorney instead to file the report during the period specified by the OAG under the

bill's provisions. The bill requires the OAG to adopt rules as necessary to implement the bill's provisions relating to the case tracking system, including rules regarding how frequently law enforcement agencies and state's attorneys must submit the required information.

H.B. 2992 repeals the requirement for the OAG to develop an annual report based on information submitted by law enforcement agencies and state's attorneys detailing the total amount of funds forfeited, or credited after the sale of forfeited property, in Texas and to post the most recent report on the OAG website. The bill requires the OAG instead to establish and make available to the public a website with a searchable database that includes the following information:

- the information submitted to the OAG for inclusion in the case tracking system;
- the total amount of funds expended from the proceeds of property seized or forfeited under statutory provisions governing the seizure and forfeiture of contraband or under an agreement with the federal government in the following categories:
 - drug abuse, crime, and gang prevention or other community programs;
 - compensation, reparations, or other similar types of funds paid to or in behalf of victims;
 - investigation costs, including controlled buys, forensics, informant fees, and witness protection;
 - expenses related to the storage, maintenance, repair, or return of seized property;
 - expenses related to forfeiture proceedings under those statutory provisions, including court costs, attorney's fees, and costs related to auditing, discovery, court reporters, printing, postage, and witnesses;
 - government personnel costs, including salaries, overtime, and benefits;
 - government travel and training, including conferences, continuing education, entertainment, and meals;
 - government administrative and operating expenses, including office supplies, postage, printing, utilities, and repairs and maintenance of vehicles or other equipment; and
 - government capital expenditures, including appliances, canines, computers, equipment, firearms, furniture, and vehicles;
- an itemized list of any other expenditure of proceeds by a law enforcement agency or state's attorney that was received from seizure or forfeiture of property under those statutory provisions or under an agreement with the federal government and was reported by the agency or state's attorney to the OAG under the bill's provisions, other than expenditures in the categories required by the bill, and including payments to trade associations, lobbyists, and other agencies; and
- the total value of seized and forfeited property held by the law enforcement agency or attorney representing the state at the end of the state fiscal year.

With respect the expenditure of proceeds by a law enforcement agency or state's attorney received from seizure or forfeiture of property under those statutory provisions or under an agreement with the federal government, the bill requires the law enforcement agency or state's attorney to submit a report with information in the categories required by the bill with respect to the public database and including any other expenditures, including payments to trade associations, lobbyists, and other agencies, to the OAG not later than the 30th day after the end of the state fiscal year. The bill authorizes the OAG to extend the reporting period for a period determined by the OAG if the OAG finds that good cause exists. The bill authorizes the commander of a multijurisdictional task force to appoint one law enforcement agency to report the relevant expenditures.

H.B. 2992 subjects a law enforcement agency or state's attorney that violates the requirement to report expenditures of proceeds received from seizure or forfeiture of property to a civil penalty for each violation:

- in an amount equal to \$500 or 25 percent of the forfeiture proceeds, whichever is greater;
- or

- in a reasonable amount determined by the OAG.

The bill requires the OAG to deposit civil penalties in the general revenue fund. The bill waives the sovereign immunity of the state and governmental immunity of a political subdivision to suit and from liability to the extent of liability of a law enforcement agency or state's attorney for a civil penalty under the bill.

H.B. 2992 prohibits the OAG from requiring a law enforcement agency or state's attorney to disclose, and the website from including, certain personally identifying information of an individual involved in the forfeiture proceeding and certain identifying information regarding any seized or forfeited property. The bill authorizes the OAG to adopt rules as necessary to implement the searchable Internet database and reports of expenditures.

H.B. 2992 requires the OAG, not later than the 120th day after the end of the state fiscal year, to compile and submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report summarizing activity related to property seized or forfeited under statutory provisions governing the seizure and forfeiture of contraband. The report must include:

- the type, approximate value, and disposition of property seized or forfeited under those provisions; and
- the total amount of funds received or expended from the proceeds of property seized or forfeited under those provisions.

The bill requires information included in the report to be disaggregated by agency and organized by category, as applicable. The bill authorizes the OAG to include in the report legislative recommendations to ensure expenditures related to the seizure or forfeiture of property under those statutory provisions are expended and reported in a manner that is fair to victims, owners or interest holders of seized property, Texas residents, law enforcement agencies and state's attorneys, and taxpayers. The bill requires the OAG to post a copy of the report to the website with the searchable database created by the bill.

H.B. 2992 makes all information and reports submitted to the OAG or published by the OAG for the case tracking system, the searchable database website, and OAG's report to the governor, lieutenant governor, and speaker of the house, other than personally identifying information whose disclosure or inclusion is prohibited under the bill, subject to disclosure under state public information law.

H.B. 2992 creates an exception to the requirement that proceeds from the seizure or forfeiture of property under those statutory provisions, if a local agreement exists between the state's attorney and law enforcement agencies, be deposited, after the deduction of court costs, in specified funds and used only for the official purposes of the state's attorney or for law enforcement purposes. Under this exception, the state's attorney or head of a law enforcement agency, as applicable, may use any portion of the gross amount credited to the state attorney's or agency's special fund to pay the following:

- the fee charged by the attorney general to maintain the case tracking system and the searchable Internet database; or
- any incurred costs of the state's attorney or agency to compile information or submit reports to the OAG as required by the bill.

H.B. 2992 prohibits the state's attorney from disbursing proceeds from the seizure or forfeiture of property under statutory provisions governing the seizure and forfeiture of contraband to a law enforcement agency that does not comply with the requirement to report expenditures of proceeds to the OAG under the bill. The bill prohibits the state's attorney or a law enforcement agency from expending any applicable proceeds, using any property seized or forfeited under statutory provisions, or awarded under the bill's provisions until the state's attorney or agency submits the report to the OAG.

H.B. 2992 requires the State Auditor's Office (SAO), on request of a member of the legislature, to perform an audit related to the seizure, forfeiture, receipt, and specific expenditure of proceeds

and property as contraband. The SAO is not required to perform more than one such audit per year. The bill requires the SAO to submit a copy of the audit to the OAG not later than the 90th day after the date the audit is completed and requires the OAG to promptly publish the audit on the website with the searchable Internet database.

H.B. 2992 repeals Articles 59.06(1) and (s), Code of Criminal Procedure.

H.B. 2992 applies only to a state fiscal year beginning on or after January 1, 2024.

EFFECTIVE DATE

September 1, 2023.