

BILL ANALYSIS

Senate Research Center

S.B. 1529
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The current forfeiture laws do not provide for accountability and penalties as they relate to criminal asset forfeiture, disposition of proceeds, and property from criminal asset forfeiture. Past actions of law enforcement agents and prosecutors in Tenaha, Texas provide an excellent example of a good law-enforcement tool being abused. More than 140 people were pulled over then stripped of their cars, cash, jewelry, and other valuables, thus constituting highway robbery. Preventing a prosecutor from getting a waiver on property until notice of the civil suit has been appropriately filed would prevent waivers from being obtained by law enforcement or prosecutors during or immediately after traffic stops.

As proposed, S.B. 1529 prohibits the head of a law enforcement agency or an authority representing the state from using proceeds or property under this chapter for certain purposes, including political campaigns, the purchase of alcohol, or donations to entities that do not assist in investigation or the prosecution of criminal cases, or services to victims or witnesses of criminal cases or abuse. This bill amends the Code of Criminal Procedure as it relates to criminal asset forfeiture, disposition of proceeds and property from criminal asset forfeiture, and accountability for that disposition and provides penalties for violations.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 59.03(d), Code of Criminal Procedure, to prohibit a peace officer, rather than a peace officer who seizes property under this chapter at the time of seizure, from requesting, requiring, or in any manner inducing any person who asserts an interest in or right to the property seized, to execute a document purporting to waive the person's interest in or rights to property seized under this chapter, rather than to the property.

SECTION 2. Amends Article 59.03, Code of Criminal Procedure, by adding subsection [*sic*] (e), as follows:

(e) Prohibits an attorney representing the state from requesting, requiring, or in any manner inducing any person, including a person who asserts an interest in or right to the property seized, to execute a document purporting to waive the person's interest in or rights to property seized under this chapter prior to notice being filed in accordance with Article 59.04 (Notification of Forfeiture Proceeding), Code of Criminal Procedure.

SECTION 3. Amends Article 59.06, Code of Criminal Procedure, by amending Subsections (d) and (g), and by adding Subsections (c-1) and (d-1), as follows:

(c-1) Requires that any post-judgment interest from money, proceeds, or other things of value that are deposited in an interest-bearing bank account under Subsection (c) 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 article.

(d-1) Prohibits the head of a law enforcement agency or an attorney representing the state from using proceeds or property under this chapter for certain purposes. Deletes existing text prohibiting the head of the agency or attorney representing the state from using existence of an award to increase a salary, expense, or allowance for an employee of the attorney or agency who is budgeted by the commissioners court or governing body unless the commissioners court or governing body first approves the expenditure.

(g) (1) Requires that the audit be completed on a form provided by the attorney general and is required to include a detailed report and explanation of all expenditures, including salaries and overtime pay, training, 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 comptroller of public account's (comptroller) office and the attorney general not later than the 60th day after the date on which the annual period that is the subject of the audits end. Makes nonsubstantive changes.

(2) Makes no changes to this subdivision.

(3) Requires the comptroller, on notice under Subdivision 2 (relating to the delivery of a copy of an audit to the attorney general within a certain time period), rather than this subdivision, to perform the audit otherwise required by Subdivision (1).

SECTION 4. 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. Provides that the state auditor is not required to perform an audit under this subsection if the comptroller performs the audit under Article 59.06(g)(3) (relating to the comptroller performing an audit).

(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, except that if the release of the applicable information is restricted under state or federal law, the state auditor is authorized to access the information only with the approval of a court or federal administrative agency, as appropriate.

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

Art. 59.062. ENFORCEMENT. (a) Authorizes the attorney general to institute a suit in the name of the state in a district court in a county in which the law enforcement agency or attorney representing the state is located or in a Travis County district court for injunction relief, to recover a civil penalty, or for both injunction relief and a civil penalty, if the results of an audit or investigation under this chapter indicate that a law enforcement agency or attorney representing the state violated 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 after a finding that a law enforcement agency or attorney representing the state violated 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 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 appropriated for the nature and seriousness of the violation. Requires the court, in determining an appropriate penalty for the violation, to consider certain factors.

(d) Authorizes the attorney general, if the attorney general brings 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) Provides that any penalty, cost, fee, or other expense awarded under this article is payable solely from the special fund created under Article 59.06(c) by the law enforcement agency or attorney representing the state for the administration of forfeiture funds.

(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.

SECTION 5. Makes application of the changes in law made by this Act to Article 59.03, Code of Criminal Procedure, prospective.

SECTION 6. Provides that the changes in law made by this Act to Articles 59.06, 59.061 and 59.062, 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 seizure of the proceeds or property occurred before, on, or after the effective date of this Act.

SECTION 7. Effective date: September 1, 2009.