

BILL ANALYSIS

C.S.H.B. 805
By: Dale
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties express concern over recent court rulings that show the lack of obligation to return certain property seized in relation to an asset forfeiture proceeding determined to have been seized unconstitutionally. C.S.H.B. 805 seeks to address this issue by protecting such property from seizure and forfeiture.

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

ANALYSIS

C.S.H.B. 805 amends the Code of Criminal Procedure to exempt contraband property from being subject to seizure and forfeiture if the property is not otherwise unlawful to possess and if the evidence is inadmissible in the prosecution of the underlying offense because it was obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas or of the United States. The bill restricts the presentation of evidence in a contraband forfeiture proceeding by the attorney representing the state to evidence that would be admissible under those circumstances in the prosecution of the underlying offense giving rise to the forfeiture and establishes that a determination that evidence is admissible for the purpose of the forfeiture proceeding does not act as collateral estoppel on any issue in the prosecution of the underlying offense giving rise to the forfeiture. The bill authorizes a party to a contraband forfeiture proceeding, for purposes of evaluating the admissibility of evidence sought to be presented in the proceeding, to request a stay of that proceeding to allow the applicable determinations to be made in the prosecution of the underlying offense giving rise to the forfeiture. The bill requires the court to grant the request unless the court finds good cause to deny the request.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 805 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Article 59.02, Code of Criminal Procedure, is amended.

SECTION 2. Article 59.05, Code of Criminal Procedure, is amended by adding Subsection (b-1) to read as follows:

(b-1) In a forfeiture proceeding under this chapter, the attorney representing the state may only present evidence the admissibility of which would not be prohibited under Article 38.23 in the prosecution of the underlying offense giving rise to the forfeiture.

SECTION 3. The change in law made by this Act applies only to a forfeiture proceeding that begins on or after the effective date of this Act. A forfeiture proceeding that begins before the effective date of this Act is governed by the law in effect on the date the proceeding begins, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2017.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

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

(b-1) In a forfeiture proceeding under this chapter, the attorney representing the state may only present evidence the admissibility of which would not be prohibited under Article 38.23 in the prosecution of the underlying offense giving rise to the forfeiture. A determination that evidence is admissible for the purpose of the forfeiture proceeding does not act as collateral estoppel on any issue in the prosecution of the underlying offense giving rise to the forfeiture.

(b-2) For purposes of evaluating the admissibility of evidence sought to be presented in the proceeding, a party to a forfeiture proceeding under this chapter may request a stay of that proceeding to allow the applicable determinations to be made in the prosecution of the underlying offense giving rise to the forfeiture. The court shall grant the request unless the court finds good cause to deny the request.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.