

- SUBJECT:** Use of forfeited criminal assets by law enforcement, prosecutors
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Herrero, Carter, Canales, Hughes, Leach, Moody
0 nays
2 absent — Schaefer, Toth
1 present not voting — Burnam
- WITNESSES:** For — (*Registered, but did not testify*: Lon Craft, Texas Municipal Police Association; Steven Tays, Bexar County Criminal District Attorney’s Office; Steve Nguyen

Against — (*Registered, but did not testify*: Meredith Kincaid, American Civil Liberties Union of Texas)

On — Shannon Edmonds, Texas District and County Attorneys Association; (*Registered, but did not testify*: Kent Richardson, Office of the Attorney General; J. D. Robertson, Texas Rangers, Department of Public Safety)
- BACKGROUND:** Code of Criminal Procedure governs the forfeiture of contraband used in the commission of crimes. Art. 59.06 covers the disposition of forfeited assets and property. Under 59.06(c), if there is an agreement between the prosecutor and local law enforcement agencies, the money, securities, and proceeds from the sale of forfeited contraband must be deposited according to the terms of the agreement into one or more funds listed in the section.

One fund to which the proceeds of forfeited contraband can be deposited is a special fund in the city treasury if it is distributed to a municipal law enforcement agency for law enforcement purposes, “such as salaries and overtime pay for officers, officer training, specialized investigative equipment and supplies and items used by officers in direct law enforcement duties.”

Under 59.06(c-1), prosecutors and special rangers of the Southwestern Cattle Raisers Association can enter into agreements that allow the prosecutor to transfer forfeiture proceeds to a fund for the special rangers. It must be used for law enforcement purposes, “such as training, essential equipment, and operating equipment.”

Sec. 59.06(c)(1) allows proceeds to be deposited in the county treasury for the benefit of the local prosecutor’s office, to be used by the prosecutor solely for the purposes of the office.

DIGEST:

CSHB 1849 would eliminate the list of items designated as “law enforcement purposes” for which law enforcement agencies and special rangers are authorized to use the proceeds of forfeited contraband under Code of Criminal Procedure, art. 59.06(c)(2) and (c-1).

The bill would establish that expenditures of proceeds or property would be considered to be for law enforcement purposes if they were made for an activity of a law enforcement agency that related to criminal and civil law enforcement, including expenditures made for:

- salaries and overtime;
- equipment;
- supplies;
- investigative and training-related travel;
- conference and training expenses;
- investigative costs;
- crime prevention and treatment programs;
- facility costs;
- witness-related costs; and
- audit costs and fees.

CSHB 1849 would establish that expenditures of proceeds or property would be considered to be for the official purpose of a prosecutor’s office if they were made for an activity of a prosecutor or office of a prosecutor that related to the preservation, enforcement, or administration of law, including expenditures made for:

- salary and overtime;
- equipment; supplies;
- prosecution and training-related travel expenses;

- conferences and training;
- investigative costs;
- crime prevention and treatment;
- facilities costs;
- legal fees; and
- state bar and legal association dues.

For both of these lists, the bill would include examples in many of these categories.

The bill would take effect September 1, 2013, and would apply to the disposition or use, on or after that date, of proceeds or property, regardless of when the receipt of the proceeds occurred.

**SUPPORTERS
SAY:**

CSHB 1849 would help clear up confusion and address abuses of the use of proceeds from criminal asset forfeitures. While current law prohibits certain uses of these funds, it does not contain adequate guidance on what is permitted. The problems with current law have led to a string of abuses, such as the use of proceeds for trips to Hawaii and personal vehicles.

The bill would address this problem by establishing the broad purpose for which these funds could be used and listing categories and examples of acceptable uses. This would give law enforcement agencies, prosecutors, and the public guidance about what was an authorized use of asset forfeiture proceeds and property. Such a list would improve uniformity, oversight, transparency, and accountability of the use of these forfeited assets.

CSHB 1849 would not establish an exclusive list of approved expenditures so as to give law enforcement agencies and prosecutors the necessary flexibility in handling these proceeds and property. Although the bill would allow for flexibility in expenditures, all expenditures — whether on the list or not — would have to meet the broad governing principles that they are for activities of law enforcement agencies related to criminal and civil law enforcement and activities of prosecutors related to the preservation, enforcement, or administration of law. This would give guidance and set parameters for individual acceptable expenditures.

**OPPONENTS
SAY:**

It would be best to establish a closed list of acceptable expenditures, rather than an open-ended list, to ensure that all expenditures were closely tied to law enforcement or prosecutorial activities. This would remove

uncertainty about expenditures not listed in the bill and ensure that expenditures were uniform statewide.

OTHER
OPPONENTS
SAY:

It would be inappropriate to allow forfeited assets to be used as payments to informants. The use of paid informants has been questioned in the past, and should not be supported through these funds.