

BILL ANALYSIS

Senate Research Center
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S.B. 1701
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1701 affects asset forfeiture cases. In these cases it would allow the state a rebuttal on the grounds that conduct occurred that would give reason for forfeiture and that the conduct was likely the source of the property subject to forfeiture and only explanation for the property.

A court may not suppress evidence solely because it was acquired by a search and seizure that violated the rights of the owner or interest holder.

If a court cannot locate the property to be forfeited or the person in question has taken some measure to hide the asset, the court may order the forfeiture on some other equal or lesser asset that may not normally be the subject of forfeiture.

As proposed, S.B. 1701 amends current law relating to procedures for and evidence that may be presented at a criminal asset forfeiture hearing and to the forfeiture of substitute assets under certain circumstances.

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 59.05, Code of Criminal Procedure, by adding Subsections (b-1) and (b-2) and amending Subsection (e), as follows:

(b-1) Establishes a rebuttable presumption that property is subject to forfeiture if the state shows by a preponderance of the evidence that:

(1) the conduct giving rise to the forfeiture occurred; and

(2) the conduct giving rise to the forfeiture is the only likely source of the property subject to forfeiture or provides the only likely explanation for that property.

(b-2) Prohibits a court, in a hearing conducted under this article, from suppressing evidence solely because the evidence was acquired pursuant to a search or seizure that violated the rights of the owner or interest holder under the Constitution of the United States or of the State of Texas.

(e)(1) Provides that it is the intention of the legislature that asset forfeiture is remedial in nature and not a form of punishment.

(2) Requires the judge, if the court finds that all or any part of the property is subject to forfeiture, to forfeit the property to the state, with the attorney representing the state as the agent for the state, except that if the court finds that the nonforfeitable interest of an interest holder in the property is valued in an

amount greater than or substantially equal to the present value of the property, the court is required to order the property released to the interest holder.

(3) Requires the court, if the court finds that the nonforfeitable interest of an interest holder is valued in an amount substantially less than the present value of the property and that the property is subject to forfeiture, to order the property forfeited to the state with the attorney representing the state acting as the agent of the state, and making necessary orders to protect the nonforfeitable interest of the interest holder.

(4) Authorizes the court to order the forfeiture of any other property of a person that otherwise is not subject to forfeiture under this article if the court finds that property of the person that has been forfeited under this subsection, as a result of an act or omission of the person:

(A) cannot be located on exercise of due diligence;

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

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

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

(5) Prohibits the court, in ordering the forfeiture of substitute assets under Subdivision (4), from ordering the forfeiture of property with a value greater than the value of the property originally ordered forfeited by the court.

(6) Requires the attorney representing the state, on final judgment of forfeiture, to dispose of the property in the manner required by Article 59.06 (Disposition of Forfeited Property) of this code.

SECTION 2. (a) Provides that the change in law made by this Act in adding Articles 59.05(b-1) and (b-2), Code of Criminal Procedure, applies only to a forfeiture proceeding that begins on or after the effective date of this Act. Provides that 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.

(b) Provides that the change in law made by this Act in amending Article 59.05(e), Code of Criminal Procedure, authorizes a court to order the forfeiture of substitute assets for any property originally ordered forfeited by the court, regardless of whether the original order of forfeiture occurred before, on, or after the effective date of this Act.

SECTION 3. Effective date: September 1, 2011.