

SUBJECT: Requiring forfeiture of profits from sale of crime memorabilia

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Hinojosa, Keel, Talton, Green, Kitchen, Martinez Fischer, Shields
0 nays
2 absent — Dunnam, Garcia

WITNESSES: For — William “Rusty” Hubbarth, Justice For All; Andy Kahan, Mayor’s Crime Victims’ Office, Houston; Madonna Pitrucha; Patsy M. Teer; *Registered but did not testify:* Kevin F. Lawrence, Texas Municipal Police Association; Dorothy N. LeBleu; Doug Adkinson, Office of Harris County Judge Robert Eckels
Against — None

BACKGROUND: Code of Criminal Procedure (CCP), art. 59 governs forfeiture of contraband. Among other things, contraband includes proceeds that a person accused or convicted of a crime or the person’s representative or assignee receives from a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, or live entertainment in which the crime was reenacted.

Art. 59.04-59.05 sets forth requirements for a forfeiture proceeding and allows the person from whom the property or proceeds are seized to have a hearing to determine the final disposition of the property or proceeds. Art. 59.06(k) requires the state’s attorney to transfer to the attorney general all forfeited property that is income from or acquired with income from a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, or live entertainment in which a crime is reenacted. This money is available to satisfy a judgment for damages incurred by the victim as a result of the crime. If the money has not been awarded within five years, it is transferred to the crime victims’ compensation fund.

DIGEST: CSHB 909 would amend the definition of “proceeds” in CCP, art. 59.01 to include the sale of tangible property whose value is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime.

The state’s attorney would have to transfer to the attorney general all proceeds from the sale of such property. The state’s attorney would have to determine the fair market value of property that was similar to the property sold but that had not increased in value because of notoriety and to deduct that amount from the sale proceeds. After transferring the appropriate amount to the attorney general, the state’s attorney would have to transfer the remainder to the property’s owner. The state’s attorney, the attorney general, or a victim who might be entitled to claim money from the proceeds could bring legal action at any time to enjoin the waste of income described by this provision.

CSHB 909 would take effect on September 1, 2001, and would apply only to sales occurring on or after that date.

SUPPORTERS SAY: Criminals should not be allowed to murder, rape, and rob people and then profit from the pain and suffering they have caused. CSHB 909 would prevent criminals from profiting by selling personal items to collectors at a value inflated by the notoriety of their crimes. Current death-row inmates are selling to brokers of crime memorabilia items such as correspondence, artwork, strands of hair, nail clippings, autopsy reports, and crime-scene photographs that would have no value if the criminal were not notorious. These inmates should not be able to trade on their notoriety as murderers to make money.

CSHB 909 would allow victims and their families to recover some of their losses by placing the profits of an accused or convicted felon into a trust for the victims. The bill would protect felons’ rights to sell items for their actual value by placing in trust only the profit made from the felon’s notoriety above the intrinsic value of the item.

This bill would reduce the number of “murderabilia” items available for sale. Families of murder victims live in dread of seeing photographs of the crime scene or other items connected to the crime available for public sale.

For example, up to 300 items connected to serial killers are for sale on the eBay auction site over the Internet on any given day. The company refuses to prohibit the sale of items that profit criminals until Texas law disallows it.

Reducing the number of such items available for sale could lower the incidence of “copycat” crimes. The more a criminal’s acts are publicized, the more likely it is that someone else will get the idea to imitate that crime.

CSHB 909 would pass constitutional muster because it would not affect Texans’ First Amendment rights to free expression. It would not prevent news media from reporting crimes, nor would it prohibit other people from writing books about the crimes or selling manufactured items depicting the criminal. The bill simply would prohibit these people from sharing profits with the criminal.

The bill would not create an unfunded mandate for counties. According to the bill’s fiscal note, it would have no significant fiscal impact on units of local government.

OPPONENTS
SAY:

CSHB 909 would create an unfunded mandate for counties to provide appraisal services for crime memorabilia. State’s attorneys are not necessarily qualified to appraise the market value of tangible items for sale. Counties might have to contract with outside appraisal services at considerable cost.

This bill could reward buyers of crime memorabilia by refunding them part of the money they paid for an item and allowing them to keep the item. It would require the state’s attorney to transfer to the item’s “owner” proceeds of the sale in an amount equaling the fair market value of the item. After a sale, the owner of an item is the buyer. The bill should specify that the money for the fair market value would be transferred to the seller of the item.

NOTES:

HB 909 as filed also would have prohibited a person other than the criminal or criminal’s representative from profiting from the sale of an item whose value was increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime.

The companion bill, SB 795 by Ellis, passed the Senate on April 11 by voice vote and was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on April 24, making it eligible to be considered in lieu of HB 909.