

BILL ANALYSIS

Senate Research Center
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S.B. 95
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Civil forfeiture is a process by which local, state, and federal law enforcement authorities obtain ownership and control of an individual's property following an alleged crime. Unlike legal action taken against a person accused of criminal conduct, civil forfeiture is a case brought against the property itself. The property is guilty until proven innocent, and is held by the seizing agency regardless of whether criminal charges are brought against the individual. Once property is seized, the legal costs associated with getting one's property back often far exceed the cost of the property itself, placing a great burden on the property owner. As such, many forfeiture proceeds go uncontested.

Law enforcement agencies at all levels that are experiencing budget deficits have the incentive to rely on civil asset forfeiture to boost revenue, fund operations, buy new equipment, increase employee salaries, and so forth. These laws can encourage law enforcement agencies to "police for profit," and undermine innocent owners' property rights.

Current Texas law gives the government a very low burden of proof in civil forfeiture cases. In order to seize and forfeit a property, the government only has to show by a "preponderance of the evidence" that it was connected with an alleged crime. The purpose of this legislation is to raise the legal standard in forfeiture proceedings from "preponderance of the evidence" to "clear and convincing evidence." This is below the "beyond a reasonable doubt" standard required in criminal cases, but would provide significantly greater protections for Texans who stand to lose their property through civil forfeiture.

As proposed, S.B. 95 amends current law relating to the state's burden of proof in certain criminal asset forfeiture proceedings.

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 59.021(d), Code of Criminal Procedure, to require that the disposition, after seizure of the substitute property, proceed as other cases in this chapter except that the attorney representing the state is required to prove by clear and convincing evidence, rather than a preponderance of the evidence, that the property fulfills certain criteria as set forth.

SECTION 2. Amends Article 59.05(b), Code of Criminal Procedure, to provide that the state has the burden of proving by clear and convincing evidence, rather than a preponderance of the evidence, that property is subject to forfeiture.

SECTION 3. Amends Section 12.1106(d), Parks and Wildlife Code, to require the court to order the seized property forfeited to the Parks and Wildlife Department if the court determines by clear and convincing evidence, rather than a preponderance of the evidence, that the seized property fulfills certain criteria as set forth.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2015.