

CODE OF CRIMINAL PROCEDURE
TITLE 1. CODE OF CRIMINAL PROCEDURE
CHAPTER 59. FORFEITURE OF CONTRABAND

Art. 59.01. DEFINITIONS. In this chapter:

(1) "Attorney representing the state" means the prosecutor with felony jurisdiction in the county in which a forfeiture proceeding is held under this chapter or, in a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(v) of this article, the city attorney of a municipality if the property is seized in that municipality by a peace officer employed by that municipality and the governing body of the municipality has approved procedures for the city attorney acting in a forfeiture proceeding. In a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(vi) of this article, the term includes the attorney general.

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

(i) any first or second degree felony under the Penal Code;

(ii) any felony under Section 15.031(b), 20.05, 20.06, 21.11, 38.04, or Chapter 43, 20A, 29, 30, 31, 32, 33, 33A, or 35, Penal Code;

(iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

(iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

(i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);

(ii) any felony under Chapter 483, Health and Safety Code;

(iii) a felony under Chapter 151, Finance

Code;

(iv) any felony under Chapter 34, Penal

Code;

(v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;

(vi) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;

(vii) a Class B misdemeanor under Chapter 522, Business & Commerce Code;

(viii) a Class A misdemeanor under Section 306.051, Business & Commerce Code;

(ix) any offense under Section 42.10, Penal Code;

(x) any offense under Section 46.06(a)(1) or 46.14, Penal Code;

(xi) any offense under Chapter 71, Penal Code;

(xii) any offense under Section 20.05 or 20.06, Penal Code; or

(xiii) an offense under Section 326.002, Business & Commerce Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x), or (xi) of this subdivision, or a crime of violence;

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code; or

(F) used to facilitate or intended to be used to facilitate the commission of a felony under Section 20A.02 or Chapter 43, Penal Code.

(3) "Crime of violence" means:

(A) any criminal offense defined in the Penal Code or in a federal criminal law that results in a personal injury to a victim; or

(B) an act that is not an offense under the Penal Code involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death sustained in an accident caused by a driver in violation of Section 550.021, Transportation Code.

(4) "Interest holder" means the bona fide holder of a perfected lien or a perfected security interest in property.

(5) "Law enforcement agency" means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.

(6) "Owner" means a person who claims an equitable or legal ownership interest in property.

(7) "Proceeds" includes income a person accused or convicted of a crime or the person's representative or assignee receives from:

(A) a movie, book, magazine article, tape recording, phonographic record, radio or television presentation, telephone service, electronic media format, including an Internet website, or live entertainment in which the crime was reenacted; or

(B) the sale of tangible property the value of which is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime.

(8) "Seizure" means the restraint of property by a peace officer under Article 59.03(a) or (b) of this code, whether the officer restrains the property by physical force or by a display of the officer's authority, and includes the collection of property or the act of taking possession of property.

(9) "Depository account" means the obligation of a regulated financial institution to pay the account owner under a written agreement, including a checking account, savings account, money market account, time deposit, NOW account, or certificate of deposit.

(10) "Primary state or federal financial institution

regulator" means the state or federal regulatory agency that chartered and comprehensively regulates a regulated financial institution.

(11) "Regulated financial institution" means a depository institution chartered by a state or federal government, the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 1, eff. Oct. 18, 1989. Subd. (2) amended by Acts 1991, 72nd Leg., ch. 102, Sec. 2, eff. Sept. 1, 1991; Subds. (1), (2) amended by Acts 1993, 73rd Leg., ch. 828, Sec. 1, eff. Sept. 1, 1993; Subd. (2) amended by Acts 1993, 73rd Leg., ch. 761, Sec. 5, eff. Sept. 1, 1993. Amended by Acts 1993, 73rd Leg., ch. 780, Sec. 1, eff. Sept. 1, 1993. Subd. (2) amended by Acts 1995, 74th Leg., ch. 621, Sec. 3, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 708, Sec. 2, eff. Sept. 1, 1995; Subd. (3) amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.91, 5.95(112), eff. Sept. 1, 1995; Subd. (2) amended by Acts 1997, 75th Leg., ch. 306, Sec. 6, eff. Sept. 1, 1997; Subd. (2) amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.48, eff. Sept. 1, 1999; Subd. (3) amended by Acts 1999, 76th Leg., ch. 62, Sec. 3.09, eff. Sept. 1, 1999; Subd. (2) amended by Acts 2001, 77th Leg., ch. 467, Sec. 1, eff. Sept. 1, 2001; Subd. (7) amended by Acts 2001, 77th Leg., ch. 124, Sec. 1, eff. Sept. 1, 2001; Subds. (9) to (11) added by Acts 2001, 77th Leg., ch. 438, Sec. 1, eff. Sept. 1, 2001; Subds. (1) and (2) amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.141, eff. Sept. 1, 2003; Subds. (1) and (2) amended by Acts 2003, 78th Leg., ch. 257, Sec. 17, eff. Sept. 1, 2003; Subd. (2) amended by Acts 2003, 78th Leg., ch. 649, Sec. 3, eff. Sept. 1, 2003; Subd. (2) amended by Acts 2003, 78th Leg., ch. 1005, Sec. 7, eff. Sept. 1, 2003; Subd. (7) amended by Acts 2003, 78th Leg., ch. 428, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 617 (H.B. [2275](#)), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 944 (H.B. [840](#)), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 944 (H.B. [840](#)), Sec. 2, eff.

September 1, 2005.

Acts 2005, 79th Leg., Ch. 1026 (H.B. [1048](#)), Sec. 3, eff.

September 1, 2005.

Acts 2005, 79th Leg., Ch. 1026 (H.B. [1048](#)), Sec. 4, eff.

September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 127 (S.B. [1694](#)), Sec. 6, eff.

September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 822 (H.B. [73](#)), Sec. 2, eff.

September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. [2278](#)), Sec. 2.14, eff. April 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 6.006, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 153 (S.B. [2225](#)), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. [2086](#)), Sec. 11, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1357 (S.B. [554](#)), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. [1303](#)), Sec. 6.003, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 223 (H.B. [260](#)), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 515 (H.B. [2014](#)), Sec. 2.04, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 427 (S.B. [529](#)), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1357 (S.B. [1451](#)), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 333 (H.B. [11](#)), Sec. 3, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. [1296](#)), Sec. 4.004, eff. September 1, 2015.

Art. 59.011. ELECTION OF FORFEITURE PROCEEDING. If property described by Article [59.01\(2\)\(B\)\(ix\)](#), (x), or (xi) is subject to forfeiture under this chapter and Article [18.18](#), the

attorney representing the state may proceed under either this chapter or that article.

Reenacted and amended by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 6.004, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1357 (S.B. 1451), Sec. 2, eff. September 1, 2013.

Art. 59.02. FORFEITURE OF CONTRABAND. (a) Property that is contraband is subject to seizure and forfeiture under this chapter.

(b) Any property that is contraband other than property held as evidence in a criminal investigation or a pending criminal case, money, a negotiable instrument, or a security that is seized under this chapter may be replevied by the owner or interest holder of the property, on execution of a good and valid bond with sufficient surety in a sum equal to the appraised value of the property replevied. The bond may be approved as to form and substance by the court after the court gives notice of the bond to the authority holding the seized property. The bond must be conditioned:

(1) on return of the property to the custody of the state on the day of hearing of the forfeiture proceedings; and

(2) that the interest holder or owner of the property will abide by the decision that may be made in the cause.

(c) An owner or interest holder's interest in property may not be forfeited under this chapter if the owner or interest holder proves by a preponderance of the evidence that the owner or interest holder acquired and perfected the interest:

(1) before or during the act or omission giving rise to forfeiture or, if the property is real property, he acquired an ownership interest, security interest, or lien interest before a lis pendens notice was filed under Article 59.04(g) of this code and did not know or should not reasonably have known of the act or omission giving rise to the forfeiture or that it was likely to occur at or before the time of acquiring and perfecting the interest or, if the property is real property, at or before the time of acquiring the ownership interest, security interest, or lien interest; or

(2) after the act or omission giving rise to the forfeiture, but before the seizure of the property, and only if the owner or interest holder:

(A) was, at the time that the interest in the property was acquired, an owner or interest holder for value; and

(B) was without reasonable cause to believe that the property was contraband and did not purposefully avoid learning that the property was contraband.

(d) Notwithstanding any other law, if property is seized from the possession of an owner or interest holder who asserts an ownership interest, security interest, or lien interest in the property under applicable law, the owner or interest holder's rights remain in effect during the pendency of proceedings under this chapter as if possession of the property had remained with the owner or interest holder.

(e) On motion by any party or on the motion of the court, after notice in the manner provided by Article 59.04 of this code to all known owners and interest holders of property subject to forfeiture under this chapter, and after a hearing on the matter, the court may make appropriate orders to preserve and maintain the value of the property until a final disposition of the property is made under this chapter, including the sale of the property if that is the only method by which the value of the property may be preserved until final disposition.

(f) Any property that is contraband and has been seized by the Texas Department of Criminal Justice shall be forfeited to the department under the same rules and conditions as for other forfeitures.

(g) An individual, firm, corporation, or other entity insured under a policy of title insurance may not assert a claim or cause of action on or because of the policy if the claim or cause of action is based on forfeiture under this chapter and, at or before the time of acquiring the ownership of real property, security interest in real property, or lien interest against real property, the insured knew or reasonably should have known of the act or omission giving rise to the forfeiture or that the act or omission was likely to occur.

(h)(1) An owner or interest holder's interest in property may

not be forfeited under this chapter if at the forfeiture hearing the owner or interest holder proves by a preponderance of the evidence that the owner or interest holder was not a party to the offense giving rise to the forfeiture and that the contraband:

(A) was stolen from the owner or interest holder before being used in the commission of the offense giving rise to the forfeiture;

(B) was purchased with:

(i) money stolen from the owner or interest holder; or

(ii) proceeds from the sale of property stolen from the owner or interest holder; or

(C) was used or intended to be used without the effective consent of the owner or interest holder in the commission of the offense giving rise to the forfeiture.

(2) An attorney representing the state who has a reasonable belief that property subject to forfeiture is described by Subdivision (1) and who has a reasonable belief as to the identity of the rightful owner or interest holder of the property shall notify the owner or interest holder as provided by Article 59.04.

(3) An attorney representing the state is not liable in an action for damages resulting from an act or omission in the performance of the duties imposed by Subdivision (2).

(4) The exclusive remedy for failure by the attorney representing the state to provide the notice required under Subdivision (2) is submission of that failure as a ground for new trial in a motion for new trial or bill of review.

(i) The forfeiture provisions of this chapter apply to contraband as defined by Article 59.01(2)(B)(v) of this code only in a municipality with a population of 250,000 or more.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 1, eff. Oct. 18, 1989. Subsec. (g) added by Acts 1993, 73rd Leg., ch. 828, Sec. 2, eff. Sept. 1, 1993; Subsecs. (c) to (g) amended by Acts 2001, 77th Leg., ch. 438, Sec. 2, eff. Sept. 1, 2001; Subsec. (h) added by Acts 2001, 77th Leg., ch. 438, Sec. 2, eff. Sept. 1, 2001, and by Acts 2001, 77th Leg., ch. 929, Sec. 1, eff. Sept. 1, 2001. Subsec. as added by Acts 2001, 77th Leg. ch. 438, Sec. 2 renumbered as subsec. (i) by Acts 2003, 78th Leg., ch. 1275, Sec. 2(9), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.043, eff. September 1, 2009.

Art. 59.021. FORFEITURE OF SUBSTITUTE PROPERTY. (a) In this article, "substitute property" means property:

(1) that is not contraband; and

(2) that is owned by a person who is or was the owner of, or has or had an interest in, contraband with an aggregate value of \$200,000 or more.

(b) Substitute property may be seized under authority of a search warrant issued under Subsection (c) if property that is contraband:

(1) can no longer be located after the exercise of reasonable diligence;

(2) has been transferred, conveyed, sold to, or deposited with a person other than the owner or interest holder;

(3) is not within the jurisdiction of the court;

(4) has substantially diminished in value;

(5) has been commingled with other property and cannot be readily distinguished or separated; or

(6) is proceeds described by Article 59.01(2)(C) and was used to acquire other property that is not within the jurisdiction of the court.

(c) A district court may issue a search warrant authorizing a peace officer to seize substitute property if the officer submits an affidavit that states:

(1) probable cause for the commission of an offense giving rise to forfeiture of contraband;

(2) a description of the contraband involved and the estimated current fair market value of the substitute property to be seized;

(3) the reasons the contraband is unavailable for forfeiture;

(4) probable cause to believe that the owner of the substitute property owned or had an interest in contraband with an aggregate value of \$200,000 or more in connection with the

commission of an underlying offense giving rise to the forfeiture;
and

(5) that due diligence has been exercised in identifying the minimum amount of substitute property necessary to approximate the estimated highest fair market value of the contraband during the period in which the owner of the substitute property owned, or had an interest in, the contraband.

(d) After seizure of the substitute property, the disposition shall proceed as other cases in this chapter except that the attorney representing the state must prove by a preponderance of the evidence:

(1) that the contraband described by Subsection (b) was subject to seizure and forfeiture under this chapter;

(2) the highest fair market value of that contraband during the period in which the owner of the substitute property owned, or had an interest in, the contraband;

(3) the fair market value of the substitute property at the time it was seized; and

(4) that the owner of the substitute property owned or had an interest in contraband with an aggregate value of \$200,000 or more in connection with the commission of an underlying offense giving rise to the forfeiture.

(e) For purposes of determining the aggregate value of contraband under Subsection (c) or (d), the owner or interest holder is not required to have simultaneously owned or had an interest in all of the property constituting contraband.

(f) If the fair market value of the substitute property seized exceeds the highest fair market value of the contraband described by Subsection (b) during the period in which the owner of the substitute property owned, or had an interest in, the contraband, the court shall make appropriate orders to ensure that property equal in value to the excess is returned to the person or persons from whom the substitute property was seized.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1357 (S.B. [1451](#)), Sec. 3, eff. September 1, 2013.

Art. 59.022. PROPERTY REMOVED FROM THIS STATE. (a) This

article applies to contraband, other than real property, that is determined to be located outside of this state.

(b) A peace officer who identifies contraband described by Subsection (a) shall provide the attorney representing the state a sworn statement that identifies the contraband and the reasons the contraband is subject to seizure. On receiving the sworn statement, the attorney representing the state may file, in the name of the state, a notice of intended forfeiture in a district court in:

(1) the county in which the contraband, or proceeds used to acquire the contraband, was known to be situated before its removal out of this state;

(2) the county in which any owner or possessor of the contraband was prosecuted for an underlying offense for which the property is subject to forfeiture;

(3) the county in which venue existed for prosecution of an underlying offense for which the property is subject to forfeiture; or

(4) Travis County.

(c) The attorney representing the state shall request that citation be served on any person who owns or is in possession or control of the contraband to which this article applies and, on service in accordance with the Texas Rules of Civil Procedure, may move to have the court order that the contraband be:

(1) returned or brought to the jurisdiction of the court; or

(2) delivered to an agent of this state for transportation to the jurisdiction of the court.

(d) The attorney representing the state is entitled to all reasonable discovery in accordance with the Texas Rules of Civil Procedure to assist in identifying and locating contraband described by Subsection (a).

(e) If the court orders the return of contraband under this article, the contraband, after return, is subject to seizure and forfeiture as otherwise provided by this chapter.

(f) If it is found that any person after being served with a citation under Subsection (c) has transported, concealed, disposed

of, or otherwise acted to prevent the seizure and forfeiture of contraband described by Subsection (a), the court may:

(1) order the payment to the attorney representing the state of costs incurred in investigating and identifying the location of the contraband, including discovery costs, reasonable attorney's fees, expert fees, other professional fees incurred by the attorney, and travel expenses;

(2) enter a judgment for civil contempt and impose:

(A) a fine of not more than \$10,000 or less than \$1,000;

(B) confinement in jail for a term of not more than 30 days or less than 10 days; or

(C) both fine and confinement;

(3) enter a judgment of forfeiture of the person's interest in the contraband;

(4) enter a judgment in the amount of the fair market value of the contraband;

(5) impose a civil penalty of not more than \$25,000 or less than \$1,000 for each item of contraband, or each separate fund, of which the person transported, concealed, disposed, or otherwise acted to prevent the seizure and forfeiture; or

(6) order any combination of Subdivisions (1) through (5).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1357 (S.B. [1451](#)), Sec. 3, eff. September 1, 2013.

Art. 59.023. SUIT FOR PROCEEDS. (a) A peace officer who identifies proceeds that are gained from the commission of an offense listed in Article [59.01](#)(2)(A) or (B) shall provide the attorney representing the state with an affidavit that identifies the amount of the proceeds and that states probable cause that the proceeds are contraband subject to forfeiture. On receiving the affidavit, the attorney representing the state may file for a judgment in the amount of the proceeds in a district court in:

(1) the county in which the proceeds were gained;

(2) the county in which any owner or possessor of the property was prosecuted for an underlying offense for which the

property is subject to forfeiture;

(3) the county in which venue existed for prosecution of an underlying offense for which the property is subject to forfeiture;

(4) the county in which the proceeds were seized; or

(5) Travis County.

(b) If the court determines that, based on an examination of the affidavit described by Subsection (a), probable cause exists for the suit to proceed, the court shall order that citation be served on all defendants named in the suit in accordance with the Texas Rules of Civil Procedure.

(c) Each person who is shown to have been a party to an underlying offense for which the proceeds are subject to forfeiture is jointly and severally liable in a suit under this article, regardless of whether the person has been charged for the offense. Added by Acts 2013, 83rd Leg., R.S., Ch. 1357 (S.B. [1451](#)), Sec. 3, eff. September 1, 2013.

Art. 59.024. MULTIPLE RECOVERY PROHIBITED. The attorney representing the state may proceed under Article [59.02](#), [59.021](#), [59.022](#), or [59.023](#), or any combination of those articles. If property or proceeds are awarded or forfeited to the state under this chapter for an underlying offense, a court may not award or forfeit additional property or proceeds that would exceed the highest fair market value of the contraband subject to forfeiture for that offense. For purposes of this article, the highest fair market value may be calculated at any time during the period in which the applicable person owned, possessed, or had an interest in the contraband.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1357 (S.B. [1451](#)), Sec. 3, eff. September 1, 2013.

Art. 59.03. SEIZURE OF CONTRABAND. (a) Property subject to forfeiture under this chapter, other than property described by Article [59.12](#), may be seized by any peace officer under authority of a search warrant.

(b) Seizure of property subject to forfeiture may be made

without warrant if:

(1) the owner, operator, or agent in charge of the property knowingly consents;

(2) the seizure is incident to a search to which the owner, operator, or agent in charge of the property knowingly consents;

(3) the property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding under this chapter; or

(4) the seizure was incident to a lawful arrest, lawful search, or lawful search incident to arrest.

(c) A peace officer who seizes property under this chapter has custody of the property, subject only to replevy under Article 59.02 of this code or an order of a court. A peace officer who has custody of property shall provide the attorney representing the state with a sworn statement that contains a schedule of the property seized, an acknowledgment that the officer has seized the property, and a list of the officer's reasons for the seizure. Not later than 72 hours after the seizure, the peace officer shall:

(1) place the property under seal;

(2) remove the property to a place ordered by the court; or

(3) require a law enforcement agency of the state or a political subdivision to take custody of the property and move it to a proper location.

(d) A person in the possession of property at the time a peace officer seizes the property under this chapter may at the time of seizure assert the person's interest in or right to the property. A peace officer, including the peace officer who seizes the property, may not request, require, or in any manner induce any person, including a person who asserts an interest in or right to the property, to execute a document purporting to waive the person's interest in or rights to property seized under this chapter.

(e) At any time before notice is filed under Article 59.04(b), an attorney representing the state may not request, require, or in any manner induce any person, including a person who asserts an interest in or right to property seized under this chapter, to execute a document purporting to waive the person's

interest in or rights to the property.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 1, eff. Oct. 18, 1989. Subsec. (a) amended by Acts 2001, 77th Leg., ch. 438, Sec. 3, eff. Sept. 1, 2001; Subsec. (d) added by Acts 2001, 77th Leg., ch. 929, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1321 (S.B. 316), Sec. 1, eff. September 1, 2011.

Art. 59.04. NOTIFICATION OF FORFEITURE PROCEEDING. (a) If a peace officer seizes property under this chapter, the attorney representing the state shall commence proceedings under this section not later than the 30th day after the date of the seizure.

(b) A forfeiture proceeding commences under this chapter when the attorney representing the state files a notice of the seizure and intended forfeiture in the name of the state with the clerk of the district court in the county in which the seizure is made. The attorney representing the state must attach to the notice the peace officer's sworn statement under Article 59.03 of this code or, if the property has been seized under Article 59.12(b), the statement of the terms and amount of the depository account or inventory of assets provided by the regulated financial institution to the peace officer executing the warrant in the manner described by Article 59.12(b). Except as provided by Subsection (c) of this article, the attorney representing the state shall cause certified copies of the notice to be served on the following persons in the same manner as provided for the service of process by citation in civil cases:

- (1) the owner of the property; and
- (2) any interest holder in the property.

(c) If the property is a motor vehicle, and if there is reasonable cause to believe that the vehicle has been registered under the laws of this state, the attorney representing the state shall ask the Texas Department of Motor Vehicles to identify from its records the record owner of the vehicle and any interest holder. If the addresses of the owner and interest holder are not otherwise known, the attorney representing the state shall request citation be served on such persons at the address listed with the

Texas Department of Motor Vehicles. If the citation issued to such address is returned unserved, the attorney representing the state shall cause a copy of the notice of the seizure and intended forfeiture to be posted at the courthouse door, to remain there for a period of not less than 30 days. If the owner or interest holder does not answer or appear after the notice has been so posted, the court shall enter a judgment by default as to the owner or interest holder, provided that the attorney representing the state files a written motion supported by affidavit setting forth the attempted service. An owner or interest holder whose interest is forfeited in this manner shall not be liable for court costs. If the person in possession of the vehicle at the time of the seizure is not the owner or the interest holder of the vehicle, notification shall be provided to the possessor in the same manner specified for notification to an owner or interest holder.

(d) If the property is a motor vehicle and is not registered in this state, the attorney representing the state shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed in another state. If the vehicle is licensed in a state that has a certificate of title law, the attorney representing the state shall request the appropriate agency of that state to identify the record owner of the vehicle and any interest holder.

(e) If a financing statement is required by law to be filed to perfect a security interest affecting the property, and if there is reasonable cause to believe that a financing statement has been filed, the attorney representing the state who commences the proceedings shall ask the appropriate official designated by Chapter 9, Business & Commerce Code, to identify the record owner of the property and the person who is an interest holder.

(f) If the property is an aircraft or a part of an aircraft, and if there is reasonable cause to believe that a perfected security instrument affects the property, the attorney representing the state shall request an administrator of the Federal Aviation Administration to identify from the records of that agency the record owner of the property and the holder of the perfected security instrument. The attorney representing the state

shall also notify the Department of Public Safety in writing of the fact that an aircraft has been seized and shall provide the department with a description of the aircraft.

(g) If the property is real property, the attorney representing the state, not later than the third day after the date proceedings are commenced, shall file a lis pendens notice describing the property with the county clerk of each county in which the property is located.

(h) For all other property subject to forfeiture, if there is reasonable cause to believe that a perfected security instrument affects the property, the attorney representing the state shall make a good faith inquiry to identify the holder of the perfected security instrument.

(i) Except as provided by Section (c) of this article, the attorney representing the state who commences the proceedings shall cause the owner and any interest holder to be named as a party and to be served with citation as provided by the Texas Rules of Civil Procedure.

(j) A person who was in possession of the property at the time it was seized shall be made a party to the proceeding.

(k) If no person was in possession of the property at the time it was seized, and if the owner of the property is unknown, the attorney representing the state shall file with the clerk of the court in which the proceedings are pending an affidavit stating that no person was in possession of the property at the time it was seized and that the owner of the property is unknown. The clerk of the court shall issue a citation for service by publication addressed to "The Unknown Owner of _____," filling in the blank space with a reasonably detailed description of the property subject to forfeiture. The citation must contain the other requisites prescribed by and be served as provided by Rules 114, 115, and 116, Texas Rules of Civil Procedure.

(l) Proceedings commenced under this chapter may not proceed to hearing unless the judge who is to conduct the hearing is satisfied that this article has been complied with and that the attorney representing the state will introduce into evidence at the hearing any answer received from an inquiry required by Subsections

(c)-(h) of this article.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 1, eff. Oct. 18, 1989. Subsec. (f) amended by Acts 1991, 72nd Leg., ch. 14, Sec. 282, eff. Sept. 1, 1991; Subsec. (b) amended by Acts 1995, 74th Leg., ch. 533, Sec. 1, eff. Sept. 1, 1995; Subsec. (c) amended by Acts 1995, ch. 165, Sec. 22(25), eff. Sept. 1, 1995; amended by Acts 1995, 74th Leg., ch. 533, Sec. 1, eff. Sept. 1, 1995; Subsec. (i) amended by Acts 1995, 74th Leg., ch. 533, Sec. 1, eff. Sept. 1, 1995; Subsec. (b) amended by Acts 2001, 77th Leg., ch. 438, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. [3097](#)), Sec. 3B.02, eff. September 1, 2009.

Art. 59.05. FORFEITURE HEARING. (a) All parties must comply with the rules of pleading as required in civil suits.

(b) All cases under this chapter shall proceed to trial in the same manner as in other civil cases. The state has the burden of proving by a preponderance of the evidence that property is subject to forfeiture.

(c) It is an affirmative defense to forfeiture under this chapter of property belonging to the spouse of a person whose acts gave rise to the seizure of community property that, because of an act of family violence, as defined by Section [71.004](#), Family Code, the spouse was unable to prevent the act giving rise to the seizure.

(d) A final conviction for an underlying offense is not a requirement for forfeiture under this chapter. An owner or interest holder may present evidence of a dismissal or acquittal of an underlying offense in a forfeiture proceeding, and evidence of an acquittal raises a presumption that the property or interest that is the subject of the hearing is nonforfeitable. This presumption can be rebutted by evidence that the owner or interest holder knew or should have known that the property was contraband.

(e) It is the intention of the legislature that asset forfeiture is remedial in nature and not a form of punishment. If the court finds that all or any part of the property is subject to forfeiture, the judge shall 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 shall order the property released to the interest holder. 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, the court shall 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. On final judgment of forfeiture, the attorney representing the state shall dispose of the property in the manner required by Article 59.06 of this code.

(f) On forfeiture to the state of an amount greater than \$2,500, the clerk of the court in which the forfeiture proceeding was held is entitled to court costs in that proceeding as in other civil proceedings unless the forfeiture violates federal requirements for multijurisdictional task force cases authorized under Chapter 362, Local Government Code. The procedure for collecting the costs is the procedure established under Subsections (a) and (c), Article 59.06.

(g) If property is seized at a federal checkpoint, the notice of seizure and intended forfeiture may be filed in and the proceeding may be held in:

- (1) the county in which the seizure occurred; or
- (2) with the consent of the owner, operator, or agent in charge of the property, a county that is adjacent to the county in which the seizure occurred, if both counties are in the same judicial district.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 1, eff. Oct. 18, 1989. Subsec. (d) amended by Acts 1993, 73rd Leg., ch. 780, Sec. 2, eff. Sept. 1, 1993; Subsec. (e) amended by Acts 1995, 74th Leg., ch. 533, Sec. 2, eff. Sept. 1, 1995; Subsec. (f) added by Acts 1999, 76th Leg., ch. 582, Sec. 1, eff. Sept. 1, 1999; Subsec. (c) amended by Acts 2003, 78th Leg., ch. 1276, Sec. 7.002(1), eff. Sept. 1, 2003; Subsec. (g) added by Acts 2003, 78th Leg., ch. 1153, Sec.

1, eff. Sept. 1, 2003.

Art. 59.06. DISPOSITION OF FORFEITED PROPERTY. (a) Except as provided by Subsection (k), all forfeited property shall be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies. If a local agreement has not been executed, the property shall be sold on the 75th day after the date of the final judgment of forfeiture at public auction under the direction of the county sheriff, after notice of public auction as provided by law for other sheriff's sales. The proceeds of the sale shall be distributed as follows:

(1) to any interest holder to the extent of the interest holder's nonforfeitable interest;

(2) after any distributions under Subdivision (1), if the Title IV-D agency has filed a child support lien in the forfeiture proceeding, to the Title IV-D agency in an amount not to exceed the amount of child support arrearages identified in the lien; and

(3) the balance, if any, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f) and, after that deduction, the deduction of storage and disposal costs, to be deposited not later than the 30th day after the date of the sale in the state treasury to the credit of the general revenue fund.

(b) If a local agreement exists between the attorney representing the state and law enforcement agencies, the attorney representing the state may transfer the property to law enforcement agencies to maintain, repair, use, and operate the property for official purposes if the property is free of any interest of an interest holder. The agency receiving the forfeited property may purchase the interest of an interest holder so that the property can be released for use by the agency. The agency receiving the forfeited property may maintain, repair, use, and operate the property with money appropriated for current operations. If the

property is a motor vehicle subject to registration under the motor vehicle registration laws of this state, the agency receiving the forfeited vehicle is considered to be the purchaser and the certificate of title shall issue to the agency. A law enforcement agency to which property is transferred under this subsection at any time may transfer or loan the property to any other municipal or county agency, a groundwater conservation district governed by Chapter 36, Water Code, or a school district for the use of that agency or district. A municipal or county agency, a groundwater conservation district, or a school district to which a law enforcement agency loans a motor vehicle under this subsection shall maintain any automobile insurance coverage for the vehicle that is required by law.

(b-1) If a loan is made by a sheriff's office or by a municipal police department, the commissioners court of the county in which the sheriff has jurisdiction or the governing body of the municipality in which the department has jurisdiction, as applicable, may revoke the loan at any time by notifying the receiving agency or district, by mail, that the receiving agency or district must return the loaned vehicle to the loaning agency before the seventh day after the date the receiving agency or district receives the notice.

(b-2) An agency that loans property under this article shall:

(1) keep a record of the loan, including the name of the agency or district to which the vehicle was loaned, the fair market value of the vehicle, and where the receiving agency or district will use the vehicle; and

(2) update the record when the information relating to the vehicle changes.

(c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, shall be deposited, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f), according to the terms of the agreement into one or more of the following funds:

(1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office;

(2) a special fund in the municipal treasury if distributed to a municipal law enforcement agency, to be used solely for law enforcement purposes;

(3) a special fund in the county treasury if distributed to a county law enforcement agency, to be used solely for law enforcement purposes; or

(4) a special fund in the state law enforcement agency if distributed to a state law enforcement agency, to be used solely for law enforcement purposes.

(c-1) Notwithstanding Subsection (a), the attorney representing the state and special rangers of the Texas and Southwestern Cattle Raisers Association who meet the requirements of Article 2.125 may enter into a local agreement that allows the attorney representing the state to transfer proceeds from the sale of forfeited property described by Subsection (c), after the deduction of court costs as described by that subsection, to a special fund established for the special rangers. Proceeds transferred under this subsection must be used by the special rangers solely for law enforcement purposes. Any expenditures of the proceeds are subject to the audit provisions established under this article.

(c-2) Any postjudgment interest from money, securities, negotiable instruments, stocks or bonds, or things of value, or proceeds from the sale of those items, that are deposited in an interest-bearing bank account under Subsection (c) shall be used for the same purpose as the principal.

(c-3) Notwithstanding Subsection (a), with respect to forfeited property seized in connection with a violation of Chapter 481, Health and Safety Code (Texas Controlled Substances Act), by a peace officer employed by the Department of Public Safety, in a proceeding under Article 59.05 in which a default judgment is rendered in favor of the state, the attorney representing the state shall enter into a local agreement with the department that allows the attorney representing the state either to:

(1) transfer forfeited property to the department to maintain, repair, use, and operate for official purposes in the manner provided by Subsection (b); or

(2) allocate proceeds from the sale of forfeited property described by Subsection (c), after the deduction of court costs as described by that subsection, in the following proportions:

(A) 40 percent to a special fund in the department to be used solely for law enforcement purposes;

(B) 30 percent to a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of the attorney's office; and

(C) 30 percent to the general revenue fund.

(c-4) Notwithstanding Subsections (a) and (c-3), with respect to forfeited property seized in connection with a violation of Chapter 481, Health and Safety Code (Texas Controlled Substances Act), by the Department of Public Safety concurrently with any other law enforcement agency, in a proceeding under Article 59.05 in which a default judgment is rendered in favor of the state, the attorney representing the state may allocate property or proceeds in accordance with a memorandum of understanding between the law enforcement agencies and the attorney representing the state.

(d) Proceeds awarded under this chapter to a law enforcement agency or to the attorney representing the state may be spent by the agency or the attorney after a budget for the expenditure of the proceeds has been submitted to the commissioners court or governing body of the municipality. The budget must be detailed and clearly list and define the categories of expenditures, but may not list details that would endanger the security of an investigation or prosecution. Expenditures are subject to the audit and enforcement provisions established under this chapter. A commissioners court or governing body of a municipality may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that the agency or the attorney receives from the commissioners court or governing body at or after the time the proceeds are awarded.

(d-1) The head of a law enforcement agency or an attorney representing the state may not use proceeds or property received under this chapter to:

- (1) contribute to a political campaign;
- (2) make a donation to any entity, except as provided by Subsection (d-2);
- (3) pay expenses related to the training or education of any member of the judiciary;
- (4) pay any travel expenses related to attendance at training or education seminars if the expenses violate generally applicable restrictions established by the commissioners court or governing body of the municipality, as applicable;
- (5) purchase alcoholic beverages;
- (6) make any expenditure not approved by the commissioners court or governing body of the municipality, as applicable, if the head of a law enforcement agency or attorney representing the state holds an elective office and:

(A) the deadline for filing an application for a place on the ballot as a candidate for reelection to that office in the general primary election has passed and the person did not file an application for a place on that ballot; or

(B) during the person's current term of office, the person was a candidate in a primary, general, or runoff election for reelection to that office and was not the prevailing candidate in that election; or

(7) increase a salary, expense, or allowance for an employee of the law enforcement agency or attorney representing the state who is budgeted by the commissioners court or governing body of the municipality unless the commissioners court or governing body first approves the increase.

(d-2) The head of a law enforcement agency or an attorney representing the state may use as an official purpose of the agency or attorney proceeds or property received under this chapter to make a donation to an entity that assists in:

- (1) the detection, investigation, or prosecution of:
 - (A) criminal offenses; or
 - (B) instances of abuse, as defined by Section

261.001, Family Code;

(2) the provision of:

(A) mental health, drug, or rehabilitation services; or

(B) services for victims or witnesses of criminal offenses or instances of abuse described by Subdivision (1); or

(3) the provision of training or education related to duties or services described by Subdivision (1) or (2).

(d-3) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for a law enforcement purpose if the expenditure is made for an activity of a law enforcement agency that relates to the criminal and civil enforcement of the laws of this state, including an expenditure made for:

(1) equipment, including vehicles, computers, firearms, protective body armor, furniture, software, uniforms, and maintenance equipment;

(2) supplies, including office supplies, mobile phone and data account fees for employees, and Internet services;

(3) investigative and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;

(4) conferences and training expenses, including fees and materials;

(5) investigative costs, including payments to informants and lab expenses;

(6) crime prevention and treatment programs;

(7) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;

(8) witness-related costs, including travel and security; and

(9) audit costs and fees, including audit preparation and professional fees.

(d-4) Except as otherwise provided by this article, an expenditure of proceeds or property received under this chapter is considered to be for an official purpose of an attorney's office if

the expenditure is made for an activity of an attorney or office of an attorney representing the state that relates to the preservation, enforcement, or administration of the laws of this state, including an expenditure made for:

(1) equipment, including vehicles, computers, visual aid equipment for litigation, firearms, body armor, furniture, software, and uniforms;

(2) supplies, including office supplies, legal library supplies and access fees, mobile phone and data account fees for employees, and Internet services;

(3) prosecution and training-related travel expenses, including payment for hotel rooms, airfare, meals, rental of and fuel for a motor vehicle, and parking;

(4) conferences and training expenses, including fees and materials;

(5) investigative costs, including payments to informants and lab expenses;

(6) crime prevention and treatment programs;

(7) facility costs, including building purchase, lease payments, remodeling and renovating, maintenance, and utilities;

(8) legal fees, including court costs, witness fees, and related costs, including travel and security, audit costs, and professional fees; and

(9) state bar and legal association dues.

(e) On the sale of contraband under this article, the appropriate state agency shall issue a certificate of title to the recipient if a certificate of title is required for the property by other law.

(f) A final judgment of forfeiture under this chapter perfects the title of the state to the property as of the date that the contraband was seized or the date the forfeiture action was filed, whichever occurred first, except that if the property forfeited is real property, the title is perfected as of the date a notice of lis pendens is filed on the property.

(g)(1) All law enforcement agencies and attorneys representing the state who receive proceeds or property under this

chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all the proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as appropriate. The annual period of the audit for a law enforcement agency is the fiscal year of the appropriate county or municipality and the annual period for an attorney representing the state is the state fiscal year. The audit must be completed on a form provided by the attorney general and must include a detailed report and explanation of all expenditures, including salaries and overtime pay, officer training, investigative equipment and supplies, and other items. Certified copies of the audit shall be delivered by the law enforcement agency or attorney representing the state to the attorney general not later than the 60th day after the date on which the annual period that is the subject of the audit ends.

(2) If a copy of the audit is not delivered to the attorney general within the period required by Subdivision (1), within five days after the end of the period the attorney general shall notify the law enforcement agency or the attorney representing the state of that fact. On a showing of good cause, the attorney general may grant an extension permitting the agency or attorney to deliver a copy of the audit after the period required by Subdivision (1) and before the 76th day after the date on which the annual period that is the subject of the audit ends. If the law enforcement agency or the attorney representing the state fails to establish good cause for not delivering the copy of the audit within the period required by Subdivision (1) or fails to deliver a copy of an audit within the extension period, the attorney general shall notify the comptroller of that fact.

(3) On notice under Subdivision (2), the comptroller shall perform the audit otherwise required by Subdivision (1). At the conclusion of the audit, the comptroller shall forward a copy of the audit to the attorney general. The law enforcement agency or attorney representing the state is liable to the comptroller for the costs of the comptroller in performing the audit.

(h) As a specific exception to the requirement of Subdivisions (1)-(3) of Subsection (c) of this article that the

funds described by those subdivisions be used only for the official purposes of the attorney representing the state or for law enforcement purposes, on agreement between the attorney representing the state or the head of a law enforcement agency and the governing body of a political subdivision, the attorney representing the state or the head of the law enforcement agency shall comply with the request of the governing body to deposit not more than a total of 10 percent of the gross amount credited to the attorney's or agency's fund into the treasury of the political subdivision. The governing body of the political subdivision shall, by ordinance, order, or resolution, use funds received under this subsection for:

(1) nonprofit programs for the prevention of drug abuse;

(2) nonprofit chemical dependency treatment facilities licensed under Chapter 464, Health and Safety Code;

(3) nonprofit drug and alcohol rehabilitation or prevention programs administered or staffed by professionals designated as qualified and credentialed by the Texas Commission on Alcohol and Drug Abuse; or

(4) financial assistance as described by Subsection (o).

(i) The governing body of a political subdivision may not use funds received under this subchapter for programs or facilities listed under Subsections (h)(1)-(3) if an officer of or member of the Board of Directors of the entity providing the program or facility is related to a member of the governing body, the attorney representing the state, or the head of the law enforcement agency within the third degree by consanguinity or the second degree by affinity.

(j) As a specific exception to Subdivision (4) of Subsection (c) of this article, the director of a state law enforcement agency may use not more than 10 percent of the amount credited to the special fund of the agency under that subdivision for the prevention of drug abuse and the treatment of persons with drug-related problems.

(k)(1) The attorney for the state shall transfer all

forfeited property that is income from, or acquired with the income from, a movie, book, magazine article, tape recording, phonographic record, radio or television presentation, telephone service, electronic media format, including an Internet website, or live entertainment in which a crime is reenacted to the attorney general.

(2) The attorney for the state shall transfer to the attorney general all income from the sale of tangible property the value of which is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime, minus the deduction authorized by this subdivision. The attorney for the state shall determine the fair market value of property that is substantially similar to the property that was sold but that has not been increased in value by notoriety and deduct that amount from the proceeds of the sale. After transferring income to the attorney general, the attorney for the state shall transfer the remainder of the proceeds of the sale to the owner of the property. The attorney for the state, the attorney general, or a person who may be entitled to claim money from the escrow account described by Subdivision (3) in satisfaction of a claim may at any time bring an action to enjoin the waste of income described by this subdivision.

(3) The attorney general shall deposit the money or proceeds from the sale of the property into an escrow account. The money in the account is available to satisfy a judgment against the person who committed the crime in favor of a victim of the crime if the judgment is for damages incurred by the victim caused by the commission of the crime. The attorney general shall transfer the money in the account that has not been ordered paid to a victim in satisfaction of a judgment to the compensation to victims of crime fund on the fifth anniversary of the date the account was established. In this subsection, "victim" has the meaning assigned by Article [56.32](#).

(1) A law enforcement agency that, or an attorney representing the state who, does not receive proceeds or property under this chapter during an annual period as described by Subsection (g) shall, not later than the 30th day after the date on

which the annual period ends, report to the attorney general that the agency or attorney, as appropriate, did not receive proceeds or property under this chapter during the annual period.

(m) As a specific exception to Subdivisions (1)-(3) of Subsection (c), a law enforcement agency or attorney representing the state may use proceeds received under this chapter to contract with a person or entity to prepare an audit as required by Subsection (g).

(n) As a specific exception to Subsection (c)(2) or (3), a local law enforcement agency may transfer not more than a total of 10 percent of the gross amount credited to the agency's fund to a separate special fund in the treasury of the political subdivision. The agency shall administer the separate special fund, and expenditures from the fund are at the sole discretion of the agency and may be used only for financial assistance as described by Subsection (o).

(o) The governing body of a political subdivision or a local law enforcement agency may provide financial assistance under Subsection (h)(4) or (n) only to a person who is a Texas resident, who plans to enroll or is enrolled at an institution of higher education in an undergraduate degree or certificate program in a field related to law enforcement, and who plans to return to that locality to work for the political subdivision or the agency in a field related to law enforcement. To ensure the promotion of a law enforcement purpose of the political subdivision or the agency, the governing body of the political subdivision or the agency shall impose other reasonable criteria related to the provision of this financial assistance, including a requirement that a recipient of the financial assistance work for a certain period of time for the political subdivision or the agency in a field related to law enforcement and including a requirement that the recipient sign an agreement to perform that work for that period of time. In this subsection, "institution of higher education" has the meaning assigned by Section [61.003](#), Education Code.

(p) Notwithstanding Subsection (a), and to the extent necessary to protect the commission's ability to recover amounts wrongfully obtained by the owner of the property and associated

damages and penalties to which the commission may otherwise be entitled by law, the attorney representing the state shall transfer to the Health and Human Services Commission all forfeited property defined as contraband under Article 59.01(2)(B)(vi). If the forfeited property consists of property other than money or negotiable instruments, the attorney representing the state may, if approved by the commission, sell the property and deliver to the commission the proceeds from the sale, minus costs attributable to the sale. The sale must be conducted in a manner that is reasonably expected to result in receiving the fair market value for the property.

(q)(1) Notwithstanding any other provision of this article, a multicounty drug task force, or a county or municipality participating in the task force, that is not established in accordance with Section 362.004, Local Government Code, or that fails to comply with the policies and procedures established by the Department of Public Safety under that section, and that participates in the seizure of contraband shall forward to the comptroller all proceeds received by the task force from the forfeiture of the contraband. The comptroller shall deposit the proceeds in the state treasury to the credit of the general revenue fund.

(2) The attorney general shall ensure the enforcement of Subdivision (1) by filing any necessary legal proceedings in the county in which the contraband is forfeited or in Travis County.

(r) As a specific exception to Subsection (c)(2), (3), or (4), a law enforcement agency may transfer not more than 10 percent of the gross amount credited to the agency's fund to a separate special fund established in the treasury of the political subdivision or maintained by the state law enforcement agency, as applicable. The law enforcement agency shall administer the separate special fund. Interest received from the investment of money in the fund shall be credited to the fund. The agency may use money in the fund only to provide scholarships to children of peace officers who were employed by the agency or by another law enforcement agency with which the agency has overlapping geographic jurisdiction and who were killed in the line of duty. Scholarships

under this subsection may be used only to pay the costs of attendance at an institution of higher education or private or independent institution of higher education, including tuition and fees and costs for housing, books, supplies, transportation, and other related personal expenses. In this subsection, "institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(s) Not later than April 30 of each year, the attorney general shall develop a report based on information submitted by law enforcement agencies and attorneys representing the state under Subsection (g) detailing the total amount of funds forfeited, or credited after the sale of forfeited property, in this state in the preceding calendar year. The attorney general shall maintain in a prominent location on the attorney general's publicly accessible Internet website a link to the most recent annual report developed under this subsection.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 1, eff. Oct. 18, 1989. Subsec. (c) amended by Acts 1991, 72nd Leg., ch. 312, Sec. 2, eff. Sept. 1, 1991; Subsec. (h) added by Acts 1991, 72nd Leg., ch. 312, Sec. 1, eff. Sept. 1, 1991; Subsec. (a) amended by Acts 1993, 73rd Leg., ch. 780, Sec. 3, eff. Sept. 1, 1993; Subsec. (g) amended by Acts 1993, 73rd Leg., ch. 814, Sec. 1, eff. Aug. 30, 1993; Subsec. (i) added by Acts 1993, 73rd Leg., ch. 780, Sec. 4, eff. Sept. 1, 1993; Subsec. (i) amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(112), eff. Sept. 1, 1995; Subsec. (g) amended by and Subsecs. (j), (k) added by Acts 1997, 75th Leg., ch. 975, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 707, Sec. 1, eff. Sept. 1, 1999; Subsecs. (a), (c) amended by Acts 1999, 76th Leg., ch. 582, Sec. 2, eff. Sept. 1, 1999; Subsec. (g) amended by Acts 1999, 76th Leg., ch. 481, Sec. 1, eff. Sept. 1, 1999; Subsec. (j) amended by Acts 1999, 76th Leg., ch. 481, Sec. 2, eff. Sept. 1, 1999; Subsec. (g) amended by Acts 2001, 77th Leg., ch. 929, Sec. 3, eff. Sept. 1, 2001; Subsec. (k) amended by Acts 2001, 77th Leg., ch. 124, Sec. 2, eff. Sept. 1, 2001; Subsec. (k)(1) amended by Acts 2003, 78th Leg., ch. 428, Sec. 2, eff. Sept. 1, 2003; Subsec. (p) added by Acts 2003, 78th Leg., ch. 198, Sec.

2.142, eff. Sept. 1, 2003; Subsec. (p) added by Acts 2003, 78th Leg., ch. 257, Sec. 18, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 556 (H.B. [1239](#)), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 120 (S.B. [1106](#)), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 446 (H.B. [195](#)), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 187 (H.B. [2062](#)), Sec. 1, eff. May 27, 2009.

Acts 2009, 81st Leg., R.S., Ch. 941 (H.B. [3140](#)), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. [1674](#)), Sec. 23, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1321 (S.B. [316](#)), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 157 (S.B. [878](#)), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1357 (S.B. [1451](#)), Sec. 4, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 920 (H.B. [530](#)), Sec. 1, eff. September 1, 2015.

Art. 59.061. AUDITS AND INVESTIGATIONS. (a) The state auditor may at any time perform an audit or conduct an investigation, in accordance with this article and Chapter [321](#), Government Code, related to the seizure, forfeiture, receipt, and specific expenditure of proceeds and property received under this chapter.

(b) The state auditor is entitled at any time to access any book, account, voucher, confidential or nonconfidential report, or other record of information, including electronic data, maintained under Article [59.06](#), except that if the release of the applicable information is restricted under state or federal law, the state auditor may access the information only with the approval of a court or federal administrative agency, as appropriate.

(c) If the results of an audit or investigation under this article indicate that a law enforcement agency or attorney representing the state has knowingly violated or is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter, the state auditor shall promptly notify the attorney general for the purpose of initiating appropriate enforcement proceedings under Article 59.062.

(d) The law enforcement agency or attorney representing the state shall reimburse the state auditor for costs incurred by the state auditor in performing an audit under this article.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1321 (S.B. 316), Sec. 3, eff. September 1, 2011.

Art. 59.062. ENFORCEMENT. (a) In the name of the state, the attorney general may institute in a district court in Travis County or in a county served by the law enforcement agency or attorney representing the state, as applicable, a suit for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty if the results of an audit or investigation under Article 59.061 indicate that the law enforcement agency or attorney representing the state has knowingly violated or is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter.

(b) On application for injunctive relief and a finding that the law enforcement agency or attorney representing the state is knowingly violating a provision of this chapter relating to the disposition of proceeds or property received under this chapter, the district court shall grant the injunctive relief the facts may warrant, without requirement for bond.

(c) A law enforcement agency or attorney representing the state who knowingly commits a violation described by Subsection (a) is liable to the state for a civil penalty in an amount not to exceed \$100,000 as determined by the district court to be appropriate for the nature and seriousness of the violation. In determining an appropriate penalty for the violation, the court shall consider:

(1) any previous violations committed by the agency or attorney;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) the demonstrated good faith of the agency or attorney; and

(4) the amount necessary to deter future violations.

(d) If the attorney general brings a suit under this article and an injunction is granted or a civil penalty is imposed, the attorney general may recover reasonable expenses, court costs, investigative costs, and attorney's fees.

(e) Notwithstanding any other provision of this article, a law enforcement agency or attorney representing the state ordered to pay a civil penalty, expense, cost, or fee under this article shall make the payment out of money available in any fund established by the agency or attorney, as applicable, for the purpose of administering proceeds or property received under this chapter. If sufficient money is not available to make payment in full at the time the court enters an order requiring payment, the agency or attorney shall continue to make payments out of money available in any fund described by this subsection until the payment is made in full.

(f) A civil penalty collected under this article shall be deposited to the credit of the drug court account in the general revenue fund to help fund specialty court programs established under Chapter [122](#), [123](#), [124](#), [125](#), or [129](#), Government Code, or former law.

(g) A law enforcement agency or attorney representing the state is immune from liability under this article if the agency or attorney reasonably relied on:

(1) the advice, consent, or approval of an entity that conducts an audit of the agency or attorney under this chapter; or

(2) a written opinion of the attorney general relating to:

(A) the statute or other provision of law the agency or attorney is alleged to have knowingly violated; or

(B) a fact situation that is substantially

similar to the fact situation in which the agency or attorney is involved.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1321 (S.B. 316), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 747 (S.B. 462), Sec. 2.02, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 369 (H.B. 3391), Sec. 2, eff. September 1, 2017.

Art. 59.07. IMMUNITY. This chapter does not impose any additional liability on any authorized state, county, or municipal officer engaged in the lawful performance of the officer's duties. Added by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 1, eff. Oct. 18, 1989.

Art. 59.08. DEPOSIT OF MONEY PENDING DISPOSITION. (a) If money that is contraband is seized, the attorney representing the state may deposit the money in an interest-bearing bank account in the jurisdiction of the attorney representing the state until a final judgment is rendered concerning the contraband.

(b) If a final judgment is rendered concerning contraband, money that has been placed in an interest-bearing bank account under Subsection (a) of this article shall be distributed in the same manner as proceeds are distributed under Article 59.06 of this code, with any interest being distributed in the same manner and used for the same purpose as the principal.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 1, eff. Oct. 18, 1989.

Art. 59.09. RIGHT TO ATTORNEY NOT TO BE ABRIDGED. This chapter is not intended to abridge an accused person's right to counsel in a criminal case.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 1, eff. Oct. 18, 1989.

Art. 59.10. ELECTION OF LAWS. If property is subject to

forfeiture under this chapter and under any other law of this state, the attorney representing the state may bring forfeiture proceedings under either law.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 1, eff. Oct. 18, 1989.

Art. 59.11. REPORT OF SEIZED AND FORFEITED AIRCRAFT. Not later than the 10th day after the last day of each quarter of the fiscal year, the Department of Public Safety shall report to the Texas Department of Transportation:

(1) a description of each aircraft that the Department of Public Safety has received by forfeiture under this chapter during the preceding quarter and the purposes for which the Department of Public Safety intends to use the aircraft; and

(2) a description of each aircraft the Department of Public Safety knows to have been seized under this chapter during the preceding quarter and the purposes for which the Department of Public Safety would use the aircraft if it were forfeited to the Department of Public Safety.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 283, eff. Sept. 1, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 4, eff. September 1, 2013.

Art. 59.12. SEIZURE OF ACCOUNTS AND ASSETS AT REGULATED FINANCIAL INSTITUTION. (a) This article applies to property consisting of a depository account or assets in a regulated financial institution.

(b) A regulated financial institution, at the time a seizure warrant issued under Chapter 18 is served on the institution, may either:

(1) pay an account or tender assets held as security for an obligation owed to the institution at the time of the service of the seizure warrant; or

(2) transfer the depository account or assets to a segregated interest-bearing account in the name of the attorney representing the state as trustee, to remain in the account until the time has

expired for an appeal from a decision of the court relating to the forfeiture of accounts or assets under Article 59.05.

(c) Immediately on service of the seizure warrant, the regulated financial institution shall take action as necessary to segregate the account or assets and shall provide evidence, certified by an officer of the institution, of the terms and amount of the account or a detailed inventory of the assets to the peace officer serving the warrant. Except as otherwise provided by this article, a transaction involving an account or assets, other than the deposit or reinvestment of interest, dividends, or other normally recurring payments on the account or assets that do not involve distribution of proceeds to the owner, is not authorized unless approved by the court that issued the seizure warrant or, if a forfeiture action has been instituted, the court in which that action is pending.

(d) Any accrual to the value of the account or assets during the pendency of the forfeiture proceedings is subject to the procedures for the disbursement of interest under Article 59.08.

(e) If the regulated financial institution fails to release the depository account or assets to a peace officer pursuant to a seizure warrant or transfer the account or assets as required by Subsection (b), and as a result cannot comply with the court's forfeiture order, the court:

(1) shall order the regulated financial institution and its culpable officers, agents, or employees to pay actual damages, attorney's fees, and court costs incurred as a result of the institution's failure to comply; and

(2) may find the regulated financial institution and its culpable officers, agents, or employees in contempt.

(f) A regulated financial institution that complies with this article is not liable in damages because of the compliance.

(g) This article does not:

(1) impair the right of the state to obtain possession of physical evidence or to seize a depository account or other assets for purposes other than forfeiture under this chapter; or

(2) waive criminal or civil remedies available under other law.

Added by Acts 2001, 77th Leg., ch. 438, Sec. 5, eff. Sept. 1, 2001.

Art. 59.13. DISCLOSURE OF INFORMATION RELATING TO ACCOUNTS AND ASSETS AT REGULATED FINANCIAL INSTITUTION. (a) The attorney representing the state may disclose information to the primary state or federal financial institution regulator, including grand jury information or otherwise confidential information, relating to any action contemplated or brought under this chapter that involves property consisting of a depository account in a regulated financial institution or assets held by a regulated financial institution as security for an obligation owed to a regulated financial institution. An attorney representing the state who discloses information as permitted by this subsection is not subject to contempt under Article 20.02 for that disclosure.

(b) A primary state or federal financial institution regulator shall keep confidential any information provided by the attorney representing the state under Subsection (a). The sharing of information under Subsection (a) by a representative of the state is not considered a waiver by the state of any privilege or claim of confidentiality.

(c) A regulator described by Subsection (b) commits an offense if the regulator knowingly discloses information in violation of this article. An offense under this subsection is punishable by confinement in jail for a period not to exceed 30 days, a fine not to exceed \$500, or both such confinement and fine.

Added by Acts 2001, 77th Leg., ch. 438, Sec. 5, eff. Sept. 1, 2001.

Art. 59.14. NOTICE TO PRIMARY STATE AND FEDERAL FINANCIAL INSTITUTION REGULATORS. (a) Before taking any action under this chapter that implicates a potentially culpable officer or director of a regulated financial institution, the attorney representing the state shall notify the banking commissioner, who shall notify the appropriate state or federal financial institution regulator.

(b) A state or federal financial institution regulator shall keep confidential any information provided by the attorney representing the state under Subsection (a).

(c) A regulator described by Subsection (b) commits an

offense if the regulator knowingly discloses information in violation of this article. An offense under this subsection is punishable by confinement in jail for a period not to exceed 30 days, a fine not to exceed \$500, or both such confinement and fine.

(d) The provision of notice under Subsection (a) is not considered a waiver by the state of any privilege or claim of confidentiality.

Added by Acts 2001, 77th Leg., ch. 438, Sec. 5, eff. Sept. 1, 2001.