


## Discretionary Funds: Protecting this Resource for the Future



Phil Grant  
TACA Conference  
October 21, 2015

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## Texas Asset Forfeiture Abuses







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Always discussed at legislative sessions

**Lawmakers eye reforms for Texas asset forfeitures**

By DIANE JENNINGS  
Staff Writer

Civil Asset Forfeiture Reform in Texas: Fighting Contraband, Upholding Civil Liberties  
by Derek Coburn in Politics

**How Asset Forfeiture Allows Cops to Steal from Citizens**  
A Virginia lawmaker takes on policing for profit.  
A. Barton Hinkle | October 22, 2014

It probably seemed like a bright idea at the time: Let the police seize the ill-gotten gains of alleged drug dealers and other suspected criminals and sell it, using the proceeds to buy much-needed crime-fighting gear.

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What are the jurisdictional rules?

- Within 30 days of seizure of asset
  - This is a hard rule, no exceptions
- In county asset seized, not necessarily where the crime occurred.
  - This is a hard rule as well, but can be a little tricky
  - Where asset was seized, not where it was found or taken into police custody

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What Crimes Support a Forfeiture under Ch. 59?

- ANY 1st or 2nd Degree Felony
- All Evading in a Vehicle
- Intox. Manslaughters
- All 4th DWI's or more
- Narcotics Cases
- Money Laundering

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### Must not be excessive

- Courts have prohibited seizures that seem out of balance with the level of offense
- Seem to prefer seizure when property used to deal narcotics not just use



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### Dispose in Plea Bargain?



**B.7 Global settlements**  
The Government may conclude a civil or administrative forfeiture action in conjunction with the resolution of the criminal charges involving the same activity that gave rise to the forfeiture of the property. The following principles should be observed in negotiating such a global settlement:  
(1) The Government should not agree to release property subject to forfeiture (civil or criminal) in order to coerce a guilty plea on the substantive charges, nor should the Government agree to dismiss criminal charges in order to coerce a forfeiture settlement.<sup>6</sup>

- Section 12.01(c) Penal Code
  - This chapter does not deprive a court of authority conferred by law to forfeit property...The civil penalty **MAY BE** included in the sentence.

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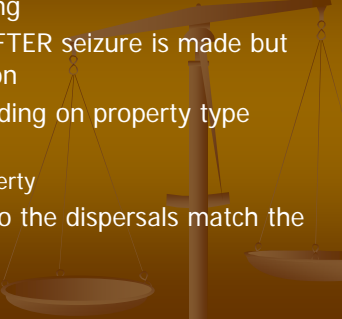
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### Local agreements required

- Must be in writing
- May be made **AFTER** seizure is made but before disposition
- May vary depending on property type
  - 70/30 cash
  - 50/50 real property
- As an auditor, do the dispersals match the local agreement



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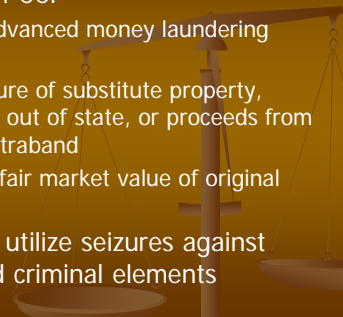
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### Substitute Property

- 59.021 - 59.024 CCP
  - Response to advanced money laundering tactics
  - Allows for seizure of substitute property, property taken out of state, or proceeds from the sale of contraband
  - Not to exceed fair market value of original contraband
- Allows State to utilize seizures against more organized criminal elements



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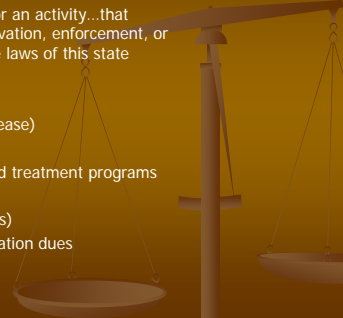
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### What can I spend it on?

- CCP 59.06 (d-4)
  - Expenditure made for an activity...that relates to the preservation, enforcement, or administration of the laws of this state
  - Equipment
  - Supplies
  - Travel (no Hawaii please)
  - Investigative costs
  - Crime Prevention and treatment programs
  - Facility Costs
  - Legal fees (audit fees)
  - State bar and association dues



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### What can't I spend it on?

- CCP 59.06 (d-1)
  - Political contributions
  - Non law enforcement donations
    - Some exceptions in (d-2)
  - Judge training
  - Training costs that violate local policies
  - Alcohol
  - Lame duck expenditures without commissioner court approval
  - Salaries without commissioner court approval



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## Federal Forfeiture prohibitions

- Tracked Armored Vehicles: Vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.
- Weaponized Aircraft, Vessels, and Vehicles of Any Kind: These items will be prohibited from purchase or transfer with weapons installed.
- Firearms of .50-Caliber or Higher
- Ammunition of .50-Caliber or Higher
- Grenade Launchers: Firearm or firearm accessory designed to launch small explosive projectiles.
- Bayonets: Large knives designed to be attached to the muzzle of a rifle/shotgun/long gun for the purposes of hand-to-hand combat.
- Camouflage Uniforms: Does not include woodland or desert patterns or solid color uniforms.

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## Audit

- Annual audit is required
- [https://www.texasattorneygeneral.gov/forms/state\\_audit.pdf](https://www.texasattorneygeneral.gov/forms/state_audit.pdf)
- By Commissioners Court? By County Auditor?
- Attorney General Form
- Within 60 days of end of fiscal year
  - Extensions can be granted
- Comptroller comes in if you fail to complete...DA to pay cost

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**NOTE: BOTH CERTIFICATIONS MUST BE COMPLETED**

**AUDITOR (TREASURER/ACCOUNTING PROFESSIONAL CERTIFICATION)**

I swear or affirm that the Commission of such, City Council or Agency Board of the governing body has requested that I conduct the audit required by Article 19 of the State Constitution and that upon diligent inspection of all relevant documents and supporting materials, the same facilities represent true and correct and complete all information required by Article 19 of the State Constitution. I further swear or affirm that all obligations reported herein were timely and proper, and made in accordance with State law.

AUDITOR, TREASURER or ACCOUNTING PROFESSIONAL (Printed Name): \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

(Include title) Page 1

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**AGENCY HEAD CERTIFICATION**

I swear or affirm, under penalty of perjury, that I have examined the various facilities, receipts and specific information of proceeds and property subject to Chapter 19 of the Code of Criminal Procedure, and that upon diligent inspection of all relevant documents and supporting materials, the same facilities represent true and correct and complete all information required by Article 19 of the Code of Criminal Procedure. I further swear or affirm that all obligations reported herein were timely and proper, and made in accordance with State law.

ATTORNEY REPRESENTING THE STATE (Attorney Official Printed Name): \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**RETURN COMPLETED FORM TO:** Office of the Attorney General  
 Criminal Prosecution Division  
 P.O. Box 12248  
 Austin, TX 78711-2248  
 Kim Wynn Richardson  
 (512)463-1276  
 C:\agpr\trk\agpr\agpr\attorneygeneral.gov

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### Miscellaneous notes

- Commissioners Court can't tell you how to spend it
- Can't consider balances when setting your budget
- Can transfer property seized to law enforcement agencies within your jurisdiction even if they didn't originally seize it
- Does appear that you can use to purchase buildings and facilities for criminal justice entities (previously prohibited in Op.Tex.Att'y Gen. GA-0613)
- Must pay court costs on seizures valued more than \$2500

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### Apportionment Act Funds

- Apportionment funds are for the payment of salaries, travel and expenses of prosecutors, investigators and administrative staff
- Amount can vary from \$11,083 to \$27,500 depending on population and duties of office
- Payments made in three equal installments upon request

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### Eligible expenses

- Consumable expenses including: pens, paper, files and miscellaneous office supplies
- Law books
- Rental or lease (not lease purchase) of office equipment, computer equipment and copiers
- Subscriptions and dues not for the exclusive use of the DA, CDA or CA

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### Eligible expenses

- Travel for office staff (not the DA, CDA or CA) that complies with the State Travel Allowance Guide
- Salaries for office staff
- Utility and telephone expenses
- Rent
- Contract labor

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The image shows a 'STATE OF TEXAS COMPTROLLER JUDICIARY APPORTIONMENT VOUCHER' form. It includes fields for 'STATE OF TEXAS', 'COMPTROLLER JUDICIARY APPORTIONMENT VOUCHER', 'DATE', 'AMOUNT', 'PURPOSE', and 'COUNTY'. There is a section for 'CERTIFICATION' with checkboxes for 'I certify that the amount is true, correct and unpaid' and 'I certify that the amount is true, correct and unpaid'. The form also has a section for 'STATE OF TEXAS JUDICIAL BRANCH' and 'COUNTY'.

- Two sided form must be filled out for each request
- Can be requested retroactively
- Consumable items not capital expenses

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### Hot Check funds

- Article 102.007 CCP
- Fees collected are deposited in an account in the county treasury for use by the CA, DA or CDA
- To defray costs and salaries
- Cannot use for CA, DA or CDA salary
- Interest on funds is severed off and put in the county general fund

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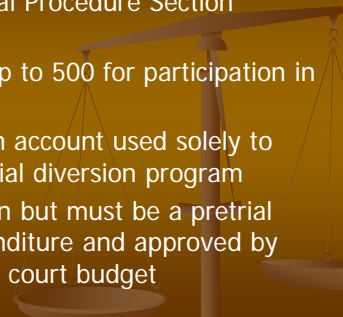
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### Pretrial Diversion Fund

- Code of Criminal Procedure Section 102.0121
- Assess a fine up to 500 for participation in the program
- Deposited in an account used solely to support a pretrial diversion program
- Broad discretion but must be a pretrial diversion expenditure and approved by commissioner's court budget



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### CALL US

- Phil Grant
  - [phil.grant@mctx.org](mailto:phil.grant@mctx.org)
  - 936-539-7910
- Tamara Holland (Asset Forfeiture Attorney)
  - [Tamara.holland@mctx.org](mailto:Tamara.holland@mctx.org) (email affidavit)
  - 936-788-8328
- Nicole Czajkoski
  - Chief of White Collar and Civil Division
  - 936-539-7869 (wk)
  - [nicole.czajkoski@mctx.org](mailto:nicole.czajkoski@mctx.org)
- Tempe Ross
  - Para-legal White Collar and Civil Division
  - 936-760-6963
  - [tempe.ross@mctx.org](mailto:tempe.ross@mctx.org)



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