

# ***Managing Seized Assets- Forfeiture of Contraband***

Chapter 59

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Texas Code of Criminal  
Procedures

# **PERTINENT STATUTES**

- CHAPTER 59, TEXAS CODE OF CRIMINAL PROCEDURES
- CHAPTER 49 – TEXAS STATE PENAL CODE
- CHAPTER 481- HEALTH AND SAFETY CODE
- CHAPTER 153 – FINANCE CODE
- CHAPTER 32, HUMAN RESOURCES CODE
- ADMINISTRATIVE FORFEITURE- US GOVT CODE

# **CONTRABAND**

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- PROPERTY of ANY nature , including REAL, PERSONAL, TANGIBLE, or INTANGIBLE THAT IS:
- USED IN THE “ COMMISSION” OF :
- (this is only a summary list)

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- 1. ANY “1<sup>st</sup>” or “2<sup>nd</sup>” DEGREE felony under the Texas Penal Code.
- 2. Certain 3<sup>rd</sup> degree and State Felonies if previous convictions have occurred.

# ***Contraband Cont.***

- Miscellaneous State Codes such as Health and Safety Code, felonies under the Human Resources Code, Business And Commerce Code .
- **CONTRABAND IS SUBJECT** to seizure and forfeiture under Chapter 59, Texas Code of Criminal Procedures.

# **Law Enforcement Agency**

- 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.
- **NOTWITHSTANDING** any other LAW , if property is seized from the possession of an owner, or interest holder who asserts an ownership interest or lien interest, **THE OWNER or INTEREST holder's RIGHTS REMAIN** in effect

# **OWNER OR INTEREST HOLDER**

- 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 PREPONDERENCE of EVIDENCE that the owner or interest holder was not a party to the offense giving rise to the forfeiture and the contraband falls under certain specific forfeitures guidelines. (see article 59.02 sec H.1)

## **Sec 59.04**

# **NOTIFICATION PROCEEDINGS**

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- PEACE OFFICERS SEIZES PROPERTY
- STATE ATTORNEY COMMENCES FORFEITURE PROCEEDINGS NO LATER THAN 30<sup>TH</sup> DAY AFTER DATE OF SEIZURE.
- State Attorney Files NOTICE OF THE SEIZURE AND INTENDED FORFEITURE IN THE NAME OF THE “STATE” TO THE CLERK OF THE DISTRICT COURT WHERE SEIZURE WAS MADE

# **FORFEITURE PROCEEDINGS**

- PEACE OFFICER'S SWORN AFFIDAVIT IS ATTACHED TO NOTIFICATION.
- CERTIFIED COPIES OF NOTICE ARE SERVED ON FOLLOWING PERSONS :
  1. THE OWNER OF THE PROPERTY
  2. ANY INTEREST HOLDER IN THE PROPERTY
  3. IF A VEHICLE, TEXAS DEPARTMENT OF MOTOR VEHICLES WILL SUPPLY LAST KNOWN OWNER INFORMATION ( just a summary of process)

# 59.05

## **FORFEITURE HEARING**

- ALL PARTIES MUST COMPLY WITH THE RULES OF PLEADING AS REQUIRED IN CIVIL SUITS.
- 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 “PREPONDERENCE OF EVIDENCE” THAT PROPERTY IS SUBJECT TO FORFEITURE.

# **FORFEITURE HEARING**

- IT IS THE “INTENTION” OF THE LEGISLATURE THAT ASSET FORFEITURE IS REMEDIAL IN NATURE AND NOT A FORM OF PUNISHMENT.
- IF JUDGE FINDS THAT “ALL” OR “ANY PART” OF THE PROPERTY IS SUBJECT TO FORFEITURE, THE JUDGE SHALL FORFEIT THE PROPERTY TO THE STATE.

# **Lubbock Sheriff's Office asset seizure process**

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- Asset's received by Lubbock Narcotics division is divided by percentages among any other assisting agencies
- Ex: 100,000.00 seized, LSO and FEDs involved.

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LSO would receive a certain percentage and the Federal Government would receive the remaining seizure amount.

# ***LSO process***

- Paper work is filed by the FEDS if they are involved.
- Monies forfeitures are normally received within 6 Months.
- Money goes into the DEA forfeiture account that is overseen by an administrative Chief.
- Titled ‘DEA” FORFEITURE ACCOUNT

# **LSO PROCESS**

- ASSETS FROM STATE/ OTHER AGENCIES GOES INTO THE LSO SEIZURE ACCOUNT (UNTIL) OFFICIALLY AWARDED TO COUNTY AND THEN IS PUT IN LSO FORFEITURE ACCOUNT.

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FORFEITED CARS ARE EITHER SOLD OR PUT INTO SERVICE. PURCHASING DEPARTMENT HANDLES FORFEITED CARS SALES AND ASSIGNMENTS.

# **AUDITS**

- SEIZED ASSETS ARE SUBJECT TO INTERNAL AUDIT. (Supervisors, Chief Deputy, Sheriff, Financial Administrator, County Auditor)

DETAILED PAPERWORK IS MAINTAINED ON EACH TRANSACTION AND SUBJECT TO AUDIT BY LUBBOCK COUNTY AUDITORS INVOLVING “BUY MONEY” FOR DRUG TRANSACTIONS.

LOCAL, STATE AND FEDERAL AGENCIES ARE SUBJECT TO AUDIT BY THE I.R.S. AS WELL AS THE D.E.A WHEN DISCREPANCIES ARISE OR A CRIMINAL ACT IS INITIATED.