
Seized and Forfeited Assets

Legislative Primer

SEIZED AND FORFEITED ASSETS

Law enforcement agencies or agencies intercepting contraband or controlled substances use revenue from seized assets to supplement agency operations and obtain equipment. Asset seizure is both a federal and state activity, applying both to civil and criminal cases. Regardless of the type of case, probable cause must first be established before a law enforcement agency may seize personal property. The purpose of seizing assets is to curtail criminal activity. Property seized is either believed to be used in committing a crime or purchased with profits from criminal activity. Such property is referred to as “contraband” in the Texas Code of Criminal Procedure. The term “seized assets” refers to the preliminary stage in which the funds or property are temporarily held until a court decision. The seized property still belongs to the property owner. Upon a court judgment awarding the property to the agency, the property is considered forfeited. These forfeited assets are then used by law enforcement, applicable state agencies, and prosecutorial agencies to supplement operations and acquire equipment.

Ten Texas state agencies receive and spend federal and/or state forfeited asset revenues. These agencies include: the Texas Department of Public Safety, the Office of the Attorney General, the Health and Human Services Commission, the Comptroller of Public Accounts, the Texas Department of Criminal Justice, the Texas Parks and Wildlife Department, the Texas Alcoholic Beverage Commission, the Texas Board of Pharmacy, and the Texas Military Department. Forfeited asset revenues vary but are small in proportion to the budgets of these agencies. For example, the State Board of Pharmacy reported receiving \$66,737 in state forfeited funds during fiscal year 2015. As a figure for comparison, the agency’s fiscal year 2015 All Funds appropriation was \$7.0 million.

CRIMINAL AND CIVIL FORFEITURE

Criminal forfeiture can occur as a part of the criminal prosecution of a defendant. It is an *in personam* (against the person) action. A forfeiture is a court ordered action; government seizes property only after the owner has been found guilty.

Civil forfeiture is an *in rem* (against the property) action brought in court against the property. The property is the defendant and no criminal charge against the owner is

required. A preponderance of the evidence that the property was tied to criminal activity is the burden of proof necessary for a civil forfeiture. Usually, legal costs prevent the property owner from petitioning to regain ownership of the property typically valued at a few thousand dollars or less. Texas state agencies do not differentiate between state civil and criminal forfeitures when submitting annual required documentation to the Office of the Attorney General (OAG).

FEDERAL SEIZED ASSETS

At the federal level, the U.S. Department of Justice (DOJ) oversees a multi-agency asset forfeiture program. The United States Marshal Service (USMS) is the primary custodian of the seized assets for that program. USMS maintains current postings on its website of online and public auctions of real estate, jewelry, coins, aircraft, vehicles, and other seized property. The U.S. Department of the Treasury (Treasury Department) administers a separate asset forfeiture program, the Treasury Executive Office for Asset Forfeiture (TEOAF). The main participating federal agencies of the TEOAF include the U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, the Internal Revenue Service, and the U.S. Secret Service. State and local law enforcement agencies receive an equitable share of federally forfeited assets because federal law authorizes the U.S. Attorney General to share federally forfeited property. Equitable sharing is the distribution of the net proceeds of forfeitures to agencies according to the degree of their direct participation in the effort that resulted in the forfeiture. Receiving agencies must report receipts and expenditures of seized assets annually to the DOJ or Treasury Department by using the Equitable Sharing Agreement and Certification form. Also, agencies cannot budget for expected receipt of funds until the final sharing decision occurs. An agency must submit a DOJ or Treasury Department application for transfer of federally forfeited property. This form requires the submitter to identify what the funds will be spent on. The categories include salaries, purchase of vehicles, purchase of equipment, place into official use (if property), or other (explanation required). The DOJ reported providing approximately \$28.7 million in equitable sharing payments to Texas agencies and task forces in federal fiscal year 2015.

The DOJ determines individually if National Guard units are eligible to participate in its equitable sharing program. A National Guard unit could qualify to receive a share of seized assets if the unit meets requirements relating to participating in counterdrug activities. The Texas National Guard receives equitable sharing payments from forfeited assets due to its participation on the Joint Counterdrug Task Force. In federal fiscal year 2015, the DOJ paid an equitable share total of \$0.3 million to this task force, including funds from sales of forfeited property.

The profits from forfeited assets are equitably shared in two ways with state and local agencies. A joint investigation is a partnership between federal agencies and state or local enforcement agencies to investigate a federal crime. An adoption is a seizure by a law enforcement agency related to a violation of federal law. The local agency then requests that an appropriate federal agency takes the seized property. The local law enforcement agency's portion of the federal seized assets funds depends on whether it is a joint investigation or adoption by a federal agency. An adoptive seizure where the activities leading up to the seizure were completed by a state or local agency will result in that agency receiving approximately 80 percent of the proceeds. A joint investigation requires that equitable shares are based on the amount of participation in the investigation resulting in seizure. Work hours completed as well as factors such as the importance and length of the work completed are considered. Regardless of these factors, the federal share will never be below 20 percent.

The Guide to Equitable Sharing for State and Local Law Enforcement Agencies, published in April 2009, describes DOJ program regulations on the expenditure of forfeited asset funds. The Treasury Department also has a guide on equitable sharing, and the two guides are very similar. Some examples of authorized uses of shared funds include travel and transportation, equipment, awards and memorials, and drug and gang education and awareness programs. The use of federal shared funds for salaries is very limited. Paying for salaries can only occur when expressly permitted by federal law, or for supplemental or short-term instances. There are only two provisions for using forfeiture funds long term for salaries. The first is to use forfeiture funds for an officer hired to replace another officer on a task force if the officer does not participate in seizure activities. Additionally, a law enforcement agency can pay the salary and benefits of an officer assigned to programs that typically do not involve traditional law enforcement functions. An example of this

provision would be the salary of an officer assigned to present a drug abuse awareness program. Overtime expenditures are not limited to staff working on drug-related investigations.

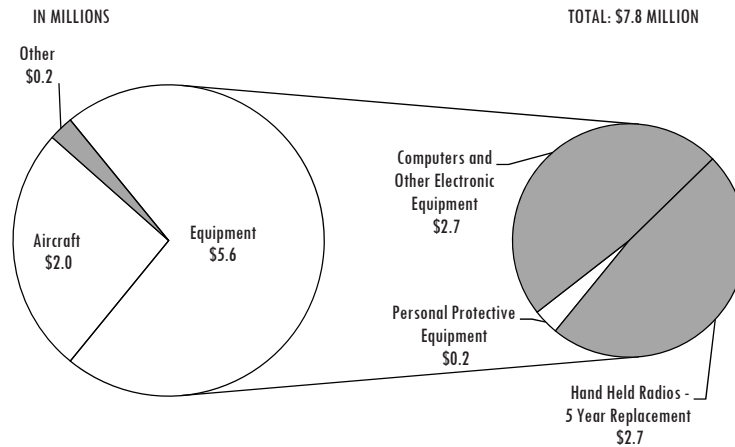
The Department of Public Safety (DPS) participates in both the DOJ and Treasury Department equitable sharing programs. DPS receives and spends the greatest amount of federal forfeited assets of Texas state agencies. In fiscal year 2015, DPS received \$2.3 million in forfeited assets and interest earned from these federal agencies. DPS begins each fiscal year with a balance of forfeited assets from previous fiscal years. The agency may use federal asset balances and new receipts of federal forfeited assets for expenditures during each fiscal year. The largest federal seized asset expenditures by DPS in recent years include items such as replacement aircraft, replacement hand-held radios, and body armor. **Figure 1** shows federal forfeited asset expenditures by type for fiscal year 2015.

STATE SEIZED ASSETS

The General Appropriations Act, Article IX, Section 8.02(b) of the 2016–17 Biennium, appropriates funds from the seizure of contraband or controlled substances to the receiving state agency. The intent of Senate Bill 316, passed by the Eighty-second Legislature, 2011, was to increase transparency of the process of criminal seized asset collection and expenditures. If the State Auditor's Office uncovers a violation in an audit, it can impose a civil penalty of not greater than \$100,000. Civil penalties collected are credited to an account in the General Revenue Fund that provides funding to drug court programs. The state auditor is entitled to access all records pertaining to seizures, receipts, forfeitures, and expenditures when performing an audit or conducting an investigation. Audit costs are the responsibility of the law enforcement agency or attorney representing the state. Additionally, a prosecutor or peace officer can no longer request that a person waive his or her rights to or interest in the property during a search.

Other amendments to the Texas Code of Criminal Procedure, Chapter 59, by the enactment of Senate Bill 316 describe prohibited and authorized uses of forfeited assets. The statutory change was an effort to prevent further misuse of funds; several cases of expenditures for non law enforcement purposes occurred before the enactment of the legislation. In 2010, a district judge and district attorney were convicted for abuse of forfeited assets. Article 59.06 (d-1) notes seven prohibited uses and exceptions, such as not expending forfeited funds for political campaign donations or alcoholic

FIGURE 1
TEXAS DEPARTMENT OF PUBLIC SAFETY FEDERAL FORFEITED ASSET EXPENDITURES, FISCAL YEAR 2015



SOURCE: Texas Department of Public Safety.

beverages. Article 59.06 (d-2) allows donations as an expenditure of forfeited asset funds. Authorized donations are for entities that detect, investigate, or prosecute criminal offenses, provide mental health or drug related services, or provide related training or education. In essence, seized asset expenditures are intended for direct law enforcement and law enforcement related purposes.

The Texas Code of Criminal Procedure also requires entities that are authorized to receive forfeited property or hire peace officers to submit an annual seized and forfeited asset audit. This includes entities such as fire departments, hospital districts, water districts, public universities and junior colleges, and applicable state agencies. However, the OAG uses the term “law enforcement agencies” to group these agencies for asset forfeiture reporting. The audit form provided by the attorney general includes details on all forfeited asset expenditures. The agency or district attorney’s office must deliver certified copies of the audit within 60 days following the end of the annual period. For a law enforcement agency, the annual period is the fiscal year of its county or municipality and for district attorneys this is the state fiscal year. **Figure 2** shows the categories of expenditures reported to the attorney general annually by law enforcement agencies and attorneys representing the state.

Funds are divided between district attorney offices and law enforcement agencies according to established local agreements between these agencies. In a local agreement, after a court cost deduction the forfeited funds are deposited into special funds within each municipal or county treasury, or state law enforcement agency. If a local agreement does

FIGURE 2
OFFICE OF THE ATTORNEY GENERAL CHAPTER 59 ASSET FORFEITURE REPORT EXPENDITURE CATEGORIES
APRIL 2016

SALARIES	OVERTIME
Equipment	Supplies
Travel (in state and out of state)	Training
Investigative Costs	Prevention/Treatment/ Financial Assistance/ Donations
Facility Costs	Miscellaneous Fees
Paid to State Treasury/General Fund/Health and Human Services Commission	Paid to Cooperating Agency Pursuant to Local Agreement
Other Expenses (using additional sheet to describe these expenses)	

NOTES:

- (1) Subcategories specify costs within categories.
- (2) In the Office of the Attorney General’s fiscal year 2015 data, there are no entries of forfeited asset funds transferred to the state due to lack of a local agreement.

SOURCE: Office of the Attorney General.

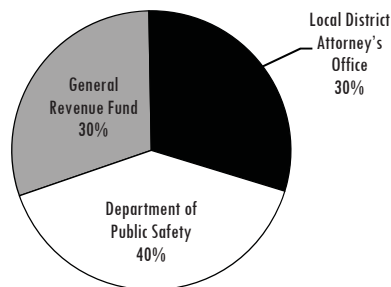
not exist, the forfeited property must be sold at a public auction on the 75th day after the court’s final forfeiture judgment order. The proceeds from those sales first go to any interest holder and to the state’s Title IV-D agency (OAG Child Support Division) who files a child support lien (if applicable). The remainder is for court costs, storage or disposal fees, and finally, deposit into the General Revenue Fund.¹ Funds or property forfeited from a felony that

¹ In the Office of the Attorney General’s fiscal year 2015 data, there are no entries of forfeited asset funds transferred to the state due to lack of a local agreement.

involves the state Medicaid program must be transferred to the Health and Human Services Commission.

The Texas Code of Criminal Procedure notes an exception to dividing forfeited asset funds according to local agreements. The statute authorizes DPS to receive 40 percent of forfeiture funds related to the Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act), as shown in **Figure 3**. Additionally, the statute states that an attorney representing the state may transfer seized property to the department to use for official purposes. DPS received \$0.9 million in fiscal year 2015 from the statutes' provision. Before the enactment of Senate Bill 316, all state forfeited funds DPS collected were deposited as unappropriated General Revenue. All forfeited funds that are unrelated to Texas Controlled Substances Act violations are still deposited as unappropriated General Revenue. In fiscal year 2015, DPS transferred \$4.9 million in forfeited assets unrelated to the Texas Controlled Substances Act to the Comptroller of Public Accounts.

**FIGURE 3
DISBURSEMENT OF TEXAS DEPARTMENT OF PUBLIC SAFETY COLLECTED STATE FORFEITED ASSET FUNDS RELATED TO TEXAS CONTROLLED SUBSTANCES ACT, FISCAL YEAR 2012 AND BEYOND**



SOURCE: Texas Code of Criminal Procedure.

DPS is required by a rider in the General Appropriations Act to submit a yearly forfeited asset report to the Governor and the Legislative Budget Board. The report must include detailed information on receipts, disbursements, and fund balances for both federal and state sources of seized assets. Funds must be deposited in the State Treasury according to rules and procedures of the Comptroller of Public Accounts.

Submitting detailed data on seized and forfeited assets to the OAG is still a relatively new procedure, as the amended statute went into effect in fiscal year 2012. The OAG is not

required by the Code of Criminal Procedure to ensure accuracy of submitted reports. To improve efficiency and accuracy of forfeiture reporting, the OAG developed an online system that will automatically calculate totals from agency reported amounts. The OAG instituted online submission in fiscal year 2015. While the implementation of the OAG system may improve report accuracy, many seizure and forfeiture practices have generated discussion and debate within policy organizations within recent years. Texas legislators have filed several bills related to seizure and forfeiture after the enactment of Senate Bill 316 by the Eighty-second Legislature, 2011, to further limit seizure and forfeiture practices. This attention suggests that these practices be re-evaluated.