



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: S.B. 236 of the 131st G.A.

Date: February 9, 2016

Status: As Introduced

Sponsor: Sen. Jordan

Local Impact Statement Procedure Required: Yes

Contents: Forfeiture law

State and Local Fiscal Highlights

- State and local law enforcement agencies and prosecuting authorities that currently receive proceeds from both state and federal civil asset forfeiture (cash and property) will likely experience reductions in their distributions that could reach into the millions of dollars annually statewide.
- In criminal forfeiture, the burden of proof is shifted from the property owner to the state or political subdivision, and proof is changed from "preponderance of the evidence" to "clear and convincing evidence." Prosecutors will likely face greater difficulty and expense in proving seizures were lawful. These changes will likely result in some criminal forfeiture actions being denied and the subsequent loss of proceeds (cash and property) that is distributed to prosecutors and law enforcement agencies under current law.

Detailed Fiscal Analysis

The bill: (1) eliminates the civil forfeiture process under Ohio law thus allowing the state or political subdivision to pursue forfeiture only through the prosecution of criminal cases in which a defendant is convicted of a criminal offense, (2) makes changes to the procedural requirements governing criminal forfeiture, (3) makes changes to the disposition of forfeited property and funds, and (4) restricts the transfer of forfeited property to a federal agency.

Elimination of civil forfeiture

The elimination of the provisions of law governing the civil forfeiture process will also reduce some of the required procedural functions performed by the prosecutor and the court. These functions, in current law, require prosecutors: to commence civil forfeiture actions in the court of the county where property is seized, to locate and give notice of the civil forfeiture to persons with an interest in the property, and to argue the case before the court to prove the forfeited property is linked to criminal activity and subject to forfeiture despite no criminal conviction. The court must hear the case, render a decision, and, if necessary, issue a civil forfeiture order. The elimination of civil forfeiture means prosecutors and courts will experience some reduction in expenditures related to these required procedures. The magnitude of any savings in any given jurisdiction is difficult to measure and would vary every year because the forfeiture of property is not of a constant volume.

Criminal forfeiture

Under the bill, a person's property will no longer be subject to forfeiture unless the person has been convicted of a criminal offense. The bill also makes changes to the burden of proof as it applies to criminal forfeiture proceedings. For example, if a person is convicted of a criminal offense, the state or political subdivision must, under the bill, prove by "clear and convincing evidence" that the property is subject to forfeiture. Under current law, the prosecutor must only prove the property is subject to forfeiture by a "preponderance of evidence," which is a lower burden of proof.

In other areas of the forfeiture process, for third-party claimants petitioning for their interest in the forfeited property, the burden of proof is also raised to "clear and convincing evidence." The value of property to be forfeited in a criminal case must be proportional to the severity of the offense for which a person was convicted. Under current law, the owner of the property (the defendant) has the burden to prove by a "preponderance of the evidence" that the value of the property is disproportionate to the severity of the offense. The bill requires the state or political subdivision to prove proportionality by "clear and convincing evidence."

As a result of these changes, shifting the burden of proof from the property owner to the prosecutor and raising the burden of proof to "clear and convincing evidence," prosecutors will likely face greater difficulty and expense attempting to prove all that is required in a criminal forfeiture. These changes will likely result in some criminal forfeiture actions being denied and the subsequent loss of property and cash that is distributed to prosecutors and law enforcement agencies under current law.

Disposition of forfeited property

Under current law, if the forfeiture was ordered by a juvenile court in a matter involving a juvenile, 10% of the money acquired from the sale of forfeited property, and remaining after the payment of certain statutorily specified costs, must be applied to community addiction services and the remaining 90% goes to the law enforcement trust fund of the prosecutor where the property was seized, and to any of numerous funds specified in the Revised Code supporting the law enforcement agency that substantially conducted the criminal investigation. If the forfeiture was ordered by any other court, 100% goes to the law enforcement trust fund of the prosecutor and any other eligible law enforcement fund.

The bill eliminates this distinction such that regardless of which court orders the forfeiture, 10% will go to the community addiction service providers and the remaining 90% goes to the law enforcement trust fund of the prosecutor where the property was seized, and to any of the numerous funds that support the law enforcement agency that substantially conducted the criminal investigation. With respect to forfeitures in criminal cases bearing a conviction, the bill will result in more funding for community addiction services and less funding for prosecutors and other eligible law enforcement agencies.

Revenue loss

More significant, however, will be the loss of not only cash from the sale of forfeited property, but also actual property such as vehicles, firearms, and computer equipment used by law enforcement and made available through the civil forfeiture process. The elimination of civil forfeiture will reduce the distribution of cash and property to prosecutors as well as state and local law enforcement agencies. The loss of this one-time revenue in certain local jurisdictions, particularly those with large urban populations, could be significant.

Forfeiture under federal law

Under current law and practice, civil forfeiture also occurs through the U.S. Department of Justice's Equitable Sharing Program whereby property is seized by state and local law enforcement agencies participating in federal drug task forces and turned over to the federal government for forfeiture without a required criminal conviction. Under the Equitable Sharing Program, the state and local agencies that seized the property can receive up to 80% of the proceeds back from the federal government. The table below summarizes the Equitable Sharing payment amounts to

Ohio from federal fiscal years (FFY) 2011-2014. Total payments statewide ranged between \$8.4 million (FFY 2014) and \$13.3 million (FFY 2013), with local agencies receiving, on average, close to 80%. The remainder was paid to various state agencies, primarily the Ohio State Highway Patrol and secondarily the Bureau of Criminal Investigation.

Ohio Justice Equitable Sharing Payments, FFYs 2011-2014				
Agency	FFY 2014	FFY 2013	FFY 2012	FFY 2011
State	\$2,122,889	\$1,502,098	\$3,009,552	\$2,472,607
Local	\$6,279,646	\$11,839,167	\$7,676,040	\$7,349,005
Total	\$8,402,535	\$13,341,265	\$10,685,592	\$9,821,612

Law enforcement agencies involved in the federal task forces cannot use the forfeited funds for general operating expenses, for example, payroll costs. Instead the revenue must be used to pay for training, weapons, and added protective gear.

The bill prohibits a law enforcement agency or prosecuting authority from directly or indirectly transferring any seized property to any federal law enforcement authority or other federal agency for the purpose of forfeiture under federal law unless the value of the seized property exceeds \$50,000, excluding the potential value of the sale of the contraband. If property seized locally cannot be transferred to the Department of Justice for forfeiture, then the bill will result in a potentially significant reduction in civil forfeitures that occur under federal law. The corresponding losses to prosecutors and state and local law enforcement agencies could reach into the millions of dollars annually statewide.