



# OHIO LEGISLATIVE SERVICE COMMISSION

## Final Analysis

Aida S. Montano

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131st General Assembly  
(As Passed by the General Assembly)

- Reps.** McColley and Brinkman, Antani, Becker, Brenner, Dever, Duffey, Hambley, Henne, Hood, LaTourette, Retherford, Roegner, Schuring, Terhar, Thompson, Vitale, Young, Zeltwanger, Amstutz, Koehler, Rezabek, Romanchuk
- Sens.** LaRose, Coley, Balderson, Beagle, Brown, Burke, Eklund, Faber, Hackett, Hottinger, Jones, Jordan, Lehner, Obhof, Peterson, Seitz, Tavares, Thomas, Uecker

**Effective date:** April 6, 2017

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## ACT SUMMARY

### Modification of civil forfeiture

- Modifies the civil forfeiture process by permitting a civil forfeiture action to be filed only under specified circumstances not sooner than specified periods of time after the seizure of the property.
- Specifies that a civil forfeiture complaint may only be filed if the property was seized with probable cause of its involvement in the commission of a felony or gambling offense or was directly or indirectly obtained through the commission of a felony or gambling offense and either of the following applies:
  - (1) The property owner is unavailable due to being deceased, or having been indicted and being out of state and unable to be extradited for prosecution or unable to be located despite reasonable efforts to locate the owner.
  - (2) The property owner has not claimed, or asserted any interest in, the property at any time during or after seizure and all claims of aggrieved parties have been denied.
- Permits a prosecutor to file a civil forfeiture action with or after the filing of a complaint charging an offense or delinquent act.

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\* This version updates the effective date.

- Provides that the above civil forfeiture action is stayed during the pendency of the criminal or delinquency proceedings and proceeds after the defendant is convicted or enters intervention in lieu of conviction or the juvenile is adjudicated delinquent.
- Changes the burden of proof required for the prosecutor in a civil forfeiture action to establish that property is subject to forfeiture from a preponderance of the evidence to clear and convincing evidence.
- Eliminates the provision permitting a civil forfeiture action to be commenced regardless of whether the offender or delinquent child has pleaded guilty to, been convicted of, or been adjudicated delinquent for the act that is the basis of the forfeiture order.
- Permits the state to file a civil action against a person alleged to have received, retained, possessed, or disposed of proceeds, in an amount exceeding \$15,000, knowing or having reasonable cause to believe that the proceeds were derived from the commission of an "offense subject to forfeiture proceedings."
- Specifies the contents of a complaint in the above civil action, the elements that the state has the burden to prove by clear and convincing evidence, and the period of limitations for bringing the civil action.
- Provides that the civil action is stayed if a criminal complaint is filed against the person alleged to have received, retained, possessed, or disposed of the proceeds under the above circumstances.
- Requires the above amount of \$15,000 to be annually increased based on the rate of inflation according to the consumer price index starting on January 1, 2018.

### **"Receiving proceeds of an offense subject to forfeiture proceedings"**

- Establishes the offense of "receiving proceeds of an offense subject to forfeiture proceedings" by prohibiting any person from receiving, retaining, possessing, or disposing of proceeds knowing or having reasonable cause to believe the proceeds were derived from the commission of any of specified offenses.
- Provides that a person is considered to have received, retained, possessed, or disposed of proceeds if they were found in a vehicle that the person was the last person to operate immediately prior to the vehicle's search.

### **Seized property**

- Modifies the timeline for hearing a motion by a person aggrieved by an alleged unlawful seizure of property showing the person's interest in the property.



- At the above hearing, places on the state or political subdivision the burden of proof by a preponderance of the evidence that the seizure was lawful if the property is titled or registered, and places on the person the same burden of proof that the seizure was unlawful if the property is not titled or registered.
- Modifies the timeline for filing and for deciding a petition by a person with an interest in seized property for its conditional release.

### **Criminal forfeiture**

- Repeals the provision that allowed the court, for good cause shown, to consider issues of guilt of the alleged offender or the delinquency of the alleged delinquent child separate from whether property should be forfeited.
- Changes the burden of proof required for the state or political subdivision to establish that property is subject to forfeiture from a preponderance of the evidence to clear and convincing evidence.
- Expands the contents of a petition by a third party claimant asserting a legal interest in the property.
- Changes the burden of proof required for a prosecutor to prove that a lienholder asserting a legal interest in the property does not possess such interest from a preponderance of the evidence to clear and convincing evidence.
- Places on the state or political subdivision the burden of proof by clear and convincing evidence that the amount or value of the instrumentality ordered forfeited is proportionate to the severity of the offense.
- Expands the factors the court is required to consider in determining the severity of the offense.
- Requires the state or political subdivision to demonstrate by clear and convincing evidence specified conditions for the court to order forfeiture of any other property of the offender or delinquent child if the property ordered forfeited is unreachable.

### **Definition of "proceeds"**

- Excludes from the definition of "proceeds" property, including money, if it is held under clear title by a law enforcement agency, it is or may be used to purchase contraband in investigating a drug abuse offense, and it continues to be the agency's property if the agency establishes a clear chain of custody of it.



## Disposal of forfeited property

- Requires the written internal control policy of a law enforcement agency with custody of forfeited property to include records of an itemized list of the specific expenditures from the sale proceeds of the property.

## Federal forfeiture

- Prohibits the transferring or referral of property seized by a law enforcement agency to any federal law enforcement authority or agency for federal forfeiture purposes unless the value of the property generally exceeds \$100,000 or the transfer or referral is for federal criminal forfeiture proceedings.

## Goods in execution claimed by a third party

- Requires the judge of the court of common pleas, municipal court, or county court, whichever has jurisdiction, to schedule a hearing to determine a claimant's right to the goods in execution as soon as practicable after receipt of the notice and schedule of the property.
- Repeals the provisions that required the summoning of jurors to try and determine the rights of the claimant to the property in controversy in a jury trial and to make appropriate findings.
- Requires the judge to render judgment based on the judge's findings at the hearing.

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## **CONTENT AND OPERATION**

### **Overview of the act**

The act modifies the Forfeiture Law by revising the civil forfeiture process, changing seizure procedures, shifting the burden of proof and revising evidence requirements for criminal forfeiture, and restricting the transfer of forfeited property to a federal agency. It establishes the offense of "receiving proceeds of an offense subject to forfeiture proceedings," and authorizes the state to file a civil action against a person who is alleged to have committed that offense if the proceeds involved generally exceed \$15,000. The act modifies the procedure in execution regarding goods claimed by a third party.

### **Modification of civil forfeiture procedure**

#### **Underlying offense; time for filing civil forfeiture action**

The Forfeiture Law permits the offense that is the basis of forfeiture to be any act or omission that could be charged as a criminal offense or a delinquent act, including any felony or misdemeanor. A prosecutor may file a criminal forfeiture or civil forfeiture action, or both. The act requires a prosecutor to commence a civil forfeiture action after a seizure if the provisions described below apply and not sooner than the time periods under those provisions, regardless of whether or not a criminal forfeiture proceeding has begun. Additionally, the act eliminates the provision that permitted a civil forfeiture action to be commenced regardless of whether the offender or delinquent child had pleaded guilty to, been convicted of, or been adjudicated delinquent for the act that was the basis of the forfeiture order.<sup>1</sup>

#### **Civil forfeiture complaint**

Under continuing law, the prosecutor of the political subdivision in which forfeitable property is located may file a civil forfeiture action in the court of common pleas of that county by filing a complaint requesting forfeiture of the property to the state or political subdivision. The act permits a complaint for civil forfeiture to be filed

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<sup>1</sup> R.C. 2981.01(B)(10), 2981.03(F), and 2981.05(A).



only if the property was seized with probable cause that it was involved in the commission of a felony or "gambling offense" (defined as in the Gambling Offenses Law) or was directly or indirectly obtained through the commission of a felony or gambling offense and either:<sup>2</sup>

(1) the property owner is unavailable to the court because the property owner is

(a) deceased, or

(b) a felony indictment or a charge for a gambling offense has been filed against the property owner or an arrest warrant was issued, and the property owner is outside the state and unable to be extradited to the state for prosecution or reasonable efforts have been made by law enforcement authorities to locate the property owner, but the property owner has not been located; or

(2) the property owner has not claimed, or asserted any interest in, the property during or after its seizure, verbally or in writing, and all claims of aggrieved parties have been denied.

The complaint may be filed not sooner than three months after the property owner is deceased, not sooner than three months after the property owner has not claimed, or asserted any interest in, the property as described in (2) above, or not sooner than one year after (1)(b) above applies.<sup>3</sup> Under former law, the time periods for filing a civil forfeiture action were within 30 days of the seizure of property alleged to have been a mobile instrumentality or personal, business, or governmental records or within 60 days of the seizure of other property, subject to extension by agreement of the parties or by the court for good cause shown.<sup>4</sup> The complaint under the act must state the facts that support the state's or political subdivision's allegations and the alleged felony or gambling offense that subjects the property to forfeiture. If the property owner is unavailable to the court because that owner is deceased, the complaint must include a certified copy of the property owner's death certificate.<sup>5</sup>

The act specifies, for purposes of the civil forfeiture provisions, a rebuttable presumption that the person in possession of the property at the time of its seizure is

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<sup>2</sup> R.C. 2981.05(A) and (J).

<sup>3</sup> R.C. 2981.05(A).

<sup>4</sup> R.C. 2981.03(F).

<sup>5</sup> R.C. 2981.05(B).



considered to be the owner of the property unless legal title to the property states otherwise.<sup>6</sup>

### **Civil forfeiture complaint filed with or after filing of charging instrument**

The act permits the prosecutor to commence a civil forfeiture action simultaneously with or after the filing of a complaint, indictment, or information charging an offense or a complaint charging a delinquent act, in the same court in which the applicable charging instrument is filed. The civil forfeiture complaint must request an order to forfeit to the state or political subdivision any property subject to forfeiture that is involved in the offense or act. The civil forfeiture action is stayed during the pendency of the criminal or delinquency proceedings, and proceeds after the defendant is convicted of, or enters intervention in lieu of conviction for, the offense or the juvenile is adjudicated a delinquent child.<sup>7</sup>

### **Civil action against person alleged to have committed specified offense**

The act permits the state to file a civil forfeiture action, in the form of a civil action against any person who is alleged to have received, retained, possessed, or disposed of proceeds, in an amount generally exceeding \$15,000, knowing or having reasonable cause to believe that the proceeds were allegedly derived from the commission of an "offense subject to forfeiture proceedings" (see "**Definitions**") in violation of the new offense of "receiving proceeds of an offense subject to forfeiture proceedings" as described below (hereafter offense in question). The complaint must be filed in the court of common pleas of the county in which the proceeds were alleged to have been received, retained, possessed, or disposed of by the person, and must specify all of the following:<sup>8</sup>

(1) That the person against whom the complaint is filed is alleged to have received, retained, possessed, or disposed of proceeds, in an amount generally exceeding \$15,000, knowing or having reasonable cause to believe that the proceeds were allegedly derived from the commission of an offense subject to forfeiture proceedings in violation of the prohibition under the offense in question;

(2) That the state has the right to recover the proceeds described above in (1);

(3) The actual amount of those proceeds.

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<sup>6</sup> R.C. 2981.05(E).

<sup>7</sup> R.C. 2981.05(C).

<sup>8</sup> R.C. 2981.05(D)(1).



The civil action must be stayed if a criminal complaint, indictment, or information is filed against the person who is alleged to have received, retained, possessed, or disposed of proceeds under the above circumstances in violation of the prohibition under the offense in question.<sup>9</sup>

In such a civil action, the state has the burden to prove by clear and convincing evidence all of the following:<sup>10</sup>

(1) That the person received, retained, possessed, or disposed of the proceeds involved;

(2) That the person knew or had reasonable cause to believe that the proceeds were derived from the alleged commission of an offense subject to forfeiture proceedings in violation of the prohibition under the offense in question;

(3) The actual amount of the proceeds involved that generally exceeds \$15,000.

Any statements made in that civil action are inadmissible as evidence in a criminal action brought against the person involved for the offense in question, except for purposes of impeachment.<sup>11</sup>

The civil action must be commenced within two years after the latest date on which a person allegedly received, retained, possessed, or disposed of proceeds, in an amount generally exceeding \$15,000, knowing or having reasonable cause to believe that the proceeds were allegedly derived from the commission of an offense subject to forfeiture proceedings in violation of the prohibition under the offense in question. The court must complete the trial of the civil action within one year after it is commenced unless the parties mutually agree to extend the one-year period or the extension of that period is for good cause shown.<sup>12</sup>

The amount of \$15,000 specified in the above provisions must be increased on the first day of the following January, starting on January 1, 2018, by the rate of inflation for the 12-month period ending in September of the prior year according to the consumer price index or its successor index.<sup>13</sup>

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<sup>9</sup> R.C. 2981.05(D)(2).

<sup>10</sup> R.C. 2981.05(D)(3).

<sup>11</sup> R.C. 2381.05(D)(4).

<sup>12</sup> R.C. 2981.05(D)(5) and (6).

<sup>13</sup> R.C. 2981.05(D)(7).





## Definitions

For purposes of the offense of "receiving proceeds of an offense subject to forfeiture proceedings" described below and the above-described civil action, the act defines "proceeds" as in the Forfeiture Law, as modified by the act; "vehicle" as in the Motor Vehicles Law; and "offense subject to forfeiture proceedings" as any of the following offenses:<sup>14</sup>

- Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, reckless homicide, negligent homicide, aggravated vehicular homicide, vehicular homicide, vehicular manslaughter, aggravated vehicular assault, vehicular assault, felonious assault, aggravated assault, assault, negligent assault, permitting child abuse, knowingly failing to provide for a functionally impaired person, recklessly failing to provide for a functionally impaired person, aggravated menacing, or menacing by stalking;
- Kidnapping, abduction, unlawful restraint, criminal child enticement, extortion, trafficking in persons, or unlawful conduct with respect to documents;
- Rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, commercial sexual exploitation of a minor, compelling prostitution, promoting prostitution, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, or illegal use of a minor in a nudity-oriented material or performance;
- Aggravated arson, arson, soliciting or providing support for an act of terrorism, making a terroristic threat, terrorism, criminal possession of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, criminal use of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, illegal assembly or possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device, or money laundering in support of terrorism;
- Aggravated robbery, robbery, aggravated burglary, burglary, trespass in a habitation when a person is present or likely to be present, or breaking and entering;

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<sup>14</sup> R.C. 2927.21(A) and 2981.05(J).

- Gambling, operating a gambling house, public gaming, cheating, or corrupting sports;
- Bribery, intimidation, intimidation of an attorney, victim, or witness in a criminal case, retaliation, perjury, tampering with evidence, or theft in office;
- Corrupting another with drugs, aggravating trafficking in drugs, trafficking in drugs, trafficking in marihuana, trafficking in other specific types of drugs, illegal manufacture of drugs, illegal cultivation of marihuana, illegal assembly or possession of chemicals for the manufacture of drugs, aggravated funding of drug trafficking, funding of drug trafficking, funding of marihuana trafficking, illegal administration or distribution of anabolic steroids, unapproved drugs – dangerous drug offenses involving livestock, aggravated possession of drugs, possession of drugs, possession of marihuana, or possession of other specific types of drugs;
- A conspiracy or attempt to commit, or complicity in committing any of the above offenses.

### **Notice to interested parties**

The act makes two changes in the procedures for the prosecutor to identify persons with an interest in the property. First, it changes the timing by requiring the prosecutor, prior to the commencement of the action, to attempt to identify those persons and, at the time of filing the complaint, to give notice of the action and a copy of the complaint to each such person. Second, it specifies that the required notice must be published once each week for the two consecutive weeks immediately after filing the complaint and must contain the date and location of the seizure of the property and an itemized list of the seized property. It retains the requirement that the publication be in a newspaper of general circulation in the county.<sup>15</sup>

### **Burden of proof**

The act modifies former law by requiring the court to issue a civil forfeiture order if it determines that the prosecutor has proved by clear and convincing evidence, instead of a preponderance of the evidence, that the property is subject to forfeiture. A civil forfeiture order must state that all interest in the property of the property owner who committed the felony or gambling offense, of the person alleged to have received,

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<sup>15</sup> R.C. 2981.05(F).

retained, possessed, or disposed of proceeds if the provisions described above in "**Civil action against person alleged to have committed specified offense**," apply, or of the adult or juvenile who committed the act described above in "**Civil forfeiture complaint filed with or after filing of charging instrument**," that is the basis of the order is forfeited to the state or political subdivision, and must make due provision for the interest in that property of any other appropriate person.<sup>16</sup>

### **"Receiving proceeds of an offense subject to forfeiture proceedings"**

The act prohibits any person from receiving, retaining, possessing, or disposing of "proceeds" knowing or having reasonable cause to believe that the proceeds were derived from the commission of an "offense subject to forfeiture proceedings." (See "**Definitions**" above.) A violation of the prohibition is the offense of "receiving proceeds of an offense subject to forfeiture proceedings." It is not a defense that the proceeds were derived by means other than the commission of an offense subject to forfeiture proceedings if the property was explicitly represented to the accused person as having been derived from the commission of any such offense. A person is considered to have received, retained, possessed, or disposed of proceeds if they were found anywhere in a "vehicle" that the person was the last person to operate immediately prior to the vehicle's search by the law enforcement officer who found the proceeds.<sup>17</sup>

The following are the penalties for the offense, which depend on the value of the proceeds involved:<sup>18</sup>

- First degree misdemeanor if the value is less than \$1,000;
- Fifth degree felony if the value is \$1,000 or more and less than \$25,000;
- Fourth degree felony if the value is \$25,000 or more and less than \$150,000;
- Third degree felony if the value is \$150,000 or more.

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<sup>16</sup> R.C. 2981.05(H).

<sup>17</sup> R.C. 2927.21(B), (C), and (D).

<sup>18</sup> R.C. 2927.21(E).



## Seized property

### Initial seizure

Under the act, if the state or a political subdivision seeks to seize real property, the prosecutor must file a motion in the appropriate court to request a hearing before the seizure and must notify the property owner of the motion. The court must hold the hearing not sooner than 21 days after the motion is filed. The court must grant the motion if the state or political subdivision demonstrates by a preponderance of the evidence that the real property is subject to forfeiture. The act repeals the procedure, applicable only in a civil forfeiture case, which required the property owner to request a hearing at which the state or political subdivision was required to show probable cause that the real property was subject to forfeiture.<sup>19</sup> The above procedure under the act is an exception to continuing law, which authorizes a law enforcement officer to seize property that the officer has probable cause to believe is subject to seizure.<sup>20</sup>

If a person aggrieved by an alleged unlawful seizure of property files a motion showing the person's interest in the property and the motion is filed before the indictment or complaint seeking forfeiture is filed, the act requires the court to schedule a hearing not later than 21 days after the motion is filed. Prior law required the hearing to be scheduled promptly. The act permits the court to extend the 21-day period for a hearing upon the consent of the parties or if good cause is shown. If the property seized is titled or registered under law, the state or political subdivision must demonstrate by a preponderance of the evidence that the seizure was lawful and the person is not entitled to the property. If the property seized is not titled or registered under law, the person must demonstrate by a preponderance of the evidence that the seizure was unlawful and the person is entitled to the property. Former law did not distinguish whether the property seized was or was not titled or registered, and placed the burden on the person to prove by a preponderance of the evidence that the seizure was unlawful and that the person was entitled to the property.<sup>21</sup>

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<sup>19</sup> R.C. 2981.03(A)(3).

<sup>20</sup> R.C. 2981.03(A)(2).

<sup>21</sup> R.C. 2981.03(A)(4).



## **Proof of amount of costs**

The act retains the law providing that the alleged offender or delinquent child has the burden to prove the amount of any direct costs lawfully incurred, and specifies that this provision applies in any criminal forfeiture action or civil forfeiture action.<sup>22</sup>

## **Conditional release of property**

If no criminal complaint or indictment is filed, the act generally requires a petition by a person with an interest in seized property for its conditional release to be filed within 30 days of the seizure of the property, instead of within 30 days of the issuance of the seizure warrant of the property under former law.<sup>23</sup>

The act modifies the time for a court to decide a petition by a person with an interest in seized property for its conditional release. The court must decide on the petition not more than 21 days after it is filed. If the property seized is alleged to be a mobile instrumentality, the court must decide on the petition not more than ten days after it is filed. Former law generally required a petition to be decided within 30 days, and required it to be decided as soon as practicable within the 30-day period if the seized property was a mobile instrumentality. The act retains the requirement that if personal, business, or governmental records were seized and a person files a petition to copy the records, the court must decide on the petition as soon as practicable, and specifies that the decision must be made not later than 30 days after the petition is filed.<sup>24</sup>

## **Criminal forfeiture**

### **Specific requirement of conviction or delinquency adjudication**

The act expands the law's requirement that property subject to forfeiture may be forfeited in a criminal proceeding only if the complaint or indictment charging the offense or the delinquent act contains a specification setting forth certain information by also requiring that the defendant be convicted of, or enter intervention in lieu of conviction for, an offense or the juvenile be adjudicated a delinquent child.<sup>25</sup>

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<sup>22</sup> R.C. 2981.03(A)(5)(b).

<sup>23</sup> R.C. 2981.03(D)(2).

<sup>24</sup> R.C. 2981.03(D)(6).

<sup>25</sup> R.C. 2981.04(A).



## **Separate consideration of guilt**

The act repeals the provision that allowed the court, for good cause shown, to consider issues of guilt of the alleged offender or the delinquency of the alleged delinquent child separate from whether property should be forfeited.<sup>26</sup>

## **Burden of proof**

The act modifies the law by requiring that if the person is convicted of, enters intervention in lieu of conviction for (added by the act), or is adjudicated delinquent on the basis of, the underlying offense, the state or political subdivision must establish by clear and convincing evidence, instead of by a preponderance of the evidence, that the property is subject to forfeiture.<sup>27</sup>

## **Third party claimants**

A person, other than the offender or delinquent child, may file a petition asserting a legal interest in the property. The act requires the petition to include a statement that one of the following conditions applies:<sup>28</sup>

(1) The petitioner has a legal interest in the property that renders the forfeiture order completely or partially invalid because the legal interest was vested in the petitioner, rather than the offender or delinquent child, or was superior to any interest of that offender or delinquent child, at the time of the commission of the offense or delinquent act;

(2) The petitioner is a bona fide purchaser for value of the interest in the property and was, at the time of the purchase, reasonably without cause to believe that it was subject to forfeiture.

Formerly, the court was required to amend its forfeiture order if it determined at the hearing that the petitioner had established either of the above conditions. The act retains the provision that places on the petitioner the burden of proof by a preponderance of the evidence that the applicable condition alleged by the petitioner as described above applies to the petitioner.<sup>29</sup>

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<sup>26</sup> R.C. 2981.04(A)(3).

<sup>27</sup> R.C. 2981.04(B).

<sup>28</sup> R.C. 2981.04(E)(1)(d).

<sup>29</sup> R.C. 2981.04(F)(1).



If a person, other than the offender or delinquent child, is a secured party or other lienholder of record that asserts a legal interest in the property and files an affidavit establishing that interest, the affidavit generally constitutes conclusive evidence of the affiant's interest in the property. The government may refute that evidence if the prosecutor files a motion challenging the affidavit and establishes by clear and convincing evidence under the act, instead of a preponderance of the evidence under prior law, that the affiant does not possess the interest or had actual knowledge of facts pertaining to the offense or delinquent act.<sup>30</sup>

### **Proportionality review**

Under the law, property may not be forfeited as an "instrumentality" (property otherwise lawful to possess that is used or intended to be used in an offense) to the extent that the property's value or amount is disproportionate to the severity of the offense. The act provides that the state or political subdivision has the burden of going forward with the evidence and the burden to prove by clear and convincing evidence that the amount or value of the property is proportionate to the severity of the offense. Formerly, the owner of the property had the burden of going forward with the evidence and the burden to prove by a preponderance of the evidence that the amount or value of the property was disproportionate to the severity of the offense.<sup>31</sup>

The act expands the factors that the court is required to consider in determining the severity of the offense to include the extent to which the property was used in committing the offense and the sentence imposed for committing the offense, if applicable. The relevant factors to be considered under continuing law are: (1) the seriousness of the offense and its impact on the community, (2) the extent to which the person participated in the offense, and (3) whether the offense was completed or attempted.<sup>32</sup>

Under the law, in determining the value of the property that is an instrumentality and is subject to forfeiture, the court must consider the value of the property to the person involved, including hardship to the person or to innocent persons. The act requires the burden to be on the person whose property is subject to forfeiture to show the property's value and any hardship to that person.<sup>33</sup>

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<sup>30</sup> R.C. 2981.04(E)(2)(c).

<sup>31</sup> R.C. 2981.01(B)(6) and 2981.09(A).

<sup>32</sup> R.C. 2981.09(C).

<sup>33</sup> R.C. 2981.09(D)(2).

## Unreachable property

The act makes two changes to the law requiring the court to order forfeiture of any other property of the offender or delinquent child up to the value of unreachable property if any of the following conditions describe the property to be forfeited:<sup>34</sup>

- It cannot be located with due diligence.
- It has been transferred, sold, or deposited with a third party.
- It has been placed beyond the court's jurisdiction.
- It has been substantially diminished in value or commingled with other property and cannot be divided without difficulty or undue injury to innocent persons.

First, it requires the state or political subdivision to demonstrate those conditions by clear and convincing evidence. Second, it specifies the second condition above as property having been transferred, sold, or deposited with an innocent or bona fide third party.<sup>35</sup>

Under the act, if property subject to a forfeiture order has been transferred, sold, or deposited with a third party, the court must order forfeiture of that property instead of ordering the forfeiture of other property if the state or political subdivision demonstrates by clear and convincing evidence that the property was transferred, sold, or deposited in violation of the offense of "interference with or diminishing forfeitable property." That offense is committed under continuing law by any person who destroys, damages, removes, or transfers property subject to forfeiture or otherwise takes any action in regard to such property with purpose to: (1) prevent or impair the state's or political subdivision's lawful authority to take the property into its custody or control or to continue holding the property, (2) impair or defeat the court's continuing jurisdiction over the person and property, or (3) devalue property that the person knows, or has reasonable cause to believe, is subject to Ohio forfeiture proceedings.<sup>36</sup>

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<sup>34</sup> R.C. 2981.06(D)(1).

<sup>35</sup> R.C. 2981.06(D)(1).

<sup>36</sup> R.C. 2981.06(D)(2) and 2981.07, not in the act.





The act provides that the law's requirements dealing with third party claimants, as modified by the act, apply to other property forfeited, other than unreachable property.<sup>37</sup>

## **Definition of "proceeds"**

The Forfeiture Law defines "proceeds" in cases involving unlawful goods, services, or activities as property derived directly or indirectly from an offense, and may include money or other means of exchange. "Proceeds" is not limited to the net gain or profit realized from the offense. Under the act, "proceeds" does not include property, including money or other means of exchange, if all of the following apply to that property:<sup>38</sup>

- It is held under clear title by a law enforcement agency.
- It is used or may be used to purchase contraband for the purpose of investigating any "drug abuse offense," as defined in the Drug Offenses Law.
- If it is used to purchase contraband, it continues to be the law enforcement agency's property if the agency establishes a clear chain of custody of it.

## **Disposal of forfeited property**

### **Internal control policy**

A law enforcement agency that has custody of forfeited property must adopt and comply with a written internal control policy regarding the use of that property. The act revises the information that must be included in the records regarding the disposition of forfeited property to include generally an itemized list of the specific expenditures, instead of the general types of expenditures, made with amounts gained from the sale of the property and retained by the agency, including the specific amount expended on each expenditure.<sup>39</sup>

### **Federal forfeiture**

The act prohibits a law enforcement agency or prosecuting authority from directly or indirectly transferring or referring any property seized by the agency or

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<sup>37</sup> R.C. 2981.06(D)(3).

<sup>38</sup> R.C. 2981.01(B)(11)(a).

<sup>39</sup> R.C. 2981.11(B)(1)(b)(ii).



authority to any federal law enforcement authority or other federal agency for purposes of forfeiture under federal law unless the value of the seized property exceeds \$100,000, excluding the potential value of the sale of contraband, or the property is being transferred or referred for federal criminal forfeiture proceedings. This prohibition is an exception to continuing law's provision that nothing in Ohio's forfeiture laws precludes the head of a law enforcement agency that seizes property from seeking forfeiture under federal law.<sup>40</sup>

### **Goods in execution claimed by a third party**

The act modifies the law dealing with execution against property claimed by a person other than the defendant by requiring the judge of the court of common pleas, municipal court, or county court, whichever has jurisdiction, to schedule a hearing to determine the claimant's right to the property as soon as practicable after receipt of the written notice and schedule of the claimed goods given by the officer who levies the writ of execution on the goods. Under former law, a county court was required to make an entry of the notice and schedule on the docket and issue a summons commanding the sheriff or any constable to summon five disinterested men with the qualifications of electors to appear before the county court judge not more than three days after the date of the writ to serve as jurors. The act repeals the provision that required the claimant to give two days' written notice of the time and place of trial to the plaintiff or party for whose benefit the writ was issued, and to the party's agent or attorney, if within the county, and to prove to the judge that such notice was given or could not be given due to the absence of the potential recipients.<sup>41</sup>

The act provides that, if at the hearing the judge finds that the claimant has the right to all or part of the goods, the judge must find their value. The judge must render judgment that the claimant recover costs against the plaintiff in execution or other party for whose benefit the writ of execution is issued and also have restitution of the goods or part of them. If the judge finds the claimant has no right to the goods, the judge must render judgment in favor of the plaintiff in execution or other party and against the claimant for costs and award execution on the judgment. Formerly, the jurors summoned as described above had to be sworn to try and determine the right of the claimant to the property, give a verdict according to the evidence, and make the appropriate finding regarding the rights of the claimant, the plaintiff in execution, or the other party.<sup>42</sup> The act further changes the law to provide that the judge, instead of

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<sup>40</sup> R.C. 2981.14(A) and (B).

<sup>41</sup> R.C. 2329.84.

<sup>42</sup> R.C. 2329.85.



the jury, assesses the bond in double the amount of the property value to be tendered by the plaintiff in execution if the judge finds at the hearing that the claimant has the right to the property.<sup>43</sup>

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## HISTORY

ACTION	DATE
Introduced	09-29-15
Reported, H. Judiciary	05-18-16
Passed House (72-25)	05-25-16
Reported, S. Gov't Oversight & Reform	12-07-16
Passed Senate (31-0)	12-08-16
House concurred in Senate amendments (81-10)	12-08-16

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<sup>43</sup> R.C. 2329.86.

