



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: H.B. 347 of the 131st G.A. (LSC 131 1769-4) **Date:** December 1, 2015
Status: In House Judiciary **Sponsor:** Reps. McColley and Brinkman

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.
- The bill's offense may create additional criminal matters for county and municipal criminal justice systems to process, with any related convictions potentially generating a mix of fine, fee, and court cost revenue retained by local jurisdictions or forwarded to the state as appropriate. A felony conviction could result in a prison sentence. For the state and those local criminal justice systems, any expenditure increase and related revenue gain is uncertain, as the number of cases that may be generated is also uncertain.

Detailed Fiscal Analysis

The bill: (1) modifies the civil forfeiture process under Ohio law thus allowing the state or any of its political subdivisions to pursue forfeiture under specified conditions, (2) makes changes to the disposition of forfeited property and funds, (3) restricts the transfer of forfeited property to a federal agency, and (4) creates an offense related to receiving proceeds of a drug abuse or trafficking in persons offense.

Modification of civil forfeiture

The modification of the provisions of law governing the civil forfeiture process may reduce some of the required procedural functions performed by prosecutors and the courts. 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 bill eliminates the requirement that a prosecutor file a civil forfeiture action if a criminal forfeiture action has not begun, and specifies the circumstances in which a complaint for civil forfeiture may be filed, such as the death of the property owner or the inability to prosecute because the property owner is unavailable. These changes mean 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.

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. The bill further expands this

distribution to include money acquired from property sold in a civil proceeding. 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

The modifications to civil and criminal forfeiture may result in some 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. Any reduction in civil forfeiture will affect the distribution of cash and property to prosecutors as well as state and local law enforcement agencies. The specific change in revenue to certain local jurisdictions is uncertain.

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

The bill allows law enforcement agencies involved in the federal task forces to use the forfeited funds for general operating expenses, for example, payroll costs, as well as 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 generally exceeds \$50,000, or the transfer is for federal criminal forfeiture proceedings as part of a federal criminal prosecution. If some portion of the 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.

Criminal offense

The bill creates an offense related to receiving, retaining, possessing, or disposing of the proceeds knowing or having reasonable cause to believe that the proceeds were derived from the commission of a drug abuse offense or a human trafficking offense. The penalty depends on the value of the proceeds involved as follows:

- If the value is less than \$1,000, then it is a first degree misdemeanor.
- If the value is more than \$1,000 and less than \$25,000, the offense is a felony of the fifth degree.
- If the value is \$25,000 or more and less than \$150,000, the offense is a felony of the fourth degree.
- If the value is \$150,000 or more, the offense is a felony of the third degree.

State fiscal effects

As a result of violations of the offense, there may be an increase in the number offenders sentenced to prison. Such an outcome may increase the Department of Rehabilitation and Correction's annual GRF-funded incarceration expenditures. The size of any such increase in institutional operating expenditures is uncertain as the potential caseload for this type of new offense is unknown. The annual cost of incarcerating an offender in prison is \$22,836.

Additional revenue, in the form of state court costs, may be collected locally and forwarded for deposit in the state treasury to the credit of the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020). The state court costs total \$60 and \$29 for a felony and misdemeanor, respectively. It is important to note that the likely amount of state court cost revenue collected from certain offenders can be problematic to estimate, especially in light of the fact that many are either indigent or unwilling to pay.

Local fiscal effects

Any new criminal case created by the bill carries the potential to increase related county and municipal criminal justice system costs, for example, expenses related to investigating, prosecuting, adjudicating, and sanctioning the offender, as well as paying for defense counsel if the offender is indigent. Any resulting increase in a county's or municipality's criminal justice system expenditures is uncertain since there is no readily available data to suggest how many persons may be arrested, charged, and convicted of the offense.

Furthermore, the bill may also increase the amount of local court cost, fee, and fine revenue collected by counties and municipalities from convicted offenders. Again, the likely amount of revenue collected from certain offenders can be problematic to estimate, given the uncertain caseloads, and in light of the fact that many are either indigent or unwilling to pay.

Synopsis of Fiscal Effect Changes

The differences in the fiscal effects between the substitute bill (LSC 131 1769-4) and the previous version (As Introduced) are summarized below.

- The substitute bill will allow more civil forfeitures to proceed under Ohio law, thereby increasing some of the required actions by prosecutors. The potential savings identified in the As Introduced version would be somewhat reduced in the substitute bill.
- The substitute bill creates a new offense related to receiving proceeds of a drug abuse offense or a human trafficking offense. The As Introduced version had no such provision. The offense may create additional criminal matters for county and municipal criminal justice systems to process, with any related convictions potentially generating a mix of fine, fee, and court cost revenue retained by local jurisdictions or forwarded to the state as appropriate. A felony conviction could result in a prison sentence. For the state and those local criminal justice systems, any expenditure increase and related revenue gain is uncertain, as the number of cases that may be generated is also uncertain. The As Introduced version had no such provision.