



# OHIO LEGISLATIVE SERVICE COMMISSION

Joseph Rogers

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 347 of the 131st G.A. **Date:** December 8, 2016  
**Status:** As Enacted **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 forfeitures (cash and property) will likely experience reductions in their distributions that could reach into the millions of dollars annually statewide.
- The bill creates the offense of receiving proceeds of certain specified offenses subject to forfeiture proceedings. Violations of the offense will 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.

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### 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) restricts the transfer of forfeited property to a federal agency, and (3) creates an offense related to receiving proceeds of certain specified offenses subject to forfeiture proceedings.

#### 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.

### **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 payments of cash and sale proceeds to Ohio from federal fiscal years (FFY) 2011-2015. Total payments statewide ranged between \$7.6 million (FFY 2015) 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.

<b>Justice Equitable Sharing Payments of Cash and Sale Proceeds to Ohio, FFYs 2011-2015</b>					
<b>Agency</b>	<b>FFY 2015</b>	<b>FFY 2014</b>	<b>FFY 2013</b>	<b>FFY 2012</b>	<b>FFY 2011</b>
State	\$1,855,579	\$2,122,889	\$1,502,098	\$3,009,552	\$2,472,607
Local	\$5,767,082	\$6,279,646	\$11,839,167	\$7,676,040	\$7,349,005
Total	\$7,622,661	\$8,402,535	\$13,341,265	\$10,685,592	\$9,821,612

The bill allows law enforcement agencies involved in 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 \$100,000, 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 the offense of "receiving proceeds of certain specified offenses subject to forfeiture proceedings," which 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 a number of specified offenses. The penalty for violating the prohibition 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 \$1,000 or more 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 prohibition, there may be an increase in the number of 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 number of violations statewide is unknown. As of November 2016, the annual cost of incarcerating an offender in prison was \$24,763.

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 number of violations, and in light of the fact that many offenders are either indigent or unwilling to pay.

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