

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 1494 – HB2403

March 3, 2016

SUMMARY OF BILL: Requires the owner of the property, for purposes of asset forfeiture under Title 40, Chapter 33 of the Tennessee Code Annotated, to have been convicted of a criminal offense related to the seized property and a finding by clear and convincing evidence that the property was used or possessed illegally, unless the property was a controlled substance; provided that the conviction and finding requirements do not apply if the owner of the property is deported, is unknown even after the seizing agency has exercised due diligence in determining the owner, or flees after prosecution is commenced.

Requires any person asserting a security interest in the seized property to file proof, rather than a claim or proof, of the security interest with the applicable agency within 30 days or the seized property will be forfeited. Requires a hearing to be set within 30 days of a claim being filed. If a claim is not filed and the owner of the property is known, then the agency is required to establish a hearing date within 30 days from the date the agency becomes aware the owner has (1) been convicted of an offense related to the seizure, (2) been deported, or (3) fled after the commencement of prosecution. Further, if no claim is filed and the owner of the property is not known after the agency has exercised due diligence in attempting to determine the owner, then the property shall be forfeited.

Requires the seizing agency to prove by clear and convincing evidence, rather than preponderance of the evidence, that the seized property was used in a manner making it subject to forfeiture. The seizing agency must (1) carry its burden of proof that the property was used in a manner making it subject to forfeiture, (2) recommend forfeiture of the property, and (3) prove by clear and convincing evidence that the owner has been convicted of a criminal offense or that the owner has been deported or fled after commencement of prosecution.

When a forfeiture proceeding is appealed, the reviewing court must apply the clear and convincing evidence standard in determining whether to sustain or reverse the final order of the applicable agency. In a forfeiture proceeding, a court shall allow a claim filed for any conveyance if the claimant proves by a preponderance of the evidence that the claimant has an interest in the conveyance, and the state failed to prove by clear and convincing evidence that the claimant had knowledge or reason to believe the conveyance was used in the commission of an offense.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue – \$262,200/Recurring

Increase State Expenditures – \$116,300/One-Time

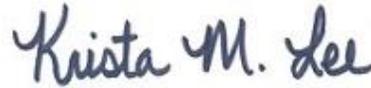
Assumptions:

- Civil forfeiture is a legal process in which law enforcement agencies take assets suspected of involvement in criminal or illegal activity. Civil forfeiture can be initiated even if the property owner has not been charged with any criminal or illegal activity.
- Civil forfeiture actions are in rem—i.e., they are actions brought against property or a property interest and not against an individual. *Stuart v. State Dept. of Safety*, 963 S.W.2d 28, 34 (Tenn. 1998).
- Under current procedure, law enforcement agencies can seize property for which probable cause exists that the property was used or involved in criminal or illegal activity and file a civil forfeiture action.
- The seizing agency must prove by a preponderance of the evidence that the property was used in a manner making it subject to forfeiture. The property owner has the burden to prove that the property was not involved.
- The bill requires the state to prove by clear and convincing evidence that the property was used in a manner making it subject to property.
- Preponderance of the evidence requires the truth of the facts asserted be more probable than not. *Teter v. Republic Parking Sys.*, 181 S.W.3d 330, 341 (Tenn. 2005). The clear and convincing evidence standard is more stringent than the preponderance of the evidence standard. “Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992).
- Proving the property was used in a manner making it subject to forfeiture will require more effort than the preponderance of the evidence standard. However, it is assumed that the additional effort will not substantially impact seizing agencies or forfeiture proceedings.
- The bill also requires that the owner be convicted of a criminal offense related to the seizing property and requires all forfeiture matters to be set for hearing. These requirements will significantly impact forfeiture proceedings in Tennessee.
- There is no direct data on the number of forfeiture matters in Tennessee that result in the owner ultimately being convicted of a criminal offense related to the forfeited property. One study indicates that up to 80 percent of cases result in no criminal charges, or in other words, only 20 percent of forfeitures involve an underlying conviction in which the forfeited property was allegedly used. *Above the Law: An Investigation of Civil Asset Forfeiture in California* (https://www.drugpolicy.org/sites/default/files/Drug_Policy_Alliance_Above_the_Law_Civil_Asset_Forfeiture_in_California.pdf).
- It is assumed that 40 percent of forfeitures in Tennessee involve an underlying conviction. It is assumed that the bill will reduce forfeitures in Tennessee by 60 percent.

- Data from the Department of Safety (DOS) indicates that it prosecutes approximately \$437,000 in forfeited property each year. The bill will reduce recurring state forfeiture revenue by \$262,200 ($\$437,000 \times 0.60$).
- Fiscal Review could not find any other data on a state or local law enforcement agency prosecuting its own forfeitures. It is assumed that they transfer all seized property to the federal government to prosecute the forfeitures.
- The DOS reports that it handles 3,500 to 4,000 forfeitures each year. It is assumed that the DOS will handle 1,400 to 1,600 [$(3,500 \text{ to } 4,000) \times 0.40$] under the bill.
- The DOS also reports that requiring a hearing for all forfeiture matters will increase the number of hearings by 100 percent. In other words, only half of the forfeiture matters handled by the Department result in a hearing. It is assumed that Safety will handle 2,800 to 3,200 [$(1,400 \text{ to } 1,600) \times 2$] hearings each year, which is near the number of cases they currently handle. It is assumed that the DOS will not need any additional personnel to handle any impact resulting from this bill.
- However, the DOS will have to update the Notice of Property Seizure and Forfeiture of Conveyance Form as well as the Notice of Forfeiture Warrant Hearing Form for the Tennessee Highway Patrol. The one-time cost to update the two forms is estimated to be \$116,329.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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