

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 340 - SB 362

February 18, 2019

**SUMMARY OF BILL:** Establishes the process for District Attorneys General to review civil asset forfeitures. Prohibits state and local law enforcement from relinquishing seized property to a federal agency for purpose of the property's forfeiture under the federal Controlled Substances Act. Prohibits state and local law enforcement from accepting payment from a joint task force or collaboration unless the aggregate net equity value of the property and currency seized in a case exceeds \$100,000, excluding contraband. Changes the required standard of proof for property forfeiture hearings and appeals.

**ESTIMATED FISCAL IMPACT:**

**Decrease State Revenue – Net Impact – \$662,800/Recurring/  
State Law Enforcement Agencies**

**Increase State Expenditures – \$36,800/One-Time/General Fund  
\$423,800/Recurring/General Fund**

**Decrease Local Revenue – Net Impact – \$2,355,300/Recurring**

**Other Fiscal Impact – The provisions of this legislation may exclude state and local governments from participation in the Equitable Share Program. The timing and extent of any exclusion cannot be reasonably determined.**

Assumptions:

*District Attorneys General:*

- Civil forfeiture is a legal process in which law enforcement agencies seize assets suspected of being involved in criminal or illegal activity. Civil forfeiture may 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, a law enforcement agency may seize property for which probable cause exists that the property was used or involved in criminal or illegal

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activity. The law enforcement agency files a civil forfeiture action. The property owner then has the burden to prove that the property was not involved in the commission of the offense.

- Based on information provided by the Department of Safety (DOS), the DOS Legal Division opened 9,420 civil asset forfeiture cases in calendar year 2016 and 8,429 civil asset forfeiture cases in calendar year 2017.
- At present, district attorneys (DAs) are not involved in the civil asset forfeiture process.
- The proposed legislation would require seizing officers to submit required information to the DA for the jurisdiction in which each seizure was made and require the DA to review the information provided and determine if there is probable cause to justify the forfeiture. If not, the DA is required to file a motion to dismiss the application for forfeiture warrant.
- The proposed legislation will require the addition of one assistant district attorney, three paralegals and four secretaries to review each civil asset forfeiture case.
- The one-time increase in state expenditures relative to the eight additional positions is estimated to be \$36,800 [(\$2,800 office furniture + \$1,800 computers) x 8].
- The total recurring increase in state expenditures associated with the positions is estimated to be \$423,810 (\$286,740 salary + \$101,270 benefits + \$13,000 travel expenses + \$800 printing + \$2,000 communications + \$16,000 rentals + \$4,000 supplies).

*Equitable Share Program:*

- When the law enforcement agency is a state entity, e.g., the Tennessee Bureau of Investigation (TBI), the Department of Safety, and the Tennessee Alcoholic Beverage Commission (ABC), the forfeiture action is filed with the Secretary of State's Division of Administrative Procedures (Administrative Procedures).
- A state or local law enforcement agency may also transfer the property to the federal government, which may institute forfeiture proceedings under the federal procedures. The monies from these federal proceedings are deposited into the Assets Forfeiture Fund of the Department of Justice (DOJ) established by the Comprehensive Crime Control Act of 1984, 98 Stat. 1837 (1984). These funds are distributed to state and local law enforcement agencies by the Attorney General (21 U.S.C. § 881(e)(1)(A) and (e)(3), 18 U.S.C. § 981(e)(2), and 19 U.S.C. § 1616a) through the Equitable Sharing Program.
- Equitable Share Funds are required to be used for law enforcement purposes that directly supplement the appropriated resources of the recipient law enforcement agency; therefore, this analysis estimates any funds distributed from the Equitable Sharing Program will remain with the requesting law enforcement agency and not revert back to the General Fund.
- The three year average that state law enforcement agencies and drug task forces have received is approximately \$1,266,263 in payments from the Equitable Sharing Program, and local law enforcement agencies received approximately \$3,757,160 in payments from the Equitable Sharing Program.
- This analysis estimates 20 percent of such funds resulted from civil asset forfeiture cases exceeding \$100,000, excluding contraband.

- Prohibiting state and local law enforcement agencies from receiving funds with a net equity value less than \$100,000 will lead to a recurring decrease in 80 percent (100% - 20%) of state law enforcement agency revenue estimated to be \$1,013,010 ( $\$1,266,263 \times 80\%$ ) and a recurring decrease in local law enforcement agency revenue estimated to be \$3,005,728 ( $\$3,757,160 \times 80\%$ ).
- The proposed legislation prohibits state and local governments from relinquishing seized property to a federal agency for purpose of the property's forfeiture under the federal Controlled Substances Act.
- The average amount remitted by state and local law enforcement agencies to the Equitable Sharing Program each year over the last three years is \$10,005,952.
- This analysis assumes 35 percent of such funds were remitted by the state and 65 percent of funds were remitted by local agencies.
- This analysis assumes that state and local law enforcement agencies transfer over cases to the federal government they are unable to accommodate within existing resources; therefore, prohibiting such agencies from transferring property over to the federal government will lead to a 10 percent increase in revenue statewide.
- The total recurring increase in state revenue resulting from the prohibition to turn civil asset forfeiture cases over to the federal government is \$350,208 ( $\$10,005,952 \times 35\% \times 10\%$ ).
- The total recurring increase in local revenue resulting from the prohibition to turn civil asset forfeiture cases over to the federal government is estimated to be \$650,387 ( $\$10,005,952 \times 65\% \times 10\%$ ).
- The total recurring net decrease in state law enforcement revenue resulting from this legislation is estimated to be \$662,802 ( $\$1,013,010 - \$350,208$ ).
- The total mandatory recurring net decrease in local revenue resulting from this legislation is estimated to be \$2,355,341 ( $\$3,005,728 - \$650,387$ ).
- Prohibiting state and local law enforcement from transferring property to the federal government may result in the DOJ prohibiting Tennessee law enforcement agencies from participating in the Equitable Share Program. The timing or extent of any prohibition cannot be reasonably determined.

*Burden of Proof:*

- Under current law, Tenn. Code Ann. § 40-33-210(a), requires the state to have a burden to prove by a preponderance of evidence that: (1) seized property was of a nature making its possession illegal or was used in a manner making it subject to forfeiture, and (2) the owner or co-owner of the property know that the property was of a nature making its possession illegal or was being used in a manner making it subject to forfeiture.
- Under current law, Tenn. Code Ann. § 40-33-213, an aggrieved party may seek judicial review. The reviewing court is required to use the preponderance of evidence standard in determining whether to sustain or reverse the final order of the applicable agency.
- The proposed legislation requires a clear and convincing evidence standard by the state and by the reviewing court.
- The standard of clear and convincing evidence is a more rigorous standard to meet than a preponderance of the evidence but a less rigorous standard than proving evidence beyond a reasonable doubt.

- Any impact resulting from requiring the state and reviewing court to use a more rigorous standard in determining outcomes of civil asset forfeiture hearings and appeals is dependent on the circumstances of each applicable civil asset forfeiture; however, the net impact of elevating such standard is estimated to be not significant.

**CERTIFICATION:**

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

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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