

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 1678

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Stargel

SUBJECT: Reports Concerning Seized or Forfeited Property

DATE: February 21, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Fav/CS
2.	Farach	Cibula	JU	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/CS/SB 1678 changes the deadline for the annual submission of reports concerning seized or forfeited property by law enforcement agencies pursuant to the Florida Contraband Forfeiture Act from October 10 to December 1.

The bill is effective July 1, 2018.

II. Present Situation:

Florida Contraband Forfeiture Act

The Florida Contraband Forfeiture Act (act), ss. 932.701-932.7062, F.S., provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of law.¹

Contraband and other property may be seized when used during a violation of, or for the purpose of violating, the act. Property constituting a “contraband article” includes, but is not limited to, a controlled substance as defined in ch. 893, F.S., any gambling paraphernalia being used or attempted to be used in violation of the state’s gambling laws, and any motor fuel upon which the motor fuel tax has not been paid as required by law.²

¹ Section 932.701(1), F.S.

² See s. 932.701(2)(a)1.-12., F.S.

Currently, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the act, or in, upon, or by means of which any violation of the act has taken or is taking place, may be seized and forfeited subject to the act.³ If the court finds that the seizure occurred lawfully⁴ and that probable cause exists for the seizure, the forfeiture may proceed as set forth in the act.⁵

When a seizing agency obtains a final judgment granting forfeiture of real or personal property, it may elect to:

- Retain the property for the agency's use;
- Sell the property at public auction or by sealed bid to the highest bidder;⁶ or
- Salvage, trade, or transfer the property to any public or nonprofit organization.⁷

Reports Concerning Seized or Forfeited Property

Section 932.7061, F.S., requires every law enforcement agency to submit an annual report by October 10 indicating whether the agency has seized or forfeited property under the act.⁸ In the event that a law enforcement agency received or expended forfeited property or proceeds from the sale of forfeited property in accordance with the act, the annual report must document such receipts and expenditures.

The report must be submitted in electronic form to the FDLE and the entity that has budgetary authority over the law enforcement agency. The report must specify, at a minimum, the type, approximate value, court case number, type of offense, disposition of property received, and amount of any proceeds received or expended. The report must be maintained by the FDLE in consultation with the Office of Program Policy Analysis and Government Accountability (OPPAGA).⁹

The FDLE must submit an annual report to the OPPAGA that compiles the information and data in the annual reports. The FDLE must also include a list of law enforcement agencies that failed to meet the reporting requirements and a summary of any action taken against such noncomplying agency by the office of Chief Financial Officer (CFO).¹⁰

Penalty for Noncompliance with Reporting Requirements

An agency that is in noncompliance with the reporting requirements in s. 932.7061, F.S., must be notified by the FDLE. Such agency has 60 days within receipt of the notification of noncompliance to comply with the reporting requirements. An agency that fails to comply within

³ Section 932.703(1)(a), F.S.

⁴ Section 932.703(1)(a), F.S., sets forth the circumstances that permit for a lawful seizure of property.

⁵ Section 932.703(2)(c), F.S.

⁶ Real property should be listed on the market and sold in a commercially reasonable manner after appraisal. Section 932.7055(1)(b), F.S.

⁷ Section 932.7055(1)(a)-(c), F.S.

⁸ Section 932.7061(1), F.S.

⁹ *Id.*

¹⁰ Section 932.7061(2), F.S.

60 days is subject to a civil fine of \$5,000. The fine is determined by the CFO and payable to the General Revenue Fund.¹¹

The FDLE must submit any substantial noncompliance to the office of the CFO, which will then be responsible for the enforcement of the fine.¹²

The fiscal year for sheriff departments runs from October 1-September 30, making it difficult to gather all required information and submit it by October 10 to comply with the statutory mandate. An agency that does not meet the deadline for submission of the annual report is subject to negative implications associated with a noncompliance status.¹³

III. Effect of Proposed Changes:

Reports Concerning Seized or Forfeited Property (amending s. 932.7061, F.S.)

Current law requires agencies having seized or forfeited property pursuant to the Florida Contraband Forfeiture Act to submit an annual report by October 10 documenting the receipts and expenditures of forfeited property or proceeds from the sale of forfeited property pursuant to the act. The bill changes the deadline for the submission of the reports to December 1.

The bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹¹ Section 932.7062, F.S.

¹² *Id.*

¹³ Polk County Sheriff's Office, *Proposal for the 2018 FSA Legislative Summit*, (on file with the Senate Criminal Justice Committee).

B. Private Sector Impact:

None.

C. Government Sector Impact:**Reports Concerning Seized or Forfeited Property**

The bill will likely have no fiscal impact with regards to the reports. While law enforcement agencies are subject to a fine if they are in noncompliance with the reporting requirements pursuant to s. 932.7061, F.S., the agencies have 60 days after receiving notification of noncompliance to comply. Sections 932.7061 and 932.7062, F.S., went into effect July 1, 2016.¹⁴ Since the law has gone into effect, no law enforcement agencies have been in noncompliance after the passage of the 60 days.¹⁵ No fines have been collected pursuant to s. 932.7062, F.S., to date,¹⁶ and the modification to the submission deadline will enable law enforcement agencies a greater opportunity to achieve initial compliant status.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 932.7061 of the Florida Statutes.

The bill reenacts section 932.7062 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on February 20, 2018:**

The Committee Substitute includes only sections 5, 8, and 11 of the underlying bill. The removed provisions related to the collection and reporting of criminal justice data.

¹⁴ Chapter 2016-179, Laws of Fla.

¹⁵ Conversation with Tabitha Krol, Government Affairs Coordinator, Florida Sheriffs Association (February 8, 2018).

¹⁶ *Id.*

CS by Criminal Justice on February 12, 2018:

The Committee Substitute:

- Creates a model of uniform criminal justice data collection;
- Defines terms used in the bill as they relate to data collection;
- Requires the clerks of the circuit court, state attorneys, public defenders, county jail operators, and the Department of Corrections (DOC) to collect certain data and transmit it to the Florida Department of Law Enforcement (FDLE) on a weekly basis;
- Requires the FDLE to publish the data on the FDLE's website and make it searchable and accessible to the public;
- Digitizes the Criminal Punishment Code sentencing scoresheet;
- Requires additional information to be reported in the annual report for pretrial release programs;
- Authorizes a pilot project in the Sixth Judicial Circuit for the purposes of implementing the bill; and
- Appropriates \$1,750,000 in nonrecurring funds to the FDLE for the hiring of nine full-time employees for purposes of implementing the requirements of the bill and to assist in the transition to incident-based crime reporting to meet the requirements of the FBI under the National Incident-Based Reporting System.

B. Amendments:

None.