

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1081 Contraband Forfeiture
SPONSOR(S): Criminal Justice Subcommittee, Benjamin
TIED BILLS: IDEN./SIM. BILLS: SB 1556

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Contraband Forfeiture Act (FCFA) authorizes a law enforcement agency to seize a contraband article or other property used by a defendant in committing a criminal offense and have such property forfeited to the law enforcement agency if the agency proves, beyond a reasonable doubt, that the property was used to violate the FCFA. Under current law, a civil forfeiture action is a separate court proceeding from a defendant's criminal case and may proceed during the pendency of the criminal case. As such, the outcome of the forfeiture action is not dependent on the outcome of the criminal proceeding.

Federal law also authorizes the seizure and forfeiture of property. However, federal law only requires a seizing agency to prove property was connected to a crime by a preponderance of the evidence, rather than beyond a reasonable doubt. Federal law authorizes federal agencies to share the proceeds of property forfeited under federal law with participating state and local law enforcement agencies in two ways: through the process of "adoption," by which a state or local law enforcement agency seizes property and turns the property over to the federal government for forfeiture under federal law, or by participating in a joint task force or investigation with the federal government.

CS/HB 1081 revises ch. 932, F.S., to tie forfeiture proceedings under the FCFA to a defendant's criminal case that is the basis for the asset forfeiture. Specifically, the bill:

- Amends s. 932.703, F.S., to require a court, following an initial determination that probable cause exists for a seizure, to stay a forfeiture action until final disposition of a defendant's related criminal case or while a prosecuting agency determines whether to file criminal charges against a defendant; and
- Amends s. 932.704, F.S., to:
 - Require a court to stay a forfeiture action until after the defendant is convicted of, or pleads guilty or nolo contendere to, the criminal charge that is the basis for the forfeiture action or while a prosecuting agency determines whether to file criminal charges against a defendant;
 - Require the attorney for the seizing law enforcement agency to notify the court presiding over a defendant's forfeiture proceeding when criminal charges are filed against a defendant and when such charges have been disposed of;
 - Require a seizing law enforcement agency to immediately release seized property if all associated criminal charges against all claimants to the property are disposed of by an acquittal, nolle prosequi, or a dismissal, or if a prosecuting agency declines to file criminal charges; and
 - Authorize a plea agreement to resolve both a criminal charge and a forfeiture, as long as the seized property is not be used in bargaining to dismiss or nolle prosequi criminal charges, obtain a guilty plea, or affect criminal sentencing recommendations.

The bill creates s. 932.7071, F.S., to prohibit a local, county, or state law enforcement agency or other seizing agency from referring, transferring, or otherwise relinquishing possession of property seized under state law to a federal agency for the purpose of forfeiting the property under federal law. The bill also limits a state or local law enforcement agency's ability to receive proceeds from a forfeiture obtained in a joint task force operation with the federal government if the forfeiture is made pursuant to federal law unless the value of the seized property is over \$100,000.

The bill may have an indeterminate fiscal impact on state and local law enforcement agencies that receive proceeds from the forfeiture of property.

The bill provides an effective date of July 1, 2023.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1081a.CRJ

DATE: 3/21/2023

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Contraband Forfeiture Act

Seizure

The Florida Contraband Forfeiture Act (FCFA)¹ authorizes a law enforcement agency to seize a contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the FCFA, or in, upon, or by means of which any violation of the FCFA has taken or is taking place.² A “contraband article” includes:

- A controlled substance as defined in ch. 893, F.S., or a substance, device, paraphernalia, or currency or other means of exchange that was used, attempted, or intended to be used in violation of ch. 893, F.S.;
- Gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, attempted, or intended to be used in violation of Florida gambling laws;
- Equipment, liquid or solid, which was used, attempted, or intended to be used, in violation of Florida beverage or tobacco laws;
- Motor fuel upon which the motor fuel tax has not been paid;
- Personal property that was used or attempted to be used as an instrumentality in, or to aid or abet the commission of, any felony, or which is acquired by proceeds obtained from a violation of the Act;
- Real property that was used or attempted to be used as an instrumentality in, or to aid or abet the commission of, any felony, or which is acquired by proceeds from a violation of the Act;
- Any personal property in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c), F.S.;
- A motor vehicle offered for sale in violation of s. 320.28, F.S.;
- A motor vehicle used in the course of committing a violation of s. 322.34(9)(a), F.S.;
- Photographs, films, or other recorded images, recorded in violation of s. 810.145, F.S., and possessed for amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person;
- Real property which is acquired by the proceeds of Medicaid fraud under ss. 409.920, F.S., or 409.9201, F.S.;
- Personal property in the possession of, or belonging to, any person which is acquired by the proceeds of Medicaid fraud under ss. 409.920, F.S., or 409.9201, F.S.; and
- Personal property that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person’s third or subsequent violation of s. 509.144, F.S.

Property may only be seized if the owner of the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article, or if one of the following circumstances apply:

- The owner of the property cannot be identified after a diligent search, or the person in possession of the property denies ownership and the owner of the property cannot be identified by means that are available to the employee or agent of the seizing agency at the time of the seizure;
- The owner of the property is a fugitive from justice or is deceased;

¹ See ss. 932.701–932.7062, F.S.

² S. 932.703(1)(a), F.S.

- An individual who does not own the property is arrested for a criminal offense that forms the basis for determining that the property is a contraband article and the owner of the property had actual knowledge of the criminal activity;
- The owner of the property agrees to be a confidential informant; or
- The property is a monetary instrument.³

If a law enforcement agency seizes property, the agency must apply to a court for an order determining whether probable cause exists for the seizure of the property within 10 days of such seizure.⁴ If a court finds that probable cause exists for the seizure and determines that the owner was arrested for a qualifying offense or an arrest exception applies, the law enforcement agency may initiate a forfeiture proceeding.⁵

Forfeiture

A seizing law enforcement must promptly initiate forfeiture proceedings by filing a complaint in the circuit court in the jurisdiction where the seizure or offense occurred.⁶ Upon proof beyond a reasonable doubt that the contraband article was used in violation of the FCFA, the court must order the seized property forfeited to the seizing law enforcement agency.⁷ After the property is forfeited to the seizing law enforcement agency, the agency may:

- Retain the property for the agency's use;
- Sell the property; or
- Salvage, trade or transfer the property to any public or nonprofit organization.⁸

If the seizing law enforcement agency is a county or municipal law enforcement agency, the proceeds from a forfeiture must be deposited into a trust fund established by the county or municipality, and such proceeds may be used for school resource officer, crime prevention, safe neighborhood, drug abuse education and prevention programs, or may be used for other law enforcement purposes *except* for meeting the normal operating expenses of the agency.⁹ If the seizing agency is a state agency, the proceeds are deposited into the General Revenue Fund unless such agency has a dedicated trust fund created by statute to accept proceeds from a forfeiture.¹⁰

Under current law, a civil forfeiture action is a separate court proceeding from a defendant's criminal case and may proceed during the pendency of the criminal case. As such, the outcome of the forfeiture action is not dependent on the outcome of the criminal proceeding. In some cases, a defendant may have his or her property forfeited, but subsequently be found not guilty or have charges dismissed in the related criminal case.

Forfeiture Adoption under Federal Law

Burden of Proof

Federal law also authorizes asset forfeiture in specified circumstances. Federal asset forfeiture laws differ from Florida's asset forfeiture laws in that the burden of proof required to forfeit property is lower. Federal law only requires the federal government to demonstrate the connection between seized property and a crime by a preponderance of the evidence,¹¹ rather than beyond a reasonable doubt.¹²

³ "Monetary instrument" means coin or currency of the United States or any other country; a traveler's check; a personal check; a bank check; a cashier's check; a money order; a bank draft of any country; an investment security or negotiable instrument in bearer form or in other form such that title passes upon delivery; a prepaid or stored value card or other device that is the equivalent of money and can be used to obtain cash, property, or services; or gold, silver, or platinum bullion or coins. S. 932.703(1)(a)5., F.S.

⁴ S. 932.703(2)(a), F.S.

⁵ S. 932.703(2)(b), F.S.

⁶ S. 932.704(4), F.S.

⁷ S. 932.704(8), F.S.

⁸ S. 932.7055(1), F.S.

⁹ S. 932.7055(5)(a), F.S.

¹⁰ S. 932.7055(6), F.S.

¹¹ "Preponderance of the evidence" is that standard of proof in most civil cases in which the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be

Thus, some property that may be forfeited under federal law may be unable to be forfeited under state law.

Federal Asset Forfeiture

Federal law authorizes specified agencies, such as the Department of Justice and the Department of the Treasury, to share federally forfeited property with participating state and local law enforcement agencies in two ways: through the process of “adoption” or by participating in a joint task force or investigation with the federal government.¹³ Florida does not currently restrict a state or local law enforcement agency from sharing proceeds of property that has been forfeited under federal law.

Current law authorizes a state or local law enforcement agency to seize property from a person arrested for violation of state law and subsequently turn such property over to the federal government for forfeiture under federal law through the process of adoption if the conduct giving rise to the seizure is also in violation of federal law and where federal law provides for forfeiture.¹⁴ Once the seized property is forfeited under federal law, the federal agency may transfer up to 80 percent of the proceeds from such forfeiture back to the state or local agency that originally seized the property.¹⁵

A state or local law enforcement agency may also receive a share of the proceeds from forfeited assets if such agency participates in a joint task force with the federal government. Generally, any property seized as the result of a joint task force is subject to forfeiture under federal law. The amount of forfeiture proceeds that a state or local law enforcement agency receives from its participation in a joint task force varies depending on the level of such agency’s involvement in the joint task force, but may be specified by a pre-arranged agreement.¹⁶

Effect of Proposed Changes

Florida Contraband Forfeiture Act

CS/HB 1081 amends s. 932.703, F.S., to require a court, following the initial determination that probable cause exists for a seizure, to stay a forfeiture action until final disposition of a defendant’s related criminal case or while a prosecuting agency determines whether criminal charges associated with the underlying basis for the forfeiture action will be filed against any claimant.

The bill amends s. 932.704, F.S., to require, if criminal charges associated with the forfeiture are filed after the complaint for forfeiture is filed, the attorney for the seizing law enforcement agency to notify the court presiding over the forfeiture action within three days after such criminal charge is filed. Under the bill, a forfeiture action may only proceed after the defendant is convicted of, or pleads guilty or nolo contendere to, the criminal charge that is the basis for the forfeiture action. The attorney for the seizing agency must notify the court presiding over the forfeiture action within three days after a final judgment and sentence in the criminal case is entered and the forfeiture action may proceed.

Under the bill, if an associated criminal charge is disposed of by a dismissal, nolle prosequi, or acquittal, or if the prosecuting agency declines to file criminal charges, the attorney for the seizing law enforcement agency must notify the court presiding over the forfeiture action within three days after the case has been disposed or the decision by the prosecuting agency. If the criminal charges against all claimants are disposed of or the prosecuting agency decides not to file criminal charges against all

proven is more probable than not. Merriam-Webster, *preponderance of the evidence*, <https://www.merriam-webster.com/legal/preponderance%20of%20the%20evidence> (last visited Mar. 21, 2023).

¹² Institute for Justice, *Grading State & Civil Forfeiture Laws*, <https://ij.org/report/policing-for-profit-2/grading-state-federal-civil-forfeiture-laws/> (last visited Mar. 21, 2023).

¹³ Institute for Justice, *Federal Equitable Sharing*, <https://ij.org/report/policing-for-profit-2/federal-equitable-sharing/> (last visited Mar. 21, 2023).

¹⁴ United States Department of Justice, *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*, <https://www.justice.gov/criminal-afmls/file/794696/download> (last visited Mar. 21, 2023).

¹⁵ *Id.*

¹⁶ *Id.*

claimants, the seizing law enforcement agency must immediately release the seized property to the person entitled to possession of the property.

The bill does not prohibit forfeiture pursuant to a lawful plea agreement which resolves a criminal charge and a forfeiture action arising from the same activity. However, seized property may not be used in bargaining to dismiss or nolle prosequi criminal charges, obtain a guilty plea, or affect criminal sentencing recommendations.

Forfeiture Adoption under Federal Law

The bill creates s. 932.7071, F.S., to prohibit a local, county, or state law enforcement agency or other seizing agency from referring, transferring, or otherwise relinquishing possession of property seized under state law to a federal agency for the purpose of forfeiting the property under federal law.

Under the bill, if a local, county, or state law enforcement agency or other seizing agency participates in a joint task force or other multijurisdictional collaboration with the federal government or federal agency, the local, county, or state law enforcement agency must retain responsibility for forfeiture of the seized property which has an aggregate net equity value of \$100,000 or less. If the federal government prohibits the local, county, or state law enforcement agency from retaining responsibility for forfeiture of the seized property and such property is forfeited under federal law, the local, county, or state law enforcement agency may not accept payment of any forfeiture proceeds from the federal government. If such property has an aggregate net equity value of greater than \$100,000, the local, county, or state law enforcement agency may transfer forfeiture responsibility to the federal government.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 932.703, F.S., relating to forfeiture of contraband article; exceptions.

Section 2: Amends s. 932.704, F.S., relating to forfeiture proceedings.

Section 3: Creates s. 932.7071, F.S., relating to forfeiture adoption under federal law.

Section 4: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires a court to stay a forfeiture action pending the outcome of a criminal proceeding or while a prosecuting agency determines whether criminal charges will be filed and ties the outcome of the forfeiture action to the underlying criminal case. To the extent property from a defendant whose case is resolved by an acquittal, dismissal, or nolle prosequi is currently being forfeited to state and local law enforcement agencies, the bill may have an indeterminate fiscal impact on such agencies. The bill prohibits a law enforcement agency from transferring property seized under state law to a federal agency for purposes of forfeiting such property under federal law and profiting from a specified forfeiture of property forfeited under federal law that was seized through a joint task force. To the extent law enforcement agencies are transferring property to the federal government that is otherwise unable to be forfeited under state law and receiving proceeds from forfeitures seized from participation in a joint task force with the federal government, the bill may have an indeterminate fiscal impact on such agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 21, 2023, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment required a court to stay a forfeiture action while a prosecuting agency determines whether criminal charges associated with the underlying activity forming the basis for a forfeiture will be filed against a claimant, and required a seizing agency to release seized property to the person entitled to possession of the property if a prosecuting agency declines to file criminal charges against all claimants.

This analysis is drafted to the committee substitute as adopted by the Criminal Justice Subcommittee.