



February 27, 2022

SUMMARY OF BILL: Enacts the *Criminal Forfeiture Process Act*.

Rewrites the process for asset seizure and forfeiture in certain criminal cases. Applies to:

- the seizure and forfeiture of all property that, prior to July 1, 2022, was forfeited utilizing the current procedure; and
- the seizure of property subject to forfeiture occurring on or after July 1, 2022.

Eliminates civil forfeiture process in all cases for which the proposed legislation is applicable. Moves all forfeiture hearings from administrative offices to criminal courts.

FISCAL IMPACT:

**Increase State Expenditures – \$5,635,900/FY22-23/General Fund
\$5,461,800/FY23-24 and Subsequent Years/
General Fund
Exceeds \$236,400/FY22-23 and Subsequent Years/
Indigent Representation Fund**

**Decrease State Expenditures –
Exceeds \$2,581,200/FY22-23 and Subsequent Years/
General Fund**

Other Fiscal Impact – State and local law enforcement agencies are expected to realize a significant recurring decrease in revenue associated with a decrease in the volume and value of assets seized and forfeited. The precise amounts of any such decreases are unknown and cannot be reasonably quantified. In addition, state and local law enforcement agencies, as well as the District Attorneys General Conference, may realize significant intermittent increases in expenditures related to liability for attorneys' fees and various interest moneys resulting from negative outcomes in judicial proceedings. Due to various factors, a precise estimate of any such increases cannot be reasonably quantified.

Assumptions:

- The proposed legislation eliminates the current civil process for the seizure of property subject to forfeiture. In doing so, it is expected to result in five significant impacts:

- It changes the current hearings regarding seized property from administrative hearings, which are held in regional offices across the state (most often Tennessee Highway Patrol (THP) offices), and moves them into criminal courts – either general sessions or state trial;
 - It requires, in many cases, a court-appointed counsel to represent a defendant in a forfeiture proceeding;
 - It places significant new responsibilities on prosecutors;
 - It is expected to significantly reduce the volume and value of assets seized by both state and local law enforcement agencies; and
 - It assigns liability for attorneys' fees and other moneys to law enforcement agencies and prosecutors in certain judicial proceedings when the defendant prevails.
- Based on the Department of Safety's (DOS) annual asset forfeiture report, over the last four years, the average number of forfeiture actions, which include hearings and settlements, was 2,364.
 - The proposed legislation is assumed to result in a decrease in the number of hearings, and an increase in the number of challenges. Any decrease in the number of hearings is assumed to be offset by the increase in the number of challenges. Therefore, the average number of actions is assumed to remain constant.
 - It is assumed that 25%, or 591 (2,364 actions x 25%), of these actions will require the service of a public defender due to indigency.
 - Based on information provided by the Administrative Office of the Courts (AOC), it is assumed that each hearing would take approximately eight billable hours of work.
 - Pursuant to Supreme Court Rule 13, Section 2, the hourly rate for services by appointed counsel is \$50/hr. Therefore, each hearing would result in a cost of \$400 (8 hours x \$50/hr).
 - For court-appointed attorneys, these costs are paid out of the Indigent Representation Fund.
 - The increase in state expenditures to the Indigent Representation Fund related to representing indigent clients in asset forfeiture hearings is therefore estimated to be \$236,400 (591 hearings x \$400).
 - In addition, based on information provided by the District Public Defenders Conference (DPDC), the proposed legislation is expected to potentially double the number of hearings a public defender would need to attend.
 - The increased caseload and travel are expected to make public defenders less available for other cases they currently handle. In those cases, the court will appoint a private attorney. The private attorneys will also be paid from the Indigent Representation Fund.
 - A precise number for this additional impact cannot be quantified, but it will result in a total impact to the Indigent Representation Fund that exceeds \$236,400 in FY22-23 and subsequent years.
 - The new indigent representation payments will require updates to the AOC's ACAP payment system. The precise cost for the updates was unknown at the time of analysis. It is assumed to be \$15,000.
 - A one-time increase in state expenditures to the AOC for ACAP updates estimated to be \$15,000 in FY22-23.

- According to AOC and the Court Clerks Association, any potential increase in the caseload and administrative burden on state and local courts is estimated to be absorbed within existing resources.
- Based on information provided by the DPDC, requiring public defenders to represent indigent clients in asset forfeiture hearings represents a significant departure from current statute and practice.
- It would require additional training for most public defenders who are typically not experienced in the current civil administrative process.
- The increase in expenditures to the DPDC to implement the required additional training is estimated to be \$25,000 in FY22-23 and subsequent years.
- Based on information provided by the District Attorneys General Conference (DAGC), the proposed legislation will place significant additional burdens on prosecutors.
- In order to accommodate the new responsibilities, the DAGC will require new personnel and funding for additional expenses.
- The estimated additional personnel required is 31 Assistant District Attorneys, 15 Paralegals, and 15 Secretaries.
- Based on information provided by the DAGC, the one-time costs for initial office setup and equipment for each position are estimated to be as follows:
 - Attorneys: \$142,600
 - Secretaries: \$69,000
 - Paralegals: \$69,000
- Therefore, a one-time increase in state expenditures for DAGC office setup estimated to be \$280,600 (\$142,600 + \$69,000 + \$69,000) in FY22-23.
- Based on information provided by the DAGC, the costs for salaries, benefits, administrative expenses in year 1 are estimated to be as follows:
 - Attorneys: \$3,264,057 (\$2,175,084 salaries + 828,573 benefits + \$260,400 admin)
 - Secretaries: \$969,695 (\$570,780 salaries + 320,915 benefits + \$78,000 admin)
 - Paralegals: \$1,056,585 (\$608,040 salaries + 327,045 benefits + \$121,500 admin)
- The increase in state expenditures to DAGC for the additional positions is thus estimated to be \$5,290,337 (3,264,057 + \$969,695 + \$1,056,585) in FY22-23.
- In year two, the attorney's salaries would increase by one level and result in a total expenditure for attorneys' salaries and benefits of \$3,125,118 (2,279,244 salaries + 845,874 benefits).
- Thus, the recurring increase in state expenditures to DAGC for the additional positions is estimated to be \$5,411,798 (3,385,518 + \$969,695 + \$1,056,585) in FY23-24 and subsequent years.
- The DAGC will also require additional annual training estimated to cost \$25,000 in FY22-23 and subsequent years.
- The total increase in state expenditures to the General Fund is estimated to be \$5,635,937 (\$15,000 ACAP + \$25,000 DPDC training + \$25,000 DAGC training + 280,600 DAGC office setup + 5,290,337 DAGC positions) in FY22-23.
- The total increase in state expenditures to the General Fund is estimated to be \$5,461,798 (\$25,000 DPDC training + \$25,000 DAGC training + \$5,411,798 DAGC positions) in FY23-24 and subsequent years.

- The process of moving civil asset forfeiture hearings from administrative offices to criminal courts will effectively eliminate the need for the DOS seizure hearing program.
- Based on information provided by DOS, this is estimated to result in the termination of eight Attorneys, three Administrative Service Assistants 2, one Administrative Service Assistant 3, and eight Administrative Secretaries. The total estimated decrease in expenditures provided by DOS associated with these positions is \$1,314,000 in salaries and benefits and an average of \$639,303 in recurring administrative expenses.
- In addition, DOS will realize a decrease in expenditures related to cost bonds, court report, and administrative judges. The total recurring decrease in expenditures related to these things based on a three-year average is estimated to be \$627,854 (\$13,850 cost bonds + \$109,544 court report + \$504,460 admin judges).
- The total decrease in expenditures to the DOS is estimated to be \$2,581,157 (\$1,314,000 salaries and benefits + \$639,303 admin + \$627,854 various other) in FY22-23 and subsequent years.
- The proposed legislation is estimated to result in a significant recurring decrease in revenue for state and local law enforcement agencies associated with a decrease in the volume and value of assets seized and forfeited. The precise amount of such decreases is unknown and cannot be reasonably quantified.
- In any judicial proceeding governed by the proposed legislation in which the defendant prevails by recovering fifty percent or more by value of seized assets, the court is required to order the seizing agency or prosecuting authority to pay:
 - reasonable attorney fees and other litigation costs incurred by the petitioner or criminal defendant;
 - post-judgment interest; and
 - in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, any interest actually paid from the date of seizure.
- Therefore, state and local law enforcement agencies, as well as the DAGC, may realize significant intermittent increases in expenditures related to the described liabilities. Due to various factors, a precise estimate of any such increases cannot be reasonably quantified.

CERTIFICATION:

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



Krista Lee Carsner, Executive Director

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