

**FINAL
FISCAL NOTE**

Drafting Number: LLS 15-0256
Prime Sponsor(s): Sen. Woods
 Rep. Saine

Date: June 16, 2015
Bill Status: Postponed Indefinitely
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BILL TOPIC: PROHIBIT FORFEITURES WITHOUT CRIMINAL CONVICTION

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue	Decrease.	
General Fund	See State Revenue section.	
State Expenditures	(at least \$232,000)	(at least \$232,000)
General Fund	Decrease.	Decrease.
Federal Funds	(\$232,000)	(\$232,000)
FTE Position Change		
TABOR Set-Aside	Decrease.	
Appropriation Required: None.		

* This summary shows changes from current law under the bill for each fiscal year. Parentheses indicate a decrease in funds.

Summary of Legislation

This bill repeals provisions of Colorado statute that authorize the forfeiture of assets without a criminal conviction. Under the bill, state and local law enforcement agencies may only receive a judgment in forfeiture from a criminal defendant who:

- surrenders seized property in a plea agreement; or
- is, pursuant to current law, convicted of a crime involving drug contraband.

The bill adds new procedures to state forfeiture actions. A party who has property seized may file a motion for a preliminary hearing or a writ of replevin (to recover property). The prosecuting attorney must file an answer, after which the court rules on the motion and orders the return of property in certain circumstances.

The bill also restricts the participation of state and local agencies in federal forfeitures. State and local law enforcement agencies are prohibited from participating or assisting in federal forfeiture actions involving less than \$50,000 of disposable assets. When state or local agencies do participate in a federal forfeiture action, all proceeds are credited to the state General Fund.

Background

Civil forfeiture is a legal process against property that is used or gained as the result of criminal activity. The Colorado Contraband Forfeiture Act (Title 16, Article 13, Part 5 of the Colorado Revised Statutes) provides cause for state and local government agencies to seize and liquidate assets that are deemed to be associated with certain drug crimes. Senate Bill 15-006 affects forfeitures under this state law and under federal law generally.

Federal forfeiture actions. The United States Department of Justice (USDOJ) administers the Equitable Sharing Program to distribute a portion of the property seized in federal forfeiture actions. This federal funding is granted to state and local agencies that have participated in forfeiture and related law enforcement actions alongside federal agencies. The USDOJ Equitable Sharing Program is limited to state and local law enforcement agencies, Colorado National Guard units participating in counterdrug operations, and state and local prosecutors. USDOJ policies hold that Equitable Sharing funds will be withheld for noncompliance with distribution requirements. It is against USDOJ policy to distribute these federal funds to non-law enforcement agencies or for their expenditure on non-law enforcement purposes.

State forfeiture actions. Forfeiture actions may also be initiated in state court under the Colorado Contraband Forfeiture Act. However, a significant portion of forfeiture cases in Colorado are initiated in federal court, with a federal cause of action.

State expenditure of federal forfeiture moneys. Many Colorado law enforcement agencies participate in the Equitable Sharing Program. State agencies include the Department of Law (Attorney General's Office), and two agencies in the Department of Public Safety (DPS): the Colorado Bureau of Investigation (CBI) and the Colorado State Patrol (CSP). The Department of Law recently entered into a memorandum of understanding with the USDOJ that is expected to yield the state about \$32,000 in federal forfeiture funds each year. The DPS receives an average of \$200,000 each year from the Equitable Sharing Program. Approximately 90 percent of current distributions to the DPS are less than \$25,000.

State Revenue

The bill results in fewer assets recovered in state forfeiture actions, under the Colorado Contraband Forfeiture Act. The bill's direction that all state and local revenue from federal forfeiture actions is credited to the state General Fund results in no new state revenue.

State forfeiture actions. The amount recovered by state law enforcement agencies from state forfeiture actions is expected to decline under the bill. The requirement of a conviction or a plea bargain will reduce the ability of law enforcement to pursue forfeiture in a substantial number of cases. In a minimal number of cases, additional procedures involving property seized by law enforcement agencies will change a state agency's willingness to pursue forfeiture. In some additional minimal number of cases, standards that require the return of property (e.g., a vehicle needed by a party for their livelihood) will also reduce the number of forfeiture cases. These effects cannot be quantified for this analysis, but are together expected to affect a significant percentage of state forfeiture cases.

Federal forfeiture actions. The bill does not result in increased General Fund revenue from state and local participation in federal forfeiture actions. Under the bill, up to \$4.4 million in federally-funded local revenues must be credited to the state General Fund. However, **the fiscal note assumes that USDOJ will not knowingly distribute Equitable Sharing federal funds in this manner, and the USDOJ will take action to recover any funds distributed in error.**

TABOR Impact

This bill decrease state revenue by a minimal amount, which will decrease the amount required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

State Expenditures

Similar to the bill's effect on state revenue, distinct expenditure impacts occur due to changes in policy concerning state versus federal forfeiture actions. **Starting in FY 2015-16, the bill decreases state expenditures by an estimated \$232,000 federal funds per year.** This reduction in spending is the result of USDOJ withholding of federal funds to state law enforcement agencies in the Department of Law and the Department of Public Safety. There are also funding and workload impacts to state agencies, including state courts, based on changes in cases filed under the Colorado Contraband Forfeiture Act.

No change in state appropriations is required, though the bill has significant effects on certain federally-funded state programs. Adjustments to FTE and programs that result from reduced federal funding will be considered in the annual budget process.

Assumptions. The USDOJ's prohibition of transfers to the General Fund results in defunding of all moneys budgeted from these federal funds. Notwithstanding violation of federal policy, some amount of federally-funded expenditures will in any event decrease because, under the bill, the state may no longer participate in federal forfeiture cases of smaller monetary value.

Federal forfeiture proceeds. State law enforcement authorities are involved in investigation and enforcement actions related to drug crime. Specifically, the Department of Law and the DPS participate in USDOJ's Equitable Sharing Program. State expenditures are expected to decrease according to USDOJ policy, by \$232,000 federal funds in FY 2015-16 and each future fiscal year. Expenditure reductions affect these state law enforcement budgets:

- *Department of Public Safety - CBI and CSP.*
Reduced by an estimated \$200,000 each fiscal year.
- *Department of Law - Special Prosecutions Unit.*
Reduced by an estimated \$32,000 each fiscal year.

State forfeiture actions - Reduced proceeds to law enforcement agencies. The Department of Law and DPS will reduce expenditures to the extent that continuing operations are funded by the proceeds of state forfeiture actions. Units of the Attorney General, the CBI, or the CSP that are substantially involved in drug contraband cases are likely to reduce expenditures as a result of the bill. This fiscal note will be updated if data becomes available regarding state expenditures on operations that fall within the scope of the Colorado Contraband Forfeiture Act.

State forfeiture actions - Judicial Department. Judicial information regarding the number of forfeiture actions heard in state courts indicates that the bill has a minimal effect on trial court workload. District courts are expected to spend more time on cases governed by the Colorado Contraband Forfeiture Act, hearing motions, undertaking legal analysis, and issuing orders. Offsetting the increase in time per case, there are expected to be fewer total cases under the Colorado statute. The net effect is a minimal workload change in the trial courts.

Local Government Impact

The bill affects revenue and expenditures in law enforcement agencies—police departments, sheriffs, interagency task forces—and district attorneys.

Local law enforcement agencies. Police departments, sheriffs, and other local government law enforcement agencies will no longer receive federal funding under the bill. Local law enforcement is prohibited from participating in any cooperative effort with federal law enforcement that does not meet the \$50,000 value threshold. Then, any local government proceeds derived from a federal forfeiture action are diverted to the state General Fund. Estimates on the statewide amount of local funding subject to reduction vary from \$800,000 per year to \$4.4 million per year. Based on the effect of the bill on local receipts of USDOJ Equitable Sharing funds, the fiscal note finds that local government revenue will decrease by up to \$4.4 million each year.

It is anticipated that local agencies affected by this federal funding decrease will reduce expenditures by an equivalent amount. Based on current budgets, this will reduce local law enforcement spending on training, equipment, public awareness campaigns and outreach, and substance abuse treatment programs.

Local agencies will also be affected if they receive revenue from state forfeiture cases. As described in the State Revenue section, new procedures in state forfeiture cases will reduce the total number of forfeitures by a minimal amount. Overall revenue to local agencies from state law cases is expected to decline by a small percentage.

District attorneys. Relatively few of Colorado's district attorneys participate in the USDOJ Equitable Sharing program. In one case, the district attorney's \$10,000 to \$15,000 annual training budget is paid from federal Equitable Sharing funds. To the extent that regional law enforcement initiatives are funded through the district attorney, these programs also utilize federal funds from the Equitable Sharing Program. District attorney funding from the Equitable Sharing Program will decrease as a result of the bill.

Effective Date

The bill was postponed indefinitely by the Senate Judiciary Committee on February 25, 2015.

State and Local Government Contacts

Judicial Department	Public Safety	Law
District Attorneys	Municipalities	Counties
Military and Veterans Affairs	Sheriffs	Corrections
Local Affairs		