



ENACTMENT NEWS

HB 347 Civil Asset Forfeiture Effective Date: April 2017

HB 347 was introduced in September of 2015, passed out of the House in May of 2016, and unanimously passed out of the Senate in December, 2016. It was signed by the Governor on January 4, 2017. The bill initially barred all civil forfeiture by completely removing Sec. 2981; it was amended considerably before its enactment to allow civil asset forfeiture in certain circumstances and to create a new criminal charge relative to civil asset forfeiture. A summary of the bill follows.

- For provisional title of property subject to *civil forfeiture*, a prosecutor must file a motion requesting a hearing and notify the property owner of the motion. A court must grant the motion if the prosecutor demonstrates by a preponderance of the evidence (rather than probable cause) that the property is subject to forfeiture. (RC 2981.03(A)(3)) An aggrieved party can file for a hearing on his interest in the property – the hearing must be scheduled not later than 21 days after filing, but the time can be extended for good cause shown. (RC 2981.03(A)(4)) An aggrieved person can also petition for conditional release; the court must decide on the petition within 21 days and within 10 days if the property is a mobile instrumentality.
- A complaint for civil forfeiture may only be filed if:
 - The property was seized with probable cause that it was involved in the commission of a felony or a “gambling offense” (defined in current law), or
 - The property was directly or indirectly obtained through the commission of a felony or gambling offense and either:
 - (1) the property owner is unavailable to the court because the property owner is

- (a) deceased [*cannot be filed sooner than 3 months after owner is deceased and a certified death certificate must accompany the complaint*], or
 - (b) the indictment or charge has been filed against the property owner or an arrest warrant has been issued, and the property owner is outside the state and unable to be extradited to the state for prosecution or reasonable efforts have been made by law enforcement authorities to locate the property owner, but the property owner has not been located [*cannot be filed sooner than 1 year after this circumstance applies*], or
 - (2) the property owner has not claimed, or asserted any interest in, the property and all claims of aggrieved parties have been denied [*cannot be filed sooner than 3 months after this circumstance applies*] (RC 2981.05(A) and (J)).
- Note: current time frames for filing a civil forfeiture action are within 30 days of the seizure of the property, if alleged to be a mobile instrumentality or records, or within 60 days, subject to extension.
- For a final adjudication of forfeiture, the state must prove its case by clear and convincing evidence (current law requires preponderance of the evidence) (RC 2981.05(H)).
- Under the bill, the state may file a civil action against a person alleged to have received, retained, possessed, or disposed of proceeds exceeding \$15,000 [*this amount is tied to inflation and will be increased every January*] knowing or having reasonable cause to believe that the proceeds were derived from the commission of an offense “subject to forfeiture proceedings” (see above) (RC 2981.05(D)).
 - The complaint is to be filed in the court of common pleas in the county where the proceeds were allegedly illegally handled.
 - The complaint must contain the following information:
 - The person is alleged to have illegally handled \$15,000 or more in the commission of an offense subject to forfeiture
 - The state has a right to recover the proceeds so illegally handled
 - The actual amount of the proceeds

- A civil action is stayed if there is a commensurate criminal charge (RC 2981.05(D)(2) (see below).
- The state has to prove its case by clear and convincing evidence (RC 2981.05(D)(3)).
- The action must be commenced within two years after the alleged illegal handling of money and the court must complete the trial within one year, unless extended.
- The bill creates the criminal offense of “receiving proceeds of an offense subject to forfeiture proceedings” (RC 2927.21 (B),(C), (D), and (E)):
 - If the value of the proceeds is less than \$1,000 – an M1
 - If the value is \$1,000 or more, but less than \$25,000 – an F5
 - If the value is \$25,000 or more, but less than \$150,000 – an F4
 - If the value is \$150,000 or more – an F3
- The bill creates a rebuttable presumption that the person in possession of the property at the time of its seizure is considered to be owner of the property unless legal title states otherwise.
- The bill eliminates the condition under current law that a criminal forfeiture has not begun to allow a prosecutor to commence a civil forfeiture action (RC 2981.01(B)(10) and 2981.03(F)). The bill permits the prosecutor to commence a civil forfeiture action simultaneously with or after the filing of the complaint, indictment, or information, in the same court in which the applicable charging instrument is filed. The civil forfeiture action is stayed during the pendency of the criminal proceedings. (RC 2981.05(C)).
- The bill eliminates the current provision permitting a civil forfeiture action to be commenced regardless of whether the offender has pleaded guilty to, or been convicted of, the act that is the basis of the civil forfeiture order (RC 2981.03(F)).
- In a *criminal* forfeiture:
 - The burden of proof is changed to clear and convincing evidence (currently, it is a preponderance of the evidence). (RC 2981.04(B)).
 - A person is subject to criminal forfeiture not just if convicted (as under current law), but also if entering an intervention in lieu of conviction. (RC 2981.04(A)).

- A third party claimant must assert in a petition that (1) the petitioner has a legal interest in the property or (2) the petitioner is a bona fide purchaser of the property. (RC 2981.04(E)(1)). A third party claimant cannot assert a claim for unreachable property. (RC 2981.06(D)(3))
- Proportionality review requires the state to show by clear and convincing evidence that the amount of the seizure is proportionate to the offense. (RC 2981.09(A)) The property owner has the burden of showing the value of the property or hardship caused by seizure. (RC 2981.09(D)(2))
- A standard of clear and convincing evidence is required to order forfeiture of non-forfeitable property in the value of property that is subject to forfeiture but is unreachable (currently, no standard is specified). If the state shows by clear and convincing evidence that property was transferred, sold, or deposited in violation of RC 2981.07 (Interference With or Diminishing of Forfeitable Property), then the state can only forfeit that property, and cannot forfeit non-forfeitable property of the same value instead.
- Law enforcement is prohibited from transferring any property seized to any federal law enforcement authority or agency for forfeiture under federal law unless (RC 2981.14(A) and (B)):
 - The value of the seized property exceeds \$100,000 (minus the value of contraband, if it were to be sold); or
 - The property is being transferred for federal criminal forfeiture proceedings
- RC 2329.84 (Goods in Execution Claimed by a Third Party) was modernized to eliminate the need for a summons commanding the sheriff to summon 5 disinterested men with the qualifications of electors to appear before the court not more than 3 days after the date of the writ to serve as jurors.