



Legislative Council Staff

Research Note

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Bill Number

Senate Bill 17-136

Sponsors

***Senators Neville T. & Kagan
Representatives Herod &
Humphrey***

Short Title

***Reporting And Limiting Civil
Forfeiture***

Research Analyst

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Status

This research note reflects the introduced version of the bill, which was postponed indefinitely by the Senate Judiciary Committee on February 15, 2017.

Background

Colorado forfeiture law. The primary Colorado civil asset forfeiture law, the Colorado Public Nuisance Abatement Act, addresses the confiscation and forfeiture of property. Forfeiture is a civil action undertaken in combination with a criminal prosecution in Colorado. Generally, Colorado law requires a conviction prior to a forfeiture judgment by the court. The district court suspends all forfeiture proceedings until a criminal conviction is obtained. In the event of a criminal conviction, prosecutors act as the plaintiffs in the forfeiture action, and the district court maintains jurisdiction over the proceedings. Colorado law requires the plaintiff to prove by clear and convincing evidence that the property, real or personal, constitutes the proceeds or instrumentality of an illegal act and that the owner was involved in, knew, or should have known of, the illegal act.

Colorado law states that generation of revenue shall not be the primary purpose of asset forfeiture. If any profits remain after distribution to numerous stakeholders, 50 percent goes to the agency involved in the seizure, and 50 percent goes to the Department of Human Services for mental health and substance abuse services. Due to this policy, most civil asset forfeiture in Colorado occurs under federal law. According to several local sheriffs in Colorado, most local law enforcement departments hand over asset forfeiture cases to federal agencies. These federal agencies adopt the case and share the profits with local law enforcement.

Federal forfeiture law. Federal civil asset forfeiture is an action brought against the property

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itself in court. Federal civil asset forfeiture does not require a criminal conviction. Also, federal law only requires the plaintiff to prove by a preponderance of the evidence that the property was used or derived from an illegal act. Federal agencies can seize assets under federal law, through a joint investigation with state or local officials, or by adopting state or local forfeitures.

Equitable sharing. Many Colorado law enforcement and district attorney's offices participate in the Equitable Sharing Program through the U.S. Department of Justice. Some participants work with federal agencies on joint investigations and therefore receive a share of the asset forfeiture made under federal law based on their contribution. If applicable under federal minimum adoption thresholds, other participants allow federal agencies to adopt their asset forfeiture cases. Once adopted, the local or state participant can receive up to 80 percent of the asset forfeiture profit based on its participation. State and local agencies then use this profit for specific purposes as outlined in the program guidelines, usually for training or equipment replacement. According to the U.S. Department of Justice, in 2015, 42 Colorado agency participants held assets worth a cash value of \$4,357,254 and sale proceeds of \$708,897.

Senate Action

Senate Judiciary Committee (February 15, 2017). At the hearing, the committee heard testimony in favor of the bill from representatives of the Southern Colorado Cannabis Council, Colorado NORML, the Cannabis Patients Alliance, the ACLU of Colorado, and the Institute for Justice, and private citizens. The committee heard testimony in opposition to the bill from representatives of the Colorado Association of Chiefs of Police, the County Sheriffs of Colorado, various county sheriff's offices, the Colorado Bureau of Investigation, the Colorado State Patrol, the Colorado District Attorneys' Council, the Colorado Attorney General's Office, the Fourth Judicial District, the Colorado Drug Investigators Association, and the Colorado Associations of Chiefs of Police.

The committee adopted amendment L.001, which removes an audit requirement from the bill; amendment L.004, which requires the value of assets seized to be less than \$50,000 and a federal criminal forfeiture proceeding to be commenced in order for a state agency to accept proceeds resulting from adoption; and amendment L.003, which permits the executive director of the Department of Public Safety to establish a reasonable fee for maintaining the website required by the bill. The bill was postponed indefinitely by the committee.

Relevant Research

Legislative Council Staff, *Civil Asset Forfeiture Laws*, Issue Brief, February 2017: <http://leg.colorado.gov/publications/civil-asset-forfeiture-laws>.