



Legislative Council Staff

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Fiscal Note

Drafting Number:	LLS 23-0608	Date:	February 6, 2023
Prime Sponsors:	Rep. DeGraaf	Bill Status:	House Judiciary
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Bill Topic: DUE PROCESS ASSET FORFEITURE ACT

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill repeals the civil forfeiture process involving contraband and creates a new process for seizure and forfeiture of property in controlled substance distribution cases. Starting in FY 2023-24, the bill will impact state and local revenue and expenditures.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Summary of Legislation

The bill repeals the civil forfeiture process involving contraband and creates a new process for seizure and forfeiture of property used in the unlawful distribution, manufacturing, dispensing, or sale of a controlled substance.

Among other changes, the bill:

- combines the asset forfeiture case with the criminal case—under current law, these are two separate cases, one civil and one criminal;
- limits when property can be seized based on the value of the property so that \$500 or less in cash or a car valued at \$5,000 or less are exempt from forfeiture in controlled substance distribution cases;
- requires the appointment of a public defender or other counsel to represent the defendant in the forfeiture hearing;
- details the steps that the courts, law enforcement, and district attorneys must take before seizure and forfeiture can occur; and
- modifies forfeiture cost reimbursements.

Background

Under current law, there are two acts that outline when property can be seized and forfeited to the state: the Colorado Public Abatement Act and the Colorado Contraband Forfeiture Act. The former governs how forfeiture occurs when something is considered a “public nuisance” and the latter governs how forfeiture occurs when seizing and forfeiting contraband that was involved in controlled substance offenses. Data on civil asset forfeiture is annually published by the Department of Local Affairs: <https://cdola.colorado.gov/civil-asset-forfeiture-reporting>.

State Revenue

Starting in FY 2023-24, the bill may both increase and decrease state revenue to the General Fund and other cash funds. The bill may increase reimbursement costs to the Office of the State Public Defender in asset forfeiture cases where the office is involved. The reduction of allowable forfeiture activity may decrease cost reimbursements to state seizing agencies and existing distributions to the state General Fund, the Behavioral Health Administration, and the Law Enforcement Community Services Grant Program Fund. Revenue from forfeited property is subject to the state’s TABOR limit.

State Expenditures

Starting in FY 2023-24, the bill impacts workload to the Judicial Department and its independent agencies.

Judicial Department. Starting in FY 2023-24, workload to the trial courts will increase to accomplish the notice requirements of the bill and for additional hearings if more individuals petition the court during the forfeiture proceeding, as allowed by the bill. The merging of the civil and criminal case in forfeitures is not expected to decrease overall trial court workload. Overall, the fiscal note assumes that any increase in workload can be handled within existing appropriations.

Independent judicial offices that represent indigent persons. Starting in FY 2023-24, expenditures in the Office of the State Public Defender and, potentially, the Office of Alternate Defense Counsel will increase to provide counsel to defendants during forfeiture hearings concerning unlawful distribution, manufacturing, dispensing, or sale of a controlled substance. The offices will seek resources through the annual budget process once caseload is known.

Local Government

Similar to the state, local revenue from forfeiture cost reimbursements may decrease. District attorney workload may increase to cover any additional hearings under the bill.

Effective Date

The bill takes effect July 1, 2023, and applies to seizures occurring on or after this date.

State and Local Government Contacts

Counties	Denver County Courts	District Attorneys
Information Technology	Judicial	Law
Local Affairs	Military Affairs	Municipalities
Natural Resources	Public Safety	Sheriffs