

House Bill 19

By: Representatives Scott of the 76<sup>th</sup>, Thomas of the 39<sup>th</sup>, Schofield of the 60<sup>th</sup>, Davis of the 87<sup>th</sup>, and Hutchinson of the 107<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 16 of Title 9 of the Official Code of Georgia Annotated, relating to the  
2 "Georgia Uniform Civil Forfeiture Procedure Act," so as to increase the burden of proof for  
3 the government in civil forfeiture proceedings; to amend Article 2 of Chapter 12 of Title 17  
4 of the Official Code of Georgia Annotated, relating to public defenders, so to provide for  
5 representation by public defenders in civil forfeiture proceedings resulting from certain  
6 criminal cases; to provide for a short title; to provide for related matters; to repeal conflicting  
7 laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as the "Due Process in Civil Forfeiture Act."

11 **SECTION 2.**

12 Chapter 16 of Title 9 of the Official Code of Georgia Annotated, relating to the "Georgia  
13 Uniform Civil Forfeiture Procedure Act," is amended by revising paragraph (1) of  
14 subsection (a) and subsection (b) of Code Section 9-16-17, relating to burden of proof and  
15 presumptions, as follows:

H. B. 19

- 1 -

16 "(a)(1) The state's burden of proof shall be to show by a ~~preponderance of the~~ clear and  
 17 convincing evidence that seized property is subject to forfeiture."

18 "(b) There shall be a rebuttable presumption that any property of a person is subject to  
 19 forfeiture under this chapter if the state attorney establishes by a ~~preponderance of the~~ clear  
 20 and convincing evidence that:

- 21 (1) The person has engaged in conduct giving rise to forfeiture;  
 22 (2) The property was acquired by the person during the period of the conduct giving rise  
 23 to forfeiture or within a reasonable time after such period; and  
 24 (3) There was no likely source for the property other than the conduct giving rise to  
 25 forfeiture."

26 **SECTION 3.**

27 Article 2 of Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to  
 28 public defenders, is amended by revising subsection (a) of Code Section 17-12-23, relating  
 29 to cases in which public defender representation required, timing of representation, juvenile  
 30 divisions, and contracts with local governments, as follows:

31 "(a) The circuit public defender shall provide representation in the following actions and  
 32 proceedings:

- 33 (1) Any case prosecuted in a superior court under the laws of the State of Georgia in  
 34 which there is a possibility that a sentence of imprisonment or probation or a suspended  
 35 sentence of imprisonment may be adjudged;  
 36 (2) A hearing on a revocation of probation in a superior court;  
 37 (3) Any juvenile court case where the juvenile may face a disposition of confinement,  
 38 commitment, or probation; ~~and~~  
 39 (4) Any direct appeal of any of the proceedings enumerated in paragraphs (1) through (3)  
 40 of this subsection; and

41 (5) In any proceeding under Chapter 16 of Title 9, the 'Georgia Uniform Civil Forfeiture  
42 Procedure Act,' that results out of any case provided for under paragraph (1) of this  
43 subsection."

44 **SECTION 4.**

45 All laws and parts of laws in conflict with this Act are repealed.