



House of Representatives

General Assembly

File No. 192

January Session, 2017

Substitute House Bill No. 7146

House of Representatives, March 23, 2017

The Committee on Banking reported through REP. LESSER of the 100th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT REQUIRING A CRIMINAL CONVICTION FOR CERTAIN OFFENSES BEFORE ASSETS SEIZED IN A LAWFUL ARREST OF LAWFUL SEARCH MAY BE FORFEITED IN A CIVIL PROCEEDING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-33g of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2017*):

3 (a) (1) When any property believed to [be possessed, controlled,
4 designed or intended for use or which is or has] have been used [or
5 which may be used] as a means of committing any criminal offense, or
6 which constitutes the proceeds of the commission of any criminal
7 offense or is directly traceable to the proceeds derived from the
8 commission of any criminal offense, except a violation of section 21a-
9 267, 21a-277, 21a-278 or 21a-279, has been seized as a result of a lawful
10 arrest or lawful search, which the state claims to be a nuisance and
11 desires to have destroyed or disposed of in accordance with the
12 provisions of this section, the Chief State's Attorney or a deputy chief
13 state's attorney, state's attorney or assistant or deputy assistant state's

14 attorney may petition the court not later than ninety days after [the
15 seizure] proof of the commission of such criminal offense is established
16 by criminal conviction, in the nature of a proceeding in rem, to order
17 forfeiture of such property. Such proceeding shall be deemed a civil
18 suit in equity, in which the state shall have the burden of proving [all
19 material facts] by clear and convincing evidence that the property (A)
20 has been used in the commission of such criminal offense, (B)
21 constitutes proceeds derived from the commission of such criminal
22 offense, or (C) is directly traceable to proceeds derived from the
23 commission of such criminal offense. The court shall identify the
24 owner of such property and any other person as appears to have an
25 interest in such property, and order the state to give notice to such
26 owner and any interested person by certified or registered mail. The
27 court shall promptly, but not less than two weeks after such notice,
28 hold a hearing on the petition.

29 [(b)] (2) If the court finds the allegations made in such petition to be
30 true and that the property has been [possessed, controlled or designed
31 for use, or is or has been or is intended to be] used [, with intent to
32 violate or in violation of any of the criminal laws of this state, or
33 constitutes the proceeds of a violation of any of the criminal laws of
34 this state] in the commission of such criminal offense, constitutes
35 proceeds derived from the commission of such criminal offense or is
36 directly traceable to proceeds derived from the commission of such
37 criminal offense, except a violation of section 21a-267, 21a-277, 21a-278
38 or 21a-279, the court shall render judgment that such property is a
39 nuisance and order the property to be destroyed or disposed of to a
40 charitable or educational institution or to a governmental agency or
41 institution, except that if any such property is subject to a bona fide
42 mortgage, assignment of lease or rent, lien or security interest, such
43 property shall not be so destroyed or disposed of in violation of the
44 rights of the holder of such mortgage, assignment of lease or rent, lien
45 or security interest.

46 [(c)] (b) (1) When the [condemned] property forfeited under this
47 section is money, [(A) on and after October 1, 2014, and prior to July 1,

48 2016, the court shall order that such money be distributed as follows:
49 (i) Seventy per cent shall be allocated to the law enforcement agency,
50 including the Department of Emergency Services and Public Protection
51 and local police departments, responsible for investigating the criminal
52 violation and seizing the money, and such local police departments
53 shall use such money for the detection, investigation, apprehension
54 and prosecution of persons for the violation of criminal laws, and any
55 money allocated to the Department of Emergency Services and Public
56 Protection shall be deposited in the General Fund; (ii) twenty per cent
57 shall be deposited in the Criminal Injuries Compensation Fund
58 established in section 54-215; and (iii) ten per cent shall be allocated to
59 the Division of Criminal Justice and deposited in the General Fund;
60 and (B) on and after July 1, 2016,] such money shall be deposited in the
61 General Fund.

62 (2) When the [condemned] property forfeited under this section is a
63 valuable prize [, which] that is subject to a bona fide mortgage,
64 assignment of lease or rent, lien or security interest, such property
65 shall remain subject to such mortgage, assignment of lease or rent, lien
66 or security interest.

67 [(d)] (c) When any property or valuable prize has been declared a
68 nuisance and [condemned] forfeited under this section, the court may
69 also order that such property be sold in accordance with procedures
70 approved by the Commissioner of Administrative Services. Proceeds
71 of such sale shall first be allocated toward the balance of any mortgage,
72 assignment of lease or rent, lien or security interest, and the remaining
73 proceeds of such sale, if any, shall be [allocated in accordance with
74 subparagraphs (A) to (C), inclusive, of subdivision (1) of subsection (c)
75 of this section] deposited in the General Fund. In any criminal
76 prosecution, secondary evidence of property condemned and
77 destroyed pursuant to this section shall be admissible against the
78 defendant to the same extent as such evidence would have been
79 admissible had the property not been condemned and destroyed.

80 [(e)] (d) If the court finds the allegations not to be true, or [that the

81 property has not been kept with intent to violate or in violation of the
82 criminal laws of this state, or that the property does not constitute the
83 proceeds of a violation of the criminal laws of this state, or] that the
84 state has not satisfied its burden of proving the requirements of
85 subsection (a) of this section, or that the property is the property of a
86 person who [is] was not a defendant in a related criminal proceeding,
87 the court shall order the property returned to the owner forthwith and
88 the party in possession of such property pending such determination
89 shall be responsible and personally liable for such property from the
90 time of seizure and shall immediately comply with such order.

91 [(f)] (e) (1) [Failure of the state to proceed against such property in
92 accordance with the provisions of this section shall not prevent the use
93 of such property as evidence in any criminal trial] Any person
94 claiming an interest in property seized in connection with a lawful
95 arrest or lawful search may petition the court for the return or delivery
96 of such property at any time prior to sixty days before trial of the
97 criminal offense. The court shall identify the owner of such property
98 and any other person as appears to have an interest in such property,
99 and order the claimant to give notice to such owner and any interested
100 person by certified or registered mail. The court shall promptly, but
101 not less than thirty days after such notice, hold a hearing on the
102 petition.

103 (2) The court shall order that such property be returned or delivered
104 to the claimant if the court finds that: (A) Such claimant has a legal
105 right or title to, or interest in, the property; (B) the state is not likely to
106 obtain an order of forfeiture pursuant to subsection (a) of this section;
107 (C) the property is not reasonably required to be held by the state for
108 investigatory purposes; and (D) the property is intended to be used by
109 such claimant to pay legitimate attorney's fees in a forfeiture
110 proceeding under subsection (a) of this section or a related criminal
111 prosecution.

112 Sec. 2. Section 54-36h of the general statutes is repealed and the
113 following is substituted in lieu thereof (*Effective October 1, 2017*):

114 (a) The following property shall be subject to forfeiture to the state
115 pursuant to subsection (b) of this section:

116 (1) All moneys used, or intended for use, in the procurement,
117 manufacture, compounding, processing, delivery or distribution of any
118 controlled substance, as defined in subdivision (9) of section 21a-240;

119 (2) All property constituting the proceeds obtained, directly or
120 indirectly, from any sale or exchange of any such controlled substance
121 in violation of section 21a-277 or 21a-278;

122 (3) All property derived from the proceeds obtained, directly or
123 indirectly, from any sale or exchange for pecuniary gain of any such
124 controlled substance in violation of section 21a-277 or 21a-278;

125 (4) All property used or intended for use, in any manner or part, to
126 commit or facilitate the commission of a violation for pecuniary gain of
127 section 21a-277 or 21a-278;

128 (5) All property constituting, or derived from, the proceeds
129 obtained, directly or indirectly, by a corporation as a result of a
130 violation of section 53a-276, 53a-277 or 53a-278.

131 (b) Not later than ninety days after [the seizure of moneys or
132 property subject to forfeiture pursuant to subsection (a) of this section,
133 in connection with a lawful criminal arrest or a lawful search] a
134 criminal conviction for a violation of section 21a-777, 21a-778 or 53a-
135 276 to 53a-278, inclusive, the Chief State's Attorney or a deputy chief
136 state's attorney, state's attorney or assistant or deputy assistant state's
137 attorney may petition the court in the nature of a proceeding in rem to
138 order forfeiture of [said] any moneys or property seized in connection
139 with a lawful criminal arrest or lawful search for such violation and
140 subject to forfeiture pursuant to subsection (a) of this section. Such
141 proceeding shall be deemed a civil suit in equity, in which the state
142 shall have the burden of proving all material facts by clear and
143 convincing evidence. The court shall identify the owner of said
144 moneys or property and any other person as appears to have an

145 interest therein, and order the state to give notice to such owner and
146 any interested person by certified or registered mail, and shall
147 promptly, but not less than two weeks after notice, hold a hearing on
148 the petition. No testimony offered or evidence produced by such
149 owner or interested person at such hearing and no evidence
150 discovered as a result of or otherwise derived from such testimony or
151 evidence, may be used against such owner or interested person in any
152 proceeding, except that no such owner or interested person shall be
153 immune from prosecution for perjury or contempt committed while
154 giving such testimony or producing such evidence. At such hearing
155 the court shall hear evidence and make findings of fact and enter
156 conclusions of law and shall issue a final order, from which the parties
157 shall have such right of appeal as from a decree in equity.

158 (c) No property shall be forfeited under this section to the extent of
159 the interest of an owner or lienholder by reason of any act or omission
160 committed by another person if such owner or lienholder did not
161 know and could not have reasonably known that such property was
162 being used or was intended to be used in, or was derived from,
163 criminal activity.

164 [(d) Notwithstanding the provisions of subsection (a) of this section,
165 no moneys or property used or intended to be used by the owner
166 thereof to pay legitimate attorney's fees in connection with his defense
167 in a criminal prosecution shall be subject to forfeiture under this
168 section.]

169 [(e)] (d) Any property ordered forfeited pursuant to subsection (b)
170 of this section shall be sold at public auction conducted by the
171 Commissioner of Administrative Services or his designee.

172 [(f)] (e) The proceeds from any sale of property under subsection
173 [(e)] (d) of this section and any moneys forfeited under this section
174 shall be applied: (1) To payment of the balance due on any lien
175 preserved by the court in the forfeiture proceedings; (2) to payment of
176 any costs incurred for the storage, maintenance, security and forfeiture
177 of such property; and (3) to payment of court costs. The balance, if any,

178 shall be deposited in the drug assets forfeiture revolving account
179 established under section 54-36i.

180 (f) (1) Any person claiming an interest in moneys or property seized
181 in connection with a lawful criminal arrest or lawful search may
182 petition the court for the return or delivery of such moneys or property
183 at any time prior to sixty days before trial of the criminal offense. The
184 court shall identify the owner of such moneys or property and any
185 other person as appears to have an interest in such moneys or
186 property, and order the claimant to give notice to such owner and any
187 interested persons by certified or registered mail. The court shall
188 promptly, but not less than thirty days after such notice, hold a hearing
189 on the petition.

190 (2) The court shall order the moneys or property be returned or
191 delivered to the claimant if the court finds that: (A) Such claimant has a
192 legal right or title to, or interest in, the moneys or property; (B) the
193 state is not likely to obtain an order of forfeiture of the property
194 pursuant to subsection (b) of this section; (C) the moneys or property
195 are not reasonably required to be held by the state for investigatory
196 purposes; and (D) the moneys or property are intended to be used by
197 such claimant to pay legitimate attorney's fees in a forfeiture
198 proceeding under subsection (b) of this section or a related criminal
199 prosecution.

200 Sec. 3. Section 54-36o of the general statutes is repealed and the
201 following is substituted in lieu thereof (*Effective October 1, 2017*):

202 (a) All property constituting, or derived from, the proceeds
203 obtained, directly or indirectly, by a person as a result of a violation of
204 section 53a-129a of the general statutes, revision of 1958, revised to
205 January 1, 2003, or section 53a-127g, 53a-129b, 53a-129c, 53a-129d, 53a-
206 129e, 53a-130, 21-120 or 21-121 shall be subject to forfeiture to the state
207 pursuant to subsection (b) of this section.

208 (b) Not later than ninety days after [the seizure of property subject
209 to forfeiture pursuant to subsection (a) of this section] a criminal

210 conviction for a violation of section 53a-129a, revision of 1958, revised
211 to January 1, 2003, or section 21-120, 21-121, 53a-127g, 53a-129b, 53a-
212 129c, 53a-129d, 53a-129e or 53a-130, the Chief State's Attorney or a
213 deputy chief state's attorney, state's attorney or assistant or deputy
214 assistant state's attorney may petition the court in the nature of a
215 proceeding in rem to order forfeiture of [said] any moneys or property
216 seized in connection with a lawful criminal arrest or lawful search for
217 such violation and subject to forfeiture pursuant to subsection (a) of
218 this section. Such proceeding shall be deemed a civil suit in equity, in
219 which the state shall have the burden of proving all material facts by
220 clear and convincing evidence. The court shall identify the owner of
221 such property and any other person as appears to have an interest
222 therein, and order the state to give notice to such owner and any
223 interested person by certified or registered mail, and shall promptly,
224 but not less than two weeks after notice, hold a hearing on the petition.
225 No testimony offered or evidence produced by such owner or
226 interested person at such hearing and no evidence discovered as a
227 result of or otherwise derived from such testimony or evidence, may
228 be used against such owner or interested person in any proceeding,
229 except that no such owner or interested person shall be immune from
230 prosecution for perjury or contempt committed while giving such
231 testimony or producing such evidence. At such hearing the court shall
232 hear evidence and make findings of fact and enter conclusions of law
233 and shall issue a final order, from which the parties shall have such
234 right of appeal as from a decree in equity.

235 (c) No property shall be forfeited under this section to the extent of
236 the interest of an owner or lienholder by reason of any act or omission
237 committed by another person if such owner or lienholder did not
238 know and could not have reasonably known that such property was
239 being used or was intended to be used in, or was derived from,
240 criminal activity.

241 [(d) Notwithstanding the provisions of subsection (a) of this section,
242 no property used or intended to be used by the owner thereof to pay
243 legitimate attorney's fees in connection with his defense in a criminal

244 prosecution shall be subject to forfeiture under this section.]

245 [(e)] (d) Any property ordered forfeited pursuant to subsection (b)
246 of this section shall be sold at public auction conducted by the
247 Commissioner of Administrative Services.

248 [(f)] (e) The proceeds from any sale of property under subsection
249 [(e)] (d) of this section shall be applied: (1) To payment of the balance
250 due on any lien preserved by the court in the forfeiture proceedings;
251 (2) to payment of any costs incurred for the storage, maintenance,
252 security and forfeiture of such property; and (3) to payment of court
253 costs. The balance, if any, shall be deposited in the privacy protection
254 guaranty and enforcement account established under section 42-472a.

255 (f) (1) Any person claiming an interest in moneys or property seized
256 in connection with a lawful criminal arrest or lawful search may
257 petition the court for the return or delivery of such moneys or property
258 at any time prior to sixty days before trial of the criminal offense. The
259 court shall identify the owner of such moneys or property and any
260 other person as appears to have an interest in such moneys or
261 property, and order the claimant to give notice to such owner and any
262 interested persons by certified or registered mail. The court shall
263 promptly, but not less than thirty days after such notice, hold a hearing
264 on the petition.

265 (2) The court shall order the moneys or property be returned or
266 delivered to the claimant if the court finds that: (A) Such claimant has a
267 legal right to, or title or interest in, the moneys or property; (B) the
268 state is not likely to obtain an order of forfeiture of the property
269 pursuant to subsection (b) of this section; (C) the moneys or property
270 are not reasonably required to be held by the state for investigatory
271 purposes; and (D) the moneys or property are intended to be used by
272 such claimant to pay legitimate attorney's fees in a forfeiture
273 proceeding under subsection (b) of this section or a related criminal
274 prosecution.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2017</i>	54-33g
Sec. 2	<i>October 1, 2017</i>	54-36h
Sec. 3	<i>October 1, 2017</i>	54-36o

BA *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: Yes, See Below

Municipal Impact: Yes, See Below

Explanation

The bill makes the following changes to asset seizure laws:

- In specified cases involving asset forfeiture, it requires a criminal conviction, eliminating current cases that may result in probation or a diversionary program; and
- Changes the distribution formula for certain types of asset seizure, instead requiring all funds to be transferred to the General Fund.

The bill results in revenue changes show in the table below:

Revenue Changes Due to HB 7146

Based on FY 16 Revenue

Agency	Formula	FY 16 Totals	Revenue Loss Due to Criminal Conviction Requirement ¹	Change Loss Due to Formula Change	TOTAL
Section 1					
Dept. of Emergency Services and Public Protection	70%	7,177	(1,794)	(8,971)	(10,766)
Local Police Departments		9,910	(2,478)	(12,388)	(14,865)
Judicial	20%	4,884	(1,221)	(6,105)	(7,326)
Resources of the General Fund	10%	2,442	(611)	27,464	26,853
TOTAL		24,413	(6,103)	-	(6,103)
Section 2					
Dept. of Emergency Services and Public Protection	70%	721,154	(180,289)		(180,289)
Local Police Departments		781,295	(195,324)		(195,324)
Dept. of Mental Health and Addiction Services	20%	443,843	(110,961)		(110,961)
Division of Criminal Justice	10%	221,924	(55,481)		(55,481)
TOTAL		2,168,216	(542,054)	-	(542,054)

¹Assumes a 25% decreased in asset forfeiture due to the requirement of a criminal conviction.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the amount of asset forfeitures.

OLR Bill Analysis**sHB 7146*****AN ACT REQUIRING A CRIMINAL CONVICTION FOR CERTAIN OFFENSES BEFORE ASSETS SEIZED IN A LAWFUL ARREST OF LAWFUL SEARCH MAY BE FORFEITED IN A CIVIL PROCEEDING.*****SUMMARY**

This bill makes changes to the laws governing civil forfeiture of property:

1. that was seized as a result of a lawful arrest or lawful search for a non-drug criminal offense and that the state claims to be a nuisance or desires to dispose of or destroy;
2. used or associated with, or that constitutes the proceeds of, certain drug offenses; and
3. constituting or derived from the proceeds obtained by a person as a result of certain identity theft offenses.

The bill permits the chief state's attorney to petition the court to order forfeiture of such property within 90 days of a criminal conviction, instead of within 90 days of the seizure resulting from a lawful arrest or lawful search as under current law.

The bill also limits the conditions under which property is subject to forfeiture to the state and establishes a procedure by which a person who claims interest in seized property may petition the court for its return. The bill repeals a provision that specifies that the state's failure to proceed against property in a civil forfeiture proceeding does not prevent its use as evidence in a criminal trial.

Additionally, the bill makes various changes to the civil forfeiture proceedings, including the circumstances in which the court must

order property returned to its owner and the evidence the state must provide to meet its burden of proof in such proceedings.

It also makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2017

PROPERTY SUBJECT TO FORFEITURE

For non-drug crimes, current law allows the state to seek forfeiture of any property (1) believed to be possessed, controlled, designed, or intended for criminal use or (2) that is, has been, or may be used in the commission of a crime. Under the bill, the property must be believed to (1) have been used in a crime or (2) be directly traceable to the proceeds derived from a crime.

The law, unchanged by the bill, specifies certain property for which the state may seek forfeiture related to drug and money laundering, identity theft, and sexual exploitation, prostitution, and human trafficking crimes.

FORFEITURE PROCEEDINGS

Forfeiture proceedings are civil suits in equity in which the court has jurisdiction over property.

The bill allows the chief state's attorney to petition the court to forfeit property associated with a crime within 90 days of a criminal conviction, instead of within 90 days of the property's seizure during a lawful search or arrest as under current law.

Non-drug Crimes

The bill requires the state, in civil forfeiture proceedings for property related to certain non-drug crimes, to prove by clear and convincing evidence that the property:

1. was used in a crime,
2. constitutes proceeds derived from a crime, or

3. is directly traceable to proceeds derived from a crime.

Current law requires the state to prove all material facts by clear and convincing evidence.

Drug Offenses, Money Laundering, and Identity Theft

The law, unchanged by the bill, requires the state to prove all material facts by clear and convincing evidence in civil forfeiture proceedings related to (1) property seized in relation to identity theft and (2) money or property seized in relation to drug offenses.

Disposition of Forfeited Property

Under the law, unchanged by the bill, if the state meets its burden of proof, the court must render judgment that the property is a nuisance and order it destroyed or disposed of to a charitable or educational institution or governmental agency or institution. However, the state may not destroy or dispose of the property if (1) it is subject to a bona fide mortgage, lease, rent, lien, or security deposit and (2) the destruction or disposition would violate the holder's rights.

By law, forfeited money and certain proceeds from the sale of nuisance property must be deposited to the:

1. General Fund in cases involving non-drug criminal offenses,
2. Drug Assets Forfeiture Revolving Account in cases involving drug crimes or money laundering, and
3. Privacy Protection Guaranty and Enforcement Account in identity theft cases.

PETITION FOR THE RETURN OF PROPERTY

For certain drug, money laundering, and identity theft crimes, the bill repeals provisions that prevent forfeiture of money or property that the owner used or intends to use to pay legitimate attorney's fees in connection with a criminal offense.

The bill instead establishes a process for a claimant to petition the

court for the return of money or property seized in a lawful search or lawful arrest to pay legitimate attorney's fees in a forfeiture proceeding or related criminal prosecution for certain non-drug, drug, money laundering, and identity theft crimes.

Under the bill, any person claiming an interest in seized property may, at least 60 days before the criminal trial, petition the court for its return. The court must:

1. identify the owner of the property and any other person who appears to have an interest in the property and
2. order the claimant to notify the owner and any other interested parties by certified or registered mail.

The court must promptly, but not less than 30 days after the notice, hold a hearing on the petition. (It is unclear whether the court must hold a hearing within 30 days after the notice is sent or received.)

The bill requires the court to order the property returned or delivered to the claimant if it finds:

1. he or she has a legal right or title to, or interest in, the property;
2. the state is not likely to obtain an order of forfeiture under the bill's provisions;
3. the property is not reasonably required to be held by the state for investigatory purposes; and
4. the property is intended to be used by the claimant to pay legitimate attorney's fees in a civil forfeiture proceeding or related criminal prosecution.

Existing law, unchanged by the bill, provides a process by which an owner may petition the court for the return of property seized during a criminal arrest or lawful search that did not result in arrest (see BACKGROUND).

BACKGROUND

Related Law

CGS § 54-36a provides a process for the disposition of property seized in connection with a criminal arrest or seized pursuant to a search warrant without an arrest. This includes specific provisions for the forfeiture of seized property including stolen property, currency, fireworks, drugs, or drug paraphernalia. Among other things, this law requires law enforcement to inventory the seized property and provides a process by which an owner may petition the court for the return of the property.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 10 Nay 9 (03/07/2017)