

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: S.102 Name of Bill: Criminal procedures, animal cruelty, asset forfeiture

Agency/Dept: State Police Author of Bill Review Major Glenn Hall

Date of Bill Review: 05/28/2015 Related Bills and Key Players: Sponsors – Senators Sears and Ashe

Status of Bill: (check one)

 Upon Introduction As passed by 1st body X As passed by both bodies

Recommended Position:

 X Support Oppose Remain Neutral Support with modifications identified in # 8 below

Analysis of Bill

1. **Summary of bill and issue it addresses.** This bill provides the ability for the state to seize assets associated with animal fighting under state seizure law to include proceeds and derivative proceeds. This bill also expands and improves the existing asset forfeiture process provided under Title 18, specifically involving drug crimes that carry a maximum penalty of ten years' incarceration or greater. This bill provides that 55% of funds go to the general fund and 45% go to law enforcement and prosecutors. Law enforcement and prosecutors are able to receive re-imbursement for expenses incurred to include actual expenses for involved personnel; before funds are distributed. This bill is conviction based which requires a person be convicted of the criminal offense related to the action for forfeiture or a person enters into an agreement with the prosecutor under which he or she is not charged with a criminal offense related to the action for forfeiture.

2. **Is there a need for this bill?** Yes, the current state seizure law is ineffective and as a result is rarely utilized by law enforcement and prosecutors. In addition to the cumbersome process, all seized assets under current law go to the general fund. Currently most all seized assets are forfeited through the federal asset forfeiture process. Specifically assets seized by state and local law enforcement are adopted by federal agencies and shared with participating agencies and state prosecutors. The federal processing agency takes 20% of seized assets and 80% is shared with participating law enforcement and prosecutors. The Federal asset forfeiture sharing program has recently come under scrutiny resulting in more restrictive changes as it relates to federally adoptive seizures. Current proposed federal legislation proposes to eliminate the equitable sharing program all together.

Asset forfeiture, specifically related to drug cases has been widely utilized and is a proven law enforcement tool in combating drug crime. The concept of seizing proceeds from illicit drug sales and assets that are obtained from those proceeds have a direct impact on those individuals involved in drug trafficking.

Federal

asset sharing has provided law enforcement with the ability to utilize seized funds directly toward increased

drug enforcement efforts. In our state, the Vermont Drug Task Force relies on seized funds to help support its operations and associated costs to include; training, equipment, buy money, vehicles and overtime.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

Programmatically there will be limited impact to law enforcement other than changes to internal procedures

and process. No new positions or infrastructure would be required. Fiscally this bill should benefit law enforcement and prosecutors. This bill will provide a viable option to law enforcement and prosecutors to seize assets directly associated with drug crimes that maybe do not meet federal guidelines. As stated above, the ability for law enforcement to be compensated for expenses incurred on these investigations in addition to utilizing seized funds to support drug enforcement efforts is vitally important.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

The State's Attorney's and Attorney General will see programmatic impact as they will need to build process to receive, screen, litigate and defend seizures. Fiscally they will have the ability to re-coup costs incurred and receive a portion of seized assets to support operating expenses.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their respective on it?

Local, state and county law enforcement / prosecutors should support this bill as it provides them the ability to seize assets in drug cases they are involved in. From a statewide perspective this benefits all by providing law enforcement and prosecutors to re-coup investigative costs and additional resources directly from the pockets of those individuals profiting from the illicit drug trade.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? Law enforcement and prosecutors will support this bill as it will enhance their drug enforcement activities and ability to address related crime.

6.2 Who else is likely to oppose the proposal and why? Public defenders, defense attorneys and the ACLU will likely oppose this bill due to additional resources needed to defend clients subject to seizures. ACLU will likely oppose on general principal of government impacting rights of private citizens and property ownership. They will likely argue that providing law enforcement with asset forfeiture sharing would encourage LE to target individuals based on perceived assets.

7. Rationale for recommendation: This bill would allow for asset forfeiture on the state level similar to that which has traditionally been done through federal process. Given the significant problems created by the illicit drug trade, in particular by heroin / opiate abuse, this bill would provide an additional

deterrent to those individuals trafficking illicit drugs into Vermont communities. The reality is that asset forfeiture is most likely utilized and directed at dealers who are profiting at the expense of the users. To allow law enforcement and prosecutors to utilize a portion of proceeds in order to directly support and enhance enforcement efforts not only makes sense but alleviates the financial strain on state tax dollars needed. Not having an effective asset forfeiture tool is a rarity compared to other states across the country.

It should be noted that this bill limits assets subject to forfeiture to those assets related to the action of forfeiture, specifically a violation under chapter 84, subchapter 1 of Title 18 that carries a maximum sentence of ten years incarceration or greater. Vermont's drug problems continue to be significantly impacted by individuals from drug source cities in surrounding states trafficking into VT for distribution.

These traffickers can be individual street level dealers to couriers as part of organized criminal groups. The reality is that Vermont's highways are utilized daily to traffic drugs north into VT and money south. It is often the case that these individuals are encountered by law enforcement on highways either with substantial amounts of drugs or the proceeds from illicit sales after the drugs are sold; but rarely both. Many times assets such as cash proceeds are seized and processed federally based on law enforcement's ability through investigation and / or admissions to establish probable cause that the assets are proceeds from illicit drug sales. This bill may limit LE's ability to seize assets absent a related crime that carries a ten year sentence.

8. **Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*
N/A
9. **Gubernatorial appointments to board or commission?** N/A

Secretary/Commissioner has reviewed this document



Date: 5/29/15