

**The Civil Liberties Committee of the Chicago Council of Lawyers
Supports HB 303 SA1 (Guzzardi/Harmon) on
Civil Asset Forfeiture Reform
June 21, 2017**

Civil asset forfeiture generally

After police seize property from a person based on the belief that the property is involved with illegal activity, forfeiture is the legal process by which the government seeks to permanently take the property away from the person.

Some states, including Illinois, have criminal forfeiture laws that allow a criminal court, after the owner (or sometimes an associate of the owner) is convicted of a criminal offense, to order that property involved in that crime be forfeited.

HB 303 SA1 concerns only Illinois' civil forfeiture laws, where a case is filed in a civil court against the property itself. No person is named as a defendant and there is no requirement that the owner or any other person be convicted of a crime.

Illinois civil asset forfeiture laws are frequently unjust

Under current Illinois civil asset forfeiture laws, a person need not be convicted of any crime—or even arrested or charged—in order to be permanently deprived of his/her cash, car, or even his/her home.

Under most current Illinois civil asset forfeiture laws, once your property is seized, the burden of proof is essentially on you to prove that your property should not be permanently forfeited to the State.

A person wishing to contest the forfeiture of his/her property must usually pay a bond for the privilege, and has no right to appointed counsel.

Asset forfeiture, especially of a person's vehicle, can cause a cascade of negative consequences in a person's life, including the inability to maintain employment or even to attend court proceedings to try to reclaim the seized property.

A recent Op-Ed shows that when police seizure locations are mapped, although seizures happened nearly everywhere in Chicago and the surrounding area, low-income neighborhoods like the South Side and West Side were more frequently the targets of asset forfeiture. ([Chicago Tribune, Chicago data show problems with civil asset forfeiture, Radley Balko, 6-15-17.](#))



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HB 303 SA1 comprehensively reforms Illinois' three most commonly used civil forfeiture laws:

1. Drug Asset Forfeiture Act

This statute authorizes forfeiture of all property types of property (cash, vehicles, personal property, or real estate) based on the suspicion that the property was either used in committing a drug offense, or is the proceeds of a drug offense.

2. Article 36

This statute authorizes forfeiture of vehicles (as well as vessels and aircraft) based on the suspicion that the property was used in committing a criminal offense other than a drug offense. Article 36 specifically provides that a wide range of crimes may form the basis for forfeiture. The most common cases under Article 36 are DUI and driving on a suspended or revoked license.

3. Money Laundering

This statute authorizes forfeiture of many types of property based on the suspicion that the property is being used to hide the proceeds of a wide array of criminal conduct, with a focus on larger criminal enterprises.

As to the three laws listed above, HB 303 SA1 does the following:

- Removes the property owner's burden of proving his or her innocence. Instead, the burden of proving guilt will rest with the government.
- Creates an expedited process for innocent owners to have their cases adjudicated more quickly.
- Increases the government's burden of proof from probable cause to preponderance of the evidence.
- The government must meet the higher burden of clear and convincing evidence if the person was found not guilty at trial in a related criminal case, or if the government lost the criminal case at the preliminary stage.
- Requires the government to do more to ensure that the property owner receives notice of the forfeiture proceedings and understands the steps (s)he must take to argue for the return of the property.



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- Eliminates the requirement that property owners must pay a “cost bond” equal to 10% of the value of the seized property before their case can be heard by a judge.
- Exempts small sums of cash from forfeiture.
- Exempts possession of a tiny amount of drugs from forfeiture.

Transparency & Public Reporting

HB 303 SA1 also provides for new data collection about seizures of property by police departments and forfeitures by Illinois prosecutors. The information will be reported to the Illinois State Police (ISP), and the aggregated data will be posted on ISP’s website. This reporting tool will enable taxpayers and lawmakers to find out:

- How much property is being seized by different law enforcement agencies in the State.
- How much seized property is forfeited by prosecutors.
- The types of property being forfeited.
- The amount of forfeiture proceeds received by law enforcement agencies.
- How those agencies spend the money.
- The reporting provisions apply not only to the Drug Asset Forfeiture Act, Article 36, and money laundering, but also to 13 other forfeiture statutes currently on the books in Illinois.

Conclusion

We understand that this agreed bill is the product of extensive negotiations among the ACLU, the Illinois State Bar Association, Cabrini Green Legal Aid, the Illinois State’s Attorneys Association, the Illinois State Police, the Illinois Association of Chiefs of Police, the Illinois Sheriffs Association, the Chicago Police Department, the Illinois Drug Enforcement Officers Association, and others. Because we believe the bill makes significant improvements in Illinois civil asset forfeiture statutes, we support it. But we reserve the right to seek to improve those statutes further in the future.



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