

Department of Planning and Budget

2018 Fiscal Impact Statement

1. Bill Number: HB 900

House of Origin	<input checked="" type="checkbox"/>	Introduced	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Engrossed
Second House	<input type="checkbox"/>	In Committee	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Enrolled

2. Patron: Freitas

3. Committee: House Courts of Justice

4. Title: Asset forfeiture

5. Summary:

The Virginia Constitution directs that the proceeds of all property forfeited to the Commonwealth be deposited into the Literary Fund to be used for public school purposes. However, the Constitution does authorize the General Assembly to exempt proceeds from the sale of all property seized and forfeited to the Commonwealth for a violation of the criminal laws proscribing the manufacture, sale or distribution of a controlled substance or marijuana and to use those proceeds to promote law enforcement activities.

Under the current state asset-sharing program, any cash, equipment, motor vehicles, and other personal and real property (i) used in the commission of numerous criminal offenses, (ii) traceable to the proceeds of violation of numerous criminal offenses, or (iii) used to promote several criminal activities, is subject to seizure by law-enforcement officials and forfeiture by the courts. The Code of Virginia sets out a procedure whereby the courts can order the forfeiture of the assets seized. After forfeiture is ordered in cases involving the sale, manufacture, or distribution of a controlled substance or marijuana, the law-enforcement agency or agencies that seized the assets are required to deposit any cash seized, and the proceeds of property that has been sold, into a special fund of the Department of Criminal Justice Services (DCJS).

State and local agencies also are eligible to receive proceeds from forfeiture proceeds resulting from investigations of violation of federal law in which state and local agencies participate with federal law-enforcement authorities. These proceeds are not required to be deposited into the state funds and the only involvement that DCJS has with these proceeds is to collect the information from the agencies involved. In FY 2017, DCJS reported that \$8.2 million from the federal equitable sharing program was collected by local and state agencies.

DCJS is authorized to use up to 10 percent of the funds from the state forfeitures to manage and operate the asset-sharing program. The remaining funds shall be made available to state and local agencies to promote law enforcement activities. Any law-enforcement agency that participated in the investigation or other law-enforcement activity that led to the seizure and forfeiture of assets may request the return of the assets or their proceeds for its use in law-enforcement activities. If more than one agency participated in the activity and

they do not agree on the equitable shares of the net proceeds, the law authorizes the Criminal Services Board to distribute the proceeds. In the case of forfeited motor vehicles, upon the request of the seizing agency, DCJS shall return the property to the seizing agency upon finding that the agency has a clear and reasonable law-enforcement need for the vehicle.

The proposed legislation would make the following changes in the provisions dealing with asset seizure and forfeiture:

- Prohibit the forfeiture of seized property until the owner of the property has been found guilty of the offense authorizing the forfeiture. The proposal sets out several exceptions to this prohibition, allowing forfeiture before a finding of guilt in the following situations:
 - Owner is a fugitive;
 - No identifiable owner of the property;
 - Property has been abandoned;
 - Owner denied ownership of the property during the prosecution of the offense;
 - Forfeiture is part of plea agreement; or
 - Owner has not submitted written demand for return of property within 21 days
- Require the deposit of all cash and proceeds from the sale of all real and personal property forfeited as a result of conviction of the manufacture, sale, or distribution of controlled substances or marijuana into the Drug Offender Assessment and Treatment Fund. In addition, the legislation requires that all cash and proceeds received by any state or local agency, pursuant to federal law authorizing the sharing of forfeited property, seized by a federal agency, with a state or local agency, also be deposited into the Drug Offender Assessment and Treatment Fund. For all other property subject to forfeiture, all cash, negotiable instruments, and proceeds from a sale would continue to be deposited into the Literary Fund, as required by the Constitution.
- Transfer responsibility for administering the forfeiture program from DCJS to the Department of Accounts.
- Require DOA to report annually on the amount of forfeitures credited to the Literary Fund and the Drug Offender Assessment and Treatment Fund. Furthermore, DOA would be required to establish a database, available to the public, containing detailed information regarding all property seized and forfeited.

6. Budget Amendment Necessary: Yes. Items 260 and 394.

7. Fiscal Impact Estimates:

Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2019	\$44,892	General
2020	\$0	
2021	\$0	
2022	\$0	
2023	\$0	
2024	\$0	

8. Fiscal Implications: Preliminary

Currently, the proceeds of criminal asset forfeitures, resulting from investigations and law-enforcement activities related to illegal drug and marijuana manufacture and distribution, are returned, after the 10 percent administrative expenses are deducted, to the seizing law-enforcement agencies, which include sheriffs' departments; county, city, and town police departments; Commonwealth's attorneys; police departments of institutions of higher education; state agencies, primarily the Virginia State Police; and regional task forces. For 2017, DCJS reported disbursements to state and local agencies of \$5.4 million from state asset-sharing program and about \$550,000 was deposited into the Literary Fund. Under the proposed legislation, state and local law-enforcement agencies would no longer receive these disbursements from the state asset-sharing program administered by DCJS but would have to deposit the proceeds from the federal program into the state Drug Offender Assessment and Treatment Fund. The deposits into the Literary Fund would not be affected by the legislation.

The proposed legislation directs the proceeds from state forfeitures resulting from illegal drug cases be deposited into the Drug Offender Assessment and Treatment Fund ("the Fund"). Currently, the source of revenue for this Fund is a fee assessed against persons convicted of illegal drug offenses: \$150 for a felony offense and \$75 for a misdemeanor offense. The current statute establishing the Fund, makes balances in it subject to annual appropriation by the General Assembly to the Department of Corrections (DOC), Department of Juvenile Justice, the Commission on Virginia Alcohol Safety Program (VASAP), Department of Criminal Justice Services, and the Office of the Executive Secretary of the Supreme Court, to be used for substance abuse assessment and treatment.

Current revenue for the Fund totals approximately \$2 million annually. In recent years, DOC was the only agency for which appropriations from the Fund were made for the purpose of supporting substance abuse counselors and re-entry staff. In the introduced appropriation bill (HB30/SB30), \$3.7 million in Fund balances was also included in the first year to cover a portion of the cost of providing inmate medical services. Additionally, approximately \$175,000 was included each year for the Supreme Court for two positions to monitor and evaluate drug courts. Under the provisions of the proposed legislation, the revenue for the Fund would increase annually from deposits of state asset forfeitures from federal equitable sharing program.

In addition to the local and state agencies currently receiving disbursements, the proposed legislation would have a fiscal impact on two other state agencies: the Department of Criminal Justice Services (DCJS) and the Department of Accounts (DOA). DCJS is authorized to use up to 10 percent of the annual revenue from the state asset forfeiture fund to pay the costs of administering the asset-sharing program and to promote state or local law-enforcement activities. DCJS uses this revenue for 1.5 positions to administer the program, one position to conduct law enforcement agency accreditation and provide support to the existing 99 accredited law enforcement agencies, and a pro-rated share of the agency's central administrative costs. In FY 2017, its expenditures from this fund source totaled \$429,061. If the legislation is enacted, the cost for the administration of this program would shift from DCJS to DOA.

DOA will need to develop a public searchable database to contain the data on forfeitures submitted by local and state law-enforcement agencies. The agency estimates the cost of developing this database would be \$44,892.

9. Specific Agency or Political Subdivisions Affected:

Department of Criminal Justice Services
Department of Accounts
Department of State Police
Institutions of higher education
Sheriffs
County, city, and towns
Commonwealth's attorneys

10. Technical Amendment Necessary: None.

11. Other Comments:

Staff of the Department of Criminal Justice Services has indicated that there has been guidance from the federal Department of Justice that the federal government would not disburse a proportionate share of forfeited assets realized in federal cases to state and local agencies participating in the investigation and seizure if state law provided that those agencies could not retain the proceeds for use in law-enforcement activities. If this advice is correct, the proposed legislation would not result in \$8.25 million in additional revenue from the federal equitable sharing program, as indicated in Item 7 above.