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Support HB 48 & SB 108 – Require a Criminal Conviction for Asset Forfeitures

HB 48 and SB 108 would postpone the forfeiture of assets seized during a criminal investigation until the person whose assets were seized has been convicted of a crime.

Asset forfeiture is ripe for abuse. Under current law, state and local law enforcement agencies can seize assets that have a “substantial connection” to a drug offense, regardless of whether a person is convicted of or even charged with a crime. In one case reported by the Washington Post, the Virginia State Police stopped two men and took thousands of dollars meant for building churches without any evidence that the men were involved in criminal activity. Only after months of legal battles did the government return the cash. This incident would not have been possible if all asset forfeitures required criminal convictions.

Law enforcement should focus on public safety, not policing for profit. A Virginia law enforcement agency that seizes money or property gets to keep 90 percent of the assets forfeited. This gives law enforcement agencies a financial incentive to seize as much money and property as possible, even if the Commonwealth will be unable to prove beyond a reasonable doubt that a crime was committed. According to the Crime Commission, drug-related asset forfeiture disbursements to Virginia law enforcement agencies have jumped from \$110,899 in 2006 to \$5.6 million in 2015 (as of September). Policing should be based on public safety, not supplementing a department’s budget.

Asset forfeiture is a byproduct of the failed War on Drugs. Law enforcement agencies justify the use of civil asset forfeiture as a necessary tool in the War on Drugs. But in 40 years, the War on Drugs has not reduced the supply or use of illegal drugs and has resulted in the mass incarceration of large numbers of minorities for nonviolent offenses. Police do not seize assets from all equally. Instead, they target those persons they associate with criminal behavior and drug trafficking. This results in the racial profiling of black and Latino drivers on the highways, who are stopped and stripped of their money based on minimal or non-existent evidence. It’s time to recognize that the War on Drugs has failed and that supporting programs, like asset forfeiture, lead departments to double down on this failed approach.

Criminal cases have a higher burden of proof than civil forfeiture actions. In a civil forfeiture action, the Commonwealth need only show that the money or property in question was likely related to a drug offense. Then it’s up to the property owner to prove that the assets were obtained lawfully. But in a criminal case, the Commonwealth must prove beyond a reasonable doubt that a person committed a crime. And if the criminal case is tried by a jury, all 12 jurors must agree on the person’s guilt. By requiring a criminal conviction, the General Assembly will make it more difficult for law enforcement agencies to take the money and property of Virginia property owners.

HB 48 & SB 108 will help protect Virginia property owners against asset forfeiture.