



[HF 2560](#) – Civil Asset Forfeiture (LSB5069HV)
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Fiscal Note Version – New

Description

[House File 2560](#) repeals Iowa Code chapter [809A](#) and replaces it with new Iowa Code chapter 809B. The Bill does the following:

- Prohibits civil forfeiture and provides that criminal forfeiture is only available to the seizure and forfeiture of property used in and derived from the violation of Iowa Code chapter [124](#), subchapter IV (Controlled Substances — Offenses and Penalties).
- Provides that the court that has jurisdiction in the related criminal matter will have jurisdiction over a forfeiture proceeding, and that the forfeiture is a part of the criminal trial. The forfeiture proceeding must follow a finding of the defendant's guilt or be conducted at the court's discretion. If the prosecuting authority fails to meet the burden in the criminal or forfeiture proceeding, the court must enter judgment dismissing the forfeiture proceeding. The Bill provides for appointed counsel for a defendant in a forfeiture proceeding if the person has a public defender, or court-appointed counsel, to the person in the connected criminal matter.
- Provides that in any proceeding in which a property owner's claim prevails by recovering at least half, by value, of the property or currency claimed, the court must order the seizing law enforcement agency or prosecuting authority at fault to pay all of the following:
 - Reasonable attorney fees and other litigation costs incurred by the claimant.
 - Postjudgment interest.
 - In cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, any interest actually paid from the date of seizure.

The Bill also provides that if the forfeiture is granted, the court is required to order the sale of forfeited property. When all forfeited property is reduced to proceeds, the court may order the distribution of the proceeds to do any of the following:

- Pay restitution to the victim of the crime.
- Satisfy recorded liens, mortgages, or filed security interests in the forfeited property.
- Pay reasonable costs for the towing, storage, maintenance, repairs, advertising, sale, and other operating costs related to the forfeited property.
- Reimburse the seizing law enforcement agency for nonpersonnel operating costs, including controlled-drug buy money, related to the investigation of the crime.
- Reimburse the prosecuting authority, public defender, or court-appointed attorney for nonpersonnel court costs, including filing fees, subpoenas, court reporters, and transcripts.

After disbursements under Iowa Code section 809B.33(4), the court may reimburse actual costs of up to \$100,000 by ordering the disbursements of:

- Up to 50.0% of remaining funds to reimburse the seizing law enforcement agency for the salaries, benefits, and overtime pay of uniformed personnel expended in the seizure of the property and investigation of the crime.

- Up to 25.0% of the remaining funds to reimburse the prosecuting authority for the salaries, benefits, and overtime pay expended in the prosecution of the crime and forfeiture proceeding.
- Up to 25.0% percent of the remaining funds to reimburse the public defense or the fund to pay court-appointed counsel for the salaries, benefits, and overtime pay expended in the defense of the criminal defendant and forfeiture proceeding.

After disbursements under Iowa Code sections 809B.33(4) and 809B.33(5), the court may order the remaining funds be disbursed to any of the following:

- The General Fund of the State.
- The Department of Public Safety (DPS) to supplement existing statewide grants to law enforcement agencies for the purchases of equipment.
- The prosecuting agency for uses other than reimbursement of salaries, benefits, and overtime pay of personnel associated with the criminal prosecution of the case.
- The State Public Defender for uses other than reimbursement of salaries, benefits, and overtime pay of personnel associated with the criminal defense of the case.

A law enforcement agency is prohibited from selling forfeited property directly or indirectly to any another law enforcement agency.

Background

Asset forfeiture is a process by which contraband and proceeds or instrumentalities related to criminal activity may be seized by the State and sold. Asset forfeiture law in Iowa is governed by Iowa Code chapter 809A.

Under current law, civil forfeiture proceedings are independent of any criminal prosecution for the same conduct, and therefore, property may be forfeited even if criminal charges are not brought or if the defendant in a criminal case is acquitted. For seized property to be forfeited, the State must show, by clear and convincing evidence, that the property is subject to forfeiture under Iowa Code section [809A.4](#). There are five types of property that are subject to forfeiture: controlled substances, real and personal property, proceeds, weapons, and enterprise interests. In addition, in some circumstances, substitute assets may be subject to forfeiture.

Conduct giving rise to forfeiture is defined as an act or omission that is a public offense and is a serious or aggravated misdemeanor or felony in Iowa, or an act or omission occurring outside of Iowa that would be punishable by confinement of one year or more in the other state and would be a serious or aggravated misdemeanor or felony if it occurred in Iowa. Therefore, conduct that is a simple misdemeanor or a scheduled violation does not give rise to forfeiture.

If the value of the property to be forfeited is equal to or exceeds \$5,000, whether an act or omission is conduct giving rise to forfeiture does not depend on whether a person is arrested, prosecuted, or convicted for the act or omission, and an acquittal or dismissal in a criminal proceeding does not preclude forfeiture of property. Asset forfeiture for property valued at less than \$5,000 is prohibited unless the conduct giving rise to forfeiture results in a conviction, or one of the other exceptions related to the property owner has been met.

Once property has been forfeited to the State, the property must be delivered to the Iowa Department of Justice (DOJ) and destroyed, sold, traded, or given to any other State agency or to any other law enforcement agency within the State if, in the opinion of the Attorney General, it will enhance law enforcement within the State. Forfeited property that is not used by the DOJ in the enforcement of the law may be requisitioned by the DPS or any law enforcement agency within the State for use in enforcing the criminal laws of the State. Forfeited property not

requisitioned may be delivered to the Director of the Department of Administrative Services to be disposed.

Forfeited property that is a controlled substance or a simulated, counterfeit, or imitation controlled substance must be destroyed, but prescription drugs may be given to nonprofit hospitals. Forfeited weapons and ammunition are deposited with the DPS and disposed of in accordance with the DPS's rules. Weapons that are not illegal or offensive may be sold at auction. Proceeds from weapons sales, less expenses, are deposited in the General Fund of the State.

If the forfeited property is cash or proceeds from the sale of real property, the DOJ is prohibited from retaining more than 10.0% of the gross sale of any forfeited real property. The balance of the proceeds is distributed to the seizing agency for use by the agency or for division among law enforcement agencies and county attorneys pursuant to any agreement entered into by the seizing agency. In the event of a cash forfeiture of more than \$400,000, the distribution of forfeited cash is to be as follows:

- 45.0% is to be retained by the seizing agency.
- 45.0% is to be distributed to other law enforcement agencies within the region of the seizing agency.
- 10.0% is to be retained by the DOJ.

Refer to the **LSA Legislative Guide [Forfeiture Reform Act](#)** for more information related to Iowa's forfeiture laws.

Assumptions

- The number of forfeitures and total proceeds from forfeitures made by law enforcement may be reduced.
- The seizing agencies may incur increased costs due to additional attorney fees and litigation costs.
- The transfer of forfeiture proceedings from civil to criminal would expand the scope of representation and duties of court-appointed attorneys representing criminal defendants.
- Employees of the Office of the State Public Defender will represent clients in forfeiture proceedings, which will result in additional costs to the Indigent Defense Fund.
- The hourly rate structure for State Public Defender attorneys will remain at \$73, \$78, and \$83.
- State public defenders and contract attorneys will spend an additional two to three hours per case on average.

Figure 1 shows the total amount of proceeds from cash forfeitures in each of the last five fiscal years, including the total amount the Attorney General's Office received. The Attorney General's Office received approximately 10.0% of the total amount received by the State for cash forfeitures in each given year.

Figure 1 — Cash Forfeiture Proceeds

	Actual FY 19	Actual FY 20	Actual FY 21	Actual FY 22	Actual FY 23
Total Cash Forfeiture	\$ 2,299,480	\$ 2,221,908	\$ 1,708,575	\$ 2,372,990	\$ 1,750,007
Total Attorney General	\$ 229,948	\$ 222,191	\$ 170,858	\$ 237,299	\$ 175,001

Fiscal Impact

House File 2560 will likely have a fiscal impact on all agencies that dispose of forfeiture property or retain a portion of the proceeds from forfeitures, such as the DOJ, the DPS, local law enforcement, and county attorneys. The extent of the fiscal impact to these agencies is unknown. The fiscal impact from a property owner prevailing in a forfeiture proceeding would require the seizing law enforcement agency to pay the attorney fees is unknown and cannot be determined.

According to the Attorney General’s Office, the State has received a total of \$10.4 million in cash forfeiture proceeds over the last five fiscal years. Of this amount, the Attorney General’s Office has received approximately \$1.0 million in cash forfeiture proceeds over the past five years. The fiscal impact of the Bill to the Attorney General’s Office is unknown.

Over the past five years, the DPS has received a total of \$819,000 from State forfeiture proceeds. The fiscal impact of the Bill to the DPS is unknown.

The total cost to the Indigent Defense Fund is estimated to be approximately \$241,000 per year. Of this total, \$160,000 would result from an increase in hourly workload for the State Public Defender’s Office and \$80,000 would result in increased workload for contract attorneys.

Sources

- Department of Public Safety
- Department of Justice
- State Public Defender
- Legislative Services Agency

/s/ Jennifer Acton

March 6, 2024

Doc ID 1446652

The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.
