



MEMORANDUM

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TO: Co-sponsors of House Bill 508 (civil asset forfeiture)

FROM: Andy Hoover, Legislative Director, ACLU of Pennsylvania

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DATE: October 5, 2016

RE: SENATE COMPANION BILL, SB 869 PN 2096

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Before the House recesses on October 28, you may consider Senate Bill 869 PN 2096. This legislation started as a companion bill to House Bill 508, a bill you co-sponsored. As introduced, both bills implemented real reform in the process of civil asset forfeiture, a legal practice that allows the government to take and keep property it claims is connected to crime.

Unfortunately, SB 869 has been amended to the point that it will have no measurable impact on civil asset forfeiture. As a result, multiple advocacy organizations that had previously supported SB 869 have now dropped their support, including the Commonwealth Foundation, the Philadelphia Bar Association, the Pennsylvania Institutional Law Project, and the ACLU of Pennsylvania.

As co-sponsors of HB 508, it is important for you to understand the differences between the bill you co-sponsored and the Senate bill that may come before you. If SB 869 PN 2096 does reach the House floor, we hope you will support efforts to improve it.

As introduced, both HB 508 and SB 869 made significant reforms to asset forfeiture to bring greater balance between the property rights and right to due process of Pennsylvanians and the needs of law enforcement. In their original forms, both bills included the following:

- **A conviction requirement to permanently forfeit someone's property:** Under current law, forfeiture occurs in civil court and does not require a criminal conviction to forfeit property. HB 508 and the original SB 869 revised the law to connect forfeiture to a criminal conviction of the property owner, ensuring that the government met its burden in proving that the person actually committed a crime.
- **Right to counsel and proper notice of forfeiture proceedings:** Because forfeiture would be coupled with criminal proceedings in HB 508 and the introduced SB 869, property owners would have a guarantee of counsel. There is no such guarantee in civil court. Criminal forfeiture would also ensure that a property owner would receive notice of forfeiture proceedings, as it would be listed in their indictment.

- **Ending the profit motive of asset forfeiture:** Civil asset forfeiture has been called “policing for profit” because the agencies that make decisions about seizing and forfeiting property- the police and district attorneys- directly receive the revenue generated by forfeiture. HB 508 and the original SB 869 ended this profit motive by sending the revenue to the overseeing jurisdiction’s general fund for distribution by the legislative branch, like all other forms of public revenue.

All of these reforms are gone from SB 869 PN 2096. Under this bill, the government can still forfeit property from people who have not been convicted of a crime, and the agencies making decisions about forfeiture directly receive the revenue generated by the practice.

Even if this bill passes as currently written, it will be business as usual with civil asset forfeiture.

This may leave you wondering what, exactly, does the bill do. The reform that supporters most often reference as justification for this narrow bill is raising the evidentiary standard for the government in proving its case from preponderance of the evidence to clear and convincing evidence. While technically true, the supporters leave out a key component of the process. Before the government must reach that burden, the property owner must first prove by a preponderance of the evidence that a) they are the property owner and b) they legally acquired the property. Our research found, as one example, that approximately 80 percent of forfeiture revenue generated annually by the city of Philadelphia is through cash forfeiture.¹ How does one prove ownership of cash and that they acquired the cash legally? If the property owner does not meet that burden, the case ends and the government does not have to provide any proof at all that the property was connected to crime.

The bill also provides a guarantee of counsel in cases that involve real property, such as houses. It does not provide that guarantee in any other cases. It is difficult and nearly impossible to navigate forfeiture without a lawyer, which is why most cases end in default, meaning that property owners do not contest the forfeiture.

House Bill 508 is real reform. Based on the co-sponsors, it is clear that this issue resonates among members with varying political perspectives:

Barrar, Stephen; Benninghoff, Kerry; Cohen, Mark; Cox, Jim; Cutler, Bryan; Daley, Mary Jo; Diamond, Russ (F); Evankovich, Eli; Frankel, Dan; Gabler, Matt; Gibbons, Jaret; Harris, Jordan; James, Lee; Keller, Mark; Kortz, Bill; Krieger, Tim (Resign. 1/3/16); Maloney, David; Marshall, Jim; Mullery, Gerald; Murt, Thomas; Nesbit, Tedd (F); Rapp, Kathy; Roae, Brad; Sims, Brian; Sturla, Mike; Thomas, Curtis; Watson, Katharine; Youngblood, Rosita

Unfortunately, SB 869 PN 2096 fails to pass the reform test. If it comes before the House, our hope is that you will support efforts to revise SB 869 to truly protect Pennsylvanians’ right to due process and their property rights and to curb government overreach.

¹ For more information, visit www.aclupa.org/forfeiture.