

# OHIO PROSECUTING ATTORNEYS ASSOCIATION

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John E. Murphy  
*Executive Director*

Memo To: Judicial Branch and Administration of Justice Committee  
From: John Murphy  
Date: May 11, 2017  
Re: Forfeiture

We oppose the recommendation that would amend the constitution to limit the use of civil forfeiture.

If the state can prove, by clear and convincing evidence, that cash or other assets are the fruits of criminal activity, we believe those assets should be subject to forfeiture, whether or not the person is criminally prosecuted. If a person can keep and enjoy the fruits of crime if the state doesn't have enough to prove the criminal case beyond a reasonable doubt, but can prove the civil case by clear and convincing evidence, then the state's policy that one should not be able to profit from crime is seriously compromised.

Civil forfeiture is simply one of the means of carrying into effect the state's policy that one should not be able to profit from crime. Property derived from criminal activity is not legitimately owned property, and should be subject to forfeiture if the government can prove the case in a court of law by clear and convincing evidence.

The same applies to forfeiture of instrumentalities, property used to commit crimes, with the added feature that in these cases the state must also show to the satisfaction of the court that the forfeiture of the property is proportional to the severity of the offense and the extent of the owner's participation in the offense.

Our forfeiture statutes, as they existed before passage of HB-347 in the last session, were based on recommendations of the Sentencing Commission, chaired by the late former Chief Justice Moyer, and were thoroughly reviewed by the legislature before passing by large majorities. We believe they have served us well, and although we opposed many of the changes made by HB-347, civil forfeiture is still available in many cases.

Although the language being proposed would still permit civil forfeiture in cases where we cannot prosecute by reason of death or inability to obtain jurisdiction over the person, we don't see this as a constitutional issue. The extent and processes of civil forfeiture should be left to the judgment of the legislature.