



Alabama asset forfeiture bill went from broad reforms to ‘best we can do’

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As he has for each of the past three years, Sen. Arthur Orr, R-Decatur introduced a bill at the start of this legislative session aimed at reining in civil asset forfeiture.

Unlike his previous attempts, the legislation appears posed to finally be approved this year, but only after extensive negotiations with law enforcement and other lawmakers that stripped major reforms out of the bill, allowing police to continue seizing cash and property from many people who have not been convicted of crimes.

“The bill is certainly not all we wanted, but it’s the best we could get through in the current environment,” Orr, a longtime critic of asset forfeiture, said via phone Tuesday evening. “I wish I could say this was game, set, match, but I can’t say that. But it’s the best we can do given the circumstances.”

Called S.B. 210, the bill as initially written would have overhauled asset forfeiture laws in Alabama, which advocates have long considered among the worst in the country. It would have brought an end to civil forfeiture for drug crimes by bringing such forfeitures under the umbrella of criminal prosecution and required proof of conviction of a crime to authorize a criminal forfeiture.

But the version of the bill that the state Senate passed last month and will likely be approved by the end of the legislative session has been greatly weakened. It will no longer end civil forfeiture or require a conviction to initiate the process.

Instead, it makes incremental changes: attempting to ensure people don’t have their property seized if they were unaware that it had been used in furtherance of a crime; stopping prosecutors from filing the same seizure in both federal and state court; and barring law enforcement from seizing \$250 or less in cash and vehicles worth less than \$5,000.

The original bill would have only barred seizures of \$100 or less in cash and vehicles worth less than \$1,000, but it also barred seizures of “homestead real property.” And it mandated that a trial judge “make findings of fact for any proceeding associated with the forfeiture of property” worth less than \$10,000. The original bill gave defendants the right to a jury trial in

cases involving property worth \$10,000 or more. The current version of the bill no longer includes those provisions.

In 2019, advocates notched a small win in the form of a state law that requires law enforcement agencies to tally and report all property they seize via the process. But the bill did not address other longstanding concerns about asset forfeiture in Alabama, and groups with backgrounds as varied as the Southern Poverty Law Center and the libertarian Institute for Justice continued to push for more meaningful reforms. Their effort has broad, bipartisan public support, as 84% of Americans oppose civil asset forfeiture according to a 2016 poll by the right-wing Cato Institute.

But law enforcement is a powerful interest group, and its advocates have been able to stymie reforms for years, frustrating people like Orr who want to see major changes to Alabama's asset forfeiture laws.

The Alabama District Attorneys Association has consistently pushed back, arguing that such changes could be detrimental to public safety and strip law enforcement agencies of key tools in the fight against drug traffickers and cartels.

Barry Matson, the association's executive director, said he is "thrilled to death" that his organization was able to negotiate an agreement with advocates, lawmakers and other stakeholders in support of a version of the bill that addresses concerns about "some things that we clearly needed to fix" without going too far.

"I personally believe that asset forfeiture is a valuable tool in our fight against criminal enterprises. The burden of proof is on the state and we can only seize and forfeit the proceeds from a criminal activity or enterprise," he said. "We were involved and have been involved in this for some time with all the different stakeholders."

Lee McGrath, senior legislative counsel at the Institute for Justice, called the bill a "good step forward" on asset forfeiture.

"Senate Bill 210 creates a fairer process in which people will more likely have their day in court and it returns the focus of law enforcement's and district attorneys' efforts to the original intent of pursuing serious crimes," he said.

"The legislative process is one of give and take, and this bill reflects the need for consensus in Alabama between the District Attorneys Association and advocates."

But some advocates say the new version of the bill falls far short of what is needed to protect Alabamians' rights and property and bring an end to asset forfeiture overreach.

Leah Nelson, research director at the Alabama Appleseed Center for Law and Justice, said the bill fails to address serious abuses, particularly regarding "policing for profit," in which law enforcement overuse the process as a means to drive revenue to their agencies. She said in a statement Tuesday that "entities, including powerful law enforcement groups, have repeatedly obstructed more robust reform efforts with a campaign of misinformation that obscures the reality that civil asset forfeiture is a money-making enterprise for the state."

Orr has long been sharply critical of asset forfeiture, writing on Twitter in March that “[p]olice abuse civil asset forfeiture laws while innocents pay the price. Yet he and other legislators were ultimately unable to rally enough support this year for more sweeping reforms.

“I think legislators in general are sensitive to the concerns of law enforcement,” Orr said.

“The law enforcement community was initially opposed to the bill as filed, very much so. But through a whole lot of negotiation, we wound up with a bill that both sides could agree to. And it does reign in the current practice in a measurable step.”

Nelson acknowledges those political realities, and she praised the bill’s “incremental protections against the worst abuses of the civil forfeiture process.” But she said that in the future, legislators need to stand up against reform opponents in the law enforcement community and take meaningful action on asset forfeiture.

“Nearly everyone agrees the current system amounts to state-sanctioned theft,” Nelson said.

“When this issue comes up again in years ahead, I hope Alabama lawmakers will be willing to vote the way their constituents want them to.”