



Asset Forfeiture Reform in Rhode Island: Summary of Proposed 2019 Legislation

An Opportunity for Rhode Island to Lead the Way for Civil Rights and a Just Government

Building off the successful “**Justice Reinvestment**” reforms enacted in Rhode Island in 2017, the state’s asset forfeiture laws have next come under scrutiny, as they can often lead to unfair government seizure of cars, cash, and other private property. While many policymakers might assume that such laws are directed at criminals, in reality, simply being accused of a crime or violating a regulation may be sufficient legal cause for the state to take your property.

The Ocean State was recently graded at a **D-** in a national report by the *Institute for Justice* for its weak asset forfeiture law. In the past 12 years, over \$17 million of private property has been seized in our state.

While the original good intent of forfeiture laws cannot be disputed – removing the illegal gains, resources, and instruments of those committing crimes from their reach – decades of experience has made obvious the need for statutory reforms, long overdue if Rhode Island is to keep pace with criminal justice reforms being made in other states across America.

Current Law: RI law sets a very low bar on the front-end by allowing the government to seize property merely on the basis of criminal suspicion and for non-criminal regulatory violations. Without a lawyer to initiate a process to reclaim your own property, you soon lose it. On the back-end, Rhode Island also sets a very high bar for innocent property owners to reclaim what is rightfully theirs. Such obstacles may create a perverse incentive for government agencies to violate individuals’ due process and property rights.

Since 2014, 25 states and the District of Columbia have passed forfeiture reforms (See <http://ij.org/activism/legislation/civil-forfeiture-legislative-highlights/>)

In March of 2018, the **Rhode Island Center for Freedom & Prosperity** and the **Stephen Hopkins Center for Civil Rights** collaborated on a report that illustrated why our state’s asset forfeiture laws requires such reforms, including research on the best practices in other states that have adopted reforms, and drafted language new criminal forfeiture language that is supported by the **RI Public Defenders Office**.

Also supported by the **RI ACLU**, the **RI Families Coalition**, and civil society leaders from the left and right, the bi-partisan legislation represents a total rewrite of existing statutes and which includes the following key features:

1. **Raises the bar re. seizures** so as to avoid government taking for civil violations and from non-defendant property owners and co-owners, while also building-in legal protections before the state seizes property.
2. **Lowers the bar re. due process** to provide less burdensome, prompt, and streamlined legal procedures for innocent property owners to reclaim seized assets.
3. **Increased Transparency:** Greater transparency around forfeiture actions so that public officials and citizens have the data to provide appropriate oversight. The 4-pages of new reporting provisions include keeping track of and reporting how much the government seizes, whether property owners are ever convicted of a crime, and how much money comes in from those seizures, as opposed to the 4-lines of reporting in current law.
4. **Enhanced Administration:** Improves administration of forfeiture programs in order to increase the credibility of law enforcement as they conduct permitted seizures; including prohibition of sale of assets for any person’s gain and a streamlined process for returning property.
5. **Budget Accountability:** Unelected bureaucrats in state and local agencies should not be empowered to manage profits from asset forfeitures or be free from public accountability. Legitimately seized moneys go to the state’s general fund where duly elected officials decide if and how to redistribute them.

The 2019 legislation has been amended to address concerns raised by law enforcement, the AG’s Office, and the Treasurer’s Office, including: elimination of the \$10,000 minimum vehicular seizure threshold; elimination of the exemption for seizure of real (homestead) property; aligning the proposed new statutes with the General Treasurer’s program to manage abandoned and lost property; and maintains the current administrative process to manage and distribute proceeds from forfeited property under the purview of the Office of Attorney General (vs Treasurer and GA).

Addressing the Concerns of Law Enforcement and Protecting Rhode Island from Constitutional Challenges

Changes to the 2019 Asset Reform Legislation

Seeking to build on the successful passage of Rhode Island's 2017's **Justice Reinvestment Act**, a coalition of reform advocates from across the political spectrum in 2018 advanced legislation to reform the process of asset seizure and forfeiture in the Ocean State. The proposed legislation does not eliminate this legitimate law enforcement tool, but rather brings it in line with recent reforms in dozens of other states.

The proposed legislation is also legally consistent with a February 2019 US Supreme Court ruling, as well as a number of state-based lawsuits, where outdated state forfeiture laws, as exist in Rhode Island, have been ruled to be unconstitutional.

In seeking to improve our state's **current D- minus national ranking** for its weak asset forfeiture laws, the legislation completely re-writes related statutes, similar to how dozens of other states across the nation have done in recent years. The legislation seeks to enhance due-process guarantees to prevent unjust forfeitures, provide protections for the property of innocent third parties, and improve transparency in the process and monitoring of the use of asset forfeitures. Throughout 2018, advocates of forfeiture reform met with and listened to the feedback from the executive and legislative branches, the law enforcement community, and from grassroots activists.

The 2019 legislation was amended to address many of the concerns raised in 2018. Among the primary changes made to the 2019 legislative language are:

- **Elimination of \$10,000 vehicular minimum seizure threshold** in response to law enforcement's concerns that criminals might switch to utilizing less valuable automobiles in the commission of crimes
- **Elimination of property value caps:** Responding to the concerns of law enforcement about their capacity to investigate major crime figures ... the 2019 legislation eliminates an absolute exemption to the forfeiture of real property (found in the 2018 legislation) for all homesteaded property that might have inadvertently protected gang safehouses or flop-houses from forfeiture. The new language still provides protections for innocent third-party owners while providing law enforcement the tools to seize the property of suspected criminals.
- **Aligning the asset forfeiture system with the General Treasurer's** current program to manage abandoned and lost property.
- **Maintain current administrative management of funds:** By eliminating the provision in the 2018 bill that would transfer management and distribution of seized funds to the Treasurer's office and the General Assembly, the 2019 legislation would maintain the management of forfeited assets under the Office of Attorney General's purview.
- **Providing the Attorney General with the tools** necessary to ensure municipalities comply with enhanced reporting and transparency requirements under the law.

With these changes incorporated into the 2019 legislation it is the hope of those advocating for further criminal justice reforms that Rhode Island can realize a fair and just asset forfeiture system that will allow reformers to build a greater consensus to keep our state in line with the majority of other states in the nation.