

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

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1 Committee/Subcommittee hearing bill: Criminal Justice  
2 Subcommittee

3 Representative Benjamin offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 89-172 and insert:

7 forfeiture action must be stayed as provided in s.

8 932.704 (6) (d).

9 (3)

10 (d) If the court determines that probable cause exists to  
11 believe that such property was used in violation of the Florida  
12 Contraband Forfeiture Act, the court shall order the property  
13 restrained by the least restrictive means to protect against  
14 disposal, waste, or continued illegal use of such property  
15 pending final disposition of the forfeiture proceeding. The

Amendment No. 1

16 court may order the claimant to post a bond or other adequate  
17 security equivalent to the value of the property.

18 Section 2. Subsection (1) and paragraph (b) of subsection  
19 (6) of section 932.704, Florida Statutes, are amended, and  
20 paragraph (d) is added to subsection (6) of that section, to  
21 read:

22 932.704 Forfeiture proceedings.—

23 (1) It is the policy of this state that law enforcement  
24 agencies shall use ~~utilize the provisions of~~ the Florida  
25 Contraband Forfeiture Act to deter and prevent the continued use  
26 of contraband articles for criminal purposes, to protect while  
27 ~~protecting~~ the proprietary interests of innocent owners and  
28 lienholders, to respect the due process rights of the accused,  
29 and to authorize such law enforcement agencies to use the  
30 proceeds collected under the Florida Contraband Forfeiture Act  
31 as supplemental funding for authorized purposes. The potential  
32 for obtaining revenues from forfeitures must not override  
33 fundamental considerations such as public safety, the safety of  
34 law enforcement officers, or the investigation and prosecution  
35 of criminal activity. It is also the policy of this state that  
36 law enforcement agencies ensure that, in all seizures made under  
37 the Florida Contraband Forfeiture Act, their officers adhere to  
38 federal and state constitutional limitations regarding an  
39 individual's right to be free from unreasonable searches and  
40 seizures, including, but not limited to, the illegal use of

810997 - h1081-line 89.docx

Published On: 3/20/2023 5:24:21 PM

Amendment No. 1

41 stops based on a pretext, coercive-consent searches, or a search  
42 based solely upon an individual's race or ethnicity.

43 (6)

44 (b) The complaint must, in addition to stating that which  
45 is required by s. 932.703(3)(a) and (b), as appropriate,  
46 describe the property; state the county, place, and date of  
47 seizure; state the name of the law enforcement agency holding  
48 the seized property; ~~and~~ state the name of the court in which  
49 the complaint will be filed; and, if available, state the  
50 criminal case number and the name of the court in which any  
51 criminal charge associated with the underlying activity forming  
52 the basis for the forfeiture action is filed against any  
53 claimant.

54 (d)1. A forfeiture action must be stayed:

55 a. If a criminal charge associated with the underlying  
56 activity forming the basis for the forfeiture action is filed  
57 against any claimant; or

58 b. While a prosecuting agency determines whether criminal  
59 charges associated with the underlying activity forming the  
60 basis for the forfeiture will be filed against any claimant.

61 2. If associated criminal charges are filed after the  
62 complaint for forfeiture is filed, the attorney for the seizing  
63 agency must notify, in writing, the court presiding over the  
64 forfeiture action within 3 days after any such criminal charge  
65 is filed.

Amendment No. 1

66       3. A forfeiture action may only proceed after the claimant  
67 is convicted of or pleads guilty or nolo contendere to,  
68 regardless of adjudication, a criminal charge forming the basis  
69 for the forfeiture action. The attorney for the seizing agency  
70 must notify, in writing, the court presiding over the forfeiture  
71 action of the final disposition of any associated criminal  
72 charges within 3 days after a final judgment and sentence is  
73 entered. The attorney for the seizing agency may notify the  
74 court immediately upon the claimant's conviction or plea,  
75 regardless of whether the claimant has been sentenced. Upon  
76 written notification by the attorney for the seizing agency, the  
77 stay shall be lifted and the forfeiture action may proceed as  
78 set forth in the Florida Contraband Forfeiture Act.

79       4. If an associated criminal charge against a claimant is  
80 disposed of by dismissal, nolle prosequi, acquittal, or if the  
81 prosecuting agency declines to file criminal charges, the  
82 attorney for the seizing agency must notify, in writing, the  
83 court presiding over the forfeiture action within 3 days after  
84 the associated criminal charge is disposed of by dismissal,  
85 nolle prosequi, acquittal, or the decision by the prosecuting  
86 agency.

87       5. If all associated criminal charges against all  
88 claimants are disposed of by dismissal, nolle prosequi,  
89 acquittal, or a decision by the prosecuting agency not to file  
90 criminal charges, the seizing agency must immediately release

810997 - h1081-line 89.docx

Published On: 3/20/2023 5:24:21 PM

Amendment No. 1

91 the seized property to the person entitled to possession of the  
92 property as determined by the court presiding over the  
93 forfeiture action. Under such circumstances, the seizing agency  
94 may not assess any towing charges, storage fees, administrative  
95 costs, or maintenance costs against the claimant with respect to  
96 the seized property or the forfeiture action.

97  
98 This paragraph does not prohibit a forfeiture pursuant to a  
99 lawful plea agreement which resolves a criminal charge and a  
100 forfeiture action arising from the same activity. However,  
101 seized property may not be used in bargaining to dismiss or  
102 nolle prosequi criminal charges, obtain a guilty plea, or affect  
103 criminal sentencing recommendations.

104  
105 -----

106 **T I T L E A M E N D M E N T**

107 Remove lines 3-13 and insert:  
108 932.703, F.S.; requiring a stay proceedings subsequent  
109 to a finding of probable cause for forfeiture;  
110 amending s. 932.704, F.S.; revising a statement of  
111 policy related to forfeiture proceedings; requiring a  
112 stay of forfeiture actions until final disposition of  
113 associated criminal charges or while a prosecuting  
114 agency determines whether associated criminal charges  
115 will be filed; requiring written notice of such

Amendment No. 1

116 | charges to the presiding court; requiring a conviction  
117 | in an associated criminal offense for forfeiture of  
118 | seized property; requiring the return of seized  
119 | property if all associated criminal charges are  
120 | dismissed or the prosecuting agency declines to file  
121 | associated criminal charges;