

New York's Horrific Forfeiture Proposal

By Scott Alexander Meiner, on January 24th, 2012

New York Governor Andrew Cuomo has presented a bill to amend New York forfeiture laws as part of his 2012-2013 budget proposal. We categorically oppose the bill.

The worst part of the bill would allow courts to forfeit any property that is somehow involved in an offense if the person charged with the offense jumps bail.

35 2. IN THE EVENT OF A PENDING CRIMINAL CASE IN WHICH A
DEFENDANT HAS 36 ABSCONDED FROM THE JURISDICTION OF THE COURT,
THE COURT MAY ORDER 37 FORFEITURE OF ANY PROPERTY, REAL OR
PERSONAL, CONSTITUTING, OR DERIVED 38 FROM, PROCEEDS OBTAINED
DIRECTLY OR INDIRECTLY, AS THE RESULT OF ANY 39 VIOLATION OF
THE THIS CHAPTER, AS WELL AS ANY PROPERTY, REAL OR 40
PERSONAL, INVOLVED IN ANY VIOLATION OF THIS CHAPTER, OR ANY
PROPERTY 41 TRACEABLE TO SUCH PROPERTY.

Note that it does not limit forfeitures to the property of the accused that jump bail. Rather, property involved in an offense where a defendant absconds from jurisdiction is subject to forfeiture. Thus, your property is subject to seizure if someone skips bail and your property is allegedly involved in, or traceable to property involved in, an offense that gave rise to their criminal charge. As stated, you needn't have any culpability to lose your property. Indeed, you might face the forfeiture of your property *because* of a crime against you or your property.

The bill would also require courts to order that persons forfeit property involved, or traceable to property involved, in felonious offenses.

31 THE COURT, IN IMPOSING SENTENCE ON A PERSON CONVICTED OF A
32 VIOLATION OF ANY FELONY OFFENSE SHALL ORDER THAT THE PERSON
FORFEIT ANY 33 PROPERTY, REAL OR PERSONAL, INVOLVED IN SUCH
OFFENSE, OR ANY PROPERTY 34 TRACEABLE TO SUCH PROPERTY.

That invokes troubling 8th Amendment excessive fine questions ([Austin v. US](#) and [United States v. Bajakajian](#)). It's also scary because we know of cases where law enforcement are proceeding with forfeitures of property stemming from pleas where defendants signed over property that the defendant did not own (See [Ernestine Ward Cofield](#), fighting forfeiture proceedings after her grandson agreed to forfeit her property-that he didn't own and without her consent-in exchange for probation on drug trafficking and conspiracy charges involving an alleged 528 pounds of cocaine).

The bill provides for a frightening expansion of unreasonable searches and seizures:

6 3. ANY PROPERTY SUBJECT TO FORFEITURE UNDER THIS SECTION MAY
BE SEIZED 7 BY LAW ENFORCEMENT, EX PARTE AND UNDER SEAL, UPON A
SHOWING OF PROBABLE 8 CAUSE TO BELIEVE THAT THE PROPERTY IS
FORFEITABLE, EXCEPT THAT A SEIZURE 9 MAY BE MADE WITHOUT A
WARRANT: 10 (A) PURSUANT TO AN ORDER OF ATTACHMENT; OR 11

(B) IF THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY IS SUBJECT
12 TO FORFEITURE; AND 13 (I) THE SEIZURE IS MADE PURSUANT TO A
LAWFUL ARREST OR SEARCH; OR 14 (II) ANOTHER EXCEPTION TO THE
FOURTH AMENDMENT WARRANT REQUIREMENT OF 15 THE FEDERAL CONSTITUTION
APPLIES.

Lastly, the bill expands the profit percentage on forfeiture proceeds that the DA's office can collect from 27% to 35%.

The [New York Law Journal](#) is reporting that the measure "was inserted into the budget at the request of prosecutors, especially Manhattan District Attorney Cyrus R. Vance Jr."

[Full text of the proposed legislation \(S6255/A9255 Part E\).](#)

Update: The [New York State Association of Criminal Defense Lawyers](#) (NYSACDL) have released a statement sharing some of our concerns and opposing the proposed forfeiture bill:

Calling it a "dangerous and burdensome expansion of the criminal court's responsibility", NYSACDL President Kevin O'Connell recently voiced opposition to a bill contained within the 2012 – 13 budget recently submitted to Gov. Cuomo which requires judges to order asset forfeiture at sentencing on every felony and misdemeanor conviction. Noting that criminals should not be allowed to profit from crimes, NYSACDL nonetheless opposes the current bill which lacks the procedural notices and safeguards in place in the current state forfeiture scheme. Mr. O'Connell cited as example, for instance, a teenager uses drugs in the family home; is the home "involved" in the crime thereby causing the parents to lose the home?

The bill is supported by prosecutors and intended to obviate the need for prosecutors to pursue asset forfeiture in a separate civil proceeding. Funds from forfeited assets go to state and local governments including prosecutors' offices. The bill as submitted however is broad and greatly expands the courts' authority to order forfeiture of assets "constituting, or derived from, proceeds the person obtained directly or indirectly as the result of" a violation of any offense.