



Policy Options and Recommendations

December 3, 2015



Asset Forfeiture

(SB 684/HB 1287)



Policy Option 1:

- Should a criminal conviction be required, and the conclusion of all appeals, before any civil forfeiture could be ordered? (This is what was proposed in SB 684/HB 1287).
 - Should additional exceptions be included?
 - Unnamed defendant?
 - Lawful settlement agreement?



Policy Option 2:

- Should a criminal conviction be required before any civil forfeiture could be ordered?
 - *NOTE: Combined with Option #1. If Policy Option 1 is approved, this is not necessary.*



Policy Option 3:

- Should the burden of proof on the Commonwealth be increased from “preponderance of the evidence” to “clear and convincing evidence?”



Policy Option 4:

- Should defendants be entitled to have forfeiture proceedings heard prior to the resolution of any related pending criminal cases, even if the Commonwealth wants to stay the forfeiture case?



Policy Option 5:

- Should defendants be entitled to a mandatory stay until the resolution of any related pending criminal cases?



Recommendation 1:

- The use of “waivers” by law enforcement, whereby the declared owners or lawful possessors of property “waive” their rights to contest forfeiture, should be prohibited.



Recommendation 2:

- DCJS should be required to prepare an annual report to the Governor and General Assembly regarding information on all drug and non-drug asset seizures and forfeitures.



Recommendation 3:

- The word “warrant” should be added to Va. Code § 19.2-386.10(B), so that a forfeiture proceeding may be stayed if it is also related to a warrant.



Recommendation 4:

- DCJS should require participating agencies to submit information on all state law enforcement seizures and state forfeiture actions *stemming from any criminal activity*, not just those related to drug offenses.
 - This can easily be captured on the annual certification report that participating agencies already submit.



Recommendation 5:

- DCJS should collect additional data related to asset forfeitures for criminal charges and convictions that may accompany drug and non-drug related civil asset forfeitures.
 - DCJS can amend their forms to collect accompanying charges and convictions.



Recommendation 6:

- DCJS should consider further automating Virginia's Forfeited Asset Sharing Program so participating agencies have the ability to upload all forms, annual certification reports, and supporting documentation.
 - A legislative change would be necessary to allow Commonwealth's Attorneys the ability to electronically submit notices of vehicle seizures to DMV.



Recommendation 7:

- Crime Commission staff should work with law enforcement and prosecutors to help implement training that can be readily accessible online to new asset forfeiture coordinators.



Stalking

(SB 1297/HB1453)



Policy Option 1:

- Should a prima facie presumption be added to the stalking statute if a defendant receives actual notice that the victim does not want to be contacted or followed? Such continued conduct means either that the defendant intended to place the victim, or reasonably should have known that the victim would be placed in, reasonable fear of death, sexual assault or bodily injury?
 - *This was voted on and unanimously endorsed in concept at the October Commission meeting.*



Statute of Limitations for Sexual Crimes Against Minors (SB 1253)

Statute of Limitations



Policy Option 1:

- Should the statute of limitations for certain misdemeanor sex offenses, where the victim is a minor, be increased from 1 year to no later than 1 year after the victim turns 18 years of age? (This is what was proposed in SB 1253).
 - *This was voted on and unanimously endorsed at the September Commission meeting.*



Discussion
