

2019 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 101

BY REPRESENTATIVE STEFANSKI

CRIMINAL/FORFEITURE: Establishes the Louisiana Commission on Civil Asset Forfeiture

1 A CONCURRENT RESOLUTION

2 To establish the Louisiana Commission on Civil Asset Forfeiture to make recommendations
3 regarding reforming current asset forfeiture laws that allow law enforcement to seize
4 and forfeit assets from criminals while better protecting the due process rights of
5 Louisiana residents.

6 WHEREAS, civil asset forfeiture is the process by which law enforcement can take
7 ownership of a person's property without having to charge or convict the individual of a
8 crime; and

9 WHEREAS, law enforcement should have the tools necessary to forfeit property
10 used in the commission of a crime or the fruits of criminal activity; and

11 WHEREAS, current civil asset forfeiture laws in Louisiana should be studied to
12 evaluate the effect on property owners; and

13 WHEREAS, because civil asset forfeiture is done through civil and not criminal
14 courts, the government need only prove that the property in question is more likely than not
15 connected to or the result of criminal activity, instead of the criminal court's heightened
16 evidentiary standard of beyond a reasonable doubt; and

17 WHEREAS, under Louisiana law, law enforcement retains a large portion of the
18 proceeds from asset forfeiture, while the remaining proceeds go to the criminal court fund,
19 providing conflicting incentives for both law enforcement and the court system; and

20 WHEREAS, Louisiana has forfeited \$122,441,784 in property and cash and received
21 an additional \$57,206,555 from the "equitable sharing program", which allows Louisiana

1 law enforcement to receive property from a person through joint ventures with the federal
2 government; and

3 WHEREAS, Louisiana law should be studied regarding reporting requirements,
4 making it impossible for Louisiana residents to know which property forfeited is tied to a
5 criminal conviction and how the money is spent by law enforcement and the courts; and

6 WHEREAS, since 2014, thirty-one states and the District of Columbia have made
7 changes to their civil asset forfeiture laws to better protect the rights of property owners
8 while still allowing for law enforcement to remove property from criminals; and

9 WHEREAS, at least sixteen states require a criminal conviction to forfeit all or some
10 types of property and offenses; and

11 WHEREAS, it is time for Louisiana to look into current civil asset forfeiture
12 practices to determine if changes are necessary to better protect the rights of property owners
13 while allowing law enforcement to remove property from the hands of criminals.

14 THEREFORE, BE IT RESOLVED that the Legislature of Louisiana establishes the
15 Louisiana Commission on Civil Asset Forfeiture to study and make recommendations
16 regarding the practice of civil asset forfeiture to better protect innocent property owners
17 while allowing law enforcement to remove ill-derived property and the property used to
18 commit crimes from criminals.

19 BE IT FURTHER RESOLVED that the purpose of the commission is to determine
20 whether the civil asset forfeiture laws provide ample due process for Louisiana property
21 owners; whether current asset forfeiture laws provide ample transparency into the forfeiture
22 process; how much property and cash is forfeited; how many forfeited assets are tied to a
23 conviction; and how forfeited assets are spent, used, or both by law enforcement and the
24 judiciary.

25 BE IT FURTHER RESOLVED that the commission shall be composed of
26 representatives from relevant state agencies, interested associations, and other interested
27 parties including but not limited to all of the following:

28 (1) The chief justice or her designee, who shall serve as the co-chair of the
29 commission.

30 (2) The governor or his designee.

1 (3) The author of this Resolution or his designee, who shall serve as the co-chair of
2 the commission.

3 (4) The speaker of the House of Representatives or his designee.

4 (5) The president of the Senate or his designee.

5 (6) The chair of the House Committee on Administration of Criminal Justice.

6 (7) The chair of the House Committee on Judiciary.

7 (8) The chair of the Senate Committee on Judiciary B.

8 (9) The chair of the Senate Committee on Judiciary C.

9 (10) The attorney general or his designee.

10 (11) A representative from the division of administration appointed by the
11 commissioner of administration.

12 (12) A representative of the Louisiana Municipal Association, appointed by the
13 Louisiana Municipal Association.

14 (13) The president of the Louisiana Sheriffs' Association or his designee.

15 (14) Two district attorneys appointed by the president of the Louisiana District
16 Attorneys Association.

17 (15) A representative of the Louisiana Bar Association, appointed by the Louisiana
18 Bar Association.

19 (16) An attorney appointed by the Louisiana Bar Association, who is currently
20 licensed to practice law in Louisiana, is in good standing with the Louisiana Bar, and has
21 previously represented clients in civil asset forfeiture cases in Louisiana.

22 (17) Two district court judges, one appointed by the chief justice of the Louisiana
23 Supreme Court and one appointed by the Louisiana District Judges Association.

24 (18) Two representatives from the Louisiana Smart on Crime Coalition.

25 (19) The superintendent of state police or his designee.

26 (20) The president of the Louisiana Clerks of Court Association or his designee.

27 BE IT FURTHER RESOLVED that the duties of the commission shall include but
28 not be limited to all of the following:

29 (1) Review and evaluate current asset forfeiture laws in Louisiana.

1 (2) Determine the amount of property and cash forfeited for the past three years in
2 each parish.

3 (3) Determine the median value of the property and cash forfeited for the past three
4 years in each parish.

5 (4) Determine what types of property were forfeited and the number of forfeitures
6 of each type of property for the past three years in each parish.

7 (5) Determine how many asset forfeiture cases are in connection with a criminal case
8 and the disposition of those cases.

9 (6) Evaluate asset forfeiture reporting requirements and whether they provide ample
10 transparency to the residents of Louisiana.

11 (7) How forfeited assets are spent or used by law enforcement and the judiciary.

12 (8) Collect necessary data to accomplish the purposes set forth in this Resolution.

13 (9) Recommend any appropriate changes to relevant laws, administrative rules, and
14 policies of law enforcement and the judiciary.

15 BE IT FURTHER RESOLVED that the commission may request and collect relevant
16 and necessary data and information to accomplish its purposes from state and local
17 government entities.

18 BE IT FURTHER RESOLVED that the entities and court systems from which such
19 information and data is requested may, to the extent feasible, provide such information and
20 data to the commission at no cost.

21 BE IT FURTHER RESOLVED that a majority of the membership of the commission
22 shall constitute a quorum and shall meet at the call of the chairpersons, or upon an
23 affirmative vote of a majority of the commission members. All members shall be notified
24 in writing of all meetings at least five days before the date on which a meeting of the
25 commission is scheduled.

26 BE IT FURTHER RESOLVED that the commission shall meet no less than monthly
27 and shall provide a report of its initial findings and recommendations to the governor and
28 the Legislature of Louisiana no later than February 1, 2020, and any further reports or
29 recommendations thereafter as requested by the governor or the legislature, or as advised by
30 the commission.

1 BE IT FURTHER RESOLVED that the meetings of the commission shall take place
2 at the Louisiana State Capitol and the first meeting of the commission shall take place no
3 later than September 1, 2019.

4 BE IT FURTHER RESOLVED that the commission shall request and secure
5 qualified technical assistance and support through the establishment of an academic
6 partnership or from public or private stakeholders and entities with qualified expertise in the
7 commission's focus areas.

8 BE IT FURTHER RESOLVED that the division of administration and the office of
9 the judicial administrator of the Louisiana Supreme Court shall provide administrative
10 assistance and staffing as may be necessary to enable the commission to accomplish its
11 duties.

12 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to each
13 of the commission members and the appointing entities provided in this Resolution.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HCR 101 Engrossed

2019 Regular Session

Stefanski

Establishes the La. Commission on Civil Asset Forfeiture to make recommendations regarding reforming current asset forfeiture laws that allow law enforcement to seize and forfeit assets from criminals while better protecting the due process rights of La. residents.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. State that current civil asset forfeiture laws in Louisiana should be studied to evaluate the laws' reporting requirements and their effect on property owners, instead of stating that the laws do not provide adequate reporting requirements or protections for property owners.
2. Remove provision which states that Louisiana civil asset forfeiture laws puts the burden of proof on the owner of the property.
3. Add superintendent of state police, or his designee, and the president of the La. Clerks of Court Assoc., or his designee, to the commission membership.