



Re: HB 1285

Date: March 12, 2023

To Chair Doggett and members of the House Subcommittee on Criminal Justice:

I am writing on behalf of the National Coalition for a Civil Right to Counsel (NCCRC) in support of HB 1285, which would provide a right to counsel for claimant-criminal defendants in forfeiture proceedings if the public defender or other appointed counsel represents the defendant in the related criminal matter. The NCCRC is an association of over 600 participants from 45 states, some of whom are in Tennessee. We work to advance and protect the right to counsel in cases involving basic human needs, and forfeiture proceedings implicate such human needs by putting at risk primary residences or money needed for subsistence living.

The stakes are undeniably high for defendants in these forfeiture proceedings: when the federal government enacted H.R. 1658 (the Civil Asset Forfeiture Reform Act of 2000) to provide a right to counsel in federal civil forfeiture cases involving a primary residence, the House Judiciary Committee's report recommending passage observed that civil forfeiture is “so punitive in nature that appointed counsel should be made available for those who are indigent, or made indigent by seizure in appropriate circumstances.”¹

Recently, the Michigan Advisory Committee to the U.S. Commission on Civil Rights issued a report, *Civil Rights and Civil Asset Forfeiture in Michigan*. The report recommended that “all property owners be afforded the right to court-appointed counsel in civil forfeiture cases where basic needs are at risk, such as shelter, sustenance, safety, health, or child custody” and that “the Department should require partnering state and local jurisdictions to uphold this right, and recommend the same of all law enforcement agencies.” The report added that the lack of counsel in forfeiture proceedings significantly increases the risk of an erroneous deprivation and is likely to disproportionately impact communities of color.

Such a right to counsel is growing as a best practice. As shown on our website’s [interactive map](#), West Virginia and South Dakota already provide such a right, and [bills similar to HB 1285](#) are pending this year in Colorado, Kansas, New Hampshire, and Vermont. Moreover, other forfeiture bills containing right to counsel provisions have been introduced in recent years in Alabama, Arizona, Delaware, Illinois, Indiana, Pennsylvania, and at the federal level. Additionally, one indication that a right to counsel in forfeiture proceedings has gained broad bipartisan approach is the fact that the American Legislative Exchange Council (ALEC) has released [model legislation](#) urging not just the abolition of civil forfeiture, but the right to counsel in the resulting criminal forfeiture cases.

¹ H. Rept. 106-192 at 54.

We thank you for this opportunity to provide this testimony and are happy to answer any questions the Committee may have.

Sincerely,

A handwritten signature in black ink, appearing to read "John Pollock". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

John Pollock
Coordinator, National Coalition for a Civil Right to Counsel