

Criminal Forfeiture Process Act

Summary of Four Key Provisions

June 18, 2024

100:5-8 No significant changes to seizure laws.

100:20 Trial, conviction required and standard of proof.

Property may be forfeited if:

- (1) the state secures a conviction of a crime in Section 100:01; and
- (2) the state establishes by a preponderance of the evidence the property is an instrumentality of or proceeds derived directly from the crime for which the state secured a conviction.

Property may be forfeited as part of:

- (1) a consent order or plea agreement approved by the court;
- (2) a diversion agreement; or
- (3) a grant of immunity or reduced punishment, with or without the filing of a criminal charge, in exchange for testifying or assisting a law enforcement investigation or prosecution.

100:21 Exceptions to the conviction requirement.

A court may waive the conviction requirement and grant title to the property to the state if the prosecuting authority shows by a preponderance of the evidence the defendant:

- (1) abandoned the property;
- (2) absconded from the jurisdiction;
- (3) was deported by the U.S. government;
- (4) was extradited to another state or foreign jurisdiction; or
- (5) died.

100:32 Disposition of forfeited property and proceeds.

- (1) Reimbursement of costs including towing, controlled-buy money, and court filing fees;
- (2) Statewide grants to law enforcement agencies; and
- (3) Other options.

Criminal Forfeiture Process Act

Model Legislation

June 18, 2024

100:1 Short title and application. This act may be cited as the Criminal Forfeiture Process Act. It shall apply to the seizure and forfeiture of property used in and derived directly from one of the following crimes:

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| (1) Controlled substances | | § |
| (2) Fleeing the scene of a crime | (optional) | § |
| (3) Driving under the influence | (optional) | § |
| (4) <i>Drafter insert other crimes</i> | (optional) | § |

100:2 Definitions. The terms defined in this section have the following meanings in this chapter:

A. "Abandoned property" means personal property to which a possessor relinquishes all rights of ownership or control. Real property may not be abandoned.

B. "Actual knowledge" means direct and clear awareness of information, a fact, or a condition.

C. "Contraband" means goods that, in themselves, are unlawful to possess, including scheduled drugs without a lawful prescription and a firearm that is illegal to possess.

D. "Conveyance" means a device used for transportation. It includes a motor vehicle, trailer, snowmobile, airplane, vessel, or any equipment attached to one of these devices. The term does not include property that is stolen in violation of the law.

E. "Innocent owner" means an owner, co-owner, defendant's heir, or a person who regularly uses property subject to forfeiture who does not have actual knowledge of the use of the property in a crime that authorizes the forfeiture of the property. The term does not include the defendant or a secured interest holder.

F. "Instrumentality" means property otherwise lawful to possess that is used in a crime that authorizes the forfeiture of property. It includes land, buildings, containers, conveyances, equipment, materials, products, tools, computers, computer software, telecommunications devices, firearms, ammunition and ammunition-and-firearm accessories.

G. "Law enforcement agency" means any non-federal police force, or other local, county, or state agency that has the authority under state law to engage in seizure and forfeiture.

H. "Personal property" means a movable object or intangible asset of value that is subject to ownership and is not real property or proceeds.

I. "Proceeds" means United States currency, currency of another nation, digital and cryptocurrency, securities, negotiable instruments, or other means of exchange obtained from the sale of property or contraband.

J. "Prosecuting authority" means a municipal attorney, solicitor, district attorney, county attorney, attorney general, or other government official legally authorized to prosecute crime.

K. "Public defender" means any office of public defense or commission on indigent defense.

L. "Real property" includes immovable property, real estate and realty, including land and anything growing on, attached to, or erected on land, including a building.

M. "Secured interest holder" means a person who is a secured creditor, mortgagee, lienholder, or other person who has a valid claim, security interest, mortgage, lien, leasehold, or other interest in the property subject to forfeiture. The term does not include the defendant or an innocent owner.

100:3 Purpose. Forfeiture is disfavored. The purpose of this chapter is to:

- (1) deter crime by reducing its economic incentives;
- (2) confiscate property used in the violation of the law;
- (3) disgorge the fruit of illegal conduct; and
- (4) protect the due process rights of property owners.

100:4 Jurisdiction.

A. There shall be no civil forfeiture under this chapter.

B. The court that has jurisdiction in the related criminal case shall have jurisdiction in the forfeiture proceeding under this chapter.

C. The forfeiture proceeding shall be part of the prosecution of the related crime. It shall follow a finding of the defendant's guilt or be conducted at the court's discretion. It shall be conducted by the court without a jury.

D. All forfeiture-related motions shall be filed in the criminal court that has jurisdiction of the criminal case at the time of filing.

E. If an initial court bounds over or transfers the criminal case to another court, the initial court shall transfer the forfeiture-related motions along with the criminal case to the other court. At its discretion,

the initial court may postpone a forfeiture-related hearing and bound over a forfeiture-related motion to another court in the interests of justice and efficient use of judicial resources.

100:5 Seizure of proceeds and personal property with process. At the request of the state, the court may issue an ex parte order to search, attach, seize or secure proceeds and personal property for which forfeiture is sought and to provide for their custody. Application, issuance, execution, and return are subject to state law and court rules.

100:6 Seizure of proceeds without process. Proceeds may be seized without a court order if the state has probable cause to believe the proceeds were used in the purchase of a controlled or other illegal substance, or derived directly from another illegal activity and:

- (1) the seizure is incident to a lawful arrest;
- (2) the delay caused by the necessity of obtaining process would reasonably result in the removal or destruction of the proceeds; or
- (3) the proceeds are the subject of a prior and valid judgment of forfeiture in favor of the state.

100:7 Seizure of personal property without process. Personal property subject to forfeiture may be seized without a court order if:

- (1) the seizure is incident to a lawful arrest;
- (2) the state has probable cause to believe the property was used or was attempted to be used in a manner that makes the property forfeitable under this chapter;
- (3) the state has probable cause to believe the delay caused by the necessity of obtaining process would reasonably result in the removal or destruction of the property that is forfeitable under this chapter;
- (4) the property is the subject of a prior and valid judgment of forfeiture in favor of the state; or
- (5) the property is independently seized or impounded as evidence in the related criminal prosecution or investigation.

100:8 Seizure or restraint of real property with process.

A. Real property may not be seized or restrained without a court order.

B. A court may not issue an order for the seizure or restraint of real property unless the defendant and any other person with a known interest in the property receive proper notice and are given an opportunity for a contested hearing to determine the existence of probable cause for the seizure.

C. Notice may be made by publication if personal service has not been realized after reasonable attempts.

D. Nothing in this section prohibits the state from seeking a lis pendens or restraining order to hinder the sale or destruction of real property. However, if the state obtains a lis pendens or restraining order, the state shall notify the defendant and any other person with a known interest in the property within 30 days.

E. Application, filing, issuance, execution, and return of any order are subject to state law and court rules.

100:9 Stolen property and contraband.

A. No property right exists in stolen property or contraband. Such property is subject to seizure.

B. Stolen property shall be returned, and contraband shall be disposed of according to state law.

C. Notwithstanding paragraph B, the court may impose reasonable conditions on the release of stolen property and the disposal of contraband, including the use of photographic evidence, to preserve the property for later use as evidence in proceedings under this chapter or the related criminal prosecution.

100:10 Storing seized property and depositing seized currency.

A. The seizing agency is responsible for providing adequate storage, security, preservation, and maintenance for seized property unless another agency agrees to accept the responsibility. The commander of a multijurisdictional task force may assign the responsibility to one agency.

B. The seizing agency shall store seized equipment and conveyances in an appropriate place for preservation and maintenance.

C. The seizing agency shall deposit seized currency in an interest-bearing account pending the exhaustion of appeals or receiving an order from the court to disburse the seized currency.

D. Notwithstanding paragraph C, the seizing agency may take reasonable actions, including the use of photography, to preserve currency and other property for later use as evidence in proceedings under this chapter or the related criminal prosecution.

100:11 Receipt.

A. When property is seized, the law enforcement officer shall give an itemized receipt to the person possessing the property at the time of the seizure.

B. The receipt shall be numbered for future reference and shall constitute notice of seizure.

C. If the person possessing the property is not present, the seizing officer shall leave a receipt in the place where the property was found, if possible.

100:12 Property exempt from seizure and forfeiture.

A. The prosecuting authority may establish minimum dollar amounts for seizure of U.S. currency and motor vehicles in the prosecuting authority's jurisdiction. The prosecuting authority shall set the minimums in the interests of justice and efficient use of government resources.¹ The minimums shall be based on the prosecuting authority's exclusive determination and may reflect:

- (1) the deterrence that minimum-dollar seizures have on crime;
- (2) the criminal offenses that include the seizure of property; and
- (3) the costs to seize and forfeit property.

B. The prosecuting authority shall post on its website the publications that law enforcement agencies may use to establish the value of a motor vehicle in the prosecuting authority's jurisdiction. The publications may include the Kelley Blue Book and the JD Power/NADA Official Used Car Guide.

100:13 Waivers permitted and prohibited.

A. A person from whom property is seized may relinquish the person's rights, interests, and title in the seized property by knowingly and voluntarily executing a waiver that is agreed to by the prosecuting authority.

B. A waiver may be part of any agreement with the prosecuting authority. However, the prosecuting authority may not condition the initial engagement in plea negotiations upon the waiver of the person's rights, interests, and title in the seized property.

C. A waiver under paragraphs A and B is subject to a claim by a secured interest holder, innocent owner, or other person entitled to notice under Section 100:16. Such a claimant may consent to certain issues and request that the court determine any remaining issues.

D. A law enforcement officer, other than the prosecuting authority, may not request, induce, or require a person to relinquish, for purpose of forfeiture, the person's rights, interests and title in property. Such a waiver is void and inadmissible in court.

¹ Examples of the minimum dollar amount of property that may be excluded from seizure and forfeiture are: (a) U.S. currency totaling \$500 or less, excluding specifically marked currency used in the controlled buy of a controlled substance and (b) a motor vehicle of \$5,000 or less in market value.

100:14 Title.

- A. Title to the property subject to forfeiture vests with the state when the court issues a forfeiture judgment and relates back to the time the state seizes or restrains the property.
- B. Title to substitute assets vests when the court issues an order forfeiting substitute assets.

100:15 Counsel and pro se representation.

- A. A public defender or counsel appointed by the court shall represent the defendant in the related forfeiture proceeding if the public defender or appointed counsel represents the defendant in the related criminal matter.
- B. If the defendant or an innocent owner claimant engages in pro se representation in the forfeiture proceeding, the court may exercise its discretion in applying the rules of pleading, procedure, or evidence.

100:16 Notice to other known owners.

- A. The prosecuting authority or designee shall perform a reasonable search of vehicle registrations, property records, and other public records to identify any person, other than the defendant, known to have an interest in the property subject to forfeiture.
- B. The prosecuting authority or designee shall give notice to any person identified to have an interest in the property subject to forfeiture, who is not charged or indicted. The notice shall include the seizure receipt number in Section 100:11. Notice may be made by publication if personal service has not been realized after reasonable attempts.
- C. The following language must appear substantially and conspicuously in the notice:

“WARNING: You may lose the right to be heard in court if you do not file promptly a simple statement of interest or ownership. You do not have to pay a filing fee to file your notice.”
- D. If notice is not served by personal service or publication and all extension periods have expired, the court shall order the return of the property within five days to a claimant who has a valid interest in the property and is entitled to notice by paragraph B.
- E. Upon the court’s issuing an order to return the property, no further claim to the property is valid. Contraband shall not be returned.
- F. Notwithstanding paragraph D, the court may impose reasonable conditions on the return of the property, including the use of photographic evidence, to preserve the property for later use as evidence in proceedings under this chapter or the related criminal prosecution.

100:17 Prompt post-seizure hearing.

A. Following seizure, a defendant or any other person with an interest in the property has a right to a prompt post-seizure hearing.

B. A person with an interest in the property may motion the court for a hearing in 14 days;

C. At the court's discretion, the court may hold a prompt post-seizure hearing:

(1) as a separate hearing; or

(2) at the same time as a probable-cause hearing, a post-arraignment hearing, a suppression hearing, an omnibus hearing, or other pretrial hearing.

D. A party, by agreement or for good cause, may move for one extension of the hearing date. Any motion may be supported by affidavits or other submissions.

E. The court shall order the return of property within five days if the court finds by a preponderance of the evidence that:

(1) the seizure was unconstitutional;

(2) a criminal charge has not been filed and no time remains to file a charge;

(3) the petitioner is a valid innocent owner or secured interest holder; or

(4) the government's continued possession of a motor vehicle will cause substantial hardship to an immediate family member of the defendant, including preventing the family member from working or inconveniencing the transportation of the family member's child.

F. Upon the court's issuing an order to return the property, no further claim to the property is valid. Contraband shall not be returned.

G. Notwithstanding paragraph E, the court may impose reasonable conditions on the return of the property, including the use of photographic evidence, to preserve the property for later use as evidence in proceedings under this chapter or the related criminal prosecution.

100:18 Notice of proposed forfeiture.

A. In a case in which the state seeks forfeiture of property the prosecuting authority shall file with the court a notice of proposed forfeiture.

B. The notice shall be a separate document. It shall include:

- (1) a description of the property seized;
- (2) the time, date, and place of the seizure;
- (3) the seizure receipt number in Section 100:11, if available; and
- (4) a description of how the property was used in or derived from the alleged crime.

C. The prosecuting authority shall allege, in the notice, the forfeiture of property as a process after the conviction of the crime for which the defendant is charged.

D. The notice shall not be read to the jury.

E. The prosecuting authority shall serve the notice:

- (1) with the initial charging instrument;
- (2) separately but not later than XX (90) days after the presentment of the charging instrument for a misdemeanor;
- (3) the earlier of XX (90) days after presentment to a grand jury or XX (180) days after an arrest for a felony; or
- (4) at the court's discretion.

F. At the court's discretion, the court may allow the prosecuting authority to amend the notice as required in the interest of justice.

G. The Notice of Potential Collateral Consequences of Conviction pursuant to state statute XXX.XXX shall include notification of the provisions of this chapter.

H. The court shall order the return of the property to the owner within five days if the prosecuting authority does not file a charging instrument as provided by the court's rules, the period of an extension expires, or the court does not grant an extension unless a charge is not filed pursuant to an agreement or waiver.

I. Upon the court's issuing an order to return the property, no further claim to the property is valid. Contraband shall not be returned.

J. Notwithstanding paragraph H, the court may impose reasonable conditions on the return of the property, including the use of photographic evidence, to preserve the property for later use as evidence in another criminal prosecution.

100:19 Discovery. Discovery related to the forfeiture proceeding is subject to the rules of criminal procedure or court rules for general discovery.

100:20 Trial, conviction required and standard of proof.

A. Property may be forfeited if:

- (1) the state secures a conviction of a crime under Section 100:1; and
- (2) the state establishes by a preponderance of the evidence that the property is an instrumentality of, or proceeds derived directly from the crime for which the state secured a conviction.

B. The court shall hold the forfeiture proceeding after the defendant's conviction in the criminal prosecution. At its discretion, the court may hold the forfeiture proceeding as soon as practicable including concurrent with sentencing. The court shall conduct the forfeiture proceeding without a jury.

C. Provided that all persons entitled to notice under section 100:16 consent to the forfeiture, nothing in this chapter shall prohibit property from being forfeited by:

- (1) consent order or plea agreement approved by the court;
- (2) a diversion agreement; or
- (3) a grant of immunity or reduced punishment, with or without the filing of a criminal charge, in exchange for testifying or assisting a law enforcement investigation or prosecution

D. Persons entitled to notice may consent to some issues and litigate remaining issues before the court without a jury.

100:21 Exceptions to the conviction requirement.

A. The court may waive the conviction requirement in Section 100:20 and grant title to the property to the state if the prosecuting authority files an ex parte motion in either the same criminal court or a civil court in the same jurisdiction no fewer than 90 days after seizure and shows by a preponderance of the evidence that the defendant, before conviction:

- (1) abandoned the property;
- (2) absconded from the jurisdiction;
- (3) was deported by the U.S. government;
- (4) was extradited to another state or foreign jurisdiction; or
- (5) died.

B. The death of the defendant does not preclude the defendant's heir or legatee from filing a claim for the property as an innocent owner under Section 100:24.

100:22 Proportionality.

A. The defendant may motion the court to determine whether the forfeiture is unconstitutionally excessive under the constitution of this state or the United States.

B. At the court's discretion, the court may hold a proportionality hearing:

- (1) as a separate hearing;
- (2) at the same time as a probable-cause hearing, an omnibus hearing, or other pretrial hearing;
- (3) at trial; or
- (4) upon conviction.

C. The defendant has the burden of establishing the forfeiture is unconstitutionally excessive by a preponderance of the evidence at a hearing conducted by the court without a jury.

D. At a hearing prior to conviction under paragraph B(1), (2) or (3), the court first shall determine, by a preponderance of the evidence, if the prosecuting attorney will secure a conviction. The court then shall determine if the forfeiture is unconstitutionally excessive.

E. At any hearing held under paragraph B, the court may consider all relevant factors to determine if the forfeiture is unconstitutionally excessive, including:

- (1) the seriousness of the crime and its impact on the community, including the duration of the activity, use of a firearm, and harm caused by the defendant;
- (2) the extent to which the defendant participated in the crime;
- (3) the extent to which the property was integral to facilitating the crime;
- (4) whether the crime was completed or attempted; and
- (5) the sentence or fine to be imposed for committing the crime.

F. In determining the value of the instrumentality subject to forfeiture, the court may consider all relevant factors related to the fair market value of the property, including information in any publication advised by the prosecuting authority in Section 100:12(B).

G. The court may not consider the benefit or value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

H. The court shall order the return of property that is unconstitutionally excessive within five days.

I. Upon the court's issuing an order to return the property, no further claim to the property is valid. Contraband shall not be returned.

100:23 Secured interest holder.

- A. Property encumbered by a security interest shall not be forfeited up to the value of the interest.
- B. The prosecuting authority shall summarily return property to a secured interest holder up to the value of the interest. Contraband shall not be returned.
- C. If the property is not summarily returned, the secured interest holder may motion the court at any time before the court enters judgment in the criminal prosecution or grants the motion in Section 100:21. The motion shall include the seizure receipt number in Section 100:11, if available.
- D. The court shall hear the motion within 30 days after filing or at the court's discretion. The hearing shall be held before the court without a jury. The court may consolidate the hearing on the motion with any other hearing before the court in the case.
- E. The secured interest holder shall allege the validity of the security interest, mortgage, lien, leasehold, lease, rental agreement, or other agreement.
- F. If the prosecuting authority seeks to proceed, the prosecuting authority shall prove by a preponderance of the evidence that:
 - (1) the interest is invalid;
 - (2) the interest resulted from a fraudulent conveyance;
 - (3) the interest is held through a straw purchase, trust, or otherwise for the benefit of the defendant; or
 - (4) the secured interest holder consented to the use of the property in the crime for which the defendant is charged.
- G. If the state fails to meet the burden established in paragraph F, the court shall order the state to relinquish claims to the property, up to the value of the interest, and return the interest to the secured interest holder within five days.
- H. Notwithstanding paragraph G, the court may impose reasonable conditions on the return of the property, including the use of photographic evidence, to preserve the property for later use as evidence in proceedings under this chapter or the related criminal prosecution.
- I. Upon the court's issuing an order, no further claim on the property up to the value of the secured interest is valid. The forfeiture of the remaining interest may be litigated as provided by this chapter.

100:24 Innocent owner.

- A. Property of an innocent owner shall not be forfeited.
- B. The prosecuting authority shall summarily return property to an innocent owner. Contraband shall not be returned.
- C. If the property is not summarily returned, an innocent owner claimant may motion the court at any time before the court enters judgment in the criminal prosecution or grants the motion in Section 100:21.
- D. The court shall hear the innocent owner claimant's motion within 30 days after filing or at the court's discretion. The hearing shall be held before the court without a jury. The court may consolidate the hearing on the claimant's motion with any other hearing before the court in the case.
- E. The innocent owner claimant may motion the court by filing a simple statement that sets forth:
 - (1) the claimant's interest in or regular use of the property;
 - (2) the time and circumstances of the claimant's acquisition of the interest in the property;
 - (3) additional facts or evidence supporting the claimant's claim;
 - (4) an affirmation of the validity of interest or regular use of the property;
 - (5) the relief sought by the claimant; and
 - (6) the seizure receipt number in Section 100:11, if available.
- F. The filing fee for the claimant's motion under this section is waived.
- G. If the prosecuting authority seeks to proceed, the prosecuting authority shall prove by a preponderance of the evidence the claimant is not an innocent owner because:
 - (1) the claimant did not regularly use the property;
 - (2) the claimant's interest in the property is invalid;
 - (3) the claimant was not a bona fide purchaser without notice of any defect in title and for valuable consideration;
 - (4) the claimant consented to the use of the property in the crime for which the defendant is charged;
 - (5) the claimant was willfully blind to the crime for which the defendant is charged; or

(6) the claimant had actual knowledge and the claimant did not take reasonable steps to prevent the use of the property in the crime for which the defendant is charged. The claimant is not required to take steps the claimant reasonably believes would subject the claimant to physical danger.

H. If the prosecuting authority fails to meet its burden in paragraph G, the court shall order the state to relinquish all claims and return the property to the innocent owner within five days.

I. Upon the court's issuing an order, no further claim on the property is valid.

J. Notwithstanding paragraph H, the court may impose reasonable conditions on the return of the property, including the use of photographic evidence, to preserve the property for later use as evidence in proceedings under this chapter or the related criminal prosecution.

K. No information in the claimant's statement in paragraph D shall be used as evidence in the related criminal prosecution.

L. Nothing in this section prohibits the claimant from providing information to any party or testifying in any trial as to facts known by the claimant.

M. The defendant or convicted offender may invoke the right against self-incrimination or marital privilege in the forfeiture proceeding. The trier of fact may draw an adverse inference from the invocation of the right or privilege in the forfeiture proceeding.

100:25 Judgment.

A. If the prosecuting authority fails to meet its burden in the criminal prosecution or forfeiture proceeding, the court shall enter judgment dismissing the forfeiture proceeding and ordering the return of property within five days, unless possession of the property is illegal. Contraband shall not be returned.

B. If the prosecuting authority meets its burden in the criminal prosecution and forfeiture proceeding, the court shall enter judgment forfeiting the property.

C. The court may enter judgment following a hearing, pursuant to a stipulation, consent order, or plea agreement, or at the court's discretion.

100:26 Substitution of assets. Upon the prosecuting authority's motion following conviction or at the court's discretion, the court may order the forfeiture of substitute property owned solely by the defendant up to the value of property that is beyond the court's jurisdiction or cannot be located through due diligence, if the state proves by a preponderance of the evidence that the defendant intentionally:

- (1) dissipated the property;
- (2) transferred, sold, or deposited property with a third party to avoid forfeiture;

- (3) diminished substantially the value of the property; or
- (4) commingled property with other property that cannot be divided without difficulty.

100:27 No additional remedies. The state may not seek personal money judgments or other remedies related to the forfeiture of property not provided for in this chapter.

100:28 No joint-and-several liability. A defendant is not jointly and severally liable for forfeiture awards owed by other defendants. When ownership is unclear, the court may order each defendant to forfeit property on a pro rata basis or by another means the court finds equitable.

100:29 Appeals.

A. A party to the forfeiture proceeding, other than the defendant, may appeal the court's order concerning the disposition of the property upon the issuance of the order per the state's rules of procedure and court rules.

B. The defendant may appeal the court's decision regarding the seizure or forfeiture of property following final judgment in the forfeiture proceeding.

100:30 Attorney fees. In any proceeding in which a property owner recovers at least half of the value of the property or currency claimed, the court shall order the seizing agency or prosecuting authority at fault to pay:

- (1) reasonable attorney fees and other litigation costs incurred by the claimant; and
- (2) interest from the date of seizure.

100:31 Return of property, damages and costs.

A. If the court orders the return of property, the law enforcement agency that holds the property shall return the property to the owner within five days. Contraband shall not be returned.

B. The owner shall not be subject to any expenses related to towing, storage or preservation of the property.

C. The law enforcement agency that holds the property is responsible for any damages, storage fees, and related costs applicable to property returned under this section.

100:32 Disposition of forfeited property and proceeds.

A. The court may order contraband to be sold or destroyed according to state law when it is no longer needed as evidence.

B. The court may order property to be sold when it is no longer needed as evidence.

C. If the court grants forfeiture, the court may order the sale of forfeited personal and real property.

D. After all forfeited property is reduced to proceeds, the court may order, upon conclusion of all direct appeals or at its discretion, the distribution of forfeited proceeds to:

(1) pay restitution to the victim of the crime;

(2) satisfy secured interest holders;

(3) pay reasonable costs for the towing, storage, maintenance, repairs, advertising and sale, and other operating costs related to the forfeited property;

(4) reimburse the seizing law enforcement agency for non-personnel operating costs, including controlled-drug buy money, related to the investigation of the crime; and

(5) reimburse the prosecuting authority, public defender, or court-appointed attorney for non-personnel court costs, including filing fees, subpoenas, court reporters and transcripts.

E. (OPTIONAL BUT NOT RECOMMENDED) After disbursements under paragraph D, the court may reimburse costs of up to \$100,000 by ordering the disbursements of:

(1) up to 50% of remaining funds to the seizing law enforcement agency for the salaries, benefits and overtime pay of uniformed personnel expended in the seizure of the property and investigation of the crime;

(2) up to 25% of the remaining funds to the prosecuting authority for the salaries, benefits and overtime pay expended in the prosecution of the crime and forfeiture proceeding; and

(3) up to 25% of the remaining funds to the public defender or the fund to pay court-appointed counsel for the salaries, benefits and overtime pay expended in the defense of the criminal defendant and forfeiture proceeding.

F. After disbursements under paragraphs D and E [if E is used], the court may order the remaining net proceeds from the forfeiture to be disbursed to:

(1) the state's School Fund as required by Article XX-Y of the state constitution;

(2) the state's general fund;

(3) (OPTIONAL) the Department of Public Safety to supplement existing statewide grants to law enforcement agencies for the purchase of equipment;

(4) (OPTIONAL) the prosecuting agency for uses other than reimbursement of salaries, benefits, and overtime pay of personnel associated with the criminal prosecution of the case; and

(5) (OPTIONAL) the public defender for uses other than reimbursement of salaries, benefits, and overtime pay of personnel associated with the criminal defense of the case.

100:33 Sale restrictions. No law enforcement agency may sell forfeited property directly or indirectly to an employee of the law enforcement agency or to a person related to an employee within the third degree of consanguinity.

100:34 Preemption. This chapter preempts laws by township, municipal, county and other governments in the state that regulate civil and criminal forfeiture.

100:35 Limitation on federal adoption.

A. A state or local law enforcement agency shall not offer for adoption property, seized under state law, to a federal agency for the purpose of forfeiture under 18 U.S. Code Chapter 46, or other federal law (OPTIONAL ADDITION: “unless the seized property includes U.S. currency that exceeds \$_____”).

B. The limitation in paragraph A applies only to a seizure by state and or local law enforcement agencies pursuant to their own authority under state law and without involvement of the federal government.

C. Nothing in paragraph A shall be construed to limit state and local agencies from participating in joint task forces with the federal government.

D. State and local law enforcement agencies are prohibited from accepting payment of any kind or distribution of forfeiture proceeds from the federal government if the state or local law enforcement agency violates paragraph A. All such proceeds shall be directed to the state’s general fund.

100:36 (OPTIONAL) Limitation on state/federal joint task forces.²

A. A joint task force of a law enforcement agency and a federal agency shall transfer seized property to the prosecuting authority for forfeiture under this chapter except as allowed for in paragraph B.

B. The joint task force may transfer seized property to the U.S. Department of Justice for forfeiture under federal law if the seized property includes U.S. currency that exceeds \$_____.

C. A law enforcement agency is prohibited from accepting payment or distribution of any kind from the federal government if the federal government requires seized property that includes U.S. currency less

² Inclusion of Section 100:36 requires edits to Section 100:35(C).

than \$_____ (as established in paragraph B) be transferred to the federal government for forfeiture under federal law.

D. Nothing in paragraphs A or B shall be construed to prohibit the federal government, acting alone, from seizing property and seeking forfeiture under federal law.

100:37 Guidance.

A. A prosecuting authority shall consult with the responsible U.S. Attorney to minimize circumvention of state law under this chapter through the use of the federal government's equitable sharing program and other programs. This shall include establishing guidelines for joint task forces and multijurisdictional collaboration in the prosecuting authority's jurisdiction.

B. The guidelines established under paragraph A shall be consistent with federal safeguards to ensure that activities are conducted in compliance with U.S. Department of Justice policies.

C. The Department of Public Safety, from time to time, may offer training on seizure and forfeiture under this chapter.

Note to drafter: Insert references to this chapter in the crime statutes listed in section 100:1.

CONTACT INFORMATION

Mr. Alasdair Whitney
Institute for Justice
901 North Glebe Road, Suite 900
Arlington VA 22203-1854
Office: (703) 682-9320
Cell: (517) 643-0169
Email: awhitney@ij.org
Main: www.ij.org
Models: www.ij.org/legislation

OPTIONAL PROVISION #1

100:XXX. Initial reporting

Likely insert after 100:12

A. A law enforcement agency making a seizure shall submit a report to the prosecuting authority within ten days of the seizure.

B. For the purpose of reporting, when the seizure of property is accomplished because of coordinated efforts by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure.

C. The report described in paragraph A shall include the following information about the property seized:

- (1) name of the seizing law enforcement agency;
- (2) value and type of proceeds seized;
- (3) make, model, year, serial or vehicle identification number of a conveyance seized;
- (4) description of the other personal property or real property seized;
- (5) address and location where the seizure occurred;
- (6) date and circumstances of seizure;
- (7) location where the property is being stored and present custodian;
- (8) name and contact information of owner;
- (9) name and contact information of any possible innocent owner claimant;
- (10) name and contact information of any possible secured interest holder;
- (11) the type and quantity of the controlled substance involved, if applicable; and
- (12) other relevant information.

D. The report described in paragraph A shall identify the alleged criminal offense that was the basis for the seizure and describe how the property was used in committing the offense or derived from it.

OPTIONAL PROVISION #2

100:XXY Probable cause hearing

Likely insert after 100:16

- A. Unless waived under paragraph E, within thirty (30) days of a seizure, a hearing must be scheduled in the court with final jurisdiction over the property seized or the underlying criminal offense, to determine whether, by a preponderance of the evidence, the proceeds, property, or other assets are the proceeds or an instrumentality of the alleged underlying crime.

- B. One or more of the law enforcement officers who made the seizure shall testify under oath regarding the facts and circumstances which established probable cause for the seizure.

- C. At least ten days prior to the hearing, the state shall provide to the defendant information required in section 100:XXX (C) and (D);

- D. The state has the burden of proving by a preponderance of the evidence that probable cause existed for the seizure and underlying criminal offense. If the court determines that probable cause did not exist for the seizure, all proceeds, property, or other assets seized must be returned to the lawful owner within five days of the court's order. If the court determines there was probable cause for the seizure, the property is subject to forfeiture proceedings pursuant to the provisions of this chapter.

- E. A defendant may waive a hearing pursuant to this section by submitting a written pleading or affidavit to the court or in person before the court. The court will inform any defendant who waives a hearing in person about the consequences of the waiver.

- F. The failure of a secured interest holder or innocent owner to appear at the probable cause hearing described in paragraph A does not preclude the secured interest holder or innocent owner from seeking relief under this chapter.