

2019 -- S 0229

=====
LC000854
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

—————
A N A C T

RELATING TO CRIMINAL PROCEDURE -- ASSET FORFEITURE

Introduced By: Senators Metts, Cano, Quezada, Goodwin, and Crowley

Date Introduced: January 31, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 33

4 ASSET FORFEITURE PROCESS AND PROPERTY RIGHT PRESERVATION ACT

5 **12-33-1. Title.**

6 This act shall be known and may be cited as the "Asset Forfeiture Process and Property
7 Right Preservation Act."

8 **12-33-2. Definitions.**

9 As used in this chapter, the terms defined in this section have the following meanings:

10 (1) "Abandoned property" means personal property left by an owner who intentionally
11 relinquishes all rights to its control. Failure to make a claim to the seizing agency within one year
12 of the date of seizure shall be considered adequate evidence of abandonment. Real property may
13 not be abandoned.

14 (2) "Actual knowledge" means direct and clear awareness of information, a fact, or a
15 condition.

16 (3) "Adoptive seizure" means a seizure of property for which all of the pre-seizure
17 activity and related investigations are performed by the state or local seizing agency, and
18 thereafter a request is made to the federal government for adoption. There must be a state
19 violation and a federal basis for forfeiture in order for the seizure to be an adoptive seizure. A

1 seizure resulting from a joint investigation or task force case is not an adoptive seizure.

2 (4) "Contraband" means goods that are unlawful to possess, including scheduled drugs
3 without a valid prescription.

4 (5) "Conveyance" means a device used for transportation and includes a motor vehicle,
5 trailer, snowmobile, airplane, and vessel, and any equipment attached to it. The term does not
6 include property that is stolen or taken in violation of the law.

7 (6) "Instrumentality" means property otherwise lawful to possess that is used in the
8 furtherance or commission of an offense of a law subject to forfeiture. An "instrumentality"
9 includes, but is not limited to, land, buildings, a container, a conveyance, equipment, materials,
10 products, a tool, a computer, computer software, a telecommunications device, a firearm or
11 ammunition.

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

14 (8) "Law subject to forfeiture" means a state law that carries a felony penalty and that
15 explicitly includes forfeiture as a punishment or sanction for the offense.

16 (9) "Proceeds" means money, securities, negotiable instruments or other means of
17 exchange obtained by the sale of property.

18 **12-33-3. Purpose.**

19 This purpose of this chapter is to:

20 (1) Deter criminal activity by reducing its economic incentives;

21 (2) Increase the pecuniary loss from criminal activity;

22 (3) Protect against the wrongful forfeiture of property; and

23 (4) Ensure that only criminal forfeiture is allowed in this state.

24 **12-33-4. Criminal forfeiture – Property subject to forfeiture.**

25 (a) When a person is convicted of violating a law subject to forfeiture, a prosecutor
26 having jurisdiction over a law subject to forfeiture has authority to pursue forfeiture. The court,
27 consistent with this chapter, may order the person to forfeit:

28 (1) Proceeds the person derived from the commission of the crime;

29 (2) Property directly traceable to proceeds derived from the commission of the crime; and

30 (3) Instrumentalities the person used in the commission of the crime.

31 (b) Property subject to forfeiture is limited to land, buildings, containers, conveyances,
32 equipment, materials, products, money, securities, negotiable instruments, ammunition, firearms,
33 and ammunition and firearm accessories. Mere presence or possession of U.S. currency, prepaid
34 debit credit card, or alternative forms or methods of store of U.S. currency, without other indicia,

1 is insufficient probable cause for seizure.

2 **12-33-5. Exemptions.**

3 Homesteaded real property, a motor vehicle of less than ten thousand dollars (\$10,000) in
4 market value, and U.S. currency totaling one thousand dollars (\$1,000) or less are exempt from
5 forfeiture.

6 **12-33-6. Contraband.**

7 No property right exists in contraband which is subject to seizure and shall be disposed of
8 according to appropriate state law applicable thereto. Contraband is not subject to forfeiture
9 pursuant to this chapter.

10 **12-33-7. Conviction required – Standard of proof.**

11 (a) Property may be forfeited only if:

12 (1) The offense is a felony under state law and subject to forfeiture;

13 (2) The offense is established by proof of a criminal conviction; and

14 (3) The state establishes that the property is forfeitable under §§ 12-33-3 through 12-33-5
15 by clear and convincing evidence.

16 (b) Nothing herein prevents property from being forfeited by plea agreement approved by
17 the presiding criminal court.

18 (c) The court may waive the conviction requirement if the prosecuting authority shows by
19 clear and convincing evidence that the defendant:

20 (1) Died;

21 (2) Was deported by the U.S. government;

22 (3) Is granted immunity or reduced punishment in exchange for testifying or assisting a
23 law enforcement investigation or prosecution and has agreed to forfeiture as a component of that
24 grant or reduction;

25 (4) Fled the jurisdiction after being arrested, charged with a crime that includes the
26 forfeiture of property, and released on bail; or

27 (5) Abandoned the property.

28 Notwithstanding the prosecuting authority's motion for a waiver, the property remains
29 subject to claims by innocent owners, creditors, and other third parties pursuant to this chapter.

30 (d) Property that either is seized from a person who flees the jurisdiction or is abandoned
31 shall be delivered to the state treasurer within thirty (30) days without further forfeiture-related
32 litigation. The state treasurer shall dispose of all non-currency property. The sale proceeds and
33 any currency seized from a person who flees the jurisdiction or abandons the currency shall be
34 deposited into the state's general fund.

1 (e) Asset forfeiture for civil violations shall not be permitted under any state or local law
2 or administrative rule.

3 (f) The court shall resolve any ambiguity in this chapter relating to the state taking
4 property through asset forfeiture in favor of the property owner.

5 (g) If a court determines that a person opposing forfeiture is financially unable to obtain
6 representation by counsel, the court, at the request of the person, shall ensure that the person is
7 represented by an attorney at the state's expense. The attorney shall submit a statement of
8 reasonable fees and costs to the court in a manner directed by the court.

9 **12-33-8. Substitution of assets.**

10 Upon the state's motion following conviction, the court may order the forfeiture of
11 substitute property owned by the defendant up to the value of unreachable property that is beyond
12 the court's jurisdiction or cannot be located through due diligence only if the state proves by a
13 preponderance of the evidence that the defendant intentionally transferred, sold, or deposited
14 property with a third party to avoid forfeiture.

15 **12-33-9. Exclusivity – No additional remedies.**

16 This chapter shall establish the exclusive process governing forfeitures in the state of
17 Rhode Island and supersedes any conflicting provisions in law. The state may not seek personal
18 money judgments or other remedies not provided for in this chapter.

19 **12-33-10. No joint and several liability.**

20 A defendant is not jointly and severally liable for forfeiture awards owed by other
21 defendants. When ownership is unclear, a court may order each defendant to forfeit property on a
22 pro rata basis or by another means the court finds equitable.

23 **12-33-11. Seizure of personal property with process.**

24 At the request of the state and, at any time, a court may issue an ex parte preliminary
25 order to attach, seize or secure personal property for which forfeiture is sought and to provide for
26 its custody. Application, issuance, execution, and return are subject to state statute or court rules.

27 **12-33-12. Seizure of personal property without process.**

28 Personal property subject to forfeiture may be seized at any time without a court order if:

29 (1) The seizure of personal property is incident to a lawful arrest or a search lawfully
30 conducted;

31 (2) The personal property subject to seizure has been the subject of a prior judgment in
32 favor of the state; or

33 (3) The state has probable cause to believe that the delay occasioned by the necessity to
34 obtain process would result in the removal or destruction of the personal property and that the

1 personal property is forfeitable under this chapter.

2 (4) Mere presence or possession of United States currency, debit cards or credit cards,
3 without other indicia of a crime that includes the forfeiture of property, is insufficient probable
4 cause for seizure of United States currency, debit cards or credit cards.

5 **12-33-13. Seizure of real property with process.**

6 (a) Seizure of real property requires a court order. A court may issue an order to seize or
7 secure real property for which forfeiture is sought only after proper notice to property owners and
8 an opportunity for a contested hearing approved by the court to determine the sufficiency of
9 probable cause for the seizure.

10 (b) Nothing in this section prohibits the prosecuting authority from seeking a lis pendens
11 or restraining order to hinder the sale or destruction of the real property.

12 (c) Application, issuance, execution, and return of any order are subject to applicable
13 state law.

14 **12-33-14. Receipt, storage, and records.**

15 (a) When property is seized, the law enforcement officer shall give an itemized receipt to
16 the person possessing the property; or in the absence of any person, leave a receipt in the place
17 where the property was found, if reasonably possible.

18 (b) When property is seized, the state shall use reasonable diligence to secure the
19 property and prevent waste.

20 (c) Any entity having custody of seized property that is subject to forfeiture shall
21 maintain the following records:

22 (1) The exact kinds, quantities, and forms of the property;

23 (2) The date and from whom it received the property;

24 (3) The violation of law that subjected the property to seizure;

25 (4) The liens against the seized property;

26 (5) The make, model, and serial number of each seized vehicle or firearm;

27 (6) To whom and when the notice of forfeiture was given;

28 (7) To whom it delivered the property; and

29 (8) The date and manner of destruction or disposition of the property.

30 (d) The records required under subsection (c) of this section are public records and
31 subject to the requirements of chapter 2 of title 38 (access to public records).

32 (e) The general treasurer shall establish and maintain a tracking system and searchable
33 public website that includes the following information about property seized and forfeited under
34 state law and under any agreement with the federal government.

- 1 (1) Name of the law enforcement agency that seized the property;
- 2 (2) Date the property was seized;
- 3 (3) Type of property seized, including year, make, model and serial number, as
4 applicable;
- 5 (4) Location of the seizure: home; business; traffic stop including street name and traffic
6 direction where seizure occurred, such as eastbound, westbound, southbound or northbound;
- 7 (5) Estimated value of the seizure;
- 8 (6) Criminal offense alleged that led to the seizure (include under state or federal law);
- 9 (7) Crime for which suspect was charged (include under state or federal law);
- 10 (8) Criminal case number;
- 11 (9) Outcome of related criminal action, such as whether: no charges were brought,
12 charges dropped, a plea bargain was reached, a conviction was obtained or an acquittal was
13 issued;
- 14 (10) If forfeiture not processed under state law, reason for the federal transfer: adoption
15 or joint task force;
- 16 (11) Forfeiture case number;
- 17 (12) If a property owner filed a claim or counterclaim, information as to who filed the
18 claim including, but not limited to, the:
19 (i) Suspect;
20 (ii) Innocent owner;
21 (iii) Joint owner; or
22 (iv) Third-party owner;
- 23 (13) Type of forfeiture procedure: criminal forfeiture, civil-administrative forfeiture or
24 civil-judicial forfeiture;
- 25 (14) Whether the property owner was represented by an attorney in the forfeiture case;
- 26 (15) Date of forfeiture decision;
- 27 (16) Total administrative and other expenses deducted as part of the forfeiture process;
- 28 (17) Net amount received from the forfeiture;
- 29 (18) Disposition of property following seizure, such as whether the property was:
30 (i) Returned to the owner;
31 (ii) Partially returned to owner;
32 (iii) Destroyed;
33 (iv) Sold after forfeiture; or
34 (v) Retained after forfeiture by law enforcement;

1 (19) Date of forfeiture decision; and
2 (20) Whether the seizure was an adoptive seizure.
3 (f) The general treasurer shall also establish and maintain a searchable public website that
4 includes:
5 (1) The total value of seized and forfeited property held by each law enforcement agency
6 at the end of the reporting period; and
7 (2) The total amount of funds expended, in each of the categories delineated in §§ 12-33-
8 23(c) and 12-33-23(d).
9 The general treasurer may require information not specified in this section also be
10 reported.
11 (g) The law enforcement agency that seizes property and prosecutors that litigate related
12 criminal cases and forfeiture proceedings shall update the general treasurer's website with the
13 information required by this section at the end of the month following each seizure of property.
14 The commander of a multijurisdictional task force may appoint one agency to report its seizures.
15 If an agency has made no seizures during the previous year, a null report shall be filed by the
16 agency specifying that it did not engage in seizures or forfeitures under this title during the
17 reporting period.
18 (h) The law enforcement agency that expends forfeiture-related proceeds shall update the
19 general treasurer's website with the information required under this section within thirty (30) days
20 after the end of the fiscal year. The commander of a multijurisdictional task force may appoint
21 one agency to report its expenditures.
22 (i) The general treasurer is hereby authorized and empowered to develop a standard form,
23 webpage, process, and deadlines for electronic data entry for submission of seizure data,
24 forfeiture data and expenditures of proceeds by law enforcement agencies.
25 (j) The state auditor shall perform annually a financial audit under the generally accepted
26 auditing standards of records related to inventory of seized property and expenditures of
27 forfeiture proceeds. A copy of the final audit report shall be submitted to the general treasurer no
28 later than ninety (90) days after the end of the fiscal year and shall be made public.
29 (k) The general treasurer, one hundred twenty (120) days after the close of the fiscal year,
30 shall submit to the speaker of the house of representatives, president of the senate, attorney
31 general, and governor a written report summarizing activity in the state, for the preceding fiscal
32 year, the type, approximate value, and disposition of the property seized and the amount of any
33 proceeds received or expended at the state and local levels. The report shall provide a categorized
34 accounting of all proceeds expended and shall also be made available on the general treasurer's

1 website.

2 (l) The general treasurer shall include in its aggregate report information on law
3 enforcement agencies not in compliance with this chapter and shall order the state to withhold
4 payment of any funds to those agencies until compliance is achieved.

5 (m) The general treasurer may recoup its operational costs by charging a fee to law
6 enforcement agencies that engage in seizures or forfeitures during the reporting period. Each law
7 enforcement agency may use forfeiture proceeds to pay the cost of compiling and reporting data
8 under this chapter, including any fee imposed by the general treasurer.

9 (n) The data and reports compiled and prepared under this chapter about completed
10 forfeitures are public information under the state's access to public records act and are not
11 exempted from disclosure by § 38-2-2(4)(D) relating to criminal records or § 38-2-2(4)(E)
12 relating to litigation records.

13 (o) The general treasurer may adopt rules that are necessary to implement the
14 requirements of this section.

15 **12-33-15. Waiver prohibition.**

16 (a) A law enforcement officer may not request, require, or in any manner induce any
17 person to execute a document purporting to waive, for purpose of forfeiture under this section, the
18 person's interest in or rights to property seized, and provided further.

19 (b) Any document obtained by a law enforcement officer purporting to waive a person's
20 interest in or right to property seized under this chapter is null and void.

21 **12-33-16. Bond by owner for possession/title to property.**

22 (a) If the owner of property that has been seized seeks its possession before the criminal
23 trial, the owner may post bond or give substitute property in an amount equal to the fair market
24 value of the seized property at the time the bond amount is determined. On the posting of bond or
25 the giving of substitute property, the state shall return the seized property to the owner within a
26 reasonable period of time not to exceed three (3) business days. The forfeiture action may then
27 proceed against the bond or substitute property as if it were the seized property.

28 (b) Subsection (a) of this section does not apply to property reasonably held for
29 investigatory purposes.

30 (c) Title to the property subject to forfeiture vests with the state when the court issues a
31 forfeiture judgment and the applicable appeal period runs, and shall relate back to the time when
32 the state seizes or restrains the property.

33 (d) Title to substitute assets vests when the court issues an order forfeiting substitute
34 assets and the applicable appeal period runs.

1 (e) For either subsection (c) or (d) of this section, however, title is subject to claims by
2 third parties adjudicated under this chapter.

3 **12-33-17. Pretrial replevin hearing.**

4 (a) Following the seizure of property, a defendant or a third party has a right to a pretrial
5 hearing to determine the validity of the seizure.

6 (b) The claimant may claim at any time prior to sixty (60) days before trial of the related
7 criminal offense the right to possession of property by motion to the court to issue a writ of
8 replevin.

9 (c) The claimant shall file a motion establishing the validity of the alleged right, title, or
10 interest in the property.

11 (d) The court shall hear the motion no more than thirty (30) days after the motion is filed.

12 (e) The state shall file an answer showing probable cause for the seizure, or cross motions
13 at least ten (10) days before the hearing.

14 (f) Either party may, by agreement or for good cause, move the court for one extension of
15 no more than ten (10) days. Any such motion may be supported by affidavits or other
16 submissions.

17 (g) The court shall issue a writ of replevin if it finds that:

18 (1) It is likely the final judgment will be that the state must return the property to the
19 claimant;

20 (2) The property is the only reasonable means for a defendant to pay for legal
21 representation in the forfeiture or criminal proceeding; or

22 (3) With respect to claims of innocent third parties, there are extenuating circumstances
23 which justify the remission or mitigation of the forfeiture.

24 (h) In lieu of ordering the issuance of the writ, the court may order the state to give
25 security or written assurance for satisfaction of any judgment, including damages, that may be
26 rendered in the action, or order any other relief as may be just.

27 **12-33-18. Discovery.**

28 Discovery by the defendant is subject to the rules of criminal procedure pursuant to title
29 12. Discovery by an innocent owner claimant, lienholder, or other third party is subject to the
30 rules of civil procedure pursuant to title 9.

31 **12-33-19. Trial proceedings.**

32 (a) Within ten (10) days of the seizure of property or, if less, simultaneously upon filing a
33 related criminal charge, the state shall file a forfeiture charge that shall include:

34 (1) A description of the property seized;

1 (2) The date and place of seizure of the property;
2 (3) The name and address of the law enforcement agency making the seizure;
3 (4) The specific statutory and factual grounds for the seizure;
4 (5) Whether the property was seized pursuant to an order of seizure, and if the property
5 was seized without an order of seizure, an affidavit from a law enforcement officer stating the
6 legal and factual grounds why an order of seizure was not required; and

7 (6) The names of persons known to the state who may claim an interest in the property
8 and the basis for each person's alleged interest.

9 (b) The charging document shall be served upon the person from whom the property was
10 seized, the person's attorney of record and the names of all persons known or reasonably believed
11 to claim an interest in the property.

12 (c) The litigation related to the forfeiture of property shall be held in a single proceeding
13 following the trial of the related alleged offense unless the defendant moves to bifurcate the trial.

14 (d) The court, upon motion of a defendant, shall separate the trial of the criminal matter
15 against the defendant from the matter related to the forfeiture of property.

16 (e) The court, upon motion of a defendant, shall allow a defendant to waive the right to
17 trial by jury related to the forfeiture of property while preserving the right to trial by jury of any
18 crime alleged. Notwithstanding the forgoing, the litigation associated with the forfeiture of
19 property of less than ten thousand dollars (\$10,000) in value shall be held before only a judge.

20 (f) If the court bifurcates the jury trial, the court shall first instruct and submit to the jury
21 the issue of the guilt or innocence of the defendant to be determined by proof beyond a
22 reasonable doubt and shall restrict argument of counsel to those issues.

23 (g) If the court bifurcates the jury trial, each party may introduce evidence in the
24 forfeiture phase that was not introduced in the criminal phase.

25 (h) If the jury finds a defendant guilty of the related criminal offense and the defendant
26 did not waive the right to trial by jury related to the forfeiture, the court shall instruct and submit
27 to the jury the issue of the forfeiture. The court may use interrogatories to address the forfeiture
28 issue.

29 **12-33-20. Proportionality hearing.**

30 (a) At any time following determination of forfeiture by the trier of fact, the defendant
31 may petition the court to determine whether the forfeiture is unconstitutionally excessive under
32 the state constitution or federal constitution.

33 (b) The defendant has the burden of establishing the forfeiture is disproportional to the
34 seriousness of the offense by a preponderance of the evidence at a hearing conducted by the court

1 without a jury.

2 (c) In determining whether the forfeiture of an instrumentality is unconstitutionally
3 excessive, the court may consider all relevant factors including:

4 (1) The seriousness of the offense and its impact on the community, including the
5 duration of the activity and the harm caused by the defendant;

6 (2) The extent to which the defendant participated in the offense;

7 (3) The extent to which the property was used in committing the offense;

8 (4) The sentence imposed for committing the crime subject to forfeiture; and

9 (5) Whether the offense was completed or attempted.

10 (d) In determining the value of the instrumentality subject to forfeiture, the court may
11 consider all relevant factors including:

12 (1) The fair market value of the property;

13 (2) The value of the property to the defendant including hardship to the defendant if the
14 forfeiture is realized and if the forfeiture would deprive the property owner of the owner's
15 livelihood; and

16 (3) The hardship from the loss of a primary residence, motor vehicle or other property to
17 the defendant's family members or others if the property is forfeited.

18 (e) The court may not consider the value of the instrumentality to the state in determining
19 whether the forfeiture of an instrumentality is constitutionally excessive.

20 **12-33-21. Secured interest.**

21 (a) Property encumbered by a bona fide security interest is not subject to forfeiture. A
22 person claiming a security interest must establish by a preponderance of the evidence the validity
23 of the interest perfected under state statute or under a lease or rental agreement.

24 (b) The prosecuting authority shall summarily return the seized property to the person
25 with a bona fide security interest. Any value in excess of their secured claim received by the
26 person with the secured interest, which would have otherwise, by law or contract, been returned
27 to the party from whom the property was seized, shall be returned to the state and shall be
28 thereafter subject to the provisions of this chapter in place of the original seized property.

29 (c) If the person alleges a valid security interest but the state seeks to proceed with the
30 forfeiture against the property, the state shall prove by a preponderance of the evidence that the
31 person had actual knowledge of the underlying crime giving rise to the forfeiture.

32 **12-33-22. Innocent owners' claims.**

33 (a) The property of an innocent owner may not be forfeited under any forfeiture statute
34 and the process for determining whether a person is an innocent owner shall be determined by

1 this section.

2 (b) Any person, other than the defendant, asserting a legal interest in property which has
3 been seized or restrained may, at any time up until sixty (60) days after the criminal conviction,
4 petition the court for a hearing to adjudicate the validity of the person's alleged interest in the
5 property. The hearing shall be held before the court alone, without a jury.

6 (c) The petition shall be signed by the petitioner under penalty of perjury and shall set
7 forth the nature and extent of the petitioner's right, title, or interest in the property, the time and
8 circumstances of the petitioner's acquisition of the right, title, or interest in the property, any
9 additional facts supporting the petitioner's claim, and the relief sought.

10 (d) The hearing on the petition shall, to the extent practicable and consistent with the
11 interests of justice, be held within thirty (30) days of the filing of the petition. The court may
12 consolidate the hearing on the petition with a hearing on any other petition filed by a person other
13 than the defendant under this subsection.

14 (e) At the hearing, the petitioner may testify and present evidence and witnesses on the
15 petitioner's own behalf, and cross-examine witnesses who appear at the hearing. The state may
16 present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-
17 examine witnesses who appear at the hearing.

18 (f) The petitioner who has an ownership interest in property subject to forfeiture existing
19 at the time the illegal conduct giving rise to forfeiture occurred and who claims to be an innocent
20 owner bears the burden of proving by clear and convincing evidence that the person has a legal
21 right, title, or interest in the property seized under this chapter.

22 (g) If subsection (f) of this section is satisfied and the state seeks to proceed with the
23 forfeiture against the property, the state shall prove by clear and convincing evidence that the
24 petitioner had actual knowledge of the underlying crime giving rise to the forfeiture.

25 (h) A petitioner who acquired an ownership interest in property subject to forfeiture after
26 the commission of a crime giving rise to the forfeiture and who claims to be an innocent owner
27 bears the burden of proving by clear and convincing evidence that the person has legal right, title,
28 or interest in the property seized under this chapter.

29 (i) If subsection (h) of this section is satisfied and the state seeks to proceed with the
30 forfeiture against the property, the state shall prove by clear and convincing evidence that at the
31 time the petitioner acquired the property the person:

32 (1) Had actual knowledge that the property was subject to forfeiture; or

33 (2) Was not a bona fide purchaser without notice of any defect in title and for valuable
34 consideration.

1 (j) If the state fails to meet its burden in subsections (g) or (i) of this section, the court
2 shall find that the petitioner is an innocent owner and shall order the state to relinquish all claims
3 of title to the property.

4 (k) The defendant or convicted offender may invoke the right against self-incrimination
5 or the marital privilege during the forfeiture-related stage of the prosecution and the trier of fact at
6 the hearing may draw an adverse inference from the invocation of the right or privilege.

7 **12-33-23. Appeal.**

8 A party to forfeiture litigation may appeal the district court's decision regarding the
9 seizure, on an interlocutory basis, or forfeiture of property under this chapter to the superior court
10 within sixty (60) days of a decision or entry of judgement.

11 **12-33-24. Disposition of property and proceeds.**

12 (a) At any time when unclaimed property or contraband held for evidentiary purposes is
13 no longer needed for that purpose, the court may order it be delivered to the state treasurer within
14 thirty (30) days of the order, or, in the case of contraband, be destroyed within thirty (30) days of
15 the order.

16 (b) All remaining property aside from United States currency or stolen property which is
17 to be returned to its rightful owner shall be sold, subsequent to reasonable public notice, by public
18 auction, or, if auction is not possible, in a commercially reasonable manner approved by the
19 court.

20 (c) Proceeds seized and proceeds from the sale of forfeited assets may be distributed only
21 following a court order. The court shall order the funds be used to pay, in order of priority, for the
22 following purposes:

23 (1) Storage and sale expenses;

24 (2) Satisfaction of valid liens against the property;

25 (3) Restitution ordered to the victim of the criminal offense and the return of stolen
26 property;

27 (4) Upon motion of the seizing agency, reimbursement of investigation costs excluding
28 salaries that the law enforcement agency incurred in the seizure of the assets subject to the
29 forfeiture action;

30 (5) Court-ordered child support obligations;

31 (6) Claims for compensation by the defendant's employees; and

32 (7) Claims for compensation by the defendant's unsecured creditors.

33 (d) All remaining funds must be deposited into the state's treasury and credited to the
34 general fund.

1 **12-33-25. Prohibition on retaining property – Sale restrictions.**

2 No law enforcement agency may retain forfeited or abandoned property of the agency for
3 its own use or sell it directly or indirectly to any employee of the agency, to a person related to an
4 employee by blood or marriage, or to another law enforcement agency.

5 **12-33-26. Return of property, damages, and costs.**

6 (a) The state shall return property to the owner within a reasonable period of time not to
7 exceed three (3) business days after a court finds that:

8 (1) The owner had a bona fide security interest;

9 (2) The owner was an innocent owner;

10 (3) Charges against the owner were dismissed; or

11 (4) The owner was found not guilty of the criminal charge that is the basis for the
12 forfeiture action.

13 (b) If property returned under subsection (a) of this section has been damaged, the owner
14 may make a claim in district court for the damages to the seized property against the agency that
15 seized the property.

16 (c) The state is responsible for any storage fees and related costs applicable to property
17 returned under subsection (a) of this section.

18 **12-33-27. Adoption – Joint taskforces – Receipt of payment of forfeiture proceeds**
19 **from the federal government.**

20 (a) No state or municipal law enforcement agency or prosecuting authority may enter into
21 an agreement to transfer or refer seized property to a federal agency directly, indirectly, by
22 adoption, through an intergovernmental joint taskforce or by other means for the purposes of
23 forfeiture litigation unless the seized property includes United States currency in excess of one
24 hundred thousand dollars (\$100,000).

25 (b) All state or municipal law enforcement agencies shall refer seized property to the
26 appropriate state or municipal prosecuting authority for forfeiture litigation under this chapter
27 unless the seized property includes United States currency in excess of one hundred thousand
28 dollars (\$100,000). If seized property includes United States currency in excess of one hundred
29 thousand dollars (\$100,000), the state or municipal law enforcement agency has the option but is
30 not required to refer or transfer the seized property to a federal agency for forfeiture litigation
31 under federal law.

32 (c) Nothing in subsection (a) or (b) of this section shall be construed to restrict state or
33 municipal law enforcement agencies from collaborating with a federal agency to seize contraband
34 or property that the law enforcement agency has probable cause to believe is the proceeds or

1 instruments of a crime through an intergovernmental joint taskforce.

2 (d) All funds paid by the federal government must be deposited into the state's treasury.

3 The state shall credit:

4 (1) The state government unit involved with the federal government sufficiently to
5 reimburse it for investigation costs, excluding salaries, that the state government unit incurred
6 related to the seizure of the assets subject to the forfeiture action; and

7 (2) The remainder to the general fund.

8 (e) No unit of state government may accept from the federal government any
9 instrumentality or payment of proceeds not permitted by subsection (c) of this section.

10 (f) The applicable state government unit shall report all transfers to the federal
11 government of an investigation or criminal proceeding that involves forfeiture per the reporting
12 requirements of this chapter.

13 (g) Any taxpayer has standing to challenge in court the receipt of any proceeds or
14 instrumentality by a state government unit from the federal government contrary to subsections
15 (d) and (e) of this section. If a complainant shall prevail they may make claim to the court for
16 reasonable attorneys' fees and other litigation costs incurred.

17 **12-33-28. Attorneys' fees.**

18 (a) In any forfeiture proceeding under this chapter in which the claimant prevails, the
19 state is liable for:

20 (1) Reasonable attorneys' fees and other litigation costs reasonably incurred by the
21 claimant;

22 (2) Post judgment interest; and

23 (3) In cases involving currency, other negotiable instruments, or the proceeds of an
24 interlocutory sale:

25 (i) Interest actually paid to the state from the date of seizure of the property that resulted
26 from the investment of the property in an interest-bearing account or instrument; and

27 (ii) An imputed amount of interest that the currency, instruments, or proceeds would have
28 earned at the rate applicable to the thirty (30) day U.S. Treasury Bill, for any period during which
29 no interest was paid (not including any period when the property reasonably was in use as
30 evidence in an official proceeding or in conducting scientific tests for the purpose of collecting
31 evidence), commencing fifteen (15) days after the property was seized by a law enforcement
32 agency.

33 **12-33-29. Disposing of property of a person deported.**

34 (a) This section provides procedures for disposing of property when the owner is

1 deported from the United States to a foreign country.

2 (b) If the owner of property is deported following:

3 (1) A conviction for a violation of a state law that is subject to forfeiture; and

4 (2) The property is found to be an instrumentality or proceeds of the violation of that state
5 law, the court shall enter an order disposing of the property in accordance with this chapter.

6 (c) If the owner of property is deported, however:

7 (1) The owner is not convicted of violating a state law that is subject to forfeiture; or

8 (2) The property is not found to be an instrumentality or proceeds from the violation of a
9 state law subject to forfeiture for which the owner of the property is convicted, the property shall
10 be returned to the next of kin of the person deported.

11 (d) If the next of kin is not known or refuses the property, the state shall exercise
12 reasonable diligence to identify persons with a potential interest in the property and make
13 reasonable efforts to give notice to potential claimants. The state shall provide written notice to
14 persons known or alleged to have an interest in the property including, but not limited to, other
15 family members and any person potentially making claims for court-ordered child support,
16 employment-related compensation, or payment of debts. The notice shall also be made by
17 publication in a reasonable geographic area.

18 (e) If no claim is made within sixty (60) days of the notice's publication date, the property
19 shall be deemed abandoned and the court shall enter an order disposing of the property in
20 accordance with this chapter.

21 (f) A person wanting to assert a legal claim to the property shall, within sixty (60) days of
22 the date of the applicable notice in subsection (d) of this section, petition the court for a hearing to
23 adjudicate the validity of the alleged interest in the property. The petition for the hearing must be
24 signed by the claimant under penalty of perjury. It must state the nature and extent of the
25 claimant's right, title, or interest in the property; the time and circumstances of the claimant's
26 acquisition of the right, title, or interest; and any additional facts supporting the claim and the
27 relief sought.

28 (g) The court shall schedule a hearing as soon as practicable to determine if the claimant
29 has a legal right, title or interest in the property or is a bona fide purchaser for value of the legal
30 right, title or interest in the property.

31 **12-33-30. Penalty for violations.**

32 (a) Any person acting under color of law, official title, or position who takes any action
33 intending to conceal, transfer, withhold, retain, divert, or otherwise prevent any proceeds,
34 conveyances, real property, or any things of value forfeited under the law of the state or the

1 United States from being applied, deposited, used, or returned to the owner in accordance with
2 this chapter is subject to a civil penalty in an amount of three (3) times the value of the forfeited
3 property concealed, transferred, withheld, retained, or diverted.

4 (b) Any taxpayer to the state has standing to challenge in superior court any action
5 contrary to the provisions of this chapter. If a complainant shall prevail they may make claim to
6 the court for reasonable attorneys' fees and other litigation costs incurred.

7 **12-33-31. Preemption.**

8 This chapter preempts laws by municipal or other governments in the state which
9 regulate or impose civil and criminal forfeiture. Except for federal forfeitures consistent with
10 applicable law, forfeiture may occur only pursuant to an explicit grant of authority in state law,
11 and therefore any ordinance enacted by a municipality or other unit of government authorizing
12 forfeiture is not valid.

13 **12-33-32. Severability.**

14 If any provision of this chapter or the application of it to any person or circumstances is
15 held invalid, that invalidity shall not affect other provisions or applications of the chapter which
16 can be given effect without the invalid provisions or application, and to this end the provisions of
17 this chapter are declared to be severable.

18 SECTION 2. Section 21-28-5.04 of the General Laws in Chapter 21-28 entitled "Uniform
19 Controlled Substances Act" is hereby amended to read as follows:

20 **21-28-5.04. Forfeiture of property and money.**

21 (a) Any property, real or personal, including, but not limited to, vessels, vehicles, or
22 aircraft, and money or negotiable instruments, securities, or other things of value or any property
23 constituting, or derived from any proceeds, furnished, or intended to be furnished, by any person
24 for the transportation of, or in exchange for, a controlled substance and that has been, or is being
25 used, in violation of § 21-28-4.01(a) or 21-28-4.01(b) or in, upon, or by means of which any
26 violation of §§ 21-28-4.01(a) or 21-28-4.01(b) or §§ 21-28-4.01.1 or 21-28-4.01.2 or 21-28-4.08
27 has taken, or is taking place, and all real property including any right, title, and interest in the
28 whole of any lot or tract of land and any appurtenances or improvements that is used in the
29 commission of a violation of §§ 21-28-4.01(a) or 21-28-4.01(b) or §§ 21-28-4.01.1 or 21-28-
30 4.01.2 or 21-28-4.08, or that was purchased with funds obtained as a result of the commission of
31 a violation of §§ 21-28-4.01(a) or §§ 21-28-4.01(b) or §§ 21-28-4.01.1 or 21-28-4.01.2 or 21-28-
32 4.08, shall be subject to seizure and forfeiture pursuant to chapter 33 of title 12. ~~seized and~~
33 ~~forfeited; provided that no property or money, as enumerated in this subsection, used by any~~
34 ~~person shall be forfeited under the provisions of this chapter unless it shall appear that the owner~~

1 ~~of the property or money had knowledge, actual or constructive, and was a consenting party to the~~
2 ~~alleged illegal act. All moneys, coin and currency, found in close proximity to forfeitable~~
3 ~~controlled substances, to forfeitable drug manufacturing or distributing paraphernalia, or to~~
4 ~~forfeitable records of the importation, manufacture, or distribution of controlled substances, are~~
5 ~~presumed to be unlawfully furnished in exchange for a controlled substance or used in violation~~
6 ~~of this chapter. The burden of proof is upon claimants of the property to rebut this presumption.~~

7 ~~(b) Property taken or detained under this section shall not be repleviable, but shall be~~
8 ~~deemed to be in the custody of the law enforcement agency making the seizure and whenever~~
9 ~~property or money is forfeited under this chapter it shall be utilized as follows:~~

10 ~~(1) Where the seized property is a vessel, vehicle, aircraft, or other personal property it~~
11 ~~may be retained and used by the law enforcement agency that seized the property where the use~~
12 ~~of the property is reasonably related to the law enforcement duties of the seizing agency. If the~~
13 ~~seized property is a motor vehicle that is inappropriate for use by the law enforcement agency due~~
14 ~~to style, size, or color, the seizing agency shall be allowed to apply the proceeds of sale or the~~
15 ~~trade-in value of the vehicle towards the purchase of an appropriate vehicle for use in activities~~
16 ~~reasonably related to law enforcement duties.~~

17 ~~(2) The law enforcement agency may sell any forfeited property not required by this~~
18 ~~chapter to be destroyed and not harmful to the public. The proceeds from the sale are to be~~
19 ~~distributed in accordance with subdivision (3) of this subsection.~~

20 ~~(3) As to the proceeds from the sale of seized property as referred to in subdivision (2) of~~
21 ~~this subsection, and as to moneys, coin and currency, negotiable instruments, securities, or other~~
22 ~~things of value as referred to in subsection (a) of this section, the distribution shall be as follows:~~

23 ~~(i) (A) All proceeds of the forfeiture of real or personal property shall be distributed as~~
24 ~~follows: All costs of advertising administrative forfeitures shall first be deducted from the amount~~
25 ~~forfeited. Of the remainder, twenty percent (20%) of the proceeds shall be provided to the~~
26 ~~attorney general's department to be used for further drug related law enforcement activities~~
27 ~~including, but not limited to, investigations, prosecutions, and the administration of this chapter;~~
28 ~~seventy percent (70%) of the proceeds shall be divided among the state and local law~~
29 ~~enforcement agencies proportionately based upon their contribution to the investigation of the~~
30 ~~criminal activity related to the asset being forfeited; and ten percent (10%) of the proceeds shall~~
31 ~~be provided to the department of health for distribution to substance abuse treatment programs.~~

32 ~~(B) The law enforcement agencies involved in the investigation, with the assistance of the~~
33 ~~attorney general, shall by agreement determine the respective proportionate share to be received~~
34 ~~by each agency. If the agencies are unable to reach agreement, application shall be made by one~~

1 ~~or more of the agencies involved to the presiding justice of the superior court who shall determine~~
2 ~~the respective proportionate share attributable to each law enforcement agency. The proceeds~~
3 ~~from all forfeitures shall be held by the general treasurer in a separate account until such time as~~
4 ~~an allocation is determined by agreement of the agencies or by the presiding justice. It shall be the~~
5 ~~duty and responsibility of the general treasurer to disburse the allocated funds from the separate~~
6 ~~account to the respective law enforcement agencies.~~

7 (ii) ~~Each state or local law enforcement agency shall be entitled to keep the forfeited~~
8 ~~money or the proceeds from sales of forfeited property. The funds shall be used for law~~
9 ~~enforcement purposes and investigations of violations of this chapter. The funds received by a~~
10 ~~state law enforcement agency shall be maintained in a separate account by the general treasurer.~~
11 ~~The funds received by a local law enforcement agency shall be maintained in a separate account~~
12 ~~by the local agency's city or town treasurer.~~

13 (c) (1) ~~There is established in the state's treasury a special fund to be known as the asset~~
14 ~~forfeiture fund in which shall be deposited the excess proceeds of forfeitures arising out of~~
15 ~~criminal acts occurring before July 1, 1987. The asset forfeiture fund shall be used to fund drug-~~
16 ~~related law enforcement activity and the treatment and rehabilitation of victims of drug abuse.~~
17 ~~The fund shall be administered through the office of the general treasurer. The presiding justice of~~
18 ~~the superior court shall have the authority to determine the feasibility and amount of disbursement~~
19 ~~to those state or local law enforcement agencies that have made application.~~

20 (2) ~~Upon the application of any law enforcement agency of the state of Rhode Island,~~
21 ~~when a special need exists concerning the enforcement of the provisions of this chapter, the~~
22 ~~attorney general, or his or her designee, may apply to the presiding justice of the superior court~~
23 ~~for the release from the general treasury of sums of money. When the presiding justice upon~~
24 ~~consideration of the reasons set forth by that agency deems them to be reasonable and necessary~~
25 ~~to the accomplishment of a goal within the powers and duties of that law enforcement agency, he~~
26 ~~or she may issue an order ex parte providing for the release of the funds.~~

27 (d) ~~Each law enforcement agency making any seizure(s) that result(s) in a forfeiture~~
28 ~~pursuant to this section shall certify and file with the state treasurer between January 1 and~~
29 ~~January 30 an annual report detailing the property or money forfeited during the previous~~
30 ~~calendar year and the use or disposition of the property or money. The report shall be made in the~~
31 ~~form and manner as may be provided or specified by the treasurer and these annual law~~
32 ~~enforcement agency reports shall be provided to the local governmental body governing the~~
33 ~~agency and to the house and senate judiciary committees.~~

34 (e) ~~Any law enforcement agency whose duty it is to enforce the laws of this state relating~~

1 ~~to controlled substances is empowered to authorize designated officers or agents to carry out the~~
2 ~~seizure provisions of this chapter. It shall be the duty of any officer or agent authorized or~~
3 ~~designated, or authorized by law, whenever he or she shall discover any property or monies that~~
4 ~~have been, or are being, used in violation of any of the provisions of this chapter, or in, upon, or~~
5 ~~by means of which any violation of this chapter has taken or is taking place, to seize the property~~
6 ~~or monies and to place it in the custody of the person as may be authorized or designated for that~~
7 ~~purpose by the respective law enforcement agency pursuant to those provisions.~~

8 (f) ~~For purposes of this section and § 30-14-2 only, the Rhode Island national guard shall~~
9 ~~be deemed a law enforcement agency eligible to participate in the forfeiture of money and assets~~
10 ~~seized through counterdrug operations in which members of the guard support federal, state or~~
11 ~~municipal efforts.~~

12 SECTION 3. Sections 21-28-5.04.1 and 21-28-5.04.2 of the General Laws in Chapter 21-
13 28 entitled "Uniform Controlled Substances Act" are hereby repealed.

14 ~~**21-28-5.04.1. Criminal forfeiture procedures.**~~

15 (a) ~~Any criminal complaint, information, or indictment charging one or more covered~~
16 ~~offenses shall set forth with reasonable particularity property that the attorney general seeks to~~
17 ~~forfeit pursuant to this section.~~

18 (b) ~~The court may, upon application of the attorney general, enter a restraining order or~~
19 ~~injunction, require any person claiming any interest in the subject property to execute a~~
20 ~~satisfactory performance bond to the state, or take any other action to preserve the availability of~~
21 ~~property subject to forfeiture described in § 21-28-5.04, whether prior or subsequent to the filing~~
22 ~~of a complaint, indictment, or information. Written notice and an opportunity for a hearing shall~~
23 ~~be afforded to persons appearing to have an interest in the property, the hearing to be limited to~~
24 ~~the issues of whether:~~

25 (1) ~~There is a substantial probability that the state will prevail on the issue of forfeiture~~
26 ~~and that failure to enter the order will result in the property being destroyed, conveyed,~~
27 ~~encumbered or further encumbered, removed from the jurisdiction of the court, or made~~
28 ~~unavailable for forfeitures; and~~

29 (2) ~~The need to preserve the availability of property through the entry of the requested~~
30 ~~order outweighs the hardship on any party against whom the order is to be entered.~~

31 (c) (1) ~~A temporary restraining order under this section may be entered upon application~~
32 ~~of the attorney general without notice or opportunity for a hearing when a complaint, information,~~
33 ~~or indictment has not yet been filed with respect to the property if the attorney general~~
34 ~~demonstrates that there is probable cause to believe that the property with respect to which the~~

1 ~~order is sought would, in the event of conviction, be subject to forfeiture under § 21-28-5.04 and~~
2 ~~that provision of notice will jeopardize the availability of the property for forfeiture. The~~
3 ~~temporary restraining order shall expire within ten (10) days of the date on which it is entered~~
4 ~~unless extended for good cause shown or unless the party against whom it is entered consents to~~
5 ~~an extension for a longer period.~~

6 ~~(2) A hearing requested by any party in interest concerning an order entered under this~~
7 ~~subsection shall be held at the earliest possible time and prior to the expiration of the temporary~~
8 ~~order.~~

9 ~~(3) The court may receive and consider, at the hearing held pursuant to this subsection,~~
10 ~~evidence and information that would be inadmissible in court.~~

11 ~~(d) Upon conviction of a person for a covered offense the court shall enter a judgment of~~
12 ~~forfeiture of the property described in § 21-28-5.04 to the state and shall also authorize the~~
13 ~~attorney general to seize all property ordered forfeited upon any terms and conditions that the~~
14 ~~court shall deem proper. Following the entry of an order declaring the property forfeited, the~~
15 ~~court may, upon application of the attorney general, enter any appropriate restraining orders or~~
16 ~~injunctions, require the execution of satisfactory performance bonds, appoint receivers,~~
17 ~~conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of~~
18 ~~the state in the property ordered forfeited. Any income accruing to or derived from an enterprise~~
19 ~~or an interest in an enterprise that has been ordered forfeited under this section may be used to~~
20 ~~offset ordinary and necessary expenses of the enterprise as required by law or that are necessary~~
21 ~~to protect the interest of the state or innocent third parties.~~

22 ~~(e) All right, title, and interest in property described in § 21-28-5.04 vests in the state~~
23 ~~upon the commission of the act giving rise to forfeiture under this chapter. Any property that is~~
24 ~~subsequently transferred to any person may be the subject of a special verdict of forfeiture and~~
25 ~~after this shall be ordered forfeited to the state, unless the transferee establishes in a hearing~~
26 ~~pursuant to subsection (f) of this section that he or she is a bona fide purchaser for value of the~~
27 ~~property who at the time of purchase was reasonably without cause to believe that the property~~
28 ~~was subject for forfeiture.~~

29 ~~(f) Procedures subsequent to the special verdict of forfeiture shall be as follows:~~

30 ~~(1) Following the entry of an order of forfeiture under this section, the state shall publish~~
31 ~~notice of the order and of its intent to dispose of the property once per week for at least three (3)~~
32 ~~weeks in the manner that the attorney general may provide by regulation. The attorney general~~
33 ~~shall also, to the extent practicable, provide written notice to all parties known to have an interest~~
34 ~~in the property and all parties whose identity is reasonably subject to discovery and who may~~

1 ~~have an interest in the forfeited property.~~

2 ~~(2) Any person, other than the defendant, asserting any interest in property that has been~~
3 ~~ordered forfeited to the state pursuant to this section may, within one hundred eighty (180) days~~
4 ~~of the final publication of notice or his or her receipt of notice under subdivision (1) of this~~
5 ~~subsection, whichever is earlier, petition the court for a hearing to adjudicate the validity of his or~~
6 ~~her alleged interest in the property.~~

7 ~~(3) The petition shall be signed by the petitioner under penalty of perjury and shall set~~
8 ~~forth the nature and extent of the petitioner's right, title, or interest in the property; and additional~~
9 ~~facts supporting the petitioner's claim; and the relief sought.~~

10 ~~(4) The hearing on the petition shall, to the extent practicable and consistent with the~~
11 ~~interest of justice, be held within thirty (30) days of the filing of the petition. The court may~~
12 ~~consolidate the hearing on the petition with a hearing on any other petition filed by a person other~~
13 ~~than the defendant and concerning the same property.~~

14 ~~(5) At a hearing, the petitioner may testify and present evidence and witnesses on his own~~
15 ~~behalf, and cross-examine witnesses who appear at the hearing. The state may present evidence~~
16 ~~and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses~~
17 ~~who appear at the hearing. In addition to testimony and evidence presented at the hearing, the~~
18 ~~court shall consider the relevant portions of the record of the criminal case that resulted in the~~
19 ~~order of forfeiture.~~

20 ~~(6) In accordance with its findings at the hearing, the court shall amend the order of~~
21 ~~forfeiture if it determines that the petitioner has established by a preponderance of the evidence~~
22 ~~that:~~

23 ~~(i) The petitioner has a right, title, or interest in the property, and the right, title or interest~~
24 ~~was vested in the petitioner rather than the defendant or was superior to any right, title, or interest~~
25 ~~of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the~~
26 ~~property under this section; or~~

27 ~~(ii) The petitioner is a bona fide purchaser for value of any right, title, or interest in the~~
28 ~~property and was at the time of purchase reasonably without cause to believe that the property~~
29 ~~was subject to forfeiture under this section.~~

30 ~~(7) Following the court's disposition of all petitions filed under this section, or if no such~~
31 ~~petitions are filed, following the expiration of the period provided in § 21-28-5.04 for the filing of~~
32 ~~the petitions, the state shall have clear title to property that is the subject of the order of forfeiture~~
33 ~~and shall transfer good and sufficient title to any subsequent purchaser, transferee, or fund as~~
34 ~~provided in this chapter.~~

1 ~~(8) Except as provided in this section, no party claiming an interest in property subject to~~
2 ~~forfeiture under this section may:~~

3 ~~(i) Intervene in a trial or appeal of a criminal case involving the forfeiture of the property;~~

4 ~~or~~

5 ~~(ii) Commence any action against the state concerning the validity of the alleged interest.~~

6 ~~(g) In order to facilitate the identification or location of property declared forfeited and to~~
7 ~~facilitate the disposition of petitions filed pursuant to § 21-28-5.04 after the entry of an order~~
8 ~~declaring forfeited property to the state, the court may, upon application of the attorney general,~~
9 ~~order that the testimony of any witness relating to the property forfeited be taken by deposition~~
10 ~~and that any designated book, paper, document, record, recording (electronic or otherwise), or~~
11 ~~other material not privileged, be produced at the same time and place, in the same manner as~~
12 ~~provided for the taking of depositions under the Rules of Civil Procedure.~~

13 ~~(h) If any of the property described in § 21-28-5.04: (1) cannot be located; (2) has been~~
14 ~~transferred to, sold to or deposited with a third party; (3) has been placed beyond the jurisdiction~~
15 ~~of the court; (4) has been substantially diminished in value by any act or omission of the~~
16 ~~defendant; or (5) has been commingled with other property which cannot be divided without~~
17 ~~difficulty; the court shall order the forfeiture of any other property of the defendant up to the~~
18 ~~value of the subject property.~~

19 ~~(i) The court shall have jurisdiction to enter orders as provided in this section without~~
20 ~~regard to the location of any property that may be subject to forfeiture under this section or that~~
21 ~~has been ordered forfeited under this section.~~

22 ~~**21-28-5.04.2. Civil forfeiture procedure.**~~

23 ~~(a) In addition to or in lieu of the criminal forfeiture procedures of this chapter, any~~
24 ~~property described in § 21-28-5.04 except as designated in subsection (b) of this section, is~~
25 ~~subject to civil forfeiture to the state. Civil forfeiture proceedings shall be in the nature of an~~
26 ~~action in rem and shall be governed by the civil rules for in rem proceedings.~~

27 ~~(b) All property described in § 21-28-5.04 is subject to civil forfeiture except that:~~

28 ~~(1) No conveyances used by any person as a common carrier in the transaction of~~
29 ~~business as a common carrier shall be forfeited under the provisions of this section unless it~~
30 ~~appears that the owner or other person in charge of the conveyance was a consenting party or~~
31 ~~privity to the covered offense charged;~~

32 ~~(2) No conveyance shall be forfeited under the provisions of this section by reason of any~~
33 ~~act or omission established by the owner of it to have been committed or omitted by any person~~
34 ~~other than the owner while the conveyance was unlawfully in the possession of a person other~~

1 ~~than the owner in violation of the criminal laws of this state or of the United States; and~~

2 ~~(3) No property shall be forfeited under this section, to the extent of the interest of an~~

3 ~~owner, by reason of any act or omission established by that owner to have been committed or~~

4 ~~omitted without knowledge or consent of that owner.~~

5 ~~(c) Property subject to forfeiture under this section may be seized by a law enforcement~~

6 ~~officer:~~

7 ~~(1) Upon process issued pursuant to the Rules of Civil Procedure applicable to in rem~~

8 ~~proceedings;~~

9 ~~(2) Upon process issued pursuant to a legally authorized search warrant; or~~

10 ~~(3) Without court process when:~~

11 ~~(i) The seizure is incident to a lawful arrest or search;~~

12 ~~(ii) The property subject to seizure has been the subject of a prior judgment in favor of~~

13 ~~the state in a controlled substance act;~~

14 ~~(iii) The law enforcement officer has probable cause to believe that the property is~~

15 ~~directly or indirectly dangerous to health or safety; or~~

16 ~~(iv) The law enforcement officer has probable cause to believe that the property is~~

17 ~~forfeitable under § 21-28-5.04.~~

18 ~~(d) In the event of a seizure under § 21-28-5.04 the property shall not be subject to~~

19 ~~sequestration or attachment but is deemed to be in the custody of the law enforcement agency~~

20 ~~making the seizure, subject only to the order of the court. When property is seized under this~~

21 ~~section, pending forfeiture and final disposition, the law enforcement agency making the seizure~~

22 ~~may:~~

23 ~~(1) Place the property under seal;~~

24 ~~(2) Remove the property to a storage area for safekeeping;~~

25 ~~(3) Remove the property to a place designated by the court; or~~

26 ~~(4) Request another agency authorized by law to take custody of the property and remove~~

27 ~~it to an appropriate location within the jurisdiction of the court.~~

28 ~~(e) As soon as practicable after seizure, the seizing agency shall conduct an inventory~~

29 ~~upon and cause the appraisal of the property seized.~~

30 ~~(f) In the event of a seizure under this section, the seizing agency shall within thirty (30)~~

31 ~~days send to the attorney general a written request for forfeiture, which shall include a statement~~

32 ~~of all facts and circumstances including the names of all witnesses then known, the appraised~~

33 ~~value of the property and the statutory provision relied upon for forfeiture.~~

34 ~~(g) The attorney general shall immediately examine the facts and applicable law of the~~

1 ~~cases referred to him or her pursuant to this section, and if it is probable that the property is~~
2 ~~subject to forfeiture shall immediately cause the initiation of administrative or judicial~~
3 ~~proceedings against the property. If, upon inquiry and examination, the attorney general~~
4 ~~determines that those proceedings probably cannot be sustained or that justice does not require~~
5 ~~the institution of the proceedings, he or she shall make a written report of those findings, transmit~~
6 ~~a copy to the seizing agency, and immediately authorize the release of the property.~~

7 ~~(h) If the value of any personal property seized does not exceed twenty thousand dollars~~
8 ~~(\$20,000), the attorney general may forfeit the property administratively in the following manner:~~

9 ~~(1) The attorney general shall provide notice of intention to forfeit property~~
10 ~~administratively by publication in a local newspaper of general circulation, one day per week for~~
11 ~~three (3) consecutive weeks.~~

12 ~~(2) In addition, to the extent practicable, the attorney general shall provide notice by~~
13 ~~registered mail of intent to forfeit the property administratively to all known interested parties and~~
14 ~~all parties whose identity is reasonably subject to discovery who may have an interest in the~~
15 ~~property seized.~~

16 ~~(3) Notice by publication and by mail shall include:~~

17 ~~(i) A description of the property;~~

18 ~~(ii) The appraised value of the property;~~

19 ~~(iii) The date and place of seizure;~~

20 ~~(iv) The violation of law alleged against the subject property;~~

21 ~~(v) The instructions for filing claim and cost bond or a petition for remission or~~
22 ~~mitigation; and~~

23 ~~(vi) A notice that the property will be forfeited to the state if a petition for remission or~~
24 ~~mitigation or a claim and cost bond has not been timely filed.~~

25 ~~(4) Persons claiming an interest in the property may file petitions for remission or~~
26 ~~mitigation of forfeiture or a claim and cost bond with the attorney general within thirty (30) days~~
27 ~~of the final notice by publication or receipt of written notice, whichever is earlier.~~

28 ~~(5) The attorney general shall inquire into the facts and circumstances surrounding~~
29 ~~petitions for remission or mitigation of forfeiture.~~

30 ~~(6) The attorney general shall provide the seizing agency and the petitioner a written~~
31 ~~decision on each petition for remission or mitigation within sixty (60) days of receipt of the~~
32 ~~petition unless the circumstances of the case require additional time, in which case the attorney~~
33 ~~general shall notify the petitioner in writing and with specificity within the sixty (60) day period~~
34 ~~that the circumstances of the case require additional time and further notify the petitioner of the~~

1 ~~expected decision date.~~

2 ~~(7) Any person claiming seized property under this subsection may institute de novo~~
3 ~~judicial review of the seizure and proposed forfeiture by timely filing with the attorney general a~~
4 ~~claim and bond to the state in the amount of ten percent (10%) of the appraised value of the~~
5 ~~property or in the penal sum of two hundred fifty dollars (\$250), whichever is greater, with~~
6 ~~sureties to be approved by the attorney general, upon condition that in the case of forfeiture the~~
7 ~~claimant shall pay all costs and expenses of the proceedings at the discretion of the court. Upon~~
8 ~~receipt of the claim and bond, or if he or she elects, the attorney general shall file with the court a~~
9 ~~complaint in rem in accordance with the procedures set forth in this section. Any funds received~~
10 ~~by the attorney general as cost bonds shall be placed in an escrow account pending final~~
11 ~~disposition of the case.~~

12 ~~(8) If no petitions or claims with bonds are timely filed, the attorney general shall prepare~~
13 ~~a written declaration of forfeiture of the subject property to the state and dispose of the property~~
14 ~~in accordance with this chapter.~~

15 ~~(9) If the petition is denied, the attorney general shall prepare a written declaration of~~
16 ~~forfeiture to the state and dispose of the property in accordance with this chapter and the attorney~~
17 ~~general's regulations, if any, pursuant to this chapter.~~

18 ~~(10) A written declaration of forfeiture signed by the attorney general pursuant to this~~
19 ~~chapter shall be deemed to provide good and sufficient title to the forfeited property.~~

20 ~~(i) If the value of any personal property seized exceeds twenty thousand dollars~~
21 ~~(\$20,000), the attorney general shall file a complaint in rem against the property within twenty~~
22 ~~(20) days of the receipt of the report referred to in subsection (f) of this section and after this~~
23 ~~provide notice of intention to forfeit by publication in a local newspaper of general circulation for~~
24 ~~a period of at least once per week for three (3) consecutive weeks. The notice shall include:~~

- 25 ~~(1) A description of the property;~~
- 26 ~~(2) The appraised value of the property;~~
- 27 ~~(3) The date and place of seizure;~~
- 28 ~~(4) The violation of law alleged against the subject property.~~

29 ~~(j) (1) The case may be tried by a jury, if in the superior court, upon the request of either~~
30 ~~party, otherwise by the court, and the cause of forfeiture alleged being proved, the court which~~
31 ~~shall try the case shall enter upon judgment for the forfeiture and disposition of the property~~
32 ~~according to law.~~

33 ~~(2) An appeal may be claimed by either party from any judgment of forfeiture rendered~~
34 ~~by the district court, to be taken in like manner as by defendants in criminal cases within the~~

1 ~~jurisdiction of the district court to try and determine, to the superior court for the same county in~~
2 ~~which the division of the district court rendering judgment is situated and like proceedings may~~
3 ~~be had therein as in cases of informations for forfeitures originally filed in that court.~~

4 ~~(3) The judgment of the superior court shall be final in all cases of the forfeitures,~~
5 ~~whether originally commenced in that court or brought there by appeal, unless a new trial is~~
6 ~~ordered, for cause shown by the supreme court.~~

7 ~~(k) The in rem action shall be brought in the district court if the value of the property~~
8 ~~seized is less than two hundred fifty thousand dollars (\$250,000), otherwise the in rem action~~
9 ~~shall be brought in the superior court. The attorney general shall also, to the extent practicable,~~
10 ~~provide written notice of the action in rem to all known interested parties and all persons whose~~
11 ~~identity is reasonably subject to discovery who may have an interest in the property.~~

12 ~~(l) Persons claiming an interest in the property may file claims against the property within~~
13 ~~thirty (30) days of the final notice by publication or receipt of written notice, whichever is earlier.~~
14 ~~The claims shall be filed and adjudicated in the manner set forth for petitions in criminal~~
15 ~~proceedings in § 21-28-5.04.1(f).~~

16 ~~(m) If the property sought to be forfeited is real property, the attorney general shall file a~~
17 ~~complaint in rem in the superior court against the property. In addition to providing notice as~~
18 ~~required by this chapter, the attorney general shall file a lis pendens with respect to the property~~
19 ~~with the recorder of deeds in the city or town in which the property is located.~~

20 ~~(n) Upon order of the court forfeiting the subject property to the state, the state shall have~~
21 ~~clear title to the forfeited property, and the attorney general may transfer good and sufficient title~~
22 ~~to any subsequent purchaser or transferee. Title to the forfeited property shall be deemed to have~~
23 ~~vested in the state upon the commission of the act giving rise to the forfeiture under this chapter.~~

24 ~~(o) Upon entry of judgment for the claimant in any proceeding to forfeit property under~~
25 ~~this chapter, the property shall immediately be returned to the claimant. If it appears that there~~
26 ~~was reasonable cause for the seizure or the filing of the complaint, the court shall cause a proper~~
27 ~~certificate of that to be entered, and the claimant shall not, in that case, be entitled to costs or~~
28 ~~damages, nor shall the person or agency who made the seizure, nor the attorney general nor the~~
29 ~~prosecutor, be liable to suit or judgment on account of the seizure, suit, or prosecution.~~

30 ~~(p) In any action brought under this section, the state shall have the initial burden of~~
31 ~~showing the existence of probable cause for seizure or arrest of the property. Upon that showing~~
32 ~~by the state, the claimant shall have the burden of showing by a preponderance of evidence that~~
33 ~~the property was not subject to forfeiture under this section.~~

34

1 SECTION 4. This act shall take effect upon passage.

=====
LC000854
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE -- ASSET FORFEITURE

1 This act would provide for standardized procedures for asset forfeitures across all crimes,
2 simplify procedures, and addresses counterproductive incentives that distort policing priorities,
3 while protecting the powers of law enforcement to seize property suspected of being associated
4 with crime and preserving prosecutors' ability to charge and prosecute suspected criminals, and
5 would ensure that those individuals convicted of a crime do not benefit from the fruits of their
6 crime. The act would also provide legislators with the information necessary for basic oversight
7 of law enforcement agencies who seize and forfeit private property under state and federal
8 forfeiture laws.

9 This act would take effect upon passage.

=====
LC000854
=====