

Civil Asset Forfeiture Reform

The Act ends the practice of civil forfeiture but preserves criminal forfeiture, in which property is subject to forfeit if the owner is convicted of a crime. It requires proceeds to go to the state's general fund, not to individual law enforcement agencies. The Act amends and revises forfeiture procedures when the State seeks to administer pecuniary punishment on a person convicted of a crime in instances where the State can also prove that property was used in or acquired from criminal activity.

Submitted as:

New Mexico

[HB 560](#)

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Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Purpose.*]
2 A. The purposes of the [Forfeiture] Act are to:
3 1) make uniform the standards and procedures for the seizure and forfeiture of property
4 subject to forfeiture;
5 2) protect the constitutional rights of persons whose property is subject to forfeiture and of
6 innocent owners holding interests in property subject to forfeiture;
7 3) deter criminal activity by reducing its economic incentives;
8 4) increase the pecuniary loss from criminal activity;
9 5) protect against the wrongful forfeiture of property; and
10 6) ensure that only criminal forfeiture is allowed in this state.
11 B. The [Forfeiture] Act:
12 (1) applies to seizures, forfeitures and dispositions of property subject to forfeiture pursuant
13 to laws that specifically apply the [Forfeiture] Act; and
14 (2) does not apply to contraband, which is subject to seizure pursuant to applicable state
15 laws, but is not subject to forfeiture pursuant to the [Forfeiture] Act.
16
17 Section 2. [*Definitions*]
18 A. "abandoned property":
19 (1) means personal property the rights to which and the control of which an owner has
20 intentionally relinquished; and
21 (1) does not mean real property;
22 B. "actual knowledge" means a direct and clear awareness of information, a fact or a condition;
23 C. "contraband" means goods that may not be lawfully imported, exported or possessed,
24 including drugs that are listed in Schedule I, II, III, IV or V of the Controlled Substances Act
25 and that are possessed without a valid prescription;
26 D. "conveyance" means a device used for transportation and:
27 (1) includes a motor vehicle, trailer, snowmobile, airplane, vessel and any equipment
28 attached to the conveyance; but
29 (2) does not include property that is stolen or taken in violation of a law;

- 1 E. “conviction” or “convicted” means that a person has been found guilty of a crime in a trial
2 court whether by a plea of guilty or nolo contendere or otherwise and whether the sentence is
3 deferred or suspended;
- 4 F. “crime” means a violation of a criminal statute for which property of the offender is subject
5 to seizure and forfeiture;
- 6 G. “instrumentality” means all property that is otherwise lawful to possess that is used in the
7 furtherance or commission of an offense to which forfeiture applies and includes land, a
8 building, a container, a conveyance, equipment, materials, a product, a computer, computer
9 software, a telecommunications device, a firearm, ammunition, a tool, money, a security and
10 a negotiable instrument and other devices used for exchange of property;
- 11 H. “law enforcement agency” means the employer of a law enforcement officer that is
12 authorized to seize or has seized property pursuant to the [Forfeiture] Act;
- 13 I. “law enforcement officer” means:
14 (1) a state or municipal police officer, county sheriff, deputy sheriff, conservation officer,
15 motor transportation enforcement officer or other state employee authorized by state law
16 to enforce criminal statutes; but
17 (2) does not mean a correctional officer;
- 18 J. “owner” means a person who has a legal or equitable ownership interest in property;
- 19 K. “property” means tangible or intangible personal property or real property;
- 20 L. “property subject to forfeiture” means property or an instrumentality described and declared
21 to be subject to forfeiture by the [Forfeiture] Act or a state law outside of the [Forfeiture]
22 Act; and
- 23 M. “secured party” means a person with a security or other protected interest in property,
24 whether the interest arose by mortgage, security agreement, lien, lease or otherwise; the
25 purpose of which interest is to secure the payment of a debt or protect a potential debt owed
26 to the secured party.

27
28 Section 3 [*Forfeiture—Conviction Required—Seizure of Property—With Process—Without*
29 *Process*]

- 30 A. A person's property is subject to forfeiture if:
31 (1) the person was arrested for an offense to which forfeiture applies;
32 (2) the person is convicted by a criminal court of the offense; and
33 (3) the state establishes by clear and convincing evidence that the property is subject to
34 forfeiture as provided in Subsection B of this section.
- 35 B. Following a person's conviction for an offense to which forfeiture applies, a court may order
36 the person to forfeit:
37 (1) property the person acquired through commission of the offense;
38 (2) property directly traceable to property acquired through the commission of the offense;
39 and
40 (3) any instrumentality the person used in the commission of the offense.
- 41 C. Nothing in this section shall prevent property from being forfeited by the terms of a plea
42 agreement that is approved by a court or by other agreement of the parties to a criminal
43 proceeding.
- 44 D. Subject to the provisions of [Insert citation], at any time, at the request of the state, a court
45 may issue an ex parte preliminary order to seize property that is subject to forfeiture and for
46 which forfeiture is sought and to provide for the custody of the property. The execution on

1 the order to seize the property and the return of the property, if applicable, are subject to the
2 [Forfeiture] Act and other applicable state laws. Before issuing an order pursuant to this
3 subsection, the court shall make a determination that:

4 (1) there is a substantial probability that:

5 (a) the property is subject to forfeiture;

6 (b) the state will prevail on the issue of forfeiture; and

7 (c) failure to enter the order will result in the property being destroyed, removed from the
8 state or otherwise made unavailable for forfeiture; and

9 (2) the need to preserve the availability of the property through the entry of the requested
10 order outweighs the hardship to the owner and other parties known to be claiming
11 interests in the property.

12 E. Property subject to forfeiture may be seized at any time, without a prior court order, if:

13 (1) the seizure is incident to a lawful arrest for a crime or a search lawfully conducted
14 pursuant to a search warrant and the law enforcement officer making the arrest or

15 executing the search has probable cause to believe the property is subject to forfeiture and
16 that the subject of the arrest or search warrant is an owner of the property;

17 (2) the property subject to seizure is the subject of a previous judgment in favor of the state;
18 or

19 (3) the law enforcement officer making the seizure has probable cause to believe the property
20 is subject to forfeiture and that the delay occasioned by the need to obtain a court order
21 would result in the removal or destruction of the property or otherwise frustrate the
22 seizure.

23
24 Section 4. [*Receipt for Seized Property—Replevin Hearing*]

25 A. When a law enforcement officer seizes property that is subject to forfeiture, the officer shall
26 provide an itemized receipt to the person possessing the property or, in the absence of a
27 person to whom the receipt could be given, shall leave the receipt in the place where the
28 property was found, if possible.

29 B. Following the seizure of property, the defendant in the related criminal matter or another
30 person who claims an interest in seized property may, at any time before sixty days prior to a
31 related criminal trial, claim an interest in seized property by a motion to the court to issue a
32 writ of replevin. A motion filed pursuant to this section shall include facts to support the
33 person's alleged interest in the property.

34 C. A person who makes a timely motion pursuant to this section shall have a right to a hearing
35 on the motion before the resolution of any related criminal matter or forfeiture proceeding
36 and within thirty days of the date on which the motion is filed.

37 D. At least ten days before a hearing on a motion filed pursuant to this section, the state shall
38 file an answer or responsive motion that shows probable cause for the seizure.

39 E. A court shall grant a claimant's motion if the court finds that:

40 (1) it is likely that the final judgment will require the state to return the property to the
41 claimant;

42 (2) the property is not reasonably required to be held for investigatory reasons; or

43 (3) the property is the only reasonable means for a defendant to pay for legal representation
44 in a related criminal or forfeiture proceeding.

45 F. In its discretion, the court may order the return of funds or property sufficient to obtain legal
46 counsel but less than the total amount seized, and it may require an accounting.

- 1 G. In lieu of ordering the issuance of the writ of replevin, a court may order:
2 (1) the state to give security or written assurance for satisfaction of any judgment, including
3 damages, that may be rendered in a related forfeiture action; or
4 (2) any other relief the court deems to be just.
5

6 Section 5. [*Complaint of Forfeiture—Service of Process.*]

- 7 A. Within thirty days of making a seizure of property or simultaneously upon filing a related
8 criminal indictment, the state shall file a complaint of ancillary forfeiture proceedings or
9 return the property to the person from whom it was seized. A complaint of ancillary
10 forfeiture proceedings shall include:
11 (1) a description of the property seized;
12 (2) the date and place of seizure of the property;
13 (3) the name and address of the law enforcement agency making the seizure;
14 (4) the specific statutory and factual grounds for the seizure;
15 (5) whether the property was seized pursuant to an order of seizure, and if the property was
16 seized without an order of seizure, an affidavit from a law enforcement officer stating the
17 legal and factual grounds why an order of seizure was not required; and
18 (6) in the complaint caption and in the complaint, the names of persons known to the state
19 who may claim an interest in the property and the basis for each person's alleged interest.
20 B. The complaint shall be served upon the person from whom the property was seized, the
21 person's attorney of record and all persons known or reasonably believed by the state to claim
22 an interest in the property. A copy of the complaint shall also be published at least three
23 times in a newspaper of general circulation in the district of the court having jurisdiction or
24 on the sunshine portal until the forfeiture proceeding is resolved.
25

26 Section 6. [*Forfeiture Proceedings—Determination—Substitution of Property—*
27 *Constitutionality—Appeal.*]

- 28 A. A person who claims an interest in seized property shall file an answer to the complaint of
29 forfeiture within thirty days of the date of service of the complaint. The answer shall include
30 facts to support the claimant's alleged interest in the property.
31 B. The district courts have jurisdiction over forfeiture proceedings, and venue for a forfeiture
32 proceeding is in the same court in which venue lies for the criminal matter related to the
33 seized property.
34 C. The forfeiture proceeding shall begin after the conclusion of the trial for the related criminal
35 matter in an ancillary proceeding that relates to a defendant's property before the same judge
36 and jury, if applicable, and the court, and the jury, if applicable, may consider the forfeiture
37 of property seized from other persons at the same time or in a later proceeding. If the
38 criminal defendant in the related criminal matter is represented by the public defender
39 department, the chief public defender or the district public defender may authorize
40 department representation of the defendant in the forfeiture proceeding.
41 D. Discovery conducted in an ancillary forfeiture proceeding is subject to the rules of criminal
42 procedure.
43 E. An ancillary forfeiture proceeding that relates to the forfeiture of property valued at less than
44 twenty thousand dollars (\$20,000) shall be held before a judge only.
45 F. If the state fails to prove, by clear and convincing evidence, that a person whose property is
46 alleged to be subject to forfeiture is an owner of the property:

- 1 (1) the forfeiture proceeding shall be dismissed and the property shall be delivered to the
- 2 owner, unless the owner's possession of the property is illegal; and
- 3 (2) the owner shall not be subject to any charges by the state for storage of the property or
- 4 expenses incurred in the preservation of the property.
- 5 G. The court shall enter a judgment of forfeiture and the seized property shall be forfeited to the
- 6 state if the state proves by clear and convincing evidence that:
- 7 (1) the property is subject to forfeiture;
- 8 (2) the criminal prosecution of the owner of the seized property resulted in a conviction; and
- 9 (3) the value of the property to be forfeited does not unreasonably exceed:
- 10 (a) the pecuniary gain derived or sought to be derived by the crime;
- 11 (b) the pecuniary loss caused or sought to be caused by the crime; or
- 12 (c) the value of the convicted owner's interest in the property.
- 13 H. A court shall not accept a plea agreement or other arrangement by which a defendant
- 14 contributes or donates property to a person, charity or other organization in full or partial
- 15 fulfillment of responsibility established in the court's proceeding.
- 16 I. Following a person's conviction, the state may make a motion for forfeiture of substitute
- 17 property owned by the person that is equal to but does not exceed the value of property that is
- 18 subject to forfeiture but that the state is unable to seize. The court shall order the forfeiture of
- 19 substitute property only if the state proves by a preponderance of the evidence that the person
- 20 intentionally transferred, sold or deposited property with a third party to avoid the court's
- 21 jurisdiction and the forfeiture of the property.
- 22 J. A person is not jointly and severally liable for orders for forfeiture of another person's
- 23 property. When ownership of property is unclear, a court may order each person to forfeit the
- 24 person's property on a pro rata basis or by another means the court deems equitable.
- 25 K. At any time following the conclusion of a forfeiture proceeding, the person whose property
- 26 was forfeited may petition the court to determine whether the forfeiture was
- 27 unconstitutionally excessive pursuant to the state or federal constitution.
- 28 L. At a non-jury hearing on the petition, the petitioner has the burden of establishing by a
- 29 preponderance of the evidence that the forfeiture was grossly disproportional to the
- 30 seriousness of the criminal offense for which the person was convicted.
- 31 M. In determining whether the forfeiture is unconstitutionally excessive, the court may consider
- 32 all relevant factors, including:
- 33 (1) the seriousness of the criminal offense and its impact on the community, the duration of
- 34 the criminal activity and the harm caused by the defendant;
- 35 (2) the extent to which the defendant participated in the offense;
- 36 (3) the extent to which the property was used in committing the offense;
- 37 (4) the sentence imposed for the commission of the crime that relates to the property that is
- 38 subject to forfeiture; and
- 39 (5) whether the criminal offense was completed or attempted.
- 40 N. In determining the value of the property subject to forfeiture, the court may consider relevant
- 41 factors, including the:
- 42 (1) fair market value of the property;
- 43 (2) value of the property to the defendant, including hardship that the defendant will suffer if
- 44 the forfeiture is realized; and hardship from the loss of a primary residence, motor vehicle
- 45 or other property to the defendant's family members or others if the property is forfeited.

- 1 O. The court shall not consider the value of the property to the state when it determines whether
- 2 the forfeiture of property is constitutionally excessive.
- 3 P. A party to a forfeiture proceeding may appeal a district court's decision regarding the seizure,
- 4 forfeiture and distribution of property pursuant to the [Forfeiture] Act.

5
6 Section 7, [*Title to Seized Property—Disposition of Forfeited Property and Proceeds.*]

- 7 A. The state acquires provisional title to seized property at the time the property was used or
- 8 acquired in connection with an offense that subjects the property to forfeiture. Provisional
- 9 title authorizes the state to hold and protect the property. Title to the property shall vest with
- 10 the state when a trier of fact renders a final forfeiture verdict and the title relates back to the
- 11 time when the state acquired provisional title; provided that the title is subject to claims by
- 12 third parties that are adjudicated pursuant to the [Forfeiture] Act.
- 13 B. Unless possession of the property is illegal or a different disposition is specifically provided
- 14 for by law and except as provided in this section, forfeited property that is not currency shall
- 15 be delivered along with any abandoned property to the state treasurer for disposition at a
- 16 public auction. Forfeited currency and all sale proceeds of the sale of forfeited or abandoned
- 17 property shall be deposited in the general fund.
- 18 C. Proceeds from the sale of forfeited property received by the state from another jurisdiction
- 19 shall be deposited in the general fund.
- 20 D. A property interest forfeited to the state pursuant to the [Forfeiture] Act is subject to the
- 21 interest of a secured party unless, in the forfeiture proceeding, the state proves by clear and
- 22 convincing evidence that the secured party had actual knowledge of the crime that relates to
- 23 the seizure of the property.

24
25 Section 8. [*Innocent Owners.*]

- 26 A. The property of an innocent owner, as provided in this section, shall not be forfeited.
- 27 B. A person who claims to be an innocent owner has the burden of production to show that the
- 28 person:
 - 29 (1) holds a legal right, title or interest in the property seized; and
 - 30 (2) held an ownership interest in the seized property at the time the illegal conduct that gave
 - 31 rise to the seizure of the property occurred or was a bona fide purchaser for fair value.
- 32 C. The state shall immediately return property to an established innocent owner who has an
- 33 interest in homesteaded property, a motor vehicle valued at less than ten thousand dollars
- 34 (\$10,000) or a conveyance that is encumbered by a security interest that was perfected
- 35 pursuant to state law or that is subject to a lease or rental agreement, unless the secured party
- 36 or lessor had actual knowledge of the criminal act upon which the forfeiture was based.
- 37 D. If a person establishes that the person is an innocent owner pursuant to [Insert citation] and
- 38 the state pursues a forfeiture proceeding with respect to that person's property, other than
- 39 property described in [Insert citation], to successfully forfeit the property, the state shall
- 40 prove by clear and convincing evidence that the innocent owner had actual knowledge of the
- 41 underlying crime giving rise to the forfeiture.
- 42 E. A person who acquired an ownership interest in property subject to forfeiture after the
- 43 commission of a crime that gave rise to the forfeiture and who claims to be an innocent
- 44 owner has the burden of production to show that the person has legal right, title or interest in
- 45 the property seized under this section.

- 1 F. If a person establishes that the person is an innocent owner as provided in Subsection B of
2 this section and the state pursues a forfeiture proceeding against the person's property, to
3 successfully forfeit the property, the state shall prove by clear and convincing evidence that
4 at the time the person acquired the property, the person:
5 (1) had actual knowledge that the property was subject to forfeiture; or
6 (2) was not a bona fide purchaser who was without notice of any defect in title and who gave
7 valuable consideration.
- 8 G. If the state fails to meet its burdens as provided in Subsections C and D of this section, the
9 court shall find that the person is an innocent owner and shall order the state to relinquish all
10 claims of title to the innocent owner's property.

11
12 Section 9. [*Safekeeping of Seized Property Pending Disposition—Selling or Retaining Seized*
13 *Property Prohibited.*]

- 14 A. Seized currency alleged to be subject to forfeiture shall be deposited with the clerk of the
15 district court in an interest-bearing account.
- 16 B. Seized property other than currency or real property, not required by federal or state law to
17 be destroyed, shall be:
18 (1) placed under seal; and
19 (2) removed to a place designated by the district court; or
20 (3) held in the custody of a law enforcement agency.
- 21 C. Seized property shall be kept by the custodian in a manner to protect it from theft or damage
22 and, if ordered by the district court, insured against those risks.
- 23 D. A law enforcement agency shall not retain forfeited or abandoned property.

24
25 Section 10. [*Reporting.*]

- 26 A. Every law enforcement agency shall prepare an annual report of the agency's seizures and
27 forfeitures conducted pursuant to the [Forfeiture] Act, and seizures and forfeitures conducted
28 pursuant to federal forfeiture law, and the report shall include:
29 (1) the total number of seizures of currency and the total amount of currency seized in each
30 seizure;
31 (2) the total number of seizures of property and the number and types of items seized in each
32 seizure;
33 (3) the market value of each item of property seized; and
34 (4) the total number of occurrences of each class of crime that resulted in the agency's
35 seizure of property.
- 36 B. A law enforcement agency shall submit its annual reports to the department of public safety
37 and to the district attorney's office in the agency's district. An agency that did not engage in
38 seizure or forfeiture pursuant to the [Forfeiture] Act or federal forfeiture law, or both, shall
39 report that fact in its annual report.
- 40 C. The department of public safety shall compile the reports submitted by each law enforcement
41 agency and issue an aggregate report of all forfeitures in the state.
- 42 D. By April 1 of each year, the department of public safety shall publish on its web site the
43 department's aggregate report and individual law enforcement agency reports submitted for
44 the previous year.

1 Section 11. [*Return of Property—Damages—Costs.*]

- 2 A. A law enforcement agency that holds seized property shall return the seized property to the
3 owner of the property within a reasonable period of time that does not exceed five days after:
4 (1) a court finds that a person had a bona fide security interest in the property;
5 (2) a court finds that the owner was an innocent owner;
6 (3) the acquittal of or dismissal of related criminal charges against the owner of the property;
7 or
8 (4) the disposal of the criminal charge that was the basis of the forfeiture proceedings by
9 nolle prosequi.
- 10 B. A law enforcement agency that holds seized property is responsible for any damages, storage
11 fees and related costs applicable to property that is returned to an owner pursuant to this
12 section.

13
14 Section 12. [*Transfer of Forfeitable Property to the Federal Government.*]

- 15 A. A law enforcement agency shall not directly or indirectly transfer seized property to a federal
16 law enforcement authority or other federal agency unless:
17 (1) the value of the seized property exceeds fifty thousand dollars (\$50,000), excluding the
18 potential value of the sale of contraband; and
19 (2) the law enforcement agency determines that the criminal conduct that gave rise to the
20 seizure is interstate in nature and sufficiently complex to justify the transfer of the
21 property; or
22 (3) the seized property may only be forfeited under federal law.
- 23 B. The law enforcement agency shall not transfer property to the federal government if the
24 transfer would circumvent the protections of the [Forfeiture] Act that would otherwise be
25 available to a putative interest holder in the property.