

REFERENCE TITLE: forfeiture; criminal conviction; procedures; remedies

State of Arizona  
House of Representatives  
Fifty-second Legislature  
Second Regular Session  
2016

## **HB 2369**

Introduced by  
Representatives Thorpe, Barton: Cobb, Finchem, Townsend

### AN ACT

AMENDING SECTIONS 11-584, 12-348, 12-349, 13-2301, 13-2314, 13-2314.01, 13-2314.03, 13-4304, 13-4305, 13-4306 AND 13-4308, ARIZONA REVISED STATUTES; REPEALING SECTION 13-4309, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 39, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 13-4309; AMENDING SECTIONS 13-4310, 13-4311, 13-4312, 13-4314 AND 13-4315, ARIZONA REVISED STATUTES; RELATING TO FORFEITURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 11-584, Arizona Revised Statutes, is amended to  
3 read:  
4 11-584. Public defender; duties; reimbursement  
5 A. The public defender ~~shall~~, on order of the court, **SHALL** defend,  
6 advise and counsel any person who is entitled to counsel as a matter of law  
7 and who is not financially able to employ counsel in the following  
8 proceedings and circumstances:  
9 1. Offenses triable in the superior court or justice courts at all  
10 stages of the proceedings, including the preliminary examination.  
11 2. Extradition hearings.  
12 3. Mental disorder hearings only if appointed by the court under title  
13 36, chapter 5.  
14 4. Involuntary commitment hearings held pursuant to title 36, chapter  
15 18, only if appointed by the court.  
16 5. Involuntary commitment hearings held pursuant to title 36, chapter  
17 37, if appointed by the court as provided in section 36-3704, subsection C  
18 and the board of supervisors has advised the presiding judge of the county  
19 that the public defender is authorized to accept these appointments.  
20 6. Juvenile delinquency and incorrigibility proceedings only if  
21 appointed by the court under section 8-221.  
22 7. Appeals to a higher court or courts.  
23 8. All juvenile proceedings other than delinquency and incorrigibility  
24 proceedings under paragraph 6 of this subsection, including serving as a  
25 guardian ad litem, if appointed by the court pursuant to section 8-221 and  
26 the board of supervisors has advised the presiding judge of the county that  
27 the public defender is authorized to accept these appointments.  
28 9. All mental health hearings regarding release recommendations held  
29 before the psychiatric security review board pursuant to section 13-3994, if  
30 appointed by the court as provided in section 31-502, subsection A, paragraph  
31 8 and the board of supervisors has advised the presiding judge of the  
32 superior court in the county that the public defender is authorized to accept  
33 these appointments.  
34 10. As attorneys in any other proceeding or circumstance in which a  
35 party is entitled to counsel as a matter of law if the court appoints the  
36 public defender and the board of supervisors has advised the presiding judge  
37 of the county that the public defender is authorized to accept these  
38 appointments as specified.  
39 **11. ALL FORFEITURE PROCEEDINGS HELD PURSUANT TO TITLE 13.**  
40 B. The public defender shall perform the following duties:  
41 1. Keep a record of all services rendered by the public defender in  
42 that capacity and file with the board of supervisors an annual report of  
43 those services.

1           2. By December 1 of each year, file with the presiding judge of the  
2 superior court, the chief probation officer and the board of supervisors an  
3 annual report on the average cost of defending a felony case.

4           C. Although the services of the public defender or court appointed  
5 counsel shall be without expense to the defendant, the juvenile, a parent or  
6 any other party, the court may make the following assessments:

7           1. Order an indigent administrative assessment of not more than  
8 twenty-five dollars.

9           2. Order an administrative assessment fee of not more than twenty-five  
10 dollars to be paid by the juvenile or the juvenile's parent or guardian.

11           3. Require that the defendant, including a defendant who is placed on  
12 probation, a juvenile, a parent or any other party who is appointed counsel  
13 under subsection A of this section repay to the county a reasonable amount to  
14 reimburse the county for the cost of the person's legal services.  
15 Reimbursement for legal services in a delinquency, dependency or termination  
16 proceeding shall be ordered pursuant to section 8-221. Reimbursement for  
17 legal services in a guardianship or conservatorship proceeding shall be  
18 ordered pursuant to section 14-5414.

19           D. In determining the amount and method of payment the court shall  
20 take into account the financial resources of the defendant and the nature of  
21 the burden that the payment will impose.

22           E. Assessments collected pursuant to subsection C of this section  
23 shall be paid into the county general fund in the account designed for use  
24 solely by the public defender and court appointed counsel to defray the costs  
25 of public defenders and court appointed counsel. The assessments shall  
26 supplement, not supplant, funding provided by counties for public defense,  
27 legal defense and contract indigent defense counsel in each county.

28           Sec. 2. Section 12-348, Arizona Revised Statutes, is amended to read:

29           12-348. Award of fees and other expenses against the state or a  
30 city, town or county; reduction or denial of award;  
31 application; basis for amount of award; source of  
32 award; definitions

33           A. In addition to any costs that are awarded as prescribed by statute,  
34 a court shall award fees and other expenses to any party other than this  
35 state or a city, town or county that prevails by an adjudication on the  
36 merits in any of the following:

37           1. A civil action brought by this state or a city, town or county  
38 against the party.

39           2. A court proceeding to review a state agency decision pursuant to  
40 chapter 7, article 6 of this title or any other statute authorizing judicial  
41 review of agency, city, town or county decisions.

42           3. A proceeding pursuant to section 41-1034.

43           4. A special action proceeding brought by the party to challenge an  
44 action by this state or a city, town or county against the party.

1           5. An appeal by this state to a court of law from a decision of the  
2 personnel board under title 41, chapter 4, article 6.

3           6. A ~~civil action brought by the party to~~ challenge TO the seizure and  
4 sale of personal property by this state or a city, town or county.

5           B. In addition to any costs that are awarded as prescribed by statute,  
6 except as provided in subsection C of this section, a court may award fees  
7 and other expenses to any party, other than this state or a city, town or  
8 county, that prevails by an adjudication on the merits in an action brought  
9 by the party against this state or a city, town or county challenging:

10           1. The assessment, collection or refund of taxes or in an action  
11 brought by this state or a city, town or county against the party to enforce  
12 the assessment or collection of taxes or the denial of a refund.

13           2. The adequacy or regularity of notice of delinquent taxes.

14           3. The regularity of sales of property for delinquent taxes.

15           C. The court in its discretion may deny the award provided for in this  
16 section or may reduce the award if it finds that any of the following  
17 applies:

18           1. During the course of the proceeding the prevailing party unduly and  
19 unreasonably protracted the final resolution of the matter.

20           2. The reason that the party other than this state or a city, town or  
21 county has prevailed is an intervening change in the applicable law.

22           3. The prevailing party refused an offer of civil settlement that was  
23 at least as favorable to the party as the relief ultimately granted.

24           D. A party may apply pursuant to the applicable procedural rules for  
25 an award of attorney fees and other expenses authorized under this section  
26 and shall include as part of the application evidence of the party's  
27 eligibility for the award and the amount sought, including an itemized  
28 statement from the attorneys and experts stating the actual time expended in  
29 representing the party and the rate at which the fees were computed.

30           E. The court shall base any award of fees as provided in this section  
31 on prevailing market rates for the kind and quality of the services  
32 furnished, except that:

33           1. An expert is not eligible for compensation at a rate in excess of  
34 the highest rate of compensation for experts paid by this state or a city,  
35 town or county except for awards made pursuant to subsection B of this  
36 section.

37           2. Except for awards made pursuant to subsection B of this section,  
38 the award of attorney fees may not exceed the amount that the prevailing  
39 party has paid or has agreed to pay the attorney or a maximum amount of  
40 seventy-five dollars per hour unless the court determines that an increase in  
41 the cost of living or a special factor, such as the limited availability of  
42 qualified attorneys for the proceeding involved, justifies a higher fee.

43           3. For awards made pursuant to subsection B of this section, the award  
44 of attorney fees may not exceed the amount that the prevailing party has paid

1 or agreed to pay the attorney or a maximum amount of three hundred fifty  
2 dollars per hour.

3 4. Except for awards made pursuant to subsection B of this section, an  
4 award of fees against a city, town or county as provided in this section  
5 shall not exceed ten thousand dollars.

6 5. For awards made pursuant to subsection B of this section, an award  
7 of fees against this state or a city, town or county shall not exceed  
8 seventy-five thousand dollars for fees incurred at each level of judicial  
9 appeal.

10 6. For each calendar year beginning from and after December 31, 2015,  
11 the ATTORNEY GENERAL SHALL ADJUST THE income dollar amounts for maximum  
12 awards made pursuant to ~~subsections~~ SUBSECTION B ~~and E~~ of this section ~~shall~~  
13 ~~be adjusted by the attorney general~~ AND PARAGRAPHS 2, 3, 4 AND 5 OF THIS  
14 SUBSECTION according to the average annual change in the metropolitan Phoenix  
15 consumer price index published by the United States bureau of labor  
16 statistics. The revised dollar amounts shall be raised to the nearest whole  
17 dollar. The income dollar amounts may not be revised below the amounts  
18 prescribed in the prior calendar year.

19 F. The particular state agency over which a party prevails shall pay  
20 the fees and expenses awarded as provided in this section from any monies  
21 appropriated to the agency for that purpose. If no agency is involved or if  
22 an agency fails or refuses to pay fees and other expenses within thirty days  
23 after demand by a person who has received an award pursuant to this section,  
24 and if no further review or appeals of the award are pending, the person may  
25 file a claim for the fees and other expenses with the department of  
26 administration, which shall pay the claim within thirty days, in the same  
27 manner as an uninsured property loss under title 41, chapter 3.1, article 1.  
28 If, at the time the agency failed or refused to pay the award, it had  
29 appropriated monies either designated or assignable for the purpose of paying  
30 awards, the legislature shall reduce the agency's operating appropriation for  
31 the following year by the amount of the award and shall appropriate the  
32 amount of the reduction to the department of administration as reimbursement  
33 for the loss.

34 G. A city, town or county shall pay fees and expenses awarded as  
35 provided in this section within thirty days after demand by a party who has  
36 received an award if no further review or appeal of the award is pending.

37 H. This section does not:

38 1. Apply to an action arising from a proceeding before this state or a  
39 city, town or county in which the role of this state or a city, town or  
40 county was to determine the eligibility or entitlement of an individual to a  
41 monetary benefit or its equivalent, to adjudicate a dispute or issue between  
42 private parties or to establish or fix a rate.

43 2. Apply to proceedings brought by this state pursuant to title 13  
44 or 28. THIS PARAGRAPH DOES APPLY TO A FORFEITURE PROCEEDING PURSUANT TO  
45 TITLE 13, CHAPTER 39.



1           3. Unreasonably expands or delays the proceeding.

2           4. Engages in abuse of discovery.

3           B. The court may allocate the payment of attorney fees among the  
4 offending attorneys and parties, jointly or severally, and may assess  
5 separate amounts against an offending attorney or party.

6           C. Attorney fees shall not be assessed if after filing an action a  
7 voluntary dismissal is filed for any claim or defense within a reasonable  
8 time after the attorney or party filing the dismissal knew or reasonably  
9 should have known that the claim or defense was without substantial  
10 justification.

11           D. This section does not apply to the adjudication of civil traffic  
12 violations or to any proceedings brought by this state pursuant to title 13,  
13 EXCEPT FOR A PROCEEDING BROUGHT PURSUANT TO TITLE 13, CHAPTER 39.

14           E. Notwithstanding any other law, this state and political  
15 subdivisions of this state may be awarded attorney fees pursuant to this  
16 section.

17           F. For the purposes of this section, "without substantial  
18 justification" means that the claim or defense is groundless and is not made  
19 in good faith.

20           Sec. 4. Section 13-2301, Arizona Revised Statutes, is amended to read:

21           13-2301. Definitions

22           A. For the purposes of sections 13-2302, 13-2303 and 13-2304:

23           1. "Collect an extension of credit" means to induce in any way any  
24 person to make repayment of that extension.

25           2. "Creditor" means any person making an extension of credit or any  
26 person claiming by, under or through any person making an extension of  
27 credit.

28           3. "Debtor" means any person to whom an extension of credit is made or  
29 any person who guarantees the repayment of an extension of credit, or in any  
30 manner undertakes to indemnify the creditor against loss resulting from the  
31 failure of any person to whom an extension is made to repay the extension.

32           4. "Extend credit" means to make or renew any loan or to enter into  
33 any agreement, tacit or express, whereby the repayment or satisfaction of any  
34 debt or claim, whether acknowledged or disputed, valid or invalid, and  
35 however arising, may or shall be deferred.

36           5. "Extortionate extension of credit" means any extension of credit  
37 with respect to which it is the understanding of the creditor and the debtor  
38 at the time the extension is made that delay in making repayment or failure  
39 to make repayment could result in the use of violence or other criminal means  
40 to cause harm to the person or the reputation or property of any person.

41           6. "Extortionate means" means the use, or an express or implicit  
42 threat of use, of violence or other criminal means to cause harm to the  
43 person or the reputation or property of any person.

44           7. "Repayment of any extension of credit" means the repayment,  
45 satisfaction or discharge in whole or in part of any debt or claim,

1 acknowledged or disputed, valid or invalid, resulting from or in connection  
2 with that extension of credit.

3 B. For the purposes of section 13-2305, 13-2306 or 13-2307:

4 1. "Dealer in property" means a person who buys and sells property as  
5 a business.

6 2. "Stolen property" means property of another as defined in section  
7 13-1801 that has been the subject of any unlawful taking.

8 3. "Traffic" means to sell, transfer, distribute, dispense or  
9 otherwise dispose of stolen property to another person, or to buy, receive,  
10 possess or obtain control of stolen property, with the intent to sell,  
11 transfer, distribute, dispense or otherwise dispose of the property to  
12 another person.

13 C. For the purposes of this chapter:

14 1. "Animal activity" means a commercial enterprise that uses animals  
15 for food, clothing or fiber production, agriculture or biotechnology.

16 2. "Animal facility" means a building or premises where a commercial  
17 activity in which the use of animals is essential takes place, including a  
18 zoo, rodeo, circus, amusement park, hunting preserve and horse and dog event.

19 3. "Animal or ecological terrorism" means any felony in violation of  
20 section 13-2312, subsection B that involves at least three persons acting in  
21 concert, that involves the intentional or knowing infliction of property  
22 damage in an amount of more than ten thousand dollars to the property that is  
23 used by a person for the operation of a lawfully conducted animal activity or  
24 to a commercial enterprise that is engaged in a lawfully operated animal  
25 facility or research facility and that involves either:

26 (a) The use of a deadly weapon or dangerous instrument.

27 (b) The intentional or knowing infliction of serious physical injury  
28 on a person engaged in a lawfully conducted animal activity or participating  
29 in a lawfully conducted animal facility or research facility.

30 4. "Biological agent" means any microorganism, virus, infectious  
31 substance or biological product that may be engineered through biotechnology  
32 or any naturally occurring or bioengineered component of any microorganism,  
33 virus, infectious substance or biological product and that is capable of  
34 causing any of the following:

35 (a) Death, disease or physical injury in a human, animal, plant or  
36 other living organism.

37 (b) The deterioration or contamination of air, food, water, equipment,  
38 supplies or material of any kind.

39 5. "Combination" means persons who collaborate in carrying on or  
40 furthering the activities or purposes of a criminal syndicate even though  
41 such persons may not know each other's identity, membership in the  
42 combination changes from time to time or one or more members may stand in a  
43 wholesaler-retailer or other arm's length relationship with others as to  
44 activities or dealings between or among themselves in an illicit operation.

- 1           6. "Communication service provider" has the same meaning prescribed in  
2 section 13-3001.
- 3           7. "Criminal syndicate" means any combination of persons or  
4 enterprises engaging, or having the purpose of engaging, on a continuing  
5 basis in conduct that violates any one or more provisions of any felony  
6 statute of this state.
- 7           8. "Explosive agent" means an explosive as defined in section 13-3101  
8 and flammable fuels or fire accelerants in amounts over fifty gallons but  
9 excludes:
- 10           (a) Fireworks as defined in section 36-1601.  
11           (b) Firearms.  
12           (c) A propellant actuated device or propellant actuated industrial  
13 tool.  
14           (d) A device that is commercially manufactured primarily for the  
15 purpose of illumination.  
16           (e) A rocket having a propellant charge of less than four ounces.
- 17           9. "Material support or resources" includes money or other financial  
18 securities, financial services, lodging, sustenance, training, safehouses,  
19 false documentation or identification, communications equipment, facilities,  
20 weapons, lethal substances, explosives, personnel, transportation, disguises  
21 and other physical assets but does not include medical assistance, legal  
22 assistance or religious materials.
- 23           10. "Public establishment" means a structure that is owned, leased or  
24 operated by this state or a political subdivision of this state or a health  
25 care institution as defined in section 36-401.
- 26           11. "Research facility" means a laboratory, institution, medical care  
27 facility, government facility, public or private educational institution or  
28 nature preserve at which a scientific test, experiment or investigation  
29 involving the use of animals is lawfully carried out, conducted or attempted.
- 30           12. "Terrorism" means any felony, including any completed or  
31 preparatory offense, that involves the use of a deadly weapon or a weapon of  
32 mass destruction or the intentional or knowing infliction of serious physical  
33 injury with the intent to either:
- 34           (a) Influence the policy or affect the conduct of this state or any of  
35 the political subdivisions, agencies or instrumentalities of this state.  
36           (b) Cause substantial damage to or substantial interruption of public  
37 communications, communication service providers, public transportation,  
38 common carriers, public utilities, public establishments or other public  
39 services.
- 40           13. "Toxin" means the toxic material of plants, animals,  
41 microorganisms, viruses, fungi or infectious substances or a recombinant  
42 molecule, whatever its origin or method of reproduction, including:
- 43           (a) Any poisonous substance or biological product that may be  
44 engineered through biotechnology and that is produced by a living organism.

1 (b) Any poisonous isomer or biological product, homolog or derivative  
2 of such substance.

3 14. "Vector" means a living organism or molecule, including a  
4 recombinant molecule or biological product that may be engineered through  
5 biotechnology, that is capable of carrying a biological agent or toxin to a  
6 host.

7 15. "Weapon of mass destruction" means:

8 (a) Any device or object that is designed or that the person intends  
9 to use to cause multiple deaths or serious physical injuries through the use  
10 of an explosive agent or the release, dissemination or impact of a toxin,  
11 biological agent, poisonous chemical, or its precursor, or any vector.

12 (b) Except as authorized and used in accordance with a license,  
13 registration or exemption by the radiation regulatory agency pursuant to  
14 section 30-672, any device or object that is designed or that the person  
15 intends to use to release radiation or radioactivity at a level that is  
16 dangerous to human life.

17 D. For the purposes of sections 13-2312, 13-2313, 13-2314 and 13-2315,  
18 unless the context otherwise requires:

19 1. "Control", in relation to an enterprise, means the possession of  
20 sufficient means to permit substantial direction over the affairs of an  
21 enterprise and, in relation to property, means to acquire or possess.

22 2. "Enterprise" means any corporation, partnership, association, labor  
23 union or other legal entity or any group of persons associated in fact  
24 although not a legal entity.

25 3. "Financial institution" means any business under the jurisdiction  
26 of the department of financial institutions or a banking or securities  
27 regulatory agency of the United States, a business coming within the  
28 definition of a bank, financial agency or financial institution as prescribed  
29 by 31 United States Code section 5312 or 31 Code of Federal Regulations  
30 section 1010.100 or a business under the jurisdiction of the securities  
31 division of the corporation commission, the state real estate department or  
32 the department of insurance.

33 4. "Racketeering" means any CRIMINAL act, including any preparatory or  
34 completed offense, that ~~is chargeable or indictable~~ RESULTS IN A CONVICTION  
35 under the laws of the state or country in which the CRIMINAL act occurred  
36 and, if the CRIMINAL act occurred in a state or country other than this  
37 state, that would be chargeable or indictable under the laws of this state if  
38 the CRIMINAL act had occurred in this state, and that would be punishable by  
39 imprisonment for more than one year under the laws of this state and, if the  
40 CRIMINAL act occurred in a state or country other than this state, under the  
41 laws of the state or country in which the CRIMINAL act occurred, ~~regardless~~  
42 ~~of whether the act is charged or indicted~~, and the CRIMINAL act involves  
43 either:

44 (a) Terrorism, animal terrorism or ecological terrorism that results  
45 or is intended to result in a risk of serious physical injury or death.

- 1 (b) Any of the following **CRIMINAL** acts if committed for financial  
2 gain:
- 3 (i) Homicide.
  - 4 (ii) Robbery.
  - 5 (iii) Kidnapping.
  - 6 (iv) Forgery.
  - 7 (v) Theft.
  - 8 (vi) Bribery.
  - 9 (vii) Gambling.
  - 10 (viii) Usury.
  - 11 (ix) Extortion.
  - 12 (x) Extortionate extensions of credit.
  - 13 (xi) Prohibited drugs, marijuana or other prohibited chemicals or  
14 substances.
  - 15 (xii) Trafficking in explosives, weapons or stolen property.
  - 16 (xiii) Participating in a criminal syndicate.
  - 17 (xiv) Obstructing or hindering criminal investigations or  
18 prosecutions.
  - 19 (xv) Asserting false claims including, but not limited to, false  
20 claims asserted through fraud or arson.
  - 21 (xvi) Intentional or reckless false statements or publications  
22 concerning land for sale or lease or sale of subdivided lands or sale and  
23 mortgaging of unsubdivided lands.
  - 24 (xvii) Resale of realty with intent to defraud.
  - 25 (xviii) Intentional or reckless fraud in the purchase or sale of  
26 securities.
  - 27 (xix) Intentional or reckless sale of unregistered securities or real  
28 property securities.
  - 29 (xx) A scheme or artifice to defraud.
  - 30 (xxi) Obscenity.
  - 31 (xxii) Sexual exploitation of a minor.
  - 32 (xxiii) Prostitution.
  - 33 (xxiv) Restraint of trade or commerce in violation of section 34-252.
  - 34 (xxv) Terrorism.
  - 35 (xxvi) Money laundering.
  - 36 (xxvii) Obscene or indecent telephone communications to minors for  
37 commercial purposes.
  - 38 (xxviii) Counterfeiting marks as proscribed in section 44-1453.
  - 39 (xxix) Animal terrorism or ecological terrorism.
  - 40 (xxx) Smuggling of human beings.
  - 41 (xxxii) Child prostitution.
  - 42 (xxxiii) Sex trafficking.
  - 43 (xxxiv) Trafficking of persons for forced labor or services.
  - 44 (xxxv) Manufacturing, selling or distributing misbranded drugs in  
45 violation of section 13-3406, subsection A, paragraph 9.

- 1           5. "Records" means any book, paper, writing, computer program, data,  
2 image or information that is collected, recorded, preserved or maintained in  
3 any form of storage medium.
- 4           6. "Remedy racketeering" means to enter a civil judgment pursuant to  
5 this chapter or chapter 39 of this title against property or a person who is  
6 subject to liability, including liability for injury to the state that is  
7 caused by racketeering or by actions in concert with racketeering.
- 8           E. For the purposes of sections 13-2316, 13-2316.01 and 13-2316.02:  
9           1. "Access" means to instruct, communicate with, store data in,  
10 retrieve data from or otherwise make use of any resources of a computer,  
11 computer system or network.
- 12           2. "Access device" means any card, token, code, account number,  
13 electronic serial number, mobile or personal identification number, password,  
14 encryption key, biometric identifier or other means of account access,  
15 including a canceled or revoked access device, that can be used alone or in  
16 conjunction with another access device to obtain money, goods, services,  
17 computer or network access or any other thing of value or that can be used to  
18 initiate a transfer of any thing of value.
- 19           3. "Computer" means an electronic device that performs logic,  
20 arithmetic or memory functions by the manipulations of electronic or magnetic  
21 impulses and includes all input, output, processing, storage, software or  
22 communication facilities that are connected or related to such a device in a  
23 system or network.
- 24           4. "Computer contaminant" means any set of computer instructions that  
25 is designed to modify, damage, destroy, record or transmit information within  
26 a computer, computer system or network without the intent or permission of  
27 the owner of the information, computer system or network. Computer  
28 contaminant includes a group of computer instructions, such as viruses or  
29 worms, that is self-replicating or self-propagating and that is designed to  
30 contaminate other computer programs or computer data, to consume computer  
31 resources, to modify, destroy, record or transmit data or in some other  
32 fashion to usurp the normal operation of the computer, computer system or  
33 network.
- 34           5. "Computer program" means a series of instructions or statements, in  
35 a form acceptable to a computer, that permits the functioning of a computer  
36 system in a manner designed to provide appropriate products from the computer  
37 system.
- 38           6. "Computer software" means a set of computer programs, procedures  
39 and associated documentation concerned with the operation of a computer  
40 system.
- 41           7. "Computer system" means a set of related, connected or unconnected  
42 computer equipment, devices and software, including storage, media and  
43 peripheral devices.
- 44           8. "Critical infrastructure resource" means any computer or  
45 communications system or network that is involved in providing services

1 necessary to ensure or protect the public health, safety or welfare,  
2 including services that are provided by any of the following:

- 3 (a) Medical personnel and institutions.
- 4 (b) Emergency services agencies.
- 5 (c) Public and private utilities, including water, power,  
6 communications and transportation services.
- 7 (d) Fire departments, districts or volunteer organizations.
- 8 (e) Law enforcement agencies.
- 9 (f) Financial institutions.
- 10 (g) Public educational institutions.
- 11 (h) Government agencies.

12 9. "False or fraudulent pretense" means the unauthorized use of an  
13 access device or the use of an access device to exceed authorized access.

14 10. "Financial instrument" means any check, draft, money order,  
15 certificate of deposit, letter of credit, bill of exchange, credit card or  
16 marketable security or any other written instrument as defined in section  
17 13-2001 that is transferable for value.

18 11. "Network" includes a complex of interconnected computer or  
19 communication systems of any type.

20 12. "Property" means financial instruments, information, including  
21 electronically produced data, computer software and programs in either  
22 machine or human readable form, and anything of value, tangible or  
23 intangible.

24 13. "Proprietary or confidential computer security information" means  
25 information about a particular computer, computer system or network that  
26 relates to its access devices, security practices, methods and systems,  
27 architecture, communications facilities, encryption methods and system  
28 vulnerabilities and that is not made available to the public by its owner or  
29 operator.

30 14. "Services" includes computer time, data processing, storage  
31 functions and all types of communication functions.

32 Sec. 5. Section 13-2314, Arizona Revised Statutes, is amended to read:

33 13-2314. Racketeering; civil remedies by this state;  
34 definitions

35 A. The attorney general or a county attorney may file an action in  
36 superior court on behalf of a person who sustains injury to his person,  
37 business or property by racketeering as defined by section 13-2301,  
38 subsection D, paragraph 4 or by a violation of section 13-2312 for the  
39 recovery of treble damages and the costs of the suit, including reasonable  
40 attorney fees, or to prevent, restrain, ~~or~~ remedy racketeering as defined by  
41 section 13-2301, subsection D, paragraph 4 or a violation of section 13-2312.  
42 If the person against whom a racketeering claim has been asserted, including  
43 a forfeiture action or lien, prevails on that claim, the person may be  
44 awarded costs and reasonable attorney fees incurred in defense of that  
45 claim. In actions filed by the state or a county, awards of costs and

1 reasonable attorney fees are to be assessed against and paid from monies  
2 acquired pursuant to sections 13-2314.01 and 13-2314.03.

3 B. The superior court has jurisdiction to prevent, restrain, and  
4 remedy racketeering as defined by section 13-2301, subsection D, paragraph 4  
5 or a violation of section 13-2312 after making provision for the rights of  
6 any person who sustained injury to his person, business or property by the  
7 racketeering conduct and after a hearing or trial, as appropriate, by issuing  
8 appropriate orders.

9 C. ~~Prior to~~ BEFORE a ~~determination of liability such~~ CONVICTION, THE  
10 orders may include, ~~but are not limited to,~~ issuing seizure warrants,  
11 entering findings of probable cause for in personam or in rem forfeiture,  
12 entering restraining orders or prohibitions or taking such other actions,  
13 including the acceptance of satisfactory performance bonds, the creation of  
14 receiverships and the enforcement of constructive trusts, in connection with  
15 any property or other interest subject to forfeiture, damages or other  
16 remedies or restraints pursuant to this section as the court deems proper.

17 D. Following a ~~determination of liability such~~ CONVICTION, THE orders  
18 may include, ~~but are not limited to:~~

19 1. Ordering any person to divest himself of any interest, direct or  
20 indirect, in any enterprise.

21 2. Imposing reasonable restrictions on the future activities or  
22 investments of any person, including prohibiting any person from engaging in  
23 the same type of endeavor as the enterprise engaged in, the activities of  
24 which affect the laws of this state, to the extent the constitutions of the  
25 United States and this state permit.

26 3. Ordering dissolution or reorganization of any enterprise.

27 4. Ordering the payment of treble damages to those persons injured by  
28 racketeering as defined by section 13-2301, subsection D, paragraph 4 or a  
29 violation of section 13-2312.

30 5. Ordering the payment of all costs and expenses of the prosecution  
31 and investigation of any offense included in the definition of racketeering  
32 in section 13-2301, subsection D, paragraph 4 or a violation of section  
33 13-2312, civil and criminal, including reasonable attorney fees, to be paid  
34 to the general fund of the state or the county which brings the action.

35 6. In personam forfeiture pursuant to chapter 39 of this title to the  
36 general fund of the state or county, as appropriate, to the extent that  
37 forfeiture is not inconsistent with protecting the rights of any person who  
38 sustained injury to his person, business or property by the racketeering  
39 conduct, of the interest of a person in:

40 (a) Any property or interest in property acquired or maintained by the  
41 person in violation of section 13-2312.

42 (b) Any interest in, security of, claims against or property, office,  
43 title, license or contractual right of any kind affording a source of  
44 influence over any enterprise or other property ~~which~~ THAT the person has

1 acquired or maintained an interest in or control of, conducted or  
2 participated in the conduct of in violation of section 13-2312.

3 (c) All proceeds traceable to an offense included in the definition of  
4 racketeering in section 13-2301, subsection D, paragraph 4 and held by the  
5 person and all monies, negotiable instruments, securities and other property  
6 used or intended to be used by the person in any manner or part to facilitate  
7 commission of the offense and that the person either owned or controlled for  
8 the purpose of that use.

9 (d) Any other property up to the value of the subject property  
10 described in subdivision (a), (b) or (c) of this paragraph.

11 7. Payment to the general fund of the state or county as appropriate  
12 of an amount equal to the gain that was acquired or maintained through an  
13 offense included in the definition of racketeering in section 13-2301,  
14 subsection D, paragraph 4 or a violation of section 13-2312 or that any  
15 person is liable for under this section.

16 E. A person who is liable for conduct described in subsection D,  
17 paragraph 6, subdivision (a), (b) or (c) of this section is liable for the  
18 total value of all interests in property described in those subdivisions.  
19 The court shall enter an order of forfeiture against the person in the amount  
20 of the total value of all those interests less the value of any interests  
21 that are forfeited before or at the time of the entry of the final judgment.

22 F. A person or enterprise that acquires any property through an  
23 offense included in the definition of racketeering in section 13-2301,  
24 subsection D, paragraph 4 or through a violation of section 13-2312 is an  
25 involuntary trustee. The involuntary trustee and any other person or  
26 enterprise, except a bona fide purchaser for value who is reasonably without  
27 notice of the unlawful conduct and who is not knowingly taking part in an  
28 illegal transaction, hold the property, its proceeds and its fruits in  
29 constructive trust for the benefit of persons entitled to remedies under this  
30 section.

31 G. In addition to ~~or in lieu of~~ an action under this section the  
32 attorney general or a county attorney may file an in rem action pursuant to  
33 chapter 39 of this title for forfeiture, to the extent that forfeiture is not  
34 inconsistent with protecting the rights of any person who sustained injury to  
35 his person, business or property by the racketeering conduct, of:

36 1. Any property or interest in property acquired or maintained by a  
37 person in violation of section 13-2312.

38 2. Any interest in, security of, claims against or property, office,  
39 title, license or contractual right of any kind affording a source of  
40 influence over any enterprise or other property ~~which~~ THAT a person has  
41 acquired or maintained an interest in or control of, conducted or  
42 participated in the conduct of in violation of section 13-2312.

43 3. All proceeds traceable to an offense included in the definition of  
44 racketeering in section 13-2301, subsection D, paragraph 4 and all monies,

1 negotiable instruments, securities and other property used or intended to be  
2 used in any manner or part to facilitate the commission of the offense.

3 H. A defendant convicted in any criminal proceeding shall be precluded  
4 from subsequently denying the essential allegations of the criminal offense  
5 of which he was convicted in any civil proceeding. For the purposes of this  
6 subsection, a conviction may result from a verdict or plea including a no  
7 contest plea.

8 I. Notwithstanding any law creating a lesser period, the initiation of  
9 civil proceedings related to violations of any offense included in the  
10 definition of racketeering in section 13-2301, subsection D, paragraph 4 or a  
11 violation of section 13-2312, including procedures pursuant to chapter 39 of  
12 this title, shall be commenced within seven years after actual discovery of  
13 the violation.

14 J. In any civil action brought pursuant to this section, the attorney  
15 general or a county attorney may file with the clerk of the superior court a  
16 certificate stating that the case is of special public importance. A copy of  
17 that certificate shall be furnished immediately by such clerk to the chief  
18 judge or presiding chief judge of the superior court in the county in which  
19 such action is pending, and, upon receipt of such copy, the judge shall  
20 immediately designate a judge to hear and determine the action. The judge so  
21 designated shall promptly assign such action for hearing, participate in the  
22 hearings and determination and cause the action to be expedited.

23 K. The standard of proof in actions brought pursuant to this section  
24 is the preponderance of the evidence test.

25 L. A civil action authorized by this section, including proceedings  
26 pursuant to chapter 39 of this title, is remedial and not punitive and does  
27 not limit and is not limited by any other previous or subsequent civil or  
28 criminal action under this title or any other provision of law. Civil  
29 remedies provided under this title are supplemental and not mutually  
30 exclusive.

31 M. The attorney general may appear as amicus curiae in any proceeding  
32 in which a claim under this section has been asserted, including proceedings  
33 pursuant to chapter 39 of this title, or in which the court is interpreting  
34 this chapter or chapter 39 of this title. A party who files a notice of  
35 appeal from a civil action brought under this chapter or chapter 39 of this  
36 title shall serve the notice and one copy of the appellant's brief on the  
37 attorney general at the time the person files the appellant's brief with the  
38 court. This requirement is jurisdictional.

39 N. ~~It~~ FOR THE PURPOSES OF this section and section 13-2312:

40 1. "Acquire" means for a person to do any of the following:

41 (a) Possess.

42 (b) Act so as to exclude other persons from using their property  
43 except on his own terms.

1 (c) Bring about or receive the transfer of any interest in property,  
2 whether to himself or to another person, or to secure performance of a  
3 service.

4 2. "Gain" means any benefit, interest or property of any kind without  
5 reduction for expenses of acquiring or maintaining it or incurred for any  
6 other reason.

7 3. "Proceeds" includes any interest in property of any kind acquired  
8 through or caused by an act or omission, or derived from the act or omission,  
9 directly or indirectly, and any fruits of this interest, in whatever form.

10 Sec. 6. Section 13-2314.01, Arizona Revised Statutes, is amended to  
11 read:

12 13-2314.01. Anti-racketeering revolving fund; use of fund;  
13 reports; review board; board termination

14 A. The anti-racketeering revolving fund is established. The attorney  
15 general shall administer the fund under the conditions and for the purposes  
16 provided by this section. Monies in the fund are exempt from the lapsing  
17 provisions of section 35-190.

18 B. Any prosecution and investigation costs, including attorney fees,  
19 recovered for the state by the attorney general as a result of enforcement of  
20 civil and criminal statutes pertaining to any offense included in the  
21 definition of racketeering in section 13-2301, subsection D, paragraph 4 or  
22 section 13-2312, whether by final judgment, settlement or otherwise, shall be  
23 deposited in the fund established by this section.

24 C. Any monies received by any department or agency of this state or  
25 any political subdivision of this state from any department or agency of the  
26 United States or another state as a result of participation in any  
27 investigation or prosecution, whether by final judgment, settlement or  
28 otherwise, shall be deposited in the fund established by this section or, if  
29 the recipient is a political subdivision of this state, may be deposited in  
30 the fund established ~~by~~ PURSUANT TO section 13-2314.03.

31 D. Any monies obtained as a result of a forfeiture by any department  
32 or agency of this state under this title or under federal law shall be  
33 deposited in the fund established by this section. Any monies or other  
34 property obtained as a result of a forfeiture by any political subdivision of  
35 this state or the federal government may be deposited in the fund established  
36 by this section. Monies deposited in the fund pursuant to this section or  
37 section 13-4315 shall accrue interest and shall be held for the benefit of  
38 the agency or agencies responsible for the seizure or forfeiture to the  
39 extent of their contribution. Except as provided in subsections F and G of  
40 this section, the monies and interest shall be distributed within thirty days  
41 of application to the agency or agencies responsible for the seizure or  
42 forfeiture. Monies in the fund used by the attorney general for capital  
43 projects in excess of one million dollars are subject to review by the joint  
44 committee on capital review.

1 E. Monies in the fund:  
2 1. May be used for the following:  
3 ~~1-~~ (a) The funding of gang prevention programs, substance abuse  
4 prevention programs, substance abuse education programs, programs that  
5 provide assistance to victims of a criminal offense that is listed in section  
6 13-2301 and witness protection pursuant to section 41-196 or for any purpose  
7 permitted by federal law relating to the disposition of any property that is  
8 transferred to a law enforcement agency.  
9 ~~2-~~ (b) The investigation and prosecution of any offense included in  
10 the definition of racketeering in section 13-2301, subsection D, paragraph 4  
11 or section 13-2312, including civil enforcement.  
12 ~~3-~~ (c) The payment of the relocation expenses of any law enforcement  
13 officer and the officer's immediate family if the law enforcement officer is  
14 the victim of a bona fide threat that occurred because of the law enforcement  
15 officer's duties.  
16 2. IN ADDITION TO ANY OTHER RESTRICTION ON THE USE OF PUBLIC MONIES  
17 PROVIDED BY LAW, MAY NOT BE USED FOR ANY OF THE FOLLOWING:  
18 (a) PURCHASING REAL PROPERTY OR ANY INTEREST IN REAL PROPERTY EXCEPT  
19 TO ACQUIRE FULL TITLE TO OR TO SATISFY LIENS OR MORTGAGES ON FORFEITED  
20 PROPERTY.  
21 (b) PAYING RECEPTION AND REPRESENTATION EXPENSES, INCLUDING  
22 REFRESHMENTS, MEALS, GIFTS OR ENTERTAINMENT.  
23 (c) SHARING VEHICLES OR FORFEITED PROPERTY OR ITEMS PURCHASED WITH  
24 SHARED MONIES BY A PERSON WHO IS NOT EMPLOYED BY A LAW ENFORCEMENT AGENCY.  
25 (d) PAYING EDUCATION-RELATED COSTS, INCLUDING SCHOLARSHIPS, FINANCIAL  
26 AID OR CLASSES THAT ARE NOT FOR LAW ENFORCEMENT. THIS SUBDIVISION DOES NOT  
27 PROHIBIT PAYING TUITION FOR A LAW ENFORCEMENT CLASS THAT IS NECESSARY TO THE  
28 PERFORMANCE OF A PEACE OFFICER'S OFFICIAL DUTIES.  
29 F. On or before January 15, April 15, July 15 and October 15 of each  
30 year, each department or agency of this state receiving monies pursuant to  
31 this section or section 13-2314.03 or 13-4315 or from any department or  
32 agency of the United States or another state as a result of participation in  
33 any investigation or prosecution shall file with the attorney general, the  
34 board of supervisors if the sheriff received the monies and the city or town  
35 council if the ~~city~~ CITY'S or town's department received the monies a report  
36 for the previous calendar quarter. The report shall be in a form that is  
37 prescribed by the Arizona criminal justice commission and approved by the  
38 director of the joint legislative budget committee. The report shall set  
39 forth the sources of all monies and all expenditures. THE REPORT SHALL  
40 PROVIDE SEPARATE DETAILS FOR EACH FORFEITURE, INCLUDING THE CRIMINAL CASE  
41 NUMBER OR THE CIVIL CASE NUMBER, AS APPROPRIATE, THAT IS ASSOCIATED WITH THE  
42 FORFEITURE AND ANY RELATED LAW ENFORCEMENT DEPARTMENTAL REPORT NUMBERS. The  
43 report shall not include any identifying information about specific ONGOING  
44 investigations. If a department or agency of this state fails to file a  
45 report within forty-five days after the report is due and there is no good

1 cause as determined by the Arizona criminal justice commission, the attorney  
2 general shall make no expenditures from the fund for the benefit of the  
3 department or agency until the report is filed. The attorney general is  
4 responsible for collecting all reports from departments and agencies of this  
5 state and transmitting the reports to the Arizona criminal justice commission  
6 at the time that the report required pursuant to subsection G of this section  
7 is submitted.

8 G. On or before January 25, April 25, July 25 and October 25 of each  
9 year, the attorney general shall file with the Arizona criminal justice  
10 commission a report for the previous calendar quarter. The report shall be  
11 in a form that is prescribed by the Arizona criminal justice commission and  
12 approved by the director of the joint legislative budget committee. The  
13 report shall set forth the sources of all monies and all expenditures. **THE**  
14 **REPORT SHALL PROVIDE SEPARATE DETAILS FOR EACH FORFEITURE, INCLUDING THE**  
15 **CRIMINAL CASE NUMBER OR THE CIVIL CASE NUMBER, AS APPROPRIATE, THAT IS**  
16 **ASSOCIATED WITH THE FORFEITURE AND ANY RELATED LAW ENFORCEMENT DEPARTMENTAL**  
17 **REPORT NUMBERS.** The report shall not include any identifying information  
18 about specific **ONGOING** investigations. If the attorney general fails to file  
19 a report within sixty days after the report is due and there is no good cause  
20 as determined by the Arizona criminal justice commission, the attorney  
21 general shall make no expenditures from the fund for the benefit of the  
22 attorney general until the report is filed. If a political subdivision of  
23 this state fails to file a report with the county attorney pursuant to  
24 section 13-2314.03 within forty-five days after the report is due and there  
25 is no good cause as determined by the Arizona criminal justice commission,  
26 the attorney general shall make no expenditures from the fund for the benefit  
27 of the political subdivision until the report is filed.

28 H. **THE ARIZONA CRIMINAL JUSTICE COMMISSION SHALL ESTABLISH AND**  
29 **MAINTAIN A SEARCHABLE PUBLIC WEBSITE THAT INCLUDES THE FOLLOWING INFORMATION**  
30 **THAT IS OBTAINED FROM THE ATTORNEY GENERAL PURSUANT TO SUBSECTION G OF THIS**  
31 **SECTION:**

32 1. **FROM CLOSED CASES INVOLVING PROPERTY, OTHER THAN CURRENCY, THAT IS**  
33 **SEIZED BY A STATE, COUNTY, CITY OR TOWN LAW ENFORCEMENT AGENCY UNDER FEDERAL**  
34 **AND STATE LAW:**

35 (a) **THE NAME OF THE LAW ENFORCEMENT AGENCY THAT SEIZED THE PROPERTY.**

36 (b) **A DESCRIPTION OF THE SEIZED PROPERTY, OTHER THAN CURRENCY,**  
37 **INCLUDING THE MAKE AND MODEL OF A MOTOR VEHICLE, EXCEPT THAT THE DETAILS ARE**  
38 **NOT REQUIRED IF PUBLISHING THE DETAILS WILL COMPROMISE AN ONGOING**  
39 **INVESTIGATION.**

40 (c) **THE DATE THE LAW ENFORCEMENT AGENCY SEIZED THE PROPERTY.**

41 (d) **THE ESTIMATED VALUE OF THE SEIZED PROPERTY.**

42 (e) **WHETHER THE SUSPECT WAS CHARGED WITH A CRIMINAL OFFENSE.**

43 (f) **THE CRIMINAL OFFENSE ALLEGED TO HAVE BEEN COMMITTED THAT LED TO**  
44 **THE PROPERTY'S SEIZURE.**

45 (g) **WHETHER THE CRIMINAL OFFENSE IS UNDER FEDERAL OR STATE LAW.**

- 1 (h) THE DISPOSITION OF THE CASE, INCLUDING WHETHER CHARGES WERE
- 2 DROPPED OR WHETHER THE DEFENDANT WAS ACQUITTED, ENTERED A PLEA OR WAS
- 3 CONVICTED.
- 4 (i) WHETHER THE FORFEITURE PROCEEDINGS WERE CIVIL OR CRIMINAL.
- 5 (j) THE DATE OF SALE IF THE PROPERTY WAS SOLD.
- 6 (k) SELLING EXPENSES ASSOCIATED WITH THE PROPERTY'S SALE.
- 7 (l) THE TOTAL NET PROCEEDS RECEIVED FROM THE PROPERTY'S SALE.
- 8 (m) THE PROCEEDS RECEIVED BY THE LAW ENFORCEMENT AGENCY FROM THE
- 9 PROPERTY'S SALE.
- 10 (n) IF THE PROPERTY WAS RETAINED, THE PURPOSE FOR WHICH THE PROPERTY
- 11 WAS USED, EXCEPT THAT THE DETAILS ARE NOT REQUIRED IF PUBLISHING THE DETAILS
- 12 WILL COMPROMISE AN ONGOING INVESTIGATION.
- 13 (o) THE DATE OF DESTRUCTION IF THE PROPERTY WAS DESTROYED.
- 14 (p) THE DATE OF THE PROPERTY'S RETURN IF THE PROPERTY WAS RETURNED TO
- 15 AN OWNER OR INTEREST HOLDER BY THE LAW ENFORCEMENT AGENCY OR PROSECUTING
- 16 AGENCY OR BY COURT ORDER.
- 17 2. FROM CLOSED CASES INVOLVING CURRENCY THAT IS SEIZED BY A STATE,
- 18 COUNTY, CITY OR TOWN LAW ENFORCEMENT AGENCY UNDER FEDERAL AND STATE LAW:
- 19 (a) THE NAME OF THE LAW ENFORCEMENT AGENCY THAT SEIZED THE CURRENCY.
- 20 (b) THE AMOUNT OF CURRENCY SEIZED.
- 21 (c) THE DATE THE LAW ENFORCEMENT AGENCY SEIZED THE CURRENCY.
- 22 (d) WHETHER THE SUSPECT WAS CHARGED WITH A CRIMINAL OFFENSE.
- 23 (e) THE CRIMINAL OFFENSE ALLEGED TO HAVE BEEN COMMITTED THAT LED TO
- 24 THE CURRENCY'S SEIZURE.
- 25 (f) WHETHER THE CRIMINAL OFFENSE IS UNDER FEDERAL OR STATE LAW.
- 26 (g) THE DISPOSITION OF THE CASE, INCLUDING WHETHER CHARGES WERE
- 27 DROPPED OR WHETHER THE DEFENDANT WAS ACQUITTED, ENTERED A PLEA OR WAS
- 28 CONVICTED.
- 29 (h) WHETHER THE FORFEITURE PROCEEDINGS WERE CIVIL OR CRIMINAL.
- 30 (i) THE DATE OF THE RETURN OF THE CURRENCY IF THE CURRENCY WAS
- 31 RETURNED TO AN OWNER OR INTEREST HOLDER BY THE SEIZING LAW ENFORCEMENT AGENCY
- 32 OR PROSECUTING AGENCY OR BY COURT ORDER.
- 33 3. THE TOTAL AMOUNT OF MONIES SPENT IN EACH OF THE FOLLOWING
- 34 CATEGORIES THAT RESULTED FROM PROPERTY SEIZED AND REPORTED PURSUANT TO
- 35 SUBSECTION G OF THIS SECTION:
- 36 (a) ABUSE AND CRIME PREVENTION PROGRAMS.
- 37 (b) WITNESS PROTECTION, VICTIM RESTITUTION, INFORMANT FEES, GANG
- 38 PROGRAMS AND CONTROLLED BUYS.
- 39 (c) SALARIES, OVERTIME AND BENEFITS.
- 40 (d) PROFESSIONAL OUTSIDE SERVICES AND FEES, INCLUDING AUDITING, COURT
- 41 REPORTING, EXPERT WITNESS FEES, OUTSIDE ATTORNEY FEES AND MEMBERSHIP FEES
- 42 PAID TO TRADE ASSOCIATIONS.
- 43 (e) TRAVEL, MEALS, ENTERTAINMENT, TRAINING, CONFERENCES AND CONTINUING
- 44 EDUCATION SEMINARS.

1 (f) OTHER OPERATING EXPENSES, INCLUDING OFFICE SUPPLIES, POSTAGE AND  
2 ADVERTISING.

3 (g) CAPITAL EXPENDITURES, INCLUDING VEHICLES, FIREARMS, EQUIPMENT,  
4 COMPUTERS AND FURNITURE.

5 (h) OTHER EXPENDITURES OF FORFEITURE PROCEEDS.

6 4. THE TOTAL AMOUNT OF CURRENCY THAT IS HELD BY THE LAW ENFORCEMENT  
7 AGENCY AT THE END OF THE REPORTING PERIOD.

8 ~~H.~~ I. On or before September 30 of each year, the Arizona criminal  
9 justice commission shall compile the attorney general report and the reports  
10 of all departments and agencies of this state into a single comprehensive  
11 report and shall submit a copy of the report to the governor, the director of  
12 the department of administration, the president of the senate, the speaker of  
13 the house of representatives, the director of the joint legislative budget  
14 committee and the secretary of state.

15 J. THE ATTORNEY GENERAL SHALL ESTABLISH AND APPOINT MEMBERS TO AN  
16 INDEPENDENT REVIEW BOARD. THE REVIEW BOARD SHALL REVIEW THE SOURCES AND  
17 EXPENDITURES OF ALL MONIES THAT ARE IN THE ANTI-RACKETEERING REVOLVING FUND.  
18 THE REVIEW BOARD SHALL NOTIFY THE ATTORNEY GENERAL IF IT FINDS ANY UNLAWFUL  
19 USES OF FUND MONIES. BOARD MEMBERS MAY NOT BE CURRENT OR FORMER EMPLOYEES OF  
20 A LAW ENFORCEMENT OR PROSECUTORIAL AGENCY OR HAVE ANY FAMILIAL RELATIONSHIP  
21 TO AN EMPLOYEE OF AN AGENCY OR ANY RECIPIENT OF FORFEITED MONEY OR PROPERTY.

22 K. THE REVIEW BOARD ESTABLISHED BY SUBSECTION J OF THIS SECTION ENDS  
23 ON JULY 1, 2024 PURSUANT TO SECTION 41-3103.

24 L. THE ATTORNEY GENERAL SHALL INVESTIGATE ALL ALLEGATIONS OF UNLAWFUL  
25 USE OF MONIES. IF THE ALLEGATION INVOLVES THE ATTORNEY GENERAL, THE COUNTY  
26 ATTORNEY IN THE COUNTY WHERE THE ALLEGED UNLAWFUL USE OCCURRED SHALL  
27 INVESTIGATE THE ALLEGATION.

28 Sec. 7. Section 13-2314.03, Arizona Revised Statutes, is amended to  
29 read:

30 13-2314.03. County anti-racketeering revolving fund; use of  
31 fund; reports; review board; board termination

32 A. The board of supervisors of a county shall establish a county  
33 anti-racketeering revolving fund administered by the county attorney under  
34 the conditions and for the purposes provided by this section.

35 B. Any prosecution and investigation costs, including attorney fees,  
36 recovered for the county as a result of enforcement of civil and criminal  
37 statutes pertaining to any offense included in the definition of racketeering  
38 in section 13-2301, subsection D, paragraph 4 or section 13-2312, whether by  
39 final judgment, settlement or otherwise, shall be deposited in the fund  
40 established by the board of supervisors.

41 C. Any monies received by any department or agency of this state or  
42 any political subdivision of this state from any department or agency of the  
43 United States or another state as a result of participation in any  
44 investigation or prosecution, whether by final judgment, settlement or

1 otherwise, shall be deposited in the fund established ~~by~~ PURSUANT TO this  
2 section or in the fund established by section 13-2314.01.

3 D. Any monies obtained as a result of a forfeiture by the county  
4 attorney under this title or under federal law shall be deposited in the fund  
5 established ~~by~~ PURSUANT TO this section. Any monies or other property  
6 obtained as a result of a forfeiture by any political subdivision of this  
7 state or the federal government may be deposited in the fund established ~~by~~  
8 PURSUANT TO this section or in the fund established by section 13-2314.01.  
9 Monies deposited in the fund pursuant to this section or section 13-4315  
10 shall accrue interest and shall be held for the benefit of the agency or  
11 agencies responsible for the seizure or forfeiture to the extent of their  
12 contribution. Except as provided in subsections F and G of this section, the  
13 monies and interest shall be distributed to the agency or agencies  
14 responsible for the seizure or forfeiture within thirty days of application.

15 E. Monies in the fund:

16 1. May be used for the FOLLOWING:

17 (a) THE funding of gang prevention programs, substance abuse  
18 prevention programs, substance abuse education programs, programs that  
19 provide assistance to victims of a criminal offense that is listed in section  
20 13-2301 and witness protection pursuant to section 11-536 or for any purpose  
21 permitted by federal law relating to the disposition of any property that is  
22 transferred to a law enforcement agency. ~~Monies in the fund may be used for~~

23 (b) The investigation and prosecution of any offense included in the  
24 definition of racketeering in section 13-2301, subsection D, paragraph 4 or  
25 section 13-2312, including civil enforcement.

26 2. IN ADDITION TO ANY OTHER RESTRICTION ON THE USE OF PUBLIC MONIES  
27 PROVIDED BY LAW, MAY NOT BE USED FOR ANY OF THE FOLLOWING:

28 (a) PURCHASING REAL PROPERTY OR ANY INTEREST IN REAL PROPERTY EXCEPT  
29 TO ACQUIRE FULL TITLE TO OR TO SATISFY LIENS OR MORTGAGES ON FORFEITED  
30 PROPERTY.

31 (b) PAYING RECEPTION AND REPRESENTATION EXPENSES, INCLUDING  
32 REFRESHMENTS, MEALS, GIFTS OR ENTERTAINMENT.

33 (c) SHARING VEHICLES OR FORFEITED PROPERTY OR ITEMS PURCHASED WITH  
34 SHARED MONIES BY A PERSON WHO IS NOT EMPLOYED BY A LAW ENFORCEMENT AGENCY.

35 (d) PAYING EDUCATION-RELATED COSTS, INCLUDING SCHOLARSHIPS, FINANCIAL  
36 AID OR CLASSES THAT ARE NOT FOR LAW ENFORCEMENT. THIS SUBDIVISION DOES NOT  
37 PROHIBIT PAYING TUITION FOR A LAW ENFORCEMENT CLASS THAT IS NECESSARY TO THE  
38 PERFORMANCE OF A PEACE OFFICER'S OFFICIAL DUTIES.

39 F. On or before January 25, April 25, July 25 and October 25 of each  
40 year, the county attorney shall ~~cause to be filed~~ FILE with the Arizona  
41 criminal justice commission a report for the previous calendar quarter. The  
42 report shall be in a form that is prescribed by the Arizona criminal justice  
43 commission and approved by the director of the joint legislative budget  
44 committee. The report shall set forth the sources of all monies and all  
45 expenditures. THE REPORT SHALL PROVIDE SEPARATE DETAILS FOR EACH FORFEITURE,

1 INCLUDING THE CRIMINAL CASE NUMBER OR THE CIVIL CASE NUMBER, AS APPROPRIATE,  
2 THAT IS ASSOCIATED WITH THE FORFEITURE AND ANY RELATED LAW ENFORCEMENT  
3 DEPARTMENTAL REPORT NUMBERS. The report shall not include any identifying  
4 information about specific ONGOING investigations. If the county attorney  
5 fails to file a report within sixty days after it is due and there is no good  
6 cause as determined by the Arizona criminal justice commission, the county  
7 attorney shall make no expenditures from the fund for the benefit of the  
8 county attorney until the report is filed.

9 G. On or before January 15, April 15, July 15 and October 15 of each  
10 year, each political subdivision of this state receiving monies pursuant to  
11 this section or section 13-2314.01 or 13-4315 or from any department or  
12 agency of the United States or another state as a result of participating in  
13 any investigation or prosecution shall ~~cause to be filed~~ FILE with the board  
14 of supervisors of the county in which the political subdivision is located,  
15 each city or town council in which the political subdivision is located and  
16 the county attorney of the county in which the political subdivision is  
17 located a report for the previous calendar quarter. The report shall be in a  
18 form that is prescribed by the Arizona criminal justice commission and  
19 approved by the director of the joint legislative budget committee. The  
20 report shall set forth the sources of all monies and all expenditures. THE  
21 REPORT SHALL PROVIDE SEPARATE DETAILS FOR EACH FORFEITURE, INCLUDING THE  
22 CRIMINAL CASE NUMBER OR THE CIVIL CASE NUMBER, AS APPROPRIATE, THAT IS  
23 ASSOCIATED WITH THE FORFEITURE AND ANY RELATED LAW ENFORCEMENT DEPARTMENTAL  
24 REPORT NUMBERS. The report shall not include any identifying information  
25 about specific ONGOING investigations. If a political subdivision of this  
26 state fails to file a report within forty-five days after the report is due  
27 and there is no good cause as determined by the Arizona criminal justice  
28 commission, the county attorney shall make no expenditures from the fund for  
29 the benefit of the political subdivision until the report is filed. The  
30 county attorney shall be responsible for collecting all reports from  
31 political subdivisions within that county and transmitting the reports to the  
32 Arizona criminal justice commission at the time that the county report  
33 required pursuant to subsection F of this section is submitted.

34 H. THE ARIZONA CRIMINAL JUSTICE COMMISSION SHALL ESTABLISH AND  
35 MAINTAIN A SEARCHABLE PUBLIC WEBSITE THAT INCLUDES THE FOLLOWING INFORMATION  
36 THAT IS OBTAINED FROM THE COUNTY ATTORNEY PURSUANT TO SUBSECTION G OF THIS  
37 SECTION:

38 1. FROM CLOSED CASES INVOLVING PROPERTY, OTHER THAN CURRENCY, THAT IS  
39 SEIZED BY A STATE, COUNTY, CITY OR TOWN LAW ENFORCEMENT AGENCY UNDER FEDERAL  
40 AND STATE LAW:

41 (a) THE NAME OF THE LAW ENFORCEMENT AGENCY THAT SEIZED THE PROPERTY.

42 (b) A DESCRIPTION OF THE SEIZED PROPERTY, OTHER THAN CURRENCY,  
43 INCLUDING THE MAKE AND MODEL OF A MOTOR VEHICLE, EXCEPT THAT THE DETAILS ARE  
44 NOT REQUIRED IF PUBLISHING THE DETAILS WILL COMPROMISE AN ONGOING  
45 INVESTIGATION.

- 1 (c) THE DATE THE LAW ENFORCEMENT AGENCY SEIZED THE PROPERTY.
- 2 (d) THE ESTIMATED VALUE OF THE SEIZED PROPERTY.
- 3 (e) WHETHER THE SUSPECT WAS CHARGED WITH A CRIMINAL OFFENSE.
- 4 (f) THE CRIMINAL OFFENSE ALLEGED TO HAVE BEEN COMMITTED THAT LED TO
- 5 THE PROPERTY'S SEIZURE.
- 6 (g) WHETHER THE CRIMINAL OFFENSE IS UNDER FEDERAL OR STATE LAW.
- 7 (h) THE DISPOSITION OF THE CASE, INCLUDING WHETHER CHARGES WERE
- 8 DROPPED OR WHETHER THE DEFENDANT WAS ACQUITTED, ENTERED A PLEA OR WAS
- 9 CONVICTED.
- 10 (i) WHETHER THE FORFEITURE PROCEEDINGS WERE CIVIL OR CRIMINAL.
- 11 (j) THE DATE OF SALE IF THE PROPERTY WAS SOLD.
- 12 (k) SELLING EXPENSES ASSOCIATED WITH THE PROPERTY'S SALE.
- 13 (l) THE TOTAL NET PROCEEDS RECEIVED FROM THE PROPERTY'S SALE.
- 14 (m) THE PROCEEDS RECEIVED BY THE LAW ENFORCEMENT AGENCY FROM THE
- 15 PROPERTY'S SALE.
- 16 (n) IF THE PROPERTY WAS RETAINED, THE PURPOSE FOR WHICH THE PROPERTY
- 17 WAS USED, EXCEPT THAT THE DETAILS ARE NOT REQUIRED IF PUBLISHING THE DETAILS
- 18 WILL COMPROMISE AN ONGOING INVESTIGATION.
- 19 (o) THE DATE OF DESTRUCTION IF THE PROPERTY WAS DESTROYED.
- 20 (p) THE DATE OF THE PROPERTY'S RETURN IF THE PROPERTY WAS RETURNED TO
- 21 AN OWNER OR INTEREST HOLDER BY THE LAW ENFORCEMENT AGENCY OR PROSECUTING
- 22 AGENCY OR BY COURT ORDER.
- 23 2. FROM CLOSED CASES INVOLVING CURRENCY THAT IS SEIZED BY A STATE,
- 24 COUNTY, CITY OR TOWN LAW ENFORCEMENT AGENCY UNDER FEDERAL AND STATE LAW:
- 25 (a) THE NAME OF THE LAW ENFORCEMENT AGENCY THAT SEIZED THE CURRENCY.
- 26 (b) THE AMOUNT OF CURRENCY SEIZED.
- 27 (c) THE DATE THE LAW ENFORCEMENT AGENCY SEIZED THE CURRENCY.
- 28 (d) WHETHER THE SUSPECT WAS CHARGED WITH A CRIMINAL OFFENSE.
- 29 (e) THE CRIMINAL OFFENSE ALLEGED TO HAVE BEEN COMMITTED THAT LED TO
- 30 THE CURRENCY'S SEIZURE.
- 31 (f) WHETHER THE CRIMINAL OFFENSE IS UNDER FEDERAL OR STATE LAW.
- 32 (g) THE DISPOSITION OF THE CASE, INCLUDING WHETHER CHARGES WERE
- 33 DROPPED OR WHETHER THE DEFENDANT WAS ACQUITTED, ENTERED A PLEA OR WAS
- 34 CONVICTED.
- 35 (h) WHETHER THE FORFEITURE PROCEEDINGS WERE CIVIL OR CRIMINAL.
- 36 (i) THE DATE OF THE RETURN OF THE CURRENCY IF THE CURRENCY WAS
- 37 RETURNED TO AN OWNER OR INTEREST HOLDER BY THE SEIZING LAW ENFORCEMENT AGENCY
- 38 OR PROSECUTING AGENCY OR BY COURT ORDER.
- 39 3. THE TOTAL AMOUNT OF MONIES SPENT IN EACH OF THE FOLLOWING
- 40 CATEGORIES THAT RESULTED FROM PROPERTY SEIZED AND REPORTED PURSUANT TO
- 41 SUBSECTION G OF THIS SECTION:
- 42 (a) ABUSE AND CRIME PREVENTION PROGRAMS.
- 43 (b) WITNESS PROTECTION, VICTIM RESTITUTION, INFORMANT FEES, GANG
- 44 PROGRAMS AND CONTROLLED BUYS.
- 45 (c) SALARIES, OVERTIME AND BENEFITS.

1 (d) PROFESSIONAL OUTSIDE SERVICES AND FEES, INCLUDING AUDITING, COURT  
2 REPORTING, EXPERT WITNESS FEES, OUTSIDE ATTORNEY FEES AND MEMBERSHIP FEES  
3 PAID TO TRADE ASSOCIATIONS.

4 (e) TRAVEL, MEALS, ENTERTAINMENT, TRAINING, CONFERENCES AND CONTINUING  
5 EDUCATION SEMINARS.

6 (f) OTHER OPERATING EXPENSES, INCLUDING OFFICE SUPPLIES, POSTAGE AND  
7 ADVERTISING.

8 (g) CAPITAL EXPENDITURES, INCLUDING VEHICLES, FIREARMS, EQUIPMENT,  
9 COMPUTERS AND FURNITURE.

10 (h) OTHER EXPENDITURES OF FORFEITURE PROCEEDS.

11 4. THE TOTAL AMOUNT OF CURRENCY THAT IS HELD BY THE LAW ENFORCEMENT  
12 AGENCY AT THE END OF THE REPORTING PERIOD.

13 ~~H.~~ I. On or before September 30 of each year, the Arizona criminal  
14 justice commission shall compile all county attorney reports into a single  
15 comprehensive report and all political subdivision reports into a single  
16 comprehensive report and submit a copy of each comprehensive report to the  
17 governor, the president of the senate, the speaker of the house of  
18 representatives, the director of the joint legislative budget committee and  
19 the secretary of state.

20 J. THE BOARD OF SUPERVISORS SHALL ESTABLISH AND APPOINT MEMBERS TO AN  
21 INDEPENDENT REVIEW BOARD. THE REVIEW BOARD SHALL REVIEW THE SOURCES AND  
22 EXPENDITURES OF ALL MONIES THAT ARE IN THE ANTI-RACKETEERING REVOLVING FUND.  
23 THE REVIEW BOARD SHALL NOTIFY THE ATTORNEY GENERAL IF IT FINDS ANY UNLAWFUL  
24 USES OF FUND MONIES. BOARD MEMBERS MAY NOT BE CURRENT OR FORMER EMPLOYEES OF  
25 A LAW ENFORCEMENT OR PROSECUTORIAL AGENCY OR HAVE ANY FAMILIAL RELATIONSHIP  
26 TO AN EMPLOYEE OF AN AGENCY OR ANY RECIPIENT OF FORFEITED MONEY OR PROPERTY.

27 K. THE REVIEW BOARD ESTABLISHED BY SUBSECTION J OF THIS SECTION ENDS  
28 ON JULY 1, 2024 PURSUANT TO SECTION 41-3103.

29 L. THE ATTORNEY GENERAL SHALL INVESTIGATE ALL ALLEGATIONS OF UNLAWFUL  
30 USE OF MONIES. IF THE ALLEGATION INVOLVES THE ATTORNEY GENERAL, THE COUNTY  
31 ATTORNEY IN THE COUNTY WHERE THE ALLEGED UNLAWFUL USE OCCURRED SHALL  
32 INVESTIGATE THE ALLEGATION.

33 Sec. 8. Section 13-4304, Arizona Revised Statutes, is amended to read:

34 13-4304. Property subject to forfeiture: exemptions: waiver

35 A. FOLLOWING A PERSON'S CONVICTION FOR A CRIMINAL OFFENSE THAT  
36 PROVIDES FOR FORFEITURE, THE COURT MAY ORDER THE PERSON TO FORFEIT ANY OF THE  
37 FOLLOWING:

38 1. PROPERTY, INCLUDING ALL INTERESTS IN SUCH PROPERTY, THAT WAS  
39 ACQUIRED THROUGH THE COMMISSION OF THE OFFENSE.

40 2. PROPERTY, INCLUDING ALL INTERESTS IN SUCH PROPERTY, THAT IS  
41 DIRECTLY TRACEABLE TO PROPERTY ACQUIRED THROUGH THE COMMISSION OF THE  
42 OFFENSE.

43 3. ANY INSTRUMENTALITY THE PERSON USED IN THE COMMISSION OF THE  
44 OFFENSE.

1           B. All property, including all interests in such property, described  
2 in ~~a statute providing for its forfeiture is~~ SUBSECTION A OF THIS SECTION IS  
3 subject to forfeiture. ~~However,~~ EXCEPT THAT:

4           1. No vehicle used by any person as a common carrier in the  
5 transaction of business as a common carrier may be forfeited under ~~the~~  
6 ~~provisions of~~ this chapter unless it appears that the owner or other person  
7 in charge of the vehicle was a consenting party or privy to the act or  
8 omission giving rise to forfeiture or knew or had reason to know of it.

9           2. No vehicle may be forfeited under ~~the provisions of~~ this chapter  
10 for any act or omission established by the owner to have been committed or  
11 omitted by a person other than the owner while the vehicle was unlawfully in  
12 the possession of a person other than the owner in violation of the criminal  
13 laws of this state or of the United States.

14           3. No property may be forfeited pursuant to section 13-3413,  
15 subsection A, paragraph 1 or 3 if the conduct giving rise to the forfeiture  
16 both:

17           (a) Did not involve an amount of unlawful substance greater than the  
18 statutory threshold amount as defined in section 13-3401.

19           (b) Was not committed for financial gain.

20           4. No owner's or interest holder's interest may be forfeited under  
21 this chapter if the owner or interest holder establishes all of the  
22 following:

23           (a) He acquired the interest before or during the conduct giving rise  
24 to forfeiture.

25           (b) He did not empower any person whose act or omission gives rise to  
26 forfeiture with legal or equitable power to convey the interest, as to a bona  
27 fide purchaser for value, and he was not married to any such person or if  
28 married to such person, held the property as separate property.

29           (c) He did not know and could not reasonably have known of the act or  
30 omission or that it was likely to occur.

31           5. No owner's or interest holder's interest may be forfeited under  
32 this chapter if the owner or interest holder establishes all of the  
33 following:

34           (a) He acquired the interest after the conduct giving rise to  
35 forfeiture.

36           (b) He is a bona fide purchaser for value not knowingly taking part in  
37 an illegal transaction.

38           (c) He was at the time of purchase and at all times after the purchase  
39 and before the filing of a racketeering lien notice or the provision of  
40 notice of pending forfeiture or the filing and notice of a civil or criminal  
41 proceeding under this title relating to the property, whichever is earlier,  
42 reasonably without notice of the act or omission giving rise to forfeiture  
43 and reasonably without cause to believe that the property was subject to  
44 forfeiture.

1 C. NOTWITHSTANDING SUBSECTIONS A AND B OF THIS SECTION AND EXCEPT FOR  
2 REAL PROPERTY, IF THE ALLEGED PROPERTY OR AN INTEREST IN PROPERTY IS  
3 ABANDONED, THE PROPERTY OR INTEREST IN PROPERTY MAY BE FORFEITED WITHOUT A  
4 CONVICTION. FOR THE PURPOSES OF THIS SUBSECTION, "ABANDONED" MEANS THE OWNER  
5 OR INTEREST HOLDER OF PROPERTY LEAVES THE PROPERTY AND INTENTIONALLY  
6 RELINQUISHES ALL RIGHTS TO CONTROL THE PROPERTY OR INTEREST IN THE PROPERTY.

7 Sec. 9. Section 13-4305, Arizona Revised Statutes, is amended to read:  
8 13-4305. Seizure of property

9 A. Property subject to forfeiture under this chapter may be seized for  
10 forfeiture by a peace officer:

11 1. On process issued pursuant to the ARIZONA rules of civil procedure  
12 or ~~the provisions of~~ this title including a seizure warrant.

13 2. By making a seizure for forfeiture on property seized on process  
14 issued pursuant to law, including sections 13-3911 through 13-3915.

15 3. By making a seizure for forfeiture without court process if any of  
16 the following is true:

17 (a) The seizure for forfeiture is of property seized incident to an  
18 arrest or search.

19 (b) The property subject to seizure for forfeiture has been the  
20 subject of a prior judgment in favor of this state or any other state or the  
21 federal government in a forfeiture proceeding.

22 (c) The peace officer has probable cause to believe that the property  
23 is subject to forfeiture.

24 B. Property subject to forfeiture under this chapter may be seized for  
25 forfeiture by placing the property under constructive seizure. Constructive  
26 seizure may be made by posting notice of seizure for forfeiture on the  
27 property or by filing notice of seizure for forfeiture or notice of pending  
28 forfeiture in any appropriate public record relating to the property.

29 C. The court shall determine probable cause for seizure before real  
30 property may be seized for forfeiture, unless the seizure is pursuant to a  
31 constructive seizure or the filing of a racketeering lien or lis pendens.  
32 The court may make its determination ex parte if the state demonstrates that  
33 notice and an opportunity to appear would create a risk of harm to the public  
34 safety or welfare, including the risk of physical injury or the likelihood of  
35 property damage or financial loss.

36 D. The court shall determine probable cause for seizure before  
37 property may be seized for forfeiture as a substitute asset pursuant to  
38 section 13-2314, subsection D, E or G, or pursuant to section 13-4313,  
39 subsection A, unless the seizure is pursuant to a constructive seizure or the  
40 filing of a racketeering lien or lis pendens. The court may issue a seizure  
41 warrant for such property if it determines that there is probable cause to  
42 believe that the property is subject to forfeiture and is not available for  
43 seizure for forfeiture for any reason described in section 13-4313,  
44 subsection A. The determinations shall be made ex parte unless real property

1 is to be seized and subsection C of this section requires notice and an  
2 opportunity to appear.

3 ~~E. In establishing a preponderance of the evidence and in determining  
4 probable cause for seizure and for forfeiture, a rebuttable presumption  
5 exists that the property of any person is subject to forfeiture if the state  
6 establishes all of the following by the standard of proof applicable to that  
7 proceeding:~~

- 8 ~~1. Conduct giving rise to forfeiture occurred.~~  
9 ~~2. The person acquired the property during the period of the conduct  
10 giving rise to forfeiture or within a reasonable time after that period.~~  
11 ~~3. There is no likely source for the property other than the conduct  
12 giving rise to forfeiture.~~

13 ~~F. In establishing a preponderance of the evidence and in determining  
14 probable cause for seizure and for forfeiture, the fact that money or any  
15 negotiable instrument was found in proximity to contraband or to  
16 instrumentalities of an offense gives rise to an inference that the money or  
17 instrument was the proceeds of contraband or was used or intended to be used  
18 to facilitate commission of the offense.~~

19 Sec. 10. Section 13-4306, Arizona Revised Statutes, is amended to  
20 read:

21 13-4306. Powers and duties of peace officers and agencies

22 A. In the event of a seizure for forfeiture under section 13-4305, the  
23 property is not subject to replevin, conveyance, sequestration or attachment  
24 but is deemed to be in the custody of the law enforcement agency making the  
25 seizure for forfeiture. The seizing agency or the attorney for the state may  
26 authorize the release of the seizure for forfeiture of the property if  
27 forfeiture or retention is unnecessary, may transfer the property to any  
28 other state ~~or federal~~ agency or may transfer the action to another attorney  
29 for the state by discontinuing forfeiture proceedings in favor of forfeiture  
30 proceedings initiated by the other agency or attorney. An action pursuant to  
31 this chapter shall be consolidated with any other action or proceeding  
32 pursuant to this title relating to the same property on motion by the  
33 attorney for the state in either action.

34 B. If property is seized for forfeiture under section 13-4305, pending  
35 forfeiture and final disposition, the seizing agency may do any of the  
36 following:

- 37 1. Remove the property to a storage area for safekeeping or, if the  
38 property is a negotiable instrument or money, deposit it in an interest  
39 bearing account.  
40 2. Remove the property to a place designated by the court.  
41 3. Provide for another custodian or agency to take custody of the  
42 property and remove it to an appropriate location within the jurisdiction of  
43 the court.

44 C. As soon as practicable after seizure for forfeiture, the seizing  
45 agency shall conduct an inventory and estimate the value of the property

1 seized. Within twenty days the seizing agency or the attorney for the state  
2 shall make reasonable efforts to provide notice of seizure for forfeiture to  
3 all persons known to have an interest in the seized property.

4 D. A person who acts in good faith and in a reasonable manner to  
5 comply with an order of the court or a request of a peace officer is not  
6 liable to any person for acts done in compliance with the order or request.

7 E. A possessory lien of a person from whose possession property is  
8 seized is not affected by the seizure.

9 F. In the event of a seizure for forfeiture under section 13-4305, the  
10 seizing agency shall send to an attorney for the state a written request for  
11 forfeiture within twenty days, which shall include a statement of facts and  
12 circumstances of the seizure including the names of witnesses then known, the  
13 appraised or estimated value of the property and a summary of the facts  
14 relied on for forfeiture.

15 G. An owner of property seized for forfeiture may obtain the release  
16 of the seized property by posting with the attorney for the state a surety  
17 bond or cash in an amount equal to the full fair market value of the property  
18 as determined by the attorney for the state. The state may refuse to release  
19 the property if any of the following applies:

20 1. The bond or cash tendered is inadequate.

21 2. The property is retained as contraband or evidence.

22 3. The property is particularly altered or designed for use in conduct  
23 giving rise to forfeiture.

24 H. If an owner of property posts a surety bond or cash and the  
25 property is forfeited the court shall forfeit the surety bond or cash in lieu  
26 of the property.

27 I. THE SEIZING AGENCY OR THE ATTORNEY FOR THE STATE MAY NOT DIRECTLY  
28 OR INDIRECTLY TRANSFER SEIZED PROPERTY TO A FEDERAL AGENCY OR ATTORNEY UNLESS  
29 THE SEIZED PROPERTY IS VALUED AT MORE THAN FIFTY THOUSAND DOLLARS, EXCLUDING  
30 THE POTENTIAL VALUE OF THE SALE OF CONTRABAND. A SEIZING AGENCY OR THE  
31 ATTORNEY FOR THE STATE MAY NOT ENTER INTO A PARTNERSHIP OR AGREEMENT WITH A  
32 FEDERAL AGENCY TO SEIZE PROPERTY TO AVOID THE REQUIREMENT FOR A CRIMINAL  
33 CONVICTION.

34 Sec. 11. Section 13-4308, Arizona Revised Statutes, is amended to  
35 read:

36 13-4308. Commencement of proceedings

37 A. The attorney for the state shall determine whether it is probable  
38 that the property is subject to forfeiture and, if so, FOLLOWING A CRIMINAL  
39 CONVICTION, may cause the initiation of ~~uncontested or~~ judicial proceedings  
40 against the property. If, on inquiry and examination, the attorney FOR THE  
41 STATE determines that the proceedings probably cannot be sustained, THAT A  
42 CONVICTION MAY NOT OCCUR or that justice does not require the institution of  
43 such proceedings, ~~he~~ THE ATTORNEY FOR THE STATE shall notify the seizing  
44 agency and immediately authorize the release of the seizure for forfeiture on  
45 the property or on any specified interest in it.

1 B. If the state fails to initiate forfeiture proceedings against  
2 property seized for forfeiture by notice of pending forfeiture within sixty  
3 days after its seizure for forfeiture, or fails to pursue forfeiture of such  
4 property on which a timely claim has been properly filed by filing a  
5 complaint, information or indictment pursuant to section 13-4311 or 13-4312  
6 within sixty days after notice of pending forfeiture ~~or, if uncontested~~  
7 ~~forfeiture has been made available, within sixty days after a declaration of~~  
8 ~~forfeiture~~, whichever is later, such property shall be released from its  
9 seizure for forfeiture on the request of an owner or interest holder, pending  
10 further proceedings pursuant to this chapter, which shall be commenced within  
11 seven years after actual discovery of the last act giving rise to forfeiture.

12 C. If the property sought to be forfeited is real property, including  
13 fixtures, the attorney for the state may file a lis pendens or a notice of  
14 pending forfeiture with respect to the property with the county recorder of  
15 the county in which the property is located, in addition to any lien provided  
16 by section 13-2314.02, without a filing fee or other charge.

17 Sec. 12. Repeal

18 Section 13-4309, Arizona Revised Statutes, is repealed.

19 Sec. 13. Title 13, chapter 39, Arizona Revised Statutes, is amended by  
20 adding a new section 13-4309, to read:

21 13-4309. Pretrial replevin hearing; seized property

22 A. IF PROPERTY IS SEIZED PURSUANT TO THIS CHAPTER, THE DEFENDANT OR  
23 ANY OTHER PERSON WHO HAS AN OWNERSHIP INTEREST IN THE PROPERTY MAY REQUEST A  
24 PRETRIAL HEARING TO DETERMINE THE VALIDITY OF THE SEIZURE, THE VALIDITY OF  
25 THE CLAIMANT'S ALLEGED INTEREST IN THE SEIZED PROPERTY AND WHETHER THE COURT  
26 SHOULD GRANT A WRIT OF REPLEVIN OR ANOTHER REMEDY. AT LEAST SIXTY DAYS  
27 BEFORE TRIAL ON THE RELATED CRIMINAL OFFENSE THE CLAIMANT MAY FILE A MOTION  
28 WITH THE COURT REQUESTING A WRIT OF REPLEVIN. THE MOTION SHALL INCLUDE ANY  
29 EVIDENCE THAT ESTABLISHES THE VALIDITY OF THE CLAIMANT'S ALLEGED INTEREST IN  
30 THE PROPERTY. THE STATE SHALL FILE AN ANSWER THAT PROVIDES PROBABLE CAUSE  
31 FOR THE SEIZURE, OR CROSS MOTIONS, AT LEAST TEN DAYS BEFORE A HEARING ON THE  
32 CLAIMANT'S MOTION. THE COURT SHALL CONDUCT THE HEARING WITHIN THIRTY DAYS  
33 AFTER THE CLAIMANT'S MOTION IS FILED.

34 B. EITHER PARTY, BY AGREEMENT OR FOR GOOD CAUSE, MAY REQUEST THAT THE  
35 COURT GRANT ONE EXTENSION FOR THE HEARING OF NOT MORE THAN TEN DAYS. A  
36 MOTION FOR AN EXTENSION MAY BE SUPPORTED BY AFFIDAVIT OR OTHER SUBMISSIONS.

37 C. THE COURT SHALL GRANT THE CLAIMANT'S MOTION FOR REPLEVIN IF THE  
38 COURT FINDS THAT ANY OF THE FOLLOWING APPLIES:

39 1. IT IS LIKELY THAT THE FINAL JUDGMENT WILL REQUIRE THE STATE TO  
40 RETURN THE SEIZED PROPERTY TO THE CLAIMANT.

41 2. THE SEIZED PROPERTY IS NOT REASONABLY REQUIRED TO BE HELD FOR  
42 INVESTIGATORY PURPOSES.

43 3. THE SEIZED PROPERTY IS THE ONLY REASONABLE MEANS FOR A DEFENDANT TO  
44 PAY FOR LEGAL REPRESENTATION IN THE FORFEITURE OR CRIMINAL PROCEEDING. THE  
45 COURT MAY ORDER THE RETURN OF MONEY OR PROPERTY SUFFICIENT TO OBTAIN LEGAL

1 COUNSEL BUT LESS THAN THE TOTAL AMOUNT SEIZED AND REQUIRE AN ACCOUNTING OF  
2 THE RETURNED MONEY OR PROPERTY.

3 D. IN LIEU OF ORDERING THE WRIT OF REPLEVIN, THE COURT MAY ORDER THE  
4 STATE TO PROVIDE SECURITY OR A WRITTEN ASSURANCE FOR SATISFACTION OF ANY  
5 JUDGMENT, INCLUDING DAMAGES, THAT MAY BE RENDERED IN THE ACTION OR ORDER  
6 OTHER RELIEF AS MAY BE JUST.

7 Sec. 14. Section 13-4310, Arizona Revised Statutes, is amended to  
8 read:

9 13-4310. Judicial forfeiture proceedings; general

10 A. In any proceeding pursuant to this chapter, the court, on  
11 application of the state, may enter any restraining order or injunction,  
12 require the execution of satisfactory performance bonds, create  
13 receiverships, appoint conservators, appraisers, accountants or trustees or  
14 take any other action to seize, secure, maintain or preserve the availability  
15 of property subject to forfeiture under this title, including a warrant for  
16 its seizure, whether prior or subsequent to the filing of a notice of pending  
17 forfeiture, complaint, indictment or information.

18 B. If property is seized for forfeiture without a prior judicial  
19 determination of probable cause, an order of forfeiture or a hearing pursuant  
20 to section 13-4312, subsection D, the court, on an application filed by an  
21 owner of or interest holder in the property within fifteen days after notice  
22 of its seizure for forfeiture or actual knowledge of it, whichever is  
23 earlier, and complying with the requirements for claims in section 13-4311,  
24 subsections E and F, may issue an order to show cause to the seizing agency  
25 for a hearing on the sole issue of whether probable cause for forfeiture of  
26 the property then exists. Notice of the order to show cause hearing must be  
27 served ~~upon~~ ON the attorney for the state at least five working days before  
28 the hearing is held. If the court finds that no probable cause for  
29 forfeiture of the property then exists or if the state elects not to contest  
30 the issue, the property seized for forfeiture from the applicant shall be  
31 released to the custody of the applicant pending the outcome of a judicial  
32 proceeding pursuant to this chapter. If the court finds that probable cause  
33 for the forfeiture of the property then exists, the court shall not order the  
34 property released, except as provided in section 13-4306, subsection G.

35 C. A defendant convicted in any criminal proceeding shall be precluded  
36 from subsequently denying the essential allegations of the criminal offense  
37 of which he was convicted in any proceeding pursuant to this chapter. For  
38 the purposes of this chapter, a conviction may result from a verdict or plea  
39 including a no contest plea.

40 D. In any judicial forfeiture hearing, determination or other  
41 proceeding pursuant to this chapter, the applicant, petitioner or claimant  
42 must establish by a preponderance of the evidence that he is an owner of or  
43 interest holder in the property seized for forfeiture before other evidence  
44 is taken. The burden of proving the standing of the claimant ~~and the~~  
45 ~~existence of the exemption~~ is on the claimant or party raising the claim, and

1 it is not necessary to negate the standing of any claimant ~~or the existence~~  
2 ~~of any exemption~~ in any notice, application, complaint, information or  
3 indictment. IF A CLAIMANT ESTABLISHES BY A PREPONDERANCE OF THE EVIDENCE  
4 THAT THE CLAIMANT IS AN OWNER OF OR INTEREST HOLDER IN THE PROPERTY, IT IS  
5 PRESUMED THAT THE CLAIMANT'S INTEREST IN THE PROPERTY IS EXEMPT FROM  
6 FORFEITURE UNDER SECTION 13-4304 AND THE BURDEN OF ESTABLISHING THAT THE  
7 CLAIMANT'S PROPERTY SHOULD BE FORFEITED IS ON THE STATE.

8 E. In hearings and determinations pursuant to this chapter:

9 1. The law of evidence relating to civil actions applies equally to  
10 all parties, including ~~the~~ THIS state, an applicant, a petitioner, a claimant  
11 and a defendant, on all issues required to be established by a preponderance  
12 of the evidence.

13 2. The court shall receive and consider, in making any determination  
14 of probable cause or reasonable cause, all evidence and information that  
15 would be permissible in determining probable cause at a preliminary hearing,  
16 at a grand jury or by a magistrate pursuant to section 13-3913, together with  
17 inferences from the evidence and information.

18 3. ~~No~~ Evidence may be suppressed in any hearing pursuant to this  
19 chapter on the ground that its acquisition by search or seizure violated  
20 constitutional protections applicable in criminal cases relating to  
21 unreasonable searches or seizures.

22 F. All property, including all interests in such property, declared  
23 forfeited under this title vests in this state on the commission of the act  
24 or omission giving rise to forfeiture under this title together with the  
25 proceeds of the property after such time. Any such property or proceeds  
26 subsequently transferred to any person are subject to forfeiture and  
27 thereafter shall be ordered forfeited unless the transferee claims and  
28 establishes in a hearing pursuant to this chapter the showings set out in  
29 section 13-4304.

30 G. On the motion of a party and after notice to any persons who are  
31 known to have an interest in the property and an opportunity to be heard, the  
32 court may order property that has been seized for forfeiture sold, leased,  
33 rented or operated to satisfy an interest of any interest holder who has  
34 timely filed a proper claim or to preserve the interests of any party. The  
35 court may order a sale or any other disposition of the property if the  
36 property may perish, waste, be foreclosed on or otherwise be significantly  
37 reduced in value or if the expenses of maintaining the property are or will  
38 become greater than its fair market value. If the court orders a sale, the  
39 court shall designate a third party or state property manager to dispose of  
40 the property by public sale or other commercially reasonable method and shall  
41 distribute the proceeds in the following order of priority:

- 42 1. Payment of reasonable expenses incurred in connection with the  
43 sale.
- 44 2. Satisfaction of exempt interests in the order of their priority.

1           3. Preservation of the balance, if any, in the actual or constructive  
2 custody of the court in an interest bearing account, subject to further  
3 proceedings under this chapter.

4           H. If the property is disposed of pursuant to subsection G of this  
5 section, a successful claimant may apply to the court for actual monetary  
6 damages suffered, if any, as a result of the disposal of the property, but  
7 ~~the THIS~~ state, a political subdivision of ~~the THIS~~ state, or an officer,  
8 employee or agent of any of them shall not in any event be liable under this  
9 chapter for incidental or consequential damages or for damages either:

10           1. That could have been avoided if the claimant had made full and  
11 immediate disclosure to the attorney for the state of facts or evidence known  
12 or available to the claimant.

13           2. In excess of the fair market value of the property seized for  
14 forfeiture at the time of its seizure plus interest from the time of its  
15 seizure for forfeiture.

16           ~~I. If an indictment or information is filed alleging the same conduct  
17 as the conduct giving rise to forfeiture in a civil forfeiture proceeding,  
18 the court in the civil proceeding may stay civil discovery against the  
19 criminal defendant and against the state in the civil proceeding until the  
20 defendant's criminal trial is completed. Before staying civil discovery, the  
21 court shall make adequate provision to prevent any loss or expense to any  
22 victim or party resulting from the delay, including loss or expense due to  
23 maintenance, management, insurance, storage or preservation of the  
24 availability of the property or due to depreciation in the value of the  
25 property.~~

26           ~~J.~~ I. No person claiming to be an owner of or interest holder in  
27 property seized for forfeiture under this chapter may commence or maintain  
28 any action against the state concerning the validity of the alleged interest  
29 other than as provided in this chapter.

30           Sec. 15. Section 13-4311, Arizona Revised Statutes, is amended to  
31 read:

32           13-4311. Judicial in rem forfeiture proceedings

33           A. If a forfeiture is authorized by law, it shall be ordered by a  
34 court on an action in rem brought by the state pursuant to a notice of  
35 pending forfeiture or a verified complaint for forfeiture. The state may  
36 serve the complaint in the manner provided by section 13-4307 or by the  
37 Arizona rules of civil procedure.

38           B. A civil in rem action may be brought by the state in addition to ~~or~~  
39 ~~in lieu of~~ the civil and criminal in personam forfeiture procedures set forth  
40 in sections 13-4312 and 13-4313 ~~or the uncontested civil forfeiture~~  
41 ~~procedures set forth in section 13-4309~~. Judicial in rem forfeiture  
42 proceedings are in the nature of an action in rem and are governed by the  
43 Arizona rules of civil procedure unless a different procedure is provided by  
44 law.

1 C. On the filing of a civil in rem action by the state in superior  
2 court the clerk of the court in which the action is filed shall provide, and  
3 the attorney for the state may provide, the notice of pending forfeiture  
4 required by section 13-4307 unless the files of the clerk of the court  
5 reflect that such notice has previously been made.

6 D. An owner of or interest holder in the property may file a claim  
7 against the property, within thirty days after the notice, for a hearing to  
8 adjudicate the validity of his claimed interest in the property. The COURT  
9 SHALL HOLD THE hearing ~~shall be held by the court~~ without a jury.

10 E. The claim shall be signed by the claimant under penalty of perjury  
11 and shall set forth all of the following:

12 1. The caption of the proceeding as set forth on the notice of pending  
13 forfeiture or complaint and the name of the claimant.

14 2. The address at which the claimant will accept future mailings from  
15 the court or attorney for the state.

16 3. The nature and extent of the claimant's interest in the property.

17 4. The date, the identity of the transferor and the circumstances of  
18 the claimant's acquisition of the interest in the property.

19 5. The specific provisions of this chapter relied on in asserting  
20 that the property is not subject to forfeiture.

21 6. All facts supporting each such assertion.

22 7. Any additional facts supporting the claimant's claim.

23 8. The precise relief sought.

24 F. Copies of the claim shall be mailed to the seizing agency and to  
25 the attorney for the state. No extension of time for the filing of a claim  
26 may be granted.

27 G. Within twenty days after service of the complaint, the claimant  
28 shall file and serve the answer to the complaint and the answers to  
29 interrogatories and requests for admission if any were served with the  
30 complaint. The answer shall be signed by the owner or interest holder under  
31 penalty of perjury, shall comply with the Arizona rules of civil procedure  
32 relating to answers and shall comply with all of the requirements for claims.  
33 If no proper answer is timely filed, the attorney for the state shall proceed  
34 as provided in sections 13-4314 and 13-4315 with ten days' notice to any  
35 person who has timely filed a claim that has not been stricken by the court.

36 H. At the time of filing its pleadings or at any other time not less  
37 than thirty days before the hearing, the state and any claimant who has  
38 timely answered the complaint may serve discovery requests on any other  
39 party, the answers or response to which shall be due in twenty days, and may  
40 take the deposition of any person at any time after the expiration of fifteen  
41 days after the filing and service of the complaint. Any party may move for  
42 summary judgment at any time after an answer or responsive pleading is served  
43 and not less than thirty days before the hearing. The state, ~~as the party~~  
44 ~~defending against the claim,~~ may make offers of judgment at any time more  
45 than ten days before the hearing begins.

1 I. An injured person may submit a request for compensation from  
2 forfeited property to the court at any time before the earlier of the entry  
3 of a final judgment or an application for an order of the forfeiture of the  
4 property, or if a hearing pursuant to subsections K, L and M of this section  
5 is held, not less than thirty days before the hearing. The request shall be  
6 signed by the requestor under penalty of perjury and shall set forth all of  
7 the following:

8 1. The caption of the proceeding as set forth on the notice of pending  
9 forfeiture or complaint and the name of the requestor.

10 2. The address at which the requestor will accept future mailings from  
11 the court or parties to the action.

12 3. The property subject to forfeiture from which the requestor seeks  
13 compensation.

14 4. The nature of the economic loss sustained by the requestor.

15 5. All facts supporting each such assertion.

16 6. Any additional facts supporting the request.

17 7. The amount of economic loss for which the requestor seeks  
18 compensation.

19 J. If a proper request for compensation from forfeited property is  
20 timely filed, the court shall hold a hearing to establish whether there is a  
21 factual basis for the request. The requestor has the burden of establishing  
22 by a preponderance of the evidence that the requestor is an injured person  
23 who sustained economic loss.

24 K. The hearing on the claim, to the extent practicable and consistent  
25 with the interest of justice, shall be held sixty days after all parties have  
26 complied with the disclosure required by rule 26.1 of the Arizona rules of  
27 civil procedure. The court may consolidate the hearing on the claim with a  
28 hearing on any other claim concerning the same property.

29 L. At the hearing, the claimant may testify, present evidence and  
30 witnesses on the claimant's own behalf and cross-examine witnesses who appear  
31 at the hearing. The state may present evidence and witnesses and  
32 cross-examine witnesses who appear at the hearing.

33 M. At the hearing, the state has the burden of establishing by a  
34 preponderance of the evidence that the property is subject to forfeiture  
35 under section 13-4304. ~~Any IF THE claimant who has previously established by~~  
36 ~~a preponderance of the evidence that the claimant is an owner of or interest~~  
37 ~~holder in the property, has the burden of establishing by a preponderance of~~  
38 ~~the evidence~~ **IT IS PRESUMED** that the claimant's interest in the property is  
39 exempt from forfeiture under section 13-4304 **AND THE BURDEN OF ESTABLISHING**  
40 **THAT THE CLAIMANT'S PROPERTY SHOULD BE FORFEITED IS ON THE STATE.**

1 N. In accordance with its findings at the hearing:

2 1. The court shall order an interest in property returned or conveyed  
3 to a claimant, if any, who has established by a preponderance of the evidence  
4 that the claimant is an owner of or interest holder in the property if either  
5 of the following applies:

6 (a) The state has failed to establish by a preponderance of the  
7 evidence that the interest is subject to forfeiture under section 13-4304.

8 (b) The ~~claimant STATE~~ has ~~established by a preponderance of the~~  
9 ~~evidence~~ FAILED TO ESTABLISH that the interest is NOT exempt from forfeiture  
10 under section 13-4304.

11 2. The court shall order all other property, including all interests  
12 in the property, forfeited to this state and proceed pursuant to sections  
13 13-4314 and 13-4315.

14 3. If the court finds that a requestor is an injured person the court  
15 shall determine the amount of the injured person's economic loss caused by  
16 the conduct giving rise to the forfeiture of the designated property and  
17 shall require the following:

18 (a) If the designated property is not contraband and is not altered or  
19 designed for use in conduct giving rise to forfeiture, the attorney for the  
20 state shall sell the property as provided in section 13-4315, subsection A,  
21 paragraph 2, ~~and~~ and shall apply the resulting balance to compensate the injured  
22 person's economic loss in the amount found by the court.

23 (b) If the balance is insufficient to compensate the economic loss of  
24 all injured persons the attorney for the state shall distribute the balance  
25 among the injured persons according to a method determined by the court.

26 (c) After compensation of all injured persons, the attorney for the  
27 state shall transmit ten ~~per-cent~~ PERCENT of the remaining balance, if any,  
28 to the Arizona criminal justice commission for deposit in the victim  
29 compensation and assistance fund established by section 41-2407.

30 (d) The attorney for the state shall deposit the remainder of the  
31 balance, if any, in an appropriate anti-racketeering revolving fund  
32 established by section 13-2314.01 or ESTABLISHED PURSUANT TO SECTION  
33 13-2314.03.

34 Sec. 16. Section 13-4312, Arizona Revised Statutes, is amended to  
35 read:

36 13-4312. Judicial in personam forfeiture proceedings

37 A. If a forfeiture is authorized by law, it shall be ordered by a  
38 court on proceedings by the state AFTER A CRIMINAL CONVICTION in an in  
39 personam civil or criminal action pursuant to section 13-2313 or 13-2314 or  
40 any other law providing for a forfeiture.

41 B. Any complaint, information or indictment alleging or charging one  
42 or more offenses included in section 13-2301, subsection D, paragraph 4 or a  
43 violation of section 13-2312, or any other offense giving rise to forfeiture  
44 under this title, shall set forth with reasonable particularity property that  
45 the state seeks to forfeit pursuant to this section in that action, if any.

1 The court shall allow the allegation that particular new or different or  
2 differently described property is subject to forfeiture in an in personam  
3 criminal or civil case to be made at any time prior to the date the case is  
4 actually tried unless the allegation is filed fewer than twenty days before  
5 the case is actually tried, and the court finds on the record that the  
6 defendant was in fact prejudiced by the untimely filing and states reasons  
7 for these findings, provided that when the allegation is filed, the state  
8 must make available to the defendant a copy of any material information  
9 concerning the allegation.

10 C. In any proceeding pursuant to this section, the court, on  
11 application of the state, may enter any order authorized by section 13-4310,  
12 subsection A or take any other action to seize, secure, maintain or preserve  
13 the availability of property subject to forfeiture under this title,  
14 including a warrant for its seizure, whether before or after the filing of a  
15 complaint, indictment or information.

16 D. Notwithstanding subsection E of this section, a temporary  
17 restraining order under this section may be entered on application of the  
18 state without notice or an opportunity for a hearing if the state  
19 demonstrates both that:

20 1. There is probable cause to believe that the property with respect  
21 to which the order is sought would, in the event of ~~final judgment or~~ A  
22 CRIMINAL conviction, be subject to forfeiture under this title.

23 2. Provision of notice will jeopardize the availability of the  
24 property for forfeiture. A temporary restraining order expires within ten  
25 days after the date on which it is entered unless the party against whom it  
26 is entered consents to an extension for a longer period or unless after  
27 commencing a hearing the court enters or is considering a preliminary  
28 injunction.

29 E. Notice of the entry of the restraining order and an opportunity for  
30 a hearing shall be afforded to persons known to have an interest in the  
31 property, whether or not a temporary restraining order is entered without  
32 notice. The hearing, however, is limited to the issues of whether both:

33 1. There is a probability that the state will prevail on the issue of  
34 forfeiture and that failure to enter the order will result in the property  
35 being destroyed, conveyed, encumbered or further encumbered, removed from the  
36 jurisdiction of the court, concealed or otherwise made unavailable for  
37 forfeiture.

38 2. The need to preserve the availability of property through the entry  
39 of the requested order outweighs the hardship on any owner, interest holder  
40 or defendant against whom the order is to be entered.

41 F. A hearing requested by any owner or interest holder concerning an  
42 order entered under this section shall be held at the earliest possible time  
43 and before the expiration of a temporary order.

44 G. On ~~a determination of liability or~~ the conviction of a person for  
45 conduct giving rise to forfeiture under this title, the court shall enter a

1 judgment of forfeiture of the property described in the forfeiture statute  
2 alleged and set out in the complaint, information or indictment, as amended,  
3 and shall also authorize the county attorney or attorney general, their  
4 agents or any peace officer to seize all property ordered forfeited that was  
5 not previously seized or is not then under seizure. Following the entry of  
6 an order declaring the property forfeited, the court, on application of the  
7 state, may enter any order authorized by section 13-4310, subsection A or  
8 take any other action to protect the interest of this state or a political  
9 subdivision in the property ordered forfeited. The filing of the order of  
10 forfeiture in the appropriate public records perfects the interest of the  
11 state in the property described in the order as of the earlier of the date of  
12 the act or omission giving rise to forfeiture or the date that a notice of  
13 seizure for forfeiture or notice of pending forfeiture or racketeering lien  
14 was first filed in the records, which entitles the state to all rights of a  
15 secured party as to that property in addition to any other rights or remedies  
16 of the state in relation to the property. Any income accruing to, or derived  
17 from, an enterprise or any interest in an enterprise or other property  
18 interest that is forfeited under this chapter is also forfeited from the time  
19 of the conduct giving rise to forfeiture. It may be used pending procedures  
20 subsequent to a verdict or finding of liability to offset ordinary and  
21 necessary expenses of the enterprise or property as required by law or that  
22 are necessary to protect the interests of this state or a political  
23 subdivision.

24 H. Procedures subsequent to the verdict ~~or finding of liability~~ and  
25 order of forfeiture shall be as follows:

26 1. Following the entry of an order of forfeiture under this subsection  
27 the clerk of the court shall, and the attorney for the state may, give notice  
28 of pending forfeiture to all owners and interest holders who have not  
29 previously been given notice, if any, in the manner provided in section  
30 13-4307.

31 2. An owner of or interest holder in property that has been ordered  
32 forfeited pursuant to such action whose claim is not precluded may file a  
33 claim as described in section 13-4311, subsections E and F in the court for a  
34 hearing to adjudicate the validity of his claimed interest in the property  
35 within thirty days after initial notice of pending forfeiture or after notice  
36 under paragraph 1 of this subsection, whichever is earlier.

37 3. The hearing on the claim, to the extent practicable and consistent  
38 with the interest of justice, shall be held within sixty days after the order  
39 of forfeiture. The court may consolidate the hearing on the claim with a  
40 hearing on any other claim filed by a person other than a party or defendant  
41 in the underlying action and concerning the same property.

42 4. The hearing shall be held by the court without a jury and conducted  
43 in the manner provided for in rem judicial forfeiture actions including the  
44 provisions of section 13-4311, subsections ~~J and K~~ L AND M. In addition to  
45 testimony and evidence presented at the hearing, the court shall consider the

1 relevant portions of the record of the underlying civil or criminal action  
2 that resulted in the order of forfeiture.

3 5. In accordance with its findings at the hearing, the court may amend  
4 the order of forfeiture if it determines that any claimant has established by  
5 a preponderance of the evidence that the claimant is an owner of or interest  
6 holder in the property if either of the following applies:

7 (a) The state has failed to establish by a preponderance of the  
8 evidence that the interest is subject to forfeiture under section 13-4304.

9 (b) The ~~claimant~~ STATE has ~~established by a preponderance of the~~  
10 ~~evidence~~ FAILED TO ESTABLISH that the interest is NOT exempt from forfeiture  
11 under section 13-4304.

12 I. In order to facilitate the identification or location of property  
13 declared forfeited and to facilitate the disposition of filed or subsequent  
14 claims pursuant to subsection H, paragraph 2 of this section, the court, on  
15 application of the state, may order that the testimony of any witness  
16 relating to the property forfeited or alleged to be subject to forfeiture be  
17 taken by deposition and that any designated book, paper, document, record,  
18 recording, electronic or otherwise, or other material which is not privileged  
19 be produced at the same time and place and in the same manner as that  
20 provided for the taking of depositions under the rules of civil procedure.

21 Sec. 17. Section 13-4314, Arizona Revised Statutes, is amended to  
22 read:

23 13-4314. Disposition by court

24 A. ~~If no petitions for remission or mitigation or claims are timely~~  
25 ~~filed or if no petitioner files a claim in the court within thirty days after~~  
26 ~~the mailing of a declaration of forfeiture~~ AFTER A CRIMINAL CONVICTION  
27 OCCURS, the attorney for the state shall apply to the court for an order of  
28 forfeiture and allocation of forfeited property pursuant to section 13-4315.  
29 On the state's written application showing A CONVICTION, jurisdiction, ~~AND~~  
30 notice ~~and facts sufficient to demonstrate probable cause for forfeiture~~, and  
31 in cases brought pursuant to section 13-3413, subsection A, paragraph 1 or 3,  
32 probable cause to believe that the conduct giving rise to forfeiture involved  
33 an amount of unlawful substance greater than the statutory threshold amount  
34 as defined in section 13-3401 or was committed for financial gain, the court  
35 shall order the property forfeited to the state.

36 B. After the court's disposition of all claims timely filed under this  
37 chapter, the state has clear title to the forfeited property and the court  
38 shall so order. Title to the forfeited property and its proceeds is deemed  
39 to have vested in the state on the commission of the act or omission giving  
40 rise to the forfeiture under this title.

41 C. If, in his discretion, the attorney for the state has entered into  
42 a stipulation with an interest holder that the interest holder has an  
43 interest that is exempted from forfeiture, the court, on application of the  
44 attorney for the state, may release or convey forfeited personal property to  
45 the interest holder if all of the following are true:

1           1. The interest holder has an interest ~~which~~ THAT was acquired in the  
2 regular course of business as a financial institution within section 13-2301,  
3 subsection D, paragraph 3.

4           2. The amount of the interest holder's encumbrance is readily  
5 determinable and it has been reasonably established by proof made available  
6 by the attorney for the state to the court.

7           3. The encumbrance held by the interest holder seeking possession is  
8 the only interest exempted from forfeiture and the order forfeiting the  
9 property to the state transferred all of the rights of the owner ~~prior to~~  
10 BEFORE forfeiture, including rights to redemption, to the state.

11           4. After the court's release or conveyance, the interest holder shall  
12 dispose of the property by a commercially reasonable public sale, and within  
13 ten days of disposition shall tender to the state the amount received at  
14 disposition less the amount of the interest holder's encumbrance and  
15 reasonable expense incurred by the interest holder in connection with the  
16 sale or disposal.

17           D. On order of the court forfeiting the subject property, the attorney  
18 for the state may transfer good and sufficient title to any subsequent  
19 purchaser or transferee, and the title shall be recognized by all courts, by  
20 this state and by all departments and agencies of this state and any  
21 political subdivision.

22           E. On entry of judgment for a claimant or claimants in any proceeding  
23 to forfeit property under this chapter such property or interest in property  
24 shall be returned or conveyed immediately to the claimant or claimants  
25 designated by the court. ~~If it appears that there was reasonable cause for~~  
26 ~~the seizure for forfeiture or for the filing of the notice of pending~~  
27 ~~forfeiture, complaint, information or indictment, the court shall cause a~~  
28 ~~finding to be entered,~~ and the claimant ~~is not~~ OR CLAIMANTS, in such case,  
29 ARE entitled to ATTORNEY FEES, costs or damages. ~~, nor is~~ The person or  
30 seizing agency that made the seizure, ~~nor is~~ AND the attorney for the state  
31 IS NOT liable to suit or judgment on account of ~~such~~ THE seizure, suit or  
32 prosecution.

33           F. The court shall order any claimant who fails to establish that his  
34 entire interest is exempt from forfeiture under section 13-4304 to pay ~~the~~  
35 HIS PROPORTIONATE costs of any claimant who establishes that his entire  
36 interest is exempt from forfeiture under section 13-4304 and the state's  
37 costs and expenses of the investigation and prosecution of the matter,  
38 including reasonable attorney fees. THE PROPORTIONATE COSTS SHALL BE EQUAL  
39 TO THE CLAIMANT'S PERCENTAGE OF INTEREST THAT IS SUBJECT TO FORFEITURE.

40           Sec. 18. Section 13-4315, Arizona Revised Statutes, is amended to  
41 read:

42           13-4315. Allocation of forfeited property

43           A. Any property, including all interests in property, forfeited to the  
44 state under this title shall be transferred as requested by the attorney for

1 the state to the seizing agency or to the agency or political subdivision  
2 employing the attorney for the state, which may do any of the following:

3 1. Sell, lease, lend or transfer the property to any local or state  
4 government entity or agency or political subdivision, ANY law enforcement  
5 agency or prosecutorial agency or any federal law enforcement agency which  
6 THAT operates within this state for official federal, state or political  
7 subdivision use within this state, with expenses for keeping and transferring  
8 such property to be paid by the recipient. Property may not be allocated for  
9 official use if the fair market value of the property substantially exceeds  
10 the agency's probable cost of purchasing other property equally suited for  
11 the intended official use. Property that is allocated for official use may  
12 not be assigned for use by any person who supervised or exercised discretion  
13 in its forfeiture unless the use is approved in writing by the head of the  
14 agency.

15 2. Sell forfeited property by public or otherwise commercially  
16 reasonable sale with expenses of keeping and selling the property and the  
17 amount of all valid interests established by claimants paid out of the  
18 proceeds of the sale with the balance paid into the anti-racketeering  
19 REVOLVING fund of the state or of the county in which the political  
20 subdivision seizing the property or prosecuting the action is located. A  
21 sale of forfeited property may not be made to any employee of the seizing  
22 agency, any person who participated in the forfeiture, any employee of a  
23 contractor selling the property on behalf of the seizing agency or any member  
24 of the immediate family of any of these employees or persons.

25 3. Destroy or use for investigative purposes any illegal or controlled  
26 substances or other contraband at any time more than twenty days after  
27 seizure, on written approval of the attorney for the state, preserving only  
28 such material as may be necessary for evidence.

29 4. Sell, use or destroy all raw materials, products and equipment of  
30 any kind used or intended for use in manufacturing, compounding or processing  
31 a controlled substance.

32 5. Compromise and pay claims against property forfeited pursuant to  
33 any provision of this section.

34 6. Make any other disposition of forfeited property authorized by law  
35 for the disposition of property of the state, government entity, agency or  
36 political subdivision.

37 B. Notwithstanding subsection A of this section or any other provision  
38 of law to the contrary:

39 1. If the property forfeited is money, and a law enforcement agency  
40 can specifically identify monies as being from its investigative funds or as  
41 being exchanged for property from its investigative property, the monies  
42 shall be remitted to the investigative fund. If there are additional  
43 forfeited monies or monies tendered on satisfaction by an interest holder  
44 which THAT cannot be specifically identified, the court shall order the  
45 monies returned to each law enforcement agency that makes a showing of costs

1 or expenses ~~which~~ THAT it incurred in connection with the investigation and  
2 prosecution of the matter and shall order all excess monies remaining after  
3 such returns deposited in the anti-racketeering REVOLVING fund of this state  
4 or of the county in which the political subdivision seizing the monies or  
5 prosecuting the action is located, established pursuant to section 13-2314.01  
6 or 13-2314.03.

7 2. If the property declared forfeited is an interest in a vehicle, the  
8 court shall order it forfeited to the local, state or other law enforcement  
9 agency seizing the vehicle for forfeiture or to the seizing agency.

10 C. Monies in any anti-racketeering REVOLVING fund established pursuant  
11 to this title may be used, in addition to any other lawful use, for:

12 1. The payment of any expenses necessary to seize, detain, appraise,  
13 inventory, protect, maintain, preserve the availability of, advertise or sell  
14 property that is subject to forfeiture and that is seized, detained or  
15 forfeited pursuant to this title or of any other necessary expenses incident  
16 to the seizure, detention, preservation or forfeiture of the property. The  
17 payments may include payments for contract services and payments to reimburse  
18 any federal, state or local agency for any expenditures made to perform the  
19 functions of the seizing agency.

20 2. The payment of awards for information or assistance leading to a  
21 civil or criminal proceeding under this title.

22 3. The payment of compensation from forfeited property to injured  
23 persons as provided in section 13-4311, subsection N, paragraph 3.

24 D. Each attorney for the state shall submit a copy of each forfeiture  
25 judgment, including each order of forfeiture, to the Arizona criminal justice  
26 commission within sixty days after the forfeiture judgment becomes final or  
27 after the conclusion of appellate review, if any.

28 E. THE ATTORNEY GENERAL SHALL INVESTIGATE ALL ALLEGATIONS OF UNLAWFUL  
29 USE OF MONIES. IF THE ALLEGATION INVOLVES THE ATTORNEY GENERAL, THE COUNTY  
30 ATTORNEY IN THE COUNTY WHERE THE ALLEGED UNLAWFUL USE OCCURRED SHALL  
31 INVESTIGATE THE ALLEGATION.