

House Engrossed

civil asset forfeiture; conviction; procedures

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 327
HOUSE BILL 2810

AN ACT

AMENDING SECTIONS 13-2314, 13-2314.01, 13-2314.03, 13-3413, 13-3914, 13-3919, 13-3920, 13-3921, 13-3942, 13-4301, 13-4303, 13-4304, 13-4305, 13-4306, 13-4307 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, 13-4315 AND 41-2407, 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 13-2314, Arizona Revised Statutes, is amended to
3 read:

4 13-2314. Racketeering; civil remedies by this state;
5 definitions

6 A. The attorney general or a county attorney may file an action in
7 superior court on behalf of a person who sustains injury to his person,
8 business or property by racketeering as defined by section 13-2301,
9 subsection D, paragraph 4 or by a violation of section 13-2312 for the
10 recovery of treble damages and the costs of the suit, including reasonable
11 attorney fees, or to prevent, restrain or remedy racketeering as defined
12 by section 13-2301, subsection D, paragraph 4 or a violation of section
13 13-2312. If the person against whom a racketeering claim has been
14 asserted, including a forfeiture action or lien, prevails on that claim,
15 the person may be awarded costs and reasonable attorney fees incurred in
16 defense of that claim. In actions filed by the state or a county, awards
17 of costs and reasonable attorney fees are to be assessed against and paid
18 from monies acquired pursuant to sections 13-2314.01 and 13-2314.03.

19 B. The superior court has jurisdiction to prevent, restrain and
20 remedy racketeering as defined by section 13-2301, subsection D, paragraph
21 4 or a violation of section 13-2312 after making provision for the rights
22 of any person who sustained injury to his person, business or property by
23 the racketeering conduct and after a hearing or trial, as appropriate, by
24 issuing appropriate orders.

25 C. Before a determination of liability the orders may include
26 issuing seizure warrants, entering findings of probable cause for in
27 personam or in rem forfeiture, entering restraining orders or prohibitions
28 or taking ~~such~~ other actions, including the acceptance of satisfactory
29 performance bonds, the creation of receiverships and the enforcement of
30 constructive trusts, in connection with any property or other interest
31 subject to forfeiture, damages or other remedies or restraints pursuant to
32 this section as the court deems proper.

33 D. Following a determination of liability the orders may include:

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

36 2. Imposing reasonable restrictions on the future activities or
37 investments of any person, including prohibiting any person from engaging
38 in the same type of endeavor as the enterprise engaged in, the activities
39 of which affect the laws of this state, to the extent the constitutions of
40 the United States and this state ~~permit~~ ALLOW.

41 3. Ordering dissolution or reorganization of any enterprise.

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

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

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

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

14 (b) Any interest in, security of, claims against or property,
15 office, title, license or contractual right of any kind affording a source
16 of influence over any enterprise or other property that the person has
17 acquired or maintained an interest in or control of, conducted or
18 participated in the conduct of in violation of section 13-2312.

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

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

27 7. Payment to the general fund of the state or county as
28 appropriate of an amount equal to the gain that was acquired or maintained
29 through an offense included in the definition of racketeering in section
30 13-2301, subsection D, paragraph 4 or a violation of section 13-2312 or
31 that any person is liable for under this section.

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

39 F. A person or enterprise that acquires any property through an
40 offense included in the definition of racketeering in section 13-2301,
41 subsection D, paragraph 4 or through a violation of section 13-2312 is an
42 involuntary trustee. The involuntary trustee and any other person or
43 enterprise, except a bona fide purchaser for value who is reasonably
44 without notice of the unlawful conduct and who is not knowingly taking
45 part in an illegal transaction, hold the property, its proceeds and its

1 fruits in constructive trust for the benefit of persons entitled to
2 remedies under this section.

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

8 ~~1. Any property or interest in property acquired or maintained by a~~
9 ~~person in violation of section 13-2312.~~

10 ~~2. Any interest in, security of, claims against or property,~~
11 ~~office, title, license or contractual right of any kind affording a source~~
12 ~~of influence over any enterprise or other property that a person has~~
13 ~~acquired or maintained an interest in or control of, conducted or~~
14 ~~participated in the conduct of in violation of section 13-2312.~~

15 ~~3. All proceeds traceable to an offense included in the definition~~
16 ~~of racketeering in section 13-2301, subsection D, paragraph 4 and all~~
17 ~~monies, negotiable instruments, securities and other property used or~~
18 ~~intended to be used in any manner or part to facilitate the commission of~~
19 ~~the offense.~~

20 ~~H.~~ G. A defendant convicted in any criminal proceeding shall be
21 precluded from subsequently denying the essential allegations of the
22 criminal offense of which he was convicted in any civil proceeding. For
23 the purposes of this subsection, a conviction may result from a verdict or
24 plea including a no contest plea.

25 ~~I.~~ H. Notwithstanding any law creating a lesser period, the
26 initiation of civil proceedings related to violations of any offense
27 included in the definition of racketeering in section 13-2301, subsection
28 D, paragraph 4 or a violation of section 13-2312, including procedures
29 pursuant to chapter 39 of this title, shall be commenced within seven
30 years after actual discovery of the violation.

31 ~~J.~~ I. In any civil action brought pursuant to this section, the
32 attorney general or a county attorney may file with the clerk of the
33 superior court a certificate stating that the case is of special public
34 importance. A copy of that certificate shall be furnished immediately by
35 ~~such~~ THE clerk to the chief judge or presiding chief judge of the superior
36 court in the county in which ~~such~~ THE action is pending, and, ~~upon~~ ON
37 receipt of ~~such~~ THE copy, the judge shall immediately designate a judge to
38 hear and determine the action. The judge so designated shall promptly
39 assign ~~such~~ THE action for hearing, participate in the hearings and
40 determination and cause the action to be expedited.

41 ~~K.~~ J. The standard of proof in actions brought pursuant to this
42 section is the preponderance of the evidence test, except that the
43 standard of proof for an order under subsection D, paragraph 6 of this
44 section is the standard of proof that is applicable for an in personam
45 forfeiture as set forth in chapter 39 of this title ~~and the standard of~~

1 ~~proof for an in rem forfeiture under subsection G of this section is the~~
2 ~~standard of proof that is applicable to an in rem forfeiture as set forth~~
3 ~~in chapter 39 of this title.~~

4 ~~L. A civil action authorized by this section, including proceedings~~
5 ~~pursuant to chapter 39 of this title, is remedial and not punitive and~~
6 ~~does not limit and is not limited by any other previous or subsequent~~
7 ~~civil or criminal action under this title or any other provision of~~
8 ~~law. Civil remedies provided under this title are supplemental and not~~
9 ~~mutually exclusive.~~

10 ~~M.~~ K. The attorney general may appear as amicus curiae in any
11 proceeding in which a claim under this section has been asserted,
12 including proceedings pursuant to chapter 39 of this title, or in which
13 the court is interpreting this chapter or chapter 39 of this title. A
14 party who files a notice of appeal from a civil action brought under this
15 chapter or chapter 39 of this title shall serve the notice and one copy of
16 the appellant's brief on the attorney general at the time the person files
17 the appellant's brief with the court. This requirement is jurisdictional.

18 ~~N.~~ L. For the purposes of this section and section 13-2312:

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

20 (a) Possess.

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

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

26 2. "Gain" means any benefit, interest or property of any kind
27 without reduction for expenses of acquiring or maintaining it or incurred
28 for any other reason.

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

33 Sec. 2. Section 13-2314.01, Arizona Revised Statutes, is amended to
34 read:

35 13-2314.01. Anti-racketeering revolving fund; use of monies;
36 reports; audit

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

41 B. Any prosecution and investigation costs, including attorney
42 fees, that are recovered for the state by the attorney general as a result
43 of enforcement of civil and criminal statutes pertaining to any offense
44 included in the definition of racketeering in section 13-2301, subsection

1 D, paragraph 4 or section 13-2312, whether by final judgment, settlement
2 or otherwise, shall be deposited in the fund established by this section.

3 C. Any monies received by any department or agency of this state or
4 any political subdivision of this state from any department or agency of
5 the United States or another state as a result of participation in any
6 investigation or prosecution, whether by final judgment, settlement or
7 otherwise, shall be deposited in the fund established by this section or,
8 if the recipient is a political subdivision of this state, may be
9 deposited in the fund established pursuant to section 13-2314.03.

10 D. Any monies obtained as a result of a forfeiture by any
11 department or agency of this state under this title or under federal law
12 shall be deposited in the fund established by this section. Any monies or
13 other property obtained as a result of a forfeiture by any political
14 subdivision of this state or the federal government may be deposited in
15 the fund established by this section. Monies deposited in the fund
16 pursuant to this section or section 13-4315 shall accrue interest and
17 shall be held for the benefit of the agency or agencies responsible for
18 the seizure or forfeiture to the extent of their contribution.

19 E. Except as provided in subsections H and I of this section, the
20 monies and interest shall be distributed within thirty days after
21 application to the agency or agencies responsible for the seizure or
22 forfeiture. The agency or agencies applying for monies must submit an
23 application in writing to the attorney general that includes a description
24 of what the requested monies will be used for. The attorney general may
25 deny an application that requests monies for a purpose that is not
26 authorized by this section, section 13-4315 or federal law. Monies in the
27 fund used by the attorney general for capital projects in excess of
28 \$1,000,000 are subject to review by the joint committee on capital review.

29 F. Monies in the fund may be used for the following:

30 1. Funding gang prevention programs, substance abuse prevention
31 programs, substance abuse education programs, programs that provide
32 assistance to victims of a criminal offense that is listed in section
33 13-2301 and witness protection pursuant to section 41-196 or for any
34 purpose permitted by federal law relating to disposing of any property
35 that is transferred to a law enforcement agency.

36 2. Investigating and prosecuting any offense included in the
37 definition of racketeering in section 13-2301, subsection D, paragraph 4
38 or section 13-2312, including civil enforcement.

39 3. Paying the relocation expenses of any law enforcement officer
40 and the officer's immediate family if the law enforcement officer is the
41 victim of a bona fide threat that occurred because of the law enforcement
42 officer's duties.

43 4. Paying the costs of the reports, audits and application
44 approvals that are required by this section.

1 G. Notwithstanding subsection F of this section, beginning from and
2 after August 27, ~~2019~~ 2024, the attorney general may not use monies from
3 the fund to pay salaries for ~~more than sixteen~~ full-time equivalent
4 positions in the attorney general's office.

5 H. On or before January 28, April 28, July 28 and October 28 of
6 each year, each department or agency of this state receiving monies
7 pursuant to this section or section 13-2314.03 or 13-4315 or from any
8 department or agency of the United States or another state as a result of
9 participation in any investigation or prosecution shall file with the
10 attorney general, the board of supervisors if the sheriff received the
11 monies and the city or town council if the city's or town's department
12 received the monies a report for the previous calendar quarter. The
13 report shall be in an electronic form that is prescribed by the Arizona
14 criminal justice commission and approved by the director of the joint
15 legislative budget committee. The report shall set forth the sources of
16 all monies and all expenditures as required by subsection L of this
17 section. The report shall not include any identifying information about
18 specific investigations. If a department or agency of this state fails to
19 file a report within forty-five days after the report is due and there is
20 no good cause as determined by the Arizona criminal justice commission,
21 the attorney general shall make no expenditures from the fund for the
22 benefit of the department or agency until the report is filed. The
23 attorney general is responsible for collecting all reports from
24 departments and agencies of this state and transmitting the reports to the
25 Arizona criminal justice commission at the time that the report required
26 pursuant to subsection I of this section is submitted.

27 I. On or before February 21, May 21, August 21 and November 21 of
28 each year, the attorney general shall file with the Arizona criminal
29 justice commission a report for the previous calendar quarter. The report
30 shall be in an electronic form that is prescribed by the Arizona criminal
31 justice commission and approved by the director of the joint legislative
32 budget committee. The report shall set forth the sources of all monies
33 and all expenditures as required by subsections K and L of this section.
34 The report shall not include any identifying information about specific
35 investigations. If the attorney general fails to file a report within
36 sixty days after the report is due and there is no good cause as
37 determined by the Arizona criminal justice commission, the attorney
38 general shall make no expenditures from the fund for the benefit of the
39 attorney general until the report is filed. If a political subdivision of
40 this state fails to file a report with the county attorney pursuant to
41 section 13-2314.03 within forty-five days after the report is due and
42 there is no good cause as determined by the Arizona criminal justice
43 commission, the attorney general shall make no expenditures from the fund
44 for the benefit of the political subdivision until the report is filed.

1 J. On or before the last day of February, May, August and November
2 of each year, the Arizona criminal justice commission shall compile the
3 attorney general report and the reports of all departments and agencies of
4 this state into a single comprehensive report for the previous calendar
5 quarter and shall submit an electronic copy of the report to the governor,
6 the director of the department of administration, the president of the
7 senate, the speaker of the house of representatives, the director of the
8 joint legislative budget committee and the secretary of state.

9 K. The report that is required by subsection I of this section must
10 include all of the following information if monies were obtained as a
11 result of a forfeiture:

- 12 1. The name of the law enforcement agency that seized the property.
- 13 2. The date of the seizure for forfeiture.
- 14 3. The type of property seized and a description of the property
15 seized, including, if applicable, the make, the model and the serial
16 number of the property.
- 17 4. The location of the original seizure by law enforcement.
- 18 5. The estimated value of the property seized for forfeiture, not
19 excluding encumbrances.
- 20 6. The criminal statute that allowed the seizure for forfeiture.
- 21 7. The criminal statute charged in ~~any~~ **THE** criminal case that is
22 related to the forfeiture case, ~~if known at the time of the report.~~
- 23 8. The court case number of ~~any~~ **THE** criminal case that is related
24 to the forfeiture case, ~~if known at the time of the report.~~
- 25 9. The outcome of ~~any~~ **THE** criminal case that is related to the
26 forfeiture case, ~~if known at the time of the report.~~
- 27 10. If the property was seized by a state agency and submitted for
28 state forfeiture proceedings but was transferred to federal authorities
29 for forfeiture proceedings, the reason for the federal transfer.
- 30 11. The forfeiture case number.
- 31 12. The method of forfeiture proceeding, including whether it was
32 criminal or civil, and if civil, whether ~~the civil forfeiture was judicial~~
33 ~~or uncontested pursuant to section 13-4309~~ **A CLAIM WAS FILED BY AN OWNER**
34 **OR INTEREST HOLDER.**
- 35 13. The venue of the forfeiture action.
- 36 14. Whether a person or entity filed a claim or counterclaim or
37 submitted a petition asserting an interest in the property as an owner,
38 interest holder or injured person.
- 39 15. Whether the owner, interest holder or injured person was
40 assisted by an attorney in the forfeiture case.
- 41 16. The date of the forfeiture decision.
- 42 17. Whether there was a forfeiture settlement agreement.
- 43 18. Whether the property was awarded or partially awarded to the
44 owner, partial owner or injured person or if the property was forfeited to
45 the state.

1 19. Whether the property was sold, destroyed or retained by law
2 enforcement.

3 20. The earliest date that the property was disposed of or sent for
4 disposition.

5 21. The net amount of monies AND PROCEEDS received from the
6 forfeiture.

7 22. The estimated administrative and storage costs and any other
8 costs, including any costs of litigation.

9 23. The amount of attorney fees, costs, expenses and damages
10 awarded and to whom the fees, costs, expenses or damages were awarded.

11 L. The reports that are required by subsections H and I of this
12 section must include the following information with regard to all
13 expenditures made from the fund for:

14 1. Crime, gang and substance abuse prevention programs.

15 2. Any injured person as defined in section 13-4301.

16 3. Witness protection.

17 4. Investigation costs, including informant fees and buy money.

18 5. Regular-time salaries, overtime pay and employee benefits of
19 prosecutors.

20 6. Regular-time salaries, overtime pay and employee benefits of
21 sworn law enforcement agency personnel other than prosecutors.

22 7. Regular-time salaries, overtime pay and employee benefits of
23 unsworn law enforcement agency personnel other than prosecutors.

24 8. Professional or outside services, including services related to
25 auditing, outside attorney fees, court reporting, expert witnesses and
26 other court costs.

27 9. Travel and meals.

28 10. Training.

29 11. Conferences.

30 12. Vehicles purchased or leased.

31 13. Vehicle maintenance.

32 14. Canines, firearms and related equipment, including tactical
33 gear.

34 15. Other capital expenditures, including furniture, computers and
35 office equipment.

36 16. External publications and communications.

37 17. Other operating expenses, including office supplies, postage
38 and printing. Expenses listed under this paragraph must be separately
39 categorized.

40 M. Beginning in 2018 and every other year thereafter, the auditor
41 general shall conduct a performance audit, as defined in section 41-1278,
42 and a financial audit of the attorney general's use of monies in the fund.
43 The audits must include all expenditures that were made by the attorney
44 general's office from the fund for the previous two years. The auditor
45 general shall submit copies of the performance and financial audits to the

1 president of the senate, the speaker of the house of representatives and
2 the chairpersons of the senate judiciary committee and the house of
3 representatives judiciary and public safety committee, or their successor
4 committees. The attorney general shall pay any fees and costs of the
5 audits under this section from the fund.

6 Sec. 3. Section 13-2314.03, Arizona Revised Statutes, is amended to
7 read:

8 13-2314.03. County anti-racketeering revolving fund; use of
9 fund; reports

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

13 B. Any prosecution and investigation costs, including attorney
14 fees, recovered for the county as a result of enforcement of civil and
15 criminal statutes pertaining to any offense included in the definition of
16 racketeering in section 13-2301, subsection D, paragraph 4 or section
17 13-2312, whether by final judgment, settlement or otherwise, shall be
18 deposited in the fund established by the board of supervisors.

19 C. Any monies received by any department or agency of this state or
20 any political subdivision of this state from any department or agency of
21 the United States or another state as a result of participation in any
22 investigation or prosecution, whether by final judgment, settlement or
23 otherwise, shall be deposited in the fund established pursuant to this
24 section or in the fund established by section 13-2314.01.

25 D. Any monies obtained as a result of a forfeiture by the county
26 attorney under this title or under federal law shall be deposited in the
27 fund established pursuant to this section. Any monies or other property
28 obtained as a result of a forfeiture by any political subdivision of this
29 state or the federal government ~~may~~ **SHALL** be deposited in the fund
30 established pursuant to this section or in the fund established by section
31 13-2314.01. Monies deposited in the fund pursuant to this section or
32 section 13-4315 shall accrue interest and shall be held for the benefit of
33 the agency or agencies responsible for the seizure or forfeiture to the
34 extent of their contribution.

35 E. Except as provided in subsections G and H of this section, the
36 monies and interest shall be distributed to the agency or agencies
37 responsible for the seizure or forfeiture within thirty days of
38 application. The agency or agencies applying for monies must submit an
39 application in writing to the county attorney that includes a description
40 of what the requested monies will be used for. The county attorney ~~may~~
41 **SHALL** deny an application that requests monies for a purpose that is not
42 authorized by this section, section 13-4315 or federal law. Except in an
43 emergency, before the county attorney's office may use any monies from the
44 fund, the county attorney shall submit an application that includes a
45 description of what the requested monies will be used for to the board of

1 supervisors. The board of supervisors shall approve the county attorney's
2 use of the monies if the purpose is authorized by this section, section
3 13-4315 or federal law. If an application is not submitted to the board
4 of supervisors before the county attorney's office uses monies from the
5 fund because of an emergency, the application must be submitted to the
6 board of supervisors within a reasonable amount of time after the monies
7 are used. The board of supervisors, at its next meeting, shall review and
8 ratify, if appropriate, the county attorney's use of the monies. The
9 board of supervisors may retain outside counsel, if necessary, to approve,
10 review or ratify the county attorney's use of the monies.

11 F. Monies in the fund may be used for the funding of gang
12 prevention programs, substance abuse prevention programs, substance abuse
13 education programs, programs that provide assistance to victims of a
14 criminal offense that is listed in section 13-2301 and witness protection
15 pursuant to section 11-536 or for any purpose permitted by federal law
16 relating to the disposition of any property that is transferred to a law
17 enforcement agency. Monies in the fund may be used for ~~the investigation~~
18 **INVESTIGATING** and ~~prosecution of~~ **PROSECUTING** any offense included in the
19 definition of racketeering in section 13-2301, subsection D, paragraph 4
20 or section 13-2312, including civil enforcement, and for the costs of the
21 reports and application and expenditure reviews and approvals that are
22 required by this section.

23 G. On or before February 21, May 21, August 21 and November 21 of
24 each year, the county attorney shall file with the Arizona criminal
25 justice commission a report for the previous calendar quarter. The report
26 shall be in an electronic form that is prescribed by the Arizona criminal
27 justice commission and approved by the director of the joint legislative
28 budget committee. The report shall set forth the sources of all monies
29 and all expenditures as required by subsections J and K of this section.
30 The report shall not include any identifying information about specific
31 investigations. If the county attorney fails to file a report within
32 sixty days after it is due and there is no good cause as determined by the
33 Arizona criminal justice commission, the county attorney shall make no
34 expenditures from the fund for the benefit of the county attorney until
35 the report is filed.

36 H. On or before January 28, April 28, July 28 and October 28 of
37 each year, each political subdivision of this state receiving monies
38 pursuant to this section or section 13-2314.01 or 13-4315 or from any
39 department or agency of the United States or another state as a result of
40 participating in any investigation or prosecution shall file with the
41 board of supervisors of the county in which the political subdivision is
42 located, each city or town council in which the political subdivision is
43 located and the county attorney of the county in which the political
44 subdivision is located a report for the previous calendar quarter. The
45 report shall be in an electronic form that is prescribed by the Arizona

1 criminal justice commission and approved by the director of the joint
2 legislative budget committee. The report shall set forth the sources of
3 all monies and all expenditures as required by subsection K of this
4 section. The report shall not include any identifying information about
5 specific investigations. If a political subdivision of this state fails
6 to file a report within forty-five days after the report is due and there
7 is no good cause as determined by the Arizona criminal justice commission,
8 the county attorney shall make no expenditures from the fund for the
9 benefit of the political subdivision until the report is filed. The
10 county attorney shall be responsible for collecting all reports from
11 political subdivisions within that county and transmitting the reports to
12 the Arizona criminal justice commission at the time that the county report
13 required pursuant to subsection G of this section is submitted.

14 I. On or before the last day of February, May, August and November
15 of each year, the Arizona criminal justice commission shall compile all
16 county attorney reports into a single comprehensive report for the
17 previous calendar quarter and all political subdivision reports into a
18 single comprehensive report for the previous calendar quarter and submit
19 an electronic copy of each comprehensive report to the governor, the
20 president of the senate, the speaker of the house of representatives, the
21 director of the joint legislative budget committee and the secretary of
22 state.

23 J. The report that is required by subsection G of this section must
24 include all of the following information if monies were obtained as a
25 result of a forfeiture:

- 26 1. The name of the law enforcement agency that seized the property.
- 27 2. The date of the seizure for forfeiture.
- 28 3. The type of property seized and a description of the property
29 seized, including, if applicable, the make, the model and the serial
30 number of the property.
- 31 4. The location of the original seizure by law enforcement.
- 32 5. The estimated value of the property seized for forfeiture, not
33 excluding encumbrances.
- 34 6. The criminal statute that allowed the seizure for forfeiture.
- 35 7. The criminal statute charged in ~~any THE~~ criminal case that is
36 related to the forfeiture case, ~~if known at the time of the report.~~
- 37 8. The court case number of ~~any THE~~ criminal case that is related
38 to the forfeiture case, ~~if known at the time of the report.~~
- 39 9. The outcome of ~~any THE~~ criminal case that is related to the
40 forfeiture case, ~~if known at the time of the report.~~
- 41 10. If the property was seized by a state agency and submitted for
42 state forfeiture proceedings but was transferred to federal authorities
43 for forfeiture proceedings, the reason for the federal transfer.
- 44 11. The forfeiture case number.

1 12. The method of forfeiture proceeding, including whether it was
2 criminal or civil, and if civil, whether ~~the civil forfeiture was judicial~~
3 ~~or uncontested pursuant to section 13-4309~~ A CLAIM WAS FILED BY AN OWNER
4 OR INTEREST HOLDER.

5 13. The venue of the forfeiture action.

6 14. Whether a person or entity filed a claim or counterclaim or
7 submitted a petition asserting an interest in the property as an owner,
8 interest holder or injured person.

9 15. Whether the owner, interest holder or injured person was
10 assisted by an attorney in the forfeiture case.

11 16. The date of the forfeiture decision.

12 17. Whether there was a forfeiture settlement agreement.

13 18. Whether the property was awarded or partially awarded to the
14 owner, partial owner or injured person or if the property was forfeited to
15 the state.

16 19. Whether the property was sold, destroyed or retained by law
17 enforcement.

18 20. The earliest date that the property was disposed of or sent for
19 disposition.

20 21. The net amount of monies AND PROCEEDS received from the
21 forfeiture.

22 22. The estimated administrative and storage costs and any other
23 costs, including any costs of litigation.

24 23. The amount of attorney fees, costs, expenses and damages
25 awarded and to whom the fees, costs, expenses or damages were awarded.

26 K. The reports that are required by subsections G and H of this
27 section must include the following information with regard to all
28 expenditures made from the fund for:

- 29 1. Crime, gang and substance abuse prevention programs.
- 30 2. Any injured person as defined in section 13-4301.
- 31 3. Witness protection.
- 32 4. Investigation costs, including informant fees and buy money.
- 33 5. Regular-time salaries, overtime pay and employee benefits of
34 prosecutors.
- 35 6. Regular-time salaries, overtime pay and employee benefits of
36 sworn law enforcement agency personnel other than prosecutors.
- 37 7. Regular-time salaries, overtime pay and employee benefits of
38 unsworn law enforcement agency personnel other than prosecutors.
- 39 8. Professional or outside services, including services related to
40 auditing, outside attorney fees, court reporting, expert witnesses and
41 other court costs.
- 42 9. Travel and meals.
- 43 10. Training.
- 44 11. Conferences.
- 45 12. Vehicles purchased or leased.

- 1 13. Vehicle maintenance.
- 2 14. Canines, firearms and related equipment, including tactical
3 gear.
- 4 15. Other capital expenditures, including furniture, computers and
5 office equipment.
- 6 16. External publications and communications.
- 7 17. Other operating expenses, including office supplies, postage
8 and printing. Expenses listed under this paragraph must be separately
9 categorized.
- 10 18. Any emergency use when monies were used from the fund before an
11 application to use the monies was approved.
- 12 Sec. 4. Section 13-3413, Arizona Revised Statutes, is amended to
13 read:
- 14 13-3413. Forfeiture and disposition of drugs and evidence
- 15 A. The following items used or intended for use in violation of
16 this chapter are subject to seizure and forfeiture pursuant to chapter 39
17 of this title:
- 18 1. Property, equipment, containers, chemicals, materials, money,
19 books, records, research products, formulas, microfilm, tapes and data.
- 20 2. Vapor-releasing substances containing a toxic substance.
- 21 3. Vehicles to transport or in any manner facilitate the
22 transportation, sale or receipt of, or in which is contained or possessed,
23 any item or drug, except as provided in chapter 39 of this title.
- 24 B. The following property is subject to seizure and forfeiture
25 pursuant to chapter 39 of this title:
- 26 1. All proceeds traceable to an offense that is included in this
27 chapter, ~~and~~ that is committed for financial gain **AND THAT RESULTED IN A**
28 **CRIMINAL CONVICTION**.
- 29 2. All proceeds seized in this state and traceable to an offense
30 that:
- 31 (a) ~~is chargeable or indictable~~ **RESULTED IN A CRIMINAL CONVICTION**
32 under the laws of the state in which the offense occurred and, if the
33 offense occurred in a state other than this state, would be chargeable or
34 indictable under this chapter if the offense occurred in this state.
- 35 (b) Is punishable by imprisonment for more than one year.
- 36 (c) Involves prohibited drugs, marijuana or other prohibited
37 chemicals or substances.
- 38 (d) Is committed for financial gain.
- 39 C. Peyote, dangerous drugs, prescription-only drugs, marijuana,
40 narcotic drugs and plants from which such drugs may be derived ~~which~~ **THAT**
41 are seized in connection with any violation of this chapter or ~~which~~ **THAT**
42 come into the possession of a law enforcement agency are summarily
43 forfeited.
- 44 D. When seizures of marijuana are made in excess of ten pounds or
45 seizures of any other substance specified in subsection C of this section

1 are made in excess of one pound in connection with any violation of this
2 chapter the responsible law enforcement agency may retain ten pounds of
3 the marijuana or one pound of the other substance randomly selected from
4 the seized quantity for representation purposes as evidence. The agency
5 may destroy the remainder of the seized marijuana or substance. Before
6 any destruction is carried out, the responsible law enforcement agency
7 shall photograph the material seized with identifying case numbers or
8 other means of identification and prepare a report, identifying the seized
9 material. The responsible law enforcement agency shall notify in writing
10 any person arrested for a violation of this chapter or the attorney for
11 the person at least twenty-four hours in advance that ~~such~~ THE photography
12 will take place and that ~~such~~ THE person or the person's attorney may be
13 present at such photographing of the seized material. In addition to the
14 amount of marijuana or other substance retained for representation
15 purposes as evidence, all photographs and records made under this section
16 and properly identified are admissible in any court proceeding for any
17 purpose for which the seized marijuana or substance itself would be
18 admissible. Evidence retained after trial shall be disposed of pursuant
19 to ~~the~~ RULE 28, ARIZONA rules of criminal procedure, ~~rule 28~~.

20 E. If a seizure is made of chemicals used for the manufacture of a
21 narcotic drug or dangerous drug as defined by IN section 13-3401 in
22 connection with a violation of this title, the seizing agency may apply to
23 a magistrate or superior court judge in the application for the search
24 warrant or as soon as reasonable after the seizure for an order allowing
25 the proper disposal or destruction of the substances, on a showing to the
26 magistrate or superior court judge by affidavit of both of the following:

- 27 1. The substances pose a significant safety hazard to life or
28 property because of their explosive, flammable, poisonous or otherwise
29 toxic nature.
30 2. No adequate and safe storage facility is reasonably available to
31 the seizing agency.

32 F. On a proper showing pursuant to subsection E of this section,
33 the magistrate or superior court judge shall order the substances to be
34 properly destroyed if the containers are first photographed. In addition
35 the magistrate or superior court judge may order that the chemicals be
36 sampled and the samples preserved, unless the court finds either:

- 37 1. Sampling would be unnecessary or unsafe.
38 2. The chemicals are in labeled or factory sealed containers.

39 Sec. 5. Section 13-3914, Arizona Revised Statutes, is amended to
40 read:

41 13-3914. Examination on oath; affidavits

42 A. Before issuing a warrant, the magistrate may examine on oath the
43 person or persons seeking the warrant, and any witnesses produced, and
44 must take his affidavit, or their affidavits, in writing and cause the
45 affidavit to be subscribed by the party or parties making the

1 affidavit. Before issuing the warrant, the magistrate may also examine
2 any other sworn affidavit submitted to ~~him~~ **THE MAGISTRATE THAT** sets
3 forth facts tending to establish probable cause for the issuance of the
4 warrant.

5 B. The affidavit or affidavits must set forth the facts tending to
6 establish the grounds of the application, or probable cause for believing
7 the grounds exist. **THE PERSON OR PERSONS SEEKING THE WARRANT AND THE**
8 **JUDICIAL OFFICER ISSUING THE WARRANT MUST HAVE PROBABLE CAUSE FOR**
9 **BELIEVING THE GROUNDS EXIST.**

10 C. In lieu of, or in addition to, a written affidavit, or
11 affidavits, as provided in subsection A, the magistrate may take an oral
12 statement under oath which shall be recorded on tape, wire or other
13 comparable method. This statement may be given in person to the
14 magistrate or by telephone, radio or other means of electronic
15 communication. This statement is deemed to be an affidavit for the
16 purposes of issuance of a search warrant. If a recording of the sworn
17 statement is made, the statement shall be transcribed at the request of
18 the court or either party, ~~and~~ certified by the magistrate and filed with
19 the court.

20 Sec. 6. Section 13-3919, Arizona Revised Statutes, is amended to
21 read:

22 13-3919. Receipt for property; definitions

23 A. If an officer takes any property under the warrant, the officer
24 shall give a detailed **ITEMIZED** receipt for the property taken to the
25 person from whom it was taken or in whose possession it was found. If ~~the~~
26 ~~property was not taken from a person~~ **IT IS NOT POSSIBLE TO PROVIDE THE**
27 **RECEIPT TO A PERSON**, the officer shall leave the receipt at the place
28 where the property was found.

29 B. The court may delay for a reasonable period the service of the
30 detailed **ITEMIZED** receipt required by subsection A of this section if all
31 of the following apply:

32 1. The court finds that there is reasonable cause to believe that
33 the delay is necessary to protect the safety of any person or to prevent
34 flight from prosecution, tampering with evidence, intimidation of
35 witnesses or jeopardizing an investigation.

36 2. Unless the court finds reasonable necessity for the seizure, the
37 warrant prohibits the seizure of any tangible property, any wire or
38 electronic communication or, except as expressly provided in section
39 13-3016, any stored wire or electronic information.

40 3. The warrant provides for service of a detailed **ITEMIZED** receipt
41 within a reasonable period after the execution of the warrant. Extensions
42 for a reasonable period of time may be granted, but only on an application
43 and judicial finding.

44 C. For the purposes of this section:

1 SHALL deliver it to the county sheriff, who shall sell such property in
2 the same manner as personal property is sold under execution in a civil
3 action PURSUANT TO CHAPTER 39 OF THIS TITLE, and the proceeds shall be
4 paid into the county treasury.

5 Sec. 10. Section 13-4301, Arizona Revised Statutes, is amended to
6 read:

7 13-4301. Definitions

8 In this chapter, unless the context otherwise requires:

9 1. "ABANDONED PROPERTY":

10 (a) MEANS PERSONAL PROPERTY THAT THE OWNER HAS INTENTIONALLY
11 RELINQUISHED THE RIGHT TO AND CONTROL OVER.

12 (b) DOES NOT INCLUDE PROPERTY THAT IS OBTAINED AS A RESULT OF A
13 PEACE OFFICER REQUESTING, REQUIRING OR INDUCING A PERSON TO EXECUTE A
14 DOCUMENT THAT PURPORTS TO DISCLAIM AN INTEREST IN OR RIGHT TO THE PROPERTY
15 OR THAT RELINQUISHED INTEREST IN OR RIGHTS TO THE PROPERTY.

16 ~~1.~~ 2. "Attorney for the state" means an attorney designated by the
17 attorney general, by a county attorney or by a city attorney to
18 investigate, commence and prosecute an action under this chapter.

19 ~~2.~~ 3. "Commercially reasonable" means a sale or disposal that
20 would be commercially reasonable under title 47, chapter 9, article 6.

21 ~~3.~~ 4. "Injured person" means a person who has sustained economic
22 loss, including medical loss, as a result of injury to his person,
23 business or property by the conduct giving rise to the forfeiture of
24 property, and who is not an owner of or an interest holder in the
25 property. Injured person does not include a person who is responsible for
26 the conduct giving rise to forfeiture or a person whose interest would not
27 be exempt from forfeiture if the person were an owner of or interest
28 holder in the property.

29 ~~4.~~ 5. "Interest holder" means a person in whose favor there is a
30 security interest or who is the beneficiary of a perfected encumbrance
31 pertaining to an interest in property.

32 ~~5.~~ 6. "Owner" means a person who is not a secured party ~~within the~~
33 ~~meaning of~~ AS DEFINED IN section 47-9102 and who has an interest in
34 property, whether legal or equitable. A person who holds property for the
35 benefit of or as agent or nominee for another is not an owner. A
36 purported interest ~~which~~ THAT is not in compliance with any statute
37 requiring its recordation or reflection in public records in order to
38 perfect the interest against a bona fide purchaser for value shall not be
39 recognized as an interest against this state in an action pursuant to this
40 chapter. An owner with power to convey property binds other owners, and a
41 spouse binds his spouse, by his act or omission.

42 ~~6.~~ 7. "Person known to have an interest" means a person whose
43 interest in property is reflected in the public records in which his
44 interest is required by law to be recorded or reflected in order to
45 perfect his interest. If a person's interest in property is not required

1 by law to be reflected in public records in order to perfect his interest
2 in the property, a person shall be known to have an interest only if his
3 interest can be readily ascertained at the time ~~of the commencement of the~~
4 forfeiture action COMMENCES pursuant to this chapter.

5 ~~7.~~ 8. "Personal property" includes all interests in property, as
6 defined in section 13-105, in whatever form, except real property and
7 fixtures as defined in section 47-9102.

8 ~~8.~~ 9. "Seizing agency" means any department or agency of this
9 state or its political subdivisions ~~which~~ THAT regularly employs peace
10 officers, ~~and which~~ THAT employs the peace officer who seizes property
11 for forfeiture, or such other agency as the seizing agency may designate
12 in a particular case by its chief executive officer or ~~his~~ THE CHIEF
13 EXECUTIVE OFFICER'S designee.

14 ~~9.~~ 10. "Seizure for forfeiture" means seizure of property by a
15 peace officer AND EITHER:

16 (a) ~~Coupled with~~ THERE IS an assertion by the seizing agency or by
17 an attorney for the state that the property is subject to forfeiture.

18 (b) THE PROPERTY HAS NO EVIDENTIARY VALUE.

19 Sec. 11. Section 13-4303, Arizona Revised Statutes, is amended to
20 read:

21 13-4303. Venue

22 A. A civil action brought pursuant to this chapter may be brought
23 in the county in which the property is seized or in any county in which an
24 owner or interest holder ~~could be civilly or~~ IS criminally ~~complained~~
25 ~~against for the conduct alleged to give~~ CONVICTED OF THE OFFENSE THAT GAVE
26 rise to the ~~forfeiture~~ SEIZURE of the property.

27 B. A claimant or defendant may obtain a change of venue only under
28 the same circumstances under which a defendant may obtain a change of
29 venue in a criminal case.

30 Sec. 12. Section 13-4304, Arizona Revised Statutes, is amended to
31 read:

32 13-4304. Property subject to forfeiture; exemptions; innocent
33 owner

34 A. EXCEPT AS PROVIDED IN SUBSECTIONS B, C AND D OF THIS SECTION,
35 all property, including all interests in such property, described in a
36 statute providing for its forfeiture is subject to forfeiture. ~~However~~ IF
37 BOTH OF THE FOLLOWING APPLY:

38 1. THE OWNER IS CONVICTED OF AN OFFENSE TO WHICH FORFEITURE
39 APPLIES.

40 2. THE STATE ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT THE
41 PROPERTY IS SUBJECT TO FORFEITURE AS PROVIDED IN SUBSECTION E OF THIS
42 SECTION.

43 ~~1.~~ B. ~~No~~ A vehicle used by any person as a common carrier in the
44 transaction of business as a common carrier may NOT be forfeited under ~~the~~
45 ~~provisions of~~ this chapter unless ~~it appears~~ THE STATE PROVES BY CLEAR AND

1 CONVINCING EVIDENCE that the owner or other person in charge of the
2 vehicle was a consenting party or privy to the act or omission giving rise
3 to forfeiture or knew ~~or had reason to know~~ of it.

4 ~~2. C. No~~ A vehicle may NOT be forfeited under ~~the provisions of~~
5 this chapter ~~for~~ FOLLOWING A CONVICTION FOR any act or FOR AN omission
6 ~~established by the owner to have been~~ committed or omitted by a person
7 other than the owner while the vehicle was unlawfully in the possession of
8 a person other than the owner in violation of the criminal laws of this
9 state or of the United States.

10 ~~3. D. No~~ Property may NOT be forfeited pursuant to section
11 13-3413, subsection A, paragraph 1 or 3 if the conduct giving rise to the
12 ~~forfeiture~~ SEIZURE both:

13 ~~(a)~~ 1. Did not involve an amount of unlawful substance greater
14 than the statutory threshold amount as defined in section 13-3401.

15 ~~(b)~~ 2. Was not committed for financial gain.

16 ~~4. No owner's or interest holder's interest may be forfeited under~~
17 ~~this chapter if the owner or interest holder establishes all of the~~
18 ~~following:~~

19 ~~(a) He acquired the interest before or during the conduct giving~~
20 ~~rise to forfeiture.~~

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

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

27 ~~5. No owner's or interest holder's interest may be forfeited under~~
28 ~~this chapter if the owner or interest holder establishes all of the~~
29 ~~following:~~

30 ~~(a) He acquired the interest after the conduct giving rise to~~
31 ~~forfeiture.~~

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

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

41 E. AFTER A PERSON IS CONVICTED OF AN OFFENSE FOR WHICH FORFEITURE
42 APPLIES, A COURT MAY ORDER THE PERSON TO FORFEIT ANY OF THE FOLLOWING:

43 1. PROPERTY THE PERSON ACQUIRED THROUGH THE COMMISSION OF THE
44 OFFENSE.

1 2. PROPERTY DIRECTLY TRACEABLE TO PROPERTY ACQUIRED THROUGH THE
2 COMMISSION OF THE OFFENSE.

3 3. ANY PROPERTY OR INSTRUMENTALITY THE PERSON USED IN THE
4 COMMISSION OF THE OFFENSE OR TO FACILITATE THE OFFENSE.

5 F. THE COURT MAY WAIVE THE CONVICTION REQUIREMENT IF THE
6 PROSECUTING AUTHORITY SHOWS BY CLEAR AND CONVINCING EVIDENCE THAT THERE IS
7 NO KNOWN OWNER OF THE SEIZED PROPERTY, DILIGENT EFFORTS HAVE BEEN MADE TO
8 IDENTIFY THE OWNER OF THE SEIZED PROPERTY AND NO PERSON HAS ASSERTED AN
9 OWNERSHIP INTEREST IN THE SEIZED PROPERTY OR THAT, BEFORE CONVICTION, THE
10 DEFENDANT OR ALLEGED CRIMINAL:

11 1. DIED.

12 2. NO LONGER RESIDES IN THE UNITED STATES OR WAS DEPORTED.

13 3. WAS GRANTED IMMUNITY OR REDUCED PUNISHMENT IN EXCHANGE FOR
14 TESTIFYING OR ASSISTING A LAW ENFORCEMENT INVESTIGATION OR PROSECUTION.

15 4. FLED THE JURISDICTION OF THIS STATE.

16 5. ABANDONED THE PROPERTY.

17 G. THIS SECTION DOES NOT PREVENT PROPERTY FROM BEING FORFEITED BY
18 THE TERMS OF A PLEA AGREEMENT THAT IS APPROVED BY A COURT OR BY OTHER
19 AGREEMENT OF THE PARTIES IN A CRIMINAL PROCEEDING.

20 H. A PERSON WHO CLAIMS TO BE AN INNOCENT OWNER HAS THE BURDEN OF
21 PRODUCTION TO SHOW THAT THE PERSON EITHER:

22 1. HELD A LEGAL RIGHT, TITLE OR INTEREST IN THE PROPERTY SEIZED AT
23 THE TIME THE ILLEGAL CONDUCT THAT GAVE RISE TO THE SEIZURE OF THE PROPERTY
24 OCCURRED.

25 2. ACQUIRED AS A BONA FIDE PURCHASER FOR VALUE A LEGAL RIGHT, TITLE
26 OR INTEREST IN THE PROPERTY SUBJECT TO FORFEITURE AFTER THE COMMISSION OF
27 THE CRIME THAT GAVE RISE TO THE SEIZURE OF THE PROPERTY.

28 I. IF A PERSON ESTABLISHES THAT THE PERSON IS AN INNOCENT OWNER
29 PURSUANT TO SUBSECTION H OF THIS SECTION AND THE STATE PURSUES A
30 FORFEITURE PROCEEDING WITH RESPECT TO THAT PERSON'S PROPERTY, OTHER THAN
31 PROPERTY DESCRIBED IN SECTION 13-3413 TO SUCCESSFULLY FORFEIT THE
32 PROPERTY, THE STATE SHALL PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE
33 INNOCENT OWNER HAD ACTUAL KNOWLEDGE OF THE UNDERLYING CRIME THAT GAVE RISE
34 TO THE FORFEITURE.

35 J. IF THE STATE IS UNABLE TO PROVE THE PERSON IS NOT AN INNOCENT
36 OWNER AS PROVIDED IN SUBSECTIONS H AND I OF THIS SECTION, THE COURT SHALL
37 FIND THAT THE PERSON IS AN INNOCENT OWNER AND ORDER THE STATE TO
38 RELINQUISH ALL CLAIMS OF TITLE TO THE PROPERTY AND RETURN THE PROPERTY TO
39 THE INNOCENT OWNER.

40 Sec. 13. Section 13-4305, Arizona Revised Statutes, is amended to
41 read:

42 13-4305. Seizure of property

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

1 1. On process issued pursuant to the Arizona rules of civil
2 procedure or this title, including a seizure warrant.

3 2. By making a seizure for forfeiture on property seized on process
4 issued pursuant to law, including sections 13-3911, 13-3912, 13-3913,
5 13-3914 and 13-3915.

6 3. By making a seizure for forfeiture without court process if **THE**
7 **OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THE PROPERTY IS SUBJECT TO**
8 **FORFEITURE AND** any of the following is true:

9 (a) The seizure for forfeiture is of property seized incident to ~~an~~
10 **A LAWFUL** arrest **FOR A CRIME** or **A LAWFUL** search.

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

14 (c) The peace officer has probable cause to believe that the
15 property is subject to forfeiture **AND THAT THE DELAY OCCASIONED BY THE**
16 **NEED TO OBTAIN A COURT ORDER WOULD RESULT IN THE REMOVAL OR DESTRUCTION OF**
17 **THE PROPERTY OR OTHERWISE FRUSTRATE THE SEIZURE.**

18 ~~B. Property subject to forfeiture under this chapter may be seized~~
19 ~~for forfeiture by placing the property under constructive seizure.~~
20 ~~Constructive seizure may be made by posting notice of seizure for~~
21 ~~forfeiture on the property or by filing notice of seizure for forfeiture~~
22 ~~or notice of pending forfeiture in any appropriate public record relating~~
23 ~~to the property.~~

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

31 ~~D. C.~~ C. The court shall determine probable cause for seizure before
32 property may be seized for forfeiture as a substitute asset pursuant to
33 section 13-2314, subsection D, ~~OR E or G,~~ or pursuant to section 13-4313,
34 subsection A, ~~unless the seizure is pursuant to a constructive seizure or~~
35 ~~the filing of a racketeering lien or lis pendens.~~ The court may issue a
36 seizure warrant for such property if it determines that there is probable
37 cause to believe that the property is subject to forfeiture and is not
38 available for seizure for forfeiture for any reason described in section
39 13-4313, subsection A. The determinations shall be made ex parte unless
40 real property is to be seized and subsection ~~E. B~~ of this section requires
41 notice and an opportunity to appear.

42 ~~E. D.~~ D. In establishing ~~clear and convincing evidence and in~~
43 ~~determining~~ probable cause for seizure ~~and for forfeiture,~~ a rebuttable
44 presumption exists that the property of any person is subject to

1 forfeiture if the state establishes all of the following by ~~the standard~~
2 ~~of proof applicable to that proceeding~~ CLEAR AND CONVINCING EVIDENCE:

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

9 ~~F. In establishing clear and convincing evidence and in determining~~
10 ~~probable cause for seizure and for forfeiture, the fact that money or any~~
11 ~~negotiable instrument was found in proximity to contraband or to~~
12 ~~instrumentalities of an offense gives rise to an inference that the money~~
13 ~~or instrument was the proceeds of contraband or was used or intended to be~~
14 ~~used to facilitate commission of the offense.~~

15 E. THE PRESENCE OR POSSESSION OF UNITED STATES CURRENCY, DEBIT
16 CARDS OR CREDIT CARDS, WITHOUT OTHER INDICIA OF A CRIME THAT SUBJECTS
17 PROPERTY TO FORFEITURE, IS INSUFFICIENT PROBABLE CAUSE FOR SEIZURE OF
18 UNITED STATES CURRENCY, DEBIT CARDS OR CREDIT CARDS.

19 Sec. 14. Section 13-4306, Arizona Revised Statutes, is amended to
20 read:

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

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

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

- 41 1. Remove the property to a storage area for safekeeping or, if the
42 property is a negotiable instrument or money, deposit it in an interest
43 bearing account.
- 44 2. Remove the property to a place designated by the court.

1 3. Provide for another custodian or agency to take custody of the
2 property and remove it to an appropriate location within the jurisdiction
3 of the court.

4 C. As soon as practicable after seizure for forfeiture, the seizing
5 agency shall conduct an inventory and estimate the value of the property
6 seized. Within twenty days the seizing agency or the attorney for the
7 state shall make reasonable efforts to provide notice of seizure for
8 forfeiture to all persons known to have an interest in the seized
9 property.

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

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

16 F. ~~In the event of a seizure for~~ IF PROPERTY SUBJECT TO forfeiture
17 under section 13-4305 IS SEIZED, the seizing agency shall send to an
18 attorney for the state a written request for forfeiture within twenty
19 days, which shall include a statement of facts and circumstances of the
20 seizure, including the names of witnesses then known, the appraised or
21 estimated value of the property and a summary of the facts relied on for
22 forfeiture.

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

28 1. The bond or cash tendered is inadequate.

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

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

32 H. If an owner of property posts a surety bond or cash and the
33 property is forfeited the court shall forfeit the surety bond or cash in
34 lieu of the property.

35 I. The seizing agency or the attorney for the state may not enter
36 into any agreement to transfer or refer seized property to a federal
37 agency for the purpose of forfeiture if the property was seized pursuant
38 to an investigation that either:

39 1. Did not involve a federal agency.

40 2. Involves a violation of a state law and no violation of a
41 federal law is alleged.

42 J. Property that is seized in a joint investigation may not be
43 transferred or referred to a federal agency for the purpose of forfeiture
44 unless the gross estimated value of the seized property is more than
45 ~~seventy-five thousand dollars~~ \$75,000.

1 K. This section does not prohibit:

2 1. The federal government or any of its agencies from seizing
3 property, seeking forfeiture pursuant to federal law and sharing property
4 that is forfeited pursuant to federal law with a state or local law
5 enforcement agency that participates in a joint investigation.

6 2. A state or local law enforcement agency from participating in a
7 joint investigation.

8 L. A PEACE OFFICER MAY NOT REQUEST, REQUIRE OR IN ANY MANNER INDUCE
9 A PERSON TO EXECUTE A DOCUMENT THAT ATTEMPTS TO DISCLAIM AN INTEREST IN OR
10 RIGHT TO PROPERTY OR THAT RELINQUISHES INTERESTS IN OR RIGHTS TO PROPERTY.

11 ~~+~~ M. For the purposes of this section, "joint investigation"
12 means an investigation in which a state or local law enforcement agency
13 directly participates in the investigation or enforcement of a federal
14 criminal law with a federal agency and the investigation or enforcement
15 results in a seizure.

16 Sec. 15. Section 13-4307, Arizona Revised Statutes, is amended to
17 read:

18 13-4307. Notice of pending forfeiture

19 ~~Whenever notice of pending forfeiture is required under this chapter~~
20 ~~it shall be given or provided in one of the following ways and is~~
21 ~~effective at the time of personal service, publication or the mailing of~~
22 ~~written notice, whichever is earlier.~~

23 A. WITHIN SIXTY DAYS AFTER MAKING A SEIZURE FOR FORFEITURE OR
24 SIMULTANEOUSLY ON FILING A RELATED CRIMINAL INDICTMENT, THE STATE SHALL
25 FILE A NOTICE OF PENDING FORFEITURE PROCEEDING OR RETURN THE PROPERTY TO
26 THE PERSON FROM WHOM IT WAS SEIZED. A NOTICE OF PENDING FORFEITURE
27 PROCEEDING MUST INCLUDE ALL OF THE FOLLOWING:

- 28 1. A DESCRIPTION OF THE PROPERTY SEIZED.
29 2. THE DATE AND PLACE OF SEIZURE OF THE PROPERTY.
30 3. THE NAME AND ADDRESS OF THE LAW ENFORCEMENT AGENCY MAKING THE
31 SEIZURE.
32 4. THE SPECIFIC STATUTORY AND FACTUAL GROUNDS FOR THE SEIZURE.

33 B. IF THE PROPERTY SOUGHT TO BE FORFEITED IS REAL PROPERTY,
34 INCLUDING FIXTURES, THE ATTORNEY FOR THE STATE MAY FILE A LIS PENDENS OR A
35 NOTICE OF PENDING FORFEITURE WITH RESPECT TO THE PROPERTY WITH THE COUNTY
36 RECORDER OF THE COUNTY WHERE THE PROPERTY IS LOCATED, IN ADDITION TO ANY
37 LIEN PROVIDED BY SECTION 13-2314.02 WITHOUT A FILING FEE OR OTHER CHARGE.

38 C. A NOTICE OF PENDING FORFEITURE PROCEEDING MUST BE DELIVERED AS
39 FOLLOWS:

- 40 1. If the owner's or interest holder's name and current address are
41 known, by either:
42 (a) Personal service.
43 (b) Mailing a copy of the notice by certified mail to the address.
44 2. If the owner's or interest holder's interest is required by law
45 to be on record with a county recorder's office, the secretary of state,

1 the ~~department of transportation~~ motor vehicle division OF THE DEPARTMENT
2 OF TRANSPORTATION, the ARIZONA game and fish department, or another state
3 or federal licensing agency in order to perfect an interest in the
4 property, but his current address is not known, by mailing a copy of the
5 notice by certified mail to any address on the record.

6 3. If the owner's or interest holder's address is not known, and is
7 not on record as provided in paragraph 2 OF THIS SUBSECTION, or if his
8 interest is not known, by publication in one issue of a newspaper of
9 general circulation in the county in which the seizure occurs.

10 D. THE NOTICE OF PENDING FORFEITURE PROCEEDING MUST ALSO BE SERVED
11 ON THE PERSON'S ATTORNEY OF RECORD AND ALL PERSONS KNOWN OR REASONABLY
12 BELIEVED BY THE STATE TO CLAIM AN INTEREST IN THE PROPERTY.

13 E. AN OWNER OF OR INTEREST HOLDER IN THE PROPERTY MAY FILE A CLAIM
14 AGAINST THE PROPERTY AT ANY TIME WITHIN SIXTY DAYS AFTER THE NOTICE OR
15 SIXTY DAYS BEFORE A CRIMINAL TRIAL, WHICHEVER IS LATER, REQUESTING A
16 HEARING TO ADJUDICATE THE VALIDITY OF THE CLAIMED INTEREST IN THE
17 PROPERTY. AN OWNER OR INTEREST HOLDER MAY NOT BE CHARGED A FILING FEE OR
18 ANY OTHER CHARGE FOR FILING THE CLAIM. COPIES OF THE CLAIM SHALL BE
19 MAILED TO THE SEIZING AGENCY AND TO THE ATTORNEY FOR THE STATE.

20 F. THE CLAIM SHALL BE SIGNED BY THE CLAIMANT UNDER PENALTY OF
21 PERJURY AND SHALL SET FORTH ALL OF THE FOLLOWING:

22 1. THE CAPTION OF THE PROCEEDING AS SET FORTH ON THE NOTICE OF
23 PENDING FORFEITURE OR COMPLAINT AND THE NAME OF THE CLAIMANT.

24 2. THE ADDRESS AT WHICH THE CLAIMANT WILL ACCEPT FUTURE MAILINGS
25 FROM THE COURT OR THE ATTORNEY FOR THE STATE.

26 3. THE NATURE AND EXTENT OF THE CLAIMANT'S INTEREST IN THE
27 PROPERTY.

28 4. ALL FACTS SUPPORTING THE CLAIMANT'S CLAIM IN THE PROPERTY AND
29 ITS RETURN TO THE CLAIMANT.

30 5. THE PRECISE RELIEF SOUGHT.

31 Sec. 16. Section 13-4308, Arizona Revised Statutes, is amended to
32 read:

33 13-4308. Commencement of proceedings

34 A. The attorney for the state shall determine whether it is
35 probable that the property is subject to forfeiture and, if so, may cause
36 the ~~initiation of uncontested or~~ COMMENCEMENT OF FURTHER judicial
37 FORFEITURE proceedings ~~against the property~~ FOR WHICH A NOTICE OF PENDING
38 FORFEITURE HAS BEEN FILED AND MADE BY FILING A COMPLAINT IF A CLAIM HAS
39 BEEN FILED. If, on inquiry and examination, the attorney FOR THE STATE
40 determines that the proceedings probably cannot be sustained or that
41 justice does not require the institution of such proceedings, ~~the~~ THE
42 ATTORNEY FOR THE STATE shall notify the seizing agency and immediately
43 authorize the release of the seizure for forfeiture on the property or on
44 any specified interest in it.

1 B. THE STATE MAY NOT PROCEED WITH FURTHER FORFEITURE PROCEEDINGS
2 BEFORE A CRIMINAL CONVICTION FOR AN OFFENSE TO WHICH FORFEITURE APPLIES
3 UNLESS NO TIMELY CLAIM HAS BEEN FILED OR A CONVICTION IS WAIVED PURSUANT
4 TO THIS CHAPTER.

5 ~~B.~~ C. If the state fails to ~~initiate~~ PROCEED WITH FURTHER
6 forfeiture proceedings ~~against property seized for forfeiture by notice of~~
7 ~~pending forfeiture~~ within sixty days ~~after its seizure for forfeiture, or~~
8 ~~fails to pursue forfeiture of such property on which a timely claim has~~
9 ~~been properly filed by filing a complaint, information or indictment~~
10 ~~pursuant to section 13-4311 or 13-4312 within sixty days after notice of~~
11 ~~pending forfeiture or, if uncontested forfeiture has been made available,~~
12 ~~within sixty days after a declaration of forfeiture, whichever is later,~~
13 FOLLOWING A PERSON'S CONVICTION FOR AN OFFENSE TO WHICH FORFEITURE APPLIES
14 AND A CLAIM HAS BEEN FILED, such property shall be released from its
15 seizure for forfeiture ~~on the request of~~ TO an owner or interest holder,
16 pending further proceedings pursuant to this chapter, which shall be
17 commenced within seven years after actual discovery of the last act giving
18 rise to forfeiture.

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

25 Sec. 17. Repeal

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

27 Sec. 18. Title 13, chapter 39, Arizona Revised Statutes, is amended
28 by adding a new section 13-4309, to read:

29 13-4309. Postdeprivation hearing

30 A. AFTER THE SEIZURE OF PROPERTY, THE DEFENDANT IN THE RELATED
31 CRIMINAL MATTER OR ANOTHER PERSON WHO CLAIMS AN INTEREST IN THE SEIZED
32 PROPERTY, UP TO SIXTY DAYS AFTER THE NOTICE, MAY CLAIM AN INTEREST IN
33 SEIZED PROPERTY BY FILING A MOTION WITH THE SUPERIOR COURT REQUESTING AN
34 ORDER FOR THE RELEASE OF THE CLAIMED PROPERTY TO THE PERSON'S CUSTODY
35 PENDING FURTHER FORFEITURE PROCEEDINGS AND ORDERS PURSUANT TO THIS
36 CHAPTER. A MOTION FILED PURSUANT TO THIS SECTION MUST INCLUDE FACTS TO
37 SUPPORT THE PERSON'S ALLEGED INTEREST IN THE PROPERTY. THE STATE MAY
38 ELECT TO NOT CONTEST THE MOTION AND THE RELEASE OF THE CLAIMED PROPERTY TO
39 THE CUSTODY OF THE PERSON WHO IS CLAIMING THE INTEREST IN THE SEIZED
40 PROPERTY. THE STATE MAY REQUEST THAT THE COURT ISSUE A PROTECTIVE ORDER
41 THAT PRESERVES THE AVAILABILITY OF RELEASED PROPERTY PENDING FURTHER
42 FORFEITURE PROCEEDINGS.

43 B. A PERSON WHO MAKES A TIMELY MOTION FOR THE RETURN OF PROPERTY
44 HAS A RIGHT TO A HEARING ON THE MOTION BEFORE THE RESOLUTION OF ANY

1 RELATED CRIMINAL MATTER OR FORFEITURE PROCEEDING AND WITHIN THIRTY DAYS
2 AFTER THE DATE THAT THE MOTION IS FILED.

3 C. AT LEAST TEN DAYS BEFORE A HEARING ON A MOTION FILED PURSUANT TO
4 THIS SECTION, THE STATE SHALL FILE AN ANSWER OR RESPONSIVE MOTION THAT
5 INCLUDES THE REASONS WHY THE STATE IS ENTITLED TO RETAIN POSSESSION OF THE
6 PROPERTY.

7 D. THE COURT SHALL GRANT THE CLAIMANT'S MOTION IF THE COURT FINDS
8 THAT ANY OF THE FOLLOWING APPLIES:

9 1. IT IS LIKELY THAT THE FINAL JUDGMENT WILL REQUIRE THE STATE TO
10 RETURN THE PROPERTY TO THE CLAIMANT.

11 2. THE PROPERTY IS NOT REASONABLY REQUIRED TO BE HELD FOR
12 EVIDENTIARY REASONS.

13 3. THE PROPERTY IS THE ONLY REASONABLE MEANS FOR A DEFENDANT TO PAY
14 FOR LEGAL REPRESENTATION IN A RELATED CRIMINAL OR FORFEITURE PROCEEDING.

15 E. THE COURT MAY ORDER THE RETURN OF MONEY OR PROPERTY SUFFICIENT
16 TO OBTAIN LEGAL COUNSEL BUT LESS THAN THE TOTAL AMOUNT SEIZED AND THE
17 COURT MAY REQUIRE AN ACCOUNTING.

18 F. IN LIEU OF ORDERING THE RETURN OF PROPERTY, THE COURT MAY ORDER:

19 1. THE STATE TO GIVE SECURITY OR WRITTEN ASSURANCE FOR SATISFACTION
20 OF ANY JUDGMENT, INCLUDING DAMAGES, THAT MAY BE RENDERED IN A RELATED
21 FORFEITURE ACTION.

22 2. ANY OTHER RELIEF THAT THE COURT DEEMS TO BE JUST.

23 Sec. 19. Section 13-4310, Arizona Revised Statutes, is amended to
24 read:

25 13-4310. Judicial forfeiture proceedings; damages

26 ~~A. In any proceeding pursuant to this chapter, the court, on~~
27 ~~application of the state, may enter any restraining order or injunction,~~
28 ~~require the execution of satisfactory performance bonds, create~~
29 ~~receiverships, appoint conservators, appraisers, accountants or trustees~~
30 ~~or take any other action to seize, secure, maintain or preserve the~~
31 ~~availability of property subject to forfeiture under this title, including~~
32 ~~a warrant for its seizure, whether prior or subsequent to the filing of a~~
33 ~~notice of pending forfeiture, complaint, indictment or information.~~

34 ~~B. If property is seized for forfeiture without a prior judicial~~
35 ~~determination of probable cause, an order of forfeiture or a hearing~~
36 ~~pursuant to section 13-4312, subsection D, the court, on an application~~
37 ~~filed by an owner of or interest holder in the property within fifteen~~
38 ~~days after notice of its seizure for forfeiture or actual knowledge of it,~~
39 ~~whichever is earlier, and complying with the requirements for claims in~~
40 ~~section 13-4311, subsections E and F, may issue an order to show cause to~~
41 ~~the seizing agency for a hearing on the sole issue of whether probable~~
42 ~~cause for forfeiture of the property then exists. Notice of the order to~~
43 ~~show cause hearing must be served on the attorney for the state at least~~
44 ~~five working days before the hearing is held. If the court finds that no~~
45 ~~probable cause for forfeiture of the property then exists or if the state~~

1 ~~elects not to contest the issue, the property seized for forfeiture from~~
2 ~~the applicant shall be released to the custody of the applicant pending~~
3 ~~the outcome of a judicial proceeding pursuant to this chapter. If the~~
4 ~~court finds that probable cause for the forfeiture of the property then~~
5 ~~exists, the court shall not order the property released, except as~~
6 ~~provided in section 13-4306, subsection G.~~

7 A. A PERSON WHO CLAIMS AN INTEREST IN SEIZED PROPERTY SHALL FILE AN
8 ANSWER TO THE COMPLAINT OF FORFEITURE WITHIN THIRTY DAYS AFTER SERVICE OF
9 THE FORFEITURE COMPLAINT. THE ANSWER MUST INCLUDE FACTS TO SUPPORT THE
10 CLAIMANT'S ALLEGED INTEREST IN THE PROPERTY. THE CLERK OF COURT MAY NOT
11 CHARGE A PERSON WHO CLAIMS OWNERSHIP OR TO BE AN INTEREST HOLDER A FILING
12 FEE OR ANY CHARGE FOR FILING THE ANSWER.

13 ~~C.~~ B. A defendant convicted in any criminal proceeding shall be
14 precluded from subsequently denying the essential allegations of the
15 criminal offense of which he was convicted in any proceeding pursuant to
16 this chapter. For the purposes of this chapter, a conviction may result
17 from a verdict or plea including a no contest plea.

18 ~~D.~~ C. In any judicial forfeiture hearing, determination or other
19 proceeding pursuant to this chapter, the applicant, petitioner or claimant
20 must establish by a preponderance of the evidence that he is an owner of
21 or interest holder in the property seized for forfeiture before other
22 evidence is taken. The burden of proving the standing of the claimant and
23 the existence of the exemption is on the claimant or party raising the
24 claim, and it is not necessary to negate the standing of any claimant or
25 the existence of any exemption in any notice, application, complaint,
26 information or indictment.

27 ~~E.~~ D. In hearings and determinations pursuant to this chapter:
28 ~~1.~~ the law of evidence relating to civil actions applies equally to
29 all parties, including the state, an applicant, a petitioner, a claimant
30 and a defendant, on all issues required to be established by a
31 preponderance of the evidence or clear and convincing evidence.

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

38 E. THE COURT SHALL ENTER A JUDGMENT OF FORFEITURE AND THE SEIZED
39 PROPERTY SHALL BE FORFEITED TO THE STATE IF THE STATE PROVES BY CLEAR AND
40 CONVINCING EVIDENCE THAT:

- 41 1. THE PROPERTY IS SUBJECT TO FORFEITURE.
- 42 2. THE CRIMINAL PROSECUTION RELATED TO THE SEIZED PROPERTY RESULTED
- 43 IN A CONVICTION OR THE COURT WAIVED THE REQUIREMENT FOR A CONVICTION
- 44 PURSUANT TO SECTION 13-4304.

1 3. THERE IS NO INNOCENT OWNER OR THIRD PARTY INTEREST HOLDER TO
2 WHOM THE PROPERTY SHOULD BE DELIVERED.

3 4. THE VALUE OF THE PROPERTY TO BE FORFEITED DOES NOT UNREASONABLY
4 EXCEED:

5 (a) THE PECUNIARY GAIN DERIVED OR SOUGHT TO BE DERIVED BY THE
6 CRIME.

7 (b) THE PECUNIARY LOSS CAUSED OR SOUGHT TO BE CAUSED BY THE CRIME.

8 (c) THE VALUE OF THE CONVICTED OWNER'S INTEREST IN THE PROPERTY.

9 F. A PERSON IS NOT JOINTLY AND SEVERALLY LIABLE FOR ORDERS FOR
10 FORFEITURE OF ANOTHER PERSON'S PROPERTY. IF OWNERSHIP OF PROPERTY IS
11 UNCLEAR, A COURT MAY ORDER EACH PERSON TO FORFEIT THE PERSON'S PROPERTY ON
12 A PRO RATA BASIS OR BY ANOTHER MEANS THAT THE COURT DEEMS EQUITABLE.

13 ~~F.~~ G. All property, including all interests in such property,
14 declared forfeited under this title vests in this state on the commission
15 of the act or omission giving rise to forfeiture under this title together
16 with the proceeds of the property after such time. Any ~~such~~ property or
17 proceeds subsequently transferred to any person are subject to forfeiture
18 and thereafter shall be ordered forfeited ~~unless the transferee claims and~~
19 ~~establishes in a hearing pursuant to this chapter the showings set out in~~
20 ~~section 13-4304~~ IF THE STATE PROVES BY CLEAR AND CONVINCING EVIDENCE THAT
21 THE TRANSFEREE:

22 1. HAD ACTUAL KNOWLEDGE THAT THE PROPERTY WAS SUBJECT TO
23 FORFEITURE.

24 2. WAS NOT A BONA FIDE PURCHASER FOR VALUE NOT KNOWINGLY TAKING
25 PART IN AN ILLEGAL TRANSACTION.

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

39 1. Payment of reasonable expenses incurred in connection with the
40 sale.

41 2. Satisfaction of exempt interests in the order of their priority.

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

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

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

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

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

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

28 K. AN INJURED PERSON MAY SUBMIT A REQUEST FOR COMPENSATION FROM
29 FORFEITED PROPERTY TO THE COURT AT ANY TIME BEFORE THE EARLIER OF THE
30 ENTRY OF A FINAL JUDGMENT OR AN APPLICATION FOR AN ORDER OF THE FORFEITURE
31 OF THE PROPERTY, OR IF A HEARING PURSUANT TO SUBSECTIONS M, N AND O OF
32 THIS SECTION IS HELD, NOT LESS THAN THIRTY DAYS BEFORE THE HEARING. THE
33 REQUEST SHALL BE SIGNED BY THE REQUESTOR UNDER PENALTY OF PERJURY AND
34 SHALL SET FORTH ALL OF THE FOLLOWING:

35 1. THE CAPTION OF THE PROCEEDING AS SET FORTH ON THE NOTICE OF
36 PENDING FORFEITURE OR COMPLAINT AND THE NAME OF THE REQUESTOR.

37 2. THE ADDRESS AT WHICH THE REQUESTOR WILL ACCEPT FUTURE MAILINGS
38 FROM THE COURT OR PARTIES TO THE ACTION.

39 3. THE PROPERTY SUBJECT TO FORFEITURE FROM WHICH THE REQUESTOR SEEKS
40 COMPENSATION.

41 4. THE NATURE OF THE ECONOMIC LOSS SUSTAINED BY THE REQUESTOR.

42 5. ALL FACTS SUPPORTING EACH SUCH ASSERTION.

43 6. ANY ADDITIONAL FACTS SUPPORTING THE REQUEST.

44 7. THE AMOUNT OF ECONOMIC LOSS THAT THE REQUESTOR SEEKS
45 COMPENSATION FOR.

1 L. IF A PROPER REQUEST FOR COMPENSATION FROM FORFEITED PROPERTY IS
2 TIMELY FILED, THE COURT SHALL HOLD A HEARING TO ESTABLISH WHETHER THERE IS
3 A FACTUAL BASIS FOR THE REQUEST. THE REQUESTOR HAS THE BURDEN OF
4 ESTABLISHING BY A PREPONDERANCE OF EVIDENCE THAT THE REQUESTOR IS AN
5 INJURED PERSON WHO SUSTAINED ECONOMIC LOSS.

6 M. THE HEARING ON THE CLAIM, TO THE EXTENT PRACTICABLE AND
7 CONSISTENT WITH THE INTEREST OF JUSTICE, SHALL BE HELD SIXTY DAYS AFTER
8 ALL PARTIES HAVE COMPLIED WITH THE DISCLOSURE REQUIRED BY RULE 26.1,
9 ARIZONA RULES OF CIVIL PROCEDURE. THE COURT MAY CONSOLIDATE THE HEARING
10 ON THE CLAIM WITH A HEARING ON ANY OTHER CLAIM CONCERNING THE SAME
11 PROPERTY.

12 N. AT THE HEARING, THE CLAIMANT MAY TESTIFY, PRESENT EVIDENCE AND
13 WITNESSES ON THE CLAIMANT'S OWN BEHALF AND CROSS-EXAMINE WITNESSES WHO
14 APPEAR AT THE HEARING. THE STATE MAY PRESENT EVIDENCE AND WITNESSES AND
15 CROSS-EXAMINE WITNESSES WHO APPEAR AT THE HEARING.

16 O. AT THE HEARING, THE STATE HAS THE BURDEN OF ESTABLISHING BY
17 CLEAR AND CONVINCING EVIDENCE THAT THE PROPERTY IS SUBJECT TO FORFEITURE
18 UNDER SECTION 13-4304. ANY CLAIMANT WHO HAS PREVIOUSLY ESTABLISHED BY A
19 PREPONDERANCE OF THE EVIDENCE THAT THE CLAIMANT IS AN OWNER OF OR INTEREST
20 HOLDER IN THE PROPERTY HAS THE BURDEN OF ESTABLISHING BY A PREPONDERANCE
21 OF THE EVIDENCE THAT THE CLAIMANT'S INTEREST IN THE PROPERTY IS EXEMPT
22 FROM FORFEITURE UNDER SECTION 13-4304.

23 P. AFTER A HEARING:

24 1. THE COURT SHALL ORDER AN INTEREST IN PROPERTY RETURNED OR
25 CONVEYED TO A CLAIMANT, IF ANY, WHO HAS ESTABLISHED BY A PREPONDERANCE OF
26 THE EVIDENCE THAT THE CLAIMANT IS AN OWNER OF OR INTEREST HOLDER IN THE
27 PROPERTY IF EITHER OF THE FOLLOWING APPLIES:

28 (a) THE STATE HAS FAILED TO ESTABLISH BY CLEAR AND CONVINCING
29 EVIDENCE THAT THE INTEREST IS SUBJECT TO FORFEITURE UNDER SECTION 13-4304.

30 (b) THE CLAIMANT HAS ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE
31 THAT THE INTEREST IS EXEMPT FROM FORFEITURE UNDER SECTION 13-4304.

32 2. THE COURT SHALL ORDER ALL OTHER PROPERTY, INCLUDING ALL
33 INTERESTS IN THE PROPERTY, FORFEITED TO THIS STATE AND PROCEED PURSUANT TO
34 SECTIONS 13-4314 AND 13-4315.

35 3. IF THE COURT FINDS THAT A REQUESTOR IS AN INJURED PERSON THE
36 COURT SHALL DETERMINE THE AMOUNT OF THE INJURED PERSON'S ECONOMIC LOSS
37 CAUSED BY THE CONDUCT GIVING RISE TO THE FORFEITURE OF THE DESIGNATED
38 PROPERTY AND SHALL REQUIRE THE FOLLOWING:

39 (a) IF THE DESIGNATED PROPERTY IS NOT CONTRABAND AND IS NOT ALTERED
40 OR DESIGNED FOR USE IN CONDUCT GIVING RISE TO FORFEITURE, THE ATTORNEY FOR
41 THE STATE SHALL SELL THE PROPERTY AS PROVIDED IN SECTION 13-4315,
42 SUBSECTION A, PARAGRAPH 2 AND SHALL APPLY THE RESULTING BALANCE TO
43 COMPENSATE THE INJURED PERSON'S ECONOMIC LOSS IN THE AMOUNT FOUND BY THE
44 COURT.

1 (b) IF THE BALANCE IS INSUFFICIENT TO COMPENSATE THE ECONOMIC LOSS
2 OF ALL INJURED PERSONS THE ATTORNEY FOR THE STATE SHALL DISTRIBUTE THE
3 BALANCE AMONG THE INJURED PERSONS ACCORDING TO A METHOD DETERMINED BY THE
4 COURT.

5 (c) AFTER COMPENSATING ALL INJURED PERSONS, THE ATTORNEY FOR THE
6 STATE SHALL TRANSMIT TEN PERCENT OF THE REMAINING BALANCE, IF ANY, TO THE
7 STATE TREASURER FOR DEPOSIT IN THE VICTIM COMPENSATION AND ASSISTANCE FUND
8 ESTABLISHED BY SECTION 41-2407.

9 (d) THE ATTORNEY FOR THE STATE SHALL DEPOSIT THE REMAINDER OF THE
10 BALANCE, IF ANY, IN AN APPROPRIATE ANTI-RACKETEERING REVOLVING FUND
11 ESTABLISHED BY SECTION 13-2314.01 OR 13-2314.03.

12 Sec. 20. Section 13-4311, Arizona Revised Statutes, is amended to
13 read:

14 13-4311. Judicial in rem forfeiture proceedings

15 A. If a forfeiture is authorized by law, it ~~shall~~ MAY be ordered by
16 a court on an action in rem brought by the state pursuant to a notice of
17 pending forfeiture or a verified complaint for forfeiture. The state may
18 serve the complaint in the manner provided by section 13-4307 or by the
19 Arizona rules of civil procedure.

20 B. JUDICIAL IN REM FORFEITURE PROCEEDINGS ARE IN THE NATURE OF AN
21 ACTION IN REM AND ARE GOVERNED BY THE ARIZONA RULES OF CIVIL PROCEDURE
22 UNLESS A DIFFERENT PROCEDURE IS PROVIDED BY LAW. A civil in rem action
23 may be brought by the state in addition to or in lieu of the civil and
24 criminal in personam forfeiture procedures set forth in sections 13-4312
25 and 13-4313 ~~or the uncontested civil forfeiture procedures set forth in~~
26 ~~section 13-4309. Judicial in rem forfeiture proceedings are in the nature~~
27 ~~of an action in rem and are governed by the Arizona rules of civil~~
28 ~~procedure unless a different procedure is provided by law.~~ IF THE
29 PROSECUTOR SHOWS BY CLEAR AND CONVINCING EVIDENCE THAT THERE IS NO KNOWN
30 OWNER OF THE SEIZED PROPERTY, DILIGENT EFFORTS HAVE BEEN MADE TO IDENTIFY
31 THE OWNER OF THE SEIZED PROPERTY AND NO PERSON HAS ASSERTED AN OWNERSHIP
32 INTEREST IN THE SEIZED PROPERTY OR THAT, BEFORE OR AFTER THE CONVICTION,
33 THE DEFENDANT OR ALLEGED CRIMINAL:

- 34 1. DIED.
- 35 2. NO LONGER RESIDES IN THE UNITED STATES OR WAS DEPORTED.
- 36 3. WAS GRANTED IMMUNITY OR REDUCED PUNISHMENT IN EXCHANGE FOR
37 TESTIFYING OR ASSISTING A LAW ENFORCEMENT INVESTIGATION OR PROSECUTION.
- 38 4. FLED THE JURISDICTION OF THIS STATE.
- 39 5. ABANDONED THE PROPERTY.

40 C. On the filing of a civil in rem action by the state in superior
41 court the clerk of the court in which the action is filed ~~OR THE ATTORNEY~~
42 ~~FOR THE STATE shall provide, and the attorney for the state may provide,~~
43 the notice of pending forfeiture required by section 13-4307 unless the
44 files of the clerk of the court reflect that ~~such~~ THE notice has
45 previously been made.

1 D. An owner of or interest holder in the property may file a claim
2 against the property PURSUANT TO SECTION 13-4307, within ~~thirty~~ SIXTY days
3 after the notice, for a hearing to adjudicate the validity of ~~his~~ THE
4 OWNER'S OR INTEREST HOLDER'S claimed interest in the property. The court
5 shall hold the hearing without a jury. An owner or interest holder may
6 not be charged a filing fee or any other charge for filing the claim.

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

9 ~~1. The caption of the proceeding as set forth on the notice of~~
10 ~~pending forfeiture or complaint and the name of the claimant.~~

11 ~~2. The address at which the claimant will accept future mailings~~
12 ~~from the court or attorney for the state.~~

13 ~~3. The nature and extent of the claimant's interest in the~~
14 ~~property.~~

15 ~~4. The date, the identity of the transferor and the circumstances~~
16 ~~of the claimant's acquisition of the interest in the property.~~

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

19 ~~6. All facts supporting each such assertion.~~

20 ~~7. Any additional facts supporting the claimant's claim.~~

21 ~~8. The precise relief sought.~~

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

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

35 ~~H. At the time of filing its pleadings or at any other time not~~
36 ~~less than thirty days before the hearing, the state and any claimant who~~
37 ~~has timely answered the complaint may serve discovery requests on any~~
38 ~~other party, the answers or response to which shall be due in twenty days,~~
39 ~~and may take the deposition of any person at any time after the expiration~~
40 ~~of fifteen days after the filing and service of the complaint. Any party~~
41 ~~may move for summary judgment at any time after an answer or responsive~~
42 ~~pleading is served and not less than thirty days before the hearing. The~~
43 ~~state, as the party defending against the claim, may make offers of~~
44 ~~judgment at any time more 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~~
3 ~~entry of a final judgment or an application for an order of the forfeiture~~
4 ~~of the property, or if a hearing pursuant to subsections K, L and M of~~
5 ~~this section is held, not less than thirty days before the hearing. The~~
6 ~~request shall be signed by the requestor under penalty of perjury and~~
7 ~~shall set forth all of the following:~~

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

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

12 ~~3. The property subject to forfeiture from which the requestor~~
13 ~~seeks 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~~
21 ~~a factual basis for the request. The requestor has the burden of~~
22 ~~establishing by a preponderance of the evidence that the requestor is an~~
23 ~~injured person who sustained economic loss.~~

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

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

34 ~~m. At the hearing, the state has the burden of establishing by~~
35 ~~clear and convincing evidence that the property is subject to forfeiture~~
36 ~~under section 13-4304. Any claimant who has previously established by a~~
37 ~~preponderance of the evidence that the claimant is an owner of or interest~~
38 ~~holder in the property has the burden of establishing by a preponderance~~
39 ~~of the evidence that the claimant's interest in the property is exempt~~
40 ~~from forfeiture under section 13-4304.~~

41 ~~n. In accordance with its findings at the hearing:~~

42 ~~1. The court shall order an interest in property returned or~~
43 ~~conveyed to a claimant, if any, who has established by a preponderance of~~
44 ~~the evidence that the claimant is an owner of or interest holder in the~~
45 ~~property if either of the following applies:~~

1 ~~(a) The state has failed to establish by clear and convincing~~
2 ~~evidence that the interest is subject to forfeiture under section 13-4304.~~

3 ~~(b) The claimant has established by a preponderance of the evidence~~
4 ~~that the interest is exempt from forfeiture under section 13-4304.~~

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

8 ~~3. If the court finds that a requestor is an injured person the~~
9 ~~court shall determine the amount of the injured person's economic loss~~
10 ~~caused by the conduct giving rise to the forfeiture of the designated~~
11 ~~property and shall require the following:~~

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

18 ~~(b) If the balance is insufficient to compensate the economic loss~~
19 ~~of all injured persons the attorney for the state shall distribute the~~
20 ~~balance among the injured persons according to a method determined by the~~
21 ~~court.~~

22 ~~(c) After compensation of all injured persons, the attorney for the~~
23 ~~state shall transmit ten percent of the remaining balance, if any, to the~~
24 ~~Arizona criminal justice commission for deposit in the victim compensation~~
25 ~~and assistance fund established by section 41-2407.~~

26 ~~(d) The attorney for the state shall deposit the remainder of the~~
27 ~~balance, if any, in an appropriate anti-racketeering revolving fund~~
28 ~~established by section 13-2314.01 or 13-2314.03.~~

29 Sec. 21. Section 13-4312, Arizona Revised Statutes, is amended to
30 read:

31 13-4312. Judicial in personam forfeiture proceedings

32 ~~A. If a forfeiture is authorized by law, it shall be ordered by a~~
33 ~~court on proceedings by the state in an in personam civil or criminal~~
34 ~~action pursuant to section 13-2313 or 13-2314 or any other law providing~~
35 ~~for a forfeiture.~~

36 ~~B.~~ A. Any complaint, information or indictment alleging or
37 charging one or more offenses included in section 13-2301, subsection D,
38 paragraph 4 or a violation of section 13-2312, or any other offense giving
39 rise to forfeiture under this title, shall set forth with reasonable
40 particularity property that the state seeks to forfeit pursuant to this
41 section in that action, if any. ~~The court shall allow the allegation that~~
42 ~~particular new or different or differently described property is subject~~
43 ~~to forfeiture in an in personam criminal or civil case to be made at any~~
44 ~~time prior to the date the case is actually tried unless the allegation is~~
45 ~~filed fewer than twenty days before the case is actually tried, and the~~

1 ~~court finds on the record that the defendant was in fact prejudiced by the~~
2 ~~untimely filing and states reasons for these findings, provided that when~~
3 ~~the allegation is filed, the state must make available to the defendant a~~
4 ~~copy of any material information concerning the allegation.~~

5 ~~C. In any proceeding pursuant to this section, the court, on~~
6 ~~application of the state, may enter any order authorized by section~~
7 ~~13-4310, subsection A or take any other action to seize, secure, maintain~~
8 ~~or preserve the availability of property subject to forfeiture under this~~
9 ~~title, including a warrant for its seizure, whether before or after the~~
10 ~~filing of a complaint, indictment or information.~~

11 ~~D.~~ B. Notwithstanding subsection ~~E~~ C of this section, a temporary
12 restraining order under this section may be entered on application of the
13 state without notice or an opportunity for a hearing if the state
14 demonstrates both that:

15 1. ~~There is~~ THE SEIZURE IS INCIDENT TO A LAWFUL ARREST FOR A CRIME
16 OR A SEARCH LAWFULLY CONDUCTED PURSUANT TO A SEARCH WARRANT AND THE STATE
17 HAS probable cause to believe that the property with respect to which the
18 order is sought would, ~~in the event of final judgment or~~ IF A conviction
19 OCCURS, be subject to forfeiture under this title AND THAT THE SUBJECT OF
20 THE ARREST OR SEARCH WARRANT IS AN OWNER OF THE PROPERTY.

21 2. Provision of notice will jeopardize the availability of the
22 property for forfeiture. A temporary restraining order expires within ten
23 days after the date on which it is entered unless the party against whom
24 it is entered consents to an extension for a longer period or unless ~~after~~
25 ~~commencing a hearing the court enters or is considering a preliminary~~
26 ~~injunction~~ THE STATE CAN DEMONSTRATE THE PROPERTY IS BEING HELD AS
27 EVIDENCE IN A CRIMINAL CASE.

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

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

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

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

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

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

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

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

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

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

44 ~~4. The hearing shall be held by the court without a jury and~~
45 ~~conducted in the manner provided for in rem judicial forfeiture actions~~

1 ~~including the provisions of section 13-4311, subsections L and M. In~~
2 ~~addition to testimony and evidence presented at the hearing, the court~~
3 ~~shall consider the relevant portions of the record of the underlying civil~~
4 ~~or criminal action that resulted in the order of forfeiture.~~

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

10 ~~(a) The state has failed to establish by clear and convincing~~
11 ~~evidence that the interest is subject to forfeiture under section 13-4304.~~

12 ~~(b) The claimant has established by a preponderance of the evidence~~
13 ~~that the interest is exempt from forfeiture under section 13-4304.~~

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

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

26 13-4314. Disposition by court

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

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

44 ~~C. If, in his discretion, the attorney for the state has entered~~
45 ~~into a stipulation with an interest holder that the interest holder has an~~

1 ~~interest that is exempted from forfeiture, the court, on application of~~
2 ~~the attorney for the state, may release or convey forfeited personal~~
3 ~~property to the interest holder if all of the following are true:~~

4 ~~1. The interest holder has an interest that was acquired in the~~
5 ~~regular course of business as a financial institution within section~~
6 ~~13-2301, subsection D, paragraph 3.~~

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

10 ~~3. The encumbrance held by the interest holder seeking possession~~
11 ~~is the only interest exempted from forfeiture and the order forfeiting the~~
12 ~~property to the state transferred all of the rights of the owner before~~
13 ~~forfeiture, including rights to redemption, to the state.~~

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

20 ~~D.~~ C. On order of the court forfeiting the subject property, the
21 attorney for the state may transfer good and sufficient title to any
22 subsequent purchaser or transferee, and the title shall be recognized by
23 all courts, by this state and by all departments and agencies of this
24 state and any political subdivision. THE ATTORNEY FOR THE STATE MAY NOT
25 TRANSFER TITLE TO EITHER:

26 1. AN OFFICER OR EMPLOYEE OF THE AGENCY THAT SEIZED THE PROPERTY OR
27 A PERSON WHO IS RELATED TO THE OFFICER OR EMPLOYEE BY BLOOD OR MARRIAGE.

28 2. THE ATTORNEY FOR THE STATE OR ANY INDIVIDUAL WORKING IN THE SAME
29 OFFICE OR ANY PERSON RELATED TO THE AUTHORITY OR INDIVIDUAL BY BLOOD OR
30 MARRIAGE.

31 ~~E.~~ D. On entry of judgment for a claimant or claimants in any
32 proceeding to forfeit property under this chapter such property or
33 interest in property shall be returned or conveyed immediately to the
34 claimant or claimants designated by the court. The person or seizing
35 agency that made the seizure and the attorney for the state are not
36 personally liable to suit or judgment on account of such seizure, suit or
37 prosecution unless the person, seizing agency or attorney for the state
38 intended to cause injury or was grossly negligent.

39 ~~F.~~ E. The court may award reasonable attorney fees, expenses and
40 damages for loss of the use of the property to any claimant who
41 substantially prevails by an adjudication on the merits of a claim. If
42 the court finds that reasonable cause did not exist for the seizure for
43 forfeiture or the filing of the notice of pending forfeiture, complaint,
44 information or indictment and that the seizing agency or attorney for the
45 state intended to cause injury or was grossly negligent, the court shall

1 award the claimant treble costs or damages. The court must apportion the
2 award for treble costs or damages between the agency that made the seizure
3 and the office of the attorney for the state.

4 Sec. 23. Section 13-4315, Arizona Revised Statutes, is amended to
5 read:

6 13-4315. Allocation of forfeited property

7 A. Any property, including all interests in property, forfeited to
8 the state under this title shall be transferred as requested by the
9 attorney for the state to the seizing agency or to the agency or political
10 subdivision employing the attorney for the state, which may do any of the
11 following:

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

24 2. Sell forfeited property by public or otherwise commercially
25 reasonable sale with expenses of keeping and selling the property and the
26 amount of all valid interests established by claimants paid out of the
27 proceeds of the sale with the balance paid into the anti-racketeering
28 **REVOLVING** fund of the state or of the county in which the political
29 subdivision seizing the property or prosecuting the action is located. A
30 sale of forfeited property may not be made to any employee of the seizing
31 agency, any person who participated in the forfeiture, any employee of a
32 contractor selling the property on behalf of the seizing agency or any
33 member of the immediate family of any of these employees or persons.

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

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

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

43 6. Make any other disposition of forfeited property authorized by
44 law for the disposition of property of the state, government entity,
45 agency or political subdivision.

1 B. Notwithstanding subsection A of this section or any other
2 ~~provision of~~ law to the contrary:

3 1. If the property forfeited is money, and a law enforcement agency
4 can specifically identify monies as being from its investigative funds or
5 as being exchanged for property from its investigative property, the
6 monies shall be remitted to the investigative fund. If there are
7 additional forfeited monies or monies tendered on satisfaction by an
8 interest holder ~~which~~ THAT cannot be specifically identified, the court
9 shall order the monies returned to each law enforcement agency that makes
10 a showing of costs or expenses ~~which~~ THAT it incurred in connection with
11 the investigation and prosecution of the matter and shall order all excess
12 monies remaining after such returns deposited in the anti-racketeering
13 REVOLVING fund of this state or of the county in which the political
14 subdivision seizing the monies or prosecuting the action is located,
15 established pursuant to section 13-2314.01 or 13-2314.03.

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

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

23 1. The payment of any expenses necessary to seize, detain,
24 appraise, inventory, protect, maintain, preserve the availability of,
25 advertise or sell property that is subject to forfeiture and that is
26 seized, detained or forfeited pursuant to this title or of any other
27 necessary expenses incident to the seizure, detention, preservation or
28 forfeiture of the property. The payments may include payments for
29 contract services and payments to reimburse any federal, state or local
30 agency for any expenditures made to perform the INVESTIGATIVE, STORAGE AND
31 MAINTENANCE functions ~~of~~ ASSOCIATED WITH THE PROPERTY HELD BY the seizing
32 agency.

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

35 3. The payment of compensation from forfeited property to injured
36 persons as provided in section ~~13-4311, subsection N~~ 13-4310, SUBSECTION
37 P, paragraph 3.

38 D. Each attorney for the state shall submit a copy of each
39 forfeiture judgment, including each order of forfeiture, to the Arizona
40 criminal justice commission within sixty days after the forfeiture
41 judgment becomes final or after the conclusion of appellate review, if
42 any.

1 Sec. 24. Section 41-2407, Arizona Revised Statutes, is amended to
2 read:

3 41-2407. Victim compensation and assistance fund;
4 subrogation; prohibited debt collection activity;
5 definition

6 A. The victim compensation and assistance fund is established. The
7 Arizona criminal justice commission shall administer the fund. The victim
8 compensation and assistance fund shall consist of monies collected
9 pursuant to section 31-411, subsection E and sections 12-116.08, ~~13-4311~~
10 13-4310, 31-418, 31-467.06 and 41-1674, unclaimed victim restitution
11 monies pursuant to sections 22-116 and 44-313 and monies available from
12 any other source.

13 B. Subject to legislative appropriation, the Arizona criminal
14 justice commission shall allocate monies in the victim compensation and
15 assistance fund to public and private agencies for the purpose of
16 establishing, maintaining and supporting programs that compensate and
17 assist victims of crime.

18 C. The allocation of monies pursuant to this section shall be made
19 in accordance with rules adopted by the Arizona criminal justice
20 commission pursuant to section 41-2405, subsection A, paragraph 8. The
21 rules shall provide that persons who suffered personal injury or death
22 that resulted from an attempt to aid a public safety officer in the
23 prevention of a crime or the apprehension of a criminal may be eligible
24 for compensation.

25 D. This state and the applicable operational unit or qualified
26 program, as defined in the victim compensation program rules, are
27 subrogated to the rights of an individual who receives monies from the
28 victim compensation and assistance fund to recover or receive monies or
29 benefits from a third party, to the extent of the amount of monies the
30 individual receives from the fund.

31 E. A licensed health care provider who agrees to the victim
32 compensation program rules may receive program monies for providing health
33 and medical services to a victim or claimant. A licensed health care
34 provider who accepts the full allowable payment for those services from a
35 victim compensation program funded pursuant to this section is deemed to
36 have accepted the payment as the full payment for those services. The
37 licensed health care provider may not collect or attempt to collect any
38 payment for the same health and medical services from the victim or
39 claimant, except that if a victim compensation program funded pursuant to
40 this section is unable to pay the full allowable payment to a licensed
41 health care provider because of a lack of available monies or for any
42 other reason, the licensed health care provider may collect the unpaid
43 balance for the services from the victim or claimant or from a third-party
44 payor, and the total amount billed or requested by the licensed health
45 care provider may not exceed the full allowable payment that the licensed

1 health care provider agreed to accept from the victim compensation program
2 for the services.

3 F. If a licensed health care provider receives notice that a person
4 has filed a claim with a victim compensation program funded by this
5 section, the licensed health care provider is prohibited from any debt
6 collection activity for any monies owed by the person that are included in
7 the filed claim until an award is made on the claim or until a
8 determination is made that the claim is noncompensable. For the purposes
9 of this subsection, "debt collection activity" includes repeatedly
10 telephoning or writing to the claimant and threatening to either turn the
11 matter over to a debt collection agency or to an attorney for collection,
12 enforcement or filing of any other debt collection process. Debt
13 collection activity does not include routine billing or inquiries about
14 the status of the claim.

15 G. For the purposes of this section, "licensed health care
16 provider" means a person or institution that is licensed or certified by
17 this state to provide health care services, medical services, nursing
18 services, emergency medical services and ambulance services that are
19 regulated pursuant to title 36, chapter 21.1, article 2 or other
20 health-related services.

APPROVED BY THE GOVERNOR MAY 5, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 5, 2021.