

A MEMORIAL

REQUESTING THE OFFICE OF THE ATTORNEY GENERAL TO CONVENE A TASK FORCE TO STUDY THE POTENTIAL FOR AND APPROPRIATENESS OF FORFEITURE OF REAL PROPERTY THAT IS USED TO COMMIT A VIOLATION OF THE CONTROLLED SUBSTANCES ACT.

WHEREAS, the Controlled Substances Act identifies numerous types of property that are now subject to forfeiture if used in the commission of a drug-related crime, including a controlled substance; the raw materials of a controlled substance; a potential container for a controlled substance; any vehicle or conveyance used to transport a controlled substance; any written material, records or data used to manufacture, distribute or traffic a controlled substance; drug paraphernalia used with a controlled substance; or money that is the fruit of selling a controlled substance; and

WHEREAS, the federal criminal code identifies additional types of property that are subject to forfeiture under these circumstances, including interests in real property and any improvements or appurtenances to the real property; and

WHEREAS, in violating the Controlled Substances Act, a perpetrator is often, of necessity, located in or on real property, without which it would be difficult or impossible to commit the violation and which should, therefore, be subject to forfeiture; and

WHEREAS, forfeiture of real property could have unintended consequences that would bring harm to family members of the perpetrator who are in no way involved in the commission of the crime; and

WHEREAS, there may be other benefits or consequences of forfeiture that are not identified in this memorial; and

WHEREAS, a balance of priorities must be carefully weighed between justice, protection of the public and fairness to innocent persons who are inadvertently involved in a criminal activity;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that the office of the attorney general be requested to convene a task force to study the potential for and appropriateness of forfeiture of real property that is used to commit a violation of the Controlled Substances Act; and

BE IT FURTHER RESOLVED that the task force include representation from the New Mexico district attorneys association, the public defender department, the New Mexico sheriffs' and police associations, the drug policy alliance and others with interest and expertise in the nature of and consequences of forfeiture of property and drug-related crimes; and

BE IT FURTHER RESOLVED that the study also consider the differences between federal and state law regarding forfeiture

of property in these circumstances and evaluate whether there is a benefit to aligning state law with federal law; and

BE IT FURTHER RESOLVED that a report of the findings and recommendations of this memorial be presented to the appropriate interim legislative committee by October 31, 2009; and

BE IT FURTHER RESOLVED that a copy of this memorial be transmitted to the office of the attorney general.