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HOUSE BILL 233

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

George Dodge, Jr.

AN ACT

RELATING TO FORFEITURE; REVISING DEFINITIONS; REVISING PROCEDURES RELATED TO FORFEITURE PROCEEDINGS; PROVIDING FOR DISTRIBUTION OF PROCEEDS FROM THE SALE OF FORFEITED OR DISCLAIMED PROPERTY; PROVIDING FOR DESTRUCTION OF CERTAIN SEIZED PROPERTY; REVISING PROCEDURES RELATED TO STORAGE, TRANSFER AND DESTRUCTION OF SEIZED PROPERTY; REVISING REPORTING REQUIREMENTS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 31-27-2 NMSA 1978 (being Laws 2002, Chapter 4, Section 2, as amended) is amended to read:

"31-27-2. ~~[PURPOSE OF ACT]~~ APPLICABILITY--NO ADDITIONAL REMEDIES.--

~~[A. The purposes of the Forfeiture Act are to:~~

~~(1) make uniform the standards and procedures~~

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1 ~~for the seizure and forfeiture of property subject to~~
2 ~~forfeiture;~~

3 ~~(2) protect the constitutional rights of~~
4 ~~persons whose property is subject to forfeiture and of innocent~~
5 ~~owners holding interests in property subject to forfeiture;~~

6 ~~(3) deter criminal activity by reducing its~~
7 ~~economic incentives;~~

8 ~~(4) increase the pecuniary loss from criminal~~
9 ~~activity;~~

10 ~~(5) protect against the wrongful forfeiture of~~
11 ~~property; and~~

12 ~~(6) ensure that only criminal forfeiture is~~
13 ~~allowed in this state.~~

14 B.] The Forfeiture Act:

15 [~~(1)~~] A. applies to all seizures, forfeitures and
16 dispositions of property subject to forfeiture [~~pursuant to~~
17 ~~laws that specifically apply the Forfeiture Act~~] in this state;
18 and

19 [~~(2)~~] B. does not apply to:

20 (1) contraband, which is subject to seizure
21 pursuant to applicable state laws, but is not subject to
22 forfeiture pursuant to the Forfeiture Act;

23 (2) animals that are subject to seizure,
24 impoundment, alteration, permanent removal from custody or
25 destruction for animal welfare, public health and safety or

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1 compliance and enforcement purposes pursuant to applicable
2 state and local laws;

3 (3) real property or personal property that is
4 located on that real property that is subject to destruction
5 pursuant to state and local laws to protect public health and
6 safety; and

7 (4) forfeiture that results from a lien for
8 charges or assessments that are provided for or fixed by state
9 or local laws."

10 SECTION 2. Section 31-27-3 NMSA 1978 (being Laws 2002,
11 Chapter 4, Section 3, as amended) is amended to read:

12 "31-27-3. DEFINITIONS.--As used in the Forfeiture Act:

13 [~~A.~~ "~~abandoned property~~":

14 ~~(1) means personal property the rights to~~
15 ~~which and the control of which an owner has intentionally~~
16 ~~relinquished; and~~

17 ~~(2) does not mean real property;~~

18 ~~B. "actual knowledge" means a direct and clear~~
19 ~~awareness of information, a fact or a condition;~~

20 ~~G.]~~ A. "contraband" means goods that may not be
21 lawfully imported, exported or possessed, including drugs that
22 are listed in Schedule I, II, III, IV or V of the Controlled
23 Substances Act and that are possessed without a valid
24 prescription;

25 [~~D.]~~ B. "conveyance" means a device used for

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1 transportation and:

2 (1) includes a motor vehicle, trailer,
3 snowmobile, airplane, vessel and any equipment attached to the
4 conveyance; but

5 (2) does not include property that is stolen
6 or taken in violation of a law;

7 [~~E-~~] C. "conviction" or "convicted" means that a
8 person has been found guilty of a crime in a trial court
9 whether by a plea of guilty or nolo contendere or otherwise and
10 whether the sentence is deferred or suspended;

11 [~~F-~~] D. "crime" means a violation of a criminal
12 statute for which property of the offender is subject to
13 seizure and forfeiture;

14 E. "disclaimed property" means property, the
15 ownership of which has been disclaimed by the person in
16 possession of the property at the time the property is seized;

17 [~~G-~~] F. "instrumentality" means all property that
18 is otherwise lawful to possess that is used in the furtherance
19 or commission of an offense to which forfeiture applies and
20 includes land, a building, a container, a conveyance,
21 equipment, materials, a product, a computer, computer software,
22 a telecommunications device, a firearm, ammunition, a tool,
23 money, a security and a negotiable instrument and other devices
24 used for exchange of property;

25 G. "knowledge" means actual or constructive

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1 awareness that can be proved either through direct or
2 circumstantial evidence of information, a fact or a condition;

3 H. "law enforcement agency" means the employer of a
4 law enforcement officer [~~that~~] who is authorized to seize or
5 has seized property [~~pursuant to the Forfeiture Act~~] and
6 includes the district attorney, the attorney general and
7 another entity authorized by law to file a forfeiture action;

8 I. "law enforcement officer" [~~means~~]:

9 (1) means a state or municipal police officer,
10 county sheriff, deputy sheriff, conservation officer, motor
11 transportation enforcement officer or other state employee
12 authorized by state law to enforce criminal statutes; but

13 (2) does not mean a correctional officer;

14 J. "owner" means a person who has a legal or
15 equitable ownership interest in property;

16 K. "property" means tangible or intangible personal
17 property or real property;

18 L. "property subject to forfeiture" means property
19 or an instrumentality [~~described and~~] declared to be subject to
20 forfeiture by the Forfeiture Act [~~or~~], a state law outside of
21 the Forfeiture Act or a local ordinance; and

22 M. "secured party" means a person with a security
23 or other protected interest in property, whether the interest
24 arose by mortgage, security agreement, lien, lease or
25 otherwise; the purpose of which interest is to secure the

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1 payment of a debt or protect a potential debt owed to the
2 secured party."

3 SECTION 3. Section 31-27-4 NMSA 1978 (being Laws 2002,
4 Chapter 4, Section 4, as amended) is amended to read:

5 "31-27-4. FORFEITURE--CONVICTION REQUIRED--SEIZURE OF
6 PROPERTY--WITH PROCESS--WITHOUT PROCESS.--

7 A. A person's property is subject to forfeiture if:

8 (1) the person was arrested for an offense to
9 which forfeiture applies;

10 (2) the person is convicted by a criminal
11 court of the offense; and

12 (3) the ~~[state]~~ law enforcement agency
13 establishes by clear and convincing evidence that the property
14 is subject to forfeiture as provided in Subsection B of this
15 section.

16 B. Following a person's conviction for an offense
17 to which forfeiture applies, a court may order the person to
18 forfeit:

19 (1) property the person acquired through
20 commission of the offense;

21 (2) property directly traceable to property
22 acquired through the commission of the offense; and

23 (3) any instrumentality the person used in the
24 commission of the offense.

25 C. Nothing in this section shall prevent property

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1 from being forfeited by the terms of a plea agreement that is
2 approved by a court or by other agreement of the parties to a
3 criminal proceeding.

4 D. Subject to the provisions of Section 31-27-5
5 NMSA 1978, at any time, at the request of the ~~[state]~~ law
6 enforcement agency, a court may issue an ex parte preliminary
7 order to seize property that is subject to forfeiture and for
8 which forfeiture is sought and to provide for the custody of
9 the property. The execution on the order to seize the property
10 and the return of the property, if applicable, are subject to
11 the Forfeiture Act and other applicable state laws or local
12 ordinances. Before issuing an order pursuant to this
13 subsection, the court shall make a determination that:

14 (1) there is a substantial probability that:

15 (a) the property is subject to
16 forfeiture;

17 (b) the ~~[state]~~ law enforcement agency
18 will prevail on the issue of forfeiture; and

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

22 (2) the need to preserve the availability of
23 the property through the entry of the requested order outweighs
24 the hardship to the owner and other parties known to be
25 claiming interests in the property.

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

3 (1) the seizure is incident to a lawful arrest
4 for a crime or a search lawfully conducted pursuant to a search
5 warrant and the law enforcement officer making the arrest or
6 executing the search has probable cause to believe the property
7 is subject to forfeiture and that the subject of the arrest or
8 search warrant is an owner of the property;

9 (2) the property subject to seizure is the
10 subject of a previous judgment in favor of the [~~state~~] law
11 enforcement agency; or

12 (3) the law enforcement officer making the
13 seizure has probable cause to believe the property is subject
14 to forfeiture and that the delay occasioned by the need to
15 obtain a court order would result in the removal or destruction
16 of the property or otherwise frustrate the seizure."

17 SECTION 4. Section 31-27-4.1 NMSA 1978 (being Laws 2015,
18 Chapter 152, Section 5) is amended to read:

19 "31-27-4.1. RECEIPT FOR SEIZED PROPERTY--REPLEVIN
20 HEARING.--

21 A. When a law enforcement officer seizes property
22 that is subject to forfeiture, the officer shall provide an
23 itemized receipt to the person possessing the property or, in
24 the absence of a person to whom the receipt could be given,
25 shall leave the receipt in the place where the property was

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1 found, if possible.

2 B. Within five business days of the seizure, the
3 law enforcement officer shall provide notice by first class
4 mail to all owners of record of the seized property.

5 ~~[B.]~~ C. Following the seizure of property, the
6 defendant in the related criminal matter or another person who
7 claims an interest in the seized property may, at any time
8 before ~~[sixty days prior to a related criminal trial]~~ the one-
9 hundred-twentieth day following the filing of the forfeiture
10 action in court, claim an interest in the seized property by a
11 motion ~~[to]~~ requesting the court to issue a writ of replevin.
12 A motion filed pursuant to this section shall include facts to
13 support the person's alleged interest in the seized property.

14 ~~[G.]~~ D. A person who makes a timely motion pursuant
15 to this section shall have a right to a hearing on the motion
16 before the resolution of any related criminal matter or
17 forfeiture proceeding and within ~~[thirty]~~ sixty days of the
18 date on which the motion is filed.

19 ~~[D.]~~ E. At least ten days before a hearing on a
20 motion filed pursuant to this section, the ~~[state]~~ law
21 enforcement agency shall file an answer or responsive motion
22 that shows probable cause for the seizure.

23 ~~[E.]~~ F. A court shall grant a claimant's motion if
24 the court finds that:

- 25 (1) it is likely that the final judgment will

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1 require the [~~state~~] law enforcement agency to return the
2 property that was seized without a court order to the claimant;

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

5 (3) the property is the only reasonable means
6 for a defendant to pay for legal representation in a related
7 criminal or forfeiture proceeding and the law enforcement
8 agency did not make a prima facie showing that the property was
9 stolen or proceeds from or is an instrumentality of a crime.

10 [~~F.~~] G. In its discretion, the court may order the
11 return of funds or property sufficient for a defendant to
12 obtain legal counsel but less than the total amount seized [~~and~~
13 ~~it may~~]. If the court makes such an order, it shall require an
14 accounting. An accounting report of reasonable legal fees held
15 before the resolution of the relevant criminal and forfeiture
16 proceedings shall be held in camera. If the court finds in
17 favor of the law enforcement agency in both the criminal and
18 forfeiture proceedings, the court shall:

19 (1) hear arguments by the parties as to what
20 portion of the funds or property should be paid to the
21 defendant's counsel and what portion should be forfeited; and

22 (2) issue an order on how the funds or
23 property shall be distributed.

24 [~~G.~~] H. In lieu of ordering the issuance of [~~the~~] a
25 writ of replevin, a court may order:

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1 (1) the ~~[state]~~ law enforcement agency to give
2 security or written assurance for satisfaction of any judgment,
3 including damages, that may be rendered in a related forfeiture
4 action; or

5 (2) any other relief the court deems to be
6 just; provided that the relief does not prejudice an innocent
7 owner, including a secured lienholder."

8 SECTION 5. Section 31-27-5 NMSA 1978 (being Laws 2002,
9 Chapter 4, Section 5, as amended) is amended to read:

10 "31-27-5. ~~[COMPLAINT OF FORFEITURE]~~ NOTICE OF INTENT TO
11 FORFEIT--SERVICE OF PROCESS.--

12 A. Within thirty days of making a seizure of
13 property or simultaneously upon filing a related criminal
14 indictment, the ~~[state]~~ law enforcement agency shall file a
15 ~~[complaint of ancillary forfeiture proceedings]~~ notice of
16 intent to forfeit or return the property to the person from
17 whom it was seized. ~~[A complaint of ancillary forfeiture~~
18 ~~proceedings]~~ The notice shall include:

- 19 (1) a description of the property seized;
20 (2) the date and place of seizure of the
21 property;
22 (3) the name and address of the law
23 enforcement agency making the seizure;
24 (4) the specific statutory and factual grounds
25 for the seizure;

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1 (5) whether the property was seized pursuant
2 to an order of seizure, and if the property was seized without
3 an order of seizure, an affidavit from a law enforcement
4 officer stating the legal and factual grounds why an order of
5 seizure was not required; and

6 (6) in the [~~complaint caption and in the~~
7 ~~complaint~~] notice, the names of persons known to the [~~state~~]
8 law enforcement agency who may claim an interest in the
9 property and the basis for each person's alleged interest.

10 B. The [~~complaint~~] notice shall be served upon the
11 person from whom the property was seized, the person's attorney
12 of record and all persons known or reasonably believed by the
13 [~~state~~] law enforcement agency to claim an interest in the
14 property. A copy of the [~~complaint~~] notice shall also be
15 published [~~at least three times in a newspaper of general~~
16 ~~circulation in the district of the court having jurisdiction~~
17 ~~or~~] on the sunshine portal until the forfeiture proceeding is
18 resolved."

19 SECTION 6. Section 31-27-6 NMSA 1978 (being Laws 2002,
20 Chapter 4, Section 6, as amended) is amended to read:

21 "31-27-6. FORFEITURE PROCEEDINGS--DETERMINATION--
22 SUBSTITUTION OF PROPERTY--CONSTITUTIONALITY--APPEAL.--

23 A. A person who claims an interest in seized
24 property shall file [~~an answer to the complaint of forfeiture~~]
25 a response within thirty days of the date of service of the

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1 ~~[complaint]~~ notice of intent to forfeit. The ~~[answer]~~ response
2 shall include facts to support the claimant's alleged interest
3 in the property.

4 B. The ~~[district]~~ state courts have jurisdiction
5 over forfeiture proceedings, and venue for a forfeiture
6 proceeding is in the same court in which venue lies for the
7 criminal matter related to the seized property.

8 C. The forfeiture proceeding shall begin after the
9 conclusion of the trial for the related criminal matter in an
10 ancillary proceeding that relates to a defendant's property
11 before the same judge and jury, if applicable, and the court,
12 and the jury, if applicable, may consider the forfeiture of
13 property seized from other persons at the same time or in a
14 later proceeding. If the criminal defendant in the related
15 criminal matter is represented by the public defender
16 department, the chief public defender or the district public
17 defender may authorize department representation of the
18 defendant in the forfeiture proceeding.

19 D. Discovery conducted in an ancillary forfeiture
20 proceeding is subject to the rules of criminal procedure.

21 E. An ancillary forfeiture proceeding that relates
22 to the forfeiture of property valued at less than twenty
23 thousand dollars (\$20,000) shall be held before a judge only.

24 F. If the ~~[state]~~ law enforcement agency fails to
25 prove, by clear and convincing evidence, that a person whose

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1 property is alleged to be subject to forfeiture is an owner of
2 the property:

3 (1) the forfeiture proceeding shall be
4 dismissed and the property shall be delivered to the owner,
5 unless the owner's possession of the property is illegal; and

6 (2) the owner shall not be subject to any
7 charges by the [~~state~~] law enforcement agency for storage of
8 the property or expenses incurred in the preservation of the
9 property.

10 G. The court shall enter a judgment of forfeiture
11 and the seized property shall be forfeited to the [~~state~~] law
12 enforcement agency if the [~~state~~] law enforcement agency proves
13 by clear and convincing evidence that:

14 (1) the seized property is subject to
15 forfeiture;

16 (2) the criminal prosecution of the owner of
17 the seized property resulted in a conviction; and

18 (3) the value of the property to be forfeited
19 does not unreasonably exceed:

20 (a) the pecuniary gain derived or sought
21 to be derived by the crime;

22 (b) the pecuniary loss caused or sought
23 to be caused by the crime; or

24 (c) the value of the convicted owner's
25 interest in the property.

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1 H. A court shall not accept a plea agreement or
2 other arrangement by which a defendant contributes or donates
3 property to a person, charity or other organization in full or
4 partial fulfillment of responsibility established in the
5 court's proceeding.

6 I. Following a person's conviction, the ~~[state]~~ law
7 enforcement agency may make a motion for forfeiture of
8 substitute property owned by the person that is equal to but
9 does not exceed the value of the property that is subject to
10 forfeiture but that the ~~[state]~~ law enforcement agency is
11 unable to seize. The court shall order the forfeiture of
12 substitute property only if the ~~[state]~~ law enforcement agency
13 proves by a preponderance of the evidence that the person
14 intentionally transferred, sold or deposited property with a
15 third party to avoid the court's jurisdiction and the
16 forfeiture of the property.

17 J. A person is not jointly and severally liable for
18 orders for forfeiture of another person's property. When
19 ownership of property is unclear, a court may order each person
20 to forfeit the person's property on a pro rata basis or by
21 another means the court deems equitable.

22 K. ~~[At any time]~~ Within the time period for filing
23 an appeal following the conclusion of a forfeiture proceeding,
24 the person whose property was forfeited may petition the court
25 to determine whether the forfeiture was unconstitutionally

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1 excessive pursuant to the state or federal constitution.

2 L. At a non-jury hearing on the petition, the
3 petitioner has the burden of establishing by a preponderance of
4 the evidence that the forfeiture was grossly disproportional to
5 the seriousness of the criminal offense for which the person
6 was convicted.

7 M. In determining whether the forfeiture is
8 unconstitutionally excessive, the court may consider all
9 relevant factors, including:

10 (1) the seriousness of the criminal offense
11 and its impact on the community, the duration of the criminal
12 activity and the harm caused by the defendant;

13 (2) the extent to which the defendant
14 participated in the offense;

15 (3) the extent to which the property was used
16 in committing the offense;

17 (4) the sentence imposed for the commission of
18 the crime that relates to the property that is subject to
19 forfeiture; and

20 (5) whether the criminal offense was completed
21 or attempted.

22 N. In determining the value of the property subject
23 to forfeiture, the court may consider relevant factors,
24 including the [~~(1)~~] fair market value of the property

25 [~~(2)~~ value of the property to the defendant,

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1 ~~including hardship that the defendant will suffer if the~~
2 ~~forfeiture is realized; and~~

3 ~~(3)]~~ and the hardship from the loss of a
4 primary residence, motor vehicle or other property to the
5 defendant's family members or others if the property is
6 forfeited, in addition to any non-monetary intrinsic value of
7 property that would cause the defendant to suffer if the
8 forfeiture is realized.

9 O. The court shall not consider the value of the
10 property to the [~~state~~] law enforcement agency when it
11 determines whether the forfeiture of the property is
12 constitutionally excessive.

13 P. A party to a forfeiture proceeding may appeal a
14 district court's decision regarding the seizure, forfeiture and
15 distribution of property [~~pursuant to the Forfeiture Act~~]."

16 **SECTION 7.** Section 31-27-7 NMSA 1978 (being Laws 2002,
17 Chapter 4, Section 7, as amended) is amended to read:

18 "31-27-7. TITLE TO SEIZED PROPERTY--DISPOSITION OF
19 FORFEITED PROPERTY AND DISCLAIMED PROPERTY--PROCEEDS.--

20 A. The [~~state~~] law enforcement agency acquires
21 provisional title to seized property at the time the property
22 was used or acquired in connection with an offense that
23 subjects the property to forfeiture. Provisional title
24 authorizes the [~~state~~] law enforcement agency to hold and
25 protect the property. Title to the property shall vest with

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1 the ~~[state]~~ law enforcement agency when a trier of fact renders
2 a final forfeiture verdict and the title relates back to the
3 time when the ~~[state]~~ law enforcement agency acquired
4 provisional title; provided that the title is subject to claims
5 by third parties that are adjudicated pursuant to the
6 Forfeiture Act.

7 B. Unless possession of the property is illegal or
8 a different disposition is specifically provided for by law and
9 except as provided in this section, forfeited property that is
10 not currency shall be delivered ~~[along with any abandoned~~
11 ~~property]~~ to the state treasurer or the state treasurer's
12 designee for disposition at a public auction. Forfeited
13 currency and all ~~[sale]~~ proceeds of the sale of forfeited ~~[or~~
14 ~~abandoned]~~ property shall be distributed by the state treasurer
15 as follows:

16 (1) first, to reimburse the reasonable
17 expenses related to the storage, protection and transfer of the
18 property and to prepare reports required by the provisions of
19 Subsection A of Section 31-27-9 NMSA 1978;

20 (2) second, to pay any reasonable expenses
21 incurred to dispose of the property; and

22 (3) third, any remaining balance shall be
23 deposited in the general fund.

24 ~~[G. Proceeds from the sale of forfeited property~~
25 ~~received by the state from another jurisdiction shall be~~

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1 ~~deposited in the general fund]~~

2 C. A law enforcement agency or public body that
3 receives reimbursement pursuant to Subsection B of this section
4 shall inform the state auditor of that fact at the time of the
5 agency's or body's annual audit.

6 D. A forfeited property interest [~~forfeited to the~~
7 ~~state pursuant to the Forfeiture Act]~~ is subject to the
8 interest of a secured party unless, in the forfeiture
9 proceeding, the [~~state]~~ law enforcement agency proves by clear
10 and convincing evidence that the secured party had [~~actual~~]
11 knowledge of the crime that relates to the seizure of the
12 property.

13 E. Disclaimed property is subject to the provisions
14 of Section 29-1-14 NMSA 1978 and shall be disposed of in the
15 same manner as provided in Section 29-1-15 NMSA 1978.

16 F. Property subject to forfeiture that is in a law
17 enforcement agency's possession becomes disclaimed property and
18 may be disposed of as such without a conviction if:

19 (1) there is no innocent owner; and

20 (2) the criminal prosecution of the owner of
21 the seized property cannot proceed because for a period in
22 excess of one year and one day:

23 (a) a bench warrant has been pending as
24 a result of the defendant failing to appear; or

25 (b) the owner fugitates."

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1 SECTION 8. Section 31-27-7.1 NMSA 1978 (being Laws 2015,
2 Chapter 152, Section 9) is amended to read:

3 "31-27-7.1. INNOCENT OWNERS.--

4 A. The property of an innocent owner, as provided
5 in this section, shall not be forfeited.

6 B. A person who claims to be an innocent owner has
7 the burden of production to show that the person:

8 (1) holds a legal right, title or interest in
9 the property seized; and

10 (2) held an ownership interest in the seized
11 property at the time the illegal conduct that gave rise to the
12 seizure of the property occurred or was a bona fide purchaser
13 for fair value.

14 C. The ~~[state]~~ law enforcement agency shall
15 immediately return property to an established innocent owner
16 who has an interest in homesteaded property, a motor vehicle
17 valued at less than ten thousand dollars (\$10,000) or a
18 conveyance that is encumbered by a security interest that was
19 perfected pursuant to state law or that is subject to a lease
20 or rental agreement, unless the secured party or lessor had
21 ~~[actual]~~ knowledge of the criminal act upon which the
22 forfeiture was based.

23 D. If a person establishes that the person is an
24 innocent owner pursuant to Subsection B of this section
25 ~~[31-27-7.1 NMSA 1978]~~ and the ~~[state]~~ law enforcement agency

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1 pursues a forfeiture proceeding with respect to that person's
2 property, other than property described in Subsection D of
3 Section 31-27-7 NMSA 1978, to successfully forfeit the
4 property, the [~~state~~] law enforcement agency shall prove by
5 clear and convincing evidence that the innocent owner had
6 [~~actual~~] knowledge of the underlying crime giving rise to the
7 forfeiture.

8 E. A person who acquired an ownership interest in
9 property subject to forfeiture after the commission of a crime
10 that gave rise to the forfeiture and who claims to be an
11 innocent owner has the burden of production to show that the
12 person has legal right, title or interest in the property
13 seized under this section.

14 F. If a person establishes that the person is an
15 innocent owner as provided in Subsection B of this section and
16 the [~~state~~] law enforcement agency pursues a forfeiture
17 proceeding against the person's property, to successfully
18 forfeit the property, the [~~state~~] law enforcement agency shall
19 prove by clear and convincing evidence that at the time the
20 person acquired the property or an interest in the property,
21 the person:

22 (1) had [~~actual~~] knowledge that the property
23 was subject to forfeiture; or

24 (2) was not a bona fide purchaser who was
25 without notice of any defect in title and who gave valuable

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1 consideration.

2 G. If the [~~state~~] law enforcement agency fails to
3 meet its burdens as provided in Subsections C and D of this
4 section, the court shall find that the person is an innocent
5 owner and shall order the [~~state~~] law enforcement agency to
6 relinquish all claims of title to the innocent owner's property
7 without delay.

8 H. Seized property that is firearms, ammunition or
9 explosives subject to forfeiture under the protections of this
10 section and that is not returned to an innocent owner may be
11 destroyed upon a motion by the law enforcement agency and an
12 order of the court."

13 SECTION 9. Section 31-27-8 NMSA 1978 (being Laws 2002,
14 Chapter 4, Section 8, as amended) is amended to read:

15 "31-27-8. SAFEKEEPING OF SEIZED PROPERTY PENDING
16 DISPOSITION [~~SELLING OR RETAINING SEIZED PROPERTY~~
17 ~~PROHIBITED~~].--With regard to seized property in the state
18 courts:

19 A. seized currency alleged to be subject to
20 forfeiture shall be deposited with the clerk of the district
21 court in an interest-bearing account;

22 B. seized property other than currency or real
23 property, not required by federal or state law to be destroyed,
24 shall be [~~(1)~~] placed under seal [~~and~~

25 ~~(2) removed to~~] at a place designated by the

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1 district court; ~~or~~
2 ~~(3) held in the custody of a law enforcement~~
3 ~~agency;~~

4 C. seized property shall be kept by the custodian
5 in a manner to protect it from theft or damage and, if ordered
6 by the district court, insured against those risks; and

7 D. unless it is returned to an owner, a law
8 enforcement agency shall ~~[not retain]~~ dispose of forfeited or
9 abandoned property as provided in Section 31-27-7 NMSA 1978."

10 SECTION 10. Section 31-27-9 NMSA 1978 (being Laws 2015,
11 Chapter 152, Section 11) is amended to read:

12 "31-27-9. REPORTING.--

13 A. Within sixty days following the conclusion of
14 each fiscal year, every law enforcement agency shall prepare an
15 annual report of the agency's seizures and forfeitures
16 conducted pursuant to ~~[the Forfeiture Act]~~ applicable state law
17 and local ordinances, and seizures and forfeitures conducted
18 pursuant to federal forfeiture law, and the report shall
19 include:

20 (1) the total number of seizures of currency
21 and the total amount of currency seized in each seizure;

22 (2) the total number of seizures of property
23 and the number and types of items seized in each seizure;

24 (3) the market value of each item of property
25 seized; ~~[and]~~

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1 (4) the total number of occurrences of each
2 class of crime that resulted in the agency's seizure of
3 property;

4 (5) the costs incurred by the agency for
5 storage, maintenance and transportation of seized property;

6 (6) any proceeds received through equitable
7 sharing, along with the federal case number and the final
8 disposition of the case; and

9 (7) any costs incurred by the agency to
10 prepare its report in accordance with this subsection.

11 B. A law enforcement agency shall submit its annual
12 reports to the department of public safety and to the district
13 attorney's office in the agency's district. An agency that did
14 not engage in seizure or forfeiture pursuant to [~~the Forfeiture~~
15 ~~Act~~] local, state or federal forfeiture law [~~or both~~] shall
16 report that fact in its annual report.

17 C. The department of public safety shall compile
18 the reports submitted by each law enforcement agency and issue
19 an aggregate report of all forfeitures in the state.

20 D. By April 1 of each year, the department of
21 public safety shall publish on its [~~web site~~] website the
22 department's aggregate report and individual law enforcement
23 agency reports submitted for the previous year."

24 SECTION 11. Section 31-27-11 NMSA 1978 (being Laws 2015,
25 Chapter 152, Section 13) is amended to read:

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1 "31-27-11. TRANSFER OF FORFEITABLE PROPERTY TO THE
2 FEDERAL GOVERNMENT.--

3 A. A law enforcement agency shall not directly or
4 indirectly transfer seized property to a federal law
5 enforcement authority or other federal agency unless:

6 (1) the value of the seized property exceeds
7 fifty thousand dollars (\$50,000), excluding the potential value
8 of the sale of contraband; ~~[and~~

9 ~~(2) the law enforcement agency determines that~~
10 ~~the criminal conduct that gave rise to the seizure is~~
11 ~~interstate in nature and sufficiently complex to justify the~~
12 ~~transfer of the property; or~~

13 ~~(3) the seized property may only be forfeited~~
14 ~~under federal law;] or~~

15 (2) the federal government has filed criminal
16 charges against the owner of the seized property, there is no
17 innocent owner and the seized property is required as evidence
18 in the federal prosecution.

19 B. ~~[The]~~ A law enforcement agency shall not
20 transfer property to the federal government if the transfer
21 would circumvent the protections of the Forfeiture Act that
22 would otherwise be available to a putative interest holder in
23 the property. A law enforcement agency may share information
24 and cooperate with the federal government; provided that the
25 information-sharing and cooperation is not part of a broader

underscoring material = new
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1 pattern, practice or policy that operates to circumvent the
2 protections of the Forfeiture Act.

3 C. A law enforcement agency may participate in
4 equitable sharing programs with the federal government as
5 authorized by Section 29-1-10.1 NMSA 1978 and permitted in this
6 section; provided that no equitable sharing proceeds shall be
7 accepted by the law enforcement agency unless the property was
8 disclaimed or an owner of the property is convicted in federal
9 court."

10 SECTION 12. TEMPORARY PROVISION.--The New Mexico supreme
11 court shall issue procedural court rules to implement the
12 provisions of this act.

13 SECTION 13. TEMPORARY PROVISION.--Abandoned property in
14 the possession of a law enforcement agency or the state
15 treasurer on the effective date of this act shall be disposed
16 of pursuant to Section 29-1-14 NMSA 1978.

17 SECTION 14. APPLICABILITY.--The provisions of this act
18 apply to seized and disclaimed property in the possession of a
19 law enforcement agency or the state treasurer on and after the
20 effective day of this act.

21 SECTION 15. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.