

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 2673

By Delegates Anders, White, Ridenour, Dillon, Kump,

Kimble, Dean, and Bridges

[Introduced February 20, 2025; referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §60A-7-701, §60A-7-702, §60A-7-703, §60A-7-704, §60A-7-705,
2 §60A-7-706, §60A-7-707, and §60A-7-708 of the Code of West Virginia, 1931, as
3 amended; to amend said code by adding new sections designated §60A-7-709, §60A-7-
4 710, §60A-7-711, §60A-7-712, §60A-7-713, §60A-7-714, §60A-7-715, §60A-7-716, §60A-
5 7-717, §60A-7-718, §60A-7-719, §60A-7-720, §60A-7-721, §60A-7-722, §60A-7-723,
6 §60A-7-724, §60A-7-725, §60A-7-726, §60A-7-727, §60A-7-728, §60A-7-729, §60A-7-
7 730, §60A-7-731, §60A-7-732, and §60A-7-733; and to amend said code by repealing
8 §60A-7-705a thereof, related to eliminating civil asset forfeiture; setting definitions; setting
9 forth purpose and legislative intent; describing jurisdictional and procedural requirements
10 for criminal asset forfeiture; requiring notice of intent to seize real property; permitting
11 seizure and providing for disposition of contraband and stolen property; providing storage
12 procedures for contraband and seized property; requiring a receipt for seized property;
13 permitting prosecuting authorities to establish a minimum dollar amount for seized
14 currency and motor vehicles; permitting for knowing and voluntary waiver of property
15 rights; prohibiting prosecuting authorities from conditioning initial engagement in plea
16 negotiations on waiver of property rights; vesting title of seized property; permitting
17 representation by public defenders in forfeiture proceedings; requiring notice of seizure to
18 all known owners of seized property; permitting courts to place reasonable restrictions on
19 return of seized property to preserve the property for use as evidence; requiring and
20 providing procedure for prompt post-seizure hearings; requiring notice of proposed
21 forfeiture; providing for discovery; providing for when property may be forfeited; providing
22 for exceptions to the conviction requirement; permitting motions and hearings to determine
23 proportionality of forfeiture; setting forth requirements for disposition of seized property
24 that is encumbered by a security interest; prohibiting forfeiture of property owned by an
25 innocent owner; providing for disposition of seized property upon failure to convict;
26 permitting substitution of assets in certain cases; providing that enumerated remedies are

27 the sole remedies; prohibiting joint and several liability for forfeiture awards owed by other
28 defendants; providing for appeals of seizure and forfeiture orders; permitting recovery of
29 attorney fees under enumerated circumstances; providing process and requirements for
30 return of seized property; providing procedure for disposition of forfeited property and
31 proceeds; limiting sales of forfeited property; preempting local laws regarding asset
32 forfeiture; limiting cooperation with federal agencies; requiring prosecuting authorities to
33 consult with U.S. Attorneys to establish guidelines; and permitting the Department of
34 Homeland Security to develop and offer training on seizure and forfeiture

Be it enacted by the Legislature of West Virginia:

**ARTICLE 7. WEST VIRGINIA ~~CONTRABAND FORFEITURE~~ PROPERTY RIGHTS
ACT.**

§60A-7-701. ~~Short title~~ Definitions.

1 This article shall be known and cited as the "West Virginia ~~Contraband Forfeiture Act.~~"

2 The terms defined in this section have the following meanings in this chapter:

3 (a) "Abandoned property" means personal property to which a possessor relinquishes all
4 rights of ownership or control. Real property may not be abandoned.

5 (b) "Actual knowledge" means direct and clear awareness of information, a fact, or a
6 condition.

7 (c) "Contraband" means goods that, in themselves, are unlawful to possess, including
8 scheduled drugs without a lawful prescription and a firearm that is illegal to possess.

9 (d) "Conveyance" means a device used for transportation. It includes a motor vehicle,
10 trailer, snowmobile, airplane, vessel, or any equipment attached to one of these devices. The term
11 does not include property that is stolen in violation of the law.

12 (e) "Innocent owner" means an owner, co-owner, defendant's heir, or a person who
13 regularly uses property subject to forfeiture who does not have actual knowledge of the use of the

property in a crime that authorizes the forfeiture of the property. The term does not include the defendant or a secured interest holder.

(f) "Instrumentality" means property otherwise lawful to possess that is used in a crime that authorizes the forfeiture of property. It includes land, buildings, containers, conveyances, equipment, materials, products, tools, computers, computer software, telecommunications devices, firearms, ammunition, and ammunition-and-firearm accessories.

(g) "Law-enforcement agency" means any non-federal police force, or other local, county, or state agency that has the authority under state law to engage in seizure and forfeiture.

(h) "Personal property" means a movable object or intangible asset of value that is subject to ownership and is not real property or proceeds.

(i) "Proceeds" means United States currency, currency of another nation, digital and cryptocurrency, securities, negotiable instruments, or other means of exchange obtained from the sale of property or contraband.

(j) "Prosecuting authority" means a municipal attorney, solicitor, district attorney, county attorney, attorney general, or other government official legally authorized to prosecute crime.

(k) "Public defender" means the Indigent Defense Commission established by §29-21-3b of this code and any office of public defense.

(l) "Real property" includes immovable property, real estate and realty, including land and anything growing on, attached to, or erected on land, including a building.

(m) "Secured interest holder" means a person who is a secured creditor, mortgagee, lienholder, or other person who has a valid claim, security interest, mortgage, lien, leasehold, or other interest in the property subject to forfeiture. The term does not include the defendant or an innocent owner.

§60A-7-702. Legislative findings; purpose.

(a) Forfeiture is disfavored. The purpose of this chapter is to:

(1) Deter crime by reducing its economic incentives;

3 (2) Confiscate property used in the violation of the law;

4 (3) Disgorge the fruit of legal conduct; and

5 (4) Protect the due process rights of property owners.

6 (b) The Legislature hereby finds and declares that the seizure and sale of items under the
7 provisions of this article is not contemplated to be a forfeiture as the same is used in article twelve,
8 section five of the West Virginia Constitution and to the extent that such seizure and sale may be
9 found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a
10 seizure and sale under this article is not part of net proceeds as the same is contemplated by such
11 article twelve, section five of the West Virginia Constitution.

**§60A-7-703. Items subject to forfeiture; persons authorized to seize property subject to
forfeiture Jurisdiction.**

1 ~~(a) The following are subject to forfeiture:~~

2 ~~(1) All controlled substances which have been manufactured, distributed, dispensed or~~
3 ~~possessed in violation of this chapter;~~

4 ~~(2) All raw materials, products and equipment of any kind which are used, or intended for~~
5 ~~use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled~~
6 ~~substance in violation of this chapter;~~

7 ~~(3) All tax-not-paid tobacco products, as that term is defined in section two, article~~
8 ~~seventeen, chapter eleven of this code, declared to be contraband under said article;~~

9 ~~(4) All property which is used, or has been used, or is intended for use, as a container for~~
10 ~~property described in subdivision (1), (2) or (3) of this subsection;~~

11 ~~(5) All conveyances, including aircraft, vehicles or vessels, which are used, have been~~
12 ~~used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale,~~
13 ~~receipt, possession or concealment of property described in subdivision (1), (2) or (3) of this~~
14 ~~subsection, except that:~~

15 ~~(i) A conveyance used by any person as a common carrier in the transaction of business as~~

~~a common carrier shall not be forfeited under this section unless it appears that the person owning the conveyance is a consenting party or privy to a violation of this chapter;~~

~~(ii) A conveyance shall not be forfeited under the provisions of this article if the person owning the conveyance establishes that he or she neither knew, nor had reason to know, that the conveyance was being employed or was likely to be employed in a violation of this chapter; and~~

~~(iii) A bona fide security interest or other valid lien in any conveyance shall not be forfeited under the provisions of this article, unless the state proves by a preponderance of the evidence that the holder of the security interest or lien either knew, or had reason to know, that the conveyance was being used or was likely to be used in a violation of this chapter;~~

~~(6) All books, records, research products and materials, including formulas, microfilm, tapes and data which are used, or have been used, or are intended for use, in violation of this chapter;~~

~~(7) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished in violation of this chapter by any person in exchange for a controlled substance, all proceeds traceable to the exchange and all moneys, negotiable instruments and securities used, or which have been used, or which are intended to be used to facilitate any violation of this chapter: *Provided*, That no property may be forfeited under this subdivision, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his or her knowledge or consent; and~~

~~(8) All real property, including any right, title and interest in any lot or tract of land, and any appurtenances or improvements, which are used, or have been used, or are intended to be used, in any manner or part, to commit or to facilitate the commission of a violation of this chapter punishable by more than one year imprisonment: *Provided*, That no property may be forfeited under this subdivision, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without his or her knowledge or consent.~~

~~The requirements of this subsection pertaining to the removal of seized property are not mandatory in the case of real property and the appurtenances to the real property.~~

~~(b) Property subject to forfeiture under this article may be seized by any person granted enforcement powers in section five hundred one, article five of this chapter (hereinafter referred to as the "appropriate person" in this article).~~

~~(c) Controlled substances listed in article two of this chapter which are manufactured, possessed, transferred, sold or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state upon the seizure of the controlled substances.~~

~~(d) Species of plant from which controlled substances may be derived which have been planted or cultivated in violation of the provisions of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized and summarily forfeited to the state upon the seizure of the plants.~~

~~(e) The failure, upon demand by the appropriate person, or his or her authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he or she is the holder of an appropriate registration, constitutes authority for the seizure and forfeiture of the plants.~~

~~(f) Notwithstanding any provision of this article to the contrary, controlled substances listed in article two of this chapter and species of plants from which controlled substances may be derived shall either be destroyed or used only for investigative or prosecutorial purposes.~~

~~(g) Notwithstanding any other provisions of this article to the contrary, any items of real property or any items of tangible personal property sold to a bona fide purchaser are not subject to forfeiture unless the state establishes by clear and convincing proof that the bona fide purchaser knew or should have known that the property had in the previous three years next preceding the sale been used in violation of this chapter or that the property is a controlled substance~~

68 (a) There may be no civil forfeiture under this chapter.

69 (b) The court that has jurisdiction in the related case shall have jurisdiction in the forfeiture
70 proceeding under this chapter.

71 (c) The forfeiture proceeding shall be part of the prosecution of the related crime. It shall
72 follow a finding of the defendant's guilt or be conducted at the court's discretion. It shall be
73 conducted by the court without a jury

74 (d) All forfeiture-related motions shall be filed in the criminal court that has jurisdiction of
75 the criminal case at the time of filing.

76 (e) If an initial court bounds over or transfers the criminal case to another court, the initial
77 court shall transfer the forfeiture-related motions along with the criminal case to the other court. At
78 its discretion, the initial court may postpone a forfeiture-related hearing and bound over a
79 forfeiture-related motion to another court in the interests of justice and efficient use of judicial
80 resources.

§60A-7-704. Procedures for seizure of forfeitable property.

1 ~~(a) Seizure of property made subject to forfeiture by the provisions of this article may be~~
2 ~~made upon process issued by any court of record having jurisdiction over the property.~~

3 ~~(b) Notwithstanding the provisions of subsection (a) of this section, seizure of property~~
4 ~~subject to forfeiture by the provisions of this article may be made without process if:~~

5 ~~(1) The seizure is incident to a lawful arrest or pursuant to a search under a search warrant~~
6 ~~or an inspection warrant;~~

7 ~~(2) The property subject to seizure has been the subject of a prior judgment in favor of the~~
8 ~~state in a forfeiture proceeding based upon this article;~~

9 ~~(3) The appropriate person has probable cause to believe that the property is directly or~~
10 ~~indirectly dangerous to health or safety; or~~

11 ~~(4) The appropriate person has probable cause to believe that the property was used or~~
12 ~~intended for use in violation of this chapter.~~

~~(c) In the event of seizure pursuant to subsection (b) of this section, forfeiture proceedings shall be instituted within ninety days of the seizure thereof.~~

~~(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the appropriate person, subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this article, the appropriate person may:~~

~~(1) Place the property under seal;~~

~~(2) Remove the property to a place designated by him;~~

~~(3) Require the appropriate law enforcement agency to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or~~

~~(4) In the case of seized moneys, securities or other negotiable instruments, place the assets in any interest-bearing depository insured by an agency of the federal government.~~

~~The requirements of this subsection pertaining to the removal of seized property are not mandatory in the case of real property and appurtenances thereto~~

(a) Seizure of proceeds and personal property with process—At the request of the state, the court may issue an ex parte order to search, attach, seize or secure proceeds and personal property for which forfeiture is sought and to provide for their custody. Application, issuance, execution, and return are subject to state law and court rules.

(b) Seizure of proceeds without process—Proceeds may be seized without a court order if the state has probable cause to believe the proceeds were used in the purchase of a controlled or other illegal substance, or derived directly from another illegal activity and:

(1) The seizure is incident to a lawful arrest;

(2) The delay caused by the necessity of obtaining process would reasonably result in the removal or destruction of the proceeds;

(3) The proceeds are the subject of a prior and valid judgment of forfeiture in favor of the state; or

39 (4) The proceeds are seized or impounded as evidence in a criminal prosecution or
40 investigation independent of forfeiture.

41 (c) Seizure of personal property without process—Personal property subject to forfeiture
42 may be seized without a court order if:

43 (1) The seizure is incident to a lawful arrest;

44 (2) The state has probable cause to believe the property was used or was attempted to be
45 used in a manner that makes the property forfeitable under this chapter;

46 (3) The state has probable cause to believe the delay caused by the necessity of obtaining
47 process would reasonably result in the removal or destruction of the property that is forfeitable
48 under this chapter;

49 (4) The property is the subject of a prior and valid judgment of forfeiture in favor of the state;
50 or

51 (5) The property is seized or impounded as evidence in a criminal prosecution or
52 investigation independent of forfeiture.

53 (d) Seizure or restraint of real property with process.

54 (1) Real property may not be seized or restrained without a court order.

55 (2) A court may not issue an order for the seizure or restraint of real property unless the
56 defendant and any other person with a known interest in the property receives proper notice and is
57 given an opportunity for a contested hearing to determine the existence of probable cause for the
58 seizure.

59 (3) Notice may be made by publication if personal service has not been realized after
60 reasonable attempts.

61 (4) Nothing in this section prohibits the state from seeking a lis pendens or restraining order
62 to hinder the sale or destruction of real property. However, if the state obtains a lis pendens or
63 restraining order, the state shall notify the defendant and any other person with a known interest in
64 the property within 30 days.

(5) Application, filing, issuance, execution, and return of any order are subject to state law and court rules.

§60A-7-705. Procedures for forfeiture Stolen property and contraband.

~~(a) (1) Any proceeding wherein the state seeks forfeiture of property subject to forfeiture under this article shall be a civil proceeding. A petition for forfeiture may be filed on behalf of the state and any law enforcement agency making a seizure under this article by the prosecuting attorney of a county, or duly appointed special prosecutor.~~

~~(2) A petition for forfeiture may be filed and proceedings held thereon in the circuit court of the county wherein the seizure was made, the real property subject to forfeiture is situate, or the circuit court of the county wherein any owner of the property subject to forfeiture may reside.~~

~~(3) Any civil trial stemming from a petition for forfeiture brought under this chapter at the demand of either party shall be by jury.~~

~~(4) A petition for forfeiture of the seized property shall be filed within ninety days after the seizure of the property in question. The petition shall be verified by oath or affirmation of a law enforcement officer representing the law enforcement agency responsible for the seizure or the prosecuting attorney and shall contain the following:~~

~~(i) A description of the property seized;~~

~~(ii) A statement as to who is responsible for the seizure;~~

~~(iii) A statement of the time and place of seizure;~~

~~(iv) The identity of the owner or owners of the property, if known;~~

~~(v) The identity of the person or persons in possession of the property at the time seized, if known;~~

~~(vi) A statement of facts upon which probable cause for belief that the seized property is subject to forfeiture pursuant to the provisions of this article is based;~~

~~(vii) The identity of all persons or corporations having a perfected security interest or lien in the subject property, as well as the identity of all persons or corporations known to the affiant who~~

~~may be holding a possessory or statutory lien against such property;~~

~~(viii) A prayer for an order directing forfeiture of the seized property to the state, and vesting ownership of such property in the state.~~

~~(b) At the time of filing or as soon as practicable thereafter, a copy of the petition for forfeiture shall be served upon the owner or owners of the seized property, as well as all holders of a perfected security interest or lien or of a possessory or statutory lien in the same class, if known. Should diligent efforts fail to disclose the lawful owner or owners of the seized property, a copy of the petition for forfeiture shall be served upon any person who was in possession or alleged to be in possession of the property at the time of seizure, where such person's identity is known. The above service shall be made pursuant to the provisions of the West Virginia Rules of Civil Procedure. Any copy of the petition for forfeiture so served shall include a notice substantially as follows:~~

~~"To any claimant to the within described property: You have the right to file an answer to this petition setting forth your title in, and right to possession of, the property within thirty days from the service hereof. If you fail to file an answer, a final order forfeiting the property to the state will be entered, and such order is not subject to appeal."~~

~~If no owner or possessors, lienholders or holders of a security interest be found, then such service may be by Class II legal publication in accordance with the provisions of article three, chapter fifty-nine of this code, and the publication area shall be the county wherein such property was located at the time of seizure and the county wherein the petition for forfeiture is filed.~~

~~(c) In addition to the requirements of subsection (b) above, the prosecuting attorney or law-enforcement officer upon whose oath or affirmation the petition for forfeiture is based, shall be responsible for the publication of a further notice. Such further notice that a petition for forfeiture has been filed shall be published by Class II legal advertisement in accordance with article three, chapter fifty-nine of this code. The publication area shall be the county wherein the property was seized and the county wherein the petition for forfeiture is filed. The notice shall advise any~~

claimant to the property of their right to file a claim on or before the date set forth in the notice, which date shall not be less than thirty days from the date of the first publication. The notice shall specify that any claim must clearly state the identity of the claimant and an address where legal process can be served upon that person. In addition such notice shall contain the following information:

(1) A description of the property seized;

(2) A statement as to who is responsible for the seizure;

(3) A statement of the time and place of seizure;

(4) The identity of the owner or owners of the property, if known;

(5) The identity of the person or persons in possession of the property at the time of seizure, if known;

(6) A statement that prayer for an order directing forfeiture of the seized property to the state, and vesting ownership of such property in the state shall be requested of the court.

(d) If no answer or claim is filed within thirty days of the date of service of the petition pursuant to subsection (b) of this section, or within thirty days of the first publication pursuant to subsection (b) of this section, the court shall enter an order forfeiting the seized property to the state. If any claim to the seized property is timely filed, a time and place shall be set for a hearing upon such claim. The claimant or claimants shall be given notice of such hearing not less than ten days prior to the date set for the hearing.

(e) At the hearing upon the claim or claims, the state shall have the burden of proving by a preponderance of the evidence that the seized property is subject to forfeiture pursuant to the provisions of this chapter.

(f) Any order forfeiting property to the state and entered pursuant to this section perfects the state's right, title and interest in the forfeited property and relates back to the date of seizure: *Provided*, That in any proceeding under this article the circuit court shall in its final order make specific findings with respect to whether or not probable cause to seize such property existed at

76 ~~the time of such seizure.~~

77 ~~(g) During the pendency of a forfeiture proceeding, it is unlawful for any property owner or~~
78 ~~holder of a bona fide security interest or other valid lienholder to transfer or attempt to transfer any~~
79 ~~ownership interest or security interest in seized property with the intent to defeat the purpose of~~
80 ~~this article, and the court wherein the petition for forfeiture is filed may enjoin a property owner or~~
81 ~~holder of a security interest or other lienholder from making such a transfer should one come to its~~
82 ~~attention. Any such transfer which is made in violation of the provisions of this subsection shall~~
83 ~~have no effect upon an order of the court forfeiting seized property to the state if a notice of lis~~
84 ~~pendens is filed prior to the recording of the instrument of transfer.~~

85 ~~(h) The court may void any transfer of property made before or after a forfeiture proceeding~~
86 ~~has been commenced, which is subject to forfeiture, if the transfer was not to a bona fide~~
87 ~~purchaser without notice for value.~~

88 ~~(i) An appeal of a decision of the circuit court concerning a forfeiture proceeding brought~~
89 ~~pursuant to this chapter must be filed within one hundred twenty days of the date of entry of the~~
90 ~~final appealable order. The appellant shall be required to give notice of intent to appeal within thirty~~
91 ~~days of the entry of such appealable order.~~

92 (a) There is no property right in stolen property or contraband, and both are subject to
93 seizure.

94 (b) Stolen property shall be returned, and contraband shall be disposed of according to
95 state law.

96 (c) Notwithstanding paragraph (b), the court may impose reasonable conditions on the
97 release of stolen property and the disposal of contraband, including the use of photographic
98 evidence, to preserve the property for later use as evidence in proceedings under this chapter or
99 the related criminal prosecution.

§60A-7-705a. Additional procedures for forfeiture

1 [Repealed.]

~~§60A-7-706. Disposition of forfeited moneys, securities or other negotiable instruments;~~
~~distribution of proceeds. Storing seized property and contraband.~~

1 (a) ~~Whenever moneys, securities or other negotiable instruments are forfeited under the~~
2 ~~provisions of this article, such proceeds shall be distributed as follows:~~

3 ~~(1) Ten percent of the proceeds shall be tendered to the office of the prosecuting attorney~~
4 ~~which initiated the forfeiture proceeding;~~

5 ~~(2) The balance shall be deposited in a special law enforcement investigation fund. The~~
6 ~~fund may be placed in any interest-bearing depository insured by an agency of the federal~~
7 ~~government. The fund shall be administered by the chief of the law enforcement agency that~~
8 ~~seized the forfeited property.~~

9 ~~(b) No funds shall be expended from the special law enforcement investigation fund~~
10 ~~except as follows:~~

11 ~~(1) In the case of the funds belonging to the State Police, the funds shall only be expended~~
12 ~~at the direction of the Superintendent of the State Police and in accordance with the provisions of~~
13 ~~article two, chapter eleven b of this code and the provisions of subdivision (10), subsection (b),~~
14 ~~section two, article two, chapter twelve of this code;~~

15 ~~(2) In the case of funds belonging to the office of either the sheriff or prosecuting attorney of~~
16 ~~any county in which the special fund has been created, the funds therein may only be expended in~~
17 ~~the manner provided in sections four and five, article five, chapter seven of this code; and~~

18 ~~(3) In the case of funds belonging to the police department of any municipality in which the~~
19 ~~special fund has been created, the funds therein may only be expended in the manner provided in~~
20 ~~section twenty-two, article thirteen, chapter eight of this code~~

21 (a) The seizing agency is responsible for providing adequate storage, security,
22 preservation, and maintenance for seized property unless another agency agrees to accept the
23 responsibility. The commander of a multijurisdictional task force may assign the responsibility to
24 one agency.

(b) The seizing agency shall store seized equipment and conveyances in an appropriate place for preservation and maintenance.

(c) The seizing agency shall deposit seized currency in an interest-bearing account pending the exhaustion of appeals or receiving an order from the court to disburse the seized currency.

(d) Notwithstanding paragraph (c), the seizing agency may take reasonable actions, including the use of photography, to preserve currency and other property for later use as evidence in proceedings under this chapter or the related criminal prosecution.

§60A-7-707. Disposition of other forfeited property; distribution of proceeds. Receipt.

~~When property other than that referred to in section seven hundred six of this article is forfeited under this article, the circuit court ordering the forfeiture, upon application by the prosecuting attorney or the chief of the law enforcement agency that seized said forfeited property, may direct that:~~

~~(1) Title to the forfeited property be vested in the law enforcement agency so petitioning; or~~

~~(2) The law enforcement agency responsible for the seizure retain the property for official use; or~~

~~(3) The forfeited property shall be offered at public auction to the highest bidder for cash. Notice of such public auction shall be published as a Class III legal advertisement in accordance with article three, chapter fifty-nine of this code. The publication area shall be the county where the public auction will be held.~~

~~(b) When a law enforcement agency receives property pursuant to this section, the court may, upon request of the prosecuting attorney initiating the forfeiture proceeding, require the law enforcement agency to pay unto the office of said prosecuting attorney a sum not to exceed ten percent of the value of the property received to compensate said office for actual costs and expenses incurred.~~

~~(c) The proceeds of every public sale conducted pursuant to this section shall be paid and~~

18 ~~applied as follows: First, to the balance due on any security interest preserved by the court;~~
19 ~~second, to the costs incurred in the storage, maintenance and security of the property; third, to the~~
20 ~~costs incurred in selling the property.~~

21 ~~(d) Any proceeds of a public sale remaining after distribution pursuant to subsection (c) of~~
22 ~~this section shall be distributed as follows:~~

23 ~~(1) Ten percent of such proceeds shall be tendered to the office of the prosecuting attorney~~
24 ~~who initiated the forfeiture proceeding.~~

25 ~~(2) The balance shall be deposited in a special law enforcement investigation fund. Such~~
26 ~~fund shall be administered by the chief of the law enforcement agency that seized the forfeited~~
27 ~~property sold and shall take the form of an interest-bearing account with any interest earned to be~~
28 ~~compounded to the fund. Any funds deposited in the special law enforcement investigative fund~~
29 ~~pursuant to this article shall be expended only to defray the costs of protracted or complex~~
30 ~~investigations, to provide additional technical equipment or expertise, to provide matching funds to~~
31 ~~obtain federal grants or for such other law enforcement purposes as the chief of the law-~~
32 ~~enforcement agency may deem appropriate; however, these funds may not be utilized for regular~~
33 ~~operating needs.~~

34 ~~(e) If more than one law enforcement agency was substantially involved in effecting the~~
35 ~~seizure and forfeiture of property, the court wherein the petition for forfeiture was filed shall~~
36 ~~equitably distribute the forfeited property among the law enforcement agencies. In the event of a~~
37 ~~public sale of such property pursuant to subsection (a) of this section, the court shall equitably~~
38 ~~distribute any proceeds remaining after distribution pursuant to subsection (c) and subdivision (1),~~
39 ~~subsection (d) of this section among such law enforcement agencies for deposit into their~~
40 ~~individual special law enforcement investigative fund. Equitable distribution shall be based upon~~
41 ~~the overall contribution of the individual law enforcement agency to the investigation which led to~~
42 ~~the seizure.~~

43 ~~(f) Upon the sale of any forfeited property for which title or registration is required by law,~~

~~the state shall issue a title or registration certificate to any bona fide purchaser at a public sale of the property conducted pursuant to subsection (a) of this section. Upon the request of the law-enforcement agency receiving, pursuant to the order of the court, or electing to retain, pursuant to subsection (a) of this section, any forfeited property for which title or registration is required by law, the state shall issue a title or registration certificate to the appropriate governmental body.~~

~~(g) Any funds expended pursuant to the provisions of this section, shall only be expended in the manner provided in subsection (b), section seven hundred five of this article.~~

~~(h) Every prosecuting attorney or law-enforcement agency receiving forfeited property or proceeds from the sale of forfeited property pursuant to this article shall submit an annual report to the body which has budgetary authority over such agency. Such report shall specify the type and approximate value of all forfeited property and the amount of proceeds from the sale of forfeited property received in the preceding year. No county or municipality may use anticipated receipts of forfeited property in their budgetary process.~~

~~(i) In lieu of the sale of any forfeited property subject to a bona fide security interest preserved by an order of the court, the law-enforcement agency receiving the forfeited property may pay the balance due on any security interest preserved by the court from funds budgeted to the office or department or from the special fund and retain possession of the forfeited property for official use pursuant to subsection (a) of this section.~~

~~(j) In every case where property is forfeited, disposition of the forfeited property, in accordance with this article, shall be made within six months of the date upon which the court of jurisdiction orders forfeiture. Should the office or agency receiving the property fail either to place the property in official use or dispose of the property in accordance with law, the court of jurisdiction shall cause disposition of the property to be made with any proceeds therefrom to be awarded to the state.~~

~~(k) No disposition shall occur until all applicable periods for filing a notice of intent to appeal has expired and no party in interest shall have filed such notice. The filing of the notice of intent to~~

~~appeal shall stay any such disposition until the appeal has been finally adjudicated or until the appeal period of one hundred eighty days has expired without an appeal having actually been taken or filed, unless a valid extension of the appeal has been granted by the circuit court under the provisions of section seven, article four, chapter fifty-eight of this code.~~

~~(l) The special law enforcement investigative funds of each law enforcement agency may be placed in an interest bearing depository insured by the federal government~~

~~(a) When property is seized, the law-enforcement officer shall give an itemized receipt to the person possessing the property at the time of the seizure.~~

~~(b) The receipt shall be numbered for future reference and shall constitute notice of seizure.~~

~~(c) If the person possessing the property is not present, the seizing officer shall leave a receipt in the place where the property was found, if possible.~~

§60A-7-708. Bookkeeping procedures and internal controls. Property exempt from seizure and forfeiture.

~~(a) Any law enforcement agency or office in this state, including, but not limited to, an "appropriate person" as identified in §60A-7-703(b), excluding prosecuting attorneys, who seizes or receives forfeited moneys, securities, negotiable instruments, items subject to forfeiture in accordance with §60A-7-703(a) of this code, or other property under the provisions of this article shall account for the same in the following manner:~~

~~(1) Maintain any items of property subject to forfeiture in accordance with §60A-7-704(d) of this code, including, but not limited to, moneys, securities, negotiable instruments, or other items and property identified in the same manner as the agency's appropriated funds. Bank accounts, checkbooks, purchase cards, and other financial instruments or documents must be maintained in the same manner as appropriated funds;~~

~~(2) Establish a segregated account or accounting codes to track both revenues and expenditures for each respective program. No other funds may be commingled in these accounts~~

~~or with these accounting codes;~~

~~(3) Process all expenditures and payments in the same manner as appropriated funds, including procurement and payment transactions;~~

~~(4) In accordance with the provisions of §60A-7-704(d)(4) of this code, in the case of seized moneys, securities, or other negotiable instruments, place the assets in an interest-bearing depository insured by an agency of the federal government. Deposit all interest earned on equitable sharing funds into the respective account or accounting code. All interest is subject to the same use restrictions as equitable sharing funds. Losses to funds maintained in investment accounts in accordance with the jurisdiction's policies may not be allocated to or deducted from the equitable sharing account;~~

~~(5) Develop, maintain, and follow written policies for accounting, bookkeeping, inventory control, and procurement that comply with the applicable jurisdiction policies. Ensure distribution of relevant policies to all appropriate personnel;~~

~~(6) Maintain records of all revenue and expenditures posted to the account or accounting code, to include bank/ledger statements, invoices, receipts, required jurisdiction approvals, or any other documents used or created during the procurement and disposition process;~~

~~(7) Report all transactions using cash-based accounting methods;~~

~~(8) Dispose of items purchased with shared funds in accordance with the agency's disposal policies. To the extent practicable and, if consistent with the agency's procurement and disposal policies, deposit proceeds from the sale of such property into the agency's sharing account or accounting code. If an item has minimal or no value, an agency may donate the item to a recipient of its choice if permitted under the agency's disposal policies;~~

~~(9) Ensure the agency head, or designee, authorizes all expenditures from the sharing accounts; and~~

~~(10) Obtain approval for expenditures from the governing body, such as the county commission, town council, or city manager's office, when required under normal established~~

jurisdiction accounting procedures.

~~(b) Any law enforcement agency or office in this state, excluding prosecuting attorneys, receiving forfeited moneys, securities, negotiable instruments, real property, personal property, or other property under the provisions of this article shall report the same to the State Auditor. For each seizure only one report shall be filed by the agency that made the seizure. All agencies receiving forfeited property shall report disposition and expenditures of any proceeds of that property. Reports shall be filed in the following manner:~~

~~(1) Name of the law enforcement agency or office that seized the property, or if seized by a multijurisdictional task force, the name of the lead agency;~~

~~(2) The time and date the property was seized;~~

~~(3) The type of property seized, whether real or personal;~~

~~(4) The actual or estimated value of the property seized;~~

~~(5) The property's final disposition, including the amount received if the property was sold, or if the property was put to use on behalf of a law enforcement agency or office, the identity of the agency or office that took possession and use of the property;~~

~~(6) Whether forfeiture was made by settlement agreement;~~

~~(7) Whether any procedure for forfeiture was initiated in accordance with the provisions of §60A-7-705 of this code, or other identifying information sufficient to permit acquisition of any available public records related to the forfeiture procedure and disposition of the forfeited property;~~

~~(8) The disposition of any action under the provisions of §60A-7-705 of this code;~~

~~(9) If an arrest was made;~~

~~(10) Whether any charges brought against a defendant in conjunction with a seizure pursuant to this article resulted in deferred action, conviction, plea deal, acquittal, or ongoing criminal case;~~

~~(11) When an administrative forfeiture procedure has been initiated pursuant to the provisions of §60A-7-705a of this code, provide designated information contained in the~~

65 ~~administrative forfeiture notice;~~

66 ~~(12) The total value of seized and forfeited or property held by the agency at the end of the~~
67 ~~reporting period; and~~

68 ~~(13) A copy of the United States Department of Justice's Equitable Sharing Agreement and~~
69 ~~Certification -- Annual Certification Report shall be provided to the State Auditor no later than~~
70 ~~October 31 each calendar year.~~

71 ~~(c) The State Auditor shall establish and maintain a searchable public website that~~
72 ~~includes the aggregate information submitted by any law enforcement agency or office required~~
73 ~~under subsection (b) of this section: *Provided*, That the State Auditor's website must not provide~~
74 ~~individual case details on its public website.~~

75 ~~(d) The State Auditor, before December 31 of each year, shall submit to the Speaker of the~~
76 ~~House of Delegates, the President of the Senate, the Attorney General, and the Governor a written~~
77 ~~report summarizing activity in the state for the preceding fiscal year on the type, approximate~~
78 ~~value, and disposition of the property forfeited and/or seized and the amount of any proceeds~~
79 ~~received or expended at the state and local levels. The report shall provide a categorized~~
80 ~~accounting of all proceeds expended. Summary data on seizures, forfeitures and expenditures of~~
81 ~~forfeiture proceeds shall be disaggregated by agency.~~

82 ~~(e) In the course of preparing its annual report, the State Auditor may, in its discretion or for~~
83 ~~good cause shown, perform a financial audit of records related to inventory of seized property and~~
84 ~~expenditures of forfeiture proceeds by any law enforcement agency or office in this state. This~~
85 ~~audit shall be conducted under the Generally Accepted Government Auditing Standards~~
86 ~~(GAGAS). A copy of the financial audit report shall be submitted to the State Auditor no later than~~
87 ~~90 days after its initiation. The State Auditor shall submit a copy of the financial audit report to the~~
88 ~~Speaker of the House of Delegates, the President of the Senate, the Attorney General and the~~
89 ~~Governor.~~

90 ~~(f) If, in the course of a calendar year, any law enforcement agency or office that secures~~

91 ~~seized or forfeited assets valued in excess of 50 percent of the prior year's total seized or forfeited~~
92 ~~assets, or expends more than 50 percent of the prior year's total expenditures of forfeited assets,~~
93 ~~shall so advise the State Auditor, who shall perform a financial audit under the Generally Accepted~~
94 ~~Government Auditing Standards (GAGAS) of records related to inventory of seized property and~~
95 ~~expenditures of forfeiture proceeds. A copy of the final audit report shall be submitted to the State~~
96 ~~Auditor no later than 90 days after the end of the fiscal year and shall be made public.~~

97 ~~(g) The State Auditor may recoup its costs under this section by charging a fee.~~

98 ~~(h) The State Auditor may include in its aggregate report required by subsection (d) of this~~
99 ~~section recommendations to improve statutes, rules, and policies related to seizure, forfeiture, and~~
100 ~~expenditures. The aggregate report shall be made available on the State Auditor's website.~~

101 ~~(i) If a law enforcement agency fails to timely file the report identified in subsection (b) of~~
102 ~~this section the State Auditor shall immediately notify the law enforcement agency that the report~~
103 ~~has not been received.~~

104 ~~(j) The State Auditor may propose rules for legislative approval in accordance with the~~
105 ~~provisions of §29A-3-1 et seq. of this code to implement this section.~~

106 ~~(k) The data and reports compiled and prepared under this section are public information~~
107 ~~under the West Virginia Freedom of Information Act, chapter 29B of this code.~~

108 ~~(l) This section is effective for the reporting period starting January 1, 2021.~~

109 ~~(m) Nothing provided in this section would prevent a court of competent jurisdiction from~~
110 ~~sealing records otherwise made available under the provisions of this section~~

111 (a) The prosecuting authority may establish minimum dollar amounts for seizure of U.S.
112 currency and motor vehicles in the prosecuting authority's jurisdiction. The prosecuting authority
113 shall set the minimums in the interests of justice and efficient use of government resources. The
114 minimums shall be based on the prosecuting authority's exclusive determination and may reflect

115 (1) The deterrence that minimum-dollar seizures have on crime;

116 (2) The criminal offenses that include the seizure of property; and

117 (3) The costs to seize and forfeit property.

118 (b) The prosecuting authority shall post on its website the publications that law
119 enforcement agencies may use to establish the value of a motor vehicle in the prosecuting
120 authority's jurisdiction. The publications may include the Kelley Blue Book and the JD
121 Power/NADA Official Used Car Guide.

§60A-7-709.

Waivers.

1 (a) A person from whom property is seized may relinquish the person's rights, interests,
2 and title in the seized property by knowingly and voluntarily executing a waiver that is agreed to by
3 the prosecuting authority.

4 (b) A waiver may be part of any agreement with the prosecuting authority. However, the
5 prosecuting authority may not condition the initial engagement in plea negotiations upon the
6 waiver of the person's rights, interests, and title in the seized property.

7 (c) A waiver under paragraphs (a) and (b) is subject to a claim by a secured interest holder,
8 innocent owner, or other person entitled to notice under §60A-7-12. Such a claimant may consent
9 to certain issues and request that the court determine any remaining issues.

10 (d) A law-enforcement officer, other than the prosecuting authority, may not request,
11 induce, or require a person to relinquish, for purpose of forfeiture, the person's rights, interests,
12 and title in property. Such a waiver is void and inadmissible in court.

§60A-7-710.

Title.

1 (a) Title to the property subject to forfeiture vests with the state when the court issues a
2 forfeiture judgment and relates back to the time the state seizes or restrains the property.

3 (b) Title to substitute assets vests when the court issues an order forfeiting substitute
4 assets.

§60A-7-711. Counsel and pro se representation.

1 (a) A public defender or counsel appointed by the court shall represent the defendant in the
2 related forfeiture proceeding if the public defender or appointed counsel represents the defendant

3 in the related criminal matter.

4 (b) If the defendant or an innocent owner claimant engages in pro se representation in the
5 forfeiture proceeding, the court may exercise its discretion in applying the rules of pleading,
6 procedure, or evidence.

§60A-7-712. Notice to other known owners.

1 (a) The prosecuting authority or designee shall perform a reasonable search of vehicle
2 registrations, property records, and other public records to identify any person, other than the
3 defendant, known to have an interest in the property subject to forfeiture.

4 (b) The prosecuting authority or designee shall give notice to any person identified to have
5 an interest in the property subject to forfeiture, who is not charged or indicted. The notice shall
6 include the seizure receipt number described in §60A-7-707. Notice may be made by publication if
7 personal service has not been realized after reasonable attempts.

8 (c) The following language must appear substantially and conspicuously in the notice:

9 "WARNING: You may lose the right to be heard in court if you do not file promptly a simple
10 statement of interest or ownership. You do not have to pay a filing fee to file your notice".

11 (d) If notice is not served by personal service or publication and all extension periods have
12 expired, the court shall order the return of the property within five days to a claimant who has a
13 valid interest in the property and is entitled to notice by paragraph (b).

14 (e) Upon the court's issuing an order to return the property, no further claim to the property
15 is valid. Contraband shall not be returned.

16 (f) Notwithstanding paragraph (d), the court may impose reasonable conditions on the
17 return of the property, including the use of photographic evidence, to preserve the property for later
18 use as evidence in proceedings under this chapter or the related criminal prosecution.

§60A-7-713. Prompt post-seizure hearing.

1 (a) Following seizure, a defendant or any other person with an interest in the property has a
2 right to a prompt post-seizure hearing.

3 (b) A person with an interest in the property may motion the court for a hearing to be held
4 within 14 days after filing the petition;

5 (c) At the court's discretion, the court may hold a prompt post-seizure hearing:

6 (1) As a separate hearing; or

7 (2) At the same time as a probable-cause hearing, a post-arraignment hearing, a
8 suppression hearing, an omnibus hearing, or other pretrial hearing.

9 (d) A party, by agreement or for good cause, may move for one extension of the hearing
10 date. Any motion may be supported by affidavits or other submissions.

11 (e) The court shall order the return of property within five days if the court finds by a
12 preponderance of the evidence that:

13 (1) The seizure was unconstitutional;

14 (2) A criminal charge has not been filed and no time remains to file a charge;

15 (3) The petitioner is an innocent owner or secured interest holder; or

16 (4) The government's continued possession of a motor vehicle will cause substantial
17 hardship to an immediate family member of the defendant, including preventing the family member
18 from working or inconveniencing the transportation of the family member's child.

19 (f) Upon the court's issuing an order to return the property, no further claim to the property
20 is valid. Contraband shall not be returned.

21 (g) Notwithstanding paragraph (e), the court may impose reasonable conditions on the
22 return of the property, including the use of photographic evidence, to preserve the property for later
23 use as evidence in proceedings under this chapter or the related criminal prosecution.

§60A-7-714. Notice of Proposed Forfeiture.

1 (a) In a case in which the state seeks forfeiture of property, the prosecuting authority shall
2 file with the court a notice of proposed forfeiture.

3 (b) The notice shall be a separate document. It shall include:

4 (1) A description of the property seized;

5 (2) The time, date, and place of the seizure;

6 (3) The seizure receipt number described in §60A-7-707, if available; and

7 (4) A description of how the property was used in or derived from the alleged crime.

8 (c) The prosecuting authority shall allege, in the notice, the forfeiture of property as a
9 process after the conviction of the crime for which the defendant is charged.

10 (d) The notice shall not be read to the jury.

11 (e) The prosecuting authority shall serve the notice:

12 (1) With the initial charging instrument;

13 (2) Separately but not later than 90 days after the presentment of the charging instrument
14 for a misdemeanor;

15 (3) The earlier of 90 days after presentment to a grand jury or 180 days after an arrest for a
16 felony; or

17 (4) At the court's discretion.

18 (f) At the court's discretion, the court may allow the prosecuting authority to amend the
19 notice as required in the interest of justice.

20 (g) The court shall order the return of the property to the owner within five days if the
21 prosecuting authority does not file a charging instrument as provided by the court's rules, the
22 period of an extension expires, or the court does not grant an extension unless a charge is not filed
23 pursuant to an agreement or waiver.

24 (h) Upon the court's issuing an order to return the property, no further claim to the property
25 is valid. Contraband shall not be returned.

26 (i) Notwithstanding paragraph (g), the court may impose reasonable conditions on the
27 return of the property, including the use of photographic evidence, to preserve the property for later
28 use as evidence in another criminal prosecution.

§60A-7-715.

Discovery.

1 Discovery related to the forfeiture proceeding is subject to the rules of criminal procedure

or court rules for general discovery.

§60A-7-716. Trial; conviction; standard of proof.

(a) Property may be forfeited if:

(1) The state secures a conviction of a crime; and

(2) The state establishes by a preponderance of the evidence that the property is an instrumentality of, or proceeds derived directly from the crime for which the state secured a conviction.

(b) The court shall hold the forfeiture proceeding after the defendant's conviction in the criminal prosecution. At its discretion, the court may hold the forfeiture proceeding as soon as practicable including concurrent with sentencing. The court shall conduct the forfeiture proceeding without a jury.

(c) Provided that all persons entitled to notice under §60A-7-712 consent to the forfeiture, nothing in this chapter shall prohibit property from being forfeited by:

(1) Consent order or plea agreement approved by the court;

(2) A diversion agreement; or

(3) A grant of immunity or reduced punishment, with or without the filing of a criminal charge, in exchange for testifying or assisting a law enforcement investigation or prosecution

(d) Persons entitled to notice may consent to some issues and litigate remaining issues before the court without a jury.

§60A-7-717. Exceptions to the conviction requirement.

(a) The court may waive the conviction requirement in §60A-7-716 and grant title to the property to the state if the prosecuting authority files an ex parte motion in either the same criminal court or a civil court in the same jurisdiction no fewer than 90 days after seizure and shows by a preponderance of the evidence that the defendant, before conviction:

(1) Abandoned the property;

(2) Absconded from the jurisdiction;

7 (3) Was deported by the U.S. government;

8 (4) Was extradited to another state or foreign jurisdiction; or

9 (5) died.

10 (b) The death of the defendant does not preclude the defendant's heir or legatee from filing
11 a claim for the property as an innocent owner under §60A-7-720.

§60A-7-718.

Proportionality.

1 (a) The defendant may motion the court to determine whether the forfeiture is
2 unconstitutionally excessive under the constitution of this state or the United States.

3 (b) At the court's discretion, the court may hold a proportionality hearing:

4 (1) As a separate hearing;

5 (2) At the same time as a probable-cause hearing, an omnibus hearing, or other pretrial
6 hearing;

7 (3) At trial; or

8 (4) Apon conviction.

9 (c) The defendant has the burden of establishing the forfeiture is unconstitutionally
10 excessive by a preponderance of the evidence at a hearing conducted by the court without a jury.

11 (d) At a hearing prior to conviction under paragraph (b)(1), (2), or (3), the court first shall
12 determine, by a preponderance of the evidence, if the prosecuting attorney will secure a
13 conviction. The court then shall determine if the forfeiture is unconstitutionally excessive.

14 (e) At any hearing held under paragraph (b), the court may consider all relevant factors to
15 determine if the forfeiture is unconstitutionally excessive, including:

16 (1) The seriousness of the crime and its impact on the community, including the duration of
17 the activity, use of a firearm, and harm caused by the defendant;

18 (2) The extent to which the defendant participated in the crime;

19 (3) The extent to which the property was integral to facilitating the crime;

20 (4) Whether the crime was completed or attempted; and

(5) The sentence or fine to be imposed for committing the crime.

(f) In determining the value of the instrumentality subject to forfeiture, the court may consider all relevant factors related to the fair market value of the property, including information in any publication advised by the prosecuting authority in §60A-7-708(b).

(g) The court may not consider the benefit or value of the property to the state in determining whether the forfeiture is unconstitutionally excessive.

(h) The court shall order the return of property that is unconstitutionally excessive within five days.

(i) Upon the court's issuing an order to return the property, no further claim to the property is valid. Contraband shall not be returned.

§60A-7-719. Secured interest holder.

(a) Property encumbered by a security interest shall not be forfeited up to the value of the interest.

(b) The prosecuting authority shall summarily return property to a secured interest holder up to the value of the interest. Contraband shall not be returned.

(c) If the property is not summarily returned, the secured interest holder may motion the court at any time before the court enters judgment in the criminal prosecution or grants the motion in §60A-7-717. The motion shall include the seizure receipt number described in §60A-7-707, if available.

(d) The court shall hear the motion within 30 days after filing or at the court's discretion. The hearing shall be held before the court without a jury. The court may consolidate the hearing on the motion with any other hearing before the court in the case.

(e) The secured interest holder shall allege the validity of the security interest, mortgage, lien, leasehold, lease, rental agreement, or other agreement.

(f) If the prosecuting authority seeks to proceed, the prosecuting authority shall prove by a preponderance of the evidence that:

(1) The interest is invalid;

(2) The interest resulted from a fraudulent conveyance;

(3) The interest is held through a straw purchase, trust, or otherwise for the benefit of the defendant; or

(4) The secured interest holder consented to the use of the property in the crime for which the defendant is charged.

(g) If the state fails to meet the burden established in paragraph (f), the court shall order the state to relinquish claims to the property, up to the value of the interest, and return the interest to the secured interest holder within five days.

(h) Notwithstanding paragraph (g), the court may impose reasonable conditions on the return of the property, including the use of photographic evidence, to preserve the property for later use as evidence in proceedings under this chapter or the related criminal prosecution.

(i) Upon the court's issuing an order, no further claim on the property up to the value of the secured interest is valid. The forfeiture of the remaining interest may be litigated as provided by this chapter.

§60A-7-720. Innocent owner.

(a) Property of an innocent owner shall not be forfeited.

(b) The prosecuting authority shall summarily return property to an innocent owner. Contraband shall not be returned.

(c) If the property is not summarily returned, an innocent owner claimant may motion the court at any time before the court enters judgment in the criminal prosecution or grants the motion in §60A-7-717.

(d) The court shall hear the innocent owner claimant's motion within 30 days after filing or at the court's discretion. The hearing shall be held before the court without a jury. The court may consolidate the hearing on the claimant's motion with any other hearing before the court in the case.

(e) The innocent owner claimant may motion the court by filing a simple statement that sets forth:

(1) The claimant's interest in or regular use of the property;

(2) The time and circumstances of the claimant's acquisition of the interest in the property;

(3) Additional facts or evidence supporting the claimant's claim;

(4) An affirmation of the validity of interest or regular use of the property;

(5) The relief sought by the claimant; and

(6) The seizure receipt number in §60A-7-707, if available.

(f) The filing fee for the claimant's motion under this section is waived.

(g) If the prosecuting authority seeks to proceed, the prosecuting authority shall prove by a preponderance of the evidence the claimant is not an innocent owner because:

(1) The claimant did not regularly use the property;

(2) The claimant's interest in the property is invalid;

(3) The claimant's interest is held through a straw purchase, trust or otherwise for the benefit of the defendant;

(4) The claimant was not a bona fide purchaser without notice of any defect in title and for valuable consideration;

(5) The claimant consented to the use of the property in the crime for which the defendant is charged;

(6) The claimant was willfully blind to the crime for which the defendant is charged; or

(7) The claimant had actual knowledge and the claimant did not take reasonable steps to prevent the use of the property in the crime for which the defendant is charged. The claimant is not required to take steps the claimant reasonably believes would subject the claimant to physical danger.

(h) If the prosecuting authority fails to meet its burden in paragraph (g), the court shall order the state to relinquish all claims and return the property to the innocent owner within five days.

(i) Upon the court's issuing an order, no further claim on the property is valid.

(j) Notwithstanding paragraph (h), the court may impose reasonable conditions on the return of the property, including the use of photographic evidence, to preserve the property for later use as evidence in proceedings under this chapter or the related criminal prosecution.

(k) No information in the claimant's statement in paragraph (d) shall be used as evidence in the related criminal prosecution.

(l) Nothing in this section prohibits the claimant from providing information to any party or testifying in any trial as to facts known by the claimant.

(m) The defendant or convicted offender may invoke the right against self-incrimination or marital privilege in the forfeiture proceeding. The trier of fact may draw an adverse inference from the invocation of the right or privilege in the forfeiture proceeding.

§60A-7-721.

Judgment.

(a) If the prosecuting authority fails to meet its burden in the criminal prosecution or forfeiture proceeding, the court shall enter judgment dismissing the forfeiture proceeding and ordering the return of property within five days, unless possession of the property is illegal. Contraband shall not be returned.

(b) If the prosecuting authority meets its burden in the criminal prosecution and forfeiture proceeding, the court shall enter judgment forfeiting the property.

(c) The court may enter judgment following a hearing, pursuant to a stipulation, consent order, or plea agreement, or at the court's discretion.

§60A-7-722.

Substitution

of

assets.

Upon the prosecuting authority's motion following conviction or at the court's discretion, the court may order the forfeiture of substitute property owned solely by the defendant up to the value of property that is beyond the court's jurisdiction or cannot be located through due diligence, if the state proves by a preponderance of the evidence that the defendant intentionally:

(1) Dissipated the property;

(2) Transferred, sold, or deposited property with a third party to avoid forfeiture;

(3) Diminished substantially the value of the property; or

(4) Commingled property with other property that cannot be divided without difficulty.

§60A-7-723. Sole remedy.

The state may not seek personal money judgments or other remedies related to the forfeiture of property not provided for in this chapter.

§60A-7-724. No joint and several liability.

A defendant is not jointly and severally liable for forfeiture awards owed by other defendants. When ownership is unclear, the court may order each defendant to forfeit property on a pro rata basis or by another means the court finds equitable.

§60A-7-725. Appeals.

(a) A party to the forfeiture proceeding, other than the defendant, may appeal the court's order concerning the disposition of the property upon the issuance of the order per the state's rules of procedure and court rules.

(b) The defendant may appeal the court's decision regarding the seizure or forfeiture of property following final judgment in the forfeiture proceeding.

§60A-7-726. Attorney Fees.

In any proceeding in which a property owner recovers at least half of the value of the property or currency claimed, the court shall order the seizing agency or prosecuting authority at fault to pay:

(1) Reasonable attorney fees and other litigation costs incurred by the claimant; and

(2) Interest from the date of seizure.

§60A-7-727. Return of property; damages; costs.

(a) If the court orders the return of property, the law enforcement agency that holds the property shall return the property to the owner within five days. Contraband shall not be returned.

(b) The owner shall not be subject to any expenses related to towing, storage, or

4 preservation of the property.

5 (c) The law enforcement agency that holds the property is responsible for any damages,
6 storage fees, and related costs applicable to property returned under this section.

§60A-7-728. Disposition of forfeited property and proceeds.

1 (a) The court may order contraband to be sold or destroyed according to state law when it
2 is no longer needed as evidence.

3 (b) The court may order property to be sold when it is no longer needed as evidence.

4 (c) If the court grants forfeiture, the court may order the sale of forfeited personal and real
5 property.

6 (d) After all forfeited property is reduced to proceeds, the court may order, upon conclusion
7 of all direct appeals or at its discretion, the distribution of forfeited proceeds according to the
8 following priorities:

9 (1) Pay restitution to the victim of the crime;

10 (2) Satisfy secured interest holders;

11 (3) Pay reasonable costs for the towing, storage, maintenance, repairs, advertising and
12 sale, and other operating costs related to the forfeited property;

13 (4) Reimburse the seizing law-enforcement agency for non-personnel operating costs,
14 including controlled-drug buy money and confidential informants, related to the investigation of the
15 crime; and

16 (5) Reimburse the prosecuting authority, public defender, or court-appointed attorney for
17 non-personnel court costs, including filing fees, subpoenas, court reporters and transcripts.

18 (e) After disbursements under paragraph (d), the court may order the remaining net
19 proceeds from the forfeiture to be disbursed to:

20 (1) The state's School Fund as required by Article XII, Section 4 of the Constitution of West
21 Virginia;

22 (2) The state's general fund; or

(3) The public defender for uses other than reimbursement of salaries, benefits, and overtime pay of personnel associated with the criminal defense of the case.

§60A-7-729. Sale restrictions.

No law-enforcement agency may sell forfeited property directly or indirectly to an employee of the law-enforcement agency or to a person related to an employee within the third degree of consanguinity.

§60A-7-730. Preemption.

This chapter preempts laws by township, municipal, county, and other governments in the state that regulate civil and criminal forfeiture.

§60A-7-731. Limitation on federal cooperation.

(a) A state or local law-enforcement agency shall not offer for adoption property, seized under state law, to a federal agency for the purpose of forfeiture under 18 U.S.C. Chapter 46, or other federal law.

(b) The limitation in paragraph (a) applies only to a seizure by state and/or local law-enforcement agencies pursuant to their own authority under state law and without involvement of the federal government.

(c) State and local law-enforcement agencies are prohibited from accepting payment of any kind or distribution of forfeiture proceeds from the federal government if the state or local law-enforcement agency violates paragraph (a). All such proceeds shall be directed to the state's general fund.

§60A-7-732. Limitation on state/federal joint task forces.

(a) A joint task force of a law-enforcement agency and a federal agency shall transfer seized property to the prosecuting authority for forfeiture under this chapter.

(b) Nothing in this section shall be construed to prohibit the federal government, acting alone, from seizing property and seeking forfeiture under federal law.

§60A-7-733. Guidance.

- 1 (a) A prosecuting authority shall consult with the responsible U.S. Attorney to minimize
2 circumvention of state law under this chapter through the use of the federal government's
3 equitable sharing program and other programs. This shall include establishing guidelines for joint
4 task forces and multijurisdictional collaboration in the prosecuting authority's jurisdiction.
- 5 (b) The guidelines established under paragraph (a) shall be consistent with federal
6 safeguards to ensure that activities are conducted in compliance with U.S. Department of Justice
7 policies.
- 8 (c) The Department of Homeland Security, from time to time, may develop and offer
9 training on seizure and forfeiture under this chapter.

NOTE: The purpose of this bill is to eliminate the practice of civil asset forfeiture.

Strike-throughs indicate language that would be stricken from a heading or the present law
and underscoring indicates new language that would be added.