

# Seizure and Forfeiture Reporting Act

## Model Legislation

November 10, 2020

1. Purpose. Under state and federal forfeiture laws, state law enforcement agencies can seize money and other property, have it sold and use forfeiture proceeds to fund agency budgets. It is the responsibility of state legislators to monitor seizures and forfeitures. This bill provides legislators with the information necessary for basic oversight of law enforcement agencies that seize and forfeit property under state and federal laws.

2. Definition of law enforcement agency. "Law enforcement agency" means any police force, multijurisdictional task force, prosecuting authority, fire department, or other municipal, county or state agency that (a) has authority under state law or (b) collaborates with a federal agency under federal law to seize or forfeit property.

3. This chapter is applicable to property seized and forfeited under the following sections in the state criminal code:

- (1) Section \_\_\_\_\_
- (2) Section \_\_\_\_\_
- (3) Section \_\_\_\_\_
- (4) Any other section in the state criminal code that authorizes a law enforcement agency to seize property that is used in the commission of a criminal offense.

4. The Centralized Reporting Authority<sup>1</sup> shall establish and maintain a case tracking system and searchable public website that includes the following information about property seized and forfeited under state law and under any agreement with the federal government. It shall assign the responsibility to report each element to relevant agencies. If forfeiture is sought under federal law, answers to questions 12-22 may not be available readily and may be skipped.

- (1) Name of the law enforcement agency that seized the property or, if seized by a multijurisdictional task force, the name of the lead agency;
- (2) Date of the seizure;

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<sup>1</sup> The authority selected to compile data and issue reports may vary by state. Authorities currently responsible for reports include the Arizona Criminal Justice Commission, the Governor's Office of Crime Prevention, Youth and Victim Services in Maryland, the Minnesota Office of the State Auditor and the Utah Commission on Criminal and Juvenile Justice.

- (3) Type of property seized. Currency or, if property other than currency, a description of property seized including make, model, and year;
- (4) Place of seizure: home, business or traffic stop; and, if a traffic stop on an interstate or state highway, the direction of the traffic flow: eastbound, westbound, southbound or northbound;
- (5) Estimated value of the seizure;
- (6) Criminal offense alleged that led to the seizure (include whether under state or federal law);
- (7) Crime for which suspect was charged (include whether under state or federal law);
- (8) Criminal case number and court in which the case was filed;
- (9) The outcome of suspect's criminal case: no charge was filed, charges dropped, acquittal, plea agreement, jury conviction or other;
- (10) Whether forfeiture is sought under federal law: (yes or no),
- (11) If forfeiture is sought under federal law, did a joint state-federal task force make the seizure of property? (yes or no);
- (12) If forfeiture is sought under federal law, did a federal government adopt the seizure that a state or municipal agency made without a federal agency's involvement in the seizure? (yes or no);
- (13) Forfeiture case number and court in which the case was filed;
- (14) If a property owner filed a claim or counterclaim, who by: the suspect, innocent owner, joint owner or third-party owner;
- (15) Method of final forfeiture proceeding: criminal, civil-judicial or civil-administrative;
- (16) Date of forfeiture order;
- (17) Whether there was a forfeiture settlement agreement: (yes or no);
- (18) Property disposition: returned to owner, partially returned to owner, sold, destroyed, retained by a law enforcement agency, or pending disposition;
- (19) Date of property disposition;
- (20) Total value of property forfeited under state law including currency, proceeds from sale of non-currency property and distributions received from the federal government (excluding the value of contraband);

- (21) Market value of property forfeited under state law that was retained, destroyed or donated (excluding the value of contraband).
- (22) Estimate of total costs to the agency (a) to store property in impound lots or evidence rooms, (b) to pay for law enforcement personnel and prosecutors' time and expenses to litigate forfeiture cases and (c) cost to sell or dispose of forfeited property;
- (23) Amount of the attorney fees awarded to property owners; and
- (24) If any property was retained by a law enforcement agency, the purpose for which it is used.

5. The Centralized Reporting Authority shall also establish and maintain a searchable public website that includes:

(a) The total amount of funds expended, in each of the following ten categories, which resulted from property seized, forfeited and reported in paragraph 4:

- (1) Drug abuse, crime and gang prevention and other community programs;
- (2) Victim reparations;
- (3) Investigation costs, including controlled buys, forensics, informant fees and witness protection;
- (4) Expenses related to seized property including storage, maintenance, repairs and return of property;
- (5) Expenses related to forfeiture litigation including court fees and expenses related to auditing, discovery, court reporters, printing, postage, filing, witness, outside counsel, and attorneys fee awarded to opposing counsel;
- (6) Government personnel costs, including salaries, overtime and benefits, as permitted by law;
- (7) Government travel and training including conferences, continuing education, entertainment, and meals;
- (8) Government administrative and operating expenses including office supplies, postage, printing, utilities and repairs and maintenance of vehicles and other equipment; and
- (9) Government capital expenditures including appliances, canines, computers, equipment, firearms, furniture and vehicles; and

- (10) An itemized list of other expenditures of forfeiture proceeds, including payments to trade associations and lobbyists, and transfer to other agencies.

(b) The total value of seized and forfeited property held by the agency at the end of the reporting period.

6. The law enforcement agency that seizes property and prosecutors that litigate related criminal cases and forfeiture proceedings shall update the Centralized Reporting Authority's website with the information required under paragraph 4 at the end of the month following each seizure of property. The commander of a multijurisdictional task force may appoint one agency to report its seizures. If an agency has made no seizures during the previous year, a null report shall be filed by the agency specifying that it did not engage in seizures or forfeitures under this title during the reporting period.

7. The law enforcement agency that expends forfeiture-related proceeds shall update the Centralized Reporting Authority's website with the information required under paragraph 5 within 30 days after the end of the fiscal year. The commander of a multijurisdictional task force may appoint one agency to report its expenditures.

8. The Centralized Reporting Authority, 120 days after the close of the fiscal year, shall submit to the Speaker of the House of Representatives, President of the Senate, Attorney General and Governor a written report summarizing activity in the state, for the preceding fiscal year, the type, approximate value, and disposition of the property seized and the amount of any proceeds received or expended at the state and local levels. The report shall provide a categorized accounting of all proceeds expended. Summary data on seizures, forfeitures and expenditures of forfeiture proceeds shall be disaggregated by agency. The aggregate report shall also be made available on the Centralized Reporting Authority's website.

9. Centralized Reporting Authority may include in its aggregate report required by paragraph 8 recommendations to improve statutes, rules and policies to better ensure that seizure, forfeiture and expenditures are done and reported in a manner that is fair to crime victims, innocent property owners, secured interest holders, citizens, law enforcement and taxpayers.

10. If a law enforcement agency fails to file a report within 30 days after it is due and there is no good cause as determined by the Centralized Reporting Authority, the agency or department shall be subject to a civil fine payable to the General Revenue Fund of \$500 or the equivalent of one-quarter of the forfeiture proceeds received by the agency, whichever is greater. In addition, the Centralized Reporting Authority shall make no expenditures from the forfeiture fund for the benefit of the agency until the report is filed.

11. The State Auditor shall perform annually a financial audit under the generally accepted government auditing standards (GAGAS) of records submitted to the Centralized Reporting Authority related to inventory of seized property and expenditures of forfeiture proceeds. A copy of the final audit report shall be submitted to the Centralized Reporting Authority no later than 90 days after the end of the fiscal year and shall be made public.

12. The Centralized Reporting Authority may recoup its costs under this chapter by charging a fee to the law enforcement agency filing a report. The agency may use forfeiture proceeds to pay the costs of compiling and reporting data under this chapter, and to pay any fees imposed by the Centralized Reporting Authority.

13. The Centralized Reporting Authority may adopt rules necessary to implement this chapter.

14. The data and reports compiled and prepared under this chapter are public information under the state's Open Records Act/Freedom of Information Act section \_\_\_\_\_. They are not exempted from disclosure by section\_\_\_\_\_.

15. This chapter is effective for the reporting period starting January 1, 202\_.

### **Contact Information**

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