

# Forfeiture

## Updated March 2010

This compilation contains legislation, session laws, and codified statutes. All statutes, laws, and bills listed in this compilation have been signed by the pertinent governor and enacted into law. This report was compiled using State Net, and Lexis Search Services. This compilation is up-to-date as of the month it was created. However, please note we recommend checking both case law and current legislation for any possible modifications to the statutes listed below.

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## Alabama

### ALA. CODE § 20-2-93 (2010). Forfeiture

(a) The following are subject to forfeiture:

- (1) All controlled substances which have been grown, manufactured, distributed, dispensed or acquired in violation of any law of this state;
- (2) All raw materials, products and equipment of any kind which are used or intended for use in manufacturing, cultivating, growing, compounding, processing, delivering, importing or exporting any controlled substance in violation of any law of this state;
- (3) All property which is used or intended for use as a container for property described in subdivision (1) or (2) of this subsection;
- (4) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation

of any law of this state; all proceeds traceable to such an exchange; and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any law of this state concerning controlled substances;

(5) All conveyances, including aircraft, vehicles, or vessels, or agricultural machinery, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any property described in subdivision (1) or (2) of this subsection;

(6) All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used or intended for use in violation of any law of this state concerning controlled substances;

(7) All imitation controlled substances as defined under the laws of this state;

(8) All real property or fixtures used or intended to be used for the manufacture, cultivation, growth, receipt, storage, handling, distribution, or sale of any controlled substance in violation of any law of this state;

(9) All property of any type whatsoever constituting, or derived from, any proceeds obtained directly, or indirectly, from any violation of any law of this state concerning controlled substances;

(b) Property subject to forfeiture under this chapter may be seized by state, county or municipal law enforcement agencies upon process issued by any court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) The state, county, or municipal law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The state, county or municipal law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the state, county or municipal law enforcement agency subject only to the orders and judgment of the court having jurisdiction over the forfeiture

proceedings. When property is seized under this chapter, the state, county or municipal law enforcement agency may:

(1) Place the property under seal;

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

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

(4) In the case of real property or fixtures, post notice of the seizure on the property, and file and record notice of the seizure in the probate office.

(e) When property is forfeited under this chapter the state, county or municipal law enforcement agency may:

(1) Retain it for official use; except for lawful currency (money) of the United States of America which shall be disposed of in the same manner provided for the disposal of proceeds from a sale in subdivision (e)(2) of this section;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds from the sale authorized by this subsection shall be used, first, for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of or custody, advertising and court costs; and the remaining proceeds from such sale shall be awarded and distributed by the court to the municipal law enforcement agency or department, and/or county law enforcement agency or department, and/or state law enforcement agency or department, following a determination of the court of whose law enforcement agencies or departments are determined by the court to have been a participant in the investigation resulting in the seizure, and such award and distribution shall be made on the basis of the percentage as determined by the court, which the respective agency or department contributed to the police work resulting in the seizure. Provided however, any proceeds from sales authorized by this section awarded by the court to a county or municipal law enforcement agency or department shall be deposited into the respective county or municipal general fund and made available to the affected law enforcement agency or department upon requisition of the chief law enforcement official of such agency or department.

(3) Require the state, county or municipal law enforcement agency to take custody of the property and remove it for disposition in accordance with law.

(f) Controlled substances listed in Schedule I that are possessed, transferred, sold or offered for sale in violation of any law of this state are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I 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.

(g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of any law of this state or of which the owners or cultivators are unknown or which are wild growths may be seized and summarily forfeited to the state.

(h) An owner's or bona fide lienholder's interest in real property or fixtures shall not be forfeited under this section for any act or omission unless the state proves that that act or omission was committed or omitted with the knowledge or consent of that owner or lienholder. An owner's or bona fide lienholder's interest in any type of property other than real property and fixtures shall be forfeited under this section unless the owner or bona fide lienholder proves both that the act or omission subjecting the property to forfeiture was committed or omitted without the owner's or lienholder's knowledge or consent and that the owner or lienholder could not have obtained by the exercise of reasonable diligence knowledge of the intended illegal use of the property so as to have prevented such use. Except as specifically provided to the contrary in this section, the procedures for the condemnation and forfeiture of property seized under this section shall be governed by and shall conform to the procedures set out in Sections 28-4-286 through 28-4-290, except that: (1) the burden of proof and standard of proof shall be as set out in this subsection instead of as set out in the last three lines of Section 28-4-290; and (2) the official filing the complaint shall also serve a copy of it on any person, corporation, or other entity having a perfected security interest in the property that is known to that official or that can be discovered through the exercise of reasonable diligence.

### **ALA. CODE § 13A-12-200.8. Forfeiture and Seizure of Property.**

(a) The following property is subject to forfeiture:

(1) All obscene material and material which is harmful to minors used, intended to be used or obtained in violation of the provisions of this division;

(2) All moneys, negotiable instruments, and funds used, intended to be used, or obtained in any violation of the provisions of this division;

(3) All proceeds or receipts derived from property which is subject to forfeiture pursuant to subdivisions (a)(1) and (a)(2) of this section.

(b) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the state, county or municipal law enforcement agency subject only to the orders and judgment of the court having jurisdiction over the forfeiture proceedings. When property is seized under this division, the state, county or municipal law enforcement agency may:

(1) Place the property under seal;

(2) Remove the property to a place designated by it; and

(3) In the case of real property or fixtures, post notice of the seizure on the property, and file and record notice of seizure in the probate office.

(c) The following is the procedure regarding the seizure of property subject to forfeiture under subsection (a) of this section:

(1) Property subject to forfeiture may be seized by state, county or municipal law enforcement agencies upon process issued by any court having jurisdiction over the property upon a showing of probable cause; provided, however, that not more than one copy of each expressive material may be seized prior to a judicial determination, after a hearing at which all proper parties have an opportunity to be heard and present evidence, that the expressive material is obscene material or material which is harmful to minors and, in either case, subject to forfeiture under this division.

(2) In the event of seizure, a forfeiture action pursuant to subdivision (c)(4) of this section shall be instituted promptly and within time limits mandated by the United States Constitution.

(3) At any time after seizure, and prior to trial, the state, defendant, owner, or other proper party, may file with the appropriate circuit court, a written demand for an adversary hearing for the purpose of obtaining with regard to expressive material only a preliminary determination of obscenity, harmfulness to minors, and whether the property is subject to forfeiture. Such adversary hearing shall be held as soon as possible. At such adversary hearing, all proper parties shall be given the opportunity to present evidence. It shall be the duty of the State of Alabama at the hearing to prove by clear and convincing evidence that the seized property is subject to forfeiture under subsection (a) herein. The court shall render a decision within time limits mandated by the United States Constitution and, if the court does not find the property to be subject to forfeiture, it shall immediately order the property to be returned. Should the court find the property to be subject to forfeiture, it shall order the property to be retained as evidence. A finding by the court that the property is subject to forfeiture shall not be binding at the trial on the merits.

(4) The Attorney General or district attorney may initiate a forfeiture action in the name of the State of Alabama in the circuit court. The action shall be heard and determined within time limits mandated by the United States Constitution. It shall be the duty of the State of Alabama at the hearing to prove by clear and convincing evidence that the property should be forfeited. It shall be an affirmative defense to the forfeiture action to the extent of the owner's interest that the owner of the obscene material, material which is harmful to minors, moneys, negotiable instruments, funds, proceeds or receipts, neither consented to nor had knowledge of the acts which would otherwise result in forfeiture. It shall be an affirmative defense to any bona fide lienholder to the extent of the lienholder's interest that the lienholder neither consented to nor had knowledge of the acts which would otherwise result in forfeiture. The defendant shall be given the opportunity to present evidence.



(d) Nothing in this section shall be deemed to authorize a prior restraint of speech in violation of the United States Constitution. All hearings and determinations required pursuant to this section shall be heard and determined within time limits mandated by the United States Constitution.

(e) After trial on the merits, the court shall issue such forfeiture and seizure orders as are proper under the law and facts. The court shall order obscene material and material which is harmful to minors which is forfeited to be destroyed or retained for official law enforcement use. Where the court orders the forfeiture of one copy of an expressive material, it may also order the seizure and forfeiture of all other copies of such expressive material of the defendant which is subject to forfeiture. The court shall further order such moneys, negotiable instruments, funds, proceeds, or receipts, which are forfeited to be (1) distributed directly to the general fund of the state, county or municipality whose enforcement agencies investigated the acts resulting in forfeiture or (2) sold and distributed, after payment of all proper expenses relating to the forfeiture and sale, to the general fund of the state or any county or municipality whose department, office, or agency contributed to the investigation of the acts resulting in forfeiture, based upon the contribution, including expenses, of the department, office, or agency, or agency as determined by the court.

(f) Where any property owned or possessed by a person is subject to forfeiture pursuant to this section but because of any act, omission, or consent by such person the property (1) cannot be located upon the exercise of due diligence, (2) has been transferred or sold to, or deposited with, a third party, (3) has been placed beyond the jurisdiction of the court, (4) has been substantially diminished in value or, (5) has been commingled with other property which cannot be divided without difficulty, and such person knowingly participated either as a principal, aider and abettor, or conspirator in the acts subjecting the property to forfeiture, the Attorney General or district attorney may initiate a civil action in the name of the State of Alabama against such person for forfeiture of a money judgment amount up to the value of and in lieu of the property described in (1) through (5) of this subsection. Such judgment upon satisfaction shall be distributed as provided in subsection (e) of this section.

## **Alaska**

### **ALASKA STAT. § 11.41.468 (2010). Forfeiture of Property used in Sexual Offense**

(a) Property used to aid a violation of AS 11.41.410 -- 11.41.458 or to aid the solicitation of, attempt to commit, or conspiracy to commit a violation of AS 11.41.410 -- 11.41.458 may be forfeited to the state upon the conviction of the offender.

(b) In this section, "property" means computer equipment, telecommunications

equipment, photography equipment, video or audio equipment, books, magazines, photographs, videotapes, audiotapes, and any equipment or device, regardless of format or technology employed, that can be used to store, create, modify, receive, transmit, or distribute digital or analog information, including images, motion pictures, and sounds.

**ALASKA STAT. § 11.46.487 (2010). Forfeiture of Property upon Conviction.**

Firearms and other personal property, except a motor vehicle, used in aid of a violation of AS 11.46.460, 11.46.462, or 11.46.484(a)(5) may be forfeited to the state upon conviction of the offender for the crime.

**Arizona**

**ARIZ. REV. STAT. § 13-3557. Equipment; Forfeiture.**

On the conviction of a person for a violation of section 13-3552, 13-3553, 13-3554 or 13-3560, the court shall order that any photographic equipment, computer system or instrument of communication that is owned or used exclusively by the person and that was used in the commission of the offense be forfeited and sold, destroyed or otherwise properly disposed.

**ARIZ. REV. STAT. § 13-4304. Property subject to forfeiture; exemptions**

All property, including all interests in such property, described in a statute providing for its forfeiture is subject to forfeiture. However:

1. No vehicle used by any person as a common carrier in the transaction of business as a common carrier may be forfeited under the provisions of this chapter unless it appears that the owner or other person in charge of the vehicle was a consenting party or privy to the act or omission giving rise to forfeiture or knew or had reason to know of it.

2. No vehicle may be forfeited under the provisions of this chapter for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or of the United States.

3. No property may be forfeited pursuant to section 13-3413, subsection A, paragraph 1 or 3 if the conduct giving rise to the forfeiture both:

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

(b) Was not committed for financial gain.

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

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

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

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

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

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

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

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

## **Arkansas**

### **ARK. CODE ANN. § 5-64-505 (2009). Property subject to forfeiture -- Procedure -- Disposition of property.**

(a) Items Subject to Forfeiture. The following are subject to forfeiture upon the initiation of a civil proceeding filed by the prosecuting attorney and when so ordered by the circuit court in accordance with this section, however no property is subject to forfeiture based solely upon a misdemeanor possession of a Schedule III, Schedule IV, Schedule V, or Schedule VI controlled substance:

(1) Any controlled substance or counterfeit substance that has been manufactured, distributed, dispensed, or acquired in violation of this chapter;

(2) Any raw material, product, or equipment of any kind that is used, or intended for

use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or counterfeit substance in violation of this chapter;

(3) Any property that is used, or intended for use, as a container for property described in subdivision (a)(1) or (2) of this section;

(4) Any conveyance, including an aircraft, vehicle, or vessel, that is used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a)(1) or (2) of this section, however:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(B) (i) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without his or her knowledge or consent.

(ii) Upon a showing described in subdivision (a)(4)(B)(i) of this section by the owner or interest holder, the conveyance may nevertheless be forfeited if the prosecuting attorney establishes that the owner or interest holder either knew or should reasonably have known that the conveyance would be used to transport or in any manner to facilitate the transportation, for the purpose of sale or receipt, of property described in subdivision (a)(1) or (2) of this section;

(C) A conveyance is not subject to forfeiture for a violation of § 5-64-401(c); and

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission;

(5) Any book, record, or research product or material, including a formula, microfilm, tape, or data that is used, or intended for use, in violation of this chapter;

(6) (A) Anything of value, including firearms, furnished or intended to be furnished in exchange for a controlled substance or counterfeit substance in violation of this chapter, any proceeds or profits traceable to the exchange, and any money, negotiable instrument, or security used, or intended to be used, to facilitate any violation of this chapter.

(B) However, no property shall be forfeited under this subdivision (a)(6) to the extent of the interest of an owner by reason of any act or omission established by him or her, by a preponderance of the evidence, to have been committed or omitted without his or her knowledge or consent;

(7) Rebuttable Presumptions. (A) Any money, coin, currency, or firearms found in

close proximity to a forfeitable controlled substance, a counterfeit substance, forfeitable drug manufacturing or distributing paraphernalia, or a forfeitable record of an importation, manufacture, or distribution of a controlled substance or counterfeit substance is presumed to be forfeitable under this subdivision (a)(7).

(B) The burden of proof is upon a claimant of the property to rebut this presumption by a preponderance of the evidence; and

(8) Real property may be forfeited under this chapter if it substantially assisted in, facilitated in any manner, or was used or intended for use in the commission of any act prohibited by this chapter, however:

(A) No real property is subject to forfeiture under this chapter by reason of any act or omission established by the owner of the real property by a preponderance of the evidence to have been committed or omitted without his or her knowledge or consent;

(B) Real property is not subject to forfeiture for a violation of § 5-64-401(c);

(C) A forfeiture of real property encumbered by a mortgage or other lien is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the unlawful act or omission;

(D) Upon conviction, when the circuit court having jurisdiction over the real property seized finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under this section, the court shall enter an order consistent with subsection (h) of this section;

(E) When any court orders a forfeiture of real property pursuant to this chapter, the order shall be filed of record on the day issued and shall have prospective effect only;

(F) A forfeiture of real property ordered under a provision of this chapter does not affect the title of a bona fide purchaser who purchased the real property prior to the issuance of the order, and the order has no force or effect on the title of the bona fide purchaser; and

(G) Any lis pendens filed in connection with any action pending under a provision of this chapter that might result in the forfeiture of real property is operative only from the time filed and has no retroactive effect.

(b) Seizure and Summary Forfeiture of Contraband. The following items are deemed contraband and may be seized and summarily forfeited to the state:

(1) A controlled substance listed in Schedule I that is possessed, transferred, sold, or offered for sale in violation of this chapter and a controlled substance listed in Schedule I that is seized or comes into the possession of the state and the owner of the controlled substance is unknown;

(2) (A) A species of a plant from which a controlled substance in Schedule I, Schedule II, or Schedule VI may be derived and:

- (i) The plant has been planted or cultivated in violation of this chapter;
- (ii) The plant's owner or cultivator is unknown; or
- (iii) The plant is a wild growth.

(B) Upon demand by a seizing law enforcement agency, the failure of a person in occupancy or in control of land or premises where the species of plant is 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 plant; and

(3) Any drug paraphernalia or counterfeit substance except in the possession or control of a practitioner in the course of professional practice or research.

(c) Seizure of Property. Property subject to forfeiture under this chapter may be seized by any law enforcement agent upon process issued by any circuit court having jurisdiction over the property on petition filed by the prosecuting attorney of the judicial circuit. Seizure without process may be made if:

- (1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
- (2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;
- (3) The seizing law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (4) The seizing law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(d) Transfer of Property Seized by State or Local Agency to Federal Agency. (1) No state or local law enforcement agency may transfer any property seized by the state or local agency to any federal entity for forfeiture under federal law unless the circuit court having jurisdiction over the property enters an order, upon petition by the prosecuting attorney, authorizing the property to be transferred to the federal entity.

(2) The transfer shall not be approved unless it reasonably appears that the activity giving rise to the investigation or seizure involves more than one (1) state or the nature of the investigation or seizure would be better pursued under federal law.

(e) Custody of Property Pending Disposition. (1) Property seized for forfeiture under this section is not subject to replevin, but is deemed to be in the custody of the seizing law enforcement agency subject only to an order or decree of the circuit court having jurisdiction over the property seized.

(2) Subject to any need to retain the property as evidence, when property is seized under this chapter the seizing law enforcement agency may:

(A) Remove the property to a place designated by the circuit court;

(B) Place the property under constructive seizure posting notice of pending forfeiture on it, by giving notice of pending forfeiture to its owners and interest holders, or by filing notice of pending forfeiture in any appropriate public record relating to the property;

(C) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, or is not needed for evidentiary purposes, deposit it in an interest-bearing account; or

(D) Provide for another agency or custodian, including an owner, secured party, mortgagee, or lienholder, to take custody of the property and service, maintain, and operate it as reasonably necessary to maintain its value in any appropriate location within the jurisdiction of the court.

(3) (A) In any case of transfer of property, a transfer receipt shall be prepared by the transferring agency.

(B) The transfer receipt shall:

(i) List a detailed and complete description of the property being transferred;

(ii) State to whom the property is being transferred and the source or authorization for the transfer; and

(iii) Be signed by both the transferor and the transferee.

(C) Both transferor and transferee shall maintain a copy of the transfer receipt.

(4) A person who acts as custodian of property under this section is not liable to any person on account of an act done in a reasonable manner in compliance with an order under this chapter.

(f) Inventory of Property Seized -- Referral to Prosecuting Attorney. (1) Any property seized by a state or local law enforcement officer who is detached to, deputized or commissioned by, or working in conjunction with a federal agency remains subject to the provisions of this section.

(2) (A) When property is seized for forfeiture by a law enforcement agency, the seizing law enforcement officer shall prepare and sign a confiscation report.

(B) (i) The party from whom the property is seized shall also sign the confiscation report if present and shall immediately receive a copy of the confiscation report.

(ii) If the party refuses to sign the confiscation report, the confiscation report shall be signed by one (1) additional law enforcement officer, stating that the party refused to sign the confiscation report.

(C) The original confiscation report shall be:

(i) Filed with the seizing law enforcement agency within forty-eight (48) hours after the seizure; and

(ii) Maintained in a separate file.

(D) One (1) copy of the confiscation report shall be retained by the seizing law enforcement officer.

(3) The confiscation report shall contain the following information:

(A) A detailed description of the property seized including any serial or model numbers and odometer or hour reading of vehicles or equipment;

(B) The date of seizure;

(C) The name and address from whom the property was seized;

(D) The reason for the seizure;

(E) Where the property will be held;

(F) The seizing law enforcement officer's name; and

(G) A signed statement by the seizing law enforcement officer stating that the confiscation report is true and complete.

(4) Within three (3) business days of receiving the confiscation report, the seizing law enforcement agency shall forward a copy of the confiscation report to the prosecuting attorney for the district where the property was seized and to the Arkansas Drug Director.

(5) (A) The Division of Legislative Audit shall notify the Arkansas Alcohol and Drug Abuse Coordinating Council and a circuit court in the county of a law enforcement agency, prosecuting attorney, or other public entity that the law enforcement agency, prosecuting attorney, or public entity is ineligible to receive any forfeited funds, forfeited



property, or any grants from the council, if the Division of Legislative Audit determines, by its own investigation or upon written notice from the Arkansas Drug Director, that:

(i) The law enforcement agency has failed to complete and file the confiscation reports as required by this section;

(ii) The law enforcement agency, prosecuting attorney, or public entity has not properly accounted for any seized property; or

(iii) The prosecuting attorney has failed to comply with the notification requirement set forth in subdivision (i)(1) of this section.

(B) After the notice, the circuit court shall not issue any order distributing seized property to that law enforcement agency, prosecuting attorney, or public entity nor shall any grant be awarded by the council to that law enforcement agency, prosecuting attorney, or public entity until:

(i) The appropriate officials of the law enforcement agency, prosecuting attorney, or public entity have appeared before the Legislative Joint Auditing Committee; and

(ii) The Legislative Joint Auditing Committee has adopted a motion authorizing subsequent transfers of forfeited property to the law enforcement agency, prosecuting attorney, or public entity.

(C) (i) While a law enforcement agency, prosecuting attorney, or other public entity is ineligible to receive forfeited property, the circuit court shall order any money that would have been distributed to that law enforcement agency, prosecuting attorney, or public entity to be transmitted to the Treasurer of State for deposit into the Crime Lab Equipment Fund.

(ii) If the property is other than cash, the circuit court shall order the property converted to cash pursuant to subdivision (h)(1)(B) of this section and the proceeds transmitted to the Treasurer of State for deposit into the Crime Lab Equipment Fund.

(D) Moneys deposited into the Crime Lab Equipment Fund pursuant to subdivision (f)(5)(B) of this section are not subject to recovery or retrieval by the ineligible law enforcement agency, prosecuting attorney, or other public entity.

(6) The Arkansas Drug Director shall establish through rules and regulations a standardized confiscation report form to be used by all law enforcement agencies with specific instructions and guidelines concerning the nature and dollar value of all property, including firearms, to be included in the confiscation report and forwarded to the office of the local prosecuting attorney and the Arkansas Drug Director under this subsection.

(g) Initiation of Forfeiture Proceedings -- Notice to Claimants -- Judicial Proceedings.

(1) (A) The prosecuting attorney shall initiate forfeiture proceedings by filing a

complaint with the circuit clerk of the county where the property was seized and by serving the complaint on all known owners and interest holders of the seized property in accordance with the Arkansas Rules of Civil Procedure.

(B) The complaint may be based on in rem or in personam jurisdiction but shall not be filed in such a way as to avoid the distribution requirements set forth in subdivision (i)(1) of this section.

(C) The prosecuting attorney shall mail a copy of the complaint to the Arkansas Drug Director within five (5) calendar days after filing the complaint.

(2) (A) The complaint shall include a copy of the confiscation report and shall be filed within sixty (60) days after receiving a copy of the confiscation report from the seizing law enforcement agency.

(B) In a case involving real property, the complaint shall be filed within sixty (60) days of the defendant's conviction on the charge giving rise to the forfeiture.

(3) (A) The prosecuting attorney may file the complaint after the expiration of the time set forth in subdivision (g)(2) of this section only if the complaint is accompanied by a statement of good cause for the late filing.

(B) However, in no event shall the complaint be filed more than one hundred twenty (120) days after either the date of the seizure or, in a case involving real property, the date of the defendant's conviction.

(C) If the circuit court determines that good cause has not been established, the circuit court shall order that the seized property be returned to the owner or interest holder. In addition, items seized but not subject to forfeiture under this section or subject to disposition pursuant to law or the Arkansas Rules of Criminal Procedure may be ordered returned to the owner or interest holder. If the owner or interest holder cannot be determined, the court may order disposition of the property in accordance with subsection (h) of this section.

(4) Within the time set forth in the Arkansas Rules of Civil Procedure, the owner or interest holder of the seized property shall file with the circuit clerk a verified answer to the complaint that shall include:

(A) A statement describing the seized property and the owner's or interest holder's interest in the seized property, with supporting documents to establish the owner's or interest holder's interest;

(B) A certification by the owner or interest holder stating that he or she has read the verified answer and that it is not filed for any improper purpose;

(C) A statement setting forth any defense to forfeiture; and

(D) The address at which the owner or interest holder will accept mail.

(5) (A) If the owner or interest holder fails to file an answer as required by subdivision (g)(4) of this section, the prosecuting attorney may move for default judgment pursuant to the Arkansas Rules of Civil Procedure.

(B) (i) If a timely answer has been filed, the prosecuting attorney has the burden of proving by a preponderance of the evidence that the seized property should be forfeited.

(ii) After the prosecuting attorney has presented proof under subdivision (g)(5)(B)(i) of this section, any owner or interest holder of the property seized is allowed to present evidence why the seized property should not be forfeited.

(iii) (a) If the circuit court determines that grounds for forfeiting the seized property exist and that no defense to forfeiture has been established by the owner or interest holder, the circuit court shall enter an order pursuant to subsection (h) of this section.

(b) However, if the circuit court determines either that the prosecuting attorney has failed to establish that grounds for forfeiting the seized property exist or that the owner or interest holder has established a defense to forfeiture, the court shall order that the seized property be immediately returned to the owner or interest holder.

(h) Final Disposition. (1) When the circuit court having jurisdiction over the seized property finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under this chapter, the circuit court shall enter an order:

(A) To permit the law enforcement agency or prosecuting attorney to retain the seized property for law enforcement or prosecutorial purposes, subject to the following provisions:

(i) (a) Seized property may not be retained for official use for more than two (2) years, unless the circuit court finds that the seized property has been used for law enforcement or prosecutorial purposes and authorizes continued use for those purposes on an annual basis.

(b) At the end of the retention period, the seized property shall be sold as provided in subdivision (h)(1)(B) of this section and:

(1) Eighty percent (80%) of the proceeds shall be deposited into the drug control fund of the retaining law enforcement agency or prosecuting attorney; and

(2) Twenty percent (20%) of the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Crime Lab Equipment Fund.

(c) (1) Nothing prohibits the retaining law enforcement agency or prosecuting attorney from selling the retained seized property at any time during the time allowed for retention.

(2) However, the proceeds of the sale shall be distributed as set forth in subdivision (h)(1)(A)(i)(b) of this section;

(ii) If the circuit court determines that retained seized property has been used for personal use or by non-law enforcement personnel for non-law enforcement purposes, the circuit court shall order the seized property to be sold pursuant to the provisions of § 5-5-101(e) and (f), and the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Crime Lab Equipment Fund;

(iii) (a) A drug task force may use forfeited property or money if the circuit court's order specifies that the forfeited property or money is forfeited to the prosecuting attorney, sheriff, chief of police, Department of Arkansas State Police, or Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department.

(b) After the order, the prosecuting attorney, sheriff, chief of police, Department of Arkansas State Police, or Arkansas Highway Police Division shall:

(1) Maintain an inventory of the forfeited property or money;

(2) Be accountable for the forfeited property or money; and

(3) Be subject to the provisions of subdivision (f)(5) of this section with respect to the forfeited property or money;

(iv) (a) Any aircraft is forfeited to the office of the Arkansas Drug Director and may only be used for drug eradication or drug interdiction efforts, within the discretion of the Arkansas Drug Director.

(b) However, if the Arkansas Alcohol and Drug Abuse Coordinating Council determines that the aircraft should be sold, the sale shall be conducted pursuant to the provisions of § 5-5-101(e) and (f), and the proceeds of the sale shall be deposited into the Special State Assets Forfeiture Fund;

(v) Any firearm not retained for official use shall be disposed of in accordance with state and federal law; and

(vi) Any controlled substance, plant, drug paraphernalia, or counterfeit substance shall be destroyed pursuant to a court order;

(B) (i) To sell seized property that is not required by law to be destroyed and that is not harmful to the public.

(ii) Seized property described in subdivision (h)(1)(B)(i) of this section shall be sold at a public sale by the retaining law enforcement agency or prosecuting attorney pursuant to the provisions of § 5-5-101(e) and (f); or

(C) To transfer a motor vehicle to a school district for use in a driver education course.

(2) Disposition of forfeited property pursuant to this subsection is subject to the need to retain the forfeited property as evidence in any related proceeding.

(3) Within three (3) business days of the entry of the order, the circuit clerk shall forward to the Arkansas Drug Director copies of the confiscation report, the circuit court's order, and any other documentation detailing the disposition of the seized property.

(i) Disposition of Moneys Received. Subject to the provisions of subdivision (f)(5) of this section, the proceeds of sales conducted pursuant to subdivision (h)(1)(B) of this section and any moneys forfeited or obtained by judgment or settlement pursuant to this chapter shall be deposited and distributed in the manner set forth in this subsection. Moneys received from a federal forfeiture shall be deposited and distributed pursuant to subdivision (i)(4) of this section.

(1) Asset Forfeiture Fund. (A) The proceeds of any sale and any moneys forfeited or obtained by judgment or settlement under this chapter shall be deposited into the asset forfeiture fund of the prosecuting attorney and is subject to the following provisions:

(i) If, during a calendar year, the aggregate amount of moneys deposited in the asset forfeiture fund exceeds twenty thousand dollars (\$20,000) per county, the prosecuting attorney shall, within fourteen (14) days of that time, notify the circuit judges in the judicial district and the Arkansas Drug Director;

(ii) Subsequent to the notification set forth in subdivision (i)(1)(A)(i) of this section, twenty percent (20%) of the proceeds of any additional sale and any additional moneys forfeited or obtained by judgment or settlement under this chapter in the same calendar year shall be deposited into the State Treasury as special revenues to be credited to the Crime Lab Equipment Fund, and the remainder shall be deposited into the asset forfeiture fund of the prosecuting attorney;

(iii) Failure by the prosecuting attorney to comply with the notification requirement set forth in subdivision (i)(1)(A)(i) of this section renders the prosecuting attorney and any entity eligible to receive forfeited moneys or property from the prosecuting attorney ineligible to receive forfeited moneys or property, except as provided in subdivision (f)(5)(A) of this section; and

(iv) Twenty percent (20%) of any moneys in excess of twenty thousand dollars (\$20,000) that have been retained but not reported as required by subdivision (i)(1)(A)(i)

of this section are subject to recovery for deposit into the Crime Lab Equipment Fund.

(B) The prosecuting attorney shall administer expenditures from the asset forfeiture fund which is subject to audit by the Division of Legislative Audit. Moneys distributed from the asset forfeiture fund shall only be used for law enforcement and prosecutorial purposes. Moneys in the asset forfeiture fund shall be distributed in the following order:

(i) For satisfaction of any bona fide security interest or lien;

(ii) For payment of any proper expense of the proceeding for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;

(iii) Any balance under two hundred fifty thousand dollars (\$250,000) shall be distributed proportionally so as to reflect generally the contribution of the appropriate local or state law enforcement or prosecutorial agency's participation in any activity that led to the seizure or forfeiture of the property or deposit of moneys under this chapter; and

(iv) Any balance over two hundred fifty thousand dollars (\$250,000) shall be forwarded to the Arkansas Drug Director to be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund for distribution as provided in subdivision (i)(3) of this section.

(C) (i) For a forfeiture in an amount greater than two hundred and fifty thousand dollars (\$250,000) from which expenses are paid for a proceeding for forfeiture and sale under subdivision (i)(1)(B)(ii) of this section an itemized accounting of the expenses shall be delivered to the Arkansas Drug Director within ten (10) calendar days after the distribution of the funds.

(ii) The itemized accounting shall include the expenses paid, to whom paid, and for what purposes the expenses were paid.

(2) Drug Control Fund. (A) (i) There is created on the books of law enforcement agencies and prosecuting attorneys a drug control fund.

(ii) The drug control fund shall consist of any moneys obtained under subdivision (i)(1) of this section and any other revenue as may be provided by law or ordinance.

(iii) Moneys from the drug control fund may not supplant other local, state, or federal funds.

(iv) Moneys in the drug control fund are appropriated on a continuing basis and are not subject to the Revenue Stabilization Law, § 19-5-101 et seq.

(v) Moneys in the drug control fund shall only be used for law enforcement and prosecutorial purposes.

(vi) The drug control fund is subject to audit by the Division of Legislative Audit.

(B) The law enforcement agencies and prosecuting attorneys shall submit to the Arkansas Drug Director on or before January 1 and July 1 of each year a report detailing any moneys received and expenditure made from the drug control fund during the preceding six-month period.

(3) Special State Assets Forfeiture Fund. (A) There is created and established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Special State Assets Forfeiture Fund".

(B) (i) The Special State Assets Forfeiture Fund shall consist of revenues obtained under subdivision (i)(1)(B)(iv) of this section and any other revenue as may be provided by law.

(ii) Moneys from the Special State Assets Forfeiture Fund may not supplant other local, state, or federal funds.

(C) The Special State Assets Forfeiture Fund is not subject to the provisions of the Revenue Stabilization Law, § 19-5-101 et seq., or the Special Revenue Fund Account of the State Apportionment Fund, § 19-5-203(b)(2)(A).

(D) (i) The Arkansas Drug Director shall establish through rules and regulations a procedure for proper investment, use, and disposition of state moneys deposited into the Special State Assets Forfeiture Fund in accordance with the intent and purposes of this chapter.

(ii) State moneys in the Special State Assets Forfeiture Fund shall be distributed by the Arkansas Alcohol and Drug Abuse Coordinating Council and shall be distributed for drug interdiction, eradication, education, rehabilitation, the State Crime Laboratory, and drug courts.

(4) Federal forfeitures. (A) (i) (a) Any moneys received by a prosecuting attorney or law enforcement agency from a federal forfeiture shall be deposited and maintained in a separate account.

(b) However, any balance over two hundred fifty thousand dollars (\$250,000) shall be distributed as set forth in subdivision (i)(4)(B) of this section.

(ii) No other moneys may be maintained in the account except for any interest income generated by the account.

(iii) Moneys in the account shall only be used for law enforcement and prosecutorial purposes consistent with governing federal law.

(iv) The account is subject to audit by the Division of Legislative Audit.

(B) (i) Any balance over two hundred fifty thousand dollars (\$250,000) shall be forwarded to the Department of Arkansas State Police to be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund in which it shall be maintained separately and distributed consistent with governing federal law and upon the advice of the Arkansas Alcohol and Drug Abuse Coordinating Council.

(ii) Of the moneys contained in the Special State Assets Forfeiture Fund at the beginning of each fiscal year, no more than:

(a) Twenty-five percent (25%) shall be retained by the Department of Arkansas State Police to be used for law enforcement purposes consistent with governing federal law; and

(b) Sixty-five percent (65%) may be distributed among other state and local law enforcement agencies to be used for law enforcement purposes consistent with federal law.

(iii) With the advice of the Arkansas Alcohol and Drug Abuse Coordinating Council, the Department of Arkansas State Police shall promulgate rules and procedures for the distribution by an allocation formula of moneys set forth in subdivision (i)(4)(B)(ii)(b) of this section.

(j) In Personam Proceedings. In personam jurisdiction may be based on a person's presence in the state, or on his or her conduct in the state, as set out in § 16-4-101(c), and is subject to the following additional provisions:

(1) A temporary restraining order under this section may be entered ex parte on application of the state, upon a showing that:

(A) There is probable cause to believe that the property with respect to which the order is sought is subject to forfeiture under this section; and

(B) Notice of the action would jeopardize the availability of the property for forfeiture;

(2) (A) Notice of the entry of a temporary restraining order and an opportunity for hearing shall be afforded to a person known to have an interest in the property.

(B) The hearing shall be held at the earliest possible date consistent with Rule 65 of the Arkansas Rules of Civil Procedure and is limited to the issues of whether:

(i) There is a probability that the state will prevail on the issue of forfeiture and that failure to enter the temporary restraining order will result in the property being destroyed, conveyed, alienated, encumbered, disposed of, received, removed from the jurisdiction of



the circuit court, concealed, or otherwise made unavailable for forfeiture; and

(ii) The need to preserve the availability of property through the entry of the requested temporary restraining order outweighs the hardship on any owner or interest holder against whom the temporary restraining order is to be entered;

(3) The state has the burden of proof by a preponderance of the evidence to show that the defendant's property is subject to forfeiture;

(4) (A) On a determination of liability of a person for conduct giving rise to forfeiture under this section, the circuit court shall enter a judgment of forfeiture of the property subject to forfeiture as alleged in the complaint and may authorize the prosecuting attorney or any law enforcement officer to seize any property subject to forfeiture pursuant to subsection (a) of this section not previously seized or not then under seizure.

(B) The order of forfeiture shall be consistent with subsection (h) of this section.

(C) In connection with the judgment, on application of the state, the circuit court may enter any appropriate order to protect the interest of the state in property ordered forfeited; and

(5) Subsequent to the finding of liability and order of forfeiture, the following procedures apply:

(A) The attorney for the state shall give notice of pending forfeiture, in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure, to any owner or interest holder who has not previously been given notice;

(B) An owner of or interest holder in property that has been ordered forfeited and whose claim is not precluded may file a claim within thirty (30) days after initial notice of pending forfeiture or after notice under Rule 4 of the Arkansas Rules of Civil Procedure, whichever is earlier; and

(C) The circuit court may amend the in personam order of forfeiture if the circuit court determines that a claimant has established that he or she has an interest in the property and that the interest is exempt under subdivision (a)(4), (6), or (8) of this section.

(k) The circuit court shall order the forfeiture of any other property of a claimant or defendant up to the value of the claimant's or defendant's property found by the circuit court to be subject to forfeiture under subsection (a) of this section if any of the forfeitable property had remained under the control or custody of the claimant or defendant and:

(1) Cannot be located;

- (2) Was transferred or conveyed to, sold to, or deposited with a third party;
- (3) Is beyond the jurisdiction of the circuit court;
- (4) Was substantially diminished in value while not in the actual physical custody of the seizing law enforcement agency;
- (5) Was commingled with other property that cannot be divided without difficulty; or
- (6) Is subject to any interest exempted from forfeiture under this subchapter.

(1) (1) (A) On the fifth day of each month the Treasurer of State shall transfer to the Department of Community Correction Fund Account twenty percent (20%) of any moneys deposited into the Special State Asset Forfeiture Fund during the previous month.

(B) However, in no event shall more than eight hundred thousand dollars (\$800,000) be transferred during any one (1) fiscal year.

(2) Any moneys transferred to the Department of Community Correction Fund Account from the Special State Asset Forfeiture Fund in accordance with this subsection shall:

(A) Be used for the personal services and operating expenses of the drug courts and for no other purpose; and

(B) Not be transferred from the Department of Community Correction Fund Account.

## California

### **CAL. HEALTH & SAFETY CODE § 11471 (Deering 2010). Seizure with or without process.**

Property subject to forfeiture under this division may be seized by any peace officer upon process issued by any court having jurisdiction over the property. Seizure without process may be made if any of the following situations exist:

- (a) The seizure is incident to an arrest or a search under a search warrant.
- (b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this division.
- (c) There is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(d) There is probable cause to believe that the property was used or is intended to be used in violation of this division.

(e) Real property subject to forfeiture may not be seized, absent exigent circumstances, without notice to the interested parties and a hearing to determine that seizure is necessary to preserve the property pending the outcome of the proceedings. At the hearing, the prosecution shall bear the burden of establishing that probable cause exists for the forfeiture of the property and that seizure is necessary to preserve the property pending the outcome of the forfeiture proceedings. The court may issue seizure orders pursuant to this section if it finds that seizure is warranted or pendente lite orders pursuant to Section 11492 if it finds that the status quo or value of the property can be preserved without seizure.

(f) Where business records are seized in conjunction with the seizure of property subject to forfeiture, the seizing agency shall, upon request, provide copies of the records to the person, persons, or business entity from whom such records were seized.

**CAL. PENAL CODE § 502.01 (Deering 2010). Forfeiture of telecommunications and computer property used in committing specified crimes; Hearing; Claim of interest in property; Distribution of proceeds.**

(a) As used in this section:

(1) "Property subject to forfeiture" means any property of the defendant that is illegal telecommunications equipment as defined in subdivision (g) of Section 502.8, or a computer, computer system, or computer network, and any software or data residing thereon, if the telecommunications device, computer, computer system, or computer network was used in committing a violation of, or conspiracy to commit a violation of, subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, 537e, 593d, 593e, or 646.9, or was used as a repository for the storage of software or data obtained in violation of those provisions. Forfeiture shall not be available for any property used solely in the commission of an infraction. If the defendant is a minor, it also includes property of the parent or guardian of the defendant.

(2) "Sentencing court" means the court sentencing a person found guilty of violating or conspiring to commit a violation of subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 422, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, or 646.9, or, in the case of a minor, found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of those provisions, the juvenile court.

(3) "Interest" means any property interest in the property subject to forfeiture.

(4) "Security interest" means an interest that is a lien, mortgage, security interest, or interest under a conditional sales contract.

(5) "Value" has the following meanings:

(A) When counterfeit items of computer software are manufactured or possessed for sale, the "value" of those items shall be equivalent to the retail price or fair market price of the true items that are counterfeited.

(B) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the "value" of those components of computer software packages shall be equivalent to the retail price or fair market price of the number of completed computer software packages that could have been made from those components.

(b) The sentencing court shall, upon petition by the prosecuting attorney, at any time following sentencing, or by agreement of all parties, at the time of sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this section. At the forfeiture hearing, the prosecuting attorney shall have the burden of establishing, by a preponderance of the evidence, that the property or property interests are subject to forfeiture. The prosecuting attorney may retain seized property that may be subject to forfeiture until the sentencing hearing.

(c) Prior to the commencement of a forfeiture proceeding, the law enforcement agency seizing the property subject to forfeiture shall make an investigation as to any person other than the defendant who may have an interest in it. At least 30 days before the hearing to determine whether the property should be forfeited, the prosecuting agency shall send notice of the hearing to any person who may have an interest in the property that arose before the seizure.

A person claiming an interest in the property shall file a motion for the redemption of that interest at least 10 days before the hearing on forfeiture, and shall send a copy of the motion to the prosecuting agency and to the probation department.

If a motion to redeem an interest has been filed, the sentencing court shall hold a hearing to identify all persons who possess valid interests in the property. No person shall hold a valid interest in the property if, by a preponderance of the evidence, the prosecuting agency shows that the person knew or should have known that the property was being used in violation of, or conspiracy to commit a violation of, subdivision (b) of Section 272, Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 475, 476, 480, 483.5, 484g, or subdivision (a), (b), or (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) or (c) of Section 484i, subdivision (c) of

Section 502, or Section 502.7, 502.8, 529, 529a, 530.5, 537e, 593d, 593e, or 646.9, and that the person did not take reasonable steps to prevent that use, or if the interest is a security interest, the person knew or should have known at the time that the security interest was created that the property would be used for a violation.

(d) If the sentencing court finds that a person holds a valid interest in the property, the following provisions shall apply:

- (1) The court shall determine the value of the property.
- (2) The court shall determine the value of each valid interest in the property.
- (3) If the value of the property is greater than the value of the interest, the holder of the interest shall be entitled to ownership of the property upon paying the court the difference between the value of the property and the value of the valid interest.

If the holder of the interest declines to pay the amount determined under paragraph (2), the court may order the property sold and designate the prosecutor or any other agency to sell the property. The designated agency shall be entitled to seize the property and the holder of the interest shall forward any documentation underlying the interest, including any ownership certificates for that property, to the designated agency. The designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(4) If the value of the property is less than the value of the interest, the designated agency shall sell the property and pay the owner of the interest the proceeds, up to the value of that interest.

(e) If the defendant was a minor at the time of the offense, this subdivision shall apply to property subject to forfeiture that is the property of the parent or guardian of the minor.

(1) The prosecuting agency shall notify the parent or guardian of the forfeiture hearing at least 30 days before the date set for the hearing.

(2) The computer or telecommunications device shall not be subject to forfeiture if the parent or guardian files a signed statement with the court at least 10 days before the date set for the hearing that the minor shall not have access to any computer or telecommunications device owned by the parent or guardian for two years after the date on which the minor is sentenced.

(3) If the minor is convicted of a violation of Section 288, 288.2, 311.1, 311.2, 311.3, 311.4, 311.5, 311.10, 311.11, 470, 470a, 472, 476, 480, or subdivision (b) of Section 484e, subdivision (d) of Section 484e, subdivision (a) of Section 484f, subdivision (b) of Section 484i, subdivision (c) of Section 502, or Section 502.7, 502.8, 529, 529a, or 530.5, within two years after the date on which the minor is sentenced, and the violation involves a computer or telecommunications device owned by the parent or guardian, the

original property subject to forfeiture, and the property involved in the new offense, shall be subject to forfeiture notwithstanding paragraph (2).

(4) Notwithstanding paragraph (1), (2), or (3), or any other provision of this chapter, if a minor's parent or guardian makes full restitution to the victim of a crime enumerated in this chapter in an amount or manner determined by the court, the forfeiture provisions of this chapter do not apply to the property of that parent or guardian if the property was located in the family's primary residence during the commission of the crime.

(f) Notwithstanding any other provision of this chapter, the court may exercise its discretion to deny forfeiture where the court finds that the convicted defendant, or minor adjudicated to come within the jurisdiction of the juvenile court, is not likely to use the property otherwise subject to forfeiture for future illegal acts.

(g) If the defendant is found to have the only valid interest in the property subject to forfeiture, it shall be distributed as follows:

(1) First, to the victim, if the victim elects to take the property as full or partial restitution for injury, victim expenditures, or compensatory damages, as defined in paragraph (1) of subdivision (e) of Section 502. If the victim elects to receive the property under this paragraph, the value of the property shall be determined by the court and that amount shall be credited against the restitution owed by the defendant. The victim shall not be penalized for electing not to accept the forfeited property in lieu of full or partial restitution.

(2) Second, at the discretion of the court, to one or more of the following agencies or entities:

(A) The prosecuting agency.

(B) The public entity of which the prosecuting agency is a part.

(C) The public entity whose officers or employees conducted the investigation resulting in forfeiture.

(D) Other state and local public entities, including school districts.

(E) Nonprofit charitable organizations.

(h) If the property is to be sold, the court may designate the prosecuting agency or any other agency to sell the property at auction. The proceeds of the sale shall be distributed by the court as follows:

(1) To the bona fide or innocent purchaser or encumbrancer, conditional sales vendor, or mortgagee of the property up to the amount of his or her interest in the property, if the court orders a distribution to that person.

(2) The balance, if any, to be retained by the court, subject to the provisions for distribution under subdivision (g).

## **Colorado**

### **COLO. REV. STAT. § 16-13-504 (2009). Forfeiture of vehicle, fixtures and contents of building, personal property, or contraband article – exceptions.**

(1) Any vehicle or personal property, including fixtures and contents of a structure or building, as defined in section 16-13-301 (2), currency, securities, or negotiable instruments, which has been or is being used in any of the acts specified in section 16-13-503 or in, upon, or by means of which any act under said section has taken or is taking place; or any currency, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for any of the acts listed in section 16-13-503; or any proceeds traceable to the acts listed in section 16-13-503; or any currency, negotiable instruments, or securities used or intended to be used to facilitate any of the acts listed in section 16-13-503 are contraband property and shall be seized, as well as any contraband article. Any peace officer or agent of a seizing agency may seize and hold such property or articles if there is probable cause to believe that such property or articles are contraband and the seizure is incident to a lawful search. All rights and interest in and title to contraband property shall immediately vest in the state upon seizure by a seizing agency, subject only to perfection of title, rights, and interests in accordance with this part 5. Neither replevin nor any other action to recover any interest in such property shall be maintained in any court except as provided in this part 5.

(1.5) If a rental motor vehicle is seized pursuant to this part 5, the seizing agency shall notify the motor vehicle rental company of the seizure if the motor vehicle is identified as a rental motor vehicle. The motor vehicle rental company may appear at the seizing agency and request the return of the rental motor vehicle. The rental motor vehicle shall be returned to the motor vehicle rental company unless the motor vehicle must be maintained in the custody of the seizing agency for evidentiary purposes or if the seizing agency has probable cause to believe the motor vehicle rental company, at the time of rental, had knowledge or notice of the criminal activity for which the rental car was used.

(2) (a) In any action seeking forfeiture of property pursuant to this part 5, any person, including a lienholder, who seeks to contest the forfeiture shall establish by a preponderance of the evidence such person's standing as a true owner of the property or a true owner with an interest in the property.

(b) To establish standing, the person shall first prove that the person has a recorded or registered interest in the property, or a bona fide marital interest in the property, if the property is of a type for which interests can be, and customarily are, recorded or registered in a public office.

(c) The person shall also prove that the person is a true owner of the property or a true owner of an interest in the property. The factors to be considered by the court in determining whether a person is a true owner shall include, but need not be limited to:

(I) Whether the person had the primary use, benefit, possession, or control of the property;

(II) How much of the consideration for the purchase or ownership of the property was furnished by the person, and whether the person furnished reasonably equivalent value in exchange for the property or interest;

(III) Whether the transaction by which the person acquired the property or interest was secret, concealed, undisclosed, hurried, or not in the usual mode of doing business;

(IV) Whether the transaction by which the person acquired the property or interest was conducted through the use of a shell, alter ego, nominee, or fictitious party;

(V) Whether the person is a relative, a co-conspirator, complicitor, or an accessory in the public nuisance act or acts or other criminal activity, a business associate in a legal or illegal business, one who maintains a special or close relationship with, or an insider with respect to the perpetrator of the alleged public nuisance act or acts;

(VI) Whether the person is silent or fails to call parties to testify or to produce available evidence explaining the acquisition of the property or factors which may be badges of fraud or deceit, or show lack of true ownership;

(VII) Whether the timing of the transaction by which the person acquired the property was during the pendency or threat of litigation, or during any time when the person knew, should have known, or had notice of the public nuisance act or acts or the threat of a forfeiture action;

(VIII) Whether the placing of the title in the name of, or the putative ownership in, or transfer to, the person was done with intent to delay, hinder, or avoid a forfeiture, or for some purpose other than ownership of the property;

(IX) Whether the perpetrator of the alleged public nuisance act or acts has absconded or is a fugitive from justice and the conveyance occurred after the flight, or before the flight, in any of the circumstances set forth in subparagraph (III) of this paragraph (c);

(X) Whether the subject matter property is of a kind in which property or ownership rights can legally exist;

(XI) Any other badge or indicia of fraud under article 8 of title 38, C.R.S., or the general law of fraudulent transfers or conveyances.



(d) The court shall consider the totality of the circumstances in determining whether a person is a true owner. A person contesting the forfeiture does not necessarily have to show that all of the factors enumerated in paragraph (c) of this subsection (2) support the claim of true ownership, nor does the person necessarily establish true ownership by showing the absence of fraudulent intent or badges of fraud.

(e) No private sale or conveyance of a used motor vehicle shall be deemed to make a party eligible to assert standing to contest the forfeiture thereof, unless the title to the motor vehicle, with transfer duly executed to the party, has been filed with the division of motor vehicles in the department of revenue prior to the physical seizure of the vehicle and the recording of a notice of seizure, or the party attempting to assert standing has exclusive possession of the vehicle at the time of seizure. A party eligible to assert standing under this paragraph (e) must nevertheless establish that the party is a true owner of the vehicle or has an interest therein pursuant to paragraph (c) of this subsection (2).

(f) Unless the standing of a particular party is conceded in the complaint initiating the public nuisance action, a party must assert standing in the answer and fully describe the party's interest in the property which is the subject matter of the action, and submit a verified statement, supported by any available documentation, of the party's ownership of or interest in the property.

(2.1) (a) In any action to forfeit property pursuant to this part 5, the plaintiff, in addition to any other matter which must be proven in the plaintiff's case in chief, shall prove by clear and convincing evidence that possession of the property is unlawful, or that the owner of the property or interest therein was involved in or knew of the subject act. The plaintiff shall also prove by clear and convincing evidence that the property was instrumental in the commission or facilitation of the crime or the property constitutes traceable proceeds of the crime or related criminal activity.

(a.5) (I) The claimant in an action brought pursuant to this part 5 may petition the court to determine whether a forfeiture was constitutionally excessive. Upon the conclusion of a trial resulting in a judgment of forfeiture in an action brought pursuant to this part 5, if the evidence presented raises an issue of proportionality under this paragraph (a.5), the defendant may petition the court to set a hearing, or the court may on its own motion set a hearing to determine whether a forfeiture was constitutionally excessive. This determination shall be made prior to any sale or distribution of forfeited property.

(II) In making this determination, the court shall compare the forfeiture to the gravity of the public nuisance act giving rise to the forfeiture and related criminal activity.

(III) The defendant shall have the burden of establishing by a preponderance of the evidence that the forfeiture is grossly disproportional.

(IV) If the court finds that the forfeiture is grossly disproportional to the public nuisance act and related criminal activity, it shall reduce or eliminate the forfeiture as necessary to

avoid a violation of the excessive fines clause of the eighth amendment of the United States constitution or article II, section 20, of the Colorado constitution.

(V) and (VI) (Deleted by amendment, L. 2003, p. 890, § 2, effective July 1, 2003.)

(b) As used in paragraph (a) of this subsection (2.1), an owner was "involved in or knew of the subject act" if it is established that:

(I) The owner was involved in the subject act; or

(II) (A) The owner knew of the subject act or had notice of the acts facilitating the criminal activity or prior similar conduct and failed to take reasonable steps to prohibit or abate the illegal use of the property;

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (II), if the plaintiff proves by clear and convincing evidence that the owner knew or had notice of the unlawful use of the property, the owner must prove by a preponderance of the evidence that the owner took reasonable steps to prohibit or abate the unlawful use of the property for the court to find the owner was not a party to the offense or related criminal activity.

(2.2) (a) With respect to a partial or whole ownership interest in existence at the time the conduct subjecting the property to seizure took place, the term "innocent owner" means any owner who:

(I) Did not have actual knowledge of the conduct subjecting the property to seizure or notice of an act or circumstance facilitating the criminal activity or prior similar conduct, notice being satisfied by, but not limited to, sending notice of an act or circumstance facilitating the criminal activity by certified mail; or

(II) Upon learning of the conduct subjecting the property to seizure, took reasonable steps to prohibit the conduct. An owner may demonstrate that he or she took reasonable action to prohibit such conduct if the owner:

(A) Timely revoked or attempted to revoke permission for those engaging in such conduct to use the property; or

(B) Took reasonable actions to discourage or prevent the use of the property in conduct subjecting the property to seizure.

(b) With respect to a partial or whole ownership interest acquired after the conduct subjecting the property to seizure has occurred, the term "innocent owner" means a person who, at the time he or she acquired the interest in the property, had no knowledge that the illegal conduct subjecting the property to seizure had occurred or that the property had been seized for forfeiture, and:

- (I) Acquired an interest in the property in a bona fide transaction for value;
  - (II) Acquired an interest in the property through probate or inheritance; or
  - (III) Acquired an interest in the property through dissolution of marriage or by operation of law.
- (c) An innocent owner's interest in property shall not be forfeited under any provision of state law. An innocent owner has the burden of proving by a preponderance of the evidence that he or she has an ownership interest in the subject property. Otherwise, the burden of proof under this subsection (2.2) shall be as provided in subsection (2.1) of this section.
- (d) A person who is convicted of a criminal offense arising from the same activity giving rise to the forfeiture proceedings in accordance with section 16-13-505 (1.5) shall not be eligible to assert an innocent owner defense.
- (2.3) The prosecuting attorney shall set forth in the petition initiating the forfeiture action pursuant to this part 5 the existence of any liens and whether forfeiture of any liens will be sought. If forfeiture of a lien is not sought, the lienholder does not need to appear to preserve any interest in the property which is the subject of the forfeiture action which such lienholder may possess.
- (3) (Deleted by amendment, L. 93, p. 627, § 2, effective July 1, 1993.)

## Connecticut

### **CONN. GEN. STAT. § 54-36h (2010). Forfeiture of moneys and property related to illegal sale or exchange of controlled substances or money laundering. In rem proceeding. Disposition.**

- (a) The following property shall be subject to forfeiture to the state pursuant to subsection (b) of this section:
- (1) All moneys used, or intended for use, in the procurement, manufacture, compounding, processing, delivery or distribution of any controlled substance, as defined in subdivision (9) of section 21a-240;
  - (2) All property constituting the proceeds obtained, directly or indirectly, from any sale or exchange of any such controlled substance in violation of section 21a-277 or 21a-278;
  - (3) All property derived from the proceeds obtained, directly or indirectly, from any sale or exchange for pecuniary gain of any such controlled substance in violation of section 21a-277 or 21a-278;

(4) All property used or intended for use, in any manner or part, to commit or facilitate the commission of a violation for pecuniary gain of section 21a-277 or 21a-278;

(5) All property constituting, or derived from, the proceeds obtained, directly or indirectly, by a corporation as a result of a violation of section 53a-276, 53a-277 or 53a-278.

(b) Not later than ninety days after the seizure of moneys or property subject to forfeiture pursuant to subsection (a) of this section, in connection with a lawful criminal arrest or a lawful search, the Chief State's Attorney or a deputy chief state's attorney, state's attorney or assistant or deputy assistant state's attorney may petition the court in the nature of a proceeding in rem to order forfeiture of said moneys or property. Such proceeding shall be deemed a civil suit in equity, in which the state shall have the burden of proving all material facts by clear and convincing evidence. The court shall identify the owner of said moneys or property and any other person as appears to have an interest therein, and order the state to give notice to such owner and any interested person by certified or registered mail, and shall promptly, but not less than two weeks after notice, hold a hearing on the petition. No testimony offered or evidence produced by such owner or interested person at such hearing and no evidence discovered as a result of or otherwise derived from such testimony or evidence, may be used against such owner or interested person in any proceeding, except that no such owner or interested person shall be immune from prosecution for perjury or contempt committed while giving such testimony or producing such evidence. At such hearing the court shall hear evidence and make findings of fact and enter conclusions of law and shall issue a final order, from which the parties shall have such right of appeal as from a decree in equity.

(c) No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or omission committed by another person if such owner or lienholder did not know and could not have reasonably known that such property was being used or was intended to be used in, or was derived from, criminal activity.

(d) Notwithstanding the provisions of subsection (a) of this section, no moneys or property used or intended to be used by the owner thereof to pay legitimate attorney's fees in connection with his defense in a criminal prosecution shall be subject to forfeiture under this section.

(e) Any property ordered forfeited pursuant to subsection (b) of this section shall be sold at public auction conducted by the Commissioner of Administrative Services or his designee.

(f) The proceeds from any sale of property under subsection (e) of this section and any moneys forfeited under this section shall be applied: (1) To payment of the balance due on any lien preserved by the court in the forfeiture proceedings; (2) to payment of any costs incurred for the storage, maintenance, security and forfeiture of such property; and

(3) to payment of court costs. The balance, if any, shall be deposited in the drug assets forfeiture revolving account established under section 54-36i.

## **Delaware**

### **DEL. CODE ANN. TIT. 16, § 4784 (2010). Forfeitures.**

(a) The following shall be subject to forfeiture to the State and no property rights shall exist in them:

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

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

(3) Any property which is used, or intended for use, as a container for property described in paragraph (1), (2) or (6) of this subsection;

(4) Any conveyances, including aircraft, vehicles, or vessels which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, trafficking in or possession with intent to deliver property described in paragraph (1) or (2) of this subsection except that:

a. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless the owner or other person in charge of the vehicle is a consenting party or privy to a violation of the Uniform Controlled Substances Act;

b. No vehicle is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

c. A vehicle is not subject to forfeiture for a violation of §§ 4753, 4754, 4757 and 4758 of this title; and

d. A forfeiture of a vehicle encumbered by a bona fide security interest is subject to the interest of the secured party if the party neither had knowledge of nor consented to the act or omission;

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

(6) All drug paraphernalia as defined in § 4701 of this title;

(7) All moneys, negotiable instruments, securities or any other thing of value furnished, or intended to be furnished, in exchange for a controlled substance or drug paraphernalia in violation of this chapter; all profits or proceeds traceable to securities, assets or interest used, or intended to be used, to facilitate any violation of this chapter. However, no property interest or an owner, by reason of any act or omission established by the owner to be committed or omitted without the owner's knowledge or consent shall be forfeited in the items listed in this paragraph:

a. All moneys, negotiable instruments or securities found in close proximity to forfeitable controlled substances, or to forfeitable records of the importation, manufacture or distribution of controlled substances are presumed to be forfeitable under this paragraph. The burden of proof is upon claimant of the property to rebut this presumption.

b. All moneys, negotiable instruments or securities found to have trace amounts of controlled substances on them are presumed to be forfeitable under this paragraph. The burden of proof is upon the claimant of the property to rebut this presumption.

c. To the extent that assets, interests, profits and proceeds forfeitable under this paragraph (i) cannot be located, (ii) have been transferred, sold to or deposited with third parties, or (iii) have been placed beyond the jurisdiction of the State, the court, following conviction of the individual charged, may direct forfeiture of such other assets of the defendant as may be available, limited in value to those assets that would otherwise be forfeited under this paragraph. Upon petition of the defendant, the court may authorize redemption of assets forfeited under this paragraph, provided the assets described in this paragraph are surrendered or otherwise remitted by such defendant to the jurisdiction of the court; and

(8) Any real property which is used, or is intended for use, to store, grow, manufacture, compound, process, deliver, import or export any controlled substance in violation of this chapter except that:

a. No real property is subject to forfeiture under this section by reason of any act or omission established by any owner thereof to have been committed or omitted without the owner's knowledge or consent;

b. No real property being leased out by its owner shall be subject to forfeiture under this section unless the owner of the real property is a consenting party or privy to the violation of the Controlled Substances Act;

c. No real property shall be subject to forfeiture for a violation of § 4753, § 4754, § 4754A, § 4755, § 4757 or § 4758 of this title; and

d. A forfeiture of real property encumbered by a bona fide security interest of the

secured party if the party neither had knowledge of nor consented to the act or omission.

(b) Notwithstanding any other provisions of the laws of this State or rules of court, the procedures listed in subsections (c)-(j) of this section are applicable to the administrative forfeiture of property subject to forfeiture under this section.

(c) Property subject to forfeiture under this chapter may be seized by the Secretary upon process issued by any Superior Court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure made is pursuant to subchapter I of Chapter 23 of Title 11 or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal, injunction or forfeiture proceeding based upon this chapter;

(3) The Secretary has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The Secretary has probable cause to believe that the property was used or intended to be used in violation of this chapter.

(d) In the event of seizure pursuant to subsection (c) of this section, proceedings under subsections (e) and (j) of this section shall be instituted promptly.

(e) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the Secretary subject only to the orders and decrees of the Superior Court. When property is seized under this chapter, the Secretary may:

(1) Place the property under seal;

(2) Remove the property to a place designated by the Secretary; or

(3) Require the Department of Safety and Homeland Security to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(f) When property is forfeited under this chapter, the Secretary may:

(1) Retain it for official use;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs;

(3) Allow the arresting agency or any other law enforcement division to use the

property for the purpose of law enforcement provided that any proceeds remaining after the payment of expenses and any other money forfeited or realized from forfeited property shall be deposited to the Special Law Enforcement Assistance Fund for the use of the State for the purposes as established by the Attorney General with the concurrence of the Director of the Office of Management and Budget and the Controller General;

(4) Require the Department of Safety and Homeland Security to take custody of the property and remove it for disposition in accordance with law; or

(5) Forward it to the Administration for disposition.

(g) Controlled substances listed in Schedule I that are 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 listed in Schedule I, the owners of which are unknown, which are seized or come into the possession of the State are contraband and shall be summarily forfeited to the State.

(h) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation 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.

(i) The failure, upon demand by the Secretary or the Secretary's 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 the person is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(j) Property seized pursuant to this section that is not summarily forfeited pursuant to subsection (f) of this section shall be automatically forfeited to the State upon application to the Superior Court if, within 45 days of notification of seizure to all known parties having possessory interest in the seized property by registered or certified mail to the last known post-office address of the parties in interest and by publication in a newspaper of general circulation in this State, the person or persons claiming title to the seized property do not institute proceedings in the Superior Court to establish:

(1) That they have the lawful possessory interest in the seized property; and

(2) The property was unlawfully seized or not subject to forfeiture pursuant to this section.



## **District of Columbia**

### **D.C. CODE ANN. § 22-2723 (2010). Property Subject to Seizure and Forfeiture.**

(a) The following are subject to forfeiture:

(1) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate a violation of a prostitution-related offense, provided that:

(A) No conveyance used by any person as a common carrier in the course of transacting business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of a prostitution-related offense;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission that the owner establishes was committed or omitted without the owner's knowledge or consent;

(C) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; or

(D) Where the conveyance is not being driven by the owner of the conveyance, there is a presumption that the owner is without knowledge of the illegal act, and therefore the conveyance should not be forfeited.

(2) All money, coins, and currency which has been used, or was intended for use, in violation of a prostitution-related offense.

(a-1) (1) A lien in favor of the District of Columbia is hereby created in an amount equal to the costs of towing, storing, and administrative processing of a conveyance seized and subject to forfeiture pursuant to §§ 22-2701, 22-2703, and this section.

(2) The Mayor, or his or her designee, shall establish a reasonable cost for the towing, storing, and administrative processing of seized conveyances.

(3) The Attorney General for the District of Columbia, or his or her designee, may agree to release a lien by stipulation with the registered owner or lienholder of a seized conveyance.

(b) All seizures and forfeitures of property under this section shall be pursuant to § 48-

905.02, except that seized money, coins, and currency shall be deposited as provided in subchapter IIA of Chapter 5 of Title 23 of the District of Columbia Code.

**D.C. CODE ANN. § 48-905.2 (2010). Forfeitures**

(a) The following are subject to forfeiture:

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

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

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (1) or (2) of this subsection; provided, that:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his or her knowledge or consent;

(C) Repealed; or

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission;

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

(6) All cash or currency which has been used, or intended for use, in violation of this chapter;

(7) Everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an

exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of this chapter.

(A) No property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent; and

(B) All moneys, coins and currency found in close proximity to forfeitable controlled substances, forfeitable drug manufacturing or distributing paraphernalia or records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof is upon any claimant of the property to rebut this presumption; and

(8) Any real property that is used or intended to be used in any manner to commit or facilitate the commission of a violation of this chapter, except that:

(A) No real property shall be forfeited under this paragraph by reason of an act or omission established by the owner to have been committed or omitted without the knowledge and consent of the owner;

(B) Real property shall not be subject to forfeiture for a violation of § 48-904.01(d); and

(C) The forfeiture of real property encumbered by a bona fide security interest shall be subject to the interest of the secured party if the secured party had no knowledge and did not consent to the act or omission that constituted a violation of this chapter.

(a-1) All moneys, coins and currency forfeited pursuant to this chapter shall be deposited as provided in § 23-527 [sic].

(b) Property subject to forfeiture under this chapter may be seized by law enforcement officials, as designated by the Mayor, or designated civilian employees of the Metropolitan Police Department, upon process issued by the Superior Court of the District of Columbia having jurisdiction over the property, or without process if authorized by other law.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(d) (1) All controlled substances, the lawful possession of which is not established or the title to which cannot be ascertained, which come into the custody of law-enforcement officials of the District of Columbia, or any designated civilian employees of the Metropolitan Police Department, shall be delivered promptly to the United States Department of Justice or its delegate for disposal, except that controlled substances which may be needed as evidence in any criminal or administrative proceeding pursuant to the provisions of this chapter or the provisions of any federal controlled substances law shall,

upon delivery to the United States Department of Justice, not be so disposed of until the public official in charge of prosecuting any violation under this chapter shall certify that such controlled substances are no longer needed as evidence.

(2) Property, other than controlled substances, taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the Mayor. When property is seized under this chapter, the Mayor shall:

(A) Place the property under seal;

(B) Remove the property to a place designated by the Mayor; or

(C) Remove the property to an appropriate location for disposition in accordance with law.

(3) (A) After a proper showing of probable cause for the seizure is made, the Mayor shall cause notice of the seizure of property, other than controlled substances, and the Mayor's intention to forfeit and sell or otherwise dispose of the property in accordance with this chapter to be published for at least 2 successive weeks in a local newspaper of general circulation. In addition, the Mayor shall provide written notice of the seizure together with information on the applicable procedures for claiming the property to each party who is known or in the exercise of reasonable diligence should be known by the Mayor to have a right of claim to the seized property. Notice to each party shall be by registered or certified mail, return receipt requested.

(B) Any person claiming the property may, at any time within 30 days from the date of receipt of notice of seizure, file with the Mayor a claim stating his or her interest in the property. Upon the filing of a claim, the claimant shall give a bond to the District government in the penal sum of \$ 2,500 or 10% of the fair market value of the claimed property (as appraised by the Chief of the Metropolitan Police Department), whichever is lower, but not less than \$ 250, with sureties to be approved by the Mayor. In case of forfeiture of the claimed property, the costs and expenses of the forfeiture proceedings shall be deducted from the bonds. Any costs that exceed the amount of the bond shall be paid by the claimant. In determining the fair market value of the property seized, the Chief of the Metropolitan Police Department shall consider any verifiable and reasonable evidence of value that the claimant may present. The balance of the proceeds shall be transferred to the Drug Interdiction and Demand Reduction Fund ("Fund") created by subchapter VII of this chapter. The Fund shall remain available until expended regardless of the expiration of the fiscal year in which the proceeds were collected. The Fund shall be distributed in the following descending order of priority:

(i) To fund law enforcement activities of the Metropolitan Police Department of the District of Columbia, except that, beginning October 1, 1990, not more than 49% of the total amount deposited to the Fund in the immediately preceding quarter-year period shall be used for this purpose in the next succeeding quarter-year period; and

(ii) To provide grants to fund community-based drug education, prevention, and demand reduction programs;

(C) If a claim and bond (or application for a waiver of bond) are not filed within 30 days of receipt of notice, and if either the property seized has a value of less than \$ 250,000 or the property seized is a conveyance subject to forfeiture under the provisions of paragraph (a)(4) of this section, the Mayor, after determining that the property is forfeitable under this chapter, shall declare the property forfeited and shall dispose of the property in accordance with the provisions of paragraph (4) of this subsection. If the Mayor determines that the seized property is not forfeitable under this chapter and is not otherwise subject to forfeiture, the Mayor shall return the property to its rightful owner.

(D) If it appears to the Mayor that any property seized under this paragraph is liable to perish, waste, or be greatly reduced in value by the keeping, or that the expense of keeping is disproportionate to the value of the property, the Mayor may proceed to advertise and sell the property at auction or otherwise dispose of the property under rules promulgated by the Mayor.

(E) If the property seized is not forfeited or disposed of in accordance with subparagraphs (C) and (D) of this paragraph, the Mayor shall request the Attorney General to apply to the Superior Court of the District of Columbia for forfeiture of the property in accordance with the rules of the Superior Court of the District of Columbia.

(F) Whenever any person who has an interest in forfeited property files with the Mayor, either before or after the sale or disposition of property, a petition for remission or mitigation of the forfeiture, the Mayor shall remit or mitigate the forfeiture upon the terms and conditions as the Mayor deems reasonable if the Mayor finds:

(i) That the forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to violate the law; or

(ii) That mitigating circumstances justify the remission or mitigation of the forfeiture.

(G) In all suits or actions brought for forfeiture of any property seized under this chapter when the property is claimed by any person, the burden of proof shall be on the claimant once the Mayor has established probable cause as provided in subsection (a) of this section.

(H) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this paragraph. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(4) When property, other than controlled substances, is forfeited under this chapter, the Mayor shall:

(A) Retain it for official use;

(B) Sell that which is not required by law to be destroyed and which is not harmful to the public. All proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs shall be deducted from the proceeds. The balance of the proceeds shall be used, and shall remain available until expended regardless of the expiration of the fiscal year in which they were collected, to finance law enforcement activities of the Metropolitan Police Department of the District of Columbia, with any remaining balance used to finance programs which shall serve to rehabilitate drug addicts, educate citizens, or prevent drug addiction;

(C) Remove the property for disposition in accordance with law; or

(D) Forward it to the D.E.A. for disposition.

(e) During the course of any civil forfeiture proceeding pursuant to this section, which involves real property, the Mayor shall file a notice of the proceeding with the Recorder of Deeds. The notice shall include the legal description of the property and indicate that civil forfeiture is being sought. The Recorder of Deeds shall record the notice against the title of any real property for which civil forfeiture is being sought. Upon resolution of the proceeding, the Recorder of Deeds shall be notified of the disposition of the action.

## **Florida**

### **FLA. STAT. ANN. § 932.701 (2009). Short Title; Definitions**

(1) Sections 932.701-932.706 shall be known and may be cited as the "Florida Contraband Forfeiture Act."

(2) As used in the Florida Contraband Forfeiture Act:

(a) "Contraband article" means:

1. Any controlled substance as defined in chapter 893 or any substance, device, paraphernalia, or currency or other means of exchange that was used, was attempted to be used, or was intended to be used in violation of any provision of chapter 893, if the totality of the facts presented by the state is clearly sufficient to meet the state's burden of establishing probable cause to believe that a nexus exists between the article seized and the narcotics activity, whether or not the use of the contraband article can be traced to a specific narcotics transaction.

2. Any gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, was attempted, or intended to be used in violation of the gambling laws of the state.

3. Any equipment, liquid or solid, which was being used, is being used, was attempted to be used, or intended to be used in violation of the beverage or tobacco laws of the state.

4. Any motor fuel upon which the motor fuel tax has not been paid as required by law.

5. Any personal property, including, but not limited to, any vessel, aircraft, item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, securities, books, records, research, negotiable instruments, or currency, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, whether or not comprising an element of the felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

6. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which was used, is being used, or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony, or which is acquired by proceeds obtained as a result of a violation of the Florida Contraband Forfeiture Act.

7. Any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, currency, or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c).

8. Any motor vehicle offered for sale in violation of s. 320.28.

9. Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a).

10. Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145 and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

11. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device,

weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201.

(b) "Bona fide lienholder" means the holder of a lien perfected pursuant to applicable law.

(c) "Promptly proceed" means to file the complaint within 45 days after seizure.

(d) "Complaint" is a petition for forfeiture filed in the civil division of the circuit court by the seizing agency requesting the court to issue a judgment of forfeiture.

(e) "Person entitled to notice" means any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture when seized, who is known to the seizing agency after a diligent search and inquiry.

(f) "Adversarial preliminary hearing" means a hearing in which the seizing agency is required to establish probable cause that the property subject to forfeiture was used in violation of the Florida Contraband Forfeiture Act.

(g) "Forfeiture proceeding" means a hearing or trial in which the court or jury determines whether the subject property shall be forfeited.

(h) "Claimant" means any party who has proprietary interest in property subject to forfeiture and has standing to challenge such forfeiture, including owners, registered owners, bona fide lienholders, and titleholders.

### **FLA. STAT. ANN. § 932.703 (2009). Forfeiture of Contraband Article; Exceptions**

(1) (a) Any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, may be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

(b) Notwithstanding any other provision of the Florida Contraband Forfeiture Act, except the provisions of paragraph (a), contraband articles set forth in s. 932.701(2)(a)7. used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, shall be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.

(c) All rights to, interest in, and title to contraband articles used in violation of s. 932.702 shall immediately vest in the seizing law enforcement agency upon seizure.

(d) The seizing agency may not use the seized property for any purpose until the rights



to, interest in, and title to the seized property are perfected in accordance with the Florida Contraband Forfeiture Act. This section does not prohibit use or operation necessary for reasonable maintenance of seized property. Reasonable efforts shall be made to maintain seized property in such a manner as to minimize loss of value.

(2) (a) Personal property may be seized at the time of the violation or subsequent to the violation, if the person entitled to notice is notified at the time of the seizure or by certified mail, return receipt requested, that there is a right to an adversarial preliminary hearing after the seizure to determine whether probable cause exists to believe that such property has been or is being used in violation of the Florida Contraband Forfeiture Act. Seizing agencies shall make a diligent effort to notify the person entitled to notice of the seizure. Notice provided by certified mail must be mailed within 5 working days after the seizure and must state that a person entitled to notice may request an adversarial preliminary hearing within 15 days after receiving such notice. When a postseizure, adversarial preliminary hearing as provided in this section is desired, a request must be made in writing by certified mail, return receipt requested, to the seizing agency. The seizing agency shall set and notice the hearing, which must be held within 10 days after the request is received or as soon as practicable thereafter.

(b) Real property may not be seized or restrained, other than by *lis pendens*, subsequent to a violation of the Florida Contraband Forfeiture Act until the persons entitled to notice are afforded the opportunity to attend the pre-seizure adversarial preliminary hearing. A *lis pendens* may be obtained by any method authorized by law. Notice of the adversarial preliminary hearing shall be by certified mail, return receipt requested. The purpose of the adversarial preliminary hearing is to determine whether probable cause exists to believe that such property has been used in violation of the Florida Contraband Forfeiture Act. The seizing agency shall make a diligent effort to notify any person entitled to notice of the seizure. The pre-seizure adversarial preliminary hearing provided herein shall be held within 10 days of the filing of the *lis pendens* or as soon as practicable.

(c) When an adversarial preliminary hearing is held, the court shall review the verified affidavit and any other supporting documents and take any testimony to determine whether there is probable cause to believe that the property was used, is being used, was attempted to be used, or was intended to be used in violation of the Florida Contraband Forfeiture Act. If probable cause is established, the court shall authorize the seizure or continued seizure of the subject contraband. A copy of the findings of the court shall be provided to any person entitled to notice.

(d) If the court determines that probable cause exists to believe that such property was used in violation of the Florida Contraband Forfeiture Act, the court shall order the property restrained by the least restrictive means to protect against disposal, waste, or continued illegal use of such property pending disposition of the forfeiture proceeding. The court may order the claimant to post a bond or other adequate security equivalent to the value of the property.

(3) Neither replevin nor any other action to recover any interest in such property shall be

maintained in any court, except as provided in this act; however, such action may be maintained if forfeiture proceedings are not initiated within 45 days after the date of seizure. However, if good cause is shown, the court may extend the aforementioned prohibition to 60 days.

(4) In any incident in which possession of any contraband article defined in s. 932.701(2)(a) constitutes a felony, the vessel, motor vehicle, aircraft, other personal property, or real property in or on which such contraband article is located at the time of seizure shall be contraband subject to forfeiture. It shall be presumed in the manner provided in s. 90.302(2) that the vessel, motor vehicle, aircraft, other personal property, or real property in which or on which such contraband article is located at the time of seizure is being used or was attempted or intended to be used in a manner to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of a contraband article defined in s. 932.701(2).

(5) The court shall order the forfeiture of any other property of a claimant, excluding lienholders, up to the value of any property subject to forfeiture under this section if any of the property described in this section:

(a) Cannot be located;

(b) Has been transferred to, sold to, or deposited with, a third party;

(c) Has been placed beyond the jurisdiction of the court;

(d) Has been substantially diminished in value by any act or omission of the person in possession of the property; or

(e) Has been commingled with any property which cannot be divided without difficulty.

(6) (a) Property may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the owner either knew, or should have known after a reasonable inquiry, that the property was being employed or was likely to be employed in criminal activity.

(b) A bona fide lienholder's interest that has been perfected in the manner prescribed by law prior to the seizure may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the lienholder had actual knowledge, at the time the lien was made, that the property was being employed or was likely to be employed in criminal activity. If a lienholder's interest is not subject to forfeiture under the requirements of this section, such interest shall be preserved by the court by ordering the lienholder's interest to be paid as provided in s. 932.7055.

(c) Property titled or registered between husband and wife jointly by the use of the conjunctives "and," "and/or," or "or," in the manner prescribed by law prior to the

seizure, may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the coowner either knew or had reason to know, after reasonable inquiry, that such property was employed or was likely to be employed in criminal activity.

(d) A vehicle that is rented or leased from a company engaged in the business of renting or leasing vehicles, which vehicle was rented or leased in the manner prescribed by law prior to the seizure, may not be forfeited under the Florida Contraband Forfeiture Act, and no fine, penalty, or administrative charge, other than reasonable and customary charges for towing and storage, shall be imposed by any governmental agency on the company which rented or leased the vehicle, unless the seizing agency establishes by preponderance of the evidence that the renter or lessor had actual knowledge, at the time the vehicle was rented or leased, that the vehicle was being employed or was likely to be employed in criminal activity. When a vehicle that is rented or leased from a company engaged in the business of renting or leasing vehicles is seized under the Florida Contraband Forfeiture Act, upon learning the address or phone number of the company, the seizing law enforcement agency shall, as soon as practicable, inform the company that the vehicle has been seized and is available for the company to take possession upon payment of the reasonable and customary charges for towing and storage.

(7) Any interest in, title to, or right to property titled or registered jointly by the use of the conjunctives "and," "and/or," or "or" held by a coowner, other than property held jointly between husband and wife, may not be forfeited unless the seizing agency establishes by a preponderance of the evidence that the coowner either knew, or had reason to know, after reasonable inquiry, that the property was employed or was likely to be employed in criminal activity. When the interests of each culpable coowner are forfeited, any remaining coowners shall be afforded the opportunity to purchase the forfeited interest in, title to, or right to the property from the seizing law enforcement agency. If any remaining coowner does not purchase such interest, the seizing agency may hold the property in coownership, sell its interest in the property, liquidate its interest in the property, or dispose of its interest in the property in any other reasonable manner.

(8) It is an affirmative defense to a forfeiture proceeding that the nexus between the property sought to be forfeited and the commission of any underlying violation was incidental or entirely accidental. The value of the property sought to be forfeited in proportion to any other factors must not be considered in any determination as to this affirmative defense.

## Georgia

### **GA. CODE ANN. § 16-12-100 (2009). Sexual exploitation of children; reporting violation; forfeiture; penalties**

(a) As used in this Code section, the term:

(1) "Minor" means any person under the age of 18 years.

(2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.

(3) "Producing" means producing, directing, manufacturing, issuing, or publishing.

(4) "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

(H) Defecation or urination for the purpose of sexual stimulation of the viewer; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

(5) "Visual medium" means any film, photograph, negative, slide, magazine, or other visual medium.

(b)(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to

engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct can be found or purchased.

(7) It is unlawful for any person knowingly to bring or cause to be brought into this state any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(8) It is unlawful for any person knowingly to possess or control any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(c) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the Georgia Bureau of Investigation or the law enforcement agency for the county in which such matter is submitted. Any person participating in the making of a report or causing a report to be made pursuant to this subsection or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this subsection is made in good faith.

(d) The provisions of subsection (b) of this Code section shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities.

(e)(1) A person who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in:

(A) Any property constituting or directly derived from gross profits or other proceeds

obtained from such offense; and

(B) Any property used, or intended to be used, to commit such offense.

(2) In any action under this Code section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(4) The provisions of subsection (u) of Code Section 16-13-49 shall apply for the disposition of any property forfeited under this subsection. In any disposition of property under this subsection, a convicted person shall not be permitted to acquire property forfeited by such person.

(f)(1) The following property shall be subject to forfeiture to the State of Georgia:

(A) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual medium in violation of this Code section;

(B) Any visual medium produced, transported, shipped, or received in violation of this Code section, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings; or

(C) Any property constituting or directly derived from gross profits or other proceeds obtained from a violation of this Code section; except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.

(2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for forfeitures under Code Section 16-13-49.

(g)(1) Except as otherwise provided in paragraph (2) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years and by a fine of not more than \$100,000.00. In the event, however, that the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

## Hawaii

### **HAW. REV. STAT. ANN. § 712A-5 (2009). Property subject to forfeiture; exemption.**

(1) The following is subject to forfeiture:

(a) Property described in a statute authorizing forfeiture;

(b) Property used or intended for use in the commission of, attempt to commit, or conspiracy to commit a covered offense, or which facilitated or assisted such activity;

(c) Any firearm which is subject to forfeiture under any other subsection of this section or which is carried during, visible, or used in furtherance of the commission, attempt to commit, or conspiracy to commit a covered offense, or any firearm found in proximity to contraband or to instrumentalities of an offense;

(d) Contraband or untaxed cigarettes in violation of chapter 245, shall be seized and summarily forfeited to the State without regard to the procedures set forth in this chapter;

(e) Any proceeds or other property acquired, maintained, or produced by means of or as a result of the commission of the covered offense;

(f) Any property derived from any proceeds which were obtained directly or indirectly from the commission of a covered offense;

(g) Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which has been established, participated in, operated, controlled, or conducted in order to commit a covered offense;

(h) All books, records, bank statements, accounting records, microfilms, tapes, computer data, or other data which are used, intended for use, or which facilitated or assisted in the commission of a covered offense, or which document the use of the proceeds of a covered offense.

(2) Except that:

(a) Real property, or an interest therein, may be forfeited under the provisions of this chapter only in cases in which the covered offense is chargeable as a felony offense under State law;

(b) No property shall be forfeited under this chapter 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 the knowledge and consent of that owner.

(c) No conveyance used by any person as a common carrier in the transaction of a

business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter and;

(d) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent.

(e) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.

## **Idaho**

### **IDAHO CODE ANN. § 37-2744A (2009). Forfeitures.**

(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, acquired, possessed or held in violation of this act or with respect to which there has been any act by any person in violation of this act;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substances or counterfeit substances in violation of this act;

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) hereof;

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, delivery, receipt, possession or concealment, for the purpose of distribution or receipt of property described in paragraph (1) or (2) hereof, but:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act;

(B) No conveyance is subject to forfeiture under this section if the owner establishes that he could not have known in the exercise of reasonable diligence that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a)(4) of this section;

(C) A forfeiture of a conveyance encumbered by a bona fide security interest is



subject to the interest of the secured party if the security interest was created without any knowledge or reason to believe that the conveyance was being used, had been used, was intended to be used, or had been intended to be used for the purpose alleged.

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this act.

(6) (A) All moneys, currency, negotiable instruments, securities or other items easily liquidated for cash, such as, but not limited to, jewelry, stocks and bonds, or other property described in paragraphs (2) and (3) hereof, found in close proximity to property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section or which has been used or intended for use in connection with the illegal manufacture, distribution, dispensing or possession of property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section;

(B) Items described in paragraph (6)(A) above or other things of value furnished or intended to be furnished by any person in exchange for a contraband controlled substance in violation of this chapter, all proceeds, including items of property traceable to such an exchange, and all moneys or other things of value used or intended to be used to facilitate any violation of this chapter, except that no property shall be forfeited under this paragraph 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 the knowledge or consent of that owner.

(7) All drug paraphernalia as defined by section 37-2701, Idaho Code.

(8) All simulated controlled substances, which are used or intended for use in violation of this chapter.

(9) All weapons, or firearms, which are used in any manner to facilitate a violation of the provisions of this chapter.

(b) Property subject to forfeiture under this chapter may be seized by the director, or any peace officer of this state, upon process issued by any district court, or magistrate's division thereof, having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal racketeering or civil forfeiture proceeding based upon a violation of this chapter;

(3) Probable cause exists to believe that the property is directly or indirectly dangerous to health or safety; or

(4) Probable cause exists to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(1) When property is seized under this section, the director or the peace officer who seized the property may:

(A) Place the property under seal;

(B) Remove the property to a place designated by it; or

(C) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(2) The peace officer who seized the property shall within five (5) days notify the director of such seizure.

(3) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted within thirty (30) days by the director or appropriate prosecuting attorney.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director, or appropriate prosecuting attorney, subject only to the orders and decrees of the district court, or magistrate's division thereof, having jurisdiction over the forfeiture proceedings. Forfeiture proceedings shall be civil actions against the property subject to forfeiture and the standard of proof shall be preponderance of the evidence.

(1) All property described in paragraphs (1), (7) and (8) of subsection (a) hereof shall be deemed contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into possession of the state, the owners of which are unknown, shall be deemed contraband and shall be summarily forfeited to the state.

(2) When property described in paragraphs (2), (3), (4), (5) and (6) of subsection (a) hereof is seized pursuant to this section, forfeiture proceedings shall be filed in the office of the clerk of the district court for the county wherein such property is seized. The procedure governing such proceedings shall be the same as that prescribed for civil proceedings by the Idaho Rules of Civil Procedure. The court shall order the property forfeited to the director, or appropriate prosecuting attorney, if he determines that such property was used, or intended for use, in violation of this chapter, or, in the case of items described in paragraph (6)(A) of subsection (a), was found in close proximity to property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section.

(3) When conveyances, including aircraft, vehicles, or vessels are seized pursuant to this section a complaint instituting forfeiture proceedings shall be filed in the office of the clerk of the district court for the county wherein such conveyance is seized.

(A) Notice of forfeiture proceedings shall be given each owner or party in interest who has a right, title, or interest which in the case of a conveyance shall be determined by the record in the Idaho transportation department or a similar department of another state if the records are maintained in that state, by serving a copy of the complaint and summons according to one (1) of the following methods:

(I) Upon each owner or party in interest by mailing a copy of the complaint and summons by certified mail to the address as given upon the records of the appropriate department.

(II) Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last known address.

(B) Within twenty (20) days after the mailing or publication of the notice, the owner of the conveyance or claimant may file a verified answer and claim to the property described in the complaint instituting forfeiture proceedings.

(C) If at the end of twenty (20) days after the notice has been mailed there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use, or intent to use, and shall order the property forfeited to the director, or appropriate prosecuting attorney, if such fact is proved.

(D) If a verified answer is filed, the forfeiture proceeding shall be set for hearing before the court without a jury on a day not less than thirty (30) days therefrom; and the proceeding shall have priority over other civil cases.

(I) At the hearing any owner who has a verified answer on file may show by competent evidence that the conveyance was not used or intended to be used in any manner described in subsection (a)(4) of this section.

(II) At the hearing any owner who has a verified answer on file may show by competent evidence that his interest in the conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a)(4) of this section.

(III) If the court finds that the property was not used or was not intended to be used in violation of this act, or is not subject to forfeiture under this act, the court shall order the property released to the owner as his right, title, or interest appears on records in the appropriate department as of the seizure.

(IV) An owner, co-owner or claimant of any right, title, or interest in the

conveyance may prove that his right, title, or interest, whether under a lien, mortgage, conditional sales contract or otherwise, was created without any knowledge or reason to believe that the conveyance was being used, had been used, was intended to be used, or had been intended to be used for the purpose alleged;

(i) In the event of such proof, the court shall order the conveyance released to the bona fide or innocent owner, purchaser, lienholder, mortgagee, or conditional sales vendor. The court may order payment of all costs incurred by the state or law enforcement agency as a result of such seizure.

(ii) If the amount due to such person is less than the value of the conveyance, the conveyance may be sold at public auction by the director or appropriate prosecuting attorney. The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the conveyance. The proceeds from such sale shall be distributed as follows in the order indicated;

1. To the bona fide or innocent owner, purchaser, conditional sales vendor, lienholder or mortgagee of the conveyance, if any, up to the value of his interest in the conveyance.

2. The balance, if any, in the following order:

A. To the director, or appropriate prosecuting attorney, for all expenditures made or incurred by it in connection with the sale, including expenditure for any necessary repairs, storage, or transportation of the conveyance, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

B. To the law enforcement agency of this state which seized the conveyance for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any conveyance seized under this act.

C. The remainder, if any, to the director for credit to the drug and driving while under the influence enforcement donation fund or to the appropriate prosecuting attorney for credit to the local drug enforcement donation fund, or its equivalent.

(iii) In any case, the director, or appropriate prosecuting attorney, may, within thirty (30) days after judgment, pay the balance due to the bona fide lienholder, mortgagee or conditional sales vendor and thereby purchase the conveyance for use to enforce this act.

(e) When property is forfeited under this section, or is received from a federal

enforcement agency, the director, or appropriate prosecuting attorney, may:

(1) Retain it for official use;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public. The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated:

(A) To the director, or prosecuting attorney on behalf of the county or city law enforcement agency, for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs, maintenance, storage or transportation, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

(B) To the law enforcement agency of this state which seized the property for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under this act.

(C) The remainder, if any, to the director for credit to the drug and driving while under the influence enforcement donation fund or to the appropriate prosecuting attorney for credit to the local agency's drug enforcement donation fund.

(3) Take custody of the property and remove it for disposition in accordance with law; or

(f) (1) The director or any peace officer of this state seizing any of the property described in paragraphs (1) and (2) of subsection (a) of this section shall cause a written inventory to be made and maintain custody of the same until all legal actions have been exhausted unless such property has been placed in lawful custody of a court or state or federal law enforcement agency. After all legal actions have been exhausted with respect to such property, the property shall be surrendered by the court, law enforcement agency, or person having custody of the same to the director to be destroyed pursuant to paragraph (2) hereof. The property shall be accompanied with a written inventory on forms furnished by the director.

(2) All property described in paragraphs (1) and (2) of subsection (a) which is seized or surrendered under the provisions of this act may be destroyed after all legal actions have been exhausted. The destruction shall be done under the supervision of the supervisory drug analyst of the Idaho state police, a representative of the office of the director and a representative of the state board of pharmacy. An official record listing the property destroyed and the location of destruction shall be kept on file at the office of the director.

Except, however, that the director of the Idaho state police or his designee may authorize the destruction of drug or nondrug evidence, or store those items at government expense when, in the opinion of the director or his designee, it is not reasonable to remove or transport such items from the location of the seizure for destruction. In such case, a representative sample will be removed and preserved for evidentiary purposes and, when practicable, destroyed as otherwise is in accordance with this chapter. On-site destruction of such items shall be witnessed by at least two (2) persons, one (1) of whom shall be the director or his designee who shall make a record of the destruction.

(g) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the director, or his duly 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 is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) The director shall have the authority to enter upon any land or into any dwelling pursuant to a search warrant, to cut, harvest, carry off or destroy such plants described in subsection (g) hereof.

**IDAHO CODE ANN. § 37-2802 (2009). Property subject to forfeiture.**

"Property" subject to criminal forfeiture under this chapter includes:

- (1) Real property, including things growing on, affixed to, or found on the land; and
- (2) Tangible and intangible personal property, including rights, privileges, interests, claims and securities.

## **Illinois**

**720 ILL. COMP. STAT. 5/10A-15 (2010). (Repealed effective January 1, 2010) Forfeiture of property.**

Sec. 10A-15. (a) A person who commits the offense of involuntary servitude, involuntary servitude of a minor, or trafficking of persons for forced labor or services under Section 10A-10 of this Code [720 ILCS 5/10A-10] shall forfeit to the State of Illinois any profits or proceeds and any interest or property he or she has acquired or maintained in violation of Section 10A-10 of this Code that the sentencing court determines, after a forfeiture hearing, to have been acquired or maintained as a result of

maintaining a person in involuntary servitude or participating in trafficking in persons for forced labor or services.

(b) The court shall, upon petition by the Attorney General or State's Attorney at any time following sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this Section. At the forfeiture hearing the people shall have the burden of establishing, by a preponderance of the evidence, that property or property interests are subject to forfeiture under this Section.

(c) In any action brought by the People of the State of Illinois under this Section, wherein any restraining order, injunction, or prohibition or any other action in connection with any property or interest subject to forfeiture under this Section is sought, the circuit court presiding over the trial of the person or persons charged with involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor or services shall first determine whether there is probable cause to believe that the person or persons so charged have committed the offense of involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor or services and whether the property or interest is subject to forfeiture pursuant to this Section. In order to make such a determination, prior to entering any such order, the court shall conduct a hearing without a jury, wherein the People shall establish that there is: (i) probable cause that the person or persons so charged have committed the offense of involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor or services and (ii) probable cause that any property or interest may be subject to forfeiture pursuant to this Section. The hearing may be conducted simultaneously with a preliminary hearing, if the prosecution is commenced by information or complaint, or by motion of the People, at any stage in the proceedings. The court may accept a finding of probable cause at a preliminary hearing following the filing of an information charging the offense of involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor or services or the return of an indictment by a grand jury charging the offense of involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor or services as sufficient evidence of probable cause as provided in item (i) of this subsection (c). Upon such a finding, the circuit court shall enter such restraining order, injunction or prohibition, or shall take such other action in connection with any such property or other interest subject to forfeiture, as is necessary to insure that such property is not removed from the jurisdiction of the court, concealed, destroyed, or otherwise disposed of by the owner of that property or interest prior to a forfeiture hearing under this Section. The Attorney General or State's Attorney shall file a certified copy of the restraining order, injunction, or other prohibition with the recorder of deeds or registrar of titles of each county where any such property of the defendant may be located. No such injunction, restraining order, or other prohibition shall affect the rights of any bona fide purchaser, mortgagee, judgment creditor, or other lien holder arising prior to the date of such filing. The court may, at any time, upon verified petition by the defendant or an innocent owner or innocent bona fide third party lien holder who neither had knowledge of, nor consented to, the illegal act or omission, conduct a hearing to release all or portions of any such property or interest that the court previously determined to be subject to forfeiture or subject to any restraining order, injunction, or

prohibition or other action. The court may release such property to the defendant or innocent owner or innocent bona fide third party lien holder who neither had knowledge of, nor consented to, the illegal act or omission for good cause shown and within the sound discretion of the court.

(d) Upon conviction of a person of involuntary servitude, involuntary servitude of a minor, or trafficking in persons for forced labor or services, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this Section upon such terms and conditions as the court shall deem proper.

(e) All monies forfeited and the sale proceeds of all other property forfeited and seized under this Section shall be distributed as follows:

(1) one-half shall be divided equally among all State agencies and units of local government whose officers or employees conducted the investigation that resulted in the forfeiture; and

(2) one-half shall be deposited into the Violent Crime Victims Assistance Fund and targeted to services for victims of the offenses of involuntary servitude, involuntary servitude of a minor, and trafficking of persons for forced labor or services.

### **720 ILL. COMP. STAT. 5/11-20.1A (2010). (Repealed January 1, 2010) Forfeitures.**

Sec. 11-20.1A. (a) A person who commits the offense of keeping a place of juvenile prostitution, exploitation of a child, or child pornography under Section 11-17.1, 11-19.2, 11-20.1, or 11-20.3 of this Code [720 ILCS 5/11-17.1, 720 ILCS 5/11-19.2, 720 ILCS 5/11-20.1, or 720 ILCS 5/11-20.3] shall forfeit to the State of Illinois:

(1) Any profits or proceeds and any interest or property he or she has acquired or maintained in violation of Section 11-17.1, 11-19.2, 11-20.1, or 11-20.3 of this Code [720 ILCS 5/11-17.1, 720 ILCS 5/11-19.2, 720 ILCS 5/11-20.1, or 720 ILCS 5/11-20.3] that the sentencing court determines, after a forfeiture hearing, to have been acquired or maintained as a result of keeping a place of juvenile prostitution, exploitation of a child, child pornography, or aggravated child pornography.

(2) Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise that he or she has established, operated, controlled, or conducted in violation of Section 11-17.1, 11-19.2, 11-20.1, or 11-20.3 of this Code [720 ILCS 5/11-17.1, 720 ILCS 5/11-19.2, 720 ILCS 5/11-20.1, or 720 ILCS 5/11-20.3] that the sentencing court determines, after a forfeiture hearing, to have been acquired or maintained as a result of keeping a place of juvenile prostitution, exploitation of a child, child pornography, or aggravated child pornography.

(3) Any computer that contains a depiction of child pornography in any encoded or decoded format in violation of Section 11-20.1 of this Code [720 ILCS 5/11-20.1]. For



purposes of this paragraph (3), "computer" has the meaning ascribed to it in Section 16D-2 of this Code [720 ILCS 5/16D-2].

(b)(1) The court shall, upon petition by the Attorney General or State's Attorney at any time following sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this Section. At the forfeiture hearing the people shall have the burden of establishing, by a preponderance of the evidence, that property or property interests are subject to forfeiture under this Section.

(2) In any action brought by the People of the State of Illinois under this Section, wherein any restraining order, injunction or prohibition or any other action in connection with any property or interest subject to forfeiture under this Section is sought, the circuit court presiding over the trial of the person or persons charged with keeping a place of juvenile prostitution, exploitation of a child or child pornography shall first determine whether there is probable cause to believe that the person or persons so charged have committed the offense of keeping a place of juvenile prostitution, exploitation of a child or child pornography and whether the property or interest is subject to forfeiture pursuant to this Section. In order to make such a determination, prior to entering any such order, the court shall conduct a hearing without a jury, wherein the People shall establish that there is: (i) probable cause that the person or persons so charged have committed the offense of keeping a place of juvenile prostitution, exploitation of a child or child pornography and (ii) probable cause that any property or interest may be subject to forfeiture pursuant to this Section. Such hearing may be conducted simultaneously with a preliminary hearing, if the prosecution is commenced by information or complaint, or by motion of the People, at any stage in the proceedings. The court may accept a finding of probable cause at a preliminary hearing following the filing of an information charging the offense of keeping a place of juvenile prostitution, exploitation of a child or child pornography or the return of an indictment by a grand jury charging the offense of keeping a place of juvenile prostitution, exploitation of a child or child pornography as sufficient evidence of probable cause as provided in item (i) above. Upon such a finding, the circuit court shall enter such restraining order, injunction or prohibition, or shall take such other action in connection with any such property or other interest subject to forfeiture, as is necessary to insure that such property is not removed from the jurisdiction of the court, concealed, destroyed or otherwise disposed of by the owner of that property or interest prior to a forfeiture hearing under this Section. The Attorney General or State's Attorney shall file a certified copy of such restraining order, injunction or other prohibition with the recorder of deeds or registrar of titles of each county where any such property of the defendant may be located. No such injunction, restraining order or other prohibition shall affect the rights of any bona fide purchaser, mortgagee, judgment creditor or other lienholder arising prior to the date of such filing. The court may, at any time, upon verified petition by the defendant or an innocent owner or innocent bona fide third party lienholder who neither had knowledge of, nor consented to, the illegal act or omission, conduct a hearing to release all or portions of any such property or interest which the court previously determined to be subject to forfeiture or subject to any restraining order, injunction, or prohibition or other action. The court may release such property to the defendant or innocent owner or innocent bona fide third party lienholder who neither had knowledge

of, nor consented to, the illegal act or omission for good cause shown and within the sound discretion of the court.

A forfeiture under this Section may be commenced by the Attorney General or a State's Attorney.

(3) Upon conviction of a person of keeping a place of juvenile prostitution, exploitation of a child or child pornography, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this Section upon such terms and conditions as the court shall deem proper.

(4) The Attorney General is authorized to sell all property forfeited and seized pursuant to this Section, unless such property is required by law to be destroyed or is harmful to the public, and, after the deduction of all requisite expenses of administration and sale, shall distribute the proceeds of such sale, along with any moneys forfeited or seized, in accordance with subsection (c) of this Section.

(c) All monies forfeited and the sale proceeds of all other property forfeited and seized under this Section shall be distributed as follows:

(1) One-half shall be divided equally among all State agencies and units of local government whose officers or employees conducted the investigation which resulted in the forfeiture; and

(2) One-half shall be deposited in the Violent Crime Victims Assistance Fund.

## **Indiana**

### **IND. CODE ANN. § 34-24-1-1 (2009). Property which may be seized [as amended by P.L.1-2009].**

First of 2 versions of this section

(a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(ii) Dealing in methamphetamine (IC 35-48-4-1.1).

(iii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iv) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(v) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(vi) Dealing in a counterfeit substance (IC 35-48-4-5).

(vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(viii) Possession of methamphetamine (IC 35-48-4-6.1).

(ix) Dealing in paraphernalia (IC 35-48-4-8.5).

(x) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-10-1.5.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(B) Dealing in methamphetamine (IC 35-48-4-1.1).

(C) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(D) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(10).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment, including computer equipment and cellular telephones, used for or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(13) Property used by a person to commit counterfeiting or forgery in violation of IC

35-43-5-2.

(14) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.

(B) Property constituting, derived from, or traceable to the gross proceeds that the person obtained directly or indirectly as a result of the offense.

(15) Except as provided in subsection (e), a motor vehicle used by a person who operates the motor vehicle:

(A) while intoxicated, in violation of IC 9-30-5-1 through IC 9-30-5-5, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction; or

(B) on a highway while the person's driver's license is suspended in violation of IC 9-24-19-2 through IC 9-24-19-4, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction.

If a court orders the seizure of a motor vehicle under this subdivision, the court shall transmit an order to the bureau of motor vehicles recommending that the bureau not permit a motor vehicle to be registered in the name of the person whose motor vehicle was seized until the person possesses a current driving license (as defined in IC 9-13-2-41).

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a

preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

- (1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a narcotic drug).
- (2) IC 35-48-4-1.1 (dealing in methamphetamine).
- (3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).
- (4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- (5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a Class A felony, Class B felony, or Class C felony.

(7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class A felony, Class B felony, or Class C felony.

- (8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

(e) A motor vehicle operated by a person who is not:

- (1) an owner of the motor vehicle; or
- (2) the spouse of the person who owns the motor vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15).

**IND. CODE ANN. § 34-24-1-1 (2009). Property which may be seized [as amended by P.L.143-2009].**

Second of 2 versions of this section

(a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(ii) Dealing in methamphetamine (IC 35-48-4-1.1).

(iii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iv) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(v) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(vi) Dealing in a counterfeit substance (IC 35-48-4-5).

(vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(viii) Possession of methamphetamine (IC 35-48-4-6.1).

(ix) Dealing in paraphernalia (IC 35-48-4-8.5).

(x) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-10-1.5.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is

in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

(A) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(B) Dealing in methamphetamine (IC 35-48-4-1.1).

(C) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(D) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(10).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.



(10) Any equipment, including computer equipment and cellular telephones, used for or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(13) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(14) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.

(B) Property constituting, derived from, or traceable to the gross proceeds that the person obtained directly or indirectly as a result of the offense.

(15) Except as provided in subsection (e), a motor vehicle used by a person who operates the motor vehicle:

(A) while intoxicated, in violation of IC 9-30-5-1 through IC 9-30-5-5, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction; or

(B) on a highway while the person's driver's license is suspended in violation of IC 9-24-19-2 through IC 9-24-19-4, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction.

If a court orders the seizure of a motor vehicle under this subdivision, the court shall

transmit an order to the bureau of motor vehicles recommending that the bureau not permit a motor vehicle to be registered in the name of the person whose motor vehicle was seized until the person possesses a current driving license (as defined in IC 9-13-2-41).

(16) The following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or IC 30-2-13-38(f).

(B) Property constituting, derived from, or traceable to the gross proceeds that a person obtains directly or indirectly as a result of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or IC 30-2-13-38(f).

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a narcotic drug).

(2) IC 35-48-4-1.1 (dealing in methamphetamine).

(3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a Class A felony, Class B felony, or Class C felony.

(7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

(e) A motor vehicle operated by a person who is not:

(1) an owner of the motor vehicle; or

(2) the spouse of the person who owns the motor vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15).

## **Iowa**

### **IOWA CODE § 809A.4 (2008). Property subject to forfeiture.**

The following are subject to forfeiture:

1. All controlled substances, raw materials, controlled substance analogs, counterfeit controlled substances, imitation controlled substances, or precursor substances, that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the laws of this state.

2. *a.* All property, except as provided in paragraph "*b*", including the whole of any lot or tract of land and any appurtenances or improvements to real property, including homesteads that are otherwise exempt from judicial sale pursuant to section 561.16, that is either:

(1) Furnished or intended to be furnished by a person in an exchange that constitutes conduct giving rise to forfeiture.

(2) Used or intended to be used in any manner or part to facilitate conduct giving rise to forfeiture.

*b.* If the only conduct giving rise to forfeiture is a violation of section 124.401, subsection 5, real property is not subject to forfeiture and other property subject to forfeiture pursuant to paragraph "*a*", subparagraph (2), may be forfeited only pursuant to section 809A.14.

3. All proceeds of any conduct giving rise to forfeiture.

4. All weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture.

5. Any interest or security in, claim against, or property or contractual right of any kind affording a source of control over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct or through conduct giving rise to forfeiture.

6. a. Any property of a person up to the value of property which is either of the following:

(1) Described in subsection 2 that the person owned or possessed for the purpose of a use described in subsection 2.

(2) Described in subsection 3 and is proceeds of conduct engaged in by the person or for which the person is criminally responsible.

b. Property described in this subsection may be seized for forfeiture pursuant to a constructive seizure or an actual seizure pursuant to section 809A.6. Actual seizure may only be done pursuant to a seizure warrant issued on a showing, in addition to the showing of probable cause for the forfeiture of the subject property, that the subject property is not available for seizure for reasons described in section 809A.15, subsection 1, and that the value of the property to be seized is not greater than the total value of the subject property, or pursuant to a constructive seizure. If property of a defendant up to the total value of all interests in the subject property is not seized prior to final judgment in an action under this section, the remaining balance shall be ordered forfeited as a personal judgment against the defendant.

7. As used in this section, "*facilitate*" means to have a substantial connection between the property and the conduct giving rise to forfeiture.

## **Kansas**

### **KAN. STAT. ANN. § 60-4105 (2008). Property Subject to Forfeiture.**

The following property is subject to forfeiture:

(a) Property described in a statute authorizing forfeiture;

(b) except as otherwise provided by law, all property, of every kind, including, but not limited to, cash and negotiable instruments and the whole of any lot or tract of land and any appurtenances or improvements to real property that is either:

(1) Furnished or intended to be furnished by any person in an exchange that constitutes

conduct giving rise to forfeiture; or

(2) used or intended to be used in any manner to facilitate conduct giving rise to forfeiture, including, but not limited to, any computer, computer system, computer network or any software or data owned by the defendant which is used during the commission of a violation of K.S.A. 2008 Supp. 21-4019, and amendments thereto;

(c) all proceeds of any conduct giving rise to forfeiture;

(d) all property of every kind, including, but not limited to, cash and negotiable instruments derived from or realized through any proceeds which were obtained directly or indirectly from the commission of an offense listed in K.S.A. 60-4104, and amendments thereto;

(e) all weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture;

(f) ownership or interest in real property that is a homestead, to the extent the homestead was acquired with proceeds from conduct giving rise to forfeiture;

(g) contraband, which shall be seized and summarily forfeited to the state without regard to the procedures set forth in this act;

(h) all controlled substances, raw materials, controlled substance analogs, counterfeit substances, or imitation controlled substances that have been manufactured, distributed, dispensed, possessed, or acquired in violation of the laws of this state; and

(i) any items bearing a counterfeit mark.

### **KAN. STAT. ANN. § 60-4106 (2008). Exemptions.**

(a) All property, including all interests in property, described in K.S.A. 60-4105, is subject to forfeiture subject to all mortgages, deeds of trust, financing statements or security agreements properly of record prior to the forfeiture held by an interest holder except that property specifically exempted hereunder:

(1) No real property or conveyance, or an interest therein, may be forfeited under this act unless the offense or conduct giving rise to forfeiture constitutes a felony.

(2) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this act unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act.

(3) No property is subject to forfeiture under this act if the owner or interest holder acquired the property before or during the conduct giving rise to the property's forfeiture,

and such owner or interest holder:

(A) Did not know and could not have reasonably known of the act or omission or that it was likely to occur; or

(B) acted reasonably to prevent the conduct giving rise to forfeiture.

(4) No property is subject to forfeiture if the owner or interest holder acquired the property after the conduct giving rise to the property's forfeiture, including acquisition of proceeds of conduct giving rise to forfeiture, and the owner or interest holder acquired the property in good faith, for value and was not knowingly taking part in an illegal transaction.

(5) (A) An interest in property acquired in good faith by an attorney as reasonable payment or to secure payment for legal services in a criminal matter relating to violations of this act or for the reimbursement of reasonable expenses related to the legal services is exempt from forfeiture unless before the interest was acquired the attorney knew of a judicial determination of probable cause that the property is subject to forfeiture.

(B) The state bears the burden of proving that an exemption claimed under this section is not applicable. Evidence made available by the compelled disclosure of confidential communications between an attorney and a client other than nonprivileged information relating to attorney fees, is not admissible to satisfy the state's burden of proof.

(b) Notwithstanding subsection (a), property is not exempt from forfeiture, even though the owner or interest holder lacked knowledge or reason to know that the conduct giving rise to property's forfeiture had occurred or was likely to occur, if the:

(1) Person whose conduct gave rise to the property's forfeiture had authority to convey the property of the person claiming the exemption to a good faith purchaser for value at the time of the conduct;

(2) owner or interest holder is criminally responsible for the conduct giving rise to the property's forfeiture, whether or not there is a prosecution or conviction; or

(3) owner or interest holder acquired the property with notice of the property's actual or constructive seizure for forfeiture under this act, or with reason to believe that the property was subject to forfeiture under this act.

(c) Prior to final judgment in a judicial forfeiture proceeding, a court shall limit the scope of a proposed forfeiture to the extent the court finds the effect of the forfeiture is grossly disproportionate to the nature and severity of the owner's conduct including, but not limited to, a consideration of any of the following factors:

(1) The gain received or expected to be received by an owner from conduct that allows forfeiture;

- (2) the value of the property subject to forfeiture;
- (3) the extent to which the property actually facilitated the criminal conduct;
- (4) the nature and extent of the owner's knowledge of the role of others in the conduct that allows forfeiture of the property and efforts of the owner to prevent the conduct; and
- (5) the totality of the circumstances regarding the investigation.

## **Kentucky**

### **KY. REV. STAT. ANN. § 218A.410 (2010). Property subject to forfeiture.**

(1) The following are subject to forfeiture:

(a) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state.

(b) Controlled substances listed in Schedule I, 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.

(c) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state. The failure, upon demand by the law enforcement agency or its 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 is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(d) All substances, machinery, or devices used for the manufacture, packaging, repackaging, or marking, and books, papers, and records, and all vehicles owned and used by the seller or distributor for the manufacture, distribution, sale, or transfer of substances in violation of KRS 218A.350 shall be seized and forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband.

(e) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held, or acquired in violation of this chapter.

(f) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting

any controlled substance in violation of this chapter.

(g) All property which is used, or intended for use, as a container for property described in paragraph (e) or (f) of this subsection.

(h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:

1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;

4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana.

(i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

(j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph.

(k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of



this chapter excluding any misdemeanor offense relating to marijuana, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.

(2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in the forfeiture proceeding that he is a subsequent bona fide purchaser for value without actual or constructive notice of the act or omission giving rise to the forfeiture.

(3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or, has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this section.

## **Louisiana**

### **LA. REV. STAT. ANN. § 14:54.4 (2010). Forfeitures.**

A. The following contraband shall be subject to seizure and forfeiture and no property right shall exist therein:

(1) Any instrument, device, chemical or explosive substance which is arranged, manufactured, mixed or so made up as to be a device or substance which, when exposed to heat, humidity, air or foreign elements will after prolongation of time burst into flame, ignite, cause to be ignited or explode, or raw materials used or intended to be used in the manufacture of such instrument, device, chemical or explosive substance;

(2) Any bomb as proscribed and defined in R.S. 14:54.3;

(3) All property which is used, or intended for use as a container for property described in Paragraphs (1) and (2) of this Subsection;

(4) All conveyances including aircraft, vehicles, or vessels, which are used or intended for use, to transport, or in any manner to facilitate the transportation, possession, production, manufacture, dispensation or concealment of property described in Paragraphs (1) and (2) of this Subsection, except that:

(a) No conveyance used by any person as a common carrier in transaction of business as a common carrier shall be seized or forfeited under the provisions of this Section

unless it shall appear that the owner or other person in charge of such conveyance was knowingly and intentionally a consenting party or privy to a violation of R.S. 14:54.2 and 54.3; and

(b) No vessel, vehicle or aircraft shall be seized or forfeited under the provisions of this Section by reason of any act or omission established by the owner thereof to have been committed or omitted, without the owner's knowledge, consent, or permission by any person other than such owner while such vessel, vehicle or aircraft was in the possession of such person.

B. Any property subject to forfeiture under this Section may be seized under process issued by any court of record having jurisdiction over the property except that seizure without such process may be made when:

(1) The seizure is incident to an arrest with probable cause or a search under a valid search warrant or with probable cause or an inspection under valid administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this Section.

C. After seizure, all conveyances taken or detained under this Section shall be immediately returned to the owner when the charges of violating R.S. 14:54.2 and 54.3 in which the conveyance was involved are dismissed by the district attorney or dismissed by the district court, on the basis of a preliminary hearing or other preliminary proceedings, or when the accused is acquitted following a trial in the district court of the parish in which the violation is alleged to have occurred. Vehicles seized under this Section shall be forfeited upon:

(1) A showing by the district attorney of a conviction for a violation under which seizure is authorized by this Section; and

(2) A showing by the district attorney that the seizure was made incident to an arrest with probable cause or a search under a valid search warrant or with probable cause or an inspection under a valid administrative inspection warrant; and

(3) A showing by the district attorney that the owner of the conveyance was knowingly and intentionally a consent party or privy to a violation of R.S. 14:54.2 or R.S. 14:54.3.

D. Property taken or detained under this Section shall not be repleviable, but shall be deemed to be in the custody of the law enforcement agency making the seizure subject only to the orders and decrees of the court of record having jurisdiction thereof. Whenever property is seized under the provisions of this Section, the law enforcement officer or employee making the seizure shall:

(1) Place the property under seal;

(2) Remove the property to a place designated by the valid warrant under which such property was seized; or

(3) Request that the Department of Public Safety take custody of the property and remove it to an appropriate location for disposition in accordance with law.

E. Whenever property is forfeited under this Section, the law enforcement agency making the seizure may:

(1) Retain the property for official use except the conveyances described in R.S. 14:54.4(A)(4); or

(2) Sell any forfeited property, which is not required to be destroyed by law and which is not harmful to the public, provided that the proceeds be used for payment of all costs of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; or

(3) Request that the Department of Public Safety take custody of the property and remove it for disposition in accordance with law.

F. Any law enforcement agency is empowered to authorize, or designate officers, agents, or other persons to carry out the seizure provisions of this Section.

G. The district attorney within whose jurisdiction the vessel, vehicle, or aircraft or other property has been seized because of its use, attempted use in violation of R.S. 14:54.2 or R.S. 14:54.3, shall proceed against the vessel, vehicle, or aircraft or other property as provided in Subsection C in the district court having jurisdiction over the offense and have it forfeited to the use of or the sale by the law enforcement agency making the seizure.

H. Where it appears by affidavit that the residence of the owner of the vessel, vehicle, aircraft or other property is out of state or is unknown to the district attorney, the court shall appoint an attorney at law to represent the absent owner, against whom the rule shall be tried contradictorily within ten days after its filing. This affidavit may be made by the district attorney or one of his assistants. The attorney so appointed may waive service and citation of the petition or rule but shall not waive time nor any legal defenses.

I. Whenever the head of the law enforcement agency effecting the forfeiture deems it necessary or expedient to sell the property forfeited, rather than retain it for the use of the law enforcement agency, he shall cause an advertisement to be inserted in the official journal of the parish where the seizure was made, and after ten days, shall dispose of said property at public auction to the highest bidder, for cash and without appraisal.

J. The proceeds of all funds collected from any such sale, except as provided in R.S. 14:54.4(E)(2), shall be paid into the state treasury.

K. The rights of any mortgage or lien holder or holder of a vendor's privilege on the property seized shall not be affected by the seizure.

**LA. REV. STAT. ANN. § 40:2604 (2010). Property subject to forfeiture.**

The following property is subject to seizure and forfeiture as contraband, derivative contraband, or property related to contraband under the provision of Section 4 of Article I of the Constitution of Louisiana:

(1) All controlled substances, raw materials, or controlled substance analogues that have been manufactured, distributed, dispensed, possessed, or acquired in violation of R.S. 40:961 et seq.

(2) All property that is either:

(a) Furnished or intended to be furnished by any person in exchange for a controlled substance in violation of R.S. 40:961 et seq.

(b) Used or intended to be used in any manner to facilitate conduct giving rise to forfeiture, provided that a conveyance subject to forfeiture solely in connection with conduct in violation of R.S. 40:961 et seq. may be forfeited only pursuant to the provisions of this Chapter.

(3) Proceeds of any conduct giving rise to forfeiture.

(4) All weapons possessed, used, or available for use in any manner to facilitate conduct giving rise to forfeiture.

(5) Any interest or security in, claim against, or property or contractual right of any kind affording a source of control over any enterprise that a person has established, operated, controlled, conducted, or participated in the conduct of through conduct giving rise to forfeiture.

## **Maine**

**ME. REV. STAT. ANN. TIT. 15, § 5821 (2009). Subject Property.**

Except as provided in section 5821-A, the following are subject to forfeiture to the State and no property right may exist in them:

1. SCHEDULED DRUGS. All scheduled drugs which have been manufactured, made, created, grown, cultivated, sold, bartered, traded, furnished for consideration, furnished, distributed, dispensed, possessed or otherwise acquired in violation of any law of this State, any other state or of the United States;

2. MATERIALS RELATED TO SCHEDULED DRUGS. All raw materials, products and equipment of any kind which are used or intended for use in manufacturing, compounding, processing, delivering, cultivating, growing or otherwise creating any scheduled drug in violation of any law of this State, any other state or the United States;

3. OTHER PROPERTY. All property which is used or intended for use as a container for property described in subsection 1 or 2, and all property which is used or intended for use to defend, protect, guard or secure any property or items described in subsection 1 or 2;

3-A. FIREARMS AND OTHER WEAPONS. Law enforcement officers may seize all firearms and dangerous weapons that they may find in any lawful search for scheduled drugs in which scheduled drugs are found. Except for those seized weapons listed in a petition filed in the Superior Court pursuant to section 5822, all weapons seized, after notice and opportunity for hearing must be forfeited to the State by the District Court 90 days after a list of the weapons and drugs seized is filed in the District Court in the district in which the weapons and drugs were seized. A weapon need not be forfeited if the owner appears prior to the declaration of forfeiture and satisfies the court, by a preponderance of evidence, of all of the following:

A. That the owner had a possessory interest in the weapon at the time of the seizure sufficient to exclude every person involved with the seized drugs or every person at the site of the seizure;

B. That the owner had no knowledge of or involvement with the drugs and was not at the site of the seizure; and

C. That the owner had not given any involved person permission to possess or use the weapon.

Post-hearing procedures are as provided in section 5822.

A confiscated or forfeited handgun that was confiscated or forfeited because it was used to commit a homicide must be destroyed by the State unless the handgun was stolen and the rightful owner was not the person who committed the homicide, in which case the handgun must be returned to the owner if ascertainable. For purposes of this subsection, "handgun" means a firearm, including a pistol or revolver, designed to be fired by use of a single hand.

4. CONVEYANCES. All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport or in any manner to facilitate the transportation, sale, trafficking, furnishing, receipt, possession or concealment of property described in subsection 1 or 2, except that:

A. No conveyance used by any person as a common carrier in the

transaction of business as a common carrier may be forfeited under this section, unless it appears that the owner or other person in charge of the conveyance was a consenting party or had knowledge of that violation of law; and

B. No conveyance may be forfeited under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted by any person other than the owner while the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this State, any other state or of the United States;

4-A. CONVEYANCES USED IN VIOLATION OF LITTER LAWS. All conveyances, including aircraft, watercraft, vehicles, vessels, containers or cranes that are used, or attempted to be used, to dump more than 500 pounds or more than 100 cubic feet of litter in violation of Title 17, section 2264-A;

5. RECORDS. All books, records and research, including formulas, microfilm, tapes and data, which are used or intended for use in violation of Title 17-A, chapter 45;

6. MONEY INSTRUMENTS. Except as provided in paragraph A, all money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a scheduled drug in violation of Title 17-A, chapter 45; all proceeds traceable to such an exchange and all money, negotiable instruments and securities used or intended to be used to facilitate any violation of Title 17-A, chapter 45;

A. No property may be forfeited under this subsection, 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 the knowledge or consent of that owner;

7. REAL PROPERTY. Except as provided in paragraph A, all real property, including any right, title or interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended for use, in any manner or part, to commit or to facilitate the commission of a violation of Title 17-A, section 1103, 1105-A, 1105-B or 1105-C, which is a Class A, Class B or Class C crime, with the exception of offenses involving marijuana.

A. Property may not be forfeited under this subsection, to the extent of an interest of an owner, by reason of an act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner. When an owner of property that is that person's primary residence proves by a preponderance of the evidence that the owner is the spouse or minor child of the coowner of the primary residence who has used or intended to use the

residence, in any manner or part, to commit or facilitate the commission of a violation of Title 17-A, section 1103, 1105-A, 1105-B or 1105-C, the State shall bear the burden of proving knowledge or consent of the spouse or minor child by a preponderance of the evidence;

7-A. COMPUTERS. Except as provided in paragraph A, all computers, as defined in Title 17-A, section 431, subsection 2, and computer equipment, including, but not limited to, printers and scanners, that are used or are attempted to be used in violation of Title 17-A, section 259.

A. Property may not be forfeited under this subsection, to the extent of the interest of an owner, by reason of an act or omission established by that owner to have been committed or omitted without the knowledge or consent of the owner; and

8. REPEALED. Laws 2007, c. 684, § C-1, eff. Jan. 1, 2009.

9. ASSETS IN HUMAN TRAFFICKING OFFENSES. All assets, including money instruments, personal property and real property, used or intended for use in or traceable to a human trafficking offense as defined in Title 5, section 4701, subsection 1, paragraph C.

A forfeiture under this section of property encumbered by a perfected bona fide security interest is subject to the interest of the secured party if the party neither had knowledge of nor consented to the act or omission upon which the right of forfeiture is based.

## Maryland

### **MD. CODE ANN., CRIM. PROC. § 12-102 (2010). Property subject to forfeiture.**

(a) In general. -- The following are subject to forfeiture:

(1) controlled dangerous substances manufactured, distributed, dispensed, acquired, or possessed in violation of the Controlled Dangerous Substances law;

(2) raw materials, products, and equipment used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled dangerous substance in violation of the Controlled Dangerous Substances law;

(3) property used or intended for use as a container for property described in item (1) or (2) of this subsection;

(4) except as provided in § 12-103 of this subtitle, conveyances, including aircraft, vehicles, or vessels used or intended to be used to transport, or facilitate the transportation, sale, receipt, possession, or concealment of property described in item (1) or (2) of this subsection;

(5) books, records, and research, including formulas, microfilm, tapes, and data used or intended for use in violation of the Controlled Dangerous Substances law;

(6) subject to subsection (b) of this section, money or weapons used or intended to be used in connection with the unlawful manufacture, distribution, dispensing, or possession of a controlled dangerous substance or controlled paraphernalia;

(7) drug paraphernalia under § 5-619 of the Criminal Law Article;

(8) controlled paraphernalia under § 5-620 of the Criminal Law Article;

(9) except as provided in § 12-103 of this subtitle, the remaining balance of the proceeds of a sale by a holder of an installment sale agreement under § 12-626 of the Commercial Law Article of goods seized under this subtitle;

(10) except as provided in § 12-103 of this subtitle, real property; and

(11) everything of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Controlled Dangerous Substances law, all proceeds traceable to the exchange, and all negotiable instruments and securities used, or intended to be used, to facilitate any violation of the Controlled Dangerous Substances law.

(b) Money and weapons. --

(1) (i) Money or weapons that are found in close proximity to a contraband controlled dangerous substance, controlled paraphernalia, or forfeitable records of the importation, manufacture, or distribution of controlled dangerous substances are contraband and presumed to be forfeitable.

(ii) A claimant of money or weapons has the burden to rebut the presumption.

(2) All rights in, title to, and interest in the money or weapons immediately shall vest in:

(i) the State, if the seizing authority was a State unit;

(ii) the county in which the money or weapons were seized, if the seizing authority was a county law enforcement unit, including a sheriff's office; or



(iii) the municipal corporation in which the money or weapons were seized, if the seizing authority was a law enforcement unit of a municipal corporation.

(3) The money or weapons may be returned to the claimant only as this title provides.

**MD. CODE ANN., CRIM. PROC. § 12-103 (2010). Conditions excluding property from forfeiture.**

(a) No knowledge of violation. -- Property or an interest in property described in § 12-102(a)(4), (10), and (11) of this subtitle may not be forfeited if the owner establishes by a preponderance of the evidence that the violation of the Controlled Dangerous Substances law was committed without the owner's actual knowledge.

(b) No consent or privity to violation. --

(1) A conveyance used as a common carrier or vehicle for hire in the transaction of business as a common carrier or vehicle for hire may not be seized or forfeited under this title unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to a violation of the Controlled Dangerous Substances law.

(2) A conveyance may not be forfeited under this title for an act or omission that the owner shows was committed or omitted by a person other than the owner while the person other than the owner possessed the conveyance in criminal violation of federal law or the law of any state.

(c) No forfeiture of real property for drug or drug paraphernalia violation. -- An owner's interest in real property may not be forfeited for a violation of § 5-601, § 5-619, or § 5-620 of the Criminal Law Article.

(d) Principal family residence -- In general. --

(1) Except as provided in paragraph (2) of this subsection, real property used as the principal family residence may not be forfeited under this subtitle unless one of the owners of the real property was convicted of a violation of §§ 5-602 through 5-609, §§ 5-612 through 5-614, § 5-617, § 5-618, or § 5-628 of the Criminal Law Article or of an attempt or conspiracy to violate Title 5 of the Criminal Law Article.

(2) Without a conviction, a court may order a forfeiture of real property used as the principal family residence if the owner of the family residence:

(i) fails to appear for a required court appearance; and

(ii) fails to surrender to the jurisdiction of the court within 180 days after the required court appearance.

(e) Principal family residence -- Use by spouses. -- Real property used as the principal family residence by a husband and wife and held by the husband and wife as tenants by

the entirety may not be forfeited unless:

(1) the property was used in connection with a violation of §§ 5-602 through 5-609, §§ 5-612 through 5-614, § 5-617, § 5-618, or § 5-628 of the Criminal Law Article or with an attempt or conspiracy to violate Title 5 of the Criminal Law Article; and

(2) both the husband and wife are convicted of a violation of §§ 5-602 through 5-609, §§ 5-612 through 5-614, § 5-617, § 5-618, or § 5-628 of the Criminal Law Article or of an attempt or conspiracy to violate Title 5 of the Criminal Law Article.

## **Massachusetts**

### **MASS. ANN. LAWS CH. 94C, § 47 (2010). Forfeitures.**

(a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(1) All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(2) All materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing, or exporting any controlled substance in violation of this chapter.

(3) All conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal, or otherwise facilitate the manufacture, dispensing, distribution of or possession with intent to manufacture, dispense or distribute, a controlled substance in violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty.

(4) All books, records, and research, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this chapter.

(5) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J, or forty.

(6) All drug paraphernalia.

(6A) [Stricken]

(7) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part, to commit or to facilitate the commission of a violation of any provision of section thirty-two, thirty-two A, thirty-two B, thirty-two C, thirty-two D, thirty-two E, thirty-two F, thirty-two G, thirty-two I, thirty-two J or forty.

(8) All property which is used, or intended for use, as a container for property described in subparagraph (1) or (2).

(9) No forfeiture under this section shall extinguish a perfected security interest held by a creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.

(b) Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), (7) and (8) of subsection (a) shall, upon motion of the attorney general or district attorney, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Property subject to forfeiture under subparagraph (1) of subsection (a) shall be destroyed, regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise.

(c) The court shall order forfeiture of all conveyances subject to the provisions of subparagraph (3) and of all real property subject to the provisions of subparagraph (7) of subsection (a) of this section, except as follows:

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this chapter.

(2) No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of the commonwealth, or of any state.

(3) No conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances. Proof that the conveyance or real property was used to facilitate the unlawful dispensing, manufacturing, or distribution of, or possession with intent unlawfully to manufacture, dispense or distribute, controlled substances on three or more different dates shall be prima facie evidence that the conveyance or real property was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances.

(4) No conveyance or real property used to facilitate the unlawful manufacturing, dispensing, or distribution of, or the possession with intent unlawfully to manufacture, dispense, or distribute marihuana or a substance, not itself a controlled substance, containing any marihuana shall be forfeited if the net weight of the substance so manufactured, dispensed, or distributed or possessed with intent to manufacture, dispense or distribute, is less than ten pounds in the aggregate.

(d) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture under the provisions of subparagraphs (3), (5), and (7) of subsection (a). Such petition shall be filed in the court having jurisdiction over said conveyance, real property, monies or other things of value or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. In all such suits where the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5), or (7) of said subsection (a). The owner of said conveyance or real property, or other person claiming thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (i). The court shall order the commonwealth to give notice by certified or registered mail to the owner of said conveyance, real property, moneys or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than two weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said conveyance, real property, moneys or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, said final order shall provide for disposition of said conveyance, real property, moneys or any other thing of value by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance thereof shall be distributed as further provided in this section.

The final order of the court shall provide that said moneys and the proceeds of any such sale shall be distributed equally between the prosecuting district attorney or attorney general and the city, town or state police department involved in the seizure. If more than one department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the fifty percent equitably among these departments.

There shall be established within the office of the state treasurer separate special law enforcement trust funds for each district attorney and for the attorney general. All such

monies and proceeds received by any prosecuting district attorney or attorney general shall be deposited in such a trust fund and shall then be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement purposes as the district attorney or attorney general deems appropriate. The district attorney or attorney general may expend up to ten percent of the monies and proceeds for drug rehabilitation, drug education and other anti-drug or neighborhood crime watch programs which further law enforcement purposes. Any program seeking to be an eligible recipient of said funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities, itemized expenditures, and board of directors of such program. Within ninety days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of drug rehabilitation, drug education, and other anti-drug or neighborhood crime watch programs.

All such moneys and proceeds received by any police department shall be deposited in a special law enforcement trust fund and shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police of such city or town, or the colonel of state police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.

(e) Any officer, department, or agency having custody of any property subject to forfeiture under this chapter or having disposed of said property shall keep and maintain full and complete records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.

(f) (1) During the pendency of the proceedings the court may issue at the request of the commonwealth ex parte any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody, including but not limited to an order that the commonwealth remove the property if possible, and safeguard it in a secure location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account; and, that a substitute custodian be appointed to manage such property or a business enterprise. Property taken or detained under this section shall not be repleviable, but once seized shall be deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to the orders and decrees of the court having jurisdiction thereof. Process for seizure of said property shall issue only upon a

showing of probable cause, and the application therefor and the issuance, execution, and return thereof shall be subject to the provisions of chapter two hundred and seventy-six, so far as applicable.

(2) There shall be created within the division of capital asset management and maintenance an office of seized property management to which a district attorney or the attorney general may refer any real property, and any furnishings, equipment and related personal property located therein, for which seizure is sought. The office of seized property management shall be authorized to preserve and manage such property in a reasonable fashion and to dispose of such property upon a judgment ordering forfeiture issued pursuant to the provisions of subsection (d), and to enter into contracts to preserve, manage and dispose of such property. The office of seized property management may receive initial funding from the special law enforcement trust funds of the attorney general and each district attorney established pursuant to subsection (d) and shall subsequently be funded by a portion of the proceeds of each sale of such managed property to the extent provided as payment of reasonable expenses in subsection (d).

(g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized by any police officer and summarily forfeited to the commonwealth.

(h) The failure, upon demand by a police officer of the person in occupancy or in control of land or premises upon which the species of plants are growing to produce an appropriate registration, or proof that he is a holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) The owner of any real property which is the principal domicile of the immediate family of the owner and which is subject to forfeiture under this section may file a petition for homestead exemption with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition exempting from forfeiture an amount allowed under section one of chapter one hundred and eighty-eight. The value of the balance of said principal domicile, if any, shall be forfeited as provided in this section. Such homestead exemption may be acquired on only one principal domicile for the benefit of the immediate family of the owner.

(j) A forfeiture proceeding affecting the title to real property or the use and occupation thereof or the buildings thereon shall not have any effect except against the parties thereto and persons having actual notice thereof, until a memorandum containing the names of the parties to such proceeding, the name of the town where the affected real property lies, and a description of such real property sufficiently accurate for identification is recorded in the registry of deeds for the county or district where the real property lies. At any time after a judgment on the merits, or after the discontinuance, dismissal or other final disposition is recorded by the court having jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such judgment, discontinuance, dismissal or

other final disposition, and such certificate shall be recorded in the registry in which the original memorandum recorded pursuant to this section was filed.

## Michigan

### **MICH. COMP. LAWS SERV. § 333.7521 (2010). Property subject to forfeiture; "imitation controlled substance" defined.**

Sec. 7521. (1) The following property is subject to forfeiture:

(a) A prescription form, controlled substance, an imitation controlled substance, a controlled substance analogue, or other drug that has been manufactured, distributed, dispensed, used, possessed, or acquired in violation of this article.

(b) A raw material, product, or equipment of any kind that is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance, a controlled substance analogue, or other drug in violation of this article; or a raw material, product, or equipment of any kind that is intended for use in manufacturing, compounding, processing, delivering, importing, or exporting an imitation controlled substance in violation of section 7341.

(c) Property that is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) Except as provided in subparagraphs (i) to (iv), a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision (a) or (b):

(i) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this article.

(ii) A conveyance is not subject to forfeiture by reason of any act or omission established by the owner of that conveyance to have been committed or omitted without the owner's knowledge or consent.

(iii) A conveyance is not subject to forfeiture for a violation of section 7403(2)(c) or (d), section 7404, or section 7341(4).

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission.

(e) Books, records, and research products and materials, including formulas, microfilm, tapes, and data used, or intended for use, in violation of this article.

(f) Any thing of value that is furnished or intended to be furnished in exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article that is traceable to an exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article or that is used or intended to be used to facilitate any violation of this article including, but not limited to, money, negotiable instruments, or securities. To the extent of the interest of an owner, a thing of value is not

subject to forfeiture under this subdivision by reason of any act or omission that is established by the owner of the item to have been committed or omitted without the owner's knowledge or consent. Any money that is found in close proximity to any property that is subject to forfeiture under subdivision (a), (b), (c), (d), or (e) is presumed to be subject to forfeiture under this subdivision. This presumption may be rebutted by clear and convincing evidence.

(g) Any other drug paraphernalia not described in subdivision (b) or (c).

(2) As used in this section, "imitation controlled substance" means that term as defined in section 7341.

## **Minnesota**

### **MINN. STAT. ANN. § 609.5311 (2009). Forfeiture of property associated with controlled substances.**

Subdivision 1. Controlled substances.

All controlled substances that were manufactured, distributed, dispensed, or acquired in violation of chapter 152 are subject to forfeiture under this section, except as provided in subdivision 3 and section 609.5316.

Subd. 2. Associated property.

(a) All property, real and personal, that has been used, or is intended for use, or has in any way facilitated, in whole or in part, the manufacturing, compounding, processing, delivering, importing, cultivating, exporting, transporting, or exchanging of contraband or a controlled substance that has not been lawfully manufactured, distributed, dispensed, and acquired is subject to forfeiture under this section, except as provided in subdivision 3.

(b) The Department of Corrections Fugitive Apprehension Unit shall not seize real property for the purposes of forfeiture under paragraph (a).

Subd. 3. Limitations on forfeiture of certain property associated with controlled substances.

(a) A conveyance device is subject to forfeiture under this section only if the retail value of the controlled substance is \$25 or more and the conveyance device is associated with a felony-level controlled substance crime.

(b) Real property is subject to forfeiture under this section only if the retail value of the controlled substance or contraband is \$1,000 or more.

(c) Property used by any person as a common carrier in the transaction of business as a



common carrier is subject to forfeiture under this section only if the owner of the property is a consenting party to, or is privy to, the use or intended use of the property as described in subdivision 2.

(d) Property is subject to forfeiture under this section only if its owner was privy to the use or intended use described in subdivision 2, or the unlawful use or intended use of the property otherwise occurred with the owner's knowledge or consent.

(e) Forfeiture under this section of a conveyance device or real property encumbered by a bona fide security interest is subject to the interest of the secured party unless the secured party had knowledge of or consented to the act or omission upon which the forfeiture is based. A person claiming a security interest bears the burden of establishing that interest by clear and convincing evidence.

(f) Forfeiture under this section of real property is subject to the interests of a good faith purchaser for value unless the purchaser had knowledge of or consented to the act or omission upon which the forfeiture is based.

(g) Notwithstanding paragraphs (d), (e), and (f), property is not subject to forfeiture based solely on the owner's or secured party's knowledge of the unlawful use or intended use of the property if: (1) the owner or secured party took reasonable steps to terminate use of the property by the offender; or (2) the property is real property owned by the parent of the offender, unless the parent actively participated in, or knowingly acquiesced to, a violation of chapter 152, or the real property constitutes proceeds derived from or traceable to a use described in subdivision 2.

(h) The Department of Corrections Fugitive Apprehension Unit shall not seize a conveyance device or real property, for the purposes of forfeiture under paragraphs (a) to (g).

Subd. 4. Records; proceeds.

(a) All books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used, or intended for use in the manner described in subdivision 2 are subject to forfeiture.

(b) All property, real and personal, that represents proceeds derived from or traceable to a use described in subdivision 2 is subject to forfeiture.

**MINN. STAT. ANN. § 609.5312 (2009). Forfeiture of property associated with designated offenses.**

Subdivision 1. Property subject to forfeiture.

(a) All personal property is subject to forfeiture if it was used or intended for use to commit or facilitate the commission of a designated offense. All money and other property, real and personal, that represent proceeds of a designated offense, and all

contraband property, are subject to forfeiture, except as provided in this section.

(b) The Department of Corrections Fugitive Apprehension Unit shall not seize real property for the purposes of forfeiture under paragraph (a).

Subd. 1a. Computers and related property subject to forfeiture.

(a) As used in this subdivision, "property" has the meaning given in section 609. 87, subdivision 6.

(b) When a computer or a component part of a computer is used or intended for use to commit or facilitate the commission of a designated offense, the computer and all software, data, and other property contained in the computer are subject to forfeiture unless prohibited by the Privacy Protection Act, United States Code, title 42, sections 2000aa to 2000aa-12, or other state or federal law.

(c) Regardless of whether a forfeiture action is initiated following the lawful seizure of a computer and related property, if the appropriate agency returns hardware, software, data, or other property to the owner, the agency may charge the owner for the cost of separating contraband from the computer or other property returned, including salary and contract costs. The agency may not charge these costs to an owner of a computer or related property who was not privy to the act or omission upon which the seizure was based, or who did not have knowledge of or consent to the act or omission, if the owner:

(1) requests from the agency copies of specified legitimate data files and provides sufficient storage media; or

(2) requests the return of a computer or other property less data storage devices on which contraband resides.

Subd. 2. Limitations on forfeiture of property associated with designated offenses.

(a) Property used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section only if the owner of the property is a consenting party to, or is privy to, the commission of a designated offense.

(b) Property is subject to forfeiture under this section only if the owner was privy to the act or omission upon which the forfeiture is based, or the act or omission occurred with the owner's knowledge or consent.

(c) Property encumbered by a bona fide security interest is subject to the interest of the secured party unless the party had knowledge of or consented to the act or omission upon which the forfeiture is based. A person claiming a security interest bears the burden of establishing that interest by clear and convincing evidence.

(d) Notwithstanding paragraphs (b) and (c), property is not subject to forfeiture based

solely on the owner's or secured party's knowledge of the act or omission upon which the forfeiture is based if the owner or secured party took reasonable steps to terminate use of the property by the offender.

Subd. 3. Vehicle forfeiture for prostitution offenses.

(a) A motor vehicle is subject to forfeiture under this subdivision if it was used to commit or facilitate, or used during the commission of, a violation of section 609.324 or a violation of a local ordinance substantially similar to section 609.324. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense. Except as otherwise provided in this subdivision, a forfeiture under this subdivision is governed by sections 609.531, 609.5312, and 609.5313.

(b) When a motor vehicle subject to forfeiture under this subdivision is seized in advance of a judicial forfeiture order, a hearing before a judge or referee must be held within 96 hours of the seizure. Notice of the hearing must be given to the registered owner within 48 hours of the seizure. The prosecuting authority shall certify to the court, at or in advance of the hearing, that it has filed or intends to file charges against the alleged violator for violating section 609.324 or a local ordinance substantially similar to section 609.324. After conducting the hearing, the court shall order that the motor vehicle be returned to the owner if:

(1) the prosecutor has failed to make the certification required by paragraph (b);

(2) the owner of the motor vehicle has demonstrated to the court's satisfaction that the owner has a defense to the forfeiture, including but not limited to the defenses contained in subdivision 2; or

(3) the court determines that seizure of the vehicle creates or would create an undue hardship for members of the owner's family.

(c) If the defendant is acquitted or prostitution charges against the defendant are dismissed, neither the owner nor the defendant is responsible for paying any costs associated with the seizure or storage of the vehicle.

(d) A vehicle leased or rented under section 168.27, subdivision 4, for a period of 180 days or less is not subject to forfeiture under this subdivision.

(e) For purposes of this subdivision, seizure occurs either:

(1) at the date at which personal service of process upon the registered owner is made; or

(2) at the date when the registered owner has been notified by certified mail at the address listed in the Minnesota Department of Public Safety computerized motor vehicle registration records.

(f) The Department of Corrections Fugitive Apprehension Unit shall not participate in paragraphs (a) to (e).

Subd. 4. Vehicle forfeiture for fleeing peace officer.

(a) A motor vehicle is subject to forfeiture under this subdivision if it was used to commit a violation of section 609.487 and endanger life or property. A motor vehicle is subject to forfeiture under this subdivision only if the offense is established by proof of a criminal conviction for the offense. Except as otherwise provided in this subdivision, a forfeiture under this subdivision is governed by sections 609.531, 609.5312, 609.5313, and 609.5315, subdivision 6.

(b) When a motor vehicle subject to forfeiture under this subdivision is seized in advance of a judicial forfeiture order, a hearing before a judge or referee must be held within 96 hours of the seizure. Notice of the hearing must be given to the registered owner within 48 hours of the seizure. The prosecuting authority shall certify to the court, at or in advance of the hearing, that it has filed or intends to file charges against the alleged violator for violating section 609.487. After conducting the hearing, the court shall order that the motor vehicle be returned to the owner if:

(1) the prosecutor has failed to make the certification required by this paragraph;

(2) the owner of the motor vehicle has demonstrated to the court's satisfaction that the owner has a defense to the forfeiture, including but not limited to the defenses contained in subdivision 2; or

(3) the court determines that seizure of the vehicle creates or would create an undue hardship for members of the owner's family.

(c) If the defendant is acquitted or the charges against the defendant are dismissed, neither the owner nor the defendant is responsible for paying any costs associated with the seizure or storage of the vehicle.

(d) A vehicle leased or rented under section 168.27, subdivision 4, for a period of 180 days or less is not subject to forfeiture under this subdivision.

(e) A motor vehicle that is an off-road recreational vehicle as defined in section 169A.03, subdivision 16, or a motorboat as defined in section 169A.03, subdivision 13, is not subject to paragraph (b).

(f) For purposes of this subdivision, seizure occurs either:

(1) at the date at which personal service of process upon the registered owner is made; or

(2) at the date when the registered owner has been notified by certified mail at the address

listed in the Minnesota Department of Public Safety computerized motor vehicle registration records.

(g) The Department of Corrections Fugitive Apprehension Unit shall not seize a motor vehicle for the purposes of forfeiture under paragraphs (a) to (f).

## **Mississippi**

### **MISS. CODE ANN. § 41-29-153 (2010). Forfeitures.**

(a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this article or in violation of Article 5 of this chapter;

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

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) of this subsection;

(4) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in paragraph (1) or (2) of this subsection, however:

A. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this article;

B. No conveyance is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the conveyance is a leased or rented conveyance, then the confiscating authority shall notify the owner of the conveyance within five (5) days of the confiscation;

C. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;

D. A conveyance is not subject to forfeiture for a violation of Section 41-29-139(c)(2)(A), (B) or (C);

(5) All money, deadly weapons, books, records, and research products and materials, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this article or in violation of Article 5 of this chapter;

(6) All drug paraphernalia as defined in Section 41-29-105(v); and

(7) Everything of value, including real estate, furnished, or intended to be furnished, in exchange for a controlled substance in violation of this article, all proceeds traceable to such an exchange, and all monies, negotiable instruments, businesses or business investments, securities, and other things of value used, or intended to be used, to facilitate any violation of this article. All monies, coin and currency found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture or distribution of controlled substances are presumed to be forfeitable under this paragraph; the burden of proof is upon claimants of the property to rebut this presumption.

A. No property shall be forfeited under the provisions of subsection (a)(7) of this section, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

B. Neither personal property encumbered by a bona fide security interest nor real estate encumbered by a bona fide mortgage, deed of trust, lien or encumbrance shall be forfeited under the provisions of subsection (a)(7) of this section, to the extent of the interest of the secured party or the interest of the mortgagee, holder of a deed of trust, lien or encumbrance by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent.

(b) Property subject to forfeiture may be seized by the bureau, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, highway patrolmen, the board, or the State Board of Pharmacy upon process issued by any appropriate court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

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

(3) The bureau, the board, local law enforcement officers, enforcement officers of the Mississippi Department of Transportation, or highway patrolmen, or the State Board of Pharmacy have probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The bureau, local law enforcement officers, enforcement officers of the Mississippi

Department of Transportation, highway patrolmen, the board, or the State Board of Pharmacy have probable cause to believe that the property was used or is intended to be used in violation of this article.

(c) Controlled substances listed in Schedule I of Section 41-29-113 that are possessed, transferred, sold, or offered for sale in violation of this article are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in the said Schedule I, 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.

(d) Species of plants from which controlled substances in Schedules I and II of Sections 41-29-113 and 41-29-115 may be derived which have been planted or cultivated in violation of this article, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(e) The failure, upon demand by the bureau and/or local law enforcement officers, or their authorized agents, or highway patrolmen designated by the bureau, the board, or the State Board of Pharmacy, 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 is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

**MISS. CODE ANN. § 41-29-153 (2010). Forfeiture of vehicles used in drive-by shootings or bombings.**

(1) All vehicles which are used in any manner to facilitate the discharging of a firearm or the throwing or ejection of a bomb or explosive device in violation of Section 97-3-109 shall be subject to forfeiture, however:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Section 97-3-109 and this section;

(b) No conveyance is subject to forfeiture under this section by reason of any act or omission proved by the owner thereof to have been committed or omitted without his knowledge or consent; if the confiscating authority has reason to believe that the conveyance is a leased or rented conveyance, then the confiscating authority shall notify the owner of the conveyance within five (5) days of the confiscation;

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

(2) Except as otherwise provided in subsection (16), when any property is seized pursuant to subsection (1), proceedings under this section shall be instituted promptly.

(3) A petition for forfeiture shall be filed promptly in the name of the State of Mississippi, the county or the municipality and may be filed in the county in which the seizure is made, the county in which the criminal prosecution is brought or the county in which the owner of the seized property is found. Forfeiture proceedings may be brought in (a) the circuit court, or (b) the county court if a county court exists in the county and the value of the seized property is within the jurisdictional limits of the county court as set forth in Section 9-9-21, Mississippi Code of 1972, or (c) the youth court in the case of a person adjudicated delinquent where the underlying basis for the delinquency is a violation of Section 97-3-109, Mississippi Code of 1972. A copy of such petition shall be served upon the following persons by service of process in the same manner as in civil cases:

(a) The owner of the property, if address is known;

(b) Any secured party who has registered his lien or filed a financing statement as provided by law, if the identity of such secured party can be ascertained by the local law enforcement agency by making a good faith effort to ascertain the identity of such secured party as described in subsections (4), (5), (6), (7) and (8) of this section;

(c) Any other bona fide lienholder or secured party or other person holding an interest in the property in the nature of a security interest of whom the local law enforcement agency has actual knowledge; and

(d) Any person in possession of property subject to forfeiture at the time that it was seized.

(4) If the property is a motor vehicle susceptible of titling under the Mississippi Motor Vehicle Title Law and if there is any reasonable cause to believe that the vehicle has been titled, the local law enforcement agency shall make inquiry of the State Tax Commission as to what the records of the State Tax Commission show as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest which affects the vehicle.

(5) If the property is a motor vehicle and is not titled in the State of Mississippi, then the local law enforcement agency shall attempt to ascertain the name and address of the person in whose name the vehicle is licensed, and if the vehicle is licensed in a state which has in effect a certificate of title law, the local law enforcement agency shall make inquiry of the appropriate agency of that state as to what the records of the agency show as to who is the record owner of the vehicle and who, if anyone, holds any lien, security interest or other instrument in the nature of a security device which affects the vehicle.

(6) In the event the answer to an inquiry states that the record owner of the property is any person other than the person who was in possession of it when it was seized, or states that any person holds any lien, encumbrance, security interest or other interest which affects the property, the local law enforcement agency shall cause any record owner and also any lienholder, secured party or other person who holds an interest in the property in



the nature of a security interest which affects the property to be named in the petition of forfeiture and to be served with process in the same manner as in civil cases.

(7) If the owner of the property cannot be found and served with a copy of the petition of forfeiture, or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, the local law enforcement agency shall file with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of \_\_\_\_\_", filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall contain the other requisites prescribed in Section 11-33-41, Mississippi Code of 1972, and shall be served as provided in Section 11-33-37, Mississippi Code of 1972, for publication of notice for attachments at law.

(8) No proceedings instituted pursuant to the provisions of this section shall proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. Any answer received from an inquiry required by subsections (4) through (5) of this section shall be introduced into evidence at the hearing.

(9) Except as otherwise provided in subsection (16), an owner of property that has been seized pursuant to subsection (1) shall file an answer within thirty (30) days after the completion of service of process. If an answer is not filed, the court shall hear evidence that the property is subject to forfeiture and forfeit the property to the local law enforcement agency. If an answer is filed, a time for hearing on forfeiture shall be set within thirty (30) days of filing the answer or at the succeeding term of court, if court would not be in progress within thirty (30) days after filing the answer. Provided, however, that upon request by the local law enforcement agency or the owner of the property, the court may postpone said forfeiture hearing to a date past the time any criminal action is pending against said owner.

(10) If the owner of the property has filed an answer denying that the property is subject to forfeiture, then the burden is on the petitioner to prove that the property is subject to forfeiture. However, if an answer has not been filed by the owner of the property, the petition for forfeiture may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture. The standard of proof placed upon the petitioner in regard to property forfeited under the provisions of Section 97-3-109 and this section shall be by a preponderance of the evidence.

(11) At the hearing any claimant of any right, title or interest in the property may prove his lien, encumbrance, security interest or other interest in the nature of a security interest to be bona fide and created without knowledge or consent that the property was to be used so as to cause the property to be subject to forfeiture.

(12) If it is found that the property is subject to forfeiture, then the judge shall forfeit the

property to the local law enforcement agency. However, if proof at the hearing discloses that the interest of any bona fide lienholder, secured party or other person holding an interest in the property in the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to him. If such interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the local law enforcement agency.

(13) All other property which is forfeited under this section shall be liquidated and, after deduction of court costs and the expenses of liquidation, the proceeds shall be divided and deposited as follows:

(a) In the event only one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, fifty percent (50%) of the proceeds shall be forwarded to the State Treasurer and deposited in the General Fund of the state and fifty percent (50%) of the proceeds shall be deposited and credited to the budget of the participating law enforcement agency.

(b) In the event more than one (1) law enforcement agency participates in the underlying criminal case out of which the forfeiture arises, fifty percent (50%) of the proceeds shall be deposited and credited to the budget of the law enforcement agency whose officers initiated the criminal case and fifty percent (50%) shall be divided equitably between or among the other participating law enforcement agencies, and shall be deposited and credited to the budgets of the participating law enforcement agencies. In the event that the other participating law enforcement agencies cannot agree on the division of their fifty percent (50%), a petition shall be filed by any one (1) of them in the court in which the civil forfeiture case is brought and the court shall make an equitable division.

(14) All other property that has been forfeited shall, except as otherwise provided, be sold at a public auction for cash by the chief law enforcement officer of the initiating law enforcement agency, or his designee, to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale, in a newspaper having a general circulation in the jurisdiction in which said law enforcement agency is located. Such notices shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale shall be disposed of as follows:

(a) To any bona fide lienholder, secured party or other party holding an interest in the property in the nature of a security interest, to the extent of his interest; and

(b) The balance, if any, remaining after deduction of all storage, court costs and expenses of liquidation shall be divided, forwarded and deposited in the same manner set out in subsection (13) of this section.

(15) The State Tax Commission shall issue a certificate of title to any person who purchases property under the provisions of this section when a certificate of title is required under the laws of this state.

(16) When any property the value of which does not exceed Five Thousand Dollars (\$ 5,000.00) is seized pursuant to subsection (1), the property may be forfeited by the administrative forfeiture procedures provided for in subsections (16) through (22).

(17) The attorney for the seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, by certified mail, return receipt requested, to all persons who are required to be notified.

(18) In the event that notice of intention to forfeit the seized property administratively cannot be given as provided in subsection (17) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.

(19) Notice pursuant to subsections (17) and (18) of this section shall include the following information:

(a) A description of the property;

(b) The approximate value of the property;

(c) The date and place of the seizure;

(d) The connection between the property and the violation of Section 97-3-109;

(e) The instructions for filing a request for judicial review; and

(f) A statement that the property will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.

(20) Persons claiming an interest in the seized property may initiate judicial review of the seizure and proposed forfeiture by filing a request for judicial review with the attorney for the seizing law enforcement agency, within thirty (30) days after receipt of the certified letter or within thirty (30) days after the first publication of notice, whichever is applicable.

(21) If no request for judicial review is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject property and the forfeited property shall be used, distributed or disposed of in accordance with the provisions of this section.

(22) Upon receipt of a timely request for judicial review, the attorney for the seizing law enforcement agency shall promptly file a petition for forfeiture and proceed as provided in subsections (3) through (15).

## **Missouri**

### **MO. ANN. STAT. § 513.607 (2009). Property subject to forfeiture -- procedure -- report required, when, contents -- annual state auditor's report, contents -- violations, penalty.**

1. All property of every kind, including cash or other negotiable instruments, used or intended for use in the course of, derived from, or realized through criminal activity is subject to civil forfeiture. Civil forfeiture shall be had by a civil procedure known as a CAFA forfeiture proceeding.
2. A CAFA forfeiture proceeding shall be governed by the Missouri rules of court, rules of civil procedure, except to the extent that special rules of procedure are stated herein.
3. Any property seized by a law enforcement officer or agent shall not be disposed of pursuant to section 542.301, RSMo, or by the uniform disposition of unclaimed property act, sections 447.500 through 447.595, RSMo, unless the CAFA proceeding involving the seized property does not result in a judgment of forfeiture.
4. In cases where the property is abandoned or unclaimed, an in rem CAFA forfeiture proceeding may be instituted by petition by the prosecuting attorney of the county in which the property is located or seized by the attorney general's office. The proceeding may be commenced before or after seizure of the property.
5. In lieu of, or in addition to, an in rem proceeding under subsection 4 of this section, the prosecuting attorney or attorney general may bring an in personam action for the forfeiture of property, which may be commenced by petition before or after the seizure of property.
6. (1) If the petition is filed before seizure, it shall state what property is sought to be forfeited, that the property is within the jurisdiction of the court, the grounds for forfeiture, and the names of all persons known to have or claim an interest in the property. The court shall determine ex parte whether there is reasonable cause to believe that the property is subject to forfeiture and that notice to those persons having or claiming an interest in the property prior to seizure would cause the loss or destruction of the property. If the court finds that reasonable cause does not exist to believe the property is subject to forfeiture, it shall dismiss the proceeding. If the court finds that reasonable cause does exist to believe the property is subject to forfeiture but there is not reasonable cause to believe that prior notice would result in loss or destruction, it shall order service

on all persons known to have or claim an interest in the property prior to a further hearing on whether a writ of seizure should issue. If the court finds that there is reasonable cause to believe that the property is subject to forfeiture and to believe that prior notice would cause loss or destruction, it shall without any further hearing or notice issue a writ of seizure directing the sheriff of the county or other authorized law enforcement agency where the property is found to seize it.

(2) Seizure may be effected by a law enforcement officer authorized to enforce the criminal laws of this state prior to the filing of the petition and without a writ of seizure if the seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to believe the property is subject to forfeiture and will be lost or destroyed if not seized. Within four days of the date of seizure, such seizure shall be reported by said officer to the prosecuting attorney of the county in which the seizure is effected or the attorney general; and if in the opinion of the prosecuting attorney or attorney general forfeiture is warranted, the prosecuting attorney or attorney general shall, within ten days after receiving notice of seizure, file a petition for forfeiture. The petition shall state, in addition to the information required in subdivision (1) of this subsection, the date and place of seizure. The burden of proof will be on the investigative agency to prove all allegations contained in the petition.

7. After the petition is filed or the seizure effected, whichever is later, every person known to have or claim an interest in the property shall be served, if not previously served, with a copy of the petition and a notice of seizure in the manner provided by the Missouri rules of court and rules of civil procedure. Service by publication may be ordered upon any party whose whereabouts cannot be determined or if there be unknown parties.

8. The prosecuting attorney or attorney general to whom the seizure is reported shall report annually by January thirty-first for the previous calendar year all seizures. Such report shall include the date, time, and place of seizure, the property seized, the estimated value of the property seized, the person or persons from whom the property was seized, the criminal charges filed, and the disposition of the seizure, forfeiture and criminal actions. The report shall be made to the director of the Missouri department of public safety and shall be considered an open record. The prosecuting attorney or attorney general shall submit a copy of the report to the state auditor at the time the report is made to the director of the department of public safety.

9. The state auditor shall make an annual report compiling the data received from law enforcement, prosecuting attorneys and the attorney general, and shall submit the report regarding seizures for the previous calendar year to the general assembly annually by February twenty-eighth.

10. Intentional or knowing failure to comply with any reporting requirement contained in this section shall be a class A misdemeanor, punishable by a fine of up to one thousand dollars.

## Montana

### **MONT. CODE ANN. § 44-12-102 (2009). Things subject to forfeiture.**

- (1) The following are subject to forfeiture:
- (a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;
  - (b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 60 grams;
  - (c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);
  - (d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels, that are used or intended for use in any manner to facilitate the commission of a violation of Title 45, chapter 9;
  - (e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;
  - (f) all drug paraphernalia as defined in 45-10-101;
  - (g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9, all proceeds traceable to an exchange, and all money, negotiable instruments, and securities used or intended to be used to facilitate a violation of Title 45, chapter 9;
  - (h) any personal property constituting or derived from proceeds obtained directly or indirectly from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison; and
  - (i) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner or part to commit or facilitate the commission of or that is derived from or maintained by the proceeds resulting from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison. An owner's interest in real property is not subject to forfeit by reason of any act or omission unless it is proved that the act or omission was the owner's or was with the owner's actual knowledge or express consent.

(2) (a) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) A conveyance is not subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without the owner's knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) A conveyance or container is not subject to forfeiture under this section if it was used or intended for use in transporting less than 60 grams of marijuana.

## **Nebraska**

### **NEB. REV. STAT. ANN. § 28-431 (2010). Seized without warrant; subject to forfeitures; disposition; manner; when; accepted as evidence; court costs and expenses.**

(1) The following shall be seized without warrant by an officer of the Division of Drug Control or by any peace officer and the same shall be subject to forfeiture: (a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of the Uniform Controlled Substances Act; (b) all raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, administering, delivering, importing, or exporting any controlled substance in violation of the act; (c) all property which is used, or is intended for use, as a container for property described in subdivisions (a) and (b) of this subsection; (d) all drug paraphernalia defined in section 28-439; (e) all books, records, and research, including, but not limited to, formulas, microfilm, tapes, and data, which are used, or intended for use, in violation of the act; (f) all conveyances including, but not limited to, aircraft, vehicles, or vessels which are used, or intended for use, in transporting any controlled substance with intent to manufacture, distribute, deliver, dispense, export, or import such controlled substance in violation of the act; and (g) all money used, or intended to be used, to facilitate a violation of the act.

(2) Any property described in subdivision (1)(f) of this section which is used, or intended for use, to transport any property described in subdivision (1)(a) or (b) of this section is hereby declared to be a common nuisance, and any peace officer having probable cause to believe that such property is so used, or intended for such use, shall make a search thereof with or without a warrant.

(3) All money that a law enforcement agency proves was furnished by such agency shall be returned to the agency. All property seized without a search warrant shall not be subject to a replevin action and: (a) All property described in subdivisions (1)(a) to (1)(e) of this section shall be kept by the property division of the law enforcement agency which employs the officer who seized such property for so long as it is needed as evidence in any trial; and (b) when no longer required as evidence, all property described in subdivision (1)(e) of this section shall be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct, and all property described in subdivisions (1)(a), (b), (c), and (d) of this section, that has been used or is intended to be used in violation of the act, when no longer needed as evidence shall be destroyed by the law enforcement agency holding the same or turned over to the department for custody or destruction, except that a law enforcement agency may keep a small quantity of the property described in subdivisions (1)(a), (b), (c), and (d) of this section for training purposes or use in investigations. Any large quantity of property described in subdivisions (1)(a), (b), (c), and (d) of this section, whether seized under a search warrant or validly seized without a warrant, may be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct. Such an order may be given only after a proper laboratory examination and report of such property has been completed and after a hearing has been held by the court after notice to the defendant of the proposed disposition of the property. The findings in such court order as to the nature, kind, and quantity of the property so disposed of may be accepted as evidence at subsequent court proceedings in lieu of the property ordered destroyed by the court order.

(4) When any property described in subdivision (1)(f) or (g) of this section is seized, the person seizing the same shall cause to be filed, within ten days thereafter, in the district court of the county in which seizure was made, petition for disposition of such property. The proceedings shall be brought in the name of the state by the county attorney of the county in which such property was seized. The petition shall describe the property, state the name of the owner if known, allege the essential elements of the violation which is claimed to exist, and conclude with a prayer for disposition. The county attorney shall have a copy of the petition served upon the owner or any person having an interest in the property, if known, in person or by registered or certified mail at his or her last-known address. If the owner is unknown or there is a reasonable probability that there are unknown persons with interests in the property, the county attorney shall provide notice of the seizure and petition for disposition by publication once a week for four consecutive weeks in a newspaper of general circulation in the county of the seizure. At least five days shall elapse between each publication of notice.

At any time after seizure and prior to court disposition, the owner of record of such property may petition the district court of the county in which seizure was made to release such property, and the court shall order the release of the property upon a showing by the owner that he or she had no knowledge that such property was being used in violation of the Uniform Controlled Substances Act.



Any person having an interest in the property proceeded against or any person against whom civil or criminal liability would exist if such property is in violation of the act may, within thirty days after seizure, appear and file an answer or demurrer to the petition. The answer or demurrer shall allege the claimant's interest in or liability involving such property. At least thirty but not more than ninety days after seizure, there shall be a hearing before the court. If the claimant proves by a preponderance of the evidence that he or she (a) has not used or intended to use the property to facilitate an offense in violation of the act, (b) has an interest in such property as owner or lienor or otherwise, acquired by him or her in good faith, and (c) at no time had any knowledge that such property was being or would be used in, or to facilitate, the violation of the act, the court shall order that such property or the value of the claimant's interest in such property be returned to the claimant. If there are no claims, if all claims are denied, or if the value of the property exceeds all claims granted and it is shown beyond a reasonable doubt that such property was used in violation of the act, the court shall order disposition of such property at such time as the property is no longer required as evidence in any criminal proceeding. The court may order that property described in subdivision (1)(f) of this section be sold or put to official use by the confiscating agency for a period of not more than one year and that when such property is no longer necessary for official use or at the end of two years, whichever comes first, such property shall be sold. Proceeds from the sale of the property and any money described in subdivision (1)(g) of this section shall be distributed pursuant to section 28-1439.02. Official use shall mean use directly in connection with enforcement of the act.

Any court costs and fees and storage and other proper expenses shall be charged against any person intervening as claimant or owner of the property unless such person shall establish his or her claim. If a sale is ordered, the officer holding the sale shall make a return to the court showing to whom the property was sold and for what price. This return together with the court order shall authorize the county clerk to issue a title to the purchaser of the property if such title is required under the laws of this state.

## **Nevada**

### **NEV. REV. STAT. ANN. § 453.301 (2009). Property subject to forfeiture.**

The following are subject to forfeiture pursuant to NRS 179.1156 to 179.119, inclusive:

1. All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of the provisions of NRS 453.011 to 453.552, inclusive, or a law of any other jurisdiction which prohibits the same or similar conduct.
2. All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of the provisions of NRS 453.011 to 453.552, inclusive, or a law of any other jurisdiction which prohibits the same or similar conduct.

3. All property which is used, or intended for use, as a container for property described in subsections 1 and 2.

4. All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of the provisions of NRS 453.011 to 453.552, inclusive, or a law of any other jurisdiction which prohibits the same or similar conduct.

5. All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, concealment, manufacture or protection, for the purpose of sale, possession for sale or receipt of property described in subsection 1 or 2.

6. All drug paraphernalia as defined by NRS 453.554 which are used in violation of NRS 453.560; , 453.562; or 453.566 or a law of any other jurisdiction which prohibits the same or similar conduct, or of an injunction issued pursuant to NRS 453.558.

7. All imitation controlled substances which have been manufactured, distributed or dispensed in violation of the provisions of NRS 453.332; or 453.3611 to 453.3648, inclusive, or a law of any other jurisdiction which prohibits the same or similar conduct.

8. All real property and mobile homes used or intended to be used by any owner or tenant of the property or mobile home to facilitate a violation of the provisions of NRS 453.011 to 453.552, inclusive, except NRS 453.336, or used or intended to be used to facilitate a violation of a law of any other jurisdiction which prohibits the same or similar conduct as prohibited in NRS 453.011 to 453.552, inclusive, except NRS 453.336. As used in this subsection, "tenant" means any person entitled, under a written or oral rental agreement, to occupy real property or a mobile home to the exclusion of others.

9. Everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of the provisions of NRS 453.011 to 453.552, inclusive, or a law of any other jurisdiction which prohibits the same or similar conduct, all proceeds traceable to such an exchange, and all other property used or intended to be used to facilitate a violation of the provisions of NRS 453.011 to 453.552, inclusive, except NRS 453.336, or used or intended to be used to facilitate a violation of a law of any other jurisdiction which prohibits the same or similar conduct as prohibited in NRS 453.011 to 453.552, inclusive, except NRS 453.336. If an amount of cash which exceeds \$300 is found in the possession of a person who is arrested for a violation of NRS 453.337; or 453.338, then there is a rebuttable presumption that the cash is traceable to an exchange for a controlled substance and is subject to forfeiture pursuant to this subsection.

10. All firearms, as defined by NRS 202.253, which are in the actual or constructive possession of a person who possesses or is consuming, manufacturing, transporting, selling or under the influence of any controlled substance in violation of the provisions of NRS 453.011 to 453.552, inclusive, or a law of any other jurisdiction which prohibits the

same or similar conduct.

11. All computer hardware, equipment, accessories, software and programs that are in the actual or constructive possession of a person who owns, operates, controls, profits from or is employed or paid by an illegal Internet pharmacy and who violates the provisions of NRS 453.3611 to 453.3648, inclusive, or a law of any other jurisdiction which prohibits the same or similar conduct.

## **New Hampshire**

### **N.H. REV. STAT. ANN. § 318-B:17-b (2010)l Forfeiture of Items Used in Connection with Drug Offense.**

I. Interests in the following property, upon petition of the attorney general, shall be subject to forfeiture to the state and said property interest shall be vested in the state:

(a) All materials, products and equipment of any kind, including, but not limited to, firearms, scales, packaging equipment, surveillance equipment and grow lights, which are used or intended for use in procurement, manufacture, compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this chapter.

(b) Property interest in any conveyance, including but not limited to aircraft, vehicles, or vessels, which is used or intended for use in the procurement, manufacture, compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this chapter.

(c) Any moneys, coin, currency, negotiable instruments, securities or other investments knowingly used or intended for use in the procurement, manufacture, compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this chapter and all proceeds, including moneys, coin, currency, negotiable instruments, securities or other investments, and any real or personal property, traceable thereto. All moneys, coin, currency, negotiable instruments, securities and other investments found in proximity to controlled substances are presumed to be forfeitable under this paragraph. The claimant of the property shall bear the burden of rebutting this presumption.

(d) Any books, records, ledgers and research material, including formulae, microfilm, tapes and any other data which are used or intended for use in felonious violation of this chapter.

(e) Any real property, including any right, title, leasehold interest, and other interest in the whole of any lot or tract of land and any appurtenances or improvements, which real property is knowingly used or intended for use, in any manner or part, in the

procurement, manufacture, compounding, processing, concealing, trafficking, delivery or distribution of a controlled drug in felonious violation of this chapter.

I-a. The state shall have a lien on any property subject to forfeiture under this section upon seizure thereof. Upon forfeiture, the state's title to the property relates back to the date of seizure.

I-b. Property may be seized for forfeiture by any law enforcement agency designated by the department of justice, as follows:

(a) Upon process issued by any justice, associate justice or special justice of the municipal, district or superior court. The court may issue a seizure warrant on an affidavit under oath demonstrating that probable cause exists for its forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of any state or of the United States. The application for process and the issuance, execution and return of process shall be subject to applicable state law. The court may order that the property be seized and secured on such terms and conditions as are reasonable in the discretion of the court. Such order may include an order to a financial institution or to any fiduciary or bailee to require the entity to impound any property in its possession or control and not to release it except upon further order of the court. The order may be made on or in connection with a search warrant;

(b) Physically, without process on probable cause to believe that the property is subject to forfeiture under this chapter; or

(c) Constructively, without process on probable cause to believe that the property is subject to forfeiture under this chapter, by recording a notice of pending forfeiture in the registry of deeds in the county where the real property is located or at the town clerk's office where the personal property is located stating that the state intends to seek forfeiture of the identified property pursuant to this chapter.

(d) A seizure for forfeiture without process under subparagraph (b) or (c) is reasonable if made under circumstances in which a warrantless seizure or arrest would be valid in accordance with state law.

I-c. Upon seizure of any items or property interests the property shall not be subject to alienation, sequestration or attachment but is deemed to be in the custody of the department of justice subject only to the order of the court.

II. (a) Upon the seizure of any personal property under paragraph I, the person making or directing such seizure shall inventory the items or property interests and issue a copy of the resulting report to any person or persons having a recorded interest, or claiming an equitable interest in the item within 7 days of said seizure.

(b) Upon seizure of any real property under paragraph I, the person making or directing such seizure shall notify any person having a recorded interest or claiming an equitable

interest in the property within 7 days of said seizure.

(c) The seizing agency shall cause an appraisal to be made of the property as soon as possible and shall promptly send to the department of justice a written request for forfeiture. This request shall include a statement of all facts and circumstances supporting forfeiture of the property, including the names of all witnesses then known, and the appraised value of the property.

(d) The department of justice shall examine the facts and applicable law of the cases referred pursuant to subparagraph (c), and if it is probable that the property is subject to forfeiture, shall cause the initiation of administrative or judicial proceedings against the property. If upon inquiry and examination, the department of justice determines that such proceedings probably cannot be sustained or that the ends of justice do not require the institution of such proceedings, the department shall make a written report of such findings and send a copy to the seizing agency, and, if appropriate, shall also authorize and direct the release of the property.

(e) The department of justice shall, within 60 days of the seizure, either file a petition in the superior court having jurisdiction under this section or seek administrative forfeiture pursuant to RSA 318-B:17-d. If no such petition is filed or administrative procedure initiated within 60 days, the items or property interest seized shall be released or returned to the owners.

II-a. Pending forfeiture and final disposition, the law enforcement agency making the seizure shall:

(a) Place the property under seal; or

(b) Remove the property to a storage area for safekeeping; or

(c) Remove the property to a place designated by the court; or

(d) Request another agency to take custody of the property and remove it to an appropriate location within the state; or

(e) In the case of moneys, file a motion for transfer of evidence under RSA 595-A:6. Upon the court's granting of the motion the moneys shall be immediately forwarded to an interest-bearing seized asset escrow account to be administered by the attorney general. Upon resolution of the forfeiture proceeding the moneys deposited shall be transferred to the drug forfeiture fund or returned to the owners thereof as directed by the court. Unless otherwise ordered by a court in a specific case, interest on all moneys deposited in the seized asset escrow account shall be deposited annually into the drug forfeiture fund established under RSA 318-B:17-c.

III. The court may order forfeiture of all items or property interests subject to the provisions of paragraph I, except as follows:

(a) No item or property interest shall be subject to forfeiture unless the owner or owners thereof were consenting parties to a felonious violation of this chapter and had knowledge thereof.

(b) No items or property interests shall be subject to forfeiture unless involved in an offense which may be charged as a felony.

IV. (a) The department of justice may petition the superior court in the name of the state in the nature of a proceeding in rem to order forfeiture of items or property interests subject to forfeiture under the provisions of this section. Such petition shall be filed in the court having jurisdiction over any related criminal proceedings which could be brought under this chapter.

(b) Such proceeding shall be deemed a civil suit in equity in which the state shall have the burden of proving all material facts by a preponderance of the evidence and in which the owners or other persons claiming an exception pursuant to paragraph III shall have the burden of proving such exception.

(c) The court shall issue orders of notice to all persons who have a recorded interest or claim an equitable interest in said items or property interests seized under this chapter and shall schedule a hearing on the petition to be held within 90 days of the return date on said petition.

(d) At the request of any party to the forfeiture proceeding, the court may grant a continuance until the final resolution of any criminal proceedings which were brought against a party under this chapter and which arose from the transaction which gave rise to the forfeiture proceeding. No asset forfeiture may be maintained against a person's interest in property if that person has been found not guilty of the underlying felonious charge.

(e) At the hearing, the court shall hear evidence and make findings of fact and rulings of law as to whether the property is subject to forfeiture under this chapter. Except in the case of proceeds, upon a finding that the property is subject to forfeiture the court shall determine whether the forfeiture of the property is not excessive in relation to the underlying criminal offense. In making this determination the court shall consider whether in addition to any other pertinent considerations:

(1) There is a substantial connection between the property to be forfeited and the underlying drug offense;

(2) Criminal activities conducted by or through the use of the property were extensive; and

(3) The value of the property to be forfeited greatly outweighs the value of the drugs that were or would have been likely to be distributed, the costs of the investigation and

prosecution, and the harm caused by the criminal conduct.

The court shall, thereupon, make a final order, from which all parties shall have a right of appeal.

V. Final orders for forfeiture of property under this section or under RSA 318-B:17-d shall be implemented by the department of justice and shall provide for disposition of the items or property interests by the state in any manner not prohibited by law, including retention for official use by law enforcement or other public agencies or sale at public auction. The department of justice shall pay the reasonable expenses of the forfeiture proceeding, seizure, storage, maintenance of custody, advertising, court costs and notice of sale from any money forfeited and from the proceeds of any sale or public auction of forfeited items. All outstanding recorded liens on said items or property interests seized shall be paid in full upon conclusion of the court proceedings from the proceeds of any sale or public auction of forfeited items. The balance remaining shall be distributed by the department of justice as follows:

(a) Of the first \$500,000:

(1) Forty-five percent shall be returned to the fiscal officer or officers of the municipal, county, state, or federal government which provided the law enforcement agency or agencies responsible for the seizure. Moneys returned to each fiscal officer shall be deposited in a special account and shall be used primarily for meeting expenses incurred by law enforcement agencies in connection with drug-related investigations. Except as provided in RSA 31:95-b, such funds shall be available for expenditure without further appropriation by the legislative body of the municipal, county, state or federal government, and shall not be transferred or expended for any other purpose. Moneys returned to a state law enforcement agency shall be deposited in a special nonlapsing account established within the office of the state treasurer and shall be in addition to all other state appropriations to such agency;

(2) Ten percent shall be deposited into a special nonlapsing account established within the office of the state treasurer for the department of health and human services; and

(3) Forty-five percent shall be deposited in a revolving drug forfeiture fund, administered by the department of justice pursuant to RSA 318-B:17-c; and

(b) Of any balance remaining:

(1) Ten percent shall be deposited in the manner prescribed in subparagraph V(a)(2) of this section; and

(2) Ninety percent shall be deposited in the manner prescribed in subparagraph V(a)(3) of this section.

The total amount of payments made to the special account for the department of health and human services pursuant to subparagraphs V(a)(2) and V(b)(1) of this section shall not exceed \$400,000 in any fiscal year and any excess over \$400,000 which would otherwise be paid to such special account under this section shall be deposited in the general fund. The revolving drug forfeiture fund shall at no time exceed \$1,000,000. All sums in the revolving drug forfeiture fund in excess of \$1,000,000 shall be credited to the general fund.

**N.H. REV. STAT. ANN. § 633:8 Forfeiture of Items Used in Connection with Trafficking in Persons.**

I. All offenses under this section shall qualify as offenses for forfeiture and thereby upon petition of the attorney general, shall be subject to forfeiture to the state and said property interest shall be vested in the state:

(a) All materials, products, and equipment of any kind used in violation of this section.

(b) Any property interest in any conveyance used in furtherance of an act which violates this section.

(c) Any moneys, coin, currency, negotiable instruments, securities, or other investments knowingly used or intended for use in violation of this section.

(d) Any books, records, ledgers, and research material, including formulae, microfilm, tapes, and any other data which are used or intended for use in felonious violation of this section.

(e) Any real property, including any right, title, leasehold interest, and other interest in the whole of any lot or tract of land and any appurtenances or improvements, which real property is knowingly used or intended for use, in any manner or part, in felonious violation of this section.

II. The state shall have a lien on any property subject to forfeiture under this section upon seizure thereof. Upon forfeiture, the state's title to the property relates back to the date of seizure.

III. (a) Property may be seized for forfeiture by any law enforcement agency designated by the department of justice, as follows:

(1) Upon process issued by any justice, associate justice, or special justice of the district or superior court. The court may issue a seizure warrant on an affidavit under oath demonstrating that probable cause exists for its forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of any state or of the United States. The application for process and the issuance, execution, and return of process shall be subject to applicable state law. The court may order that the property be seized and secured on such terms and conditions as are reasonable in the discretion of the court. Such order may include an order to a financial institution or to any fiduciary or



bailee to require the entity to impound any property in its possession or control and not to release it except upon further order of the court. The order may be made on or in connection with a search warrant;

(2) Physically, without process on probable cause to believe that the property is subject to forfeiture under this section; or

(3) Constructively, without process on probable cause to believe that the property is subject to forfeiture under this section, by recording a notice of pending forfeiture in the registry of deeds in the county where the real property is located or at the town clerk's office where the personal property is located stating that the state intends to seek forfeiture of the identified property pursuant to this section.

(b) A seizure for forfeiture without process under subparagraph (a)(2) or (a)(3) shall be reasonable if made under circumstances in which a warrantless seizure or arrest would be valid in accordance with state law.

IV. Upon seizure of any items or property interests the property shall not be subject to alienation, sequestration, or attachment but is deemed to be in the custody of the department of justice subject only to the order of the court.

V. Upon the seizure of any personal property, the person making or directing such seizure shall inventory the items or property interests and issue a copy of the resulting report to any person or persons having a recorded interest, or claiming an equitable interest in the item within 7 days of the seizure.

VI. Upon seizure of any real property, the person making or directing such seizure shall notify any person having a recorded interest or claiming an equitable interest in the property within 7 days of the seizure.

VII. The seizing agency shall cause an appraisal to be made of the property as soon as possible and shall promptly send to the department of justice a written request for forfeiture. This request shall include a statement of all facts and circumstances supporting forfeiture of the property, including the names of all witnesses then known, and the appraised value of the property.

VIII. The department of justice shall examine the facts and applicable law of the cases referred pursuant to paragraph VII, and if it is probable that the property is subject to forfeiture, shall cause the initiation of administrative or judicial proceedings against the property. If upon inquiry and examination, the department of justice determines that such proceedings probably cannot be sustained or that the ends of justice do not require the institution of such proceedings, the department shall make a written report of such findings and send a copy to the seizing agency, and, if appropriate, shall also authorize and direct the release of the property.

IX. The department of justice shall, within 60 days of the seizure, file a petition in the

superior court having jurisdiction under this section. If no such petition is filed within 60 days, the items or property interest seized shall be released or returned to the owners.

X. Pending forfeiture and final disposition, the law enforcement agency making the seizure shall:

- (a) Place the property under seal;
- (b) Remove the property to a storage area for safekeeping;
- (c) Remove the property to a place designated by the court;
- (d) Request another agency to take custody of the property and remove it to an appropriate location within the state, or in the case of moneys, file a motion for transfer of evidence under RSA 595-A:6. Upon the court's granting of the motion, the moneys shall be immediately forwarded to an interest-bearing seized asset escrow account to be administered by the attorney general.

XI. The court may order forfeiture of all items or property interests under this section, except no item or property interest shall be subject to forfeiture unless the owner or owners thereof were consenting parties to a felonious violation of this section and had knowledge thereof.

XII. The department of justice may petition the superior court in the name of the state in the nature of a proceeding in rem to order forfeiture of items or property interests subject to forfeiture under the provisions of this section. Such petition shall be filed in the court having jurisdiction over any related criminal proceedings which could be brought under this section. Such proceeding shall be deemed a civil suit in equity in which the state shall have the burden of proving all material facts by a preponderance of the evidence and in which the owners or other persons claiming an exception pursuant to paragraph XI shall have the burden of proving such exception.

XIII. The court shall issue orders of notice to all persons who have a recorded interest or claim an equitable interest in said items or property interests seized under this section and shall schedule a hearing on the petition to be held within 90 days of the return date on said petition.

XIV. At the request of any party to the forfeiture proceeding, the court shall grant a continuance until the final resolution of any criminal proceedings which were brought against a party under this section and which arose from the transaction which gave rise to the forfeiture proceeding. No party's interest in property shall be forfeited unless a party has been found guilty of the underlying felonious charge.

XV. At the hearing, the court shall hear evidence and make findings of fact and rulings of law as to whether the property is subject to forfeiture under this section. Except in the case of proceeds, upon a finding that the property is subject to forfeiture the court shall

determine whether the forfeiture of the property is not excessive in relation to the underlying criminal offense. In making this determination the court shall consider whether in addition to any other pertinent considerations:

- (a) There is a substantial connection between the property to be forfeited and the underlying offense;
- (b) Criminal activities conducted by or through the use of the property were extensive; and
- (c) The value of the property to be forfeited greatly outweighs the cost of prosecution and the harm caused by the criminal conduct.

XVI. The court shall, thereupon, make a final order, from which all parties shall have a right of appeal. Final orders for forfeiture of property under this section shall be implemented by the department of justice and shall provide for disposition of the items or property interests by the state in any manner not prohibited by law, including payment of restitution to a victim of trafficking or sale at public auction. The department of justice shall pay the reasonable expenses of the forfeiture proceeding, seizure, storage, maintenance of custody, advertising, court costs, and notice of sale from any money forfeited and from the proceeds of any sale or public auction of forfeited items. All outstanding recorded liens on said items or property interests seized shall be paid in full upon conclusion of the court proceedings from the proceeds of any sale or public auction of forfeited items.

XVII. Overseas assets of persons convicted of trafficking in persons shall also be subject to forfeiture to the extent they can be retrieved by the government.

XVIII. After payment of costs outlined in paragraph XVI, any forfeited money and the proceeds of any sale or public auction of forfeited items shall first be used to satisfy any order of restitution or compensation imposed by the court. Any remaining funds shall go to the victims' assistance fund as defined in RSA 21-M:8-i.

## **New Jersey**

### **N.J. STAT. ANN. § § 2C:64-1 (2010). Property subject to forfeiture.**

a. Any interest in the following shall be subject to forfeiture and no property right shall exist in them:

(1) Controlled dangerous substances, firearms which are unlawfully possessed, carried, acquired or used, illegally possessed gambling devices, untaxed cigarettes, untaxed special fuel, unlawful sound recordings and audiovisual works and items bearing a

counterfeit mark. These shall be designated prima facie contraband.

(2) All property which has been, or is intended to be, utilized in furtherance of an unlawful activity, including, but not limited to, conveyances intended to facilitate the perpetration of illegal acts, or buildings or premises maintained for the purpose of committing offenses against the State.

(3) Property which has become or is intended to become an integral part of illegal activity, including, but not limited to, money which is earmarked for use as financing for an illegal gambling enterprise.

(4) Proceeds of illegal activities, including, but not limited to, property or money obtained as a result of the sale of prima facie contraband as defined by subsection a. (1), proceeds of illegal gambling, prostitution, bribery and extortion.

b. Any article subject to forfeiture under this chapter may be seized by the State or any law enforcement officer as evidence pending a criminal prosecution pursuant to section 2C:64-4 or, when no criminal proceeding is instituted, upon process issued by any court of competent jurisdiction over the property, except that seizure without such process may be made when not inconsistent with the Constitution of this State or the United States, and when

(1) The article is prima facie contraband; or

(2) The property subject to seizure poses an immediate threat to the public health, safety or welfare.

c. For the purposes of this section:

"Items bearing a counterfeit mark" means items bearing a counterfeit mark as defined in N.J.S. 2C:21-32.

"Unlawful sound recordings and audiovisual works" means sound recordings and audiovisual works as those terms are defined in N.J.S. 2C:21-21 which were produced in violation of N.J.S. 2C:21-21.

"Untaxed special fuel" means diesel fuel, No. 2 fuel oil and kerosene on which the motor fuel tax imposed pursuant to R.S. 54:39-1 et seq. is not paid that is delivered, possessed, sold or transferred in this State in a manner not authorized pursuant to R.S. 54:39-1 et seq. or P.L. 1938, c. 163 (C. 56:6-1 et seq.).

## **New Mexico**

### **N.M. STAT. ANN. § 30-45-7 (2009). Forfeiture of property**

A. The following are subject to forfeiture:

(1) all computer property, equipment or products of any kind that have been used, manufactured, acquired or distributed in violation of the Computer Crimes Act [30-45-1 NMSA 1978];

(2) all materials, products and equipment of any kind that are used or intended for use in manufacturing, using, accessing, altering, disrupting, copying, concealing, destroying, transferring, delivering, importing or exporting any computer property or computer service in violation of the Computer Crimes Act [30-45-1 NMSA 1978];

(3) all books, records and research products and materials involving formulas, microfilm, tapes and data that are used or intended for use in violation of the Computer Crimes Act [30-45-1 NMSA 1978];

(4) all conveyances, including aircraft, vehicles or vessels, that are used or intended for use to transport or in any manner to facilitate the transportation of property described in this subsection for the purpose of violating the Computer Crimes Act [30-45-1 NMSA 1978];

(5) all property, real, personal or mixed, that has been used or intended for use, maintained or acquired in violation of the Computer Crimes Act [30-45-1 NMSA 1978]; and

(6) all money or proceeds that constitute an instrumentality or derive from a violation of the Computer Crimes Act [30-45-1 NMSA 1978].

B. The provisions of the Forfeiture Act [31-27-1 NMSA 1978] apply to the seizure, forfeiture and disposal of property subject to forfeiture pursuant to Subsection A of this section.

## **New York**

### **N.Y. C.P.L.R. § 480.05 (Consol. 2010). Felony controlled substance offenses; forfeiture.**

1. When any person is convicted of a felony offense, the following property is subject to forfeiture pursuant to this article:

(a) any property constituting the proceeds or substituted proceeds of such offense, unless the forfeiture is disproportionate to the defendant's gain from or participation in the

offense, in which event the trier of fact may direct forfeiture of a portion thereof; and

(b) any property constituting an instrumentality of such offense, other than a real property instrumentality of a crime, unless such forfeiture is disproportionate to the defendant's gain from or participation in the offense, in which event the trier of fact may direct forfeiture of a portion thereof.

2. When any person is convicted of a specified offense, the real property instrumentality of such specified offense is subject to forfeiture pursuant to this article, unless such forfeiture is disproportionate to the defendant's gain from or participation in the offense, in which event the trier of fact may direct forfeiture of a portion thereof.

3. Property acquired in good faith by an attorney as payment for the reasonable and bona fide fees of legal services or reimbursement of reasonable and bona fide expenses related to the representation of a defendant in connection with a civil or criminal forfeiture proceeding or a related criminal matter, shall be exempt from a judgment of forfeiture. For purposes of this subdivision, "bona fide" means that the attorney who acquired such property had no reasonable basis to believe that the fee transaction was a fraudulent or sham transaction designed to shield property from forfeiture, hide its existence from governmental investigative agencies, or was conducted for any purpose other than legitimate.

### **N.Y. C.P.L.R. § 1310 (Consol. 2010). Definitions.**

In this article:

1. "Property" means and includes: real property, personal property, money, negotiable instruments, securities, or any thing of value or any interest in a thing of value.

2. "Proceeds of a crime" means any property obtained through the commission of a felony crime defined in subdivisions five and six hereof, and includes any appreciation in value of such property.

3. "Substituted proceeds of a crime" means any property obtained by the sale or exchange of proceeds of a crime, and any gain realized by such sale or exchange.

4. "Instrumentality of a crime" means any property, other than real property and any buildings, fixtures, appurtenances, and improvements thereon, whose use contributes directly and materially to the commission of a crime defined in subdivisions five and six hereof.

4-a. "Real property instrumentality of a crime" means an interest in real property the use of which contributes directly and materially to the commission of a specified felony offense.

4-b. "Specified felony offense" means:

(a) a conviction of a person for a violation of section 220.18, 220.21, 220.41, or

220.43 of the penal law, or where the accusatory instrument charges one or more of such offenses, conviction upon a plea of guilty to any of the felonies for which such plea is otherwise authorized by law or a conviction of a person for conspiracy to commit a violation of section 220.18, 220.21, 220.41, or 220.43 of the penal law, where the controlled substances which are the object of the conspiracy are located in the real property which is the subject of the forfeiture action; or

(b) on three or more occasions, engaging in conduct constituting a violation of any of the felonies defined in section 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43 or 221.55 of the penal law, which violations do not constitute a single criminal offense as defined in subdivision one of section 40.10 of the criminal procedure law, or a single criminal transaction, as defined in paragraph (a) of subdivision two of section 40.10 of the criminal procedure law, and at least one of which resulted in a conviction of such offense, or where the accusatory instrument charges one or more of such felonies, conviction upon a plea of guilty to a felony for which such plea is otherwise authorized by law; or

(c) a conviction of a person for a violation of section 220.09, 220.16, 220.34 or 220.39 of the penal law, or a conviction of a criminal defendant for a violation of section 221.30 of the penal law, or where the accusatory instrument charges any such felony, conviction upon a plea of guilty to a felony for which the plea is otherwise authorized by law, together with evidence which: (i) provides substantial indicia that the defendant used the real property to engage in a continual, ongoing course of conduct involving the unlawful mixing, compounding, manufacturing, warehousing, or packaging of controlled substances or where the conviction is for a violation of section 221.30 of the penal law, marijuana, as part of an illegal trade or business for gain; and (ii) establishes, where the conviction is for possession of a controlled substance or where the conviction is for a violation of section 221.30 of the penal law, marijuana, that such possession was with the intent to sell it.

5. "Post-conviction forfeiture crime" means any felony defined in the penal law or any other chapter of the consolidated laws of the state.

6. "Pre-conviction forfeiture crime" means only a felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law.

7. "Court" means a superior court.

8. "Defendant" means a person against whom a forfeiture action is commenced and includes a "criminal defendant" and a "non-criminal defendant".

9. "Criminal defendant" means a person who has criminal liability for a crime defined in subdivisions five and six hereof. For purposes of this article, a person has criminal liability when (a) he has been convicted of a post-conviction forfeiture crime, or (b) the claiming authority proves by clear and convincing evidence that such person has committed an act in violation of article two hundred twenty or section 221.30 or 221.55 of the penal law.

10. "Non-criminal defendant" means a person, other than a criminal defendant, who possesses an interest in the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.

11. "Claiming authority" means the district attorney having jurisdiction over the offense or the attorney general for purpose of those crimes for which the attorney general has criminal jurisdiction in a case where the underlying criminal charge has been, is being or is about to be brought by the attorney general, or the appropriate corporation counsel or county attorney, provided that the corporation counsel or county attorney may act as a claiming authority only with the consent of the district attorney or the attorney general, as appropriate.

12. "Claiming agent" means and shall include all persons described in subdivision thirty-four of section 1.20 of the criminal procedure law, and sheriffs, undersheriffs and deputy sheriffs of counties within the city of New York.

13. "Fair consideration" means fair consideration is given for property, or obligation, (a) when in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or (b) when such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.

14. "District attorney" means and shall include all persons described in subdivision thirty-two of section 1.20 of the criminal procedure law and the special assistant district attorney in charge of the office of prosecution, special narcotics courts of the city of New York.

### **N.Y. C.P.L.R. § 1311 (Consol. 2010). Forfeiture actions.**

1. A civil action may be commenced by the appropriate claiming authority against a criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime or the real property instrumentality of a crime or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime. A civil action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime provided, however, that a judgment of forfeiture predicated upon clause (A) of subparagraph (iv) of paragraph (b) of subdivision three hereof shall be limited to the amount of the proceeds of the crime. Any action under this article must be commenced within five years of the commission of the crime and shall be civil, remedial, and in personam in nature and shall not be deemed to be a penalty or criminal forfeiture for any purpose. Except as otherwise specially provided by statute, the proceedings under this article shall be governed by this chapter. An action under this article is not a criminal proceeding and may not be deemed



to be a previous prosecution under article forty of the criminal procedure law.

(a) Actions relating to post-conviction forfeiture crimes. An action relating to a post-conviction forfeiture crime must be grounded upon a conviction of a felony defined in subdivision five of section one thousand three hundred ten of this article, or upon criminal activity arising from a common scheme or plan of which such a conviction is a part, or upon a count of an indictment or information alleging a felony which was dismissed at the time of a plea of guilty to a felony in satisfaction of such count. A court may not grant forfeiture until such conviction has occurred. However, an action may be commenced, and a court may grant a provisional remedy provided under this article, prior to such conviction having occurred. An action under this paragraph must be dismissed at any time after sixty days of the commencement of the action unless the conviction upon which the action is grounded has occurred, or an indictment or information upon which the asserted conviction is to be based is pending in a superior court. An action under this paragraph shall be stayed during the pendency of a criminal action which is related to it; provided, however, that such stay shall not prevent the granting or continuance of any provisional remedy provided under this article or any other provisions of law.

(b) Actions relating to pre-conviction forfeiture crimes. An action relating to a pre-conviction forfeiture crime need not be grounded upon conviction of a pre-conviction forfeiture crime, provided, however, that if the action is not grounded upon such a conviction, it shall be necessary in the action for the claiming authority to prove the commission of a pre-conviction forfeiture crime by clear and convincing evidence. An action under this paragraph shall be stayed during the pendency of a criminal action which is related to it; provided, that upon motion of a defendant in the forfeiture action or the claiming authority, a court may, in the interest of justice and for good cause, and with the consent of all parties, order that the forfeiture action proceed despite the pending criminal action; and provided that such stay shall not prevent the granting or continuance of any provisional remedy provided under this article or any other provision of law.

2. All defendants in a forfeiture action brought pursuant to this article shall have the right to trial by jury on any issue of fact.

3. In a forfeiture action pursuant to this article the following burdens of proof shall apply:

(a) In a forfeiture action commenced by a claiming authority against a criminal defendant, except for those facts referred to in paragraph (b) of subdivision nine of section one thousand three hundred ten and paragraph [paragraph] [n1] (b) of subdivision one of this section which must be proven by clear and convincing evidence, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture.

(b) In a forfeiture action commenced by a claiming authority against a non-criminal defendant:

(i) in an action relating to a pre-conviction forfeiture crime, the burden shall be upon the claiming authority to prove by clear and convincing evidence the commission of the

crime by a person, provided, however, that it shall not be necessary to prove the identity of such person.

(ii) if the action relates to the proceeds of a crime, except as provided in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew or should have known that the proceeds were obtained through the commission of a crime, or (B) fraudulently obtained his or her interest in the proceeds to avoid forfeiture.

(iii) if the action relates to the substituted proceeds of a crime, except as provided in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew that the property sold or exchanged to obtain an interest in the substituted proceeds was obtained through the commission of a crime, or (B) fraudulently obtained his or her interest in the substituted proceeds to avoid forfeiture.

(iv) if the action relates to an instrumentality of a crime, except as provided for in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew that the instrumentality was or would be used in the commission of a crime or (B) knowingly obtained his or her interest in the instrumentality to avoid forfeiture.

(v) if the action relates to a real property instrumentality of a crime, the burden shall be upon the claiming authority to prove those facts referred to in subdivision four-b of section thirteen hundred ten of this article by clear and convincing evidence. The claiming authority shall also prove by a clear and convincing evidence that the non-criminal defendant knew that such property was or would be used for the commission of specified felony offenses, and either (A) knowingly and unlawfully benefitted from such conduct or (B) voluntarily agreed to the use of such property for the commission of such offenses by consent freely given. For purposes of this subparagraph, a non-criminal defendant knowingly and unlawfully benefits from the commission of a specified felony offense when he derives in exchange for permitting the use or occupancy of such real property by a person or persons committing such specified offense a substantial benefit that would otherwise not accrue as a result of the lawful use or occupancy of such real property. "Benefit" means benefit as defined in subdivision seventeen of section 10.00 of the penal law.

(c) In a forfeiture action commenced by a claiming authority against a non-criminal defendant the following rebuttable presumptions shall apply:

(i) a non-criminal defendant who did not pay fair consideration for the proceeds of a crime, the substituted proceeds of a crime or the instrumentality of a crime shall be presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(ii) a non-criminal defendant who obtains an interest in the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime with knowledge of an order of provisional remedy relating to said property issued pursuant to this article, shall be presumed to know that such property was the proceeds of a crime, substituted

proceeds of a crime, or an instrumentality of a crime.

(iii) in an action relating to a post-conviction forfeiture crime, a non-criminal defendant who the claiming authority proves by clear and convincing evidence has criminal liability under section 20.00 of the penal law for the crime of conviction or for criminal activity arising from a common scheme or plan of which such crime is a part and who possesses an interest in the proceeds, the substituted proceeds, or an instrumentality of such criminal activity is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(iv) a non-criminal defendant who participated in or was aware of a scheme to conceal or disguise the manner in which said non-criminal obtained his or her interest in the proceeds of a crime, substituted proceeds of a crime, or an instrumentality of a crime is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(d) In a forfeiture action commenced by a claiming authority against a defendant, the following rebuttable presumption shall apply: all currency or negotiable instruments payable to the bearer shall be presumed to be the proceeds of a pre-conviction forfeiture crime when such currency or negotiable instruments are (i) found in close proximity to a controlled substance unlawfully possessed by the defendant in an amount sufficient to constitute a violation of section 220.18 or 220.21 of the penal law, or (ii) found in close proximity to any quantity of a controlled substance or marihuana unlawfully possessed by such defendant in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, distribute, package or otherwise prepare for sale such controlled substance or marihuana.

(e) The presumption set forth pursuant to paragraph (d) of this subdivision shall be rebutted by credible and reliable evidence which tends to show that such currency or negotiable instrument payable to the bearer is not the proceeds of a preconviction forfeiture crime. In an action tried before a jury, the jury shall be so instructed. Any sworn testimony of a defendant offered to rebut the presumption and any other evidence which is obtained as a result of such testimony, shall be inadmissible in any subsequent proceeding relating to the forfeiture action, or in any other civil or criminal action, except in a prosecution for a violation of article two hundred ten of the penal law. In an action tried before a jury, at the commencement of the trial, or at such other time as the court reasonably directs, the claiming authority shall provide notice to the court and to the defendant of its intent to request that the court charge such presumption.

3-a. Conviction of a person in a criminal action upon an accusatory instrument which includes one or more of the felonies specified in subdivision four-b of section thirteen hundred ten of this article, of any felony other than such felonies, shall not preclude a defendant, in any subsequent proceeding under this article where that conviction is at issue, from adducing evidence that the conduct underlying the conviction would not establish the elements of any of the felonies specified in such subdivision other than the one to which the criminal defendant pled guilty. If the defendant does adduce such evidence, the burden shall be upon the claiming authority to prove, by clear and convincing evidence, that the conduct underlying the criminal conviction would establish

the elements of the felony specified in such subdivision. Nothing contained in this subdivision shall affect the validity of a settlement of any forfeiture action negotiated between the claiming authority and a criminal defendant contemporaneously with the taking of a plea of guilty in a criminal action to any felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, or to a felony conspiracy to commit the same.

4. The court in which a forfeiture action is pending may dismiss said action in the interests of justice upon its own motion or upon an application as provided for herein.

(a) At any time during the pendency of a forfeiture action, the claiming authority who instituted the action, or a defendant may (i) apply for an order dismissing the complaint and terminating the forfeiture action in the interest of justice, or (ii) may apply for an order limiting the forfeiture to an amount equivalent in value to the value of property constituting the proceeds or substituted proceeds of a crime in the interest of justice.

(b) Such application for the relief provided in paragraph (a) hereof must be made in writing and upon notice to all parties. The court may, in its discretion, direct that notice be given to any other person having an interest in the property.

(c) An application for the relief provided for in paragraph (a) hereof must be brought exclusively in the superior court in which the forfeiture action is pending.

(d) The court may grant the relief provided in paragraph (a) hereof if it finds that such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture of the property of [or] [n2] any part thereof, would not serve the ends of justice. Among the factors, considerations and circumstances the court may consider, among others, are:

(i) the seriousness and circumstances of the crime to which the property is connected relative to the impact of forfeiture of property upon the person who committed the crime; or

(ii) the adverse impact of a forfeiture of property upon innocent persons; or

(iii) the appropriateness of a judgment of forfeiture in an action relating to pre-conviction forfeiture crime where the criminal proceeding based on the crime to which the property is allegedly connected results in an acquittal of the criminal defendant or a dismissal of the accusatory instrument on the merits; or

(iv) in the case of an action relating to an instrumentality, whether the value of the instrumentality substantially exceeds the value of the property constituting the proceeds or substituted proceeds of a crime.

(e) The court must issue a written decision stating the basis for an order issued pursuant to this subdivision.

4-a. (a) The court in which a forfeiture action relating to real property is pending may, upon its own motion or upon the motion of the claiming authority which instituted the action, the defendant, or any other person who has a lawful property interest in such

property, enter an order:

(i) appointing an administrator pursuant to section seven hundred seventy-eight of the real property actions and proceedings law when the owner of a dwelling is a defendant in such action, and when persons who are not defendants in such action lawfully occupy one or more units within such dwelling, in order to maintain and preserve the property on behalf of such persons or any other person or entity who has a lawful property interest in such property, or in order to remedy any other condition which is dangerous to life, health or safety; or

(ii) otherwise limiting, modifying or dismissing the forfeiture action in order to preserve or protect the lawful property interest of any non-criminal defendant or any other person who is not a criminal defendant, or the lawful property interest of a defendant which is not subject to forfeiture; or

(iii) where such action involves interest in a residential leasehold or a statutory tenancy, directing that upon entry of a judgment of forfeiture, the lease or statutory tenancy will be modified as a matter of law to terminate only the interest of the defendant or defendants, and to continue the occupancy or tenancy of any other person or persons who lawfully reside in such demised premises, with such rights as such parties would otherwise have had if the defendant's interest had not been forfeited pursuant to this article.

(b) For purposes of this subdivision the term "owner" has the same meaning as prescribed for that term in section seven hundred eighty-one of the real property actions and proceedings law and the term "dwelling" shall mean any building or structure or portion thereof which is principally occupied in whole or part as the home, residence or sleeping place of one or more human beings.

5. An action for forfeiture shall be commenced by service pursuant to this chapter of a summons with notice or summons and verified complaint. No person shall forfeit any right, title, or interest in any property who is not a defendant in the action. The claiming authority shall also file a copy of such papers with the state division of criminal justice services; provided, however, failure to file such papers shall not be grounds for any relief by a defendant in this section.

6. On the motion of any party to the forfeiture action, and for good cause shown, a court may seal any papers, including those pertaining to any provisional remedy, which relate to the forfeiture action until such time as the property which is the subject of the forfeiture action has been levied upon. A motion to seal such papers may be made ex parte and in camera.

7. Remission. In addition to any other relief provided under this chapter, at any time within one year after the entry of a judgment of forfeiture, any person, claiming an interest in the property subject to forfeiture who did not receive actual notice of the forfeiture action may petition the judge before whom the forfeiture action was held for a remission or mitigation of the forfeiture and restoration of the property or the proceeds of any sale resulting from the forfeiture, or such part thereof, as may be claimed by him. The court may restore said property upon such terms and conditions as it deems

reasonable and just if (i) the petitioner establishes that he or she was without actual knowledge of the forfeiture action or any related proceeding for a provisional remedy and did not know or should not have known that the forfeited property was connected to a crime or fraudulently conveyed and (ii) the court determines that restoration of the property would serve the ends of justice.

8. The total amount that may be recovered by the claiming authority against all criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime or substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against criminal defendants for the value of the proceeds of the crime or substituted proceeds of the crime shall be reduced by an amount which equals the value of the same proceeds of the same crime or the same substituted proceeds of the same crime recovered against all non-criminal defendants. Any such recovery for the value of an instrumentality of a crime shall be reduced by an amount which equals the value of the same instrumentality recovered against any non-criminal defendant.

The total amount that may be recovered against all non-criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime or the substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against non-criminal defendants for the value of the proceeds of the crime or substituted proceeds of the crime shall be reduced by an amount which equals the value of the proceeds of the crime or substituted proceeds of the crime recovered against all criminal defendants. A judgment against a non-criminal defendant pursuant to clause (A) of subparagraph (iv) of paragraph (b) of subdivision three of this section shall be limited to the amount of the proceeds of the crime. Any recovery for the value of an instrumentality of the crime shall be reduced by an amount equal to the value of the same instrumentality recovered against any criminal defendant.

9. Any defendant in a forfeiture action who knowingly and intentionally conceals, destroys, dissipates, alters, removes from the jurisdiction, or otherwise disposes of, property specified in a provisional remedy ordered by the court or in a judgment of forfeiture in knowing contempt of said order or judgment shall be subject to criminal liability and sanctions under sections 80.05 and 215.80 of the penal law.

10. The proper venue for trial of an action for forfeiture is:

(a) In the case of an action for post-conviction forfeiture commenced after conviction, the county where the conviction occurred.

(b) In all other cases, the county where a criminal prosecution could be commenced under article twenty of the criminal procedure law, or, in the case of an action commenced by the office of prosecution, special narcotics courts of the city of New York, under section one hundred seventy-seven-b of the judiciary law.

11. (a) Any stipulation or settlement agreement between the parties to a forfeiture action shall be filed with the clerk of the court in which the forfeiture action is pending. No stipulation or settlement agreement shall be accepted for filing unless it is accompanied by an affidavit from the claiming authority that written notice of the stipulation or settlement agreement, including the terms of such, has been given to the state crime victims board, the state division of criminal justice services, and in the case of a forfeiture based on a felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, to the state division of substance abuse services.

(b) No judgment or order of forfeiture shall be accepted for filing unless it is accompanied by an affidavit from the claiming authority that written notice of judgment or order, including the terms of such, has been given to the state crime victims board, the state division of criminal justice services, and in the case of a forfeiture based on a felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, to the state division of substance abuse services.

(c) Any claiming authority or claiming agent which receives any property pursuant to chapter thirteen of the food and drug laws (21 U.S.C. § 801 et seq.) of the United States and/or chapter four of the customs duties laws (19 U.S.C. § 1301 et seq.) of the United States and/or chapter 96 of the crimes and criminal procedure laws (18 U.S.C. § 1961 et seq.) of the United States shall provide an affidavit to the commissioner of the division of criminal justice services stating the estimated present value of the property received.

12. Property acquired in good faith by an attorney as payment for the reasonable and bona fide fees of legal services or reimbursement of reasonable and bona fide expenses related to the representation of a defendant in connection with a civil or criminal forfeiture proceeding or a related criminal matter, shall be exempt from a judgment of forfeiture. For purposes of this subdivision and subdivision four of section one thousand three hundred twelve of this article, "bona fide" means that the attorney who acquired such property had no reasonable basis to believe that the fee transaction was a fraudulent or sham transaction designed to shield property from forfeiture, hide its existence from governmental investigative agencies, or was conducted for any purpose other than for legitimate legal representation.

## **North Carolina**

### **N.C. GEN. STAT. ANN. § 90-112 (2010). Forfeitures.**

(a) The following shall be subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of the provisions of this Article;

(2) All money, raw material, products, and equipment of any kind which are acquired,

used, or intended for use, in selling, purchasing, manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance in violation of the provisions of this Article;

(3) All property which is used, or intended for use, as a container for property described in subdivisions (1) and (2);

(4) All conveyances, including vehicles, vessels, or aircraft, which are used or intended for use to unlawfully conceal, convey, or transport, or in any manner to facilitate the unlawful concealment, conveyance, or transportation of property described in (1) or (2), except that

a. No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this Article unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this Article;

b. No conveyance shall be forfeited under the provisions of this section by reason of any act or omission, committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state;

c. No conveyance shall be forfeited unless the violation involved is a felony under this Article;

d. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who had no knowledge of or consented to the act or omission.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this Article.

(b) Any property subject to forfeiture under this Article may be seized by any law-enforcement officer upon process issued by any district or superior court having jurisdiction over the property except that seizure without such process may be made when:

(1) The seizure is incident to an arrest or a search under a search warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding under this Article.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in custody of the law-enforcement agency seizing it, which may:

(1) Place the property under seal; or,



(2) Remove the property to a place designated by it; or,

(3) Request that the North Carolina Department of Justice take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Any property seized by a State, local, or county law enforcement officer shall be held in safekeeping as provided in this subsection until an order of disposition is properly entered by the judge.

(d) Whenever property is forfeited under this Article, the law-enforcement agency having custody of it may:

(1) Retain the property for official use; or

(2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, provided that the proceeds be disposed of for payment of all proper expenses of the proceedings for forfeiture and sale including expense of seizure, maintenance of custody, advertising, and court costs; or

(3) Transfer any conveyance including vehicles, vessels, or aircraft which are forfeited under the provisions of this Article to the North Carolina Department of Justice when, in the discretion of the presiding judge and upon application of the North Carolina Department of Justice, said conveyance may be of official use to the North Carolina Department of Justice;

(4) Upon determination by the director of any law-enforcement agency that a vehicle, vessel or aircraft transferred pursuant to the provisions of this Article is of no further use to said agency for use in official investigations, such vehicle, vessel or aircraft may be sold as surplus property in the same manner as other vehicles owned by the law-enforcement agency and the proceeds from such sale after deducting the cost of sale shall be paid to the treasurer or proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in the county in which said vehicle, vessel or aircraft was seized; provided, that any vehicle transferred to any law-enforcement agency under the provisions of this Article which has been modified to increase speed shall be used in the performance of official duties only and not for resale, transfer or disposition other than as junk.

(d1) Notwithstanding the provisions of subsection (d), the law-enforcement agency having custody of money that is forfeited pursuant to this section shall pay it to the treasurer or proper officer authorized to receive fines and forfeitures to be used for the school fund of the county in which the money was seized.

(e) All substances included in Schedules I through VI that are possessed, transferred, sold, or offered for sale in violation of the provisions of this Article shall be deemed contraband and seized and summarily forfeited to the State. All substances included in

Schedules I through VI of this Article which are seized or come into the possession of the State, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the State according to rules and regulations of the North Carolina Department of Justice.

All species of plants from which controlled substances included in Schedules I, II and VI of this Article may be derived, which have been planted or cultivated in violation of this Article, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the State.

The failure, upon demand by the Attorney General of North Carolina, or his duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

(f) All other property subject to forfeiture under the provisions of this Article shall be forfeited as in the case of conveyances used to conceal, convey, or transport intoxicating beverages.

## **North Dakota**

### **N.D. CENT. CODE § 19-03.1-36. Forfeitures.**

1. The following are subject to forfeiture:

a. All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter.

b. All imitation controlled substances as defined by sections 19-03.2-01 and 19-03.2-02.

c. All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter.

d. All property which is used, or intended for use, as a container for property described in subdivision a, b, or c.

e. All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision a, b, or c, but:

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears

that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter.

(2) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent.

(3) A conveyance is not subject to forfeiture for a violation of subsection 6 of section 19-03.1-23 or subsection 3 of section 19-03.2-03.

(4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.

f. All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

g. All drug paraphernalia as defined in chapter 19-03.4.

h. All money, coin, currency, and everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter or an imitation controlled substance in violation of chapter 19-03.2, and all real and personal property, assets, profits, income, proceeds, or an interest therein, acquired or derived from the unlawful purchase, attempted purchase, delivery, attempted delivery, manufacturing, or attempted manufacturing of any controlled substance or imitation controlled substance.

2. Property subject to forfeiture under this chapter, except conveyances, may be seized by the board upon process issued by any district court having jurisdiction over the property. A conveyance subject to forfeiture under this chapter may be seized by a state, county, or city law enforcement agency upon process issued by any district court having jurisdiction over the conveyance. Seizure without process may be made if:

a. The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant.

b. The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceedings based upon this chapter.

c. The board or a law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety.

d. The board or a law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

3. In the event of seizure pursuant to subsection 2, proceedings under subsection 4 must

be instituted promptly.

4. Property taken or detained under this section is not subject to replevin, but is deemed to be in custody of the board or a law enforcement agency subject only to the orders and decrees of the district court having jurisdiction over the forfeiture proceedings as set out in subsection 2. When property is seized under this chapter, the board or a law enforcement agency may:

a. Place the property under seal.

b. Remove the property to a place designated by it.

c. Require the attorney general to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

5. When property is forfeited under this chapter, the board or a law enforcement agency may:

a. Retain it for official use or transfer the custody or ownership of any forfeited property to any federal, state, or local agency. The board shall ensure the equitable transfer of any forfeited property to the appropriate federal, state, or local law enforcement agency so as to reflect generally the contribution of that agency participating directly in any of the acts that led to the seizure or forfeiture of the property. A decision to transfer the property is not subject to review.

b. Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds must be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs, with any remaining proceeds to be deposited, subject to section 54-12-14, in the appropriate state, county, or city general fund. When two or more law enforcement agencies are involved in seizing a conveyance, the remaining proceeds may be divided proportionately.

c. Require the attorney general to take custody of property and remove it for disposition in accordance with law.

d. Forward it to the bureau for disposition.

e. Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection 6 of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

6. Controlled substances as defined in this chapter and imitation controlled substances as defined in chapter 19-03.2 that are possessed, transferred, sold, or offered for sale in violation of this chapter and drug paraphernalia as defined in chapter 19-03.4 are contraband and must be seized and summarily forfeited to the state. Controlled substances as defined in this chapter and imitation controlled substances as defined in chapter 19-03.2, which are seized or come into the possession of the state and drug paraphernalia as defined in chapter 19-03.4, the owners of which are unknown, are contraband and must be summarily forfeited to the state.
7. Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation 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.
8. The failure, upon demand by the board, or its 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 the person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

## Ohio

### **OHIO REV. CODE ANN. § 2981.02 (2010). Property subject to forfeiture; determination of use or intended use of instrumentality; motor vehicle law exclusion.**

(A) The following property is subject to forfeiture to the state or a political subdivision under either the criminal or delinquency process in section 2981.04 of the Revised Code or the civil process in section 2981.05 of the Revised Code:

- (1) Contraband involved in an offense;
- (2) Proceeds derived from or acquired through the commission of an offense;
- (3) An instrumentality that is used in or intended to be used in the commission or facilitation of any of the following offenses when the use or intended use, consistent with division (B) of this section, is sufficient to warrant forfeiture under this chapter:
  - (a) A felony;
  - (b) A misdemeanor, when forfeiture is specifically authorized by a section of the Revised Code or by a municipal ordinance that creates the offense or sets forth its penalties;
  - (c) An attempt to commit, complicity in committing, or a conspiracy to commit an

offense of the type described in divisions (A)(3)(a) and (b) of this section.

(B) In determining whether an alleged instrumentality was used in or was intended to be used in the commission or facilitation of an offense or an attempt, complicity, or conspiracy to commit an offense in a manner sufficient to warrant its forfeiture, the trier of fact shall consider the following factors the trier of fact determines are relevant:

(1) Whether the offense could not have been committed or attempted but for the presence of the instrumentality;

(2) Whether the primary purpose in using the instrumentality was to commit or attempt to commit the offense;

(3) The extent to which the instrumentality furthered the commission of, or attempt to commit, the offense.

(C) This chapter does not apply to or limit forfeitures under Title XLV of the Revised Code, including forfeitures relating to section 2903.06 or 2903.08 of the Revised Code.

## **Oklahoma**

### **OKLA. STAT. ANN. TIT. 21, § 1738 (2009). Seizure and forfeiture proceedings--Vehicles, airplanes, vessels, etc. used in attempt or commission of certain crimes.**

A. Any commissioned peace officer of this state is authorized to seize any vehicle owned by or registered to the defendant used in the commission of any armed robbery offense defined in Section 801 of this title, or any vehicle owned by or registered to the defendant when such vehicle is used to facilitate the intentional discharge of any kind of firearm in violation of Section 652 of this title, or any vehicle, airplane, vessel, vehicles or parts of vehicles whose numbers have been removed, altered or obliterated so as to prevent determination of the true identity or ownership of said property and parts of vehicles which probable cause indicates are stolen but whose true ownership cannot be determined, or any vehicle owned by or registered to the defendant used in violation of the Trademark Anti-Counterfeiting Act, or any equipment owned by or registered to the defendant which is used in the attempt or commission of any act of burglary in the first or second degree, motor vehicle theft, unauthorized use of a vehicle, obliteration of distinguishing numbers on vehicles or criminal possession of vehicles with altered, removed or obliterated numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma Statutes, or any equipment owned by or registered to the defendant used in violation of the Trademark Anti-Counterfeiting Act, or any vehicle, airplane, vessel or equipment owned by or registered to the defendant used in the commission of any arson offense defined in

Section 1401, 1402, 1403, 1404 or 1405 of this title. Said property may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the district attorney in the proper county of venue as petitioner; provided, in the event the district attorney elects not to file such action, or fails to file such action within ninety (90) days of the date of the seizure of such equipment, the property shall be returned to the owner.

B. In addition to the property described in subsection A of this section, the following property is also subject to forfeiture pursuant to this section:

1. Property used in the commission of theft of livestock or in any manner to facilitate the theft of livestock;
2. The proceeds gained from the commission of theft of livestock;
3. Personal property acquired with proceeds gained from the commission of theft of livestock;
4. All conveyances, including aircraft, vehicles or vessels, and horses or dogs which are used to transport or in any manner to facilitate the transportation for the purpose of the commission of theft of livestock;
5. Any items having a counterfeit mark and all property that is owned by or registered to the defendant that is employed or used in connection with any violation of the Trademark Anti-Counterfeiting Act;
6. Any weapon possessed, used or available for use in any manner during the commission of a felony within the State of Oklahoma, or any firearm that is possessed by a convicted felon;
7. Any police scanner used in violation of Section 1214 of this title;
8. Any computer and its components and peripherals, including but not limited to the central processing unit, monitor, keyboard, printers, scanners, software, and hardware, when it is used in the commission of any crime in this state;
9. All property used in the commission of, or in any manner to facilitate, a violation of Section 2 of this act;
10. All conveyances, including aircraft, vehicles or vessels, monies, coins and currency, or other instrumentality used or intended to be used, in any manner or part, to commit a violation of paragraph 1 of subsection A of Section 1021 of this title, where the victim of the crime is a minor child, subsection B of Section 1021 of this title, Section 1021.2 of this title, paragraph 1 of subsection A of Section 1111 of this title, or paragraphs 2 and 3 of subsection A of Section 1123 of this title; and

11. All conveyances, including aircraft, vehicles or vessels, monies, coins and currency, or other instrumentality used in any manner or part, to commit any violation of the provisions set forth in Section 748 of this title.

C. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the clerk of the district court for the county wherein such property is seized and shall be given all owners and parties in interest.

D. Notice shall be given according to one of the following methods:

1. Upon each owner or party in interest whose right, title, or interest is of record in the Oklahoma Tax Commission or with the county clerk for filings under the Uniform Commercial Code, served in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes;

2. Upon each owner or party in interest whose name and address is known, served in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

3. Upon all other owners, whose addresses are unknown, but who are believed to have an interest in the property by one publication in a newspaper of general circulation in the county where the seizure was made.

E. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

F. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the property forfeited to the state, if such fact is proven.

G. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

H. At the hearing the petitioner shall prove by clear and convincing evidence that property was used in the attempt or commission of an act specified in subsection A of this section or is property described in subsection B of this section with knowledge by the owner of the property.

I. The claimant of any right, title, or interest in the property may prove the lien, mortgage, or conditional sales contract to be bona fide and that the right, title, or interest created by the document was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

J. In the event of such proof, the court may order the property released to the bona fide or innocent owner, lien holder, mortgagee, or vendor if the amount due such person is



equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title, or interest of the purchaser, except for items bearing a counterfeit mark or used exclusively to manufacture a counterfeit mark.

K. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property may be forfeited to the state and may be sold pursuant to judgment of the court, as on sale upon execution, and as provided in Section 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise provided for by law and for property bearing a counterfeit mark which shall be destroyed.

L. Property taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the petitioner or in the custody of the law enforcement agency as provided in the Trademark Anti-Counterfeiting Act. Except for property required to be destroyed pursuant to the Trademark Anti-Counterfeiting Act, the petitioner shall release said property to the owner of the property if it is determined that the owner had no knowledge of the illegal use of the property or if there is insufficient evidence to sustain the burden of showing illegal use of such property. If the owner of the property stipulates to the forfeiture and waives the hearing, the petitioner may determine if the value of the property is equal to or less than the outstanding lien. If such lien exceeds the value of the property, the property may be released to the lien holder. Property which has not been released by the petitioner shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

M. The petitioner, or the law enforcement agency holding property pursuant to the Trademark Anti-Counterfeiting Act, shall not be held civilly liable for having custody of the seized property or proceeding with a forfeiture action as provided for in this section.

N. Attorney fees shall not be assessed against the state or the petitioner for any actions or proceeding pursuant to Section 1701 et seq. of this title.

O. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of such person's interest in the property, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual reasonable expenses of preserving the property;

3. To the victim of the crime to compensate said victim for any loss incurred as a result of the act for which such property was forfeited; and

4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as follows: one-third (1/3) to the investigating law enforcement agency; one-third (1/3) of said fund to be used and

maintained as a revolving fund by the district attorney for the victim-witness fund, a reward fund or the evidence fund; and one-third (1/3) to go to the jail maintenance fund, with a yearly accounting to the board of county commissioners in whose county the fund is established. If the petitioner is not the district attorney, then the one-third (1/3) which would have been designated to that office shall be distributed to the petitioner. Monies distributed to the jail maintenance fund shall be used to pay costs for the storage of such property if such property is ordered released to a bona fide or innocent owner, lien holder, mortgagee, or vendor and if such funds are available in said fund.

P. Monies distributed into the revolving fund in the office of the county treasurer from forfeitures initiated under this section by the district attorney shall be limited to One Hundred Thousand Dollars (\$ 100,000.00) at any one time in counties with population in excess of three hundred thousand (300,000) and Twenty-five Thousand Dollars (\$ 25,000.00) at any one time in counties with population less than three hundred thousand (300,000). Any amount in excess of these figures shall be placed in the general fund of the county.

Q. If the court finds that the property was not used in the attempt or commission of an act specified in subsection A of this section and was not property subject to forfeiture pursuant to subsection B of this section and is not property bearing a counterfeit mark, the court shall order the property released to the owner as the right, title, or interest appears on record in the Tax Commission as of the seizure.

R. No vehicle, airplane, or vessel used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited pursuant to the provisions of this section unless it shall be proven that the owner or other person in charge of such conveyance was a consenting party or privy to the attempt or commission of an act specified in subsection A or B of this section. No property shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

S. Whenever any property is forfeited pursuant to this section, the district court having jurisdiction of the proceeding may order that the forfeited property may be retained for its official use by the state, county, or municipal law enforcement agency which seized the property.

**OKLA. STAT. ANN. TIT. 63, § 2-503 (2009). Property subject to forfeiture.**

A. The following shall be subject to forfeiture:

1. All controlled dangerous substances which have been manufactured, distributed, dispensed, acquired, concealed or possessed in violation of the Uniform Controlled Dangerous Substances Act;

2. All raw materials, products and equipment of any kind and all drug paraphernalia as defined by the Uniform Controlled Dangerous Substances Act, which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Act;

3. All property which is used, or intended for use, as a container for property described in paragraphs 1, 2, 5 and 6 of this subsection;

4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport, conceal, or cultivate for the purpose of distribution as defined in the Uniform Controlled Dangerous Substances Act, or which are used in any manner to facilitate the transportation or cultivation for the purpose of sale or receipt of property described in paragraphs 1 or 2 of this subsection or when the property described in paragraphs 1 or 2 of this subsection is unlawfully possessed by an occupant thereof, except that:

a. no conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of the Uniform Controlled Dangerous Substances Act unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of the Uniform Controlled Dangerous Substances Act, and

b. no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and if the act is committed by any person other than such owner the owner shall establish further that the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state;

5. All books, records and research, including formulas, microfilm, tapes and data which are used in violation of the Uniform Controlled Dangerous Substances Act;

6. All things of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Uniform Controlled Dangerous Substances Act;

7. All monies, coin and currency found in close proximity to any amount of forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances, which

are rebuttably presumed to be forfeitable under the Uniform Controlled Dangerous Substances Act. The burden of proof is upon claimants of the property to rebut this presumption;

8. All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenance or improvement thereto, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of the Uniform Controlled Dangerous Substances Act which is punishable by imprisonment for more than one (1) year, except that no property right, title or interest shall be forfeited pursuant to this paragraph, by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of that owner; and

9. All weapons possessed, used or available for use in any manner to facilitate a violation of the Uniform Controlled Dangerous Substances Act.

B. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that such property or thing of value was acquired by such person during the period of the violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after such period and there was no likely source for such property or thing of value other than the violation of the Uniform Controlled Dangerous Substances Act.

C. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that the person has not paid all or part of a fine imposed pursuant to the provisions of Section 2-415 of this title.

D. All items forfeited in this section shall be forfeited under the procedures established in Section 2-506 of this title. Whenever any item is forfeited pursuant to this section except for items confiscated by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections, or the Office of the Attorney General, the district court of the district shall order that such item, money, or monies derived from the sale of such item be deposited by the state, county or city law enforcement agency which seized the item in the revolving fund provided for in Section 2-506 of this title; provided, such item, money or monies derived from the sale of such item forfeited due to nonpayment of a fine imposed pursuant to the provisions of Section 2-415 of this title shall be apportioned as provided in Section 2-416 of this title. Items, money or monies seized pursuant to subsections A and B of this section shall not be applied or considered toward satisfaction of the fine imposed by Section 2-415 of this title. All raw materials used or intended to be used by persons to unlawfully manufacture or attempt to manufacture any controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act shall be summarily forfeited pursuant to the provisions of Section 2-505 of this title.

E. All property taken or detained under this section by the Oklahoma State Bureau of

Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections, or the Office of the Attorney General, shall not be repleviable, but shall remain in the custody of the Bureaus, Departments, Commission, or Office, respectively, subject only to the orders and decrees of a court of competent jurisdiction. The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Commissioner of Public Safety, the Director of the Oklahoma State Bureau of Investigation, the Director of the Alcoholic Beverage Laws Enforcement Commission, the Director of the Department of Corrections, and the Attorney General shall follow the procedures outlined in Section 2-506 of this title dealing with notification of seizure, intent of forfeiture, final disposition procedures, and release to innocent claimants with regard to all property included in this section detained by the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections, or the Office of the Attorney General. Property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections, or the Office of the Attorney General shall be disposed of or sold pursuant to the provisions of Section 2-508 of this title. Any money, coins, and currency, taken or detained pursuant to this section may be deposited in an interest bearing account by or at the direction of the State Treasurer if the seizing agency determines the currency is not to be held as evidence. All interest earned on such monies shall be returned to the claimant or forfeited with the money, coins, and currency which was taken or detained as provided by law.

F. The proceeds of any forfeiture of items seized by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall be distributed as follows:

1. To the bona fide or innocent purchaser, conditional sales vendor or mortgagee of the property, if any, up to the amount of his interest in the property, when the court declaring a forfeiture orders a distribution to such person; and

2. The balance to the Bureau of Narcotics Revolving Fund established pursuant to Section 2-107 of this title, provided the Bureau may enter into agreements with municipal, tribal, county, state or federal law enforcement agencies, or other state agencies with CLEET-certified law enforcement officers, assisting in the forfeiture or underlying criminal investigation, to return to such an agency a percentage of said proceeds.

G. Any agency that acquires seized or forfeited property or money shall maintain a true and accurate inventory and record of all such property seized pursuant to this section.

## Oregon

### **OR. REV. STAT. § 131.558 (2007). Property subject to forfeiture.**

The following are subject to criminal forfeiture:

- (1) All controlled substances that have been manufactured, distributed, dispensed, possessed or acquired in the course of prohibited conduct;
- (2) All raw materials, products and equipment of any kind that are used, or intended for use, in providing, manufacturing, compounding, processing, delivering, importing or exporting any service or substance in the course of prohibited conduct;
- (3) All property that is used, or intended for use, as a container for property described in subsection (1) or (2) of this section;
- (4) All conveyances, including aircraft, vehicles and vessels, that are used, or are intended for use, to transport or facilitate the transportation, sale, receipt, possession or concealment of property described in subsection (1) or (2) of this section, and all conveyances, including aircraft, vehicles and vessels, that are used or intended for use in prohibited conduct or to facilitate prohibited conduct, except that:
  - (a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to criminal forfeiture under the provisions of this section unless the owner or other person in charge of such conveyance was a consenting party or knew of and acquiesced in the prohibited conduct; and
  - (b) No conveyance is subject to criminal forfeiture under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state;
- (5) All books, records, computers and research, including formulae, microfilm, tapes and data that are used or intended for use to facilitate prohibited conduct;
- (6) All moneys, negotiable instruments, balances in deposit or other accounts, securities or other things of value furnished or intended to be furnished by any person in the course of prohibited conduct, all proceeds of or from prohibited conduct, and all moneys, negotiable instruments, balances in deposit and other accounts and securities used or intended to be used to facilitate any prohibited conduct;
- (7) All real property, including any right, title and interest in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used to commit or facilitate the commission of prohibited conduct;

(8) All weapons possessed, used or available for use to facilitate conduct giving rise to criminal forfeiture;

(9) All property described in this section that is intended for use in committing or facilitating an attempt to commit a crime as described in ORS 161.405, a solicitation as described in ORS 161.435 or a conspiracy as described in ORS 161.450; and

(10) All personal property that is used or intended to be used to commit or facilitate prohibited conduct.

## **Pennsylvania**

### **18 PA. CONST. STAT. § 3004 (2009). Forfeiture.**

(a) GENERAL RULE.-- The following shall be subject to forfeitures to the Commonwealth, and no property right shall exist in them:

(1) All assets, foreign or domestic:

(i) Of an individual, entity or organization engaged in planning or perpetrating an act in this Commonwealth which violates section 3002 (relating to trafficking of persons) and all assets, foreign or domestic, affording a person a source of influence over such individual, entity or organization.

(ii) Acquired or maintained by a person with the intent and for the purpose of supporting, planning, conducting or concealing an act in this Commonwealth which violates section 3002.

(iii) Derived from, involved in or used or intended to be used to commit an act in this Commonwealth which violates section 3002.

(2) All assets within this Commonwealth:

(i) Of an individual, entity or organization engaged in planning or perpetrating an act which violates section 3002.

(ii) Acquired or maintained with the intent and for the purpose of supporting, planning, conducting or concealing an act which violates section 3002.

(iii) Derived from, involved in or used or intended to be used to commit an act which violates section 3002.

(b) PROCESS AND SEIZURES.-- Property subject to forfeiture under this section may

be seized by the law enforcement authority upon process issued by any court of common pleas having jurisdiction over the property.

(c) CUSTODY OF PROPERTY.--

(1) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the law enforcement authority subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings and of the district attorney.

(2) When property is seized under this section, the law enforcement authority shall place the property under seal and either:

- (i) remove the property to a place designated by it; or
- (ii) require that the district attorney take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) TRANSFER OF PROPERTY.-- Whenever property is forfeited under this section, the property shall be transferred to the custody of the district attorney. The district attorney, where appropriate, may retain the property for official use or sell the property, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be used for the enforcement of the criminal laws of Pennsylvania.

(e) PROCEEDINGS AND PETITION.-- The proceedings for the forfeiture or condemnation of property, the retention or sale of which is provided for in this section, shall be in rem, in which the Commonwealth shall be the plaintiff and the property the defendant. A petition shall be filed in the court of common pleas of the judicial district where the property is located, verified by oath or affirmation of an officer or citizen, containing the following:

- (1) A description of the property seized.
- (2) A statement of the time and place where seized.
- (3) The owner, if known.
- (4) The person or persons in possession, if known.
- (5) An allegation that the property is subject to forfeiture pursuant to this section and an averment of material facts upon which forfeiture action is based.



(6) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and condemned unless cause be shown to the contrary.

(f) SERVICE.-- A copy of the petition required under subsection (e) shall be served personally or by certified mail on the owner or the person or persons in possession at the time of the seizure. The copy shall have endorsed a notice as follows:

To the claimant of within described property:

You are required to file an answer to this petition, setting forth your title in and right to possession of the property within 30 days from the service of this notice. You are also notified that, if you fail to file the answer, a decree of forfeiture and condemnation will be entered against the property.

The notice shall be signed by the district attorney, deputy district attorney or assistant district attorney.

(g) NOTICE.--

(1) If the owner of the property is unknown or there was no person in possession of the property when seized or if the owner or such person or persons in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court, notice of the petition shall be given by the Commonwealth through an advertisement in only one newspaper of general circulation published in the county where the property shall have been seized, once a week for two successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding.

(2) The notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure and shall direct any claimants to the property to file a claim on or before a date given in the notice, which date shall not be less than 30 days from the date of the first publication.

(3) If no claims are filed within 30 days of publication, the property shall summarily forfeit to the Commonwealth.

(h) UNKNOWN OWNER.-- For purposes of this section, the owner or other such person cannot be found in the jurisdiction of the court if:

(1) a copy of the petition is mailed to the last known address by

certified mail and is returned without delivery;

(2) personal service is attempted once but cannot be made at the last known address; and

(3) a copy of the petition is left at the last known address.

(i) **WAIVER OF NOTICE.**-- The notice provisions of this section are automatically waived if the owner, without good cause, fails to appear in court in response to a subpoena on the underlying criminal charges. Forty-five days after such a failure to appear, if good cause has not been demonstrated, the property shall summarily forfeit to the Commonwealth.

(j) **HEARING DATE.**-- Upon the filing of a claim for the property setting forth a right of possession, the case shall be deemed at issue, and a date and time shall be fixed for the hearing.

(k) **BURDEN OF PROOF.**-- At the hearing, if the Commonwealth produces evidence that the property in question was unlawfully used, possessed or otherwise subject to forfeiture under this section, the burden shall be upon the claimant to show by a preponderance of the evidence:

(1) That the claimant is the owner of the property or the holder of a chattel mortgage or contract of conditional sale thereon.

(2) That the claimant lawfully acquired the property.

(3) That the property was not unlawfully used or possessed by the claimant. If it appears that the property was unlawfully used or possessed by a person other than the claimant, then the claimant shall show that the unlawful use or possession was without his knowledge or consent. Such absence of knowledge or consent must be reasonable under the circumstances presented.

(l) **CLAIMS OF OWNERSHIP.**-- If a person claiming the ownership of or right of possession to or claiming to be the holder of a chattel mortgage or contract of conditional sale upon the property, the disposition of which is provided for in this section, prior to the sale presents a petition to the court alleging lawful ownership, right of possession, a lien or reservation of title to the property and if, on public hearing, due notice of which having been given to the district attorney, the claimant shall prove by a preponderance of the evidence that the property was lawfully acquired, possessed and used by him or, it appearing that the property was unlawfully used by a person other than the claimant, that the unlawful use was without the claimant's knowledge or consent, then the court may order the property returned or delivered to the claimant. Such absence of knowledge or consent must be reasonable under the circumstances presented. Otherwise, it shall be retained for official use or sold in accordance with this section.

**42 PA. CONST. STAT. § 6801 (2009). Controlled Substances Forfeiture.**

(a) FORFEITURES GENERALLY.-- The following shall be subject to forfeiture to the Commonwealth and no property right shall exist in them:

(1) All drug paraphernalia, controlled substances or other drugs which have been manufactured, distributed, dispensed or acquired in violation of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or other drug in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of, property described in paragraph (1) or (2), except that:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of The Controlled Substance, Drug, Device and Cosmetic Act;

(ii) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent, which absence of knowledge or consent must be reasonable under the circumstances presented;

(iii) no bona fide security interest retained or acquired under 13 Pa.C.S. (relating to commercial code) by any merchant dealing in new or used aircraft, vehicles or vessels, or retained or acquired by any licensed or regulated finance company, bank or lending institution, or by any other business regularly engaged in the financing of, or lending on the security of, such aircraft, vehicles or vessels, shall be subject to forfeiture or impairment; and

(iv) no conveyance shall be forfeited under this section for violation of section 13(a)(31) of The Controlled Substance, Drug, Device and Cosmetic Act.

(5) All books, records and research, including formulas, microfilm, tapes and data, which are used or intended for use in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(6) (i) All of the following:

(A) Money, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act, and all proceeds traceable to such an exchange.

(B) Money, negotiable instruments, securities or other things of value used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(C) Real property used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device and Cosmetic Act, including structures or other improvements thereon, and including any right, title and interest in the whole or any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of The Controlled Substance, Drug, Device and Cosmetic Act, and things growing on, affixed to and found in the land.

(ii) No property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the knowledge or consent of that owner. Such money and negotiable instruments found in close proximity to controlled substances possessed in violation of The Controlled Substance, Drug, Device and Cosmetic Act shall be rebuttably presumed to be proceeds derived from the selling of a controlled substance in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(iii) No valid lien or encumbrance on real property shall be subject to forfeiture or impairment under this paragraph. A lien which is fraudulent or intended to avoid forfeiture under this section shall be invalid.

(7) Any firearms, including, but not limited to, rifles, shotguns,

pistols, revolvers, machine guns, zip guns or any type of prohibited offensive weapon, as that term is defined in 18 Pa.C.S. (relating to crimes and offenses), which are used or intended for use to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic Act. Such operable firearms as are found in close proximity to illegally possessed controlled substances shall be rebuttably presumed to be used or intended for use to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic Act. All weapons forfeited under this section shall be immediately destroyed by the receiving law enforcement agency.

(b) **PROCESS AND SEIZURE.**-- Property subject to forfeiture under this chapter may be seized by the law enforcement authority upon process issued by any court of common pleas having jurisdiction over the property. Seizure without process may be made if:

(1) the seizure is incident to an arrest or a search under a search warrant or inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the Commonwealth in a criminal injunction or forfeiture proceeding under this chapter;

(3) there is probable cause to believe that the property is dangerous to health or safety; or

(4) there is probable cause to believe that the property has been used or is intended to be used in violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(c) **SEIZURE WITHOUT PROCESS.**-- In the event seizure without process occurs, as provided herein, proceedings for the issuance thereof shall be instituted forthwith.

(d) **CUSTODY OF PROPERTY.**-- Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the law enforcement authority subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings and of the district attorney or the Attorney General. When property is seized under this chapter, the law enforcement authority shall place the property under seal and either:

(1) remove the property to a place designated by it; or

(2) require that the district attorney or Attorney General take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) **USE OF PROPERTY HELD IN CUSTODY.**-- Whenever property is forfeited

under this chapter, the property shall be transferred to the custody of the district attorney, if the law enforcement authority seizing the property has local or county jurisdiction, or the Attorney General, if the law enforcement authority seizing the property has Statewide jurisdiction. The district attorney or the Attorney General, where appropriate, may:

(1) Retain the property for official use.

(2) Sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be dealt with in accordance with subsections (f) and (g).

(f) USE OF CASH OR PROCEEDS OF PROPERTY.-- Cash or proceeds of forfeited property transferred to the custody of the district attorney pursuant to subsection (e) shall be placed in the operating fund of the county in which the district attorney is elected. The appropriate county authority shall immediately release from the operating fund, without restriction, a like amount for the use of the district attorney enforcing the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. The entity having budgetary control shall not anticipate future forfeitures or proceeds therefrom in adoption and approval of the budget for the district attorney.

(g) DISTRIBUTION OF PROPERTY AMONG LAW ENFORCEMENT AUTHORITIES.-- If both municipal and State law enforcement authorities were substantially involved in effecting the seizure, the court having jurisdiction over the forfeiture proceedings shall equitably distribute the property between the district attorney and the Attorney General.

(h) AUTHORIZATION TO UTILIZE PROPERTY.-- The district attorney and the Attorney General shall utilize forfeited property or proceeds thereof for the purpose of enforcing the provisions of The Controlled Substance, Drug, Device and Cosmetic Act. In appropriate cases, the district attorney and the Attorney General may designate proceeds from forfeited property to be utilized by community-based drug and crime-fighting programs and for relocation and protection of witnesses in criminal cases.

(i) ANNUAL AUDIT OF FORFEITED PROPERTY.-- It shall be the responsibility of every county in this Commonwealth to provide, through the controller, board of auditors or other appropriate auditor and the district attorney, an annual audit of all forfeited property and proceeds obtained under this section. The audit shall not be made public but shall be submitted to the Office of Attorney General. The county shall report all forfeited property and proceeds obtained under this section and the disposition thereof to the Attorney General by September 30 of each year.

(j) ANNUAL REPORT; CONFIDENTIAL INFORMATION REGARDING

PROPERTY.-- The Attorney General shall annually submit a report, to the Appropriations and Judiciary Committees of the Senate and to the Appropriations and Judiciary Committees of the House of Representatives, specifying the forfeited property or proceeds thereof obtained under this section. The report shall give an accounting of all proceeds derived from the sale of forfeited property and the use made of unsold forfeited property. The Attorney General shall adopt procedures and guidelines governing the release of information by the district attorney to protect the confidentiality of forfeited property or proceeds used in ongoing drug enforcement activities.

(k) PROCEEDS AND APPROPRIATIONS.-- The proceeds or future proceeds from forfeited property under this chapter shall be in addition to any appropriation made to the Office of Attorney General.

## **Rhode Island**

### **R.I. GEN. LAWS § 21-28-5.04 (2010). Forfeiture of property and money.**

(a) Any property, real or personal, including, but not limited to, vessels, vehicles, or aircraft, and money or negotiable instruments, securities, or other things of value or any property constituting, or derived from any proceeds, furnished or intended to be furnished by any person for the transportation of or in exchange for a controlled substance and which has been or is being used in violation of § 21-28-4.01(a) or (b) or in, upon or by means of which any violation of § 21-28-4.01(a) or (b) or § 21-28-4.01.1 or 21-28-4.01.2 has taken or is taking place, and all real property including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements which is used in the commission of a violation of § 21-28-4.01(a) or (b) or § 21-28-4.01.1 or 21-28-4.01.2, or which was purchased with funds obtained as a result of the commission of a violation of § 21-28-4.01(a) or (b) or § 21-28-4.01.1 or 21-28-4.01.2, shall be seized and forfeited; provided that no property or money, as enumerated in this subsection, used by any person shall be forfeited under the provisions of this chapter unless it shall appear that the owner of the property or money had knowledge, actual or constructive, and was a consenting party to the alleged illegal act. All moneys, coin and currency, found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture, or distribution of controlled substances, are presumed to be unlawfully furnished in exchange for a controlled substance or used in violation of this chapter. The burden of proof is upon claimants of the property to rebut this presumption.

(b) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the law enforcement agency making the seizure and whenever property or money is forfeited under this chapter it shall be utilized as follows:

(1) Where the seized property is a vessel, vehicle, aircraft, or other personal property it may be retained and used by the law enforcement agency that seized the property where the use of the property is reasonably related to the law enforcement duties of the seizing

agency. If the seized property is a motor vehicle that is inappropriate for use by the law enforcement agency due to style, size, or color, the seizing agency shall be allowed to apply the proceeds of sale or the trade in value of the vehicle towards the purchase of an appropriate vehicle for use for activities reasonably related to law enforcement duties.

(2) The law enforcement agency may sell any forfeited property, which is not required by this chapter to be destroyed and which is not harmful to the public. The proceeds from the sale are to be distributed in accordance with subdivision (3) of this subsection.

(3) As to the proceeds from the sale of seized property as referred to in subdivision (2) of this subsection and as to moneys, coin and currency, negotiable instruments, securities, or other things of value as referred to in subsection (a) of this section, the distribution shall be as follows:

(i) (A) All proceeds of the forfeiture of real or personal property shall be distributed as follows: All costs of advertising administrative forfeitures shall first be deducted from the amount forfeited. Of the remainder, twenty percent (20%) of the proceeds shall be provided to the attorney general's department to be used for further drug-related law enforcement activities including, but not limited to, investigations, prosecutions and the administration of this chapter; seventy percent (70%) of the proceeds shall be divided among the state and local law enforcement agencies proportionately based upon their contribution to the investigation of the criminal activity related to the asset being forfeited; and ten percent (10%) of the proceeds shall be provided to the department of health for distribution to substance abuse treatment programs.

(B) The law enforcement agencies involved in the investigation with the assistance of the attorney general shall by agreement determine the respective proportionate share to be received by each agency. If the agencies are unable to reach agreement, application shall be made by one or more of the agencies involved to the presiding justice of the superior court, who shall determine the respective proportionate share attributable to each law enforcement agency. The proceeds from all forfeitures shall be held by the general treasurer in a separate account until such time as an allocation is determined by agreement of the agencies or by the presiding justice. It shall be the duty and responsibility of the general treasurer to disburse the allocated funds from the separate account to the respective law enforcement agencies.

(ii) Each state or local law enforcement agency shall be entitled to keep the forfeited money or the proceeds from sales of forfeited property. The funds shall be used for law enforcement purposes and investigations of violations of this chapter. The funds received by a state law enforcement agency shall be maintained in a separate account by the general treasurer. The funds received by a local law enforcement agency shall be maintained in a separate account by the local agency's city or town treasurer.

(c) (1) There is established in the state's treasury a special fund to be known as the asset forfeiture fund in which shall be deposited the excess proceeds of forfeitures arising out of criminal acts occurring before July 1, 1987. The asset forfeiture fund shall be used to



fund drug-related law enforcement activity and the treatment and rehabilitation of victims of drug abuse. The fund shall be administered through the office of the general treasurer. The presiding justice of the superior court shall have the authority to determine the feasibility and amount of disbursement to those state or local law enforcement agencies which have made application.

(2) Upon the application of any law enforcement agency of the state of Rhode Island when a special need exists concerning the enforcement of the provisions of this chapter, the attorney general or his or her designee may apply to the presiding justice of the superior court for the release from the general treasury of sums of money. When the presiding justice upon consideration of the reasons set forth by that agency deems them to be reasonable and necessary to the accomplishment of a goal within the powers and duties of that law enforcement agency, he or she may issue an order ex parte providing for the release of the funds.

(d) Each law enforcement agency making any seizure(s) which result(s) in a forfeiture pursuant to this section shall certify and file with the state treasurer between January 1 and January 30 an annual report detailing the property or money forfeited during the previous calendar year and the use or disposition of the property or money. The report shall be made in the form and manner as may be provided or specified by the treasurer and these annual law enforcement agency reports shall be provided to the local governmental body governing the agency and to the house and senate judiciary committees.

(e) Any law enforcement agency whose duty it is to enforce the laws of this state relating to controlled substances is empowered to authorize designated officers or agents to carry out the seizure provisions of this chapter. It shall be the duty of any officer or agent authorized or designated or authorized by law, whenever he or she shall discover any property or monies which have been or are being used in violation of any of the provisions of this chapter, or in, upon or by means of which any violation of this chapter has taken or is taking place, to seize the property or monies and to place it in the custody of the person as may be authorized or designated for that purpose by the respective law enforcement agency pursuant to those provisions.

**R.I. GEN. LAWS § 21-28-5.05 (2010). Forfeiture of controlled substances, related materials and other property, equipment and records.**

(a) The following shall be subject to forfeiture to the state and no property right shall exist in them:

(1) All controlled substances manufactured, distributed, dispensed, or acquired in violation of this chapter.

(2) All raw materials, products, and equipment of any kind used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter.

(3) All property used, or intended for use, as a container for property described in subdivision (1) or (2) of this subsection, subject to the limitations of § 21-28-5.04.

(4) All books, records and research, including formulas, microfilm, tapes, and data used, or intended for use, in violation of this chapter.

(5) All imitation controlled substances manufactured, distributed, or acquired in violation of this chapter.

(b) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the law enforcement agency making the seizure. Whenever property is forfeited under this chapter the law enforcement agency may:

(1) Retain the property for official use;

(2) Sell any forfeited property which is not required by this chapter to be destroyed and which is not harmful to the public, but the proceeds of the sale, after first deducting an amount sufficient for all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs, shall be paid to the general treasurer for the use of the state.

## **South Carolina**

### **S.C. Code Ann. § 44-53-520 (2009). Forfeitures.**

(a) The following are subject to forfeiture:

(1) all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this article;

(2) all raw materials, products, and equipment of any kind which are used, or which have been positioned for use, in manufacturing, producing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this article;

(3) all property which is used, or which has been positioned for use, as a container for property described in items (1) or (2);

(4) All property, both real and personal, which in any manner is knowingly used to facilitate production, manufacturing, distribution, sale, importation, exportation, or trafficking in various controlled substances as defined in this article;

(5) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or which have been positioned for use, in violation of this article;

(6) all conveyances including, but not limited to, trailers, aircraft, motor vehicles, and watergoing vessels which are used or intended for use unlawfully to conceal, contain, or transport or facilitate the unlawful concealment, possession, containment, manufacture, or transportation of controlled substances and their compounds, except as otherwise provided, must be forfeited to the State. No motor vehicle may be forfeited to the State under this item unless it is used, intended for use, or in any manner facilitates a violation of Section 44-53-370(a), involving at least one pound or more of marijuana, one pound or more of hashish, more than four grains of opium, more than two grains of heroin, more than four grains of morphine, more than ten grains of cocaine, more than fifty micrograms of lysergic acid diethylamide (LSD) or its compounds, more than ten grains of crack, or more than one gram of ice or crank, as defined in Section 44-53-110, or unless it is used, intended for use, or in any manner facilitates a violation of Section 44-53-370(e) or fifteen tablets, capsules, dosage units, or the equivalent quantity of 3, 4-methylenedioxymethamphetamine (MDMA);

(7) all property including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange;

(8) all monies seized in close proximity to forfeitable controlled substances, drug manufacturing, or distributing paraphernalia, or in close proximity to forfeitable records of the importation, manufacturing, or distribution of controlled substances and all monies seized at the time of arrest or search involving violation of this article. If the person from whom the monies were taken can establish to the satisfaction of a court of competent jurisdiction that the monies seized are not products of illegal acts, the monies must be returned pursuant to court order.

(b) Any property subject to forfeiture under this article may be seized by the department having authority upon warrant issued by any court having jurisdiction over the property. Seizure without process may be made if:

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding based upon this article;

(3) the department has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the department has probable cause to believe that the property was used or is intended to be used in violation of this article.

(c) In the event of seizure pursuant to subsection (b), proceedings under § 44-53-530

regarding forfeiture and disposition must be instituted within a reasonable time.

(d) Any property taken or detained under this section is not subject to replevin but is considered to be in the custody of the department making the seizure subject only to the orders of the court having jurisdiction over the forfeiture proceedings. Property described in § 44-53-520(a) is forfeited and transferred to the government at the moment of illegal use. Seizure and forfeiture proceedings confirm the transfer.

(e) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this article are contraband and must be seized and summarily forfeited to the State. Controlled substances listed in Schedule I, which are seized or come into the possession of the State, the owners of which are unknown, are contraband and must be summarily forfeited to the State.

(f) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this article, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the State.

(g) The failure, upon demand by the department having authority to make the demand, 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 is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(h) For the purposes of this section, whenever the seizure of any property subject to seizure is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure.

(i) Law enforcement agencies seizing property under this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. Any monies seized must be deposited in an interest bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidential nature and provides for security in another manner.

(j) When property and monies of any value as defined in this section or anything else of any value is seized, the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecution agency.

(1) The report shall provide the following information with respect to the property seized:

(a) description;

(b) circumstances of seizure;

- (c) present custodian and where the property is being stored or its location;
  - (d) name of owner;
  - (e) name of lienholder, if any;
  - (f) seizing agency; and
  - (g) the type and quantity of the controlled substance involved.
- (2) If the property is a conveyance, the report shall include the:
- (a) make, model, serial number, and year of the conveyance;
  - (b) person in whose name the conveyance is registered; and
  - (c) name of any lienholders.
- (3) In addition to the report provided for in items (1) and (2), the law enforcement agency shall prepare for dissemination to the public upon request a report providing the following information:
- (a) a description of the quantity and nature of the property and money seized;
  - (b) the seizing agency;
  - (c) the type and quantity of the controlled substance involved;
  - (d) the make, model, and year of a conveyance; and
  - (e) the law enforcement agency responsible for the property or conveyance seized.
- (k) Property or conveyances seized by a law enforcement agency or department must not be used by officers for personal purposes.

## **South Dakota**

### **S.D. CODIFIED LAWS § 34-20B-70 (2009). Property subject to forfeiture.**

The following are subject to forfeiture and no property right exists in them:

(1) All controlled drugs and substances and marijuana which have been manufactured, distributed, dispensed or acquired in violation of the provisions of this chapter or chapter 22-42;

(2) All raw materials, products and equipment of any kind which are used or intended

for use, in manufacturing, compounding, processing, importing, or exporting any controlled drug or substance or marijuana in violation of the provisions of this chapter or chapter 22-42;

(3) All property which is used, or intended for use, as a container for property described in subdivisions (1) and (2);

(4) All conveyances including aircraft, vehicles, or vessels, which transport, possess or conceal, or which are used, or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, possession or concealment of marijuana in excess of one-half pound or any quantity of any other property described in subdivision (1) or (2), except as provided in §§ 34-20B-71 to 34-20B-73, inclusive. This subdivision includes those instances in which a conveyance transports, possesses or conceals marijuana or a controlled substance as described herein without the necessity of showing that the conveyance is specifically being used to transport, possess or conceal or facilitate the transportation, possession or concealment of marijuana or a controlled substance in aid of any other offense;

(5) All books, records, and research, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this chapter;

(6) Any funds or other things of value used for the purposes of unlawfully purchasing, attempting to purchase, distributing or attempting to distribute any controlled drug or substance or marijuana;

(7) Any assets, interest, profits, income and proceeds acquired or derived from the unlawful purchase, attempted purchase, distribution or attempted distribution of any controlled drug or substance or marijuana.

## Tennessee

### **TENN. CODE ANN. § 53-11-451 (2010). Goods subject to forfeiture -- Seizure -- Disposition.**

(a) The following are subject to forfeiture:

(1) All controlled substances that have been manufactured, distributed, dispensed or acquired in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(2) All raw materials, products and equipment of any kind that are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(3) All property that is used, or intended for use, as a container for property described in subdivision (a)(1) or (a)(2);

(4) All conveyances, including aircraft, vehicles or vessels that are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale or receipt of property described in subdivision (a)(1) or (a)(2), but:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(B) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without the owner's knowledge or consent;

(C) A conveyance is not subject to forfeiture for a violation of § 39-17-418(a) or (b) or § 39-17-425; and

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes and data that are used, or intended for use, in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(6) (A) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of the Tennessee Drug Control Act of 1989, compiled in part 3 of this chapter, this part and title 39, chapter 17, part 4, all proceeds traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Tennessee Drug Control Act;

(B) No property shall be forfeited under subdivision (a)(6)(A), to the extent of the interest of an owner, by reason of any act or omission established by the owner to have been committed or omitted without the owner's knowledge or consent; and

(7) All drug paraphernalia as defined by § 39-17-402.

(b) Property subject to forfeiture under part 3 of this chapter and this part, or title 39, chapter 17, part 4, may be seized by the director of the Tennessee bureau of investigation or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable upon process issued by any circuit or criminal court having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon part 3 of this chapter and this part, or title 39, chapter 17, part 4;

(3) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable has probable cause to believe that the property was used or is intended to be used in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4.

(c) In the event of seizure pursuant to subsection (b), proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable, subject only to the orders and decrees of the circuit or criminal court. When property is seized under parts 3 of this chapter and this part, or title 39, chapter 17, part 4, the seizing authority may:

(1) Place the property under seal;

(2) Remove the property to a place designated by the seizing authority;

(3) Require the director or the director's authorized representative, agent or employee, the commissioner or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable to take custody of the property and remove it to an appropriate location for disposition in accordance with law; or

(4) Regardless of any other method of disposition of property contained in this chapter, use of the property taken or detained, with permission of the court and under the terms and conditions approved by the court, for use in the drug enforcement program of the county in which the goods are seized, or, with approval of the court having jurisdiction



over the property, sell the property and utilize the proceeds for the drug enforcement program of the county in which the property was seized, or both;

(A) In the case of property seized by the Tennessee bureau of investigation, the director of the bureau is authorized to designate, in writing, any part of the property for use by the bureau for any period of time, subject to inventory, management and disposition as provided by law;

(B) In the case of an aircraft seized by the bureau, the director is also authorized to designate, in writing, the property for transfer to and use by the department of general services subject to inventory, management and disposition as provided by law. If an aircraft is not sold, but is to be transferred to another state governmental entity, the transfer shall be approved by the commissioner of finance and administration;

(C) The proceeds from any sale conducted under this chapter of forfeited property seized by the bureau and not designated for its use, or not transferred to the department of general services as provided in subdivision (d)(4)(B), shall be paid to the state treasurer to be used only as appropriated by the general assembly.

(e) When property is forfeited under part 3 of this chapter and this part, or title 39, chapter 17, part 4, the director or the director's authorized representative, agent or employee, the commissioner of safety or the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable shall remove it for disposition in accordance with law.

(f) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4, are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I that 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.

(g) Species of plants from which controlled substances in Schedules I, II and VI may be derived that have been planted or cultivated in violation of part 3 of this chapter and this part, or title 39, chapter 17, part 4, or of which the owners or cultivators are unknown, or that are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the commissioner of safety, the commissioner's authorized representative, agent or employee, or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, or constable, 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 the person is the holder of appropriate registration, constitutes authority for the seizure and forfeiture of the plants.

(i) Confiscation proceedings under part 3 of this chapter and this part, or title 39, chapter 17, part 4, shall be conducted in accordance with part 2 of this chapter.

(j) Any property of the type set forth in subdivisions (a)(1) and (7) that is in the custody and possession of a clerk of any court of this state by virtue of the property having been held as evidence or exhibits in any criminal prosecution where all appeals or potential appeals of a judgment have ended, or when the case has been dismissed or otherwise brought to a conclusion, shall be disposed of as follows:

(1) The clerk of the court having custody of the property to be disposed of shall, no less than once annually, inventory the property and prepare a list of the property proposed to be destroyed with references to the cases involved and the name of the case, the case number and date when the property was used;

(2) The clerk shall submit the inventory list with a filed petition to the court and shall serve a copy of the petition upon the district attorney general. After determining that the listed property is not needed as evidence in any pending or potential judicial proceeding, the court shall order the property to be destroyed; and

(3) The clerk, or a deputy clerk that the clerk may designate, shall completely destroy each item by cutting, crushing, burning or melting and shall file, together with the petition and order relating to the destroyed property, an affidavit concerning the destruction, showing a description of each item, the method of destruction, the date and place of destruction, and the names and addresses of all witnesses to the destruction.

## Texas

### **Tex. Code Crim. Proc. Ann. art. 59.01 (2010). Definitions.**

In this chapter:

(1) "Attorney representing the state" means the prosecutor with felony jurisdiction in the county in which a forfeiture proceeding is held under this chapter or, in a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(v) of this article, the city attorney of a municipality if the property is seized in that municipality by a peace officer employed by that municipality and the governing body of the municipality has approved procedures for the city attorney acting in a forfeiture proceeding. In a proceeding for forfeiture of contraband as defined under Subdivision (2)(B)(vii) of this article, the term includes the attorney general.

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

- (i) any first or second degree felony under the Penal Code;
- (ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;
- (iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or
- (iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

- (i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);
- (ii) any felony under Chapter 483, Health and Safety Code;
- (iii) a felony under Chapter 153, Finance Code;
- (iv) any felony under Chapter 34, Penal Code;
- (v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;
- (vi) any felony under Chapter 152, Finance Code;
- (vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;
- (viii) a Class B misdemeanor under Chapter 522, Business & Commerce Code;
- (ix) [2 Versions: As amended by Acts 2009, 81st Leg., ch. 87] a Class A misdemeanor under Section 306.051, Business & Commerce Code;
- (ix) [2 Versions: As amended by Acts 2009, 81st Leg., chs. 153, 1130 and 1357] a Class A misdemeanor under Section 35.153, Business & Commerce Code; or
- (x) [3 Versions: As added by Acts 2009, 81st Leg., ch. 153] any offense under Section 46.06(a)(1) or 46.14, Penal Code;
- (x) [3 Versions: As added by Acts 2009, 81st Leg., ch. 1130] any offense under Chapter 71, Penal Code;

(x) [3 Versions: As added by Acts 2009, 81st Leg., ch. 1357] any offense under Section 42.10, Penal Code;

(C) the proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of this subdivision, or a crime of violence;

(D) acquired with proceeds gained from the commission of a felony listed in Paragraph (A) or (B) of this subdivision, a misdemeanor listed in Paragraph (B)(viii) or (x) of this subdivision, or a crime of violence; or

(E) used to facilitate or intended to be used to facilitate the commission of a felony under Section 15.031 or 43.25, Penal Code.

(3) "Crime of violence" means:

(A) any criminal offense defined in the Penal Code or in a federal criminal law that results in a personal injury to a victim; or

(B) an act that is not an offense under the Penal Code involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death sustained in an accident caused by a driver in violation of Section 550.021, Transportation Code.

(4) "Interest holder" means the bona fide holder of a perfected lien or a perfected security interest in property.

(5) "Law enforcement agency" means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers.

(6) "Owner" means a person who claims an equitable or legal ownership interest in property.

(7) "Proceeds" includes income a person accused or convicted of a crime or the person's representative or assignee receives from:

(A) a movie, book, magazine article, tape recording, phonographic record, radio or television presentation, telephone service, electronic media format, including an Internet website, or live entertainment in which the crime was reenacted; or

(B) the sale of tangible property the value of which is increased by the notoriety gained from the conviction of an offense by the person accused or convicted of the crime.

(8) "Seizure" means the restraint of property by a peace officer under Article 59.03(a) or (b) of this code, whether the officer restrains the property by physical force or by a display of the officer's authority, and includes the collection of property or the act of taking possession of property.

(9) "Depository account" means the obligation of a regulated financial institution to pay the account owner under a written agreement, including a checking account, savings account, money market account, time deposit, NOW account, or certificate of deposit.

(10) "Primary state or federal financial institution regulator" means the state or federal regulatory agency that chartered and comprehensively regulates a regulated financial institution.

(11) "Regulated financial institution" means a depository institution chartered by a state or federal government, the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

**Tex. Code Crim. Proc. Ann. art. 59.02 (2010). Forfeiture of contraband.**

(a) Property that is contraband is subject to seizure and forfeiture under this chapter.

(b) Any property that is contraband other than property held as evidence in a criminal investigation or a pending criminal case, money, a negotiable instrument, or a security that is seized under this chapter may be replevied by the owner or interest holder of the property, on execution of a good and valid bond with sufficient surety in a sum equal to the appraised value of the property replevied. The bond may be approved as to form and substance by the court after the court gives notice of the bond to the authority holding the seized property. The bond must be conditioned:

(1) on return of the property to the custody of the state on the day of hearing of the forfeiture proceedings; and

(2) that the interest holder or owner of the property will abide by the decision that may be made in the cause.

(c) An owner or interest holder's interest in property may not be forfeited under this chapter if the owner or interest holder proves by a preponderance of the evidence that the owner or interest holder acquired and perfected the interest:

(1) before or during the act or omission giving rise to forfeiture or, if the property is real property, he acquired an ownership interest, security interest, or lien interest before a lis pendens notice was filed under Article 59.04(g) of this code and did not know or should not reasonably have known of the act or omission giving rise to the forfeiture or that it was likely to occur at or before the time of acquiring and perfecting the interest or, if the property is real property, at or before the time of acquiring the ownership interest, security interest, or lien interest; or

(2) after the act or omission giving rise to the forfeiture, but before the seizure of the property, and only if the owner or interest holder:

(A) was, at the time that the interest in the property was acquired, an owner or interest

holder for value; and

(B) was without reasonable cause to believe that the property was contraband and did not purposefully avoid learning that the property was contraband.

(d) Notwithstanding any other law, if property is seized from the possession of an owner or interest holder who asserts an ownership interest, security interest, or lien interest in the property under applicable law, the owner or interest holder's rights remain in effect during the pendency of proceedings under this chapter as if possession of the property had remained with the owner or interest holder.

(e) On motion by any party or on the motion of the court, after notice in the manner provided by Article 59.04 of this code to all known owners and interest holders of property subject to forfeiture under this chapter, and after a hearing on the matter, the court may make appropriate orders to preserve and maintain the value of the property until a final disposition of the property is made under this chapter, including the sale of the property if that is the only method by which the value of the property may be preserved until final disposition.

(f) Any property that is contraband and has been seized by the Texas Department of Criminal Justice shall be forfeited to the department under the same rules and conditions as for other forfeitures.

(g) An individual, firm, corporation, or other entity insured under a policy of title insurance may not assert a claim or cause of action on or because of the policy if the claim or cause of action is based on forfeiture under this chapter and, at or before the time of acquiring the ownership of real property, security interest in real property, or lien interest against real property, the insured knew or reasonably should have known of the act or omission giving rise to the forfeiture or that the act or omission was likely to occur.

(h) (1) An owner or interest holder's interest in property may not be forfeited under this chapter if at the forfeiture hearing the owner or interest holder proves by a preponderance of the evidence that the owner or interest holder was not a party to the offense giving rise to the forfeiture and that the contraband:

(A) was stolen from the owner or interest holder before being used in the commission of the offense giving rise to the forfeiture;

(B) was purchased with:

(i) money stolen from the owner or interest holder; or

(ii) proceeds from the sale of property stolen from the owner or interest holder; or

(C) was used or intended to be used without the effective consent of the owner or interest holder in the commission of the offense giving rise to the forfeiture.

(2) An attorney representing the state who has a reasonable belief that property subject to forfeiture is described by Subdivision (1) and who has a reasonable belief as to the identity of the rightful owner or interest holder of the property shall notify the owner or interest holder as provided by Article 59.04.

(3) An attorney representing the state is not liable in an action for damages resulting from an act or omission in the performance of the duties imposed by Subdivision (2).

(4) The exclusive remedy for failure by the attorney representing the state to provide the notice required under Subdivision (2) is submission of that failure as a ground for new trial in a motion for new trial or bill of review.

(i) The forfeiture provisions of this chapter apply to contraband as defined by Article 59.01(2)(B)(v) of this code only in a municipality with a population of 250,000 or more.

## Utah

### **UTAH CODE ANN. § 58-37-13 (2009). Property subject to forfeiture -- Seizure – Procedure.**

(1) As used in this section:

(a) "Claimant" means:

(i) any owner as defined in this section; or

(ii) any interest holder as defined in this section and any other person or entity who asserts a claim to any property seized for forfeiture under this section;

(b) "Drug distributing paraphernalia" means any property used or designed to be used in the illegal transportation, storage, shipping, or circulation of a controlled substance. Property is considered "designed to be used" for one or more of the above-listed purposes if the property has been altered or modified to include a feature or device which would actually promote or conceal a violation of this chapter.

(c) "Drug manufacturing equipment or supplies" includes any illegally possessed controlled substance precursor, or any chemical, laboratory equipment, or laboratory supplies possessed with intent to engage in clandestine laboratory operations as defined in Section 58-37d-3.

(d) "Interest holder" means a secured party as defined in Section 70A-9a-102, a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good

faith purchaser for value. A person who holds property for the benefit of or as an agent or nominee for another, or who is not in substantial compliance with any statute requiring an interest in property to be recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value, is not an interest holder.

(e) "Owner" means an individual or entity who possesses a legal or equitable ownership in real or personal property.

(f) "Proceeds" means property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission and includes any property of any kind without reduction for expenses incurred in the acquisition, maintenance, or production of that property, or any other purpose.

(g) "Real Property" means:

(i) land; and

(ii) any building, fixture, improvement, appurtenance, structure, or other development that is affixed permanently to land.

(h) "Resolution of criminal charges" occurs at the time a claimant who is also charged with violations under Chapter 37, 37a, 37b, 37c, or 37d enters a plea, upon return of a jury verdict or court ruling in a criminal trial, or upon dismissal of the criminal charge.

(i) "Violation of this chapter" means any conduct prohibited by Chapter 37, 37a, 37b, 37c, or 37d or any conduct occurring outside the state which would be a violation of the laws of the place where the conduct occurred and which would be a violation of Chapter 37, 37a, 37b, 37c, or 37d if the conduct had occurred in this state.

(2) The following are subject to criminal or civil forfeiture pursuant to Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act:

(a) all controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter;

(b) all raw materials, products, and equipment of any kind used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;

(c) all property used or intended for use as a container for property described in Subsections (2)(a) and (2)(b);

(d) all hypodermic needles, syringes, and other paraphernalia, not including capsules used with health food supplements and herbs, used or intended for use to administer controlled substances in violation of this chapter;



(e) all conveyances including aircraft, vehicles, or vessels used or intended to be used to facilitate the distribution or possession with intent to distribute the property described in Subsections (2)(a) and (2)(b);

(f) all books, records, and research, including formulas, microfilm, tapes, and data used or intended for use in violation of this chapter;

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of this chapter, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter. An interest in property may not be civilly forfeited under this Subsection (2) unless it is proven by clear and convincing evidence that the owner or any interest holder knew of the conduct which made the property subject to forfeiture. The burden of presenting this evidence is on the state;

(h) all imitation controlled substances as defined in Section 58-37b-2, Imitation Controlled Substances Act;

(i) (i) all warehousing, housing, and storage facilities, or interest in real property of any kind used, or intended for use, in producing, cultivating, warehousing, storing, distributing or manufacturing any controlled substances in violation of this chapter but only if:

(A) the cumulative sales of controlled substances on the property within a two-month period total or exceed \$ 1,000; or

(B) the street value of any controlled substances found on the premises at any given time totals or exceeds \$ 1,000, but only after the judge makes a specific finding of proportionality under Section 24-1-14, and subject to the condition that even if proportionality is found, the judge shall have discretion not to forfeit real property which is a primary residence.

(ii) A narcotics officer experienced in controlled substances law enforcement may testify to establish the street value of the controlled substances for purposes of this Subsection (2);

(j) any firearm, weapon, or ammunition carried or used in connection with a violation of this chapter or any firearm, weapon, or ammunition kept or located within the proximity of controlled substances;

(k) all proceeds traceable to any violation of this chapter.

(3) Property subject to forfeiture under this chapter may be seized by any peace officer of this state upon process issued by any court having jurisdiction over the property. However, seizure without process may be made when:

(a) the seizure is incident to an arrest or search under a search warrant or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property has been used or intended to be used in violation of this chapter and has probable cause to believe the property will be damaged, intentionally diminished in value, destroyed, concealed, or removed from the state.

(4) Property taken or detained under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of the court or the official having jurisdiction. When property is seized under this chapter, the appropriate person or agency may:

(a) place the property under seal;

(b) remove the property to a place designated by it or the warrant under which it was seized; or

(c) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(5) All substances listed in Schedule I that are possessed, transferred, distributed, or offered for distribution in violation of this chapter are contraband and no property right shall exist in them. All substances listed in Schedule I which are seized or come into the possession of the state may be retained for any evidentiary or investigative purpose, including sampling or other preservation prior to disposal or destruction by the state.

(6) All marijuana or any species of plants from which controlled substances in Schedules I and II are derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or are wild growths, may be seized and retained for any evidentiary or investigative purpose, including sampling or other preservation prior to disposal or destruction by the state. Failure, upon demand by the department or its authorized agent, of any person in occupancy or in control of land or premises upon which species of plants are growing or being stored, to produce an appropriate license or proof that he is the holder of a license, is authority for the seizure and forfeiture of the plants.

(7) Forfeiture proceedings shall conform with the procedures and substantive protections of Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

## Vermont

### **Vt. Stat. Ann. tit. 18, § 4241 (2010). Scope.**

(a) The following property shall be subject to this subchapter:

(1) All regulated drugs which have been cultivated, manufactured, distributed, compounded, possessed, sold, prescribed, dispensed or delivered in violation of subchapter 1 of this chapter.

(2) All raw materials, products, and equipment of any kind, which are used or intended for use in cultivating, manufacturing, compounding, dispensing, delivering, processing, importing or exporting any regulated drug in violation of subchapter 1 of this chapter.

(3) All property which is used or intended for use as a container for property described in subdivisions (1) or (2) of this section.

(4) All books, records, and research, including but not limited to formulas, microfilm, tapes, computers, software and data, which are used or intended for use in violation of subchapter 1 of this chapter.

(5) Any consideration, including but not limited to monies, negotiable instruments and securities, used or intended for use in the cultivation, manufacture, compounding, distribution or delivery of any regulated drug in violation of subchapter 1 of this chapter and any proceeds or derivative proceeds of any dispensing or sale of any regulated drug in violation of subchapter 1 of this chapter, including but not limited to monies, negotiable instruments and securities. Such consideration, proceeds or derivative proceeds shall be forfeited to the extent of the interest of an owner, only by reason of an action or omission committed or omitted with the knowledge or consent of the owner. As used herein, "derivative proceeds" shall not include real property which is occupied as the primary residence of a person involved in the violation and a member or members of that person's family.

(6) All conveyances, including aircraft, vehicles or vessels, which are used or are intended for use to transport, conceal or in any manner facilitate the cultivation, manufacture, compounding, dispensing, delivering, sale or possession of a regulated drug in violation of subchapter 1 of this chapter. No conveyance shall be forfeited:

(A) which is used by any person as a common carrier in the transaction of business as a common carrier unless the owner or other person in charge of such conveyance was a consenting party or privy to a violation of subchapter 1 of this chapter;

(B) by reason of any act or omission of any person other than the owner while the conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, this state or any other state; or

(C) by reason of the use or intended use of the conveyance in violation of subchapter 1 of this chapter by a person other than the owner, unless the owner knew or had reason to believe that the conveyance was used in that manner.

(b) This subchapter shall not apply to any property used or intended for use in an offense involving two ounces or less of marijuana.

## **Virginia**

### **VA. CODE ANN. § 19.2-386.22 (2010). Seizure of property used in connection with or derived from illegal drug transactions.**

A. The following property shall be subject to lawful seizure by any officer charged with enforcing the provisions of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2: (i) all money, medical equipment, office equipment, laboratory equipment, motor vehicles, and all other personal and real property of any kind or character, used in substantial connection with (a) the illegal manufacture, sale or distribution of controlled substances or possession with intent to sell or distribute controlled substances in violation of § 18.2-248, (b) the sale or distribution of marijuana or possession with intent to distribute marijuana in violation of subdivisions (a) (2), (a) (3) and (c) of § 18.2-248.1, or (c) a drug-related offense in violation of § 18.2-474.1; (ii) everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of § 18.2-248 or for marijuana in violation of § 18.2-248.1 or for a controlled substance or marijuana in violation of § 18.2-474.1; and (iii) all moneys or other property, real or personal, traceable to such an exchange, together with any interest or profits derived from the investment of such money or other property. Under the provisions of clause (i), real property shall not be subject to lawful seizure unless the minimum prescribed punishment for the violation is a term of not less than five years.

B. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of this title.

### **VA. CODE ANN. § 19.2-386.8 (2010). Exemptions.**

The following exemptions shall apply to property otherwise subject to forfeiture:

1. No conveyance used by any person as a lawfully certified common carrier in the transaction of business as a common carrier may be forfeited under the provisions of this section unless the owner of the conveyance was a consenting party or privy to the conduct giving rise to forfeiture or knew or had reason to know of it.

2. No conveyance may be forfeited under the provisions of this section for any conduct committed by a person other than the owner while the conveyance was unlawfully in the

possession of a person other than the owner in violation of the criminal laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof.

3. No owner's interest may be forfeited under this chapter if the court finds that:

- a. He did not know and had no reason to know of the conduct giving rise to forfeiture;
- b. He was a bona fide purchaser for value without notice;
- c. The conduct giving rise to forfeiture occurred without his connivance or consent, express or implied; or
- d. The conduct giving rise to forfeiture was committed by a tenant of a residential or commercial property owned by a landlord, and the landlord did not know or have reason to know of the tenant's conduct.

4. No lien holder's interest may be forfeited under this chapter if the court finds that:

- a. The lien holder did not know of the conduct giving rise to forfeiture at the time the lien was granted;
- b. The lien holder held a bona fide lien on the property subject to forfeiture and had perfected the same in the manner prescribed by law prior to seizure of the property; and
- c. The conduct giving rise to forfeiture occurred without his connivance or consent, express or implied.

In the event the interest has been sold to a bona fide purchaser for value in order to avoid the provisions of this chapter, the Commonwealth shall have a right of action against the seller of the property for the proceeds of the sale.

## **Washington**

### **WASH. REV. CODE ANN. § 9.68A.120 (2010). Seizure and forfeiture of property.**

The following are subject to seizure and forfeiture:

- (1) All visual or printed matter that depicts a minor engaged in sexually explicit conduct.
- (2) All raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts

a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060, but:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) No property is subject to forfeiture under this section by reason of any act or omission established by the owner of the property to have been committed or omitted without the owner's knowledge or consent;

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(d) When the owner of a conveyance has been arrested under this chapter the conveyance may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest.

(3) All personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.

(4) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(5) In the event of seizure under subsection (4) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days

following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the item seized shall be deemed forfeited.

(7) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the seized items. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession thereof of the seized items.

(8) If property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of this chapter, the seizing law enforcement agency must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of this chapter.

(9) When property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to that agency for the exclusive use of enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under this chapter shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Fifty percent of the money remaining after payment of these expenses shall be deposited in the

state general fund and fifty percent shall be deposited in the general fund of the state, county, or city of the seizing law enforcement agency; or

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law.

**WASH. REV. CODE ANN. § 10.105.010 (2010). Seizure and forfeiture.**

(1) The following are subject to seizure and forfeiture and no property right exists in them: All personal property, including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which has been or was actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony. No property may be forfeited under this section until after there has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished, or acquired.

A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if at the time the security interest was created, the secured party neither had knowledge of nor consented to the commission of the felony.

(2) Personal property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding;

(c) A law enforcement officer has probable cause to believe that the property is directly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in the commission of a felony.

(3) In the event of seizure pursuant to this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. The notice of



seizure may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure, the item seized shall be deemed forfeited.

(5) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized property within forty-five days of the seizure, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the property involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. The seizing law enforcement agency shall promptly return the property to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession of the property.

(6) When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the criminal law;

(b) Sell that which is not required to be destroyed by law and which is not harmful to

the public.

(7) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the state general fund.

(a) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(b) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(c) Retained property and net proceeds not required to be paid to the state treasurer, or otherwise required to be spent under this section, shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

**WASH. REV. CODE ANN. § 69.50.505 (2010). Seizure and forfeiture.**

(1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended

for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(f) All drug paraphernalia;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(d), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the forty-five day period following service

of the notice of seizure in the case of personal property and within the ninety-day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

(8) (a) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(c) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(d) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(9) (a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the state general fund.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are 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 listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation 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 board.

(13) The failure, upon demand by a board inspector or law enforcement officer, 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 thereof constitutes authority for the seizure and forfeiture of the plants.

(14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(15) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

(a) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(b) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(i) Only if the funds applied under (b) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(c) For any claim filed under (b) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or



(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.

(17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

## **West Virginia**

### **W. VA. CODE ANN. § 60A-7-703 (2009). Items subject to forfeiture; persons authorized to seize property subject to forfeiture.**

(a) The following are subject to forfeiture:

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

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

(3) All tax-not-paid tobacco products, as that term is defined in section two [§ 11-17-2], article seventeen, chapter eleven of this code, declared to be contraband under said article;

(4) All property which is used, or has been used, or is intended for use, as a container

for property described in subdivision (1), (2) or (3) of this subsection;

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

(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 [§ 60A-5-501], article five of this chapter (hereinafter referred to as the "appropriate person" in this article).

(c) Controlled substances listed in article two [ §§ 60A-2-201 et seq.] 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 [ §§ 60A-2-201 et seq.] 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.

## **Wisconsin**

### **Wis. Stat. Ann. § 961.55 (2009). Forfeitures.**

(1) The following are subject to forfeiture: (a) All controlled substances or controlled substance analogs which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter. (b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, distributing, importing or exporting any controlled substance or controlled

substance analog in violation of this chapter.(c) All property which is used, or intended for use, as a container for property described in pars. (a) and (b) (d) All vehicles which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in pars. (a) and (b) or for the purpose of transporting any property or weapon used or to be used or received in the commission of any felony under this chapter, but:

1. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the vehicle is a consenting party or privy to a violation of this chapter;

2. No vehicle is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owners knowledge or consent. This subdivision does not apply to any vehicle owned by a person who is under 16 years of age on the date that the vehicle is used, or is intended for use, in the manner described under par. (d) (intro.), unless the court determines that the owner is an innocent bona fide owner;

3. A vehicle is not subject to forfeiture for a violation of s. 961.41 (3g) (b) to (g); and

4. If forfeiture of a vehicle encumbered by a bona fide perfected security interest occurs, the holder of the security interest shall be paid from the proceeds of the forfeiture if the security interest was perfected prior to the date of the commission of the felony which forms the basis for the forfeiture and he or she neither had knowledge of nor consented to the act or omission.(e) All books, records, and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of this chapter.(f) All property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime under this chapter.(g) Any drug paraphernalia, as defined in s. 961.571, used in violation of this chapter.

(2) Property subject to forfeiture under this chapter may be seized by any officer or employee designated in s. 961.51 (1) or (2) or a law enforcement officer upon process issued by any court of record having jurisdiction over the property. Seizure without process may be made if:(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;(c) The officer or employee or a law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or(d) The officer or employee or a law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter, that the property was derived from or realized through a crime under this chapter or that the property is a vehicle which was used as described in sub. (1) (d)

(3) In the event of seizure under sub. (2), proceedings under sub. (4) shall be instituted

promptly. All dispositions and forfeitures under this section and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent persons under sub. (1) (d) 1., 2. and 4. Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the courts satisfaction, it shall order the property returned if:(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or(b) All proceedings in which it might be required have been completed.

(4) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the sheriff of the county in which the seizure was made subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the person seizing the property may:(a) Place the property under seal;(b) Remove the property to a place designated by it; or(c) Require the sheriff of the county in which the seizure was made to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(5) When property is forfeited under this chapter, the agency whose officer or employee seized the property shall do one of the following:(a) Retain it for official use.(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The agency may use 50 percent of the amount received for payment of forfeiture expenses. The remainder shall be deposited in the school fund as proceeds of the forfeiture. In this paragraph, "forfeiture expenses" include all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs and the costs of investigation and prosecution reasonably incurred.(c) Require the sheriff of the county in which the property was seized to take custody of the property and remove it for disposition in accordance with law.(d) Forward it to the bureau for disposition.(e) If the property forfeited is money, retain the sum of all of the following for payment of forfeiture expenses, as defined in par. (b), and deposit the remainder in the school fund:

1. If the amount of money does not exceed 2,000, 70 percent of that amount.
2. Fifty percent of any amount seized in excess of 2,000.

(6) Controlled substances included in schedule I and controlled substance analogs of controlled substances included in schedule I that are possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances included in schedule I and controlled substance analogs of controlled substances included in schedule I that 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.

(6m) Flunitrazepam or ketamine that is possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter is contraband and shall be seized and summarily forfeited to the state. Flunitrazepam or ketamine that is seized or comes into the possession of the state, the owner of which is unknown, is contraband and shall be summarily forfeited to the state.

(7) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation 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.

(8) The failure, upon demand by any officer or employee designated in s. 961.51 (1) or (2), 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 federal registration, or proof that the person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

## Wyoming

### **WYO. STAT. ANN. § 35-7-1049 (2010). Forfeitures and seizures generally; property subject to forfeiture.**

(a) The following are subject to forfeiture:

(i) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this act;

(ii) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substances in violation of this act;

(iii) All property which is used as a container for property described in paragraph (i) or (ii) of this subsection;

(iv) All books, records, and research products and materials, including formulas, microfilm, tapes, and data, which are used, or intended for use, in violation of this act;

(v) All conveyances including aircraft, vehicles or vessels, knowingly used or intended for use to transport or in any manner to knowingly facilitate the transportation for the sale or receipt of property described in paragraph (a)(i) or (ii) of this section may be seized by the commissioner and forfeited to the state pursuant to subsection (e) of this section:

(A) No conveyance used by any person as a common carrier in the transaction of

business as a common carrier is subject to forfeiture under this section unless it appears that the owner or corporate officer is a consenting party or privy to a violation of this act;

(B) No conveyance is subject to forfeiture under this section by reason of any act committed without the knowledge or consent of the owner;

(C) A conveyance is not subject to forfeiture for a violation of W.S. 35-7-1031(c);

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act.

(vi) All "drug paraphernalia" as defined by W.S. 35-7-1002(a)(xxvii);

(vii) All buildings knowingly used or intended for use to store, manufacture or distribute property described under paragraphs (a)(i) or (ii) of this section if the owner has knowledge of or gives consent to the act of violation. A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if he did not have knowledge of or give consent to the act;

(viii) Any property or other thing of pecuniary value furnished in exchange for a controlled substance in violation of this act including any proceeds, assets or other property of any kind traceable to the exchange and any money, securities or other negotiable instruments used to facilitate a violation of this act. Property used or furnished without the consent or knowledge of the owner is not forfeitable under this section to the extent of his interest.

(b) Property subject to forfeiture under this act may be seized by any law enforcement officer of the state upon process issued by any district court or district court commissioner having jurisdiction over the property. Seizure without process may be made if:

(i) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(ii) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal, injunction or forfeiture proceeding based upon this act;

(iii) The board or commissioner has probable cause to believe that the property was used or is intended to be used in violation of this act.

(c) Prompt institution of proceedings. -- In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(d) Seized property not repleviable; sealing or removal of seized property. -- Property

taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the commissioner subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this act, the commissioner may:

(i) Place the property under seal;

(ii) Remove the property to a place designated by him; or

(iii) Require the board to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) When property is forfeited under this act, the commissioner may:

(i) Retain it for official use; in which case it shall become the property of the state of Wyoming;

(ii) Sell any such property which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs;

(iii) Require the board to take custody of the property and remove it for disposition in accordance with law;

(iv) Repealed by Laws 1983, ch. 160, § 2.

(v) Transfer ownership and control of the property to any municipality or political subdivision of the state for its official use; or

(vi) Authorize any law enforcement officer to apply to the district court with jurisdiction for an order providing for destruction of the contraband controlled substances or paraphernalia if no longer necessary for evidentiary purposes, provided, however, that a district court order shall not be necessary for the division of criminal investigation to destroy quantities of contraband controlled substances after the division has tested random samples. The division of criminal investigation shall adopt rules necessary to operate a program to destroy bulk quantities of contraband controlled substances, which shall include:

(A) The photographing and videotaping of the entire bulk amount of seized contraband controlled substances to maintain its evidentiary value and to create exhibits for use in legal proceedings;

(B) The extraction of ten (10) random samples from the entire bulk amount of seized contraband controlled substances for laboratory analysis;



(C) A weighing on properly calibrated scales of both the bulk amount of seized contraband controlled substances and the representative samples;

(D) The additional retention of:

(I) Five (5) ounces of organic material if the controlled substance is marijuana or a substance of similar organic composition;

(II) Five (5) grams of a controlled substance in powdered or crystalline form;

(III) Five-tenths (0.5) of a gram of a controlled substance in liquid form;

(IV) An amount sufficient for testing by experts shall be made available from the additionally retained sample for the purpose of defending criminal charges arising from the possession, use or sale of the controlled substance.

(E) After the testing and retention of samples specified in this paragraph, the commissioner or his designee may order the destruction of the bulk amount of the seized contraband controlled substance in excess of the representative sample and the additional retained samples of the seized contraband controlled substance;

(F) Once the representative samples and the additional retained samples of the contraband controlled substance are no longer necessary for evidentiary purposes, any law enforcement officer, upon authorization from the commissioner, may apply to the district court with jurisdiction for an order providing for the destruction of the remaining contraband controlled substance.

(f) Any controlled substance listed in Schedules I through V that is possessed, transferred, sold or offered for sale in violation of this act is contraband and shall be seized and summarily forfeited to the state. Any controlled substance listed in Schedules I through V which is seized or comes into possession of the state and the owner is unknown, is contraband and shall be summarily forfeited to the state.

(g) Seizures and summary forfeiture of certain plants generally. -- Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(h) Authority for seizure and forfeiture of plants. -- The failure, upon demand by the commissioner, or his 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 is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(j) Any law enforcement agency of this state may accept, receive, dispose of and expend the property or proceeds from any property forfeited to the federal government or any

state and allocated to the agency by the United States attorney general pursuant to 21 U.S.C. 881(e) or any law of another state. The property or proceeds shall be in addition to funds appropriated to the law enforcement agency by the state legislature or any unit of local government. The property or proceeds may be credited to any lawfully created fund or account designated to receive proceeds of forfeitures. For the period beginning July 1, 1996, and ending June 30, 1998, the division shall provide to the joint appropriations interim committee of the legislature a quarterly audit of the assets forfeiture account detailing the collection and distribution of all seized assets.

(k) Any law enforcement agency of this state which receives property or proceeds pursuant to subsection (j) of this section shall report to the attorney general on forms to be prescribed by the attorney general:

(i) The receipt of property or proceeds within thirty (30) days from the receipt; and

(ii) The disposition or expenditure of any property or proceeds within ninety (90) days from the disposition or expenditure.

(m) The attorney general shall submit a biennial report to the joint appropriations interim committee concerning recipients and the amount of property and proceeds received, disposed of or expended under subsection (j) of this section.

(n) No law enforcement agency of this state shall accept property or proceeds pursuant to subsection (j) of this section if the tender of the property or proceeds is conditioned upon the state law enforcement agency's adoption of federal law enforcement practices and procedure.

## **Guam**

### **GUAM CODE ANN. TIT. 9 § 67.502.1 (2009). Items Subject to Forfeiture for Violation of this Act.**

(a) The following shall be subject to forfeiture and no property right shall exist in them:

- (1) all controlled substances which have been or are intended to be manufactured, distributed, dispensed, acquired or held in violation of the provisions of this Act;
- (2) all raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of the provisions of this Act;
- (3) all property which is used, or intended for use, as a container for property described in Paragraphs (1) and (2);
- (4) all conveyances including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession or concealment of property described in Paragraphs (1) or (2), except that:

- (i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this Act, unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this Act; and
  - (ii) no conveyance shall be forfeited under the provisions of this Section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;
  - (iii) a conveyance is not subject to forfeiture for a violation of § 67.401.2; and
  - (iv) a forfeiture of a conveyance encumbered by a bona fide security interest of the secured party if he neither had knowledge of nor consented to the act or omission.
- (5) all books, records and research, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this Act;
- (6) all moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this Act, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, securities used or intended to be used to facilitate any violation of this Act, shall be forfeited to the criminal justice agency making the seizure; and
- (7) all firearms which are visible, carried during or used in furtherance of a violation of this Act.

(b) Any property subject to forfeiture under this Act may be seized by GPD upon process issued by the Superior Court, except that seizure without such process may be made when:

- (1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;
- (2) the property subject to seizure has been the subject of a prior judgment in a criminal injunction or forfeiture proceeding based upon this Act;
- (3) GPD or DPHSS has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or
- (4) GPD or DPHSS has probable cause to believe that the property has been use or intended to be used in violation of this Act.

In the event of seizure pursuant to this Subsection, proceedings under Subsection (c) shall be instituted promptly.

(c) Property taken or detained under this Section shall not be repleviable; but shall be deemed to be in the custody of the GPD or DPHSS only to the orders and decrees of the Court. Whenever property is seized under the provisions of this Act, GPD or DPHSS may:

- (1) place the property under seal; or
  - (2) remove the property to a place designated by him.
- (d) Whenever property is forfeited under this Act, GPD may:
- (1) retain the property for official use;

(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public; all proceeds shall be deposited into the Special Assets Forfeiture Fund, under the Local Assets Forfeiture Account;

(3) require the property to be taken into custody and removed for disposition in accordance with law; or

(4) forward it to the DEA for disposition; such disposition may include delivery for medical or scientific use to any Federal or state agency under regulations of the Attorney General of the United States.

(e) All substances listed in Schedule I that are possessed, transferred, sold or offered for sale in violation of the provisions of this Act shall be deemed contraband and seized and summarily forfeited to the government of Guam. Similarly, all substances listed in Schedule I which are seized or come into the possession of the government of Guam, the owners of which are unknown, shall be deemed contraband and summarily forfeited to the government of Guam:

(1) All species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this Act, or of which the owners or cultivators are unknown, of which are wild growths, may be seized and summarily forfeited to the government of Guam.

(2) The failure, upon demand by GPD of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture.

## **Puerto Rico**

### **P.R. LAWS ANN. TIT. 24, § 2512 (2009). Seizures.**

(a) The following shall be subject to forfeiture to the Commonwealth of Puerto Rico:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter.

(2) Any raw material, paraphernalia, products or equipment of any sort used or planned to be used in the fabrication, confection of compounds, manufacture, delivery, import or export of any controlled substance, thus violating the provisions of this chapter.

(3) All property which is used, or intended for use, as a container for property described in clauses (1) and (2) of this subsection.

(4) All conveyances, including aircraft, vehicles, mount or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in clauses (1) and (2) of this subsection.

(5) All books, records and research or investigations, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

(b) Any property subject to forfeiture under clause (4) of subsection (a) of this section shall be seized by process issued pursuant to Act No. 39, of June 4, 1960, as amended, known as the "Uniform Vehicle, Mount, Vessel and Plane Seizure Act".

Any property subject to seizure pursuant to clauses (1), (2), (3), and (5) of subsection (a) of this section shall be impounded, seized, and forfeited in accordance to the norms in effect upon conclusion of the proceedings.

(c) Any property subject to forfeiture under clauses (1), (2), (3), and (5) of subsection (a) of this section shall be seized and summarily forfeited by the Secretary, the Superintendent of Police or the Secretary of Justice, to the Commonwealth of Puerto Rico.

Property seized and withheld under this subsection shall not be repleviable, but shall be considered to be under the custody of the Secretary of Health, the Superintendent of Police, or the Secretary of Justice, as the case may be, and subject only to the orders and decrees of the court.

When the property seized consists of controlled substances, it shall be the duty of the Police of Puerto Rico or of the Department of Justice, as the case may be, to fill out a form stating the amount of controlled substances forfeited in terms of weight, and packages, containers or units, and the scientific or common name of the substance forfeited, date and place of forfeiture, general conditions as to the state of the controlled substances forfeited, date when it was submitted to the police laboratory for analysis, name and signature of the officer who carried out the forfeiture, as well as any other information deemed to be advisable. This form shall be kept and retained by the Police or the Department of Justice, so that it may be examined by officers duly authorized by the Mental Health and Addiction Services Administration, when the forfeited controlled substances are at the final stages of disposal in the Mental Health and Addiction Services Administration. If, upon receipt of forfeited controlled substances in the Administration for their final disposal, and after examining the above mentioned form, it is found that there is a discrepancy between the amount of controlled substances received in the Administration for final disposal, and the amount stated in the corresponding form, the Administration shall resort to the Department of Justice, and request that the proper investigation be conducted in order to explain the discrepancy and, if necessary, to proceed pursuant to law.

In the case of forfeiture of controlled substances, in which one or both of the following conditions may be present: (1) There are no adequate, safe storage facilities or there are no safe transportation facilities, or (2) when the controlled substances forfeited, whether in small or large amounts, are perishable, the Police or the Department of Justice, as the case may be, shall notify the Mental Health and Addiction Services Administration about the situation and it shall request the presence of this Department to destroy the controlled substances involved. The controlled substances shall be destroyed in the presence of at least one officer of the Department, the Police, and the Department of Justice, and a certificate shall be issued bearing the signature of the above officers representing said agencies. A sample of the forfeited controlled substances, duly identified and labeled, shall be kept by the Police or by the Department of Justice, if needed for criminal prosecution for violation of this chapter. This sample, together with the corresponding certificate of destruction, and oral testimony regarding such action, shall constitute admissible and sufficient evidence in a criminal prosecution for violation of this chapter.

Whenever the Inspectors of the Department seize controlled substances they shall fill out the form to which the third paragraph of this subsection refers. Said form shall be kept in the same way and shall be used for the same purposes stated in said paragraph. In

those cases in which the Department Inspectors seize controlled substances, and in which one or both of the situations stated in the fourth paragraph of this subsection coincide, the Department shall notify the Police and the Department of Justice, and shall request the appearance of the representatives thereof, so that they may be present when the controlled substances are destroyed. The provisions of the fourth paragraph concerning the destruction must be complied with, a certificate issued, and a sample of the controlled substances kept for the purposes of a criminal prosecution for violation of §§ 2101 et seq. of this title. The sample, together with the certificate of destruction and oral testimony regarding such action, shall constitute admissible and sufficient evidence in a criminal prosecution for violation of §§ 2101 et seq. of this title.

(d)(1) All species of plants from which substances in Schedules I and II may be derived, which have been planted or cultivated in violation of §§ 2101 et seq. of this title, or whose owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited by the Secretary, the Superintendent of Police or the Secretary of Justice, in behalf of the Commonwealth of Puerto Rico.

(2) The fact that the person who holds, administers or is in possession of land or of the place where such plant grows or is stored, cannot produce, upon the request of the duly authorized officers, a lawfully valid registration or proof that he is the holder of same, shall be a legal basis for its seizure and forfeiture.

(3) The Secretary of Justice or his officers or employees, the controlled substances inspectors, as well as the Police, are hereby authorized to enter any grounds or into any dwellings, by means of a search warrant, to cut, collect, remove or destroy such plant species.

(e) All substances forfeited under this chapter, if they may be used for medical or scientific purposes, shall be delivered by the Secretary to nonprofit charitable institutions, upon request to such effect. If there is no such petition, or if such substances cannot be used for medical or scientific purposes, they shall be destroyed by the Secretary or by his officers, in the presence of a committee composed in the manner that the Secretary may prescribe by regulations, and such committee shall issue a certificate stating the amount and the origin of the substances destroyed and the date on which the destruction took place.

(f) Any person who destroys, conceals or disposes of controlled substances in a manner different from that established herein, in violation of the provisions of this section, shall be punished by imprisonment for a fixed term of six (6) months. Should there be aggravating circumstances, the fixed penalty established may be increased to a maximum of one year; if there should be extenuating circumstances, it may be reduced to a minimum of three (3) months.

The court, in its discretion, may impose the fixed penalty of imprisonment established, or a fine that shall not exceed five hundred dollars (\$500) or both penalties.

## Virgin Islands

### V.I. CODE ANN. TIT. 19, § 623 (2010). Forfeitures.

(a) The following shall be subject to forfeiture to the Government of the Virgin Islands and no property right shall exist in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter.

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

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2).

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportations, sale, receipt, possession, or concealment of property described in paragraph (1) or (2), except that:

(A) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this chapter; and

(B) no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent or by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of the Virgin Islands.

(5) All books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

(6) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter, except that no property shall be forfeited under this paragraph, 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 the knowledge or consent of that owner.

(b) Any property subject to forfeiture to the Government of the Virgin Islands under this chapter may be seized by the Attorney General under process issued pursuant to the

Supplemental Rules for Certain Admiralty and Maritime Claims by any District Court of the Virgin Islands having jurisdiction over the property, except that seizure without such process may be made when--

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the Government of the Virgin Islands in a criminal injunction or forfeiture proceeding under this chapter;

(3) the Attorney General has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the Attorney General has probable cause to believe that the property has been used or is intended to be used in violation of this chapter. In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under the provisions of this chapter, the Attorney General may--

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the Department of Property and Procurement take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the United States customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof or other laws of the Virgin Islands; except that such duties as are imposed upon the United States customs officers or any other persons with respect to the seizure and forfeiture of property under the United States Customs Laws shall be performed with respect to seizures and forfeitures of property under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

(e) Whenever property (except property described in paragraph (6) of subsection (a) hereof) is forfeited under this chapter the Attorney General shall--



(1) deliver the property to either the Virgin Islands Police Department or the Virgin Islands Drug Enforcement Bureau for their official use depending on which agency was responsible for seizure of the property;

(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising and court costs; and any surplus shall be deposited into the "Police Crime Fighting and Equipment Fund" established in Title 33, section 3051a, Virgin Islands Code, or the "Virgin Islands Drug Enforcement Bureau Forfeiture Fund", established in Title 33, section 3051b, Virgin Islands Code, depending on which agency was responsible for seizure of the property.

(3) require that the Department of Property and Procurement take custody of the property and remove it for disposition in accordance with law; or

(4) forward it to the Federal Drug Enforcement Administration for disposition (including delivery for medical or scientific use to any Federal or State Agency).

(f) All forfeited property described in paragraph (6) of subsection (a) of this section shall be deposited into the Police Crime Fighting and Equipment Fund established under Title 33, section 3051a, Virgin Islands Code. However, all monies and property forfeited under paragraph (6) subsection (a) of this section which are seized by the Virgin Islands Drug Enforcement Bureau shall be deposited into the Virgin Islands Drug Enforcement Bureau Forfeiture Fund as established under Title 33, section 3051b, of this code. Provided, further, of the monies and proceeds realized under this subsection, ten percent (10%) shall be used to provide a drug prevention and education program in the public schools as provided under Title 17, section 41, subsection (c) of this code.