

CHAPTER 244

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 02-1404

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AN ACT**CONCERNING CIVIL FORFEITURE.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 16-13-301 (2.3) and (2.7), Colorado Revised Statutes, are amended, and the said 16-13-301 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

16-13-301. Definitions. As used in this part 3, unless the context otherwise requires:

(2.1) "CONVICTION" MEANS A VERDICT OF GUILTY BY A JUDGE OR JURY OR A PLEA OF GUILTY OR NOLO CONTENDERE THAT IS ACCEPTED BY THE COURT OR ADJUDICATION FOR AN OFFENSE THAT WOULD CONSTITUTE A CRIMINAL OFFENSE IF COMMITTED BY AN ADULT.

(2.3) "INSTRUMENTAL" MEANS A SUBSTANTIAL CONNECTION EXISTS BETWEEN THE PROPERTY AND THE PUBLIC NUISANCE ACT.

~~(2.3)~~ (2.4) "Public nuisance act" means any of the crimes, offenses, or violations set forth in section 16-13-303 (1) (a) to (1) (n), regardless of the location where the act occurred.

(2.7) "Seizing agency" means any agency ~~which~~ THAT is charged with the enforcement of the laws of this state, of any other state, or of the United States and ~~which~~ THAT has participated in a seizure or has been substantially involved in effecting a forfeiture through the development of evidence underlying the claim for forfeiture or through legal representation pursuant to this part 3. The department of

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

corrections, ~~and~~ the division of wildlife in the department of natural resources, AND A MULTI-JURISDICTIONAL LAW ENFORCEMENT TASK FORCE shall be deemed to be included under this definition.

SECTION 2. 16-13-303 (5.1) and (5.2), Colorado Revised Statutes, are amended to read:

16-13-303. Class 1 public nuisance. (5.1) (a) In any action to forfeit property pursuant to this part 3, the plaintiff, in addition to any other matter which must be proven in the plaintiff's case in chief, shall prove by ~~a preponderance of~~ CLEAR AND CONVINCING evidence that possession of the property is unlawful or that the owner of the property was a party to the creation of the public nuisance. THE PLAINTIFF SHALL ALSO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE PROPERTY WAS INSTRUMENTAL IN THE COMMISSION OR FACILITATION OF A CRIME CREATING A PUBLIC NUISANCE OR THE PROPERTY CONSTITUTES TRACEABLE PROCEEDS OF THE CRIME OR RELATED CRIMINAL ACTIVITY. PRIOR TO AN ENTRY OF JUDGMENT OF FORFEITURE, THE COURT SHALL MAKE A FINDING BASED UPON CLEAR AND CONVINCING EVIDENCE THAT THE VALUE OF THE PROPERTY TO BE FORFEITED IS PROPORTIONAL TO THE CRIME OR RELATED CRIMINAL ACTIVITY.

(a.5) UNDER PROPORTIONALITY REVIEW, THE COURT SHALL ENSURE THAT THE FORFEITURE MEETS THE REMEDIAL PURPOSE OF THE STATUTE. THE COURT SHALL BE GUIDED BY OBJECTIVE CRITERIA INCLUDING:

(I) THE SEVERITY OF THE OFFENSE OR RELATED CRIMINAL ACTIVITY AND THE HARM OR RISK OF HARM TO THE PUBLIC;

(II) THE FINANCIAL GAIN DERIVED OR SOUGHT TO BE DERIVED THROUGH COMMISSION OF THE OFFENSE OR RELATED CRIMINAL ACTIVITY;

(III) THE ACTUAL OR INTENDED LOSS TO VICTIMS DUE TO COMMISSION OF THE OFFENSE OR RELATED CRIMINAL ACTIVITY;

(IV) THE EXTENT OF THE PROPERTY OWNER'S INVOLVEMENT IN THE OFFENSE OR RELATED CRIMINAL ACTIVITY;

(V) WHETHER THE OFFENSE WAS PART OF AN ONGOING PATTERN OF RELATED CRIMINAL ACTIVITY; AND

(VI) THE VALUE OF THE OWNER'S INTEREST IN THE PROPERTY.

(b) As used in paragraph (a) of this subsection (5.1), an owner was a "party to the creation of the public nuisance" if it is established that:

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

(II) The owner ~~knew or reasonably should have known~~ of the public nuisance act OR HAD NOTICE OF THE ACTS CREATING THE PUBLIC NUISANCE;

(III) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), IF THE PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THE

OWNER KNEW OR HAD NOTICE OF THE PUBLIC NUISANCE, 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 CREATION OF THE PUBLIC NUISANCE.

(5.2) (a) ~~It shall be an affirmative defense that, and the property of a person who was not involved in the public nuisance act or acts shall not be forfeited if, the person establishes by a preponderance of evidence that the person took all reasonable steps to abate the public nuisance and took all reasonable steps to prevent the property from becoming a public nuisance or from becoming involved in the public nuisance act.~~ WITH RESPECT TO A PARTIAL OR WHOLE OWNERSHIP INTEREST IN EXISTENCE AT THE TIME THE CONDUCT CONSTITUTING A PUBLIC NUISANCE TOOK PLACE, "INNOCENT OWNER" MEANS ANY OWNER WHO:

(I) DID NOT HAVE ACTUAL KNOWLEDGE OF THE CONDUCT CONSTITUTING A PUBLIC NUISANCE OR NOTICE OF AN ACT OR CIRCUMSTANCE CREATING THE PUBLIC NUISANCE, NOTICE IS SATISFIED BY, BUT NOT LIMITED TO SENDING NOTICE OF AN ACT OR CIRCUMSTANCE CREATING THE PUBLIC NUISANCE BY CERTIFIED MAIL; OR

(II) UPON LEARNING OF THE CONDUCT CONSTITUTING A PUBLIC NUISANCE, TOOK REASONABLE ACTION TO PROHIBIT SUCH USE OF THE PROPERTY. AN OWNER MAY DEMONSTRATE THAT HE OR SHE TOOK REASONABLE ACTION TO PROHIBIT THE CONDUCT CONSTITUTING A PUBLIC NUISANCE IF THE OWNER:

(A) TIMELY REVOKED OR ATTEMPTED TO REVOKE PERMISSION FOR THE PERSONS ENGAGING IN SUCH CONDUCT TO USE THE PROPERTY; OR

(B) TOOK REASONABLE ACTION TO DISCOURAGE OR PREVENT THE USE OF THE PROPERTY IN CONDUCT CONSTITUTING A PUBLIC NUISANCE.

(b) WITH RESPECT TO A PARTIAL OR WHOLE OWNERSHIP INTEREST ACQUIRED AFTER THE CONDUCT CONSTITUTING A PUBLIC NUISANCE HAS OCCURRED, "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; OR

(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. THE PROSECUTING ATTORNEY SHALL HAVE THE BURDEN OF ESTABLISHING BY CLEAR AND CONVINCING EVIDENCE

THAT AN INDIVIDUAL IS NOT AN INNOCENT OWNER.

SECTION 3. 16-13-307, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

16-13-307. Jurisdiction - venue - parties - process. (1.5) NO JUDGMENT OF FORFEITURE OF PROPERTY IN ANY FORFEITURE PROCEEDING SHALL BE ENTERED UNLESS AND UNTIL AN OWNER OF THE PROPERTY IS CONVICTED OF AN OFFENSE LISTED IN SECTION 16-13-301 OR 16-13-303. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE CONVICTION TO BE OBTAINED IN THE SAME JURISDICTION AS THE JURISDICTION IN WHICH THE FORFEITURE ACTION IS BROUGHT. IN THE EVENT CRIMINAL CHARGES ARISING FROM THE SAME ACTIVITY GIVING RISE TO THE FORFEITURE PROCEEDINGS ARE FILED AGAINST ANY INDIVIDUAL CLAIMING AN INTEREST IN THE PROPERTY SUBJECT TO THE FORFEITURE PROCEEDING, SUCH FORFEITURE PROCEEDING SHALL BE STAYED BY THE COURT UNTIL THE DISPOSITION OF THE CRIMINAL CHARGES. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THAT A STAY BE MAINTAINED DURING AN APPEAL OR POST-CONVICTION PROCEEDING CHALLENGING A CRIMINAL CONVICTION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT OR PREVENT THE PARTIES FROM CONTEMPORANEOUSLY RESOLVING CRIMINAL CHARGES AND A FORFEITURE PROCEEDING ARISING FROM THE SAME ACTIVITY.

(1.6) UPON ACQUITTAL OR DISMISSAL OF A CRIMINAL ACTION AGAINST A PERSON NAMED IN A FORFEITURE ACTION RELATED TO THE CRIMINAL ACTION, UNLESS THE FORFEITURE ACTION WAS BROUGHT PURSUANT TO PARAGRAPH (e) OF SUBSECTION (1.7) OF THIS SECTION, THE FORFEITURE ACTION SHALL BE DISMISSED AND THE SEIZED PROPERTY SHALL BE RETURNED TO THE OWNER UNLESS POSSESSION OF THE PROPERTY IS ILLEGAL. IF THE FORFEITURE ACTION IS DISMISSED OR JUDGMENT IS ENTERED IN FAVOR OF THE CLAIMANT, THE CLAIMANT SHALL NOT BE SUBJECT TO ANY MONETARY CHARGES BY THE STATE FOR STORAGE OF THE PROPERTY OR EXPENSES INCURRED IN THE PRESERVATION OF THE PROPERTY.

(1.7) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1.5) OF THIS SECTION:

(a) FOLLOWING THE FILING OF CRIMINAL CHARGES, IF A PROPERTY OWNER FAILS TO APPEAR AT A COURT HEARING RELATING TO SUCH CHARGES OR IS DETERMINED TO BE A FUGITIVE TO AVOID CRIMINAL PROSECUTION, THE DISTRICT ATTORNEY SHALL SEND NOTICE TO THE FUGITIVE'S LAST KNOWN ADDRESS THAT THE FORFEITURE ACTION WILL PROCEED THIRTY DAYS AFTER THE DATE OF THE NOTICE. IF THE FUGITIVE APPEARS IN THE CRIMINAL ACTION OR IN THE FORFEITURE ACTION WITHIN THE THIRTY-DAY PERIOD, THIS PARAGRAPH (a) SHALL NOT BE AVAILABLE TO THE PLAINTIFF. THIRTY DAYS AFTER THE DATE OF THE NOTICE SENT BY THE DISTRICT ATTORNEY, IF THE FUGITIVE HAS NOT APPEARED IN THE CRIMINAL ACTION OR IN THE FORFEITURE ACTION, THE FORFEITURE ACTION MAY PROCEED AND A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION OF THE OWNER.

(b) IF, FOLLOWING NOTICE TO ALL PERSONS KNOWN TO HAVE AN INTEREST, OR WHO HAVE ASSERTED AN INTEREST IN THE PROPERTY SUBJECT TO FORFEITURE, NO PERSON CLAIMS AN INTEREST IN THE SEIZED PROPERTY, A FORFEITURE ACTION MAY PROCEED AND A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION OF THE OWNER.

(c) IF THE PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE PROPERTY WAS INSTRUMENTAL IN THE COMMISSION OF AN OFFENSE LISTED IN SECTION 16-13-303 (1) OR THAT THE PROPERTY IS TRACEABLE PROCEEDS OF THE OFFENSE OR RELATED CRIMINAL ACTIVITY BY A NONOWNER AND THE PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE OWNER IS NOT AN INNOCENT OWNER AS DEFINED IN SECTION 16-13-303 (5.2) (a), A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION OF THE OWNER.

(d) IF THE PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE PROPERTY WAS INSTRUMENTAL IN THE COMMISSION OF AN OFFENSE LISTED IN SECTION 16-13-303 (1) OR THAT THE PROPERTY IS TRACEABLE PROCEEDS OF THE OFFENSE OR RELATED CRIMINAL ACTIVITY BY A DECEASED OWNER AND THE PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE DECEASED OWNER WAS NOT AN INNOCENT OWNER AS DEFINED IN SECTION 16-13-303 (5.2) (a), A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION OF THE DECEASED OWNER.

(e) IF THE PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE PROPERTY WAS INSTRUMENTAL IN THE COMMISSION OF AN OFFENSE LISTED IN SECTION 16-13-303 (1) OR THAT THE PROPERTY IS TRACEABLE PROCEEDS OF THE OFFENSE OR RELATED CRIMINAL ACTIVITY AND THE OWNER RECEIVED A DEFERRED JUDGMENT, DEFERRED SENTENCE, OR PARTICIPATED IN A DIVERSION PROGRAM, OR IN THE CASE OF A JUVENILE A DEFERRED ADJUDICATION, DEFERRED SENTENCE, OR PARTICIPATED IN A DIVERSION PROGRAM FOR THE OFFENSE, A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION.

(1.8) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE TEMPORARY SEIZURE OF PROPERTY FOR EVIDENTIARY, INVESTIGATORY, OR PROTECTIVE PURPOSES.

(2.5) ALL FORFEITURE ACTIONS SHALL PROCEED IN STATE DISTRICT COURT IF THE PROPERTY WAS SEIZED BY A LOCAL OR STATE LAW ENFORCEMENT AGENCY AS A RESULT OF AN ONGOING STATE CRIMINAL INVESTIGATION AND THE OWNER IS BEING PROSECUTED IN STATE COURT. UNLESS DIRECTED BY AN AUTHORIZED AGENT OF THE FEDERAL GOVERNMENT, NO STATE OR LOCAL LAW ENFORCEMENT AGENCY MAY TRANSFER ANY PROPERTY SEIZED BY THE STATE OR LOCAL AGENCY TO A FEDERAL AGENCY FOR FORFEITURE UNDER FEDERAL LAW UNLESS AN OWNER OF THE PROPERTY IS BEING PROSECUTED IN FEDERAL COURT.

SECTION 4. 16-13-308 (1) (f), Colorado Revised Statutes, is amended to read:

16-13-308. Temporary restraining order - preliminary injunction - when to issue. (1) (f) Any person with an ownership interest adversely affected by a temporary restraining order issued pursuant to this subsection (1) may file a motion to vacate the temporary restraining order. Such motion shall be filed within ten days of the time said person is served with or otherwise has notice of the temporary restraining order. The motion shall be set for hearing within ten days after its filing. At said hearing, the court shall determine whether the various provisions of the temporary restraining order should remain in effect pending final determination of the action. No part of the temporary restraining order shall be vacated unless the proponent of the motion demonstrates that there is no probable cause to believe that a public nuisance exists or that the public nuisance acts underlying the action

occurred, or that the proponent has a reasonable likelihood of prevailing on the merits. ~~of an affirmative defense asserted pursuant to section 16-13-303 (5.2).~~ Any motion to vacate a temporary restraining order shall state specifically the factual and legal grounds upon which it is based, and only those grounds may be considered at the hearing. Until vacated, the temporary restraining order shall remain in full force and effect.

SECTION 5. 16-13-311 (3), Colorado Revised Statutes, is amended to read:

16-13-311. Disposition of seized personal property. (3) (a) ~~Except as otherwise provided in this section, the court may order any such property sold by the sheriff in the manner provided for sales on execution. The proceeds of the sale shall be applied as follows~~ IF THE PROSECUTION PREVAILS IN THE FORFEITURE ACTION, THE COURT SHALL ORDER THE PROPERTY FORFEITED. SUCH ORDER SHALL PERFECT THE STATE'S RIGHT AND INTEREST IN AND TITLE TO SUCH PROPERTY AND SHALL RELATE BACK TO THE DATE THE NOTICE OF SEIZURE WAS PLACED ON THE RECORD IN THE OFFICE OF THE CLERK AND RECORDER, IN THE COUNTY WHERE THE PROPERTY IS LOCATED. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION (3), THE COURT SHALL ALSO ORDER SUCH PROPERTY TO BE SOLD AT A PUBLIC SALE BY THE LAW ENFORCEMENT AGENCY IN POSSESSION OF THE PROPERTY IN THE MANNER PROVIDED FOR SALES ON EXECUTION. THE SALE OF FORFEITED PROPERTY SHALL BE CONDUCTED IN A COMMERCIALY REASONABLE MANNER. PROPERTY FORFEITED UNDER THIS SECTION OR PROCEEDS THEREFROM SHALL BE DISTRIBUTED OR APPLIED IN THE FOLLOWING ORDER:

(I) ~~To the fees and costs of removal and sale~~ TO PAYMENT OF THE BALANCES DUE ON ANY LIENS PERFECTED ON OR BEFORE THE DATE OF SEIZURE PRESERVED BY THE COURT IN THE FORFEITURE PROCEEDINGS, IN THE ORDER OF THEIR PRIORITY;

(II) ~~To the allowance and cost of closing and keeping closed the building or place where the property was seized pursuant to the provisions of this part 3~~ TO COMPENSATE AN INNOCENT PARTIAL OWNER FOR THE FAIR MARKET VALUE OF HIS OR HER INTEREST IN THE PROPERTY;

(III) ~~To the payment of the plaintiff's costs in such action; and~~ TO ANY PERSON WHO SUFFERS BODILY INJURY, PROPERTY DAMAGE, OR PROPERTY LOSS AS A RESULT OF THE CONDUCT CONSTITUTING A PUBLIC NUISANCE THAT RESULTED IN SUCH FORFEITURE, IF SAID PERSON PETITIONS THE COURT THEREFOR PRIOR TO THE HEARING DIVIDING THE PROCEEDS PURSUANT TO THIS SECTION AND THE COURT FINDS THAT SUCH PERSON SUFFERED SAID DAMAGES AS A RESULT OF THE SUBJECT ACTS THAT RESULTED IN THE FORFEITURE;

(IV) ~~The balance, if any, or any portion thereof not otherwise distributed pursuant to this subparagraph (IV), to the general fund of the state. Instead of being deposited in the general fund, such balance or any portion thereof may be delivered, upon order of the court, as follows:~~ TO THE LAW ENFORCEMENT AGENCY IN POSSESSION OF THE PROPERTY FOR REASONABLE FEES AND COSTS OF SALE, MAINTENANCE, AND STORAGE OF THE PROPERTY;

(A) ~~To the seizing agency if the court finds that the proceeds can be used by such agency;~~

~~(B) To any person who suffers bodily injury or property damage as a result of the action which constitutes the nuisance, if said person petitions the court therefor.~~

(V) TO THE DISTRICT ATTORNEY FOR ACTUAL AND REASONABLE EXPENSES RELATED TO THE COSTS OF PROSECUTING THE FORFEITURE PROCEEDING AND TITLE TRANSFER NOT TO EXCEED TEN PERCENT OF THE VALUE OF THE PROPERTY;

(VI) ONE PERCENT OF THE VALUE OF THE PROPERTY TO THE CLERK OF THE COURT FOR ADMINISTRATIVE COSTS ASSOCIATED WITH COMPLIANCE WITH THIS SECTION;

(VII) THE BALANCE SHALL BE DELIVERED, UPON ORDER OF THE COURT, AS FOLLOWS:

(A) FIFTY PERCENT TO THE GENERAL FUND OF THE GOVERNMENTAL BODY OR BODIES WITH BUDGETARY AUTHORITY OVER THE SEIZING AGENCY FOR PUBLIC SAFETY PURPOSES OR, IF THE SEIZING AGENCY WAS A MULTI-JURISDICTIONAL TASK FORCE, FIFTY PERCENT TO BE DISTRIBUTED IN ACCORDANCE WITH THE APPROPRIATE INTERGOVERNMENTAL AGREEMENT; AND

(B) THE REMAINING AMOUNT TO THE MANAGED SERVICE ORGANIZATION CONTRACTING WITH THE DEPARTMENT OF HUMAN SERVICES, ALCOHOL AND DRUG ABUSE DIVISION SERVING THE JUDICIAL DISTRICT WHERE THE FORFEITURE PROCEEDING WAS PROSECUTED TO FUND DETOXIFICATION AND SUBSTANCE ABUSE TREATMENT. MONEYS APPROPRIATED TO THE MANAGED SERVICE ORGANIZATION SHALL BE IN ADDITION TO, AND SHALL NOT BE USED TO SUPPLANT, OTHER FUNDING APPROPRIATED TO THE DEPARTMENT OF HUMAN SERVICES, ALCOHOL AND DRUG ABUSE DIVISION.

~~(b) In lieu of ordering the sale of such property, the court shall, if it finds that it can be used by the agency which seized it, order it delivered to the agency for such use.~~

(c) IF, IN A FORFEITURE PROCEEDING, A PARTIAL OWNER IS DETERMINED TO BE AN INNOCENT OWNER UNDER LAW, AT THE OPTION OF THE INNOCENT PARTIAL OWNER, IN LIEU OF A PUBLIC SALE, THE INNOCENT PARTIAL OWNER MAY PURCHASE THE FORFEITED ITEMS FROM THE STATE AT A PRIVATE SALE FOR FAIR MARKET VALUE. PROCEEDS RECEIVED BY THE STATE SHALL BE DISPOSED OF PURSUANT TO THIS SECTION.

(d) AFTER A JUDGMENT OF FORFEITURE HAS BEEN ENTERED, ANY SEIZING AGENCY IN POSSESSION OF ANY MONEY FORFEITED SHALL DEPOSIT THE MONEY IN THE REGISTRY OF THE COURT WHERE THE FORFEITURE ORDER WAS ENTERED. UPON THE SALE OF FORFEITED REAL OR PERSONAL PROPERTY, THE SEIZING AGENCY RESPONSIBLE FOR OVERSEEING THE SALE SHALL ENSURE THAT ANY LIENHOLDERS ARE COMPENSATED FROM THE PROCEEDS OF THE SALE PURSUANT TO THE PRIORITIES SPECIFIED IN PARAGRAPH (a) OF THIS SUBSECTION (3) FOR THEIR INTERESTS IN THE FORFEITED PROPERTY. THE SEIZING AGENCY SHALL DEPOSIT ALL REMAINING PROCEEDS FROM THE SALE IN THE REGISTRY OF THE COURT IMMEDIATELY UPON COMPLETION OF THE SALE. THE SEIZING AGENCY SHALL NOTIFY THE COURT AND THE DISTRICT ATTORNEY WHEN ALL PROPERTY SUBJECT TO THE FORFEITURE ORDER HAS BEEN SOLD AND ALL PROCEEDS AND MONEY HAVE BEEN DEPOSITED IN THE REGISTRY OF THE COURT WHERE THE FORFEITURE ORDER WAS ENTERED.

(e) WITHIN THIRTY DAYS AFTER THE DATE THE ORDER OF FORFEITURE IS ENTERED, THE DISTRICT ATTORNEY MAY SUBMIT A MOTION, AN AFFIDAVIT, AND ANY SUPPORTING DOCUMENTATION TO THE COURT TO REQUEST COMPENSATION CONSISTENT WITH THIS SECTION. WITHIN THIRTY DAYS AFTER THE DATE THE ORDER OF FORFEITURE IS ENTERED, ANY VICTIM OF THE CRIMINAL ACT GIVING RISE TO THE FORFEITURE MAY SUBMIT A REQUEST FOR COMPENSATION, AN AFFIDAVIT, AND SUPPORTING DOCUMENTATION TO THE DISTRICT ATTORNEY TO REQUEST COMPENSATION FROM THE FORFEITURE PROCEEDS.

(f) WITHIN TEN DAYS AFTER THE DATE A SEIZING AGENCY NOTIFIES THE COURT THAT ALL PROPERTY FORFEITED HAS BEEN SOLD AND ALL PROCEEDS AND MONEY HAVE BEEN DEPOSITED IN THE REGISTRY OF THE COURT WHERE THE FORFEITURE ORDER WAS ENTERED, THE SEIZING AGENCY MAY SUBMIT A MOTION, AN AFFIDAVIT, AND SUPPORTING DOCUMENTATION TO THE COURT FOR REIMBURSEMENT OF EXPENSES CONSISTENT WITH THIS SECTION. IN ITS MOTION, THE SEIZING AGENCY SHALL IDENTIFY ANY OTHER SEIZING AGENCIES THAT PARTICIPATED IN THE SEIZURE AND SPECIFY THE DETAILS OF ANY INTERGOVERNMENTAL AGREEMENT REGARDING SHARING OF PROCEEDS. THE SEIZING AGENCY SHALL SEND A COPY OF THIS MOTION TO THE DISTRICT ATTORNEY.

(g) THE DISTRICT ATTORNEY SHALL PREPARE A MOTION AND PROPOSED ORDER FOR DISTRIBUTION BASED UPON THE MOTIONS AND REQUESTS SUBMITTED BY THE PARTIES. THE ORDER SHALL INCLUDE ALLOCATION OF ONE PERCENT OF THE VALUE OF THE PROPERTY TO THE CLERK OF THE COURT FOR THE DIRECT AND INDIRECT COSTS INCURRED BY THE CLERK IN IMPLEMENTING THE PROVISIONS OF THIS SUBSECTION (3). THE DISTRICT ATTORNEY SHALL SEND COPIES TO ALL REMAINING INTERESTED PARTIES.

(h) ANY PARTY SHALL HAVE TEN DAYS AFTER FILING OF THE PROPOSED ORDER TO FILE ANY OBJECTIONS TO THE PROPOSED ORDER FILED BY THE DISTRICT ATTORNEY.

SECTION 6. 16-13-314 (2), Colorado Revised Statutes, is amended to read:

16-13-314. Disposition of forfeited real property. (2) The proceeds of such sale shall be applied ~~as follows:~~ IN THE SAME MANNER AND PRIORITY AS ENUMERATED IN SECTION 16-13-311 (3).

~~(a) To the fees and costs of the sale;~~

~~(b) To the payment of fees, costs, and fines provided by this part 3;~~

~~(c) To the payment of the plaintiff's costs in the action; and~~

~~(d) The balance, if any, or any portion thereof not otherwise distributed pursuant to this paragraph (d), to the general fund of the state. Instead of being deposited in the general fund, such balance or any portion thereof may be delivered, upon order of the court, as follows:~~

~~(f) To the seizing agency if the court finds that the proceeds can be used by such agency;~~

~~(H) To any person who suffers bodily injury or property damage as a result of the action which constitutes the nuisance, if said person petitions the court therefor.~~

SECTION 7. 16-13-315, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-13-315. Seizure of personal property. (3) IF A RENTAL MOTOR VEHICLE IS SEIZED PURSUANT TO THIS PART 3, 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.

SECTION 8. 16-13-502 (2), Colorado Revised Statutes, is amended, and the said 16-13-502 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

16-13-502. Definitions. As used in this part 5, unless the context otherwise requires:

(1.5) "CONVICTION" MEANS A VERDICT OF GUILTY BY A JUDGE OR JURY OR A PLEA OF GUILTY OR NOLO CONTENDERE THAT IS ACCEPTED BY THE COURT OR ADJUDICATION FOR AN OFFENSE THAT WOULD CONSTITUTE A CRIMINAL OFFENSE IF COMMITTED BY AN ADULT.

(1.7) "INSTRUMENTAL" MEANS A SUBSTANTIAL CONNECTION EXISTS BETWEEN THE PROPERTY AND THE UNLAWFUL USE OF THE PROPERTY.

(2) "Seizing agency" means any agency ~~which~~ THAT is charged with the enforcement of the laws of this state, of any other state, or of the United States relating to controlled substances and ~~which~~ THAT has participated in a seizure or has been substantially involved in effecting a forfeiture through legal representation pursuant to this part 5; except that the filing of any lien against property forfeited under this part 5 by the governing body or agency thereof of any seizing agency after the date of seizure shall preclude such agency from participating pursuant to this part 5 as a seizing agency and shall deny any such agency from receiving any proceeds under this part 5. The department of corrections AND A MULTI-JURISDICTIONAL TASK FORCE shall be deemed to be included under this definition.

SECTION 9. 16-13-504 (2.1) and (2.2), Colorado Revised Statutes, are amended, and the said 16-13-504 is further amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-13-504. Forfeiture of vehicle, fixtures and contents of building, personal property, or contraband article - exceptions. (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.

(2.1) (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 a ~~preponderance of the~~ 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. PRIOR TO AN ENTRY OF JUDGMENT OF FORFEITURE, THE COURT SHALL MAKE A FINDING BASED UPON CLEAR AND CONVINCING EVIDENCE THAT THE VALUE OF THE PROPERTY TO BE FORFEITED IS PROPORTIONAL TO THE CRIME OR RELATED CRIMINAL ACTIVITY.

(a.5) UNDER PROPORTIONALITY REVIEW, THE COURT SHALL ENSURE THAT THE FORFEITURE MEETS THE REMEDIAL PURPOSE OF THE STATUTE. THE COURT SHALL BE GUIDED BY OBJECTIVE CRITERIA INCLUDING:

(I) THE SEVERITY OF THE OFFENSE OR RELATED CRIMINAL ACTIVITY AND THE HARM OR RISK OF HARM TO THE PUBLIC;

(II) THE FINANCIAL GAIN DERIVED OR SOUGHT TO BE DERIVED THROUGH COMMISSION OF THE OFFENSE OR RELATED CRIMINAL ACTIVITY;

(III) THE ACTUAL OR INTENDED LOSS TO VICTIMS DUE TO COMMISSION OF THE OFFENSE OR RELATED CRIMINAL ACTIVITY;

(IV) THE EXTENT OF THE PROPERTY OWNER'S INVOLVEMENT IN THE OFFENSE OR RELATED CRIMINAL ACTIVITY;

(V) WHETHER THE OFFENSE WAS PART OF AN ONGOING PATTERN OF RELATED CRIMINAL ACTIVITY OR RELATED CRIMINAL ACTIVITY; AND

(VI) THE VALUE OF THE OWNER'S INTEREST IN THE PROPERTY.

(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) The owner knew ~~or reasonably should have known~~ of the subject act OR HAD NOTICE OF THE ACTS FACILITATING THE CRIMINAL ACTIVITY AND FAILED TO TAKE REASONABLE STEPS TO PROHIBIT OR ABATE THE ILLEGAL USE OF THE PROPERTY;

(III) NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (b), 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) ~~It shall be an affirmative defense that, and the property of a person who was not involved in the subject act or acts shall not be forfeited if, the person establishes by a preponderance of the evidence that the person took all reasonable steps to abate the subject act and took all reasonable steps to prevent the property from becoming involved in the subject act and subject to being forfeited pursuant to this part 5.~~ 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, NOTICE IS 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. THE PROSECUTING ATTORNEY SHALL HAVE THE BURDEN OF ESTABLISHING BY CLEAR AND CONVINCING EVIDENCE THAT AN INDIVIDUAL IS NOT AN INNOCENT OWNER.

SECTION 10. 16-13-505 (10) (b), Colorado Revised Statutes, is amended, and the said 16-13-505 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

16-13-505. Forfeiture proceedings. (1.5) NO JUDGMENT OF FORFEITURE OF PROPERTY IN ANY FORFEITURE PROCEEDING SHALL BE ENTERED UNLESS AND UNTIL AN OWNER OF THE PROPERTY IS CONVICTED OF AN OFFENSE LISTED IN SECTION 16-13-503. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE CONVICTION TO BE OBTAINED IN THE SAME JURISDICTION AS THE JURISDICTION IN WHICH THE FORFEITURE ACTION IS BROUGHT. IN THE EVENT CRIMINAL CHARGES ARISING FROM THE SAME ACTIVITY GIVING RISE TO THE FORFEITURE PROCEEDINGS ARE FILED AGAINST ANY INDIVIDUAL CLAIMING AN INTEREST IN THE PROPERTY SUBJECT TO THE FORFEITURE PROCEEDING, SUCH FORFEITURE PROCEEDING SHALL BE STAYED BY THE COURT UNTIL THE DISPOSITION OF THE CRIMINAL CHARGES. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THAT A STAY BE MAINTAINED DURING AN APPEAL OR POST-CONVICTION PROCEEDING CHALLENGING A CRIMINAL CONVICTION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT OR PREVENT THE PARTIES FROM CONTEMPORANEOUSLY RESOLVING CRIMINAL CHARGES AND A FORFEITURE PROCEEDING ARISING FROM THE SAME ACTIVITY.

(1.6) UPON ACQUITTAL OR DISMISSAL OF A CRIMINAL ACTION AGAINST A PERSON NAMED IN A FORFEITURE ACTION RELATED TO THE CRIMINAL ACTION, UNLESS THE FORFEITURE ACTION WAS BROUGHT PURSUANT TO PARAGRAPH (e) OF SUBSECTION (1.7) OF THIS SECTION, THE FORFEITURE ACTION SHALL BE DISMISSED AND THE SEIZED PROPERTY SHALL BE RETURNED TO THE OWNER UNLESS POSSESSION OF THE PROPERTY IS ILLEGAL. IF THE FORFEITURE ACTION IS DISMISSED OR JUDGMENT IS ENTERED IN FAVOR OF THE CLAIMANT, THE CLAIMANT SHALL NOT BE SUBJECT TO ANY MONETARY CHARGES BY THE STATE FOR STORAGE OF THE PROPERTY OR EXPENSES INCURRED IN THE PRESERVATION OF THE PROPERTY.

(1.7) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1.5) OF THIS SECTION:

(a) FOLLOWING THE FILING OF CRIMINAL CHARGES, IF A PROPERTY OWNER FAILS TO APPEAR AT A COURT HEARING RELATING TO SUCH CHARGES OR IS DETERMINED TO BE A FUGITIVE TO AVOID CRIMINAL PROSECUTION, THE DISTRICT ATTORNEY SHALL SEND NOTICE TO THE FUGITIVE'S LAST KNOWN ADDRESS THAT THE FORFEITURE ACTION WILL PROCEED THIRTY DAYS AFTER THE DATE OF THE NOTICE. IF THE FUGITIVE APPEARS IN THE CRIMINAL ACTION OR IN THE FORFEITURE ACTION WITHIN THE THIRTY-DAY PERIOD, THIS PARAGRAPH (a) SHALL NOT BE AVAILABLE TO THE PLAINTIFF. THIRTY DAYS AFTER THE DATE OF THE NOTICE SENT BY THE DISTRICT ATTORNEY, IF THE FUGITIVE HAS NOT APPEARED IN THE CRIMINAL ACTION OR IN THE FORFEITURE ACTION, THE FORFEITURE ACTION MAY PROCEED AND A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION OF THE OWNER.

(b) IF, FOLLOWING NOTICE TO ALL PERSONS KNOWN TO HAVE AN INTEREST OR WHO

HAVE ASSERTED AN INTEREST IN THE PROPERTY SUBJECT TO FORFEITURE, NO PERSON CLAIMS AN INTEREST IN THE SEIZED PROPERTY, A FORFEITURE ACTION MAY PROCEED AND A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION OF THE OWNER.

(c) IF THE PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE PROPERTY WAS INSTRUMENTAL IN THE COMMISSION OF AN OFFENSE LISTED IN SECTION 16-13-503 (1) OR THAT THE PROPERTY IS TRACEABLE PROCEEDS OF THE OFFENSE OR RELATED CRIMINAL ACTIVITY BY A NONOWNER AND THE PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE OWNER IS NOT AN INNOCENT OWNER AS DEFINED IN SECTION 16-13-504 (2.2), A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION OF THE OWNER.

(d) IF THE PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE PROPERTY WAS INSTRUMENTAL IN THE COMMISSION OF AN OFFENSE LISTED IN SECTION 16-13-503 (1) OR THAT THE PROPERTY IS TRACEABLE PROCEEDS OF THE OFFENSE OR RELATED CRIMINAL ACTIVITY BY A DECEASED OWNER AND THE PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE DECEASED OWNER WAS NOT AN INNOCENT OWNER AS DEFINED IN SECTION 16-13-504 (2.2), A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION OF THE DECEASED OWNER.

(e) IF THE PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE PROPERTY WAS INSTRUMENTAL IN THE COMMISSION OF AN OFFENSE LISTED IN SECTION 16-13-303 (1) OR THAT THE PROPERTY IS TRACEABLE PROCEEDS OF THE OFFENSE OR RELATED CRIMINAL ACTIVITY AND THE OWNER RECEIVED A DEFERRED JUDGMENT, DEFERRED SENTENCE, OR PARTICIPATED IN A DIVERSION PROGRAM, OR IN THE CASE OF A JUVENILE A DEFERRED ADJUDICATION, DEFERRED SENTENCE, OR PARTICIPATED IN A DIVERSION PROGRAM FOR THE OFFENSE, A JUDGMENT OF FORFEITURE MAY BE ENTERED WITHOUT A CRIMINAL CONVICTION.

(2.5) ALL FORFEITURE ACTIONS SHALL PROCEED IN STATE DISTRICT COURT IF THE PROPERTY WAS SEIZED BY A LOCAL OR STATE LAW ENFORCEMENT AGENCY AS A RESULT OF AN ONGOING STATE CRIMINAL INVESTIGATION AND THE OWNER IS BEING PROSECUTED IN STATE COURT. UNLESS, DIRECTED BY AN AUTHORIZED AGENT OF THE FEDERAL GOVERNMENT, NO STATE OR LOCAL LAW ENFORCEMENT AGENCY MAY TRANSFER ANY PROPERTY SEIZED BY THE STATE OR LOCAL AGENCY TO A FEDERAL AGENCY FOR FORFEITURE UNDER FEDERAL LAW UNLESS AN OWNER OF THE PROPERTY IS BEING PROSECUTED IN FEDERAL COURT.

(10) The evidentiary burdens at a forfeiture hearing brought pursuant to this part 5 shall be as follows:

(b) If the claimant establishes that such claimant is the true owner of the property sought to be forfeited, the prosecuting attorney shall have the burden of going forward with the evidence and proving the allegations of the petition by a preponderance of the CLEAR AND CONVINCING evidence. ~~The claimant shall establish any affirmative defense to the forfeiture by a preponderance of the evidence.~~

SECTION 11. 16-13-506 (1), Colorado Revised Statutes, is amended to read:

16-13-506. Final order - disposition of property. (1) If the prosecution prevails in the forfeiture action, the court shall order the property forfeited and perfect the state's right and interest in and title to such property, and such order shall relate back to the date THE NOTICE OF SEIZURE WAS PLACED ON THE RECORD IN THE OFFICE OF THE CLERK AND RECORDER, IN THE COUNTY WHERE THE PROPERTY IS LOCATED. The court shall also order such property to be sold AT PUBLIC SALE by the ~~sheriff~~ LAW ENFORCEMENT AGENCY IN POSSESSION OF THE PROPERTY in the manner provided for sales on execution. The proceeds of sale shall be applied ~~as follows and in the following order:~~ IN THE MANNER AND PRIORITY ENUMERATED IN SECTION 16-13-311.

~~(a) First to the sheriff for reasonable fees and costs of sale;~~

~~(b) Second to payment of the balance due on any lien perfected on or before the date of seizure preserved by the court in the forfeiture proceedings;~~

~~(c) Of the balance remaining after payment pursuant to paragraphs (a) and (b) of this subsection (1):~~

~~(f) Ten percent shall be deposited into the state general fund for appropriation by the general assembly to the judicial department for the payment of costs attributable to proceedings brought pursuant to section 16-13-505;~~

~~(f.5) Ten percent shall be deposited into the state general fund for appropriation by the general assembly to the department of public safety for law enforcement purposes. For the purposes of this subparagraph (f.5), law enforcement purposes shall include, but are not limited to, the administration of the department of corrections and its facilities.~~

~~(H) One and one-half percent to the district attorney as fees for bringing said action.~~

~~(d) Any moneys remaining after payment pursuant to paragraphs (a), (b), and (c) of this subsection (1) shall be applied as follows:~~

~~(f) To the payment of the costs incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of such property; and~~

~~(H) (A) To the seizing agency; and~~

~~(B) To any person who suffers bodily injury or property damage as a result of the subject acts which resulted in such forfeiture, if said person petitions the court therefor prior to the hearing dividing the proceeds under this section and the court finds that such person suffered said damages as a result of the subject acts which resulted in the forfeiture.~~

SECTION 12. 16-13-601, Colorado Revised Statutes, is amended to read:

16-13-601. Receipt of federally forfeited property. Any agency charged with the enforcement of the laws of this state is authorized to accept, receive, dispose of, and expend the property or proceeds from any property forfeited to the federal government and allocated to such agency by the United States attorney general

pursuant to 21 U.S.C. 881 (e). Such revenues shall be in addition to the moneys appropriated to such law enforcement agency by the general assembly or any unit of local government. Said property or proceeds may be credited to any lawfully created fund designated to receive proceeds of forfeitures. ANY PROCEEDS RECEIVED PURSUANT TO THIS SECTION ARE EXEMPT FROM THE DISTRIBUTION REQUIREMENTS OF SECTION 16-13-311 (3) (a).

SECTION 13. 16-13-701, Colorado Revised Statutes, is amended to read:

16-13-701. Reporting of forfeited property. (1) Any provision of law to the contrary notwithstanding, ~~each seizing agency, as defined in section 16-13-301 (2.7) or section 16-13-502 (2), which receives any property or proceeds which has been forfeited pursuant to this article or any other statute of the state of Colorado, or any statute of the United States, shall, for each fiscal year commencing on or after July 1, 1992, submit a written report of any forfeited moneys or property received during such fiscal year to the governmental body or bodies which have approval authority over the budget of such seizing agency and to the Colorado department of local affairs. Such report shall include an accounting of how any forfeited moneys or property were expended during such fiscal year. The governmental body or bodies which have approval authority over the budget of such seizing agency shall report in its primary financial statements concerning the acquisition, disposition, and status of forfeited property, and such information shall be subject to audit in accordance with part 6 of article 1 of title 29, C.R.S.~~ THE ELECTED DISTRICT ATTORNEY FOR EACH JUDICIAL DISTRICT SHALL FILE AN ANNUAL FORFEITURE REPORT ON OR BEFORE JANUARY 31 FOR THE PREVIOUS CALENDAR YEAR. SUCH REPORT SHALL INCLUDE:

(a) A DESCRIPTION AND THE VALUE OF ALL PROPERTY THAT WAS THE SUBJECT OF A FORFEITURE ACTION FILED IN THE JUDICIAL DISTRICT, INCLUDING THE FORFEITURE CASE NUMBER;

(b) THE CRIMINAL CHARGES FILED AGAINST THE OWNER OF THE PROPERTY AND THE CRIMINAL CASE NUMBER;

(c) DISPOSITION OR STATUS OF THE CRIMINAL AND FORFEITURE ACTIONS, INCLUDING THE VALUE OF THE PROPERTY FORFEITED;

(d) A DESCRIPTION AND THE VALUE OF ANY PROPERTY SEIZED BY LOCAL OR STATE LAW ENFORCEMENT AGENCIES THAT WAS TRANSFERRED TO THE UNITED STATES FOR FORFEITURE UNDER FEDERAL LAW, INCLUDING THE FEDERAL FORFEITURE CASE NUMBER AND THE CRIMINAL CASE NUMBER, WHETHER THE CRIMINAL ACTION WAS FILED IN STATE OR FEDERAL COURT, AND THE GROUNDS FOR THE TRANSFER; AND

(e) THE TOTAL PROCEEDS RECEIVED BY ALL LAW ENFORCEMENT AGENCIES AND THE DISTRICT ATTORNEY IN THE JUDICIAL DISTRICT FROM ALL FEDERAL FORFEITURE ACTIONS ARISING IN THE JUDICIAL DISTRICT.

(2) ~~Subsection (1) of this section shall not apply to the attorney general, the Colorado state patrol, and the Colorado bureau of investigation in the department of public safety~~ THE REPORT REQUIRED IN THIS SECTION SHALL BE FILED WITH THE DEPARTMENT OF LOCAL AFFAIRS AND SHALL CONSTITUTE A PUBLIC RECORD AND SHALL BE OPEN TO INSPECTION AS PROVIDED IN PART 2 OF THE ARTICLE 72 OF TITLE

24, C.R.S., COMMONLY KNOWN AS THE "PUBLIC RECORDS ACT".

(3) ANY STATE OR LOCAL LAW ENFORCEMENT AGENCY OR MULTI-JURISDICTIONAL TASK FORCE THAT RECEIVES PROCEEDS FROM FEDERAL FORFEITURE ACTIONS SHALL SUBMIT A COPY TO THE DEPARTMENT OF LOCAL AFFAIRS OF ANY ACCOUNTING REPORT FILED BY SUCH AGENCY PURSUANT TO FEDERAL LAW OR REGULATION. THE FEDERAL ANNUAL ACCOUNTING REPORT SHALL CONSTITUTE A PUBLIC RECORD AND SHALL BE OPEN TO INSPECTION AS PROVIDED IN PART 2 OF ARTICLE 72 OF TITLE, 24, C.R.S., COMMONLY KNOWN AS THE "PUBLIC RECORDS ACT". SUCH INFORMATION SHALL BE SUBJECT TO AUDIT IN ACCORDANCE WITH PART 6 OF ARTICLE 1 OF TITLE 29, C.R.S.

(4) THE ALCOHOL AND DRUG ABUSE DIVISION IN THE DEPARTMENT OF HUMAN SERVICES SHALL PREPARE AN ANNUAL ACCOUNTING REPORT OF MONEYS RECEIVED BY THE MANAGED SERVICE ORGANIZATION PURSUANT TO SECTION 16-13-311 (3)(a)(VII) (B), INCLUDING REVENUES, EXPENDITURES, BEGINNING AND ENDING BALANCES, AND SERVICES PROVIDED. THE ALCOHOL AND DRUG ABUSE DIVISION SHALL PROVIDE THIS INFORMATION IN ITS ANNUAL BRIEFING TO THE JOINT BUDGET COMMITTEE.

(5) ANY REPORT SUBMITTED PURSUANT TO THIS SECTION SHALL BE SUBJECT TO AUDIT IN ACCORDANCE WITH PART 6 OF ARTICLE 1 OF TITLE 29, C.R.S.

SECTION 14. 18-17-106 (2) (b), (2) (d), (5), (11), and (12), Colorado Revised Statutes, are amended to read:

18-17-106. Civil remedies. (2) All property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the provisions of section 18-17-104 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. The disposition of seized property shall be as follows:

(b) Any personal property seized and forfeited under the provisions of this section shall be sold by the sheriff in the manner provided for sales on execution. ~~In lieu of ordering the sale of such property, the court may, if it finds that it can be used by a law enforcement agency, order it delivered to a law enforcement agency for such use.~~

(d) The proceeds realized from such sales shall be applied ~~as follows~~ PURSUANT TO SECTION 16-13-311 (3) (a), C.R.S.

~~(I) To the fees and costs of sale;~~

~~(II) All costs and expenses of investigation and prosecution, including, but not limited to, costs of resources and manpower incurred in investigation and prosecution;~~

~~(III) The balance, if any, to the general fund of the state.~~

(5) The attorney general or district attorney may institute civil proceedings under this section. ANY ACTION INSTITUTED UNDER THIS SECTION SHALL CONFORM TO THE PROCEDURES SET FORTH IN PART 3 OR PART 5 OF ARTICLE 13 OF TITLE 16, C.R.S. In

any action brought under this section, the district court shall proceed as soon as practicable to the hearing and determination. Pending final determination, the district court may, at any time, enter such injunctions, prohibitions, or restraining orders or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper.

(11) The burden of proof in an action brought pursuant to this section shall be by ~~a preponderance of the evidence~~ CLEAR AND CONVINCING EVIDENCE.

(12) ~~An action may be commenced and heard pursuant to this section even if the defendant has not been charged or convicted in a criminal prosecution under this article.~~

SECTION 15. Effective date - applicability. This act shall take effect July 1, 2002, and shall apply to all forfeiture actions filed on or after said date.

SECTION 16. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 31, 2002