

House Bill 1036

By: Representatives Tarvin of the 2<sup>nd</sup>, Setzler of the 35<sup>th</sup>, Harrell of the 106<sup>th</sup>, Welch of the 110<sup>th</sup>, Efstoration of the 104<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 16 of Title 9 of the Official Code of Georgia Annotated, relating to the  
2 "Georgia Uniform Civil Forfeiture Procedure Act," so as to provide for the disposition of  
3 certain forfeited assets; to repeal the requirement for certain reports; to provide for related  
4 matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

7 Chapter 16 of Title 16 of the Official Code of Georgia Annotated, relating to the "Georgia  
8 Uniform Civil Forfeiture Procedure Act," is amended by revising Code Section 9-16-19,  
9 relating to disposition of forfeited property, order of distribution, and annual report, as  
10 follows:

11 "9-16-19.

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

13 (1) 'Entity' means and includes, but shall not be limited to, a law enforcement agency,  
14 multijurisdictional task force, or office, agency, authority, department, commission,  
15 board, body, division, instrumentality, or institution of the state or any political  
16 subdivision.

17 (2) 'Law enforcement agency' means a governmental unit of one or more persons  
18 employed full time or part time by the state, a state agency or department, or a political  
19 subdivision for the purposes of preventing and detecting crime and enforcing state laws  
20 or local ordinances, employees of which unit are authorized to make arrests for crimes  
21 or seize property while acting within the scope of their authority.

22 (3) 'Multijurisdictional task force' means a cooperative law enforcement effort involving  
23 personnel from two or more law enforcement agencies who are employed by or acting  
24 under the authority of different governmental authorities.

25 (4) 'Official law enforcement purpose' means expenditures associated with  
26 investigations; training; travel; the purchase, lease, maintenance, and improvement of

27 equipment, law enforcement facilities, and detention facilities; capital improvements;  
 28 victim assistance and witness assistance services; the costs of accounting, auditing, and  
 29 tracking of expenditures for federally shared cash, proceeds, and tangible property;  
 30 awards, museums, and memorials directly related to law enforcement; drug and gang  
 31 education and awareness programs; the payment of matching funds for state or federal  
 32 grant programs that enhance law enforcement services to the community or judicial  
 33 circuit; and reimbursement to a governing authority for a pro rata share of the indirect  
 34 costs incurred by the governing authority for a common or joint purpose benefiting the  
 35 law enforcement agency and other local government agencies which are not readily  
 36 assignable to any particular agency.

37 (5) 'Official prosecutorial purpose' means expenditures associated with investigations;  
 38 hearings; trials; appeals; forensic services; language interpreters or interpreters for the  
 39 hearing impaired; travel expenses that conform to the provisions set forth in Code  
 40 Sections 15-18-12 and 50-5B-5; training related to the official functions of the district  
 41 attorney; the purchase, lease, maintenance, and improvement of equipment; victim  
 42 assistance and witness assistance services; the payment of matching funds for state or  
 43 federal grant programs that enhance prosecution, victim, or witness services to the  
 44 community or judicial circuit; reimbursement to a governing authority for a pro rata share  
 45 of the indirect costs incurred by the governing authority for a common or joint purpose  
 46 benefiting the district attorney's office and other local government agencies which are not  
 47 readily assignable to any particular agency; and the payment of salaries and benefits in  
 48 conformity with subsection (e) of Code Section 15-18-19 and Code Section 15-18-20.1.

49 (6) 'Prosecuting Attorneys' Council' means the Prosecuting Attorneys' Council of the  
 50 State of Georgia.

51 (b) Whenever property is forfeited under this chapter, any property which is required by  
 52 order of the court or by law to be destroyed or which is harmful to the public shall, when  
 53 no longer needed for evidentiary purposes, be destroyed or forwarded to the Division of  
 54 Forensic Sciences of the Georgia Bureau of Investigation or any other agency of state or  
 55 local government for destruction or for any medical or scientific use not prohibited under  
 56 the laws of this state or of the United States.

57 (c) When property, other than currency or real property, is forfeited under this chapter, the  
 58 court may:

59 (1) Order the property to be sold, with the income from the sale to be distributed as  
 60 provided in subsection (f) of this Code section; or

61 (2) Provide for the in-kind distribution of the property as provided for in subsection (f)  
 62 of this Code section.

63 (d) When real property is forfeited, the court may appoint a person to act as the receiver  
 64 of such property for the limited purpose of holding and transferring title and may order  
 65 that:

66 ~~(1) The title to the real property be placed in the name of the state;~~

67 ~~(2) The title to the real property be placed in the name of the political subdivision which~~  
 68 ~~will be taking charge of such property. Such political subdivision shall then:~~

69 ~~(A) Sell the property sold with such conditions as the court deems proper and distribute~~  
 70 ~~the income as provided in subsection (f) of this Code section; or~~

71 ~~(B) Hold the property for use by one or more law enforcement agencies;~~

72 ~~(3) The real property be turned over to an appropriate political subdivision without~~  
 73 ~~restrictions;~~

74 ~~(4) The real property be deeded to a land bank authority as provided in Article 4 of~~  
 75 ~~Chapter 4 of Title 48; or~~

76 ~~(5) The real property be disposed of in any commercially reasonable manner as the court~~  
 77 ~~deems proper.~~

78 (e) When property is to be sold pursuant to this Code section:

79 (1) The court may direct that such property be sold by:

80 (A) Judicial sale as provided in Article 7 of Chapter 13 of this title; provided, however,  
 81 that the court may establish a minimum acceptable price for such property; or

82 (B) Any commercially feasible means, including, but not limited to, in the case of real  
 83 property, listing such property with a licensed real estate broker, selected by a state  
 84 attorney through competitive bids; and

85 (2) The income from such sale shall be paid into the registry of the court or deposited  
 86 into an account as specified in paragraph (1) of subsection (c) of Code Section 9-16-10  
 87 as directed by the court.

88 (f)(1) The state attorney shall submit a proposed order of distribution to the court, and  
 89 the court shall issue an order of distribution. Such order shall specify the time frame for  
 90 the transfer of forfeited property and the entity responsible for effectuating the transfer  
 91 of such property. The state attorney shall provide a copy of the order of distribution to  
 92 any entity responsible for effectuating such transfer. The state attorney shall provide a  
 93 copy of the order of distribution to the chief executive officer of each political  
 94 subdivision whose law enforcement agency will receive a distribution pursuant to such  
 95 order.

96 (2) All property forfeited in the same civil forfeiture proceeding shall be pooled together,  
 97 and a fair market value shall be assigned to each item of property other than currency in  
 98 such pool. A total value shall be established for the pool by adding together the fair

99 market value of all such property in the pool, the amount of currency in the pool, and any  
100 accrued interest.

101 (3)(A) The first distribution from the pool shall be to pay costs and court costs to the  
102 entity incurring the costs or court costs.

103 (B) ~~Except as provided in subparagraph (E) of this paragraph, the second distribution~~  
104 ~~from the pool, upon the request of the district attorney, shall be 10 percent of such pool~~  
105 ~~which shall be paid to the district attorney's office, in recognition of the district~~  
106 ~~attorney's effort in completing the civil forfeiture proceeding, and shall be used by a~~  
107 ~~district attorney for official prosecutorial purposes. Forfeited property and the sums~~  
108 ~~held by a district attorney shall be in addition to the respective budgets of the state and~~  
109 ~~the counties comprising the judicial circuit for a district attorney and shall not supplant~~  
110 ~~such appropriations. The remaining property and sums remaining in the pool shall be~~  
111 ~~distributed in equal amounts to:~~

112 ~~(i) The Indigent Care Trust Fund created pursuant to Article 6 of Chapter 8 of~~  
113 ~~Title 31; and~~

114 ~~(ii) The Safe Harbor for Sexually Exploited Children Fund created pursuant to~~  
115 ~~Article 11 of Chapter 21 of Title 15.~~

116 ~~(C) Except as provided in subparagraph (E) of this paragraph, the third distribution~~  
117 ~~from the pool shall be pro rata to law enforcement agencies and multijurisdictional task~~  
118 ~~forces according to the role each law enforcement agency or multijurisdictional task~~  
119 ~~force played in the seizure and forfeiture of the forfeited property up to the limits set~~  
120 ~~forth in division (4)(A)(ii) of this subsection.~~

121 ~~(D) If there remains currency in the pool after the distributions set forth in~~  
122 ~~subparagraphs (A) through (C) of this paragraph, it may be distributed as further set~~  
123 ~~forth in division (4)(A)(iii) or (4)(B)(ii) of this subsection, as applicable.~~

124 ~~(E) If the civil forfeiture proceeding results from criminal conduct in violation of~~  
125 ~~Article 11 of Chapter 1 of Title 7, Code Section 16-5-46, Article 5 of Chapter 8 of Title~~  
126 ~~16, or Chapter 14 of Title 16, after satisfaction of the interest of any innocent party, the~~  
127 ~~court may make any division of the pool among the state, political subdivisions, or~~  
128 ~~agencies or departments of the state or political subdivisions commensurate with the~~  
129 ~~assistance each contributed to the underlying criminal prosecution or civil forfeiture~~  
130 ~~proceeding, or both such actions.~~

131 ~~(4) Property distribution shall be as follows:~~

132 ~~(A) With respect to political subdivisions:~~

133 ~~(i) Property distributed in kind to a political subdivision or multijurisdictional task~~  
134 ~~force for use by an agency, department, or officer of a political subdivision for official~~  
135 ~~law enforcement purposes shall be designated in the order of distribution and shall be~~

~~136 titled accordingly; provided, however, that property may be distributed for other  
 137 purposes to any other entity so long as such designation is made in the order of  
 138 distribution and reported in accordance with subsection (g) of this Code section. If  
 139 real property is distributed to a political subdivision, the political subdivision may  
 140 transfer the real property to a land bank authority as provided in Article 4 of Chapter  
 141 4 of Title 48. When in-kind property is no longer needed by the recipient, it shall be  
 142 disposed of in accordance with the political subdivision's policy and procedure;~~  
~~143 (ii) Currency distributed to local law enforcement agencies or to multijurisdictional  
 144 task forces shall be paid or credited to such agencies or task forces as provided in the  
 145 order of distribution; provided, however, that such agency or task force shall not be  
 146 eligible to receive more than 33 1/3 percent of the amount of local funds appropriated  
 147 or otherwise made available to such agency or task force for the fiscal year in which  
 148 such funds are distributed. Such currency may be used for any official law  
 149 enforcement purpose at the discretion of the chief officer of the law enforcement  
 150 agency receiving such distribution, provided that such distribution shall not be used  
 151 to supplant any other local, state, or federal funds appropriated for staff or operations  
 152 or to pay salaries or rewards to law enforcement personnel;~~  
~~153 (iii) Currency not distributed pursuant to division (ii) of this subparagraph shall be  
 154 expended for any official law enforcement purpose; for the representation of indigents  
 155 in criminal cases; for drug treatment, mental health treatment, rehabilitation,  
 156 prevention, or education or any other program which deters drug or substance abuse  
 157 or responds to problems created by drug or substance abuse; for use as matching  
 158 funds for grant programs related to drug treatment or prevention; to fund victim  
 159 assistance; or for any combination of the foregoing; and~~  
~~160 (iv) When a chief officer of a law enforcement agency does not qualify as a candidate  
 161 for reelection or has been defeated in any election, he or she shall not transfer any  
 162 currency or property received due to civil forfeiture proceedings to any other entity  
 163 prior to leaving office; provided, however, that he or she may continue to expend such  
 164 currency or make use of such property for any official law enforcement purpose  
 165 within his or her law enforcement agency; and~~  
 166 (B) With respect to the state:  
~~167 (i) Property distributed in kind to the state for use by a state agency, officer of the  
 168 state, or district attorney shall be designated in the order of distribution; provided,  
 169 however, that property may be distributed for other purposes to any other entity so  
 170 long as such designation is made in the order of distribution and reported in  
 171 accordance with subsection (g) of this Code section. When a state agency, officer of  
 172 the state, or district attorney determines that in-kind property is no longer needed by~~

173 the recipient, it shall be delivered over to the Department of Administrative Services  
 174 for such use or disposition as may be determined by the commissioner of  
 175 administrative services;

176 (ii) ~~Currency distributed to the state for use by a state agency, officer of the state,  
 177 district attorney, or as further set forth in this division shall be paid as provided in the  
 178 order of distribution. It is the intent of the General Assembly that the currency  
 179 otherwise distributed to the state be used, subject to appropriation from the general  
 180 fund in the manner provided by law, for funding of Article 2 of Chapter 12 of Title  
 181 17, the 'Georgia Indigent Defense Act of 2003,' for representation of indigents in  
 182 criminal cases; for funding of the Georgia Crime Victims Emergency Fund; for law  
 183 enforcement and prosecution agency programs and particularly for funding of  
 184 advanced drug investigation and prosecution training for law enforcement officers and  
 185 prosecuting attorneys; for drug treatment, mental health treatment, rehabilitation,  
 186 prevention, or education or any other program which deters drug or substance abuse  
 187 or responds to problems created by drug or substance abuse; for use as matching  
 188 funds for grant programs related to drug treatment or prevention; or for financing the  
 189 judicial system of the state; and~~

190 (iii) ~~When a district attorney does not qualify as a candidate for reelection or has been  
 191 defeated in any election, he or she shall not transfer any currency or property received  
 192 due to civil forfeiture proceedings to any other entity prior to leaving office; provided,  
 193 however, that he or she may continue to expend such currency or make use of such  
 194 property for any official prosecutorial purpose within his or her office.~~

195 (g)(1) ~~Property and proceeds forfeited pursuant to this chapter and any income resulting  
 196 from the sale of forfeited property is government property. It is the intent of the General  
 197 Assembly that there be accountability and transparency applicable to the distribution of  
 198 forfeited property and income from the sale of forfeited property. The appropriate  
 199 accounting and auditing standards shall be applicable to such distribution.~~

200 (2) ~~Any law enforcement agency, multijurisdictional task force, district attorney, or state  
 201 agency receiving property and proceeds forfeited pursuant to this chapter and any income  
 202 resulting from the sale of forfeited property, including property distributed in kind, shall  
 203 submit an annual report specifying the property and proceeds forfeited pursuant to this  
 204 chapter and any income resulting from the sale of forfeited property received during its  
 205 reporting year and shall clearly identify the use of such property, proceeds, and income,  
 206 including the specifics of all monetary expenditures and funds on deposit with a financial  
 207 institution. Such report shall not include any information that is likely to disclose the  
 208 identity of a confidential source, disclose confidential investigative or prosecution  
 209 material which could endanger the life or physical safety of any person, disclose the~~

210 ~~existence of a confidential surveillance or investigation, or disclose techniques and~~  
 211 ~~procedures for law enforcement investigations or prosecutions. Such annual report shall~~  
 212 ~~be appropriately completed and legible. Such report shall be:~~

213 ~~(A) With respect to law enforcement agencies, multijurisdictional task forces, and state~~  
 214 ~~agencies:~~

215 ~~(i) Submitted on a form promulgated by the Prosecuting Attorneys' Council, as~~  
 216 ~~provided in subparagraph (A) of paragraph (3) of this subsection;~~

217 ~~(ii) Submitted by each local law enforcement agency to the political subdivision~~  
 218 ~~governing its jurisdiction;~~

219 ~~(iii) Submitted by multijurisdictional task forces to each political subdivision~~  
 220 ~~governing the jurisdictions involved;~~

221 ~~(iv) Submitted by state agencies to the state auditor;~~

222 ~~(v) Submitted by January 31 each year for the previous calendar year; and~~

223 ~~(vi) Copied and submitted to the Carl Vinson Institute of Government of the~~  
 224 ~~University of Georgia as provided in Code Section 36-80-21; and~~

225 ~~(B) With respect to district attorneys:~~

226 ~~(i) Submitted on a form promulgated by the Prosecuting Attorneys' Council, as~~  
 227 ~~provided in subparagraph (B) of paragraph (3) of this subsection;~~

228 ~~(ii) Submitted by district attorneys to the Prosecuting Attorneys' Council according~~  
 229 ~~to the rules and regulations adopted by the Prosecuting Attorneys' Council;~~

230 ~~(iii) Submitted to the state auditor;~~

231 ~~(iv) Submitted by January 31 each year for the previous calendar year; and~~

232 ~~(v) Copied and submitted to the Carl Vinson Institute of Government of the~~  
 233 ~~University of Georgia as provided in Code Section 36-80-21.~~

234 ~~(3)(A) The Prosecuting Attorneys' Council shall promulgate and from time to time~~  
 235 ~~amend as necessary and post on its website an annual reporting form for use by law~~  
 236 ~~enforcement agencies, multijurisdictional task forces, and state agencies to report the~~  
 237 ~~information required by this subsection. In creating this form, the Prosecuting~~  
 238 ~~Attorneys' Council shall consider input from the Georgia Peace Officer Standards and~~  
 239 ~~Training Council, the Georgia Sheriffs' Association, and the Georgia Association of~~  
 240 ~~Chiefs of Police. Such form shall include, but shall not be limited to, the following~~  
 241 ~~information:~~

242 ~~(i) As to property, other than currency, an itemization specifying:~~

243 ~~(I) The date the property was received by the entity;~~

244 ~~(II) The make, model, and serial number, when relevant; provided, however, that~~  
 245 ~~such details shall not be required when such details would disclose the identification~~

246 ~~of property being used in a confidential investigation or would compromise an~~  
 247 ~~ongoing investigation;~~  
 248 ~~(III) The statutes upon which the property was subject to forfeiture;~~  
 249 ~~(IV) The estimated value of the property received;~~  
 250 ~~(V) If the property was sold, the date of the sale and the gross and net income~~  
 251 ~~received;~~  
 252 ~~(VI) If the property was retained, the purpose for which it was used; provided,~~  
 253 ~~however, that such details shall not be required when such details would disclose~~  
 254 ~~the identification of property being used in a confidential investigation or would~~  
 255 ~~compromise an ongoing investigation; and~~  
 256 ~~(VII) If the property was destroyed, the date of the destruction;~~  
 257 ~~(ii) As to currency, an itemization specifying:~~  
 258 ~~(I) The amount of currency forfeited and the date the currency was received; and~~  
 259 ~~(II) The statutes upon which the currency was subject to forfeiture;~~  
 260 ~~(iii) If property was returned to an owner or interest holder, by the seizing law~~  
 261 ~~enforcement agency or in the order of distribution, a description of such property and~~  
 262 ~~date of return of such property;~~  
 263 ~~(iv) The total for the reporting year of the amount of currency forfeited and net~~  
 264 ~~income from the sale of forfeited property which the entity received;~~  
 265 ~~(v) A description of the use and expenditure of forfeited funds for the reporting year,~~  
 266 ~~specifying for each expenditure the amount expended and the purpose for which each~~  
 267 ~~expenditure was made; and~~  
 268 ~~(vi) The total amount of forfeited currency held in a financial institution at the end~~  
 269 ~~of the reporting year, including the net income from the sale of forfeited property and~~  
 270 ~~interest earned.~~  
 271 ~~(B) The Prosecuting Attorneys' Council shall promulgate and from time to time amend~~  
 272 ~~as necessary and post on its website an annual reporting form for district attorneys to~~  
 273 ~~use to report the information required by this subsection. In creating this form, the~~  
 274 ~~Prosecuting Attorneys' Council shall consider input from the District Attorneys'~~  
 275 ~~Association of Georgia. Such form shall include, but shall not be limited to, the~~  
 276 ~~following information:~~  
 277 ~~(i) As to in-kind property received, an itemization specifying:~~  
 278 ~~(I) The date the property was received;~~  
 279 ~~(II) The make, model, and serial number, when relevant; provided, however, that~~  
 280 ~~such details shall not be required when such details would disclose the identification~~  
 281 ~~of property being used in a confidential investigation or would compromise an~~  
 282 ~~ongoing investigation;~~

- 283 ~~(III) The statutes upon which the property was subject to forfeiture; and~~  
 284 ~~(IV) A description of the purpose to which the property was put;~~  
 285 ~~(ii) As to currency received, an itemization specifying:~~  
 286 ~~(I) The amount of currency and the date the currency was received; and~~  
 287 ~~(II) A description of the use and expenditure of forfeited currency for the reporting~~  
 288 ~~year, specifying for each expenditure the amount expended and the purpose for~~  
 289 ~~which each expenditure was made; and~~  
 290 ~~(iii) The total amount of currency received by the district attorney during the~~  
 291 ~~reporting year and the amount remaining that has not been expended, including any~~  
 292 ~~interest earned.~~
- 293 ~~(4) The annual report required by this subsection may be submitted electronically,~~  
 294 ~~provided the submission complies with Chapter 12 of Title 10.~~
- 295 ~~(5)(A) The district attorney having jurisdiction where the local law enforcement~~  
 296 ~~agency or multijurisdictional task force is located shall be authorized to conduct an~~  
 297 ~~investigation and bring any criminal prosecution or civil action he or she deems~~  
 298 ~~necessary to ensure compliance with this subsection. The district attorney shall provide~~  
 299 ~~an entity required to comply with the reporting requirements of this subsection and~~  
 300 ~~found to have committed a violation of this subsection 60 days to demonstrate to the~~  
 301 ~~district attorney that such entity has come into compliance with this subsection. If, after~~  
 302 ~~60 days, the entity has failed to correct all deficiencies, such entity shall be prohibited~~  
 303 ~~from being eligible to receive property derived or resulting from civil forfeiture~~  
 304 ~~proceedings until such time as the entity demonstrates to the district attorney that such~~  
 305 ~~entity has corrected all deficiencies and is in compliance with this subsection; provided,~~  
 306 ~~however, that if the chief officer of the entity has resigned or has been removed from~~  
 307 ~~office, the prohibition shall not apply so long as his or her successor in office corrects~~  
 308 ~~all deficiencies within 180 days of taking office. At any time after the district attorney~~  
 309 ~~finds an entity to be in violation of this subsection, such entity may seek administrative~~  
 310 ~~relief through the Office of State Administrative Hearings. If an entity seeks~~  
 311 ~~administrative relief, the time for correcting deficiencies shall be tolled, and any action~~  
 312 ~~to exclude the entity from receiving property derived or resulting from civil forfeiture~~  
 313 ~~proceedings shall be suspended until such time as a final ruling upholding the findings~~  
 314 ~~of the district attorney is issued.~~
- 315 ~~(B) If the district attorney is disqualified from conducting any investigation under this~~  
 316 ~~paragraph, the district attorney shall notify the Attorney General in accordance with~~  
 317 ~~Code Section 15-18-5.~~
- 318 ~~(6) If an audit concludes that a district attorney has used property in violation of this~~  
 319 ~~Code section and the auditor notifies the district attorney of such violation, he or she shall~~

320 ~~take appropriate action to remedy the audit's findings and repay or redistribute property~~  
321 ~~improperly used. If the district attorney fails to remedy the audit's findings within 60~~  
322 ~~days of such notification, the auditor shall notify the Attorney General for further legal~~  
323 ~~action.~~

324 ~~(7) Any person who knowingly and willfully makes a false, fictitious, or fraudulent~~  
325 ~~annual report pursuant to this subsection shall be guilty of a violation of Code Section~~  
326 ~~16-10-20 and, upon conviction, shall be punished as provided in such Code section. Any~~  
327 ~~entity that employed a person convicted of false statements based on a violation of this~~  
328 ~~subsection shall be prohibited from being eligible to receive property derived or resulting~~  
329 ~~from civil forfeiture proceedings for a period of two years commencing from the date of~~  
330 ~~such conviction, unless such entity no longer employs such person."~~

331 **SECTION 2.**

332 All laws and parts of laws in conflict with this Act are repealed.