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HOUSE BILL 312

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Christine Chandler

AN ACT

RELATING TO FORFEITURE; REVISING DEFINITIONS; REVISING  
PROCEDURES RELATED TO FORFEITURE PROCEEDINGS; PROVIDING FOR  
DISTRIBUTION OF PROCEEDS FROM THE SALE OF FORFEITED OR  
DISCLAIMED PROPERTY; PROVIDING FOR DESTRUCTION OF CERTAIN  
SEIZED PROPERTY; REVISING PROCEDURES RELATED TO STORAGE,  
TRANSFER AND DESTRUCTION OF SEIZED PROPERTY; REVISING REPORTING  
REQUIREMENTS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 31-27-2 NMSA 1978 (being Laws 2002,  
Chapter 4, Section 2, as amended) is amended to read:

"31-27-2. PURPOSE OF ACT--APPLICABILITY--NO ADDITIONAL  
REMEDIES.--

A. The purposes of the Forfeiture Act are to:

(1) make uniform the standards and procedures

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1 for the seizure and forfeiture of property subject to  
2 forfeiture;

3 (2) protect the constitutional rights of  
4 persons whose property is subject to forfeiture and of innocent  
5 owners holding interests in property subject to forfeiture;

6 (3) deter criminal activity by reducing its  
7 economic incentives;

8 (4) increase the pecuniary loss from criminal  
9 activity;

10 (5) protect against the wrongful forfeiture of  
11 property; and

12 (6) ensure that only criminal forfeiture is  
13 allowed in this state.

14 B. The Forfeiture Act:

15 (1) applies to all seizures, forfeitures and  
16 dispositions of property subject to forfeiture pursuant to laws  
17 that specifically apply the Forfeiture Act in this state; and

18 (2) does not apply to:

19 (a) contraband, which is subject to  
20 seizure pursuant to applicable state laws, but is not subject  
21 to forfeiture pursuant to the Forfeiture Act;

22 (b) animals that are subject to seizure,  
23 impoundment, alteration, permanent removal from custody or  
24 destruction for animal welfare, public health and safety or  
25 compliance and enforcement purposes pursuant to applicable

1 state and local laws;

2 (c) real property or personal property  
3 that is located on that real property that is subject to  
4 destruction pursuant to state and local laws to protect public  
5 health and safety; and

6 (d) forfeiture that results from a lien  
7 for charges or assessments that are provided for or fixed by  
8 state or local laws."

9 SECTION 2. Section 31-27-3 NMSA 1978 (being Laws 2002,  
10 Chapter 4, Section 3, as amended) is amended to read:

11 "31-27-3. DEFINITIONS.--As used in the Forfeiture Act:

12 [~~A.~~ "~~abandoned property~~":

13 ~~(1) means personal property the rights to~~  
14 ~~which and the control of which an owner has intentionally~~  
15 ~~relinquished; and~~

16 ~~(2) does not mean real property;~~

17 ~~B. "actual knowledge" means a direct and clear~~  
18 ~~awareness of information, a fact or a condition;~~

19 ~~G.]~~ A. "contraband" means goods that may not be  
20 lawfully imported, exported or possessed, including drugs that  
21 are listed in Schedule I, II, III, IV or V of the Controlled  
22 Substances Act and that are possessed without a valid  
23 prescription;

24 [~~D.]~~ B. "conveyance" means a device used for  
25 transportation and:

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1 (1) includes a motor vehicle, trailer,  
2 snowmobile, airplane, vessel and any equipment attached to the  
3 conveyance; but

4 (2) does not include property that is stolen  
5 or taken in violation of a law;

6 ~~[E-]~~ C. "conviction" or "convicted" means that a  
7 person has been found guilty of a crime in a trial court  
8 whether by a plea of guilty or nolo contendere or otherwise and  
9 whether the sentence is deferred or suspended;

10 ~~[F-]~~ D. "crime" means a violation of a criminal  
11 statute for which property of the offender is subject to  
12 seizure and forfeiture;

13 E. "disclaimed property" means property, the  
14 ownership of which has been disclaimed by the person in  
15 possession of the property at the time the property is seized;

16 ~~[G-]~~ F. "instrumentality" means all property that  
17 is otherwise lawful to possess that is used in the furtherance  
18 or commission of an offense to which forfeiture applies and  
19 includes land, a building, a container, a conveyance,  
20 equipment, materials, a product, a computer, computer software,  
21 a telecommunications device, a firearm, ammunition, a tool,  
22 money, a security and a negotiable instrument and other devices  
23 used for exchange of property;

24 G. "knowledge" means actual or constructive  
25 awareness that can be proved either through direct or

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1 circumstantial evidence of information, a fact or a condition;

2 H. "law enforcement agency" means the employer of a  
3 law enforcement officer [~~that~~] who is authorized to seize or  
4 has seized property [~~pursuant to the Forfeiture Act~~] and  
5 includes the district attorney, the attorney general and  
6 another entity authorized by law to file a forfeiture action;

7 I. "law enforcement officer" [~~means~~]:

8 (1) means a state or municipal police officer,  
9 county sheriff, deputy sheriff, conservation officer, motor  
10 transportation enforcement officer or other state employee  
11 authorized by state law to enforce criminal statutes; but

12 (2) does not mean a correctional officer;

13 J. "owner" means a person who has a legal or  
14 equitable ownership interest in property;

15 K. "property" means tangible or intangible personal  
16 property or real property;

17 L. "property subject to forfeiture" means property  
18 or an instrumentality [~~described and~~] declared to be subject to  
19 forfeiture by the Forfeiture Act [~~or~~], a state law outside of  
20 the Forfeiture Act or a local ordinance; and

21 M. "secured party" means a person with a security  
22 or other protected interest in property, whether the interest  
23 arose by mortgage, security agreement, lien, lease or  
24 otherwise; the purpose of which interest is to secure the  
25 payment of a debt or protect a potential debt owed to the

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1 secured party."

2 SECTION 3. Section 31-27-4 NMSA 1978 (being Laws 2002,  
3 Chapter 4, Section 4, as amended) is amended to read:

4 "31-27-4. FORFEITURE--CONVICTION REQUIRED--SEIZURE OF  
5 PROPERTY--WITH PROCESS--WITHOUT PROCESS.--

6 A. A person's property is subject to forfeiture  
7 pursuant to state law if:

8 (1) the person was arrested for an offense to  
9 which forfeiture applies;

10 (2) the person is convicted by a criminal  
11 court of the offense; and

12 (3) the state law enforcement agency  
13 establishes by clear and convincing evidence that the property  
14 is subject to forfeiture as provided in Subsection [B] C of  
15 this section.

16 B. A person's property is subject to forfeiture  
17 pursuant to local ordinance if:

18 (1) the person was arrested for a felony to  
19 which forfeiture applies;

20 (2) the person is convicted by a criminal  
21 court of the felony offense; and

22 (3) the local law enforcement agency  
23 establishes by clear and convincing evidence that the property  
24 is subject to forfeiture as provided in Subsection C of this  
25 section.

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1           ~~[B-]~~ C. Following a person's conviction for an  
2 offense to which forfeiture applies, a court may order the  
3 person to forfeit:

4                   (1) property the person acquired through  
5 commission of the offense;

6                   (2) property directly traceable to property  
7 acquired through the commission of the offense; and

8                   (3) any instrumentality the person used in the  
9 commission of the offense.

10           ~~[G-]~~ D. Nothing in this section shall prevent  
11 property from being forfeited by the terms of a plea agreement  
12 to a felony that is approved by a court or by other agreement  
13 of the parties to a criminal proceeding.

14           ~~[D-]~~ E. Subject to the provisions of Section  
15 31-27-5 NMSA 1978, at any time, at the request of the ~~[state]~~  
16 law enforcement agency, a court may issue an ex parte  
17 preliminary order to seize property that is subject to  
18 forfeiture and for which forfeiture is sought and to provide  
19 for the custody of the property. The execution on the order to  
20 seize the property and the return of the property, if  
21 applicable, are subject to the Forfeiture Act and other  
22 applicable state laws or local ordinances. Before issuing an  
23 order pursuant to this subsection, the court shall make a  
24 determination that:

25                   (1) there is a substantial probability that:

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1 (a) the property is subject to  
2 forfeiture;

3 (b) the [~~state~~] law enforcement agency  
4 will prevail on the issue of forfeiture; and

5 (c) failure to enter the order will  
6 result in the property being destroyed, removed from the state  
7 or otherwise made unavailable for forfeiture; and

8 (2) the need to preserve the availability of  
9 the property through the entry of the requested order outweighs  
10 the hardship to the owner and other parties known to be  
11 claiming interests in the property.

12 [~~E-~~] F. Property subject to forfeiture may be  
13 seized at any time, without a prior court order, if:

14 (1) the seizure is incident to a lawful arrest  
15 for a crime or a search lawfully conducted pursuant to a search  
16 warrant and the law enforcement officer making the arrest or  
17 executing the search has probable cause to believe the property  
18 is subject to forfeiture and that the subject of the arrest or  
19 search warrant is an owner of the property;

20 (2) the property subject to seizure is the  
21 subject of a previous judgment in favor of the [~~state~~] law  
22 enforcement agency; or

23 (3) the law enforcement officer making the  
24 seizure has probable cause to believe the property is subject  
25 to forfeiture and that the delay occasioned by the need to

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1 obtain a court order would result in the removal or destruction  
2 of the property or otherwise frustrate the seizure."

3 SECTION 4. Section 31-27-4.1 NMSA 1978 (being Laws 2015,  
4 Chapter 152, Section 5) is amended to read:

5 "31-27-4.1. RECEIPT FOR SEIZED PROPERTY--REPLEVIN  
6 HEARING.--

7 A. When a law enforcement officer seizes property  
8 that is subject to forfeiture, the officer shall provide an  
9 itemized receipt to the person possessing the property or, in  
10 the absence of a person to whom the receipt could be given,  
11 shall leave the receipt in the place where the property was  
12 found, if possible.

13 B. Within five business days of the seizure, the  
14 law enforcement officer shall provide notice by personal  
15 service or first class mail to all owners of record of the  
16 seized property.

17 ~~[B-]~~ C. Following the seizure of property, the  
18 defendant in the related criminal matter or another person who  
19 claims an interest in the seized property may, at any time  
20 before ~~[sixty days prior to a related criminal trial]~~ the one-  
21 hundred-twentieth day following the filing of the forfeiture  
22 action in court, claim an interest in the seized property by a  
23 motion ~~[to]~~ requesting the court to issue a writ of replevin.  
24 A motion filed pursuant to this section shall include facts to  
25 support the person's alleged interest in the seized property.

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1           ~~[G.]~~ D. A person who makes a timely motion pursuant  
2 to this section shall have a right to a hearing on the motion  
3 before the resolution of any related criminal matter or  
4 forfeiture proceeding and within ~~[thirty]~~ sixty days of the  
5 date on which the motion is filed.

6           ~~[D.]~~ E. At least ten days before a hearing on a  
7 motion filed pursuant to this section, the ~~[state]~~ law  
8 enforcement agency shall file an answer or responsive motion  
9 that shows probable cause for the seizure.

10           ~~[E.]~~ F. A court shall grant a claimant's motion if  
11 the court finds that:

12                   (1) it is likely that the final judgment will  
13 require the ~~[state]~~ law enforcement agency to return the  
14 property that was seized without a court order to the claimant;

15                   (2) the property is not reasonably required to  
16 be held for investigatory reasons; or

17                   (3) the property is the only reasonable means  
18 for a defendant to pay for legal representation in a related  
19 criminal or forfeiture proceeding and the law enforcement  
20 agency did not make a prima facie showing that the property was  
21 stolen or proceeds from or is an instrumentality of a crime.

22           ~~[F.]~~ G. In its discretion, the court may order the  
23 return of funds or property sufficient for a defendant to  
24 obtain legal counsel but less than the total amount seized ~~[and~~  
25 ~~it may]~~. If the court makes such an order, it shall require an

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1     accounting. An accounting report of reasonable legal fees held  
2     before the resolution of the relevant criminal and forfeiture  
3     proceedings shall be held in camera. If the court finds in  
4     favor of the law enforcement agency in both the criminal and  
5     forfeiture proceedings, the court shall:

6             (1) hear arguments by the parties as to what  
7     portion of the funds or property should be paid to the  
8     defendant's counsel and what portion should be forfeited; and

9             (2) issue an order on how the funds or  
10    property shall be distributed.

11            ~~[G-]~~ H. In lieu of ordering the issuance of ~~[the]~~ a  
12    writ of replevin, a court may order:

13            (1) the ~~[state]~~ law enforcement agency to give  
14    security or written assurance for satisfaction of any judgment,  
15    including damages, that may be rendered in a related forfeiture  
16    action; or

17            (2) any other relief the court deems to be  
18    just; provided that the relief does not prejudice an innocent  
19    owner, including a secured lienholder."

20            SECTION 5. Section 31-27-5 NMSA 1978 (being Laws 2002,  
21    Chapter 4, Section 5, as amended) is amended to read:

22            "31-27-5. ~~[COMPLAINT OF FORFEITURE]~~ NOTICE OF INTENT TO  
23    FORFEIT--SERVICE OF PROCESS.--

24            A. Within thirty days of making a seizure of  
25    property or simultaneously upon filing a related criminal

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1 indictment, the [~~state~~] law enforcement agency shall file a  
2 [~~complaint of ancillary forfeiture proceedings~~] notice of  
3 intent to forfeit or return the property to the person from  
4 whom it was seized. [~~A complaint of ancillary forfeiture~~  
5 ~~proceedings~~] The notice shall include:

- 6 (1) a description of the property seized;
- 7 (2) the date and place of seizure of the  
8 property;
- 9 (3) the name and address of the law  
10 enforcement agency making the seizure;
- 11 (4) the specific statutory and factual grounds  
12 for the seizure;
- 13 (5) whether the property was seized pursuant  
14 to an order of seizure, and if the property was seized without  
15 an order of seizure, an affidavit from a law enforcement  
16 officer stating the legal and factual grounds why an order of  
17 seizure was not required; and
- 18 (6) in the [~~complaint caption and in the~~  
19 ~~complaint~~] notice, the names of persons known to the [~~state~~]  
20 law enforcement agency who [~~may claim~~] have an interest in the  
21 property and the basis for each person's [~~alleged~~] interest.

22 B. The [~~complaint~~] notice shall be served upon the  
23 person from whom the property was seized, the person's attorney  
24 of record and all persons known or reasonably believed by the  
25 [~~state~~] law enforcement agency to claim an interest in the

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1 property. A copy of the [~~complaint~~] notice shall also be  
2 published [~~at least three times in a newspaper of general~~  
3 ~~circulation in the district of the court having jurisdiction~~  
4 ~~or~~] on the sunshine portal until the forfeiture proceeding is  
5 resolved."

6 SECTION 6. Section 31-27-6 NMSA 1978 (being Laws 2002,  
7 Chapter 4, Section 6, as amended) is amended to read:

8 "31-27-6. FORFEITURE PROCEEDINGS--DETERMINATION--  
9 SUBSTITUTION OF PROPERTY--CONSTITUTIONALITY--APPEAL.--

10 A. A person who claims an interest in seized  
11 property shall file [~~an answer to the complaint of forfeiture~~]  
12 a response within thirty days of the date of service of the  
13 [~~complaint~~] notice of intent to forfeit. The [~~answer~~] response  
14 shall include facts to support the claimant's alleged interest  
15 in the property.

16 B. The district courts have jurisdiction over  
17 forfeiture proceedings, and venue for a forfeiture proceeding  
18 is in the same court in which venue lies for the criminal  
19 matter related to the seized property.

20 C. The forfeiture proceeding shall begin after the  
21 conclusion of the trial for the related criminal matter in an  
22 ancillary proceeding that relates to a defendant's property  
23 before the same judge and jury, if applicable, and the court,  
24 and the jury, if applicable, may consider the forfeiture of  
25 property seized from other persons at the same time or in a

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1 later proceeding. If the criminal defendant in the related  
2 criminal matter is represented by the public defender  
3 department, the chief public defender or the district public  
4 defender may authorize department representation of the  
5 defendant in the forfeiture proceeding.

6 D. Discovery conducted in an ancillary forfeiture  
7 proceeding is subject to the rules of criminal procedure.

8 E. An ancillary forfeiture proceeding that relates  
9 to the forfeiture of property valued at less than twenty  
10 thousand dollars (\$20,000) shall be held before a judge only.

11 F. If the [~~state~~] law enforcement agency fails to  
12 prove, by clear and convincing evidence, that a person whose  
13 property is alleged to be subject to forfeiture is an owner of  
14 the property:

15 (1) the forfeiture proceeding shall be  
16 dismissed and the property shall be delivered to the owner,  
17 unless the owner's possession of the property is illegal; and

18 (2) the owner shall not be subject to any  
19 charges by the [~~state~~] law enforcement agency for storage of  
20 the property or expenses incurred in the preservation of the  
21 property.

22 G. The court shall enter a judgment of forfeiture  
23 and the seized property shall be forfeited to the [~~state~~] law  
24 enforcement agency if the [~~state~~] law enforcement agency proves  
25 by clear and convincing evidence that:

1 (1) the seized property is subject to  
2 forfeiture;

3 (2) the criminal prosecution of the owner of  
4 the seized property resulted in a conviction; and

5 (3) the value of the property to be forfeited  
6 does not unreasonably exceed:

7 (a) the pecuniary gain derived or sought  
8 to be derived by the crime;

9 (b) the pecuniary loss caused or sought  
10 to be caused by the crime; or

11 (c) the value of the convicted owner's  
12 interest in the property.

13 H. A court shall not accept a plea agreement or  
14 other arrangement by which a defendant contributes or donates  
15 property to a person, charity or other organization in full or  
16 partial fulfillment of responsibility established in the  
17 court's proceeding.

18 I. Following a person's conviction, the [~~state~~] law  
19 enforcement agency may make a motion for forfeiture of  
20 substitute property owned by the person that is equal to but  
21 does not exceed the value of the property that is subject to  
22 forfeiture but that the [~~state~~] law enforcement agency is  
23 unable to seize. The court shall order the forfeiture of  
24 substitute property only if the [~~state~~] law enforcement agency  
25 proves by a preponderance of the evidence that the person

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1 intentionally transferred, sold or deposited property with a  
2 third party to avoid the court's jurisdiction and the  
3 forfeiture of the property.

4 J. A person is not jointly and severally liable for  
5 orders for forfeiture of another person's property. When  
6 ownership of property is unclear, a court may order each person  
7 to forfeit the person's property on a pro rata basis or by  
8 another means the court deems equitable.

9 K. ~~[At any time]~~ Within the time period for filing  
10 an appeal following the conclusion of a forfeiture proceeding,  
11 the person whose property was forfeited may petition the court  
12 to determine whether the forfeiture was unconstitutionally  
13 excessive pursuant to the state or federal constitution.

14 L. At a non-jury hearing on the petition, the  
15 petitioner has the burden of establishing by a preponderance of  
16 the evidence that the forfeiture was grossly disproportional to  
17 the seriousness of the criminal offense for which the person  
18 was convicted.

19 M. In determining whether the forfeiture is  
20 unconstitutionally excessive, the court may consider all  
21 relevant factors, including:

22 (1) the seriousness of the criminal offense  
23 and its impact on the community, the duration of the criminal  
24 activity and the harm caused by the defendant;

25 (2) the extent to which the defendant



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1 participated in the offense;

2 (3) the extent to which the property was used  
3 in committing the offense;

4 (4) the sentence imposed for the commission of  
5 the crime that relates to the property that is subject to  
6 forfeiture; and

7 (5) whether the criminal offense was completed  
8 or attempted.

9 N. In determining the value of the property subject  
10 to forfeiture, the court may consider relevant factors,  
11 including the ~~[(1)]~~ fair market value of the property

12 ~~[(2) value of the property to the defendant,~~  
13 ~~including hardship that the defendant will suffer if the~~  
14 ~~forfeiture is realized; and~~

15 ~~(3)]~~ and the hardship from the loss of a  
16 primary residence, motor vehicle or other property to the  
17 defendant's family members or others if the property is  
18 forfeited, in addition to any non-monetary intrinsic value of  
19 property that would cause the defendant to suffer if the  
20 forfeiture is realized.

21 O. The court shall not consider the value of the  
22 property to the ~~[state]~~ law enforcement agency when it  
23 determines whether the forfeiture of the property is  
24 constitutionally excessive.

25 P. A party to a forfeiture proceeding may appeal a

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1 district court's decision regarding the seizure, forfeiture and  
2 distribution of property [~~pursuant to the Forfeiture Act~~]."

3 SECTION 7. Section 31-27-7 NMSA 1978 (being Laws 2002,  
4 Chapter 4, Section 7, as amended) is amended to read:

5 "31-27-7. TITLE TO SEIZED PROPERTY--DISPOSITION OF  
6 FORFEITED PROPERTY AND DISCLAIMED PROPERTY--PROCEEDS.--

7 A. The [~~state~~] law enforcement agency acquires  
8 provisional title to seized property at the time the property  
9 was used or acquired in connection with an offense that  
10 subjects the property to forfeiture. Provisional title  
11 authorizes the [~~state~~] law enforcement agency to hold and  
12 protect the property. Title to the property shall vest with  
13 the [~~state~~] law enforcement agency when a trier of fact renders  
14 a final forfeiture verdict and the title relates back to the  
15 time when the [~~state~~] law enforcement agency acquired  
16 provisional title; provided that the title is not subject to  
17 claims by third parties that are adjudicated pursuant to the  
18 Forfeiture Act.

19 B. Unless possession of the property is illegal or  
20 a different disposition is specifically provided for by law and  
21 except as provided in this section, forfeited property that is  
22 not currency shall be delivered [~~along with any abandoned~~  
23 ~~property~~] to the state treasurer or the state treasurer's  
24 designee for disposition at a public auction. Forfeited  
25 currency and all [~~sale~~] proceeds of the sale of forfeited [~~or~~

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1 ~~abandoned~~] property shall be distributed by the state treasurer  
2 as follows:

3 (1) first, to reimburse the reasonable  
4 expenses related to the storage, protection and transfer of the  
5 property incurred by a law enforcement agency or the state  
6 treasurer;

7 (2) second, to pay any reasonable expenses  
8 incurred to dispose of the property by a law enforcement agency  
9 or the state treasurer; and

10 (3) third, any remaining balance shall be  
11 deposited in the general fund.

12 [~~G. Proceeds from the sale of forfeited property~~  
13 ~~received by the state from another jurisdiction shall be~~  
14 ~~deposited in the general fund]~~

15 C. A law enforcement agency or public body that  
16 receives reimbursement pursuant to Subsection B of this section  
17 shall inform the state auditor of that fact at the time of the  
18 agency's or body's annual audit.

19 D. A forfeited property interest [~~forfeited to the~~  
20 ~~state pursuant to the Forfeiture Act]~~ is subject to the  
21 interest of a secured party unless, in the forfeiture  
22 proceeding, the [~~state~~] law enforcement agency proves by clear  
23 and convincing evidence that the secured party had [~~actual~~]  
24 knowledge of the crime that relates to the seizure of the  
25 property.

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1           E. Disclaimed property is subject to the provisions  
2 of Section 29-1-14 NMSA 1978 and shall be disposed of in the  
3 same manner as provided in Subsection B of this section.

4           F. Property subject to forfeiture that is in a law  
5 enforcement agency's possession becomes disclaimed property and  
6 may be disposed of as such without a conviction if:

- 7                   (1) there is no innocent owner; and
- 8                   (2) the criminal prosecution of the owner of  
9 the seized property cannot proceed because for a period in  
10 excess of one year and one day:

11                           (a) a bench warrant has been pending as  
12 a result of the defendant failing to appear; or

13                           (b) the owner fugitates."

14           SECTION 8. Section 31-27-7.1 NMSA 1978 (being Laws 2015,  
15 Chapter 152, Section 9) is amended to read:

16           "31-27-7.1. INNOCENT OWNERS.--

17                   A. The property of an innocent owner, as provided  
18 in this section, shall not be forfeited.

19                   B. A person who claims to be an innocent owner has  
20 the burden of production to show that the person:

21                           (1) holds a legal right, title or interest in  
22 the property seized; and

23                           (2) held an ownership interest in the seized  
24 property at the time the illegal conduct that gave rise to the  
25 seizure of the property occurred or was a bona fide purchaser

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1 for fair value.

2 C. The [~~state~~] law enforcement agency shall  
3 immediately return property to an established innocent owner  
4 who has an interest in homesteaded property, a motor vehicle  
5 valued at less than ten thousand dollars (\$10,000) or a  
6 conveyance that is encumbered by a security interest that was  
7 perfected pursuant to state law or that is subject to a lease  
8 or rental agreement, unless the secured party or lessor had  
9 [~~actual~~] knowledge of the criminal act upon which the  
10 forfeiture was based.

11 D. If a person establishes that the person is an  
12 innocent owner pursuant to Subsection B of this section  
13 [~~31-27-7.1 NMSA 1978~~] and the [~~state~~] law enforcement agency  
14 pursues a forfeiture proceeding with respect to that person's  
15 property, other than property described in Subsection D of  
16 Section 31-27-7 NMSA 1978, to successfully forfeit the  
17 property, the [~~state~~] law enforcement agency shall prove by  
18 clear and convincing evidence that the innocent owner had  
19 [~~actual~~] knowledge of the underlying crime giving rise to the  
20 forfeiture.

21 E. A person who acquired an ownership interest in  
22 property subject to forfeiture after the commission of a crime  
23 that gave rise to the forfeiture and who claims to be an  
24 innocent owner has the burden of production to show that the  
25 person has legal right, title or interest in the property

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1 seized under this section.

2 F. If a person establishes that the person is an  
3 innocent owner as provided in Subsection B of this section and  
4 the ~~[state]~~ law enforcement agency pursues a forfeiture  
5 proceeding against the person's property, to successfully  
6 forfeit the property, the ~~[state]~~ law enforcement agency shall  
7 prove by clear and convincing evidence that at the time the  
8 person acquired the property or an interest in the property,  
9 the person:

10 (1) had ~~[actual]~~ knowledge that the property  
11 was subject to forfeiture; or

12 (2) was not a bona fide purchaser who was  
13 without notice of any defect in title and who gave valuable  
14 consideration.

15 G. If the ~~[state]~~ law enforcement agency fails to  
16 meet its burdens as provided in Subsections C and D of this  
17 section, the court shall find that the person is an innocent  
18 owner and shall order the ~~[state]~~ law enforcement agency to  
19 relinquish all claims of title to the innocent owner's property  
20 without delay.

21 H. Seized property that is firearms, ammunition or  
22 explosives subject to forfeiture under the protections of this  
23 section and that is not returned to an innocent owner may be  
24 destroyed upon a motion by the law enforcement agency and an  
25 order of the court."

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1           SECTION 9. Section 31-27-8 NMSA 1978 (being Laws 2002,  
2 Chapter 4, Section 8, as amended) is amended to read:

3           "31-27-8. SAFEKEEPING OF SEIZED PROPERTY PENDING  
4 DISPOSITION [~~SELLING OR RETAINING SEIZED PROPERTY~~  
5 ~~PROHIBITED~~].--With regard to seized property in the state  
6 courts:

7           A. seized currency alleged to be subject to  
8 forfeiture shall be deposited with the clerk of the district  
9 court in an interest-bearing account;

10           B. seized property other than currency or real  
11 property, not required by federal or state law to be destroyed,  
12 shall be [~~(1)~~] placed under seal [~~and~~

13                         ~~(2) removed to~~] at a place designated by the  
14 district court; [~~or~~

15                         ~~(3) held in the custody of a law enforcement~~  
16 ~~agency;~~]

17           C. seized property shall be kept by the custodian  
18 in a manner to protect it from theft or damage and, if ordered  
19 by the district court, insured against those risks; and

20           D. unless it is returned to an owner, a law  
21 enforcement agency shall [~~not retain~~] dispose of forfeited [~~or~~  
22 ~~abandoned~~] property as provided in Section 31-27-7 NMSA 1978."

23           SECTION 10. Section 31-27-9 NMSA 1978 (being Laws 2015,  
24 Chapter 152, Section 11) is amended to read:

25           "31-27-9. REPORTING.--

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1           A. Within sixty days following the conclusion of  
2 each fiscal year, every law enforcement agency shall prepare on  
3 a form approved by the department of public safety an annual  
4 report of the agency's seizures and forfeitures conducted  
5 pursuant to [~~the Forfeiture Act~~] applicable state law and local  
6 ordinances, and seizures and forfeitures conducted pursuant to  
7 federal forfeiture law, and the report shall include:

8                   (1) the total number of seizures of currency  
9 and the total amount of currency seized in each seizure;

10                   (2) the total number of seizures of property  
11 and the number and types of items seized in each seizure;

12                   (3) the market value of each item of property  
13 seized; [~~and~~]

14                   (4) the total number of occurrences of each  
15 class of crime that resulted in the agency's seizure of  
16 property;

17                   (5) the costs incurred by the agency for  
18 storage, maintenance and transportation of seized property;

19                   (6) any proceeds received through equitable  
20 sharing, along with the federal case number and the final  
21 disposition of the case; and

22                   (7) any costs incurred by the agency to  
23 prepare its report in accordance with this subsection.

24           B. A law enforcement agency shall submit its annual  
25 reports to the department of public safety and to the district

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1 attorney's office in the agency's district. An agency that did  
2 not engage in seizure or forfeiture pursuant to [~~the Forfeiture~~  
3 ~~Act~~] local, state or federal forfeiture law [~~or both~~] shall  
4 report that fact in its annual report.

5 C. The department of public safety shall compile  
6 the reports submitted by each law enforcement agency and issue  
7 an aggregate report of all forfeitures in the state.

8 D. By [~~April~~] November 1 of each year, the  
9 department of public safety shall publish on its [~~web site~~]  
10 website the department's aggregate report and individual law  
11 enforcement agency reports submitted for the previous fiscal  
12 year."

13 SECTION 11. TEMPORARY PROVISION.--The New Mexico supreme  
14 court shall issue procedural court rules to implement the  
15 provisions of this act.

16 SECTION 12. TEMPORARY PROVISION.--Abandoned property in  
17 the possession of a law enforcement agency or the state  
18 treasurer on the effective date of this act shall be disposed  
19 of pursuant to Section 29-1-14 NMSA 1978.

20 SECTION 13. APPLICABILITY.--The provisions of this act  
21 apply to seized and disclaimed property in the possession of a  
22 law enforcement agency or the state treasurer on and after the  
23 effective date of this act.

24 SECTION 14. EMERGENCY.--It is necessary for the public  
25 peace, health and safety that this act take effect immediately.

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