

OHIO CRIMINAL SENTENCING COMMISSION

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Sub. H.B. 241 **(The Sentencing Commission's Forfeiture Reforms)**

AS PASSED BY THE GENERAL ASSEMBLY **1-5-07**

Sponsored by Rep. Bob Latta, this bill simplifies and streamlines Ohio statutes governing asset forfeitures that result from misconduct. The bill more clearly defines property subject to forfeiture and lays out the interests of government, the defendant, and third parties regarding that property. The bill is based on recommendations of the Ohio Criminal Sentencing Commission. It was approved by the House 91-4 on 6.21.05 and by the Senate 31-2 on 12.19.06.

The first two pages review the bill's key points. A section-by-section summary begins on p. 3. *An asterisk marks each key section.

KEY POINTS

Purpose Statement

- Makes the purposes of forfeiture law clear (§2981.01(A)):
 - To provide economic disincentives and remedies;
 - To make forfeitures proportionate to offenses;
 - To protect innocent parties; and
 - To prioritize the victim's interest in restitution.

New Chapter

- Greatly shortens forfeiture law and lends consistency by creating a new chapter to govern most asset forfeitures under the Criminal Code.
- Ch. 2981 replaces most statutes governing forfeitures in the corrupt activity, drug offenses, gang activity, Medicaid fraud, and contraband laws.

Simplified Statutes

- Replaces the jumble of former forfeiture statutes with clear terms and simpler rules for what's forfeitable:
 - "Contraband" - property that is unlawful to possess (§2901.01(A)(13)) is forfeitable for any felony or misdemeanor, other than a minor misdemeanor;
 - "Proceeds" - property derived from crime (§2981.01(B)(7)) is forfeitable; and
 - "Instrumentality" - property otherwise lawful to possess that is used in misconduct (§2981.01(B)(3)) is forfeitable provided it is sufficiently used in any felony or, when specifically authorized by statute or ordinance, a misdemeanor.
- Treats cars, boats, computers, and planes used in crime as instrumentalities, rather than as contraband.

Protecting the Individual's Interests

- Gives a person whose property was seized a chance at pretrial “hardship” release unless the property was contraband, proceeds, needed as evidence, or likely to be used in a new crime (§2981.03(D)).
- Sets out a quicker process for certain property, including vehicles and personal, business, and government records (§2981.03(D)(4) & (6)).
- To be subject to forfeiture, instrumentalities must be used or intended to be used in the offense. The bill gives guidance regarding the link between the property and the misconduct (§2981.02(A)).
- Makes instrumentality forfeitures proportionate to the crime by authorizing the court to review a forfeiture that the owner claims is disproportionate (§2981.09).
- Provides a pre-seizure probable cause review in civil cases when the target is real estate (§2981.03(A)(3)).
- Makes the right to a jury trial clear in civil forfeitures, including for third parties (§2981.08(B)).
- Otherwise safeguards the rights of innocent parties such as true owners, lien and security holders, law-abiding spouses, and business associates.

Protecting the Public Interest

- Clarifies that the State or subdivision has “provisional title” to the subject property (§2981.03(A)) and authorizes a broader range of tools to protect forfeitable property (§2981.03(B)(1)).
- Creates a new crime of transferring, hiding, or diminishing the value of property subject to forfeiture (§2981.07).
- Makes the civil forfeiture burden “a preponderance of the evidence” rather than “clear and convincing evidence” used in some statutes (§2981.05(D)(3)).
- Clearly gives the State or subdivision the right to a jury trial in civil forfeiture cases (§2981.08(B)).
- Authorizes criminal forfeitures in Medicaid fraud cases.
- Does not change basic formulas for distributing forfeited assets. It continues to steer amounts from forfeited property largely to law enforcement agencies to help defray costs of expensive investigations and prosecutions.
- As now, amounts from other property room “forfeitures” go largely to the appropriate general fund.

Protecting the Victim's Interest

- Prioritizes the victim's right to receive restitution or a civil recovery from forfeited assets (§2981.13(B)).

Effective Date

- The bill takes effect July 1, 2007. For Title 29 forfeiture cases pending on that date, the court should apply the provisions of new Chapter 2981 to the extent practical (Section 4).

SECTION-BY-SECTION SUMMARY

§9.92	Citizens' Reward Programs
§109.85	AG's Duties Re Medicaid Fraud
§309.08	County Prosecuting Attorney's Duties
§311.07	Sheriff's Duties
§1506.35	Watercraft Permit Violations
§2152.20	Juvenile Financial Sanctions

Updates cross-references and makes other technical changes.

*** §2901.01 Criminal Code Definitions - Contraband**

As now, contraband involved in any felony or misdemeanor is forfeitable (see §2981.02(A)). "Contraband" currently covers property that is illegal to possess, lawful property used to transport other contraband, and any other property involved in crime (div.(A)(13) & §2933.41(C)). The bill is more precise and concise. It narrows the definition of "contraband" to property that is unlawful to possess under a statute, ordinance, or rule, or that a trier of fact determines to be illegal to possess by reason of the property's involvement in the offense (div.(A)(13)).

The definition includes nonexclusive examples: drugs, unlawful gambling devices, dangerous ordnance, and obscene materials. They carry over from current law (although the latter two are more clearly stated in new div.(A)(13)(c)). However, the definition no longer includes *lawful* items used in misconduct such as automobiles, computers, or money (repealing §2901.01(A)(13)(a), (e), (g), (h), & (j)). These items are more accurately defined as "instrumentalities" (see §2981.01 below). Property acquired through crime (current div.(A)(13)(i)) moves to the new definition of "proceeds". Also makes technical changes.

§2909.08	Endangering Aircraft
§2913.34	Trademark Counterfeiting
§2913.421	Multiple Electronic Mail Offenses
§2923.01	Conspiracy
§2923.31	Corrupt Activity Definitions

Updates cross-references and makes other technical changes. Under §2913.34(D), goods produced in violation of a trademark, and the tools and equipment used to produce them, may be forfeited. Trademark forfeitures were not brought under the bill.

§2923.32 Engaging in a Pattern of Corrupt Activity

The crime of engaging in a pattern of corrupt activity and its penalties do not change except that a reference authorizing forfeiture under new Ch. 2981 is added. Div. (D) on nonexclusive penalties was repealed as unnecessary. The forfeiture aspects (divs. (B)(4)-(6), (C), & (E)-(G)) were repealed in favor of the new Chapter, discussed in context below.

§2923.33 Corrupt Activity: Property Subject to Forfeiture

Repealed in favor of new Ch. 2981. Specific provisions are discussed in context under §§2981.01, *et seq.* below.

§2923.34 Corrupt Activity: Civil Proceedings

This section sets out unusual civil penalties—in addition to forfeiture—for civil corrupt activity violations (*e.g.*, triple damages, class action allocations, a \$100,000 assessment, costs, and attorney fees). They are retained. Current div.(A) was repealed in favor of the new general forfeiture rules, provided the statute makes clear that forfeiture is authorized under Ch. 2981. Other divisions are relettered accordingly.

Currently, §2923.35 makes the rights of anyone who prevails in civil racketeering action superior to the rights of the governmental entity regarding forfeited assets, provided certain actions are taken within 180 days. The bill repeals §2923.35, but saves the superiority provisions by moving them into this section (divs.(M)(1) & (2)).

§2923.35 Corrupt Activity: Court Orders, Rights, Etc.

Repealed in favor of new Ch. 2981. The bill saves the key aspects of division (B)(1) & (2) as §2923.34(M)(1) & (2), discussed above. Other specific provisions are discussed in context below.

§2923.36 Corrupt Activity: Lien Notice

Contains procedures for lien notices different from the “provisional title” concept of forfeiture law. They are retained with updated cross references.

§2923.41 Gang Activity Definitions

Moves the definitions of “financial institution”, “firearms”, “computers”, & “vehicle” to new §2981.01 without substantive amendment. Strikes the definition of “property” in favor of §2981.01’s broader language. Sets the effective date of an earlier amendment.

§2923.42 Criminal Gang Activity

This offense and its non-forfeiture penalties remain (divs.(A), (B), part of (C), & (D)), including fines of twice the amount of gross proceeds wrongfully taken. Updates cross-references. Other provisions are superseded by the new chapter and discussed in context below.

§2923.44 Gang Activity Superfine

Currently, this section governs criminal forfeitures for unlawful gang activity. It also authorizes a fine of twice the offender’s ill-gotten gains. The fine provision remains (as new divs.(A) & (B)). The rest merges into the criminal forfeiture provisions in new Chapter 2981, summarized in context below.

- §2923.45 Gang Activity: Civil Forfeiture**
- §2923.46 Gang Activity: Disposition of Forfeited Property**
- §2923.47 Gang Activity: Motion to Return Property**

Repealed in favor of new Ch. 2981. Specific provisions are discussed in context below.

- §2925.03 Drug Trafficking**
- §2925.14 Drug Paraphernalia**

Technical. Updates cross-references.

§2925.41 Drug Forfeiture: Definitions

Repealed. Moves the definition of “financial institution” to the new forfeiture chapter (§2981.01) without substantive amendment. Strikes the definition of “property” in favor of the broader definition in §2981.01.

§2925.42 Drug Forfeiture: Criminal

In addition to earmarking forfeited monies to law enforcement—which moves to Ch. 2981 and is summarized in context below—the section also earmarks fine money to law enforcement. That provision remains here (current div.(B)(5)(b)).

- §2925.43 Drug Forfeiture: Civil**
- §2925.44 Drug Forfeiture: Property Disposition**
- §2925.45 Drug Forfeiture: Unlawfully Seized Property**

Repealed in favor of new Ch. 2981. Specific provisions are discussed in context below.

- §2927.02 Cigarette Trafficking**
- §2929.18 Felony Sentencing: Financial Sanctions**
- §2930.11 Victims’ Property**

Technical. Updates cross-references.

- §2933.41 Disposition of Property**
- §2933.42 Contraband**
- §2933.43 Contraband Seizure & Forfeiture**
- §2933.44 Alcohol-Related Juvenile Forfeiture Reports**
- §2933.71 Medicaid Fraud Forfeiture: Definitions**
- §2933.72 Medicaid Fraud Forfeiture: Preserving Property**
- §2933.73 Medicaid Fraud Forfeiture**
- §2933.74 Medicaid Fraud Forfeiture: Property Disposition**

Repealed in favor of new Ch. 2981. Specific provisions are discussed in context in the summary of §§2981.01, *et seq.* below. But these notes might help.

Current law makes it an offense to possess contraband (§2933.42). Since the bill makes clear that contraband is subject to forfeiture in *any* misdemeanor or felony case other than a minor misdemeanor (§2901.02)), current §2933.42 was repealed as unnecessary.

In repealing this section, the bill also eliminates the “no person shall transport ... any contraband” proscription. That quirky language makes it an “offense” to carry contraband, but does not set out a prison term or community sanction against the offender. Rather, it’s designed to allow forfeiture under §2933.43.

§2933.43 provides that a vessel used to transport contraband becomes “contraband”. By repealing that section, the bill more accurately places cars, boats, and planes used to transport contraband under the new definition of “mobile instrumentality”. However, the material being transported remains “contraband”. Other useful aspects of §2933.43 move to the new chapter.

§2933.75 Medicaid Fraud Forfeiture: Liens

Technical. Medicaid Fraud Law currently provides for liens on property subject to forfeiture. It is different from the “provisional title” concept of the new forfeiture chapter and was left without substantive changes. Otherwise, the amendments update cross-references and make language gender neutral.

§2935.03 Warrantless Arrests

Technical. Updates cross-references.

*** §2941.1417 Criminal Forfeiture Specification**

Former law generally called for specifying the property subject to criminal forfeiture in the indictment or other charging instrument, but did not provide model language.

Under the bill, property is not forfeitable in a criminal case unless the indictment: (1) specifies (to the extent reasonably known) the defendant’s interest in the property; (2) describes the property; and, (3) if an alleged instrumentality, states how the property was used in the offense. The first two are shortened versions of current statutes. The third is new. It tracks new language on instrumentality forfeitures, dovetails with new §2981.04, and adds clarity in delinquent children cases.

§2945.44 Witness Immunity

Technical. Updates cross-references and makes language gender neutral.

*** §2981.01 Forfeiture Chapter Purposes & Definitions**

Currently, the Criminal Code (Title 29) has lengthy criminal and civil asset forfeiture provisions in statutes regulating corrupt activity (§§2923.31-.36), drug organizations (§§2925.41-.45), gangs (§§2923.41-.47), contraband (§§2933.41-.44), and Medicaid fraud (§§933.71-.75). The bill consolidates and streamlines these statutes in new Chapter 2981. This shortens the Code, harmonizes forfeitures, and minimizes redundancy.

Purposes. Current law does not give reasons for using forfeiture as a penalty. Under the bill, these purposes govern the new forfeiture chapter (div.(A)):

- To provide economic disincentives and remedies to deter and offset the economic effect of offenses;
- To make instrumentality forfeitures proportionate to the misconduct involved;
- To protect third parties from wrongful forfeiture of their property;
- To prioritize restitution for victims.

Scope. The bill makes clear that the new chapter controls forfeitures relating to corrupt activity (racketeering), criminal gangs, drugs, and Medicaid fraud. However, provisions in those laws that do not conflict with Ch. 2981 remain in effect (div.(C)).

Proceeds: Ill-Gotten Gains. Today, property acquired through the sale or transfer of contraband is “contraband” (current §2901.01(A)(13)(i)). “Proceeds” are not defined. Rather than rely on contraband law, the bill defines “proceeds” as follows:

- In cases involving unlawful goods, services, or activities, any property derived directly or indirectly from an offense including any money or any other means of exchange. “Proceeds” are not limited to the net gain or profit realized from the offense (div.(B)(11)(a)).

- In cases involving lawful goods or services provided in an unlawful manner, “proceeds” means the amount of money, etc. acquired through the illegal transactions, less the direct costs lawfully incurred. The lawful costs deduction does not include any part of the overhead expenses of, or income taxes paid by, the entity providing the goods or services. The alleged offender has the burden to show lawful costs (div.(B)(11)(b)).

Instrumentalities: Connected to Crime. Currently, property used in a crime is forfeitable as contraband (§2933.41(C)(1)). Since many instrumentalities—unlike true contraband—are lawful to possess, the current provision was repealed in favor of defining “instrumentality” as “property otherwise lawful to possess that is used in or intended to be used in an offense.” As with contraband, the definition contains a nonexclusive list, including firearms acquired lawfully, “mobile instrumentalities”, computers, telecommunications devices, and money. Other than mobile instrumentalities, all move from the current “contraband” definition (div.(B)(6)).

Mobile Instrumentalities. The bill adds a definition of “mobile instrumentality” to cover items that are “inherently mobile and used in the routine transport of persons,” including motor vehicles, watercraft, aircraft, etc. (div.(B)(8)). This change allows the bill to repeal aspects of contraband law that make forfeitable any vessel used to transport contraband (current §2933.42 & §2933.43).

Other Definitions. The bill also defines:

- “Innocent person” means any bona fide purchaser of property subject to forfeiture, including one who establishes a valid claim and any victim (div.(B)(5)).
- “Law enforcement agency” comes from corrupt activity, drug, and Medicaid fraud law, and includes the Pharmacy Board (div.(B)(7)).
- “Offense” contemplates both criminal and civil actions. It means any act or omission that could be charged as a crime or a delinquent act, whether or not a formal case began when the forfeiture is initiated. Except as otherwise specified, an offense for which property may be forfeited includes any felony and any misdemeanor (div.(B)(10)).
- “Property” includes property as defined by §2901.01 (any real or tangible property and various services and intellectual property), plus any benefit, privilege, claim, position, interest in an enterprise, or right derived, directly or indirectly from the offense (div.(B)(12)).
- “Property subject to forfeiture” includes contraband, proceeds, and certain instrumentalities, as provided in the new chapter (div.(B)(13)).
- Carries over current definitions of “aircraft,” “computers,” “financial institution,” “firearm,” “money,” “prosecutor,” “vehicle,” “watercraft,” etc. (div.(B)).

*** §2981.02 Property Subject to Forfeiture**

Property Covered. Property subject to forfeiture in Ohio varies from statute to statute today. An expansive view of “contraband” picks up any property used in crime. The bill distinguishes between 5 types of property: (1) contraband; (2) proceeds; (3) instrumentalities; (4) lost, abandoned, stolen, and other property held by law enforcement; and (5) vehicles forfeitable for traffic offenses.

Setting aside the latter two types of property which are dealt with later, here is what’s forfeitable (div.(A)(1)-(3)):

- Any contraband;
- Any proceeds derived from or acquired through an offense;

- An instrumentality used in or intended to be used in any felony or, when specifically authorized by statute or ordinance, in a misdemeanor when the use is sufficient to warrant forfeiture, and in an attempt to commit such an offense.

“Used In” Test. In determining whether an alleged instrumentality was “used in or intended to be used in” an offense (including an attempt, complicity, or conspiracy), the judge or jury must consider the following when relevant (div.(B)(1)-(3)):

- Whether the offense could not have occurred *but for* the presence of the instrumentality;
- Whether the *primary purpose* in using the instrumentality was to commit or attempt the offense;
- The *extent* to which the instrumentality *furthered* the commission or attempt.

Traffic Forfeitures. The new chapter does not cover or limit vehicle forfeitures under the Traffic Code (Title 45) or forfeitures for vehicular homicide (§2903.06) and vehicular assault (§2903.08) (div.(C)). The Commission’s suggested vehicle forfeiture reforms were enacted as part of S.B. 123, effective January 1, 2004.

*** §2981.03 Provisional Title; Hardship Release**

Provisional Title. A person suspected of crime might be tempted to hide, transfer, or lessen the value of forfeitable property. Current gang and drug laws try to preempt such activity by saying the property “vests” with the government at the time the owner commits an offense (§§2923.44(A)(2), 2923.45(B)(1), 2925.42(A)(2), 2925.43(B)(1)). Of course, if the property truly “vests” at the time of the offense, there would be little need for these forfeiture statutes. In fact, it is unfair to retroactively “vest” property that may have an innocent owner.

The bill more accurately describes the government’s interest as a “provisional title.” It then makes clear that provisional title authorizes the state or subdivision to seize and hold the property and to act to protect the property. Title to the property vests with the state or subdivision when the trier of fact renders a final forfeiture verdict, subject to third party claims adjudicated under the new chapter (div.(A)(1)).

Authority to Seize. Current gang law awkwardly presumes property used by a criminal gang “on more than two occasions within a one-year period ... constitutes a nuisance” (§2923.43(A)(1)). The law further presumes that certain mobile property can be seized, even if otherwise legal. The bill eliminates the questionable presumptions. It says—for all forfeitures under the new chapter—that a law enforcement officer may seize property that the officer has probable cause to believe is subject to forfeiture (div.(A)(2)).

If the officer seizes titled or registered property, the agency must make a good faith effort to notify the property owner at the last known address as soon as practicable. The notice may be mailed or given orally (div.(A)(4)). Currently, similar provisions appear in gang (§2923.47) and contraband law (§2933.43(A)(2)). But the latter section only gives authorities 72 hours to accomplish notice (§2933.43(A)(2)). The deadline was viewed as impractical and removed by the bill in favor of good faith attempts (div.(A)(2)).

Realty in Civil Cases. In civil forfeiture cases in which the government seeks to seize real estate, the bill allows the owner to request a hearing *before* the seizure. At the hearing, the State or subdivision must show probable cause that the property is subject to seizure (div.(A)(3)). The opportunity for a pre-seizure hearing grows out of the U.S.

Supreme Court's 1993 holding in *U.S. v. James Daniel Good Real Property*, 510 U.S. 43 (1993). Note that a similar probable cause hearing was not built into criminal forfeiture law since the property must be specified in the indictment. Thus, the grand jury must have found probable cause before indicting.

Relief from Unlawful Seizures. Current gang and drug law afford a chance to seek relief from an alleged unlawful seizure (§2923.47 & §2925.45). The bill streamlines the language and applies it to all Ch. 2981 forfeitures. The aggrieved person may file a motion in the appropriate court. The motion must show the person's interest in the property, state why the seizure was unlawful, and request the property's return. If filed before the charge seeking forfeiture is filed, the court must promptly schedule a hearing. At the hearing, the movant must show by a preponderance of the evidence that the seizure was unlawful and that he or she is entitled to the property. If the motion is filed by the defendant after the indictment, information, or complaint, the court must consider it as a motion to suppress evidence. If a third party files the motion, the court must treat it as an interested party motion under §2981.04(E) & (F) (div.(A)(4)).

Right to Hold Proceeds. Current gang and drug laws presume that property is forfeitable (§2923.44(C) & 2925.42(C)). For all forfeitures under it, the bill instead assumes that the government has a right to protect or hold alleged proceeds, subject to third party claims, if it can show both of the following by a preponderance of the evidence (divs.(A)(5)(a)(i) & (ii)):

- The interest in the property was acquired by the offender during the commission of the misconduct or within a reasonable time after it;
- There is no likely source for the interest other than from the offense.

The alleged offender has the burden to prove any costs lawfully incurred (div.(A)(5)(b)).

Orders to Preserve Property. Currently, corrupt activity, gang, drug, and Medicaid fraud law give the prosecutor options to preserve the property subject to forfeiture (§§2923.33(A)-(C), 2923.44(D), 2925.42(D)(1), & 2933.72(A)-(C)). Presumably, this stems from the government's traditional "vested" title to the property.

The bill is more accurate and more flexible. Provisional title enables the prosecutor to ask the court to "take any reasonable action necessary" to assure the property remains available. The court may issue restraining orders or injunctions, compel the defendant to post bond or buy insurance, permit photographs, inspections and inventories, impose liens or *lis pendens*, or appoint a receiver or trustee (div.(B)(1)). Most of the listed options carry over from current corrupt activity, gang, and drug law. However, the insurance, inspections/inventories, lien/*lis pendens*, and trustee options—while perhaps implied in present law—are new to forfeiture statutes.

Timing; Standard. The prosecutor can ask the court for an order protecting property when filing the charging instrument, provided it alleges the property is subject to forfeiture (div.(B)(1)). If not ready to formally charge the property holder, the prosecutor could seek the order if persons known to have an interest in the property receive notice and a chance to be heard. Before granting the order, the court must find (div.(B)(1)(b)):

- There is substantial probability the government will prevail on the forfeiture;
- There is substantial probability that failure to enter the order will result in the property being destroyed, removed, or otherwise made unavailable;
- The need to preserve the property's availability outweighs the hardship on the property holder.

The third bullet's balancing test replaces current corrupt activity law which requires the court to find that the order does not result in irreparable harm (§2923.33(B)(2)).

Separately, a new provision also allows the court to issue a protective order as a condition of a hardship release (div.(B)(1)(c)), discussed below.

90 Day Limit. Generally, as in most current forfeiture statutes, an order to preserve property is valid for 90 days, unless extended by the court after the prosecutor shows the need still exists, for other good cause shown, or if a criminal charging instrument has been filed (div.(B)(2)). The underlying idea comes from current corrupt activity (§2923.33(B)(2)), gang (§2923.44(D)(2)), drug (§2925.42(D)(2)), and Medicaid fraud (§2933.72(B)(2)) statutes.

Ex Parte Orders Exception. As now in most forfeiture statutes, the court may make its order *ex parte* (without giving notice to another party) if the prosecutor shows the property is forfeitable and that notice would jeopardize availability of the property. However, an *ex parte* order is only effective for up to 10 days unless extended if the prosecutor shows the need still exists, for other good cause shown, or if the person subject to the order consents to a longer period. If the person requests a hearing, the court must hold it at the earliest possible time before the order expires (div. (B)(3)). The concept comes from current corrupt activity, gang, drug, and Medicaid fraud laws (§§2923.34(C)(3), 2923.44(D)3), 2925.42(D)(3), & 2933.72(C)(3)).

Transcript; Evidence. As now in gang and drug law (§§2923.44(D)(4) & 2925.42(D)(4)), a transcript must be made of the hearing. As now, the Rules of Evidence do not apply and the transcript does not fall under the public records law until the property is seized (div.(B)(4)).

Replevin Stayed. Replevin is an ancient tool used to compel someone to release property. Conversion is a civil action to recover money if the property were damaged or unavailable. Current civil forfeiture law involving gangs, drugs, and contraband say a forfeiture action is “not subject to replevin” (§§2923.45(B)(3), 2925.43(B)(3), & 2933.43(B)(2)). That probably means that the case must be resolved before considering the replevin action. Oddly, the statutes do not mention conversion or other civil actions. Corrupt activity and Medicaid fraud laws don't even mention replevin. And current criminal forfeiture statutes do not contain similar provisions.

It makes sense to instruct courts on conflicting claims. The bill says that any replevin, conversion, or other civil action brought concerning property subject to criminal or civil forfeiture has to wait until resolution of the forfeiture case (div.(C)). There is an exception for certain property subject to liens (div.(E), discussed below).

Pretrial Hardship Release. Once charged with an offense that makes property subject to forfeiture, or once a civil forfeiture action begins, the property owner has sketchy rights in current statutes. The bill gives the person a chance for conditional release of property before trial, if a hardship were shown (div.(D)).

Current Law's Limitations. Current contraband law allows releasing motor vehicles after seizure and before trial (§2933.43(B)(1)). Literally read, this complicated statute only lets the law enforcement agency hold a motor vehicle 72 hours, unless the agency asks the court for a longer period before the 72 hours elapse. The court in turn must “immediately” schedule a hearing and notify the owner.

The statute does not work well in practice. The seizing law enforcement agency often needs more than 72 hours simply to find and notify the owner. And release is not available if the owner is the defendant, making it meaningless in many cases.

Broader Rights. Assuming the property can be released (see exceptions below), the new procedure mimics Federal law (18 U.S.C. §983(F)). A person with an interest in the property—including the defendant—must file a request with the appropriate custodial official showing how the three-part burden discussed below is met (div.(D)(1)).

The person can petition the court for conditional release if the custodian does not surrender the property within 15 days. The deadline is only 7 days if the property were seized as a mobile instrumentality or if the request is to copy records. The person must meet the burden noted below and show steps taken to secure release from the appropriate official. Unless extended for good cause shown, the petition must be filed within 30 days of the filing of the charging instrument (div.(D)(2), 1st ¶). The accelerated 7-day period replaces the unworkable 72 hour rule in current law. While the time frame is longer, note that it applies to more property and that defendants may petition the court for release, unlike under current law.

The bill also contains a new provision that gives a person the chance to copy—under supervision—any personal, business, or governmental records that are seized, unless they are contraband (div.(D)(2), 3rd ¶).

The Claimant’s Burden. Subject to the key exceptions noted below, the court could grant conditional release of the property to a person who shows (div.(D)(3)(a)-(c)):

- A possessory interest in the property;
- Sufficient ties to the community to provide assurance that the property will be available at trial; and
- Failure to release will cause a substantial hardship to the claimant.

“Substantial Hardship”. The key is “substantial hardship”. The bill provides some guidance to determine such a hardship. The court must weigh whether the hardship to the claimant from the government's continued possession of the property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if returned to the claimant (div.(D)(4)). This balancing test is similar to that used in CAFRA, the new Federal law.

The court must consider whether withholding the property would prevent a legitimate business from functioning; prevent the claimant or an innocent person from maintaining a job; or leave the claimant or an innocent person homeless (div.(D)(4)).

Conditional Release. If the person makes the necessary showings, the court must order the property's return pending completion of the forfeiture proceedings. In making this order, the court must notify the claimant of the prohibitions against interfering with or diminishing property in §2981.07, discussed below (div.(D)(2), 2nd ¶).

Exceptions. Here are the exceptions to hardship release. The property cannot be released if there is probable cause to believe that it is (div.(D)(3), 1st ¶):

- Contraband (since it is illegal to possess);
- Proceeds of an offense (unlawful gains);
- Property that must be held for a reasonable time as evidence; or
- Property that is likely to be used in additional offenses.

The Court's Deadline. Generally, the court must rule within 30 days of filing. If the property is alleged to be a mobile instrumentality, or if it is personal, business, or governmental records, the court must decide as soon as practical. In any case, the time may be extended by consent of the parties or for good cause shown (div.(D)(6)).

If the government shows that the claim has no merit, the court must deny the request. Otherwise, the state or subdivision may respond by submitting evidence *ex parte* to avoid disclosing anything that might adversely affect an investigation or trial (div.(D)(5)).

Second Chance. If a third party does not file a timely motion, or if the motion is rejected, the person has a second chance as a third party in a criminal case or as an intervener in a civil action, discussed later.

Rights of Financial Institutions. In streamlined form, the bill carries over gang and drug language that allows a financial institution with an interest in the subject property to file a civil action. This extends formally to corrupt activity and Medicaid fraud forfeitures for the first time. If the property is sold, as now, costs and attorney's fees would be paid and the lien satisfied. Distribution of any remaining amounts dovetails with any criminal or civil forfeiture disposition. (Current §§2923.44(A)(2), 2923.45(B)(4), 2923.46(C)(1) & (3), 2925.42(A)(4), & 2925.43(B)(4) become (E).)

Option of Criminal or Civil Approach. Today, only drug law spells out the relationship between civil and criminal forfeiture actions (§2925.43(C)(3) & (D)(1)). The bill makes clear that the prosecutor has the option of filing a criminal or civil forfeiture action under the new chapter. If property is seized and a criminal forfeiture has not begun, the prosecutor must commence a civil action (div.(F), 1st ¶).

Nothing precludes the prosecutor from filing a criminal forfeiture case after the civil action begins. As in current drug forfeiture law, filing a criminal action stays the civil action (div.(F), 3rd ¶). And a civil action may be commenced whether or not the charged offender was convicted of a crime or adjudicated delinquent (div.(F), 4th ¶).

Timing. In a wholly new provision, the bill requires that the civil action commence within 30 days of seizure if the property is a mobile instrumentality or personal, business, or governmental records. Otherwise, the deadline is 60 days. Either period could be extended by agreement of the parties or for good cause shown (div.(F), 2nd ¶).

Prosecutor's Records. As in current corrupt activity law, the prosecutor has to maintain an accurate record of each item disposed under the criminal and civil forfeiture statutes. The record could not identify the officer who seized the property. It is a public record open for inspection. (Streamlined §2923.35(C)(4) & (A)(2) become div.(G)).

* §2981.04 **Criminal Forfeiture Process**

The bill streamlines and merges the criminal forfeiture process from current §§2923.44 (gangs), 2925.42 (drugs), and 2923.34 (corrupt activity) laws, with some key changes. Criminal proceedings are new to Medicaid fraud law.

Specification in Indictment. The bill carries forward current provisions that state that property subject to forfeiture in a criminal corrupt activity case must be specified in the indictment, information, or complaint (current §§2923.44(B)(1), 2925.42(B)(1), §2933.73(B) become div.(A)). The new spec language is in §2929.1417 above.

The charging instrument must contain the following, to the extent reasonably known: (1) the nature and extent of the person's interest in the property; (2) a property description; and (3) if an instrumentality, the property's alleged use in committing or facilitating the offense (div.(A)(1)). Current §2923.44(B)(2) and related provisions place this specification language "at the end of the body of the indictment, information, or complaint". The quoted phrase was struck as unnecessary.

As now in some forfeiture statutes, if the property were not reasonably foreseen to be subject to forfeiture at the time the charging document was filed, the judge or jury could still render a forfeiture verdict. However, for this to happen, the prosecutor must give notice under Criminal Rule 7(E) to the alleged offender when the prosecutor realizes that property is forfeitable (div.(A)(2), 1st sentence).

Bifurcation of Guilt and Forfeiture. Current corrupt activity and drug law effectively mandate a bifurcated procedure in criminal cases by prohibiting disclosure of the specification to the jury before a finding of guilt (§2923.44(B)(4) & §2925.42(B)(4)). The bill instead states that, for good cause shown, the court *may* separate issues of guilt from forfeiture (proposed §2981.04(A)(3)). This allows the court to separate forfeiture issues such as "used in" and proportionality when considering the defendant's guilt on the offense, but doesn't *mandate* doing so.

Burden of Proof. As in current law, the government has to show by a preponderance of the evidence that the property is subject to forfeiture in whole or in part (div.(B)). The bill streamlines and consolidates current gang (§2923.44(B)(3)) and drug (§2925.42(B)(3)) laws and makes corrupt activity law (§2923.32) consistent.

Forfeiture Verdict. Once a person is found guilty of a crime or delinquent act with a forfeiture specification, the trier of fact must then decide whether to forfeit the property (div.(B)). Language in current law addressing notice to the defendant and applying the rules of evidence was removed as unnecessary.

The forfeiture verdict must specifically describe the property. If the trier of fact were a jury, on the offender's motion, the judge must make the determination (div.(B)). This language comes in streamlined form from current gang and drug laws (§§2923.44 (B)(3) & 2925.42(B)(3)), dropping the requirement that a "special proceeding" be held. It is more elaborate than corrupt activity law (§2923.32). The trier of fact also must weigh whether the taking is proportionate to the offense (see §2981.09 below).

After entering a forfeiture verdict, the court makes the forfeiture order part of the offender's sentence. This follows the basic rule in gang and drug law (§§2923.44(B)(5)(a) & 2925.42(B)(5)(a)) and implied in corrupt activity law. The property then vests with the state or subdivision subject to the claims of third parties (div.(C)).

Third Party Rights. As now, after a forfeiture order, the prosecutor has to try to locate interested persons and serve, as well as publish, notice (current §§2923.32(E)(1), 2923.44(F)(2), & 2925.42(F)(2) become div.(D)).

Anyone, other than the offender, who asserts a legal interest in the property may ask for a hearing on the validity of the interest (div. (E)). This is done by filing a petition asserting the interest (div.(E)(1)) or an affidavit stating a mortgage or security interest or other type of lien (div.(E)(2)). The hearing language merges current corrupt activity, gang, drug, and Medicaid fraud laws (§§2923.32(E)(2)-(4), 2923.44(F), 2925.42(F) &

2933.73(F)(2)&(3)). The (E)(2) affidavit comes from gang and drug law (§2923.44(F)(3)(b) & §2925.42(F)(3)(b)). It is new to others.

The time for filing the petition or affidavit and its contents comes from present law with one substantive change. Currently, a third party's petition or affidavit must be filed within 30 days of the final notice or the person's receipt of notice, whichever is earlier. Since it may be unfair to allow earlier published notice to trump a later actual notice, the bill drops the "earlier" clause (divs.(E)(1)&(2)). As now, the petition (div.(E)(2)(b)) or, unless challenged by the prosecutor, the affidavit (div.(E)(2)(c)) is *prima facie* evidence of the interest in the property. As now, subsequent transferees take the property subject to the third party interest (div.(E)(2)(d)).

As now, the hearing should be held, to the extent practical, within 30 days of filing the petition or prosecutor's challenge to the affidavit. The court could consolidate hearings on third party claims. The claimant and the government could present testimony and call and confront witnesses at the hearing. The court could consider relevant parts of the trial record (div.(E)(3)).

The court may amend the forfeiture order if the petitioner demonstrates a vested interest in the property or bona fide purchase by a preponderance of the evidence (div.(F)). This consolidates current corrupt activity, gang, drug, and Medicaid fraud laws (§2923.32(E)(4), etc.).

Clear Title. Once the court handles third party claims, the State or political subdivision gets clear title to the property to the extent that other parties' lawful interests aren't infringed (div.(G)). This comes from present drug law (§2925.42(G)(1)).

* §2981.05 **Civil Forfeiture Process**

The bill consolidates and streamlines civil forfeitures now contained in corrupt activity, gang, drug, "contraband," and Medicaid fraud laws.

Initiating the Process. Instead of a criminal forfeiture, the prosecutor can file a civil action (div.(A)) (streamlined from current §§2923.34(A), 2923.45(E)(1), & 2925.43(E)(1)).

Third Party Claims. As now, before commencing the action, the prosecutor must make "reasonably diligent inquiries" to try to locate any interested parties by certified mail and by publication in a newspaper (div.(B)).

As now, a third party claimant could seek release of the property involved in a civil case. If release was not granted under the hardship provisions discussed earlier, the person could file a claim under the Rules of Civil Procedure (div.(C)).

These provisions consolidate and streamline extant gang and drug language (§2923.45(E)(2) & §2925.43(E)(2)) and apply them to other situations covered by the new chapter.

Burden of Proof & Forfeiture. Deciding a civil forfeiture action, including third party claims, is akin to current civil drug and gang laws (§2923.45(E)(5) & §2925.43(E)(5)), with one change. Rather than require the prosecutor to prove the case by "clear and convincing" evidence, the bill uses the traditional civil burden of proof: by a preponderance of the evidence (div.(D)).

Clear Title. As now, once the court deals with third party claims, the State or political subdivision gets clear title to the extent that other parties' lawful interests aren't infringed (div.(E)).

*** §2981.06 Orders after a Forfeiture Verdict**

Seizure. Once criminal or civil forfeiture is ordered, the court may instruct law enforcement to seize the property under set conditions and/or order the person possessing the property to deliver it (div.(A)). This consolidates current corrupt activity, gang, and drug laws (§2923.32(C) & 1st ¶ of §§2923.44(E)(1) & 2925.42(E)(1)).

Follow-up Actions. At the prosecutor's request, the court could take or require other actions including (div.(B)): (1) restraining orders or injunctions; performance bonds; receivers, conservators, appraisers, etc.; or any other action necessary to safeguard and maintain the property; (2) rewarding persons who provide information resulting in forfeiture; (3) authorizing the prosecutor to settle claims; (4) restoring forfeited property to victims and grant petitions for mitigation; and (5) staying the forfeiture order pending appeal or resolution of any claim, if requested by someone other than the defendant. This consolidates the remaining provisions of sections noted under seizure with current corrupt activity and Medicaid fraud laws and with other parts of gang and drug laws (§§2923.35(A), 2923.44(E)(2), 2925.42(E)(2), & 2933.74(A)). The fifth point comes (condensed) from current corrupt activity law (§2923.35(C)(3)). Any income accruing to or derived from the forfeited property could be used to offset expenses (div.(G)).

Depositions. To help to identify and locate the forfeited property and deal with petitions for remission or mitigation, the court may (after issuing the forfeiture order and on the prosecutor's application) order deposition of any witness and production of any material that is not privileged, consistent with the Civil Rules (div.(C)). This comes from current gang and drug laws (§§2923.44(E)(3) & 2925.42(E)(3)) and applies to all forfeitures under the chapter.

Substitute Property. The court could forfeit *other* property, up to the value of the unreachable property, if it: (1) can't be located through due diligence; (2) was transferred, sold, or deposited with a third party; (3) was placed beyond the jurisdiction of the court; or (4) was substantially diminished in value or commingled with other property and cannot be divided without difficulty or undue injury to innocent persons (div.(D)). This streamlines current corrupt activity, gang, drug, and Medicaid fraud laws (§§2923.32(B)(5), 2923.44(B)(6), 2925.42(B)(6), & 2933.73(C)).

Disposition. The bill also carries over the court's direction to the prosecutor to dispose of the property, making due provisions for the rights of innocent persons (div.(E)). The bill further makes clear the property does not revert to the offender if it is not used or transferred for value (div.(F)). These provisions consolidate current racketeering, gang, drug, and Medicaid laws (§§2923.35(C)(1)& (C)(2), 2923.44(E)(1) & (E)(2)(d), 2925.42(E)(1) & (E)(2)(d), & 2933.74(B)(1) & (2)).

*** §2981.07 Prohibition against Diminishing Property**

Ohio law does not contain specific criminal penalties for hiding, transferring, or diminishing the value of property subject to forfeiture. The government must rely on the court's contempt powers or possible tampering with evidence charges under §2921.12. As a counterpoint to the bill's expanded hardship release provisions, and in line with Federal law (18 U.S.C. §2232), the bill makes it a crime for a person to destroy, damage, remove, transfer or otherwise take action to devalue property or impede the government's lawful authority over the property (div.(A)(1)-(3)).

The offense tracks theft penalties (div.(B)). Thus, it is an M-1 if the value of the property is less than \$500, an F-5 if the value were between \$500 and \$5,000, an F-4 if between \$5,000 to \$100,000, and an F-3 if the value exceeds \$100,000.

*** §2981.08 Right to a Jury Trial**

The bill makes clear that the defendant, the government, and a third party claimant have the right to a jury trial in a civil forfeiture case (div.(B)). In criminal cases, the right extends to the defendant (div.(A)). The statute is silent regarding juries for government or third parties in criminal cases.

*** §2981.09 Proportionality Review**

In instrumentality forfeiture cases, to make the punishment better fit the crime, the bill creates a right to have the extent of forfeiture reviewed for proportionality. Current Ohio statutes do not clearly address the issue. The defendant must hope a court sees the taking as disproportionate in a constitutional sense.

Under the bill, property is subject to forfeiture as an instrumentality only to the extent that the amount or value of the property is not disproportionate to the severity of the offense (div.(A)). Note that proportionality review does not extend to contraband or unlawful proceeds (div.(B)), since both are illegal to have, both are forfeitable *in toto*.

Burden and Standard of Proof. The property owner bears the burden of going forward to prove by a preponderance of the evidence that the amount or value subject to forfeiture is disproportionate to the severity of the offense (div.(A)).

Factors to Determine Severity. To determine the severity of the offense, the court must consider a nonexclusive list of relevant factors (div.(C)): (1) the seriousness of the offense and its impact on the community, including the duration of the activity and the harm caused or intended; (2) the extent to which the claimant participated in the offense; and (3) whether the offense was completed or attempted.

Factors to Determine Value. To determine the value of the instrumentality, the court has to consider relevant factors including, but not limited to (div.(D)): (1) the property's fair market value; and (2) the value of the property to the claimant, including hardship to the claimant or to innocent parties if the property were forfeited.

*** §2981.11 Property Held By Law Enforcement Agencies**

Law enforcement agencies hold a variety of property: Lost, stolen, and abandoned property; property seized as evidence; property subject to forfeiture under the drug, gang, racketeering, and Medicaid fraud laws; and other "forfeited" property. The bill retains the fairly simple process for "forfeiting" lost property, abandoned property, and the like. In so doing, it consolidates lengthy sections and makes rules clearer.

Unlike present law, the bill does not characterize all abandoned property or property where the true owner can't be found as "contraband". While tidy, that approach is not particularly honest since much property affected by these provisions is legal to own. Otherwise, the bill tracks relevant parts of current §§2933.41(A), 2923.32, & 2933.42 and covers relevant language in repealed §2933.43(B)(2).

Agency's Duties. As now, a law enforcement agency must follow some basic steps for almost all property that comes into its custody. The bill consolidates, streamlines, and

clarifies current corrupt activity, gang, contraband, and Medicaid fraud laws in this regard §§2923.32(B)(6)&(C), 2923.42(C)(2), 2923.35, 2933.41(A), 2933.43(B)(2) & (D)(3), 2933.73(D), & 2933.74(B)):

- Safely keep the property until it is no longer needed as evidence (div.(A)(1));
- Have a written internal control policy providing for detailed records of property taken and its disposal, including what happens to any monies derived from sale of the property (div.(B)(1)); and
- File an annual report with the AG by March 1 (div.(B)(2)). [Currently, the Department of Public Safety must file by August.]

The records kept under the internal control policy and any report received by the Attorney General is a public record, as now (div.(B)(3)). The AG has to report to the General Assembly annually, as now, on law enforcement trust funds and other matters (div.(B)(4)).

Exceptions. Current law contains several provisions on disposing property involved in particular misconduct (§2933.41(F) & (H)). The bill carries over the exceptions, to the extent they do not conflict with the new chapter. Thus, Ch. 2981 does not cover the custody and disposal of vehicles subject to forfeiture under the Traffic Code, abandoned junk vehicles, animals and related devices, certain controlled substances (which have a separate control policy), and certain property recovered by a township law enforcement agency or held by a municipality (div.(A)(2)).

The bill adds to the exceptions property of negligible value, including unclaimed prison inmates' property (div.(A)(2)), effectively allowing an expedited process for items having little worth.

Notice to Possible Claimants. Mirroring present "contraband" law (§2933.41(B)), the agency has to make reasonable efforts to locate persons entitled to property, tell them when and where it may be claimed, and return the property to them at the earliest possible time. If the owner can't be identified, notice by newspaper suffices (div.(C)).

Definitions. The bill carries forward relevant definitions from current §2933.42(I), for the purposes of §§2981.11 through 2981.13 (div.(D)).

* §2981.12 **Disposal of Property Held by Law Enforcement**

Rules for Particular Property. The bill carries over these general rules for certain types of property (consolidating current gang, drug, & contraband law (§§2933.41(D)(1)-(7), 2923.46(B)(2)-(6), 2925.44(B)(3)-(7), & 2933.41(D)), which become divs.(A)(1)-(7)):

- Drugs – Destroy, turn over to Federal authorities, or use for medical or scientific purposes as provided by law;
- Weapons – Give to law enforcement for police use, sell for sporting or museum use, send to the Bureau of Criminal Identification and Investigation, or destroy;
- Obscene material – Destroy;
- Alcohol – Sell, use for training purposes, or destroy as provided by law;
- Inmate money – Return to sender or deposit in the inmate's account;
- Vehicle parts seized in VIN fraud cases – Give to law enforcement or sell;
- Computer devices – Give to law enforcement or sell.

Use or Auction. Any other unclaimed or forfeited property may be: used by the law enforcement agency, with court approval; sold at public auction without appraisal; or

disposed of in another manner authorized by the court (div.(B)). This rule comes from current contraband law (§2933.41(D)(8) & §2933.43(D)(1)). It makes corrupt activity, gang, and drug laws consistent (current §2923.46(B)(7) & §2925.44(B)(8)), and replaces current Medicaid fraud law (§2933.74(B)(1)).

The rule applies not only to lost and unclaimed property, but also to property seized as contraband, proceeds, or instrumentalities under the new chapter, unless an exception is specified (see §2981.13(A)).

Key Distinction Kept. The bill carries over the key distinction between property formally forfeited under the new chapter and property “forfeited” because it is lost or unclaimed. Proceeds and monies from the property’s sale go largely to the law enforcement agencies involved in contraband, proceeds, and instrumentality forfeitures under new Ch. 2981 (see §2981.13). Otherwise, monies from the sale go to the local general fund under this section (div.(C)), as now (from current §2933.41(E)(1)(b)).

Here is the order in which these other “forfeitures” are distributed (divs.(C)-(E)):

- First, if the forfeiture is in juvenile court, 10% goes to certified alcohol and drug addiction treatment programs (div.(D)). This comes from current drug and contraband laws (§2925.44(B)(8)(c)(i) & §2933.41(E)(1)(a)).
- Second, the remaining 90% in juvenile cases—and 100% in adult cases—goes to the General Revenue Fund of the state, or to the general fund of the county, township, or municipality of the law enforcement agency involved (div.(C)).
- Third, if the subdivision recognizes a citizens’ reward program, 25% of proceeds and amounts gained from sales go to the program, goes solely to pay rewards (div.(F)). This comes from current §2933.41(E)(2).

As now, alcohol and drug treatment programs that receive funds from juvenile court forfeitures must file an annual report with the AG, the committing court, and the county commissioners (div.(E)). This comes from current §2933.44.

Property Not to Pay Fine. Consolidating current gang, drug, and contraband law (§§2923.46(D), 2925.44(D), & 2933.43(H)), the bill provides that any property forfeited under Ch. 2981 cannot be used to pay a fine imposed on the offender (div.(G)).

*** §2981.13 Contraband, Proceeds, & Instrumentalities Disposal**

Key Distinction Kept. As noted under §2981.12, the bill plan carries over the key distinction between property formally forfeited under the new chapter and property “forfeited” because it is lost or unclaimed. Proceeds and money from the property’s sale go largely to the law enforcement agencies involved in contraband, proceeds, and instrumentality forfeitures under new Chapter 2981, as now (div.(A)). Otherwise, monies from the sale go to the local general fund.

Priority to Victims. Once forfeited property is sold, today’s general rule on distributing amounts after forfeiture does not mention passing assets on to victims, even when restitution is ordered in the case. The bill makes clear that restitution, unlike fines, can be paid out of forfeited assets.

Moreover, after paying the costs of storage, victim’s restitution has priority over other lienholders and law enforcement trust funds (divs.(B)(1)&(2)).

Most to Law Enforcement. Other than prioritizing restitution, the bill does not significantly alter current formulas for distributing forfeited assets. Monies acquired from the sale of property forfeited as contraband, proceeds, or instrumentalities continues to go largely to law enforcement agencies. Here is the proposed allocation (div.(B)). It tracks current contraband and Medicaid fraud law, and is similar to current corrupt activity law (§§2933.43(D)(1) & (2), §2933.46(B)(7), 2933.74(C)(3), & 2923.35(D)(2) & (3)), except, as noted, it gives high priority to victims.

- First, to pay costs incurred in the seizure, storage, maintenance, security, and sale of the property and in the forfeiture proceeding;
- Second, in a criminal forfeiture case, to satisfy any restitution ordered to the victim of the offense or, in a civil forfeiture case, to satisfy any recovery ordered for the person harmed, unless paid from other assets;
- Third, to pay the balance due on any security interest;
- Fourth, apply the remainder as follows (div.(B)(4)): if the forfeiture was in juvenile court, 10% to certified alcohol and drug addiction treatment programs (streamlined and made consistent); if the forfeiture was in juvenile court, 90%, and if the forfeiture was ordered in any other court, 100% to the law enforcement trust fund of the prosecutor and of the agency that substantially conducted the investigation.

Related Matters. The bill carries over current related provisions without substantive changes. However, by gathering them in one place and simplifying language, the bill shortens the Code by hundreds of words. They include: preserving the authority of law enforcement funds to receive assets (div.(C)(1)); existing limits on trust funds’ uses (div.(C)(2)); annual reports (div.(C)(3)); retaining the prosecutor’s option to decline funds (div.(B)(4)(b), 2nd ¶); allocating amounts between multiple agencies (div.(B)(4)(c)); accountability regarding prevention’s share of trust funds (div.(D)); titled and registered property requisites (div.(E)); and language on the effect of noncompliance by a court, prosecutor, or law enforcement (div.(F)).

*** §2981.14 Federal Forfeitures**

The bill makes broadly applicable language from current gang and drug law that gives law enforcement the option of seeking forfeiture under Federal law (§§2923.45(B)(3), 2923.46(A)(4)(a), & 2925.43(B)(3)). If the agency does not pursue the Federal option, forfeitable property is governed by the new chapter (div.(A)).

Similarly, the bill streamlines, but otherwise does not change law governing money received from Federal forfeitures (current §2933.43(D)(4)(a)-(d) becomes div.(B)).

§3719.11	Controlled Substance Forfeiture
§3719.141	Lawful Drug Sales by Peace Officers
§3719.21	Disposition of Fines and Forfeited Bonds
§3729.13	Campsite Property
§3743.68	Property Seized by Fire Marshal
§3745.13	Spills, Illegal Labs, Etc.
§4301.29	Seized Alcoholic Beverages
§4301.45	Seized Alcoholic Beverages 2
§4301.53	Warrant to Search for Alcohol, Etc.
§4305.13	Tax Commissioner’s Jeopardy Assessment
§4503.233	Motor Vehicle Immobilizations
§4503.234	Motor Vehicle Forfeitures
§4510.41	Motor Vehicle Seizures
§4511.195	OVI Vehicle Seizures

§4549.62	Conceal, Destroy, or Alter VINs
§4549.63	Vehicles with Altered VINs
§4728.04	Precious Metal Dealers – Stolen Goods
§4729.65	Pharmacy Board Forfeitures
§5735.121	Tax Commissioner’s Jeopardy Assessment
§5739.15	Tax Commissioner’s Jeopardy Assessment
§5743.082	Tax Commissioner’s Jeopardy Assessment
§5743.112	Cigarette Tax Evasion

Technical. These provisions currently refer to property disposition under “contraband” and related provisions. The bill instead references the new forfeiture chapter. Also, language is made gender neutral in §4301.45.

Section 2. Repeals Clause
Section 3. Harmonizations

*** Section 4. Delayed Effective Date**

The bill takes effect July 1, 2007. If a Title 29 forfeiture case is pending on that date, the bill provides that the court should apply the provisions of new Chapter 2981 to the extent practical.