

STATE OF NEW YORK

6440

2021-2022 Regular Sessions

IN SENATE

April 28, 2021

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the penal law and the criminal procedure law, in relation to enacting the "criminal forfeiture process act"; and to repeal certain provisions of the penal law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "criminal forfeiture process act".

3 § 2. Article 480 of the penal law is REPEALED and a new article 480 is
4 added to read as follows:

ARTICLE 480

CRIMINAL FORFEITURE PROCESS

Section 480.00 Legislative intent.

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9 480.10 Jurisdiction.

10 480.15 Seizure of personal property with process.

11 480.20 Seizure of personal property without process.

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EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD05916-04-1

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19 § 480.00 Legislative intent.

20 The legislature hereby finds that forfeiture is disfavored. The
21 purpose of this article is to:

22 1. Deter criminal activity by reducing its economic incentives;

23 2. Confiscate property used in the violation of law and restrain
24 profits from illegal conduct; and

25 3. Protect the due process rights of property owners.

26 § 480.05 Definitions.

27 For the purposes of this article, the following terms shall have the
28 following meanings:

29 1. "Abandoned property" means personal property left by an owner who
30 relinquishes all rights to control of such property. Abandoned property
31 shall not include real property.

32 2. "Actual knowledge" means direct and clear awareness of information,
33 a fact, or a condition.

34 3. "Contraband" means any article or thing which a person is prohibit-
35 ed from obtaining or possessing by law, rule, or regulation, including,
36 but not limited to, illegal drugs or firearms.

37 4. "Motor vehicle" means a motor vehicle as defined by section one
38 hundred twenty-five of the vehicle and traffic law, except that such
39 term shall include any trailer, snowmobile, airplane, vessel, or any
40 equipment attached to one of such devices. "Motor vehicle" shall not
41 include stolen property.

42 5. "Innocent owner" means an owner, an owner-in-joint-tenancy, or the
43 defendant's heir or other owner of property subject to forfeiture who
44 does not have actual knowledge of the use of his or her property in a
45 crime which authorizes the forfeiture of such property. "Innocent
46 owner" shall not include the defendant or a secured interest holder.

47 6. "Instrumentality" means property otherwise lawful to possess that
48 is used in a crime that authorizes the forfeiture of such property.
49 "Instrumentality" includes, but is not limited to, land, buildings,
50 containers, conveyances, equipment, materials, products, tools, comput-
51 ers, computer software, telecommunications devices, firearms, ammunition
52 and ammunition-and-firearm accessories.

53 7. "Law enforcement agency" means any state or local police force, or
54 any other local, county, or state agency that has the authority under
55 state law to engage in seizure and forfeiture.

1 8. "Proceeds" means money, securities, negotiable instruments or other
2 means of exchange obtained from the sale of property or contraband.

3 9. "Prosecuting authority" means a municipal attorney, solicitor,
4 district attorney, attorney general and other attorney acting under
5 specific direction and authority, appointed or charged by law with the
6 responsibility for prosecuting crime.

7 10. "Secured interest holder" means a person who is a secured credi-
8 tor, mortgagee, lienholder, or other person who has a valid claim, secu-
9 rity interest, mortgage, lien, leasehold, or other interest in property
10 that is subject to forfeiture. "Secured interest holder" shall not
11 include the defendant or an innocent owner.

12 § 480.10 Jurisdiction.

13 1. This article shall only apply to property seized in relation to the
14 following:

15 (a) a felony controlled substance offense under article two hundred
16 twenty of this chapter or a felony offense involving cannabis under
17 article two hundred twenty-two of this chapter;

18 (b) a felony prostitution offense under article two hundred thirty of
19 this chapter;

20 (c) a felony offense involving driving under the influence of a
21 controlled substance or alcohol; or

22 (d) an arrest or search conducted immediately subsequent to the hot
23 pursuit of a person suspected of a felony offense for which property is
24 subject to seizure and forfeiture.

25 2. There shall be no civil forfeiture under this article.

26 3. The court that has jurisdiction in the related criminal matter
27 shall have jurisdiction over the forfeiture proceeding.

28 4. The forfeiture proceeding shall be part of the trial of the related
29 crime. It shall follow a finding of the defendant's guilt or be
30 conducted at the court's discretion. Such proceeding shall be conducted
31 by the court without a jury.

32 § 480.15 Seizure of personal property with process.

33 At the request of the prosecuting authority, the court may issue an ex
34 parte order to attach, seize or secure personal property for which
35 forfeiture is sought and to provide for its custody. Application, issu-
36 ance, execution, and return are subject to state law and court rules.

37 § 480.20 Seizure of personal property without process.

38 Personal property may be seized, as part of a lawful search, without a
39 court order if:

40 1. The personal property subject to forfeiture is seized incident to a
41 lawful arrest;

42 2. The state has probable cause to believe the delay caused by the
43 necessity of obtaining process would result in the removal or
44 destruction of the personal property that is forfeitable under this
45 chapter; or

46 3. The personal property is the subject of a prior and valid judgment
47 of forfeiture in favor of the state.

48 § 480.25 Seizure or restraint of real property with process.

49 1. Real property shall not be seized or restrained without a court
50 order.

51 2. A court shall not issue an order to seize real property unless the
52 defendant and any other person with a known interest in such real prop-
53 erty receive proper notice and are given an opportunity for a contested
54 hearing to determine the existence of probable cause for such seizure.

55 3. Nothing in this section shall prohibit the prosecuting authority
56 from seeking a lis pendens or restraining order to hinder the sale or

1 destruction of real property otherwise authorized by law. If the prose-
2 cuting authority obtains a lis pendens or restraining order, such prose-
3 cuting authority shall notify the defendant and any other person with a
4 known interest in the property within thirty days.

5 4. Application, filing, issuance, execution, and return of any order
6 shall be subject to the laws of the state of New York and any court
7 rules generally applicable to such orders.

8 § 480.30 Contraband and stolen property.

9 No property right shall exist in contraband or stolen property.
10 Contraband and stolen property shall be subject to seizure. Contraband
11 shall be disposed of according to the applicable state law for such
12 article or thing. Stolen property shall be returned to its owner.

13 § 480.35 Receipt.

14 1. When property is seized, the law enforcement officer shall give an
15 itemized receipt to the person possessing such property at the time of
16 seizure, or otherwise pursuant to section 690.50 of the criminal proce-
17 dure law.

18 2. The receipt shall be numbered for future reference and shall
19 constitute notice of seizure.

20 § 480.40 Property exempt from seizure and forfeiture.

21 1. The following shall be exempt from seizure and forfeiture:

22 (a) United States currency totaling two hundred dollars or less; and

23 (b) A motor vehicle with a market value of less than two thousand
24 dollars.

25 2. The prosecuting authority shall advise as to which publications
26 that law enforcement agencies may use to establish the value of a motor
27 vehicle in the prosecuting authority's jurisdiction.

28 3. A prosecuting authority may establish a minimum-dollar amount larg-
29 er than those in paragraphs (a) and (b) of subdivision one of this
30 section in the prosecuting authority's jurisdiction.

31 4. The presence or possession of United States currency, without other
32 indicia of a crime that authorizes the forfeiture of property, shall be
33 insufficient probable cause for the seizure of such currency.

34 § 480.45 Waiver prohibition.

35 1. A law enforcement officer, other than the prosecuting authority,
36 shall not request, require or induce a person to waive, for purpose of
37 seizure or forfeiture, such person's interest in seized property.

38 2. A document purporting to waive interest or rights in seized proper-
39 ty shall be void and inadmissible in court.

40 § 480.50 Title.

41 1. Title to seized property subject to forfeiture shall vest with the
42 state when the court issues a forfeiture judgment and shall relate back
43 to the time when such property was seized or restrained.

44 2. Title to substitute assets shall vest when the court issues an
45 order forfeiting such substitute assets.

46 § 480.55 Counsel.

47 1. If a defendant in a criminal prosecution is represented by a public
48 defender, such public defender's office may authorize representation of
49 such defendant in the forfeiture proceeding and any other related
50 proceeding.

51 2. If a defendant and any other person with an interest in seized
52 property engages in pro se representation in a forfeiture-related
53 proceeding before a judge, the court shall not be bound by the common
54 law, court rules of evidence, statutory rules of evidence, technical or
55 formal rules of evidence, pleading or procedure in the litigation
56 related to the forfeiture of such property.

1 § 480.60 Notice to other known owners.

2 1. The prosecuting authority shall perform a reasonable search of
3 public records to identify any person, other than the defendant, known
4 to have an interest in seized property subject to forfeiture.

5 2. The prosecuting authority shall give notice to any person identi-
6 fied to have an interest in seized property subject to forfeiture, who
7 is not charged or indicted. The notice shall include, if available, the
8 seizure receipt number pursuant to subdivision two of section 480.35 of
9 this article. Notice shall be given as provided by the rules of the
10 court.

11 3. The following language shall substantially and conspicuously appear
12 in the notice required by this section:

13 "WARNING: You may lose the right to be heard in court if you do not file
14 promptly a statement of interest or ownership. You do not have to pay a
15 filing fee to file your notice."

16 4. If notice is not served on any persons appearing to have an inter-
17 est in seized property and no time extension is granted or the extension
18 period has expired, the prosecuting authority or court shall order the
19 return of such property to the person from whom such property was seized
20 upon the request of such person. Contraband shall not be returned.

21 § 480.65 Prompt post-seizure hearing.

22 1. Following a seizure of property, a defendant or other person with
23 an interest in such seized property shall have a right to a prompt post-
24 seizure hearing.

25 2. A person with an interest in seized property may petition the court
26 for a hearing.

27 3. At the court's discretion, the court may hold a post-seizure hear-
28 ing:

29 (a) as a separate hearing; or

30 (b) at the same time as a probable-cause determination, a post-arr-
31 ignment omnibus hearing or other pretrial hearing.

32 4. A party, by agreement or for good cause, may move for one extension
33 of no more than ten days. Any motion shall be supported by affidavits or
34 other submissions.

35 5. The court shall order the return of seized property if it finds:

36 (a) the seizure was invalid;

37 (b) a criminal charge has not been filed and no extension of the
38 filing period is available;

39 (c) the seized property is not reasonably required to be held as
40 evidence;

41 (d) the final judgment likely will be in favor of the defendant or any
42 other person with an interest in the property; or

43 (e) the seized property is the only reasonable means for the defendant
44 to pay for legal representation unless the prosecuting authority shows
45 by clear and convincing evidence that the seized property is the instru-
46 mentality of or proceeds derived directly of the crime for which the
47 defendant is charged.

48 6. At the court's discretion, it may order the return of enough funds
49 and property, not needed as evidence, for the defendant to obtain coun-
50 sel of choice but less than the total amount seized.

51 7. The provisions of this section shall not apply to contraband.

52 § 480.70 Notice of proposed forfeiture.

53 1. In any case in which the state seeks forfeiture of property, other
54 than under section 480.75 of this article, the prosecuting authority
55 shall file with the court a notice of proposed forfeiture. The notice

1 shall accompany the initial or subsequent charging instrument. Such
2 notice shall include the following information:

- 3 (a) a description of the property seized;
- 4 (b) the time, date and place of the seizure;
- 5 (c) the seizure receipt number pursuant to subdivision two of section
6 480.35 of this article, if available; and
- 7 (d) a description of how the seized property was used in or derived
8 from the alleged crime.

9 2. The prosecuting authority may allege the forfeiture of seized prop-
10 erty as a sanction related to the crime for which the defendant is
11 charged, as part of sentencing consideration, or through other means to
12 effectuate the criminal forfeiture of such property.

13 3. The notice shall not be read to any jury.

14 4. The state may amend the notice of proposed forfeiture at any time
15 prior to trial.

16 5. The court may grant an unlimited number of ninety-day extensions
17 for the filing of a criminal charge if, for each such extension, the
18 court determines probable cause is shown and additional time is
19 warranted.

20 6. The prosecuting authority shall serve the charging document or
21 amendment and the notice of proposed forfeiture as provided by the rules
22 of the court.

23 7. The court shall order the return of seized property to the owner if
24 the prosecuting authority does not file a charging document or a notice
25 of proposed forfeiture as provided by the court's rules, the period of
26 an extension expires, or the court does not grant an extension.

27 § 480.75 Notice of proposed forfeiture after indictment.

28 1. After the issuance of an indictment, the prosecuting authority
29 shall file with the court responsible for the criminal trial a notice of
30 proposed forfeiture. Such notice shall include the following informa-
31 tion:

- 32 (a) a description of the property seized;
- 33 (b) the time, date and place of the seizure;
- 34 (c) the seizure receipt number pursuant to subdivision two of section
35 480.35 of this article, if available; and
- 36 (d) a description of how the seized property was used in or derived
37 from the alleged crime.

38 2. The notice shall not to be read to any jury.

39 3. The prosecuting authority may allege, in the notice, the forfeiture
40 as a sanction related to the crime for which the defendant is charged,
41 as part of a sentencing consideration, or as other means to effectuate
42 the criminal forfeiture of the property.

43 4. Upon application of the prosecuting authority, the court may enter
44 a restraining order or injunction, or take other action to preserve the
45 availability of property only:

46 (a) upon the issuance of an indictment according to subdivision one of
47 this section; or

48 (b) prior to the issuance of an indictment, if the court determines
49 there is a substantial probability the state will prevail on the issue
50 of criminal forfeiture and that failure to enter the order will result
51 in property being destroyed, removed from the jurisdiction, or otherwise
52 made unavailable for forfeiture.

53 5. Any order entered pursuant to paragraph (b) of subdivision four of
54 this section shall be effective for not more than ninety days, unless
55 extended by the court for good cause shown or an indictment described by

1 paragraph (a) of subdivision four of this section has been issued subse-
2 quently.

3 § 480.80 Discovery.

4 Discovery related to the forfeiture proceeding shall be subject to
5 procedures set forth pursuant to the criminal procedure law.

6 § 480.85 Trial, conviction, and standard of proof.

7 1. Property shall be forfeited if:

8 (a) the prosecuting authority secures a conviction of a crime that
9 authorizes the forfeiture of property; and

10 (b) the prosecuting authority establishes by clear and convincing
11 evidence the property is an instrumentality of or proceeds derived
12 directly from the crime for which the state secured a conviction.

13 2. After the defendant's conviction, the court shall hold the forfei-
14 ture proceeding at its discretion. Such proceeding shall be conducted by
15 the court without a jury.

16 3. Except as required by section 480.45 of this article, nothing in
17 this article shall prevent property from being forfeited as part of:

18 (a) a plea agreement; or

19 (b) a grant of immunity or reduced punishment, with or without the
20 filing of a criminal charge, in exchange for testifying or assisting a
21 law enforcement investigation or prosecution.

22 4. To effectuate the purposes of paragraph (b) of subdivision three of
23 this section, the parties may file a notice, under seal, with the court,
24 if the defendant is represented by counsel. If the defendant is not
25 represented by counsel, the prosecuting authority may file an ex parte
26 notice, under seal, with the court. Such notice shall advise the court
27 of the reason for granting immunity, reducing punishment or not filing a
28 charge.

29 5. The court may use the notice provided for in subdivision four of
30 this section in its consideration of an order to transfer title of the
31 property to the state and to dispose of the property pursuant to section
32 480.145 of this article.

33 § 480.90 Exceptions to the conviction requirement.

34 The court shall waive the conviction requirement and grant permanent
35 title of the property to the state if the prosecuting authority files a
36 motion no less than ninety days after seizure and shows by clear and
37 convincing evidence that, before conviction, the defendant:

38 1. died;

39 2. was deported by the United States government;

40 3. abandoned the property; or

41 4. fled the jurisdiction.

42 § 480.95 Proportionality.

43 1. The defendant may petition the court to determine, before or at
44 trial, whether the forfeiture is unconstitutionally excessive under the
45 state or federal constitution.

46 2. The defendant shall have the burden of establishing that the
47 forfeiture is unconstitutionally excessive by a preponderance of the
48 evidence at a hearing that shall be conducted by the court without a
49 jury.

50 3. In determining whether the forfeiture is unconstitutionally exces-
51 sive, the court shall consider all relevant factors including, but not
52 limited to:

53 (a) the seriousness of the crime and its impact on the community,
54 including the duration of the activity and harm caused by the defendant;

55 (b) the extent to which the defendant participated in the crime;

56 (c) the extent to which the property was used in committing the crime;

1 (d) the sentence to be imposed for committing the crime;
2 (e) whether the crime was completed or attempted;
3 (f) the hardship to the defendant if the forfeiture of a motor vehicle
4 would deprive the defendant of the defendant's livelihood; and
5 (g) an unjust hardship from the loss of property to the defendant's
6 family members or others if the property is forfeited.

7 4. In determining the value of the instrumentality subject to forfei-
8 ture, the court shall consider all relevant factors related to the fair
9 market value of the property.

10 5. The court shall not consider the value of the property to the state
11 in determining whether the forfeiture is unconstitutionally excessive.

12 § 480.100 Secured interest holder.

13 1. Seized property encumbered by a security interest shall not be
14 forfeited.

15 2. The prosecuting authority shall return seized property to a secured
16 interest holder, other than the defendant or an innocent owner, up to
17 the value of such interest. Contraband shall not be returned.

18 3. If the seized property is not returned, the secured interest holder
19 may petition the court at any time before the court enters judgment in
20 the criminal prosecution or grants a motion under section 480.90 of this
21 article. The petition may include the seizure receipt number pursuant
22 to subdivision two of section 480.35 of this article, if available.

23 4. The court shall hear the petition within thirty days after its
24 filing or at the court's discretion. The hearing shall be held before
25 the court alone, without a jury. The court may consolidate the hearing
26 on the petition with any other hearing before the court in the case.

27 5. The secured interest holder shall establish by clear and convincing
28 evidence the validity of the security interest, mortgage, lien, lease-
29 hold, lease, rental agreement or other agreement.

30 6. If the secured interest holder alleges a valid interest but the
31 prosecuting authority seeks to proceed, the prosecuting authority shall
32 prove by clear and convincing evidence that:

33 (a) the interest is invalid; or

34 (b) the interest resulted from a fraudulent conveyance; or

35 (c) the secured interest holder consented to the use of the property
36 in the crime for which the defendant is charged.

37 7. If the prosecuting authority fails to meet its burden under subdi-
38 vision six of this section, the court shall order the state to relin-
39 quish claims to the property, up to the value of the interest, and
40 return the interest to the secured interest holder.

41 § 480.105 Innocent owner.

42 1. Seized property of an innocent owner shall not be forfeited.

43 2. The prosecuting authority shall return seized property to an inno-
44 cent owner. Contraband shall not be returned.

45 3. If the seized property is not returned, an innocent owner claimant
46 may petition the court at any time before the court enters judgment in
47 the criminal prosecution or grants a motion under section 480.90 of this
48 article.

49 4. The innocent owner claimant shall file with the court a simple
50 statement that sets forth:

51 (a) the claimant's right, title, or interest in the seized property;

52 (b) the time and circumstances of the claimant's acquisition of the
53 interest in the seized property;

54 (c) additional facts supporting the claimant's claim;

55 (d) the relief sought by the claimant; and

1 (e) the seizure receipt number pursuant to subdivision two of section
2 480.35 of this article, if available.

3 5. The filing fee for the statement under this section shall be
4 waived.

5 6. The court shall hear the petition within thirty days after its
6 filing or at the court's discretion. The hearing shall be held before
7 the court alone without a jury. The court may consolidate the hearing on
8 the petition with any other hearing before the court in the case.

9 7. The claimant shall establish by clear and convincing evidence the
10 validity of the interest in the seized property.

11 8. If subdivision seven of this section is satisfied and the prosecut-
12 ing authority seeks to proceed, the prosecuting authority shall prove by
13 clear and convincing evidence the claimant is not an innocent owner
14 because:

15 (a) the claimant's interest in the seized property is invalid;

16 (b) the claimant had actual knowledge the seized property was used in
17 or derived directly from the crime for which the defendant is charged;

18 (c) the claimant was willfully blind to the crime for which the
19 defendant is charged; or

20 (d) the claimant was not a bona fide purchaser without notice of any
21 defect in title and for valuable consideration.

22 9. If the prosecuting authority fails to meet its burden in subdivi-
23 sion eight of this section, the court shall order the state to relin-
24 quish all claims and return the seized property to the innocent owner.

25 10. No information in the claimant's statement in subdivision four of
26 this section shall be used as evidence in the criminal portion of the
27 case.

28 11. Nothing in this section shall prohibit the claimant from providing
29 information to any party or testifying in any trial as to facts the
30 claimant knows.

31 12. The defendant or convicted offender may invoke the right against
32 self-incrimination or the marital privilege during the forfeiture
33 proceeding. The court may draw an adverse inference from the invocation
34 of such right or privilege.

35 § 480.110 Judgment.

36 1. If the prosecuting authority fails to meet its burden in the crimi-
37 nal or forfeiture proceeding, the court shall enter judgment dismissing
38 the forfeiture proceeding and ordering the return of seized property to
39 the rightful owner, unless the owner's possession of such property is
40 illegal.

41 2. If the prosecuting authority meets its burden in the criminal or
42 forfeiture proceeding, the court shall enter judgment forfeiting the
43 seized property.

44 3. A court may enter judgment following a hearing, pursuant to a stip-
45 ulation or plea agreement, or at the court's discretion.

46 § 480.115 Substitution of assets.

47 Upon the prosecuting authority's motion following conviction or at the
48 court's discretion, the court may order the forfeiture of substitute
49 property owned solely by the defendant up to the value of property that
50 is beyond the court's jurisdiction or cannot be located through due
51 diligence, only if the prosecuting authority proves by a preponderance
52 of the evidence that the defendant intentionally:

53 1. dissipated the property;

54 2. transferred, sold, or deposited property with a third party to
55 avoid forfeiture;

56 3. diminished substantially the value of property; or

1 4. commingled property with other property that cannot be divided
2 without difficulty.

3 § 480.120 No additional remedies.

4 The prosecuting authority shall not seek personal money judgments or
5 other remedies related to the forfeiture of property not provided for by
6 this article.

7 § 480.125 No joint-and-several liability.

8 A defendant shall not be jointly and severally liable for forfeiture
9 awards owed by other defendants. When ownership is unclear, a court may
10 order each defendant to forfeit property on a pro rata basis or by
11 another means such court finds equitable.

12 § 480.130 Appeals.

13 1. A party to a forfeiture proceeding, other than the defendant, may
14 appeal the court's decision.

15 2. The defendant may appeal the court's decision regarding the seizure
16 or forfeiture of property following final judgment in the forfeiture
17 proceeding.

18 § 480.135 Attorney fees.

19 In any proceeding in which a seized property owner's claim prevails by
20 recovering at least half, by value, of such property or currency
21 claimed, the seizing law enforcement agency shall be liable for:

22 1. Reasonable attorney fees and other litigation costs incurred by the
23 claimant;

24 2. Post-judgment interest; and

25 3. In cases involving currency, other negotiable instruments, or the
26 proceeds of an interlocutory sale, any interest actually paid from the
27 date of seizure.

28 § 480.140 Return of property; damages and costs.

29 1. If the court orders the return of seized property, the law enforce-
30 ment agency that holds such property shall return such property to the
31 rightful owner within a reasonable period not to exceed five days after
32 the date of the order.

33 2. The rightful owner shall not be subject to any expenses related to
34 towing, storage or preservation of the seized property.

35 3. The law enforcement agency that holds the seized property shall be
36 responsible for any damages, storage fees, and related costs applicable
37 to property returned under this section.

38 § 480.145 Disposition of property and proceeds.

39 1. At any time when contraband is no longer needed as evidence, the
40 court may order it be destroyed pursuant to state law.

41 2. At any time when abandoned property or property seized from a
42 defendant who died, was deported or fled the jurisdiction is no longer
43 needed as evidence, the court may order it be sold.

44 3. If the forfeiture is granted, the court shall order the sale of
45 forfeited property other than currency.

46 4. The court may order forfeited currency and sale proceeds to:

47 (a) pay restitution to the victim related to the underlying criminal
48 offense;

49 (b) satisfy recorded liens, mortgages or filed security interests in
50 the forfeited property;

51 (c) pay reasonable costs for the towing, storage, maintenance,
52 repairs, advertising and sale, and other operating costs related to the
53 forfeited property;

54 (d) reimburse the seizing law enforcement agency for non-personnel
55 operating costs, including controlled-drug buy money, related to the
56 investigation of the underlying criminal offense;

1 (e) be disbursed to the office of public safety to supplement existing
2 statewide grants; and

3 (f) be deposited in the state's general fund.

4 § 480.150 Sale restrictions.

5 No law enforcement agency shall sell forfeited property directly or
6 indirectly to any employee of such law enforcement agency, to a person
7 related to an employee by blood or marriage, or to another law enforce-
8 ment agency.

9 § 480.155 Preemption.

10 The provisions of this article shall preempt any local law to the
11 contrary which regulate civil and criminal forfeiture.

12 § 480.160 Limitation on federal adoption.

13 A law enforcement agency shall not offer for adoption any property
14 seized under state law, to a federal agency for the purpose of forfei-
15 ture under the federal Controlled Substances Act, or other federal law
16 unless such seized property includes United States currency that exceeds
17 twenty thousand dollars.

18 § 480.165 Limitation on state and federal joint task forces.

19 1. Except as permitted under subdivision two of this section, a joint
20 task force of a law enforcement agency and a federal agency shall trans-
21 fer seized property to the prosecuting authority for forfeiture liti-
22 gation under this article.

23 2. Such joint task force may transfer seized property to the federal
24 Department of Justice for forfeiture under federal law if such seized
25 property includes United States currency that exceeds twenty thousand
26 dollars.

27 3. A law enforcement agency shall be prohibited from accepting payment
28 or distribution of any kind from the federal government if the federal
29 government requires seized property that includes United States currency
30 less than twenty thousand dollars, as established under subdivision two
31 of this section, be transferred to the federal government for forfeiture
32 under federal law.

33 4. Nothing in subdivision one or two of this section shall be
34 construed to restrict a law enforcement agency from collaborating with a
35 federal agency to lawfully seize contraband or property such law
36 enforcement agency has probable cause to believe is subject to forfei-
37 ture.

38 5. Nothing in subdivision one or two of this section shall be
39 construed to prohibit the federal government, acting alone, from seizing
40 property and seeking forfeiture under federal law.

41 § 480.170 Guidance.

42 1. A prosecuting authority, after consulting with the responsible
43 United States Attorney, may establish guidelines for joint task forces
44 and multijurisdictional collaboration in such prosecuting authority's
45 jurisdiction.

46 2. The office of public safety, from time to time, shall publish on
47 its public website best practices and shall offer training on seizure
48 and forfeiture pursuant to this article.

49 § 480.175 Severability.

50 If any clause, sentence, paragraph, section or part of this article
51 shall be adjudged by any court of competent jurisdiction to be invalid
52 and after exhaustion of all further judicial review, the judgment shall
53 not affect, impair or invalidate the remainder thereof, but shall be
54 confined in its operation to the clause, sentence, paragraph, section or
55 part of this article directly involved in the controversy in which the
56 judgment shall have been rendered.

1 § 3. Subdivision 4 of section 690.10 of the criminal procedure law, as
2 amended by chapter 612 of the laws of 1994, is amended and a new subdivi-
3 sion 5 is added to read as follows:

4 4. Constitutes evidence or tends to demonstrate that an offense was
5 committed in this state or another state, or that a particular person
6 participated in the commission of an offense in this state or another
7 state, provided however, that if such offense was against the laws of
8 another state, the court shall only issue a warrant if the conduct
9 comprising such offense would, if occurring in this state, constitute a
10 felony against the laws of this state[~~+~~]; or

11 5. As otherwise provided under article four hundred eighty of the
12 penal law.

13 § 4. Paragraph (a) of subdivision 1 of section 690.55 of the criminal
14 procedure law is amended to read as follows:

15 (a) Retain it in the custody of the court pending further disposition
16 thereof pursuant to subdivision two of this section, by article four
17 hundred eighty of the penal law, or some other provision of law; or

18 § 5. This act shall take effect on the first of November next succeed-
19 ing the date on which it shall have become a law.