

2015 DRAFTING REQUEST

Bill

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Addl. Drafters:
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Requester's email: Sen.Nass@legis.wisconsin.gov
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Pre Topic:

No specific pre topic given

Topic:

Forfeiture of property upon conviction

Instructions:

Include: forfeiture after convictions only, proportionality test, and limit on local units of government entering into federal partnerships to seize/forfeit

Drafting History:

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FE Sent For:

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intro

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State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2148/1
PJH:emw

2015 ASSEMBLY BILL 537

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November 24, 2015 - Introduced by Representatives TAUCHEN, JARCHOW, CRAIG, KNUDSON, KESSLER, MURTHA, GOYKE, ALLEN, TITTL, GANNON, KNODL and HUTTON, cosponsored by Senators NASS, LASEE and WIRCH. Referred to Committee on Criminal Justice and Public Safety.

S.A.J

1 **AN ACT to repeal** 961.55 (1) (d) 1., 961.55 (1) (d) 2., 961.55 (1) (d) 3., 961.55 (1)
2 (d) 4., 961.55 (5) (a), 961.55 (5) (e) 1., 961.55 (5) (e) 2., 973.075 (1) (b) 2m. and
3 973.075 (5m); **to renumber and amend** 961.55 (5) (e) (intro.) and 973.075 (1)
4 (b) 1m. (intro.); **to amend** 29.934 (1) (d), 961.55 (title), 961.55 (1) (intro.), 961.55
5 (1) (d) (intro.), 961.55 (3) (intro.), 961.55 (5) (b), 961.555 (1), 961.555 (2) (a),
6 973.075 (title), 973.075 (1) (intro.), 973.075 (1) (bg), 973.075 (1) (bm), 973.075
7 (1) (d), 973.075 (1) (e), 973.075 (4), 973.075 (5) (intro.), 973.076 (1) (a) and
8 973.076 (1) (b) 1.; and **to create** 961.55 (1g), 961.55 (1k), 961.55 (1m), 961.55
9 (1r), 961.555 (3m), 961.555 (5), 973.075 (1g), 973.075 (1k), 973.075 (1m),
10 973.075 (1r), 973.075 (5r), 973.076 (3m) and 973.076 (5) of the statutes;
11 **relating to:** forfeiture of property seized in relation to a crime.

Analysis by the Legislative Reference Bureau

This bill changes the way property is forfeited after it is seized in relation to a crime.

Under current law, the state or a local law enforcement agency may acquire certain property involved in the commission of a crime or seized in relation to a

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criminal investigation through a forfeiture proceeding. The forfeiture law applies to all property directly or indirectly derived from the commission of a crime. Current law allows an agency to keep certain property for its own use, to transfer the property to another agency, or to sell the property.

Under current law, the agency that seized the property may retain a set percentage of the proceeds of selling the property to cover administrative and other costs; the remainder goes into the state school fund. Under current law, local law enforcement agencies may enter into agreements with federal authorities wherein property that is seized in relation to a federal crime is turned over to the federal authorities for forfeiture under federal law. Proceeds from selling the property are shared between the federal authorities and local law enforcement agencies.

This bill allows property to be subject to forfeiture only if a person is convicted of the crime related to the action for forfeiture and only if a court finds that the property seized is proportional to the crime committed. The bill requires seized property to be returned to innocent owners of the property unless the owners were involved with or knowledgeable about the crime related to the property. Further, the bill allows the court, upon petition by a person whose property was seized but not yet forfeited, to return the property to the person under certain circumstances. Under the bill, the person may not sell, give away, or burden the property and, if the person is found to have committed the crime related to the property, must surrender the property for forfeiture. The bill requires all proceeds of the sale of property to be turned in to the state school fund.

The bill prohibits local law enforcement agencies from transferring property to federal agents for forfeiture under federal law unless the value of the property exceeds \$50,000, the property was seized in relation to an interstate crime, or the property may only be forfeited under federal law.

The bill also requires law enforcement agencies and the Department of Justice to create publicly accessible reports on the seizures and forfeitures for each year.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 29.934 (1) (d) of the statutes is amended to read:

2 29.934 (1) (d) The provisions of s. 973.075 (1)(b) 2m. and (5) (1m) apply to boats
3 and vehicles, other than motor vehicles, under this subsection.

4 **SECTION 2.** 961.55 (title) of the statutes is amended to read:

5 **961.55 (title) Forfeitures; transfers to federal government.**

6 **SECTION 3.** 961.55 (1) (intro.) of the statutes is amended to read:

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1 961.55 (1) (intro.) The Subject to subs. (1g), (1m), and (1r), the following are
2 subject to forfeiture:

3 **SECTION 4.** 961.55 (1) (d) (intro.) of the statutes is amended to read:

4 961.55 (1) (d) (intro.) All vehicles which are used, or intended for use, to
5 transport, or in any manner to facilitate the transportation, for the purpose of sale
6 or receipt of property described in pars. (a) and (b) or for the purpose of transporting
7 any property or weapon used or to be used or received in the commission of any felony
8 under this chapter, ~~but:~~ except that a vehicle is not subject to forfeiture for a violation
9 of s. 961.41 (3g) (b) to (g).

10 **SECTION 5.** 961.55 (1) (d) 1. of the statutes is repealed.

11 **SECTION 6.** 961.55 (1) (d) 2. of the statutes is repealed.

12 **SECTION 7.** 961.55 (1) (d) 3. of the statutes is repealed.

13 **SECTION 8.** 961.55 (1) (d) 4. of the statutes is repealed.

14 **SECTION 9.** 961.55 (1g) of the statutes is created to read:

15 961.55 (1g) No item is subject to forfeiture under this chapter unless a person
16 is convicted of the criminal offense that was the basis for the seizure of the item or
17 that is related to the action for forfeiture.

18 **SECTION 10.** 961.55 (1k) of the statutes is created to read:

19 961.55 (1k) (a) A person who is charged with a crime or subject to a forfeiture
20 proceeding that gave rise to the seizure of property and who claims an ownership
21 interest in the seized property may, at any time before the property is subject to
22 forfeiture, petition the court to return the property to him or her.

23 (b) In determining whether to return seized property to a person under this
24 subsection, the court shall consider all of the following:

ASSEMBLY BILL 537**SECTION 10**

1 1. The seriousness of the alleged offense and its impact on the community,
2 including the duration of the activity and the harm allegedly caused by the person.

3 2. The extent to which the person is alleged to have participated in the offense.

4 3. The extent to which the property was allegedly used in committing the
5 offense.

6 4. The sentence or amount of forfeiture for the offense.

7 5. Whether the person is alleged to have completed or attempted to complete
8 the offense.

9 6. The fair market value of the property.

10 7. The value of the property to the person, including the hardship to the person
11 if the property is not returned.

12 8. The hardship to the person's family members if the property is not returned.

13 (c) If a court orders property returned under this subsection, the court shall
14 order the person not to sell, transfer, assign, or otherwise encumber the property
15 until the court either orders the property returned under sub. (3) or forfeited under
16 s. 961.555.

17 (d) If the person is subsequently convicted of or found to have committed the
18 offense, the court shall order the person to surrender the property for proceedings
19 under s. 961.555.

20 **SECTION 11.** 961.55 (1m) of the statutes is created to read:

21 961.55 (1m) (a) A person who is not the person charged with or convicted of a
22 crime that gave rise to the seizure of the property or the forfeiture proceeding and
23 who claims an ownership interest in seized property has the burden of production to
24 show that he or she has a legal right, title, or interest in the property and that one
25 of the following is true:

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1 1. He or she had the ownership interest at the time of the conduct that gave rise
2 to the seizure of the property or the forfeiture proceeding.

3 2. He or she acquired the ownership interest after the time of the conduct that
4 gave rise to the seizure of the property or the forfeiture proceeding.

5 (b) 1. If a person meets the burden under par. (a) 1., the state shall prove by a
6 preponderance of the evidence that the person had actual or constructive knowledge
7 of the conduct that gave rise to the forfeiture.

8 2. If a person meets the burden under par. (a) 2., the state shall prove by a
9 preponderance of the evidence that one of the following is true:

10 a. The person had actual or constructive knowledge that the property was
11 subject to forfeiture when he or she acquired an ownership interest in the property.

12 b. The person was not a bona fide purchaser of the property.

13 (c) If the state does not meet the burden under par. (b) as to any property, the
14 court shall find that the property is the property of an innocent owner and not subject
15 to forfeiture under this chapter.

16 **SECTION 12.** 961.55 (1r) of the statutes is created to read:

17 961.55 (1r) No law enforcement officer or agency or state or local employee or
18 agency may transfer property that may otherwise be seized and forfeited under this
19 chapter to a federal law enforcement authority or other federal agency unless one of
20 the following applies:

21 (a) The value of the seized property exceeds \$50,000, excluding the potential
22 value of the sale of contraband.

23 (b) The seized property may only be forfeited under federal law.

24 **SECTION 13.** 961.55 (3) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 537**SECTION 13**

1 961.55 (3) (intro.) In the event of seizure under sub. (2), proceedings under sub.
2 (4) shall be instituted promptly. All dispositions and forfeitures under this section
3 and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent
4 persons under ~~sub. (1) (d) 1., 2. and 4. subs. (1g), (1k), and (1m).~~ Any property seized
5 but not forfeited shall be returned to its rightful owner. Any person claiming the
6 right to possession of property seized may apply for its return to the circuit court for
7 the county in which the property was seized. The court shall order such notice as it
8 deems adequate to be given the district attorney and all persons who have or may
9 have an interest in the property and shall hold a hearing to hear all claims to its true
10 ownership. If the right to possession is proved to the court's satisfaction, it shall
11 order the property returned if:

12 **SECTION 14.** 961.55 (5) (a) of the statutes is repealed.

13 **SECTION 15.** 961.55 (5) (b) of the statutes is amended to read:

14 961.55 (5) (b) Sell that which is not required to be destroyed by law and which
15 is not harmful to the public. The agency ~~may use 50 percent of the amount received~~
16 ~~for payment of forfeiture expenses. The remainder shall be deposited~~ shall deposit
17 all amounts received in the school fund as proceeds of the forfeiture. ~~In this~~
18 ~~paragraph, "forfeiture expenses" include all proper expenses of the proceedings for~~
19 ~~forfeiture and sale, including expenses of seizure, maintenance of custody,~~
20 ~~advertising, and court costs and the costs of investigation and prosecution~~
21 ~~reasonably incurred.~~

22 **SECTION 16.** 961.55 (5) (e) (intro.) of the statutes is renumbered 961.55 (5) (e)
23 and amended to read:

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1 961.55 (5) (e) If the property forfeited is money, ~~retain the sum of all of the~~
2 ~~following for payment of forfeiture expenses, as defined in par. (b), and deposit the~~
3 ~~remainder money~~ in the school fund.

4 **SECTION 17.** 961.55 (5) (e) 1. of the statutes is repealed.

5 **SECTION 18.** 961.55 (5) (e) 2. of the statutes is repealed.

6 **SECTION 19.** 961.555 (1) of the statutes is amended to read:

7 961.555 (1) TYPE OF ACTION; WHERE BROUGHT. In an action brought to cause the
8 forfeiture of any property seized under s. 961.55, the court may render a judgment
9 in rem or against a party personally, or both. The circuit court for the county in which
10 the property was seized shall have jurisdiction over any proceedings regarding the
11 property when the action is commenced in state court. Any Subject to s. 961.55 (1r),
12 any property seized may be the subject of a federal forfeiture action.

13 **SECTION 20.** 961.555 (2) (a) of the statutes is amended to read:

14 961.555 (2) (a) The district attorney of the county within which the property
15 was seized shall commence the forfeiture action within 30 days after ~~the seizure of~~
16 ~~the property, except that the defendant may request that the forfeiture proceedings~~
17 ~~be adjourned until after adjudication~~ the defendant was convicted of any charge
18 concerning a crime which was the basis for the seizure of the property. ~~The request~~
19 ~~shall be granted.~~ The forfeiture action shall be commenced by filing a summons,
20 complaint and affidavit of the person who seized the property with the clerk of circuit
21 court, provided service of authenticated copies of those papers is made in accordance
22 with ch. 801 within 90 days after filing upon the person from whom the property was
23 seized and upon any person known to have a bona fide perfected security interest in
24 the property.

25 **SECTION 21.** 961.555 (3m) of the statutes is created to read:

ASSEMBLY BILL 537**SECTION 21**

1 961.555 (3m) PROPORTIONALITY. (a) The court may not order the forfeiture of
2 property if the court finds that the forfeiture is grossly disproportional to the crime
3 for which the person whose property was seized was convicted or that the forfeiture
4 is unconstitutionally excessive under the state or federal constitution.

5 (b) A person who is alleging that the forfeiture is grossly disproportional or is
6 unconstitutionally excessive under this subsection shall have the burden of
7 satisfying or convincing to a reasonable certainty by the greater weight of the
8 credible evidence that the forfeiture is grossly disproportional or unconstitutionally
9 excessive.

10 (c) In determining whether the forfeiture is grossly disproportional or
11 unconstitutionally excessive, the court shall consider the following:

12 1. The seriousness of the offense and its impact on the community, including
13 the duration of the activity and the harm caused by the person.

14 2. The extent to which the person participated in the offense.

15 3. The extend to which the property was used in committing the offense.

16 4. The sentence imposed on the person for the offense.

17 5. Whether the person completed or attempted to complete the offense.

18 6. The fair market value of the property.

19 7. The value of the property to the person, including the hardship to the person
20 if the property is forfeited.

21 8. The hardship to the person's family members if the property is forfeited.

22 (d) In determining whether the forfeiture is grossly disproportional or
23 unconstitutionally excessive, the court may not consider the value of the property to
24 the state.

25 **SECTION 22.** 961.555 (5) of the statutes is created to read:

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1 961.555 (5) REPORTS. (a) Each law enforcement agency shall prepare an annual
2 report on its seizure and forfeiture activity. A law enforcement agency that seized
3 no property or that did not pursue a forfeiture of property under this section or under
4 federal law shall state that in its report. Each law enforcement agency that seized
5 or pursued forfeiture of any property under this section or under federal law shall
6 include all of the following in its report:

7 1. The total number of seizures of currency and the total amount of currency
8 seized in each seizure.

9 2. The total number of seizures of property and the number and types of items
10 seized in each seizure.

11 3. The market value of each item of property seized.

12 4. The total number of occurrences of each category of crime that resulted in
13 the agency's seizure of property.

14 5. The total amount of money or other property that the law enforcement
15 agency received from its seizure or forfeiture activity.

16 (b) Each law enforcement agency that prepares a report under par. (a) shall
17 make the report available to the public and shall submit the report to the district
18 attorney for the county where the law enforcement agency is located and to the
19 department of justice.

20 (c) The department of justice shall compile the reports submitted by each law
21 enforcement agency and shall annually create an aggregate report of all seizures and
22 forfeitures in the state under this section, s. 973.076, or federal law. The department
23 of justice shall make the report available for public view on its Internet site.

24 **SECTION 23.** 973.075 (title) of the statutes is amended to read:

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SECTION 23

1 **973.075 (title) Forfeiture of property derived from crime and certain**
2 **vehicles; transfers to federal government.**

3 **SECTION 24.** 973.075 (1) (intro.) of the statutes is amended to read:

4 973.075 (1) (intro.) ~~The~~ Subject to subs. (1g), (1m), and (1r), the following are
5 subject to seizure and forfeiture under ss. 973.075 to 973.077:

6 **SECTION 25.** 973.075 (1) (b) 1m. (intro.) of the statutes is renumbered 973.075
7 (1) (b) (intro.) and amended to read:

8 973.075 (1) (b) (intro.) ~~Except as provided in subd. 2m., all~~ All vehicles, as
9 defined in s. 939.22 (44), which are used in any of the following ways:

10 **SECTION 26.** 973.075 (1) (b) 2m. of the statutes is repealed.

11 **SECTION 27.** 973.075 (1) (bg) of the statutes is amended to read:

12 973.075 (1) (bg) Any property used or to be used in the commission of a crime
13 under s. 943.74, 943.75 (2) or (2m), or 948.07, ~~but if the property is encumbered by~~
14 ~~a bona fide perfected security interest that was perfected before the date of the~~
15 ~~commission of the current violation and the holder of the security interest neither~~
16 ~~had knowledge of nor consented to the commission of that violation, the holder of the~~
17 ~~security interest shall be paid from the proceeds of the forfeiture.~~

18 **SECTION 28.** 973.075 (1) (bm) of the statutes is amended to read:

19 973.075 (1) (bm) Any property used in the commission of a crime under s.
20 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or 940.32, ~~but if the~~
21 ~~property is encumbered by a bonafide perfected security interest that was perfected~~
22 ~~before the date of the commission of the current violation and the holder of the~~
23 ~~security interest neither had knowledge of nor consented to the commission of that~~
24 ~~violation, the holder of the security interest shall be paid from the proceeds of the~~
25 ~~forfeiture.~~

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1 **SECTION 29.** 973.075 (1) (d) of the statutes is amended to read:

2 973.075 (1) (d) A tank vessel that violates s. 299.62 (2) that is owned by a person
3 who, within 5 years before the commission of the current violation, was previously
4 convicted of violating s. 299.62 (2), ~~but if the tank vessel is encumbered by a bona fide~~
5 ~~perfected security interest that was perfected before the date of the commission of~~
6 ~~the current violation and the holder of the security interest neither had knowledge~~
7 ~~of nor consented to the commission of that violation, the holder of the security~~
8 ~~interest shall be paid from the proceeds of the forfeiture.~~

9 **SECTION 30.** 973.075 (1) (e) of the statutes is amended to read:

10 973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised,
11 offered for sale or rent, sold, rented, transported or possessed in violation of ss.
12 943.207 to 943.209 or s. 943.49 and any electronic, mechanical or other device for
13 making a recording or for manufacturing, reproducing, packaging or assembling a
14 recording that was used to facilitate a violation of ss. 943.207 to 943.209 or s. 943.49,
15 regardless of the knowledge or intent of the person from whom the recording or
16 device is seized. ~~If a device subject to forfeiture under this paragraph is encumbered~~
17 ~~by a bona fide perfected security interest that was perfected before the date of the~~
18 ~~commission of the current violation and the holder of the security interest neither~~
19 ~~had knowledge of nor consented to the commission of that violation, the holder of the~~
20 ~~security interest shall be paid from the proceeds of the forfeiture.~~

21 **SECTION 31.** 973.075 (1g) of the statutes is created to read:

22 973.075 (1g) No item is subject to forfeiture under ss. 973.075 to 973.077 unless
23 a person is convicted of the criminal offense that was the basis for the seizure of the
24 item or that is related to the action for forfeiture.

25 **SECTION 32.** 973.075 (1k) of the statutes is created to read:

ASSEMBLY BILL 537**SECTION 32**

1 973.075 (1k) (a) A person who is charged with a crime or subject to a forfeiture
2 proceeding that gave rise to the seizure of property and who claims an ownership
3 interest in the seized property may, at any time before the property is subject to
4 forfeiture, petition the court to return the property to him or her.

5 (b) In determining whether to return seized property to a person under this
6 subsection, the court shall consider all of the following:

7 1. The seriousness of the alleged offense and its impact on the community,
8 including the duration of the activity and the harm allegedly caused by the person.

9 2. The extent to which the person is alleged to have participated in the offense.

10 3. The extent to which the property was allegedly used in committing the
11 offense.

12 4. The sentence or amount of forfeiture for the offense.

13 5. Whether the person is alleged to have completed or attempted to complete
14 the offense.

15 6. The fair market value of the property.

16 7. The value of the property to the person, including the hardship to the person
17 if the property is not returned.

18 8. The hardship to the person's family members if the property is not returned.

19 (c) If a court orders property returned under this subsection, the court shall
20 order the person not to sell, transfer, assign, or otherwise encumber the property
21 until the court either orders the property returned under sub. (5) or forfeited under
22 s. 973.076.

23 (d) If the person is subsequently convicted of or found to have committed the
24 offense, the court shall order the person to surrender the property for proceedings
25 under s. 973.076.

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1 **SECTION 33.** 973.075 (1m) of the statutes is created to read:

2 973.075 (1m) (a) A person who is not the person charged with or convicted of
3 a crime that gave rise to the seizure of the property or the forfeiture proceeding and
4 who claims an ownership interest in seized property has the burden of production to
5 show that he or she has a legal right, title, or interest in the property and that one
6 of the following is true:

7 1. He or she had the ownership interest at the time of the conduct that gave rise
8 to the seizure of the property or the forfeiture proceeding.

9 2. He or she acquired the ownership interest after the time of the conduct that
10 gave rise to the seizure of the property or the forfeiture proceeding.

11 (b) 1. If a person meets the burden under par. (a) 1., the state shall prove by a
12 preponderance of the evidence that the person had actual or constructive knowledge
13 of the conduct that gave rise to the forfeiture.

14 2. If a person meets the burden under par. (a) 2., the state shall prove by a
15 preponderance of the evidence that one of the following is true:

16 a. The person had actual or constructive knowledge that the property was
17 subject to forfeiture when he or she acquired an ownership interest in the property.

18 b. The person was not a bona fide purchaser of the property.

19 (c) If the state does not meet the burden under par. (b) as to any property, the
20 court shall find that the property is the property of an innocent owner and not subject
21 to forfeiture under ss. 973.075 to 973.077.

22 **SECTION 34.** 973.075 (1r) of the statutes is created to read:

23 973.075 (1r) No law enforcement officer or agency or state or local employee
24 or agency may transfer property that may otherwise be seized and forfeited under

ASSEMBLY BILL 537**SECTION 34**

1 ss. 973.075 to 973.077 to a federal law enforcement authority or other federal agency
2 unless one of the following applies:

3 (a) The value of the seized property exceeds \$50,000, excluding the potential
4 value of the sale of contraband.

5 (b) The seized property may only be forfeited under federal law.

6 **SECTION 35.** 973.075 (4) of the statutes is amended to read:

7 973.075 (4) When property is forfeited under ss. 973.075 to 973.077, the agency
8 seizing the property may sell the property that is not required by law to be destroyed
9 or transferred to another agency. ~~The agency may retain any vehicle for official use~~
10 ~~or sell the vehicle. The agency seizing the property may deduct 50% of the amount~~
11 ~~received for administrative expenses of seizure, maintenance of custody, advertising~~
12 ~~and court costs and the costs of investigation and prosecution reasonably incurred.~~
13 ~~The remainder shall be deposited in the school fund as the agency shall deposit all~~
14 ~~proceeds of the forfeiture in the school fund.~~ If the property forfeited under ss.
15 973.075 to 973.077 is money, all the money shall be deposited in the school fund.

16 **SECTION 36.** 973.075 (5) (intro.) of the statutes is amended to read:

17 973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made
18 with due provision for the rights of innocent persons under ~~sub. (1) (b) 2m., (bg), (bm),~~
19 ~~(d) and (e) subs. (1g), (1k), and (1m).~~ Except as provided in sub. ~~(5m)~~ (5r), any
20 property seized but not forfeited shall be returned to its rightful owner. Any person
21 claiming the right to possession of property seized may apply for its return to the
22 circuit court for the county in which the property was seized. The court shall order
23 such notice as it deems adequate to be given the district attorney and all persons who
24 have or may have an interest in the property and shall hold a hearing to hear all

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1 claims to its true ownership. If the right to possession is proved to the court's
2 satisfaction, it shall order the property returned as soon as practically possible if:

3 **SECTION 37.** 973.075 (5m) of the statutes is repealed.

4 **SECTION 38.** 973.075 (5r) of the statutes is created to read:

5 973.075 (5r) If a recording involved in a violation of ss. 943.207 to 943.209 is
6 forfeited, the sheriff of the county in which the recording was seized shall destroy it
7 after the completion of all proceedings in which the recording might be required as
8 evidence.

9 **SECTION 39.** 973.076 (1) (a) of the statutes is amended to read:

10 973.076 (1) (a) *Type of action; where brought.* In an action brought to cause the
11 forfeiture of any property specified in s. 342.30 (4) (a) or s. 973.075 (1), the court may
12 render a judgment in rem or against a party personally, or both. The circuit court
13 for the county in which the property was seized shall have jurisdiction over any
14 proceedings regarding the property when the action is commenced in state court.
15 ~~Any~~ Subject to 973.075 (1r), any property seized may be the subject of a federal
16 forfeiture action.

17 **SECTION 40.** 973.076 (1) (b) 1. of the statutes is amended to read:

18 973.076 (1) (b) 1. The district attorney of the county within which the property
19 was seized or in which the defendant is convicted shall commence the forfeiture
20 action within 30 days after the seizure of the property or the date of conviction,
21 ~~whichever is earlier, except that the defendant may request that the forfeiture~~
22 ~~proceedings be adjourned until after adjudication of any charge concerning a crime~~
23 ~~which that~~ was the basis for the seizure of the property. ~~The request shall be granted.~~
24 The forfeiture action shall be commenced by filing a summons, complaint and
25 affidavit of the person who seized the property with the clerk of circuit court,

ASSEMBLY BILL 537**SECTION 40**

1 provided service of authenticated copies of those papers is made in accordance with
2 ch. 801 within 90 days after filing upon the person from whom the property was
3 seized and upon any person known to have a bona fide perfected security interest in
4 the property.

5 **SECTION 41.** 973.076 (3m) of the statutes is created to read:

6 973.076 (3m) PROPORTIONALITY. (a) The court may not order the forfeiture of
7 property if the court finds that the forfeiture is grossly disproportional to the crime
8 for which the person whose property was seized was convicted or that the forfeiture
9 is unconstitutionally excessive under the state or federal constitution.

10 (b) A person who is alleging that the forfeiture is grossly disproportional or is
11 unconstitutionally excessive under this subsection shall have the burden of
12 satisfying or convincing to a reasonable certainty by the greater weight of the
13 credible evidence that the forfeiture is grossly disproportional or unconstitutionally
14 excessive.

15 (c) In determining whether the forfeiture is grossly disproportional or
16 unconstitutionally excessive, the court shall consider the following:

17 1. The seriousness of the offense and its impact on the community, including
18 the duration of the activity and the harm caused by the person.

19 2. The extent to which the person participated in the offense.

20 3. The extend to which the property was used in committing the offense.

21 4. The sentence imposed on the person for the offense.

22 5. Whether the person completed or attempted to complete the offense.

23 6. The fair market value of the property.

24 7. The value of the property to the person, including the hardship to the person
25 if the property is forfeited.

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1 8. The hardship to the person's family members if the property is forfeited.

2 (d) In determining whether the forfeiture is grossly disproportional or
3 unconstitutionally excessive, the court may not consider the value of the property to
4 the state.

5 **SECTION 42.** 973.076 (5) of the statutes is created to read:

6 973.076 (5) **REPORTS.** (a) Each law enforcement agency shall prepare an annual
7 report on its seizure and forfeiture activity. A law enforcement agency that seized
8 no property or that did not pursue a forfeiture of property under this section or under
9 federal law shall state that in its report. Each law enforcement agency that seized
10 or pursued forfeiture of any property under this section or under federal law shall
11 include all of the following in its report:

12 1. The total number of seizures of currency and the total amount of currency
13 seized in each seizure.

14 2. The total number of seizures of property and the number and types of items
15 seized in each seizure.

16 3. The market value of each item of property seized.

17 4. The total number of occurrences of each category of crime that resulted in
18 the agency's seizure of property.

19 5. The total amount of money or other property that the law enforcement
20 agency received from its seizure or forfeiture activity.

21 (b) Each law enforcement agency that prepares a report under par. (a) shall
22 make the report available to the public and shall submit the report to the district
23 attorney for the county where the law enforcement agency is located and to the
24 department of justice.

Barman, Mike

From: Field, Adam
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Please Jacket LRB -4231/1 for the SENATE.

Adam Field

Office of Senator Steve Nass
(608) 266-2635