

State of Wisconsin



2017 Senate Bill 61

Date of enactment: April 3, 2018
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2017 WISCONSIN ACT 211

AN ACT *to repeal* 961.55 (1) (d) 1., 961.55 (1) (d) 2., 961.55 (1) (d) 3., 961.55 (1) (d) 4., 961.55 (5) (e) 1., 961.55 (5) (e) 2., 973.075 (1) (b) 2m. and 973.075 (5m); *to renumber* 973.075 (1) (b) 1m. a. to h.; *to renumber and amend* 961.55 (1) (d) (intro.), 961.55 (5) (a), 961.55 (5) (e) (intro.), 973.075 (1) (b) 1m. (intro.) and 973.075 (4); *to amend* 29.934 (1) (d), 961.55 (1) (intro.), 961.55 (3) (intro.), 961.55 (5) (b), 961.555 (1), 961.555 (2) (a), 961.555 (3), 968.20 (1), 968.20 (1g) (intro.) and (a), 973.075 (1) (intro.), 973.075 (1) (bg), 973.075 (1) (bm), 973.075 (1) (d), 973.075 (1) (e), 973.075 (5) (intro.), 973.076 (1) (a), 973.076 (1) (b) 1., 973.076 (2m) (a) and 973.076 (3); and *to create* 961.55 (1g), 961.55 (1k), 961.55 (1m), 961.55 (1r), 961.55 (5) (a) 1., 961.55 (5) (a) 2., 961.555 (2) (am), 961.555 (2m), 961.555 (3g), 961.555 (3m), 961.555 (5), 961.555 (6), 961.555 (7), 968.20 (1g) (am), 968.20 (1h), 973.075 (1g), 973.075 (1k), 973.075 (1m), 973.075 (1r), 973.075 (4) (a), 973.075 (5r), 973.076 (1) (b) 1m., 973.076 (3g), 973.076 (3m), 973.076 (5), 973.076 (6) and 973.076 (7) of the statutes; **relating to:** forfeiture of property seized in relation to a crime.

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

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

29.934 (1) (d) The provisions of s. 973.075 (4) ~~(b) 2m. and (5) (1m)~~ apply to boats and vehicles, other than motor vehicles, under this subsection.

SECTION 2. 961.55 (1) (intro.) of the statutes is amended to read:

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

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

961.55 (1) (d) All vehicles which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in pars. (a) and (b) or for the purpose of transporting any property or weapon used or to be

used or received in the commission of any felony under this chapter, ~~but: except that a vehicle is not subject to forfeiture for a violation of s. 961.41 (3g) (b) to (g).~~

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 of the statutes is repealed.

SECTION 5. 961.55 (1) (d) 2. of the statutes is repealed.

SECTION 6. 961.55 (1) (d) 3. of the statutes is repealed.

SECTION 7. 961.55 (1) (d) 4. of the statutes is repealed.

SECTION 8. 961.55 (1g) of the statutes is created to read:

961.55 (1g) A judgment of forfeiture may not be entered under this chapter unless a person is convicted of the criminal offense that was the basis for the seizure of the item or that is related to the action for forfeiture.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

SECTION 9. 961.55 (1k) of the statutes is created to read:

961.55 (1k) A person who has been subject to a seizure of property has a right to a pretrial hearing under s. 968.20.

SECTION 10. 961.55 (1m) of the statutes is created to read:

961.55 (1m) The property of an innocent owner may not be forfeited. A person who claims to be an innocent owner may follow the procedures under s. 961.555 (5).

SECTION 11. 961.55 (1r) of the statutes is created to read:

961.55 (1r) If a law enforcement officer or agency or state or local employee or agency refers seized property to a federal agency directly, indirectly, by adoption, through an intergovernmental joint task force, or by other means, for the purposes of forfeiture litigation, the agency shall produce an itemized report of actual forfeiture expenses, as defined in sub. (5) (b), and submit the report to the department of administration to make it available on the department's website. If there is a federal or state criminal conviction for the crime that was the basis for the seizure, the agency may accept all proceeds. If there is no federal or state criminal conviction, the agency may not accept any proceeds, except that the agency may accept all proceeds if one of the following circumstances applies and is explained in the report submitted under this subsection:

- (a) The defendant has died.
- (b) The defendant was deported by the U.S. government.
- (c) The defendant has been granted immunity in exchange for testifying or otherwise assisting a law enforcement investigation or prosecution.
- (d) The defendant fled the jurisdiction.
- (e) The property has been unclaimed for a period of at least 9 months.

SECTION 12. 961.55 (3) (intro.) of the statutes is amended to read:

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

SECTION 13. 961.55 (5) (a) of the statutes is renumbered 961.55 (5) (a) (intro.) and amended to read:

961.55 (5) (a) (intro.) ~~Retain~~ If the property is a vehicle, retain it for official use—for a period of up to one year. Before the end of that period, the agency shall do one of the following:

SECTION 14. 961.55 (5) (a) 1. of the statutes is created to read:

961.55 (5) (a) 1. Sell the property and use a portion, not to exceed 50 percent, of the amount received for payment of forfeiture expenses if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department's website. The remainder shall be deposited in the school fund as proceeds of the forfeiture.

SECTION 15. 961.55 (5) (a) 2. of the statutes is created to read:

961.55 (5) (a) 2. Continue to retain the property, if the agency deposits 30 percent of the value of the vehicle, as determined by the department of revenue, in the school fund as proceeds of the forfeiture. If the agency sells the vehicle at a later time and receives as proceeds from the sale an amount in excess of the amount previously deposited in the school fund, the agency shall deposit the excess in the school fund.

SECTION 16. 961.55 (5) (b) of the statutes is amended to read:

961.55 (5) (b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The agency may use a portion, not to exceed 50 percent, of the amount received for payment of forfeiture expenses if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department's website. The remainder shall be deposited in the school fund as proceeds of the forfeiture. In this ~~paragraph~~ subsection, "forfeiture expenses" include all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs and the costs of investigation and prosecution reasonably incurred.

SECTION 17. 961.55 (5) (e) (intro.) of the statutes is renumbered 961.55 (5) (e) and amended to read:

961.55 (5) (e) If the property forfeited is money, ~~retain the sum of all of the following~~ a portion, not to exceed 50 percent, of the amount received for payment of forfeiture expenses, as defined in par. (b), if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department's website and deposit the remainder money in the school fund.

SECTION 18. 961.55 (5) (e) 1. of the statutes is repealed.

SECTION 19. 961.55 (5) (e) 2. of the statutes is repealed.

SECTION 20. 961.555 (1) of the statutes is amended to read:

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

SECTION 21. 961.555 (2) (a) of the statutes is amended to read:

961.555 (2) (a) The district attorney of the county within which the property was seized shall commence the forfeiture action within 30 days after the seizure of the property, ~~except that the defendant may request that and the forfeiture proceedings shall be adjourned until after adjudication the defendant is convicted~~ of any charge concerning a crime which was the basis for the seizure of the property. ~~The request shall be granted If property is seized, a charge shall be issued within 6 months after the seizure, except that an unlimited number of 6-month extensions may be granted if, for each extension, a judge determines probable cause is shown and the additional time is warranted. If no charge is issued within 6 months after the seizure, or a 6-month extension is not granted, the seized property shall be returned to the owner.~~ The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with ch. 801 within 90 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

SECTION 22. 961.555 (2) (am) of the statutes is created to read:

961.555 (2) (am) Upon motion by the prosecuting attorney, the court may waive the conviction requirement under par. (a) if the prosecuting attorney shows by clear and convincing evidence that any of the following applies:

1. The defendant has died.
2. The defendant was deported by the U.S. government.
3. The defendant has been granted immunity in exchange for testifying or otherwise assisting a law enforcement investigation or prosecution.
4. The defendant fled the jurisdiction.
5. The property has been unclaimed for a period of at least 9 months.
6. The property is contraband that is subject to forfeiture under s. 961.55 (6), (6m), or (7).

SECTION 23. 961.555 (2m) of the statutes is created to read:

961.555 (2m) CRIMINAL FORFEITURES. (a) In addition to any penalties under this chapter, the court shall, with due provision for the rights of innocent persons in accordance with sub. (5), order forfeiture of any property specified in s. 961.55 (1) in accordance with pars. (b), (c), and (d).

(b) A criminal complaint must allege the extent of property subject to forfeiture under this subsection. At trial, the court or the jury shall return a special verdict determining the extent of property, if any, that is subject to forfeiture under this subsection. When a special verdict contains a finding of property subject to a forfeiture under this subsection, a judgment of criminal forfeiture shall be entered along with the judgment of conviction under s. 972.13.

(c) An injured person has a right or claim to forfeited property or the proceeds derived from forfeited property under this subsection that is superior to any right or claim the state has in the property or proceeds. This paragraph does not grant the injured person priority over state claims or rights by reason of a tax lien or other basis not covered by this section or by s. 961.55 or 961.56. All rights, titles, and interest in property specified in s. 961.55 (1) vest in the state upon the commission of the act giving rise to forfeiture under this subsection.

(d) An injured or innocent person may petition the court for relief from the judgment of criminal forfeiture entered under par. (b) within 30 days after it is entered. The person filing the petition has the burden of satisfying or convincing to a reasonable certainty by the greater weight of the evidence that the person has a bona fide perfected security interest in the property subject to forfeiture in s. 961.55 (1) or any other property subject to forfeiture in sub. (4). The court may order that a person with a bona fide perfected security interest be paid from the proceeds of the forfeiture or any other equitable relief necessary so as to do substantial justice to the person.

SECTION 24. 961.555 (3) of the statutes is amended to read:

961.555 (3) BURDEN OF PROOF. The state shall have the burden of ~~satisfying or proving by clear and convincing to a reasonable certainty by the greater weight of the credible~~ evidence that the property is subject to forfeiture under s. 961.55.

SECTION 25. 961.555 (3g) of the statutes is created to read:

961.555 (3g) PRIVILEGES. The defendant or convicted offender may invoke the right against self-incrimination or the marital privilege during the forfeiture-related stage of the prosecution. The trier of fact at the hearing may draw an adverse inference from the invocation of the right or privilege.

SECTION 26. 961.555 (3m) of the statutes is created to read:

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

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

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

1. The seriousness of the offense.
2. The purpose of the statute authorizing the forfeiture.
3. The maximum fine for the offense.
4. The harm that actually resulted from the defendant's conduct.

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

SECTION 27. 961.555 (5) of the statutes is created to read:

961.555 (5) INNOCENT OWNERS. (a) Notwithstanding sub. (2) (a), a person who claims to have an ownership interest in property subject to forfeiture as an innocent owner may petition the court for the return of his or her seized property at any time.

(b) A person who has an ownership interest in property subject to forfeiture that exists at the occurrence of the illegal conduct giving rise to the forfeiture and who claims to be an innocent owner has the burden of proving by clear and convincing evidence that he or she has a legal right, title, or interest in the property seized under this chapter.

(c) If the requisite showing under par. (b) has been made, in order to proceed with a forfeiture action against the property, the state has the burden of proving by clear and convincing evidence that the person had actual or constructive knowledge of the underlying crime giving rise to the forfeiture.

(d) A person who has an ownership interest in property subject to forfeiture that he or she acquired after the occurrence of the conduct giving rise to the forfeiture and who claims to be an innocent owner has the burden of proving by clear and convincing evidence that he or she has a legal right, title, or interest in the property seized under this chapter.

(e) If the requisite showing under par. (d) has been made, in order to proceed with a forfeiture action against the property, the state has the burden of proving by clear and convincing evidence that the person had actual or constructive knowledge that the property was subject to

forfeiture or that the person was not a bona fide purchaser without notice of any defect in title and for valuable consideration.

(f) If the state does not meet the burden under par. (c) or (e) as to any property, the court shall find that the property is the property of an innocent owner and not subject to forfeiture under this chapter and shall order the state to relinquish all claims of title to the property.

SECTION 28. 961.555 (6) of the statutes is created to read:

961.555 (6) RETURN OF PROPERTY. The court shall order the return of any property subject to forfeiture under ss. 961.55 to 961.56 within 30 days of acquittal or dismissal of charges for the offense which was the basis of the forfeiture action, or 6 months after a seizure which was the basis of the forfeiture action if no charges have been issued and no extension has been granted. If the property is co-owned by 2 or more defendants in a criminal action, and one or more defendant co-owners are acquitted or the charges against him or her are dismissed, the court shall have discretion to dispose of the co-owned property in accordance with the proportionality guidelines in sub. (3m) as he or she deems appropriate.

SECTION 29. 961.555 (7) of the statutes is created to read:

961.555 (7) ATTORNEY FEES. A person who prevails in an action to return property subject to forfeiture under ss. 961.55 to 961.56 may be awarded reasonable attorney fees by the state if the court finds that the forfeiting agency or prosecuting attorney has arbitrarily and capriciously pursued the forfeiture action.

SECTION 30. 968.20 (1) of the statutes is amended to read:

968.20 (1) Any person claiming the right to possession of property seized pursuant to a search warrant or seized without a search warrant, except for an animal taken into custody under s. 173.13 (1) or withheld from its owner under s. 173.21 (1) (a), may apply for its return to the circuit court for the county in which the property was seized or where the search warrant was returned, except that a court may commence a hearing, on its own initiative, to return property seized under s. 968.26. If an initial appearance under s. 970.01 is scheduled, the application for the return of the property shall be filed within 120 days of the initial appearance.

SECTION 31. 968.20 (1g) (intro.) and (a) of the statutes are amended to read:

968.20 (1g) (intro.) The court shall order such notice as it deems adequate to be given the district attorney and, unless notice was provided under s. 968.26 (7), to all persons who have or may have an interest in the property. The court shall hold a hearing to hear all claims to its true ownership. Except for a hearing commenced by the court, the hearing shall occur no more than 30 days after a motion is filed except that either party may, by agreement or for good cause, move the court for one extension

of no more than 10 days. Any motion may be supported by affidavits or other submissions. If the right to possession is proved to the court's satisfaction, it shall order the property, other than contraband or property covered under sub. (1m) or (1r) or s. 173.21 (4) or 968.205, returned if the court finds any of the following:

(a) ~~The~~ It is likely that the final judgment will be that the state must return the property to the claimant and the property is not reasonably needed as evidence or for other investigatory reasons or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; ~~or.~~

SECTION 32. 968.20 (1g) (am) of the statutes is created to read:

968.20 (1g) (am) The property is the only reasonable means for a defendant to pay for legal representation in the forfeiture or criminal proceeding, the property is not likely to be needed for payment of victim compensation, restitution, or fines, and the property is not reasonably needed as evidence or for other investigatory reasons. If the court makes this finding, it may order the return of funds or property sufficient to obtain legal counsel but less than the total amount seized and require an accounting.

SECTION 33. 968.20 (1h) of the statutes is created to read:

968.20 (1h) If a court orders property returned under sub. (1g), the court shall order the person not to sell, transfer, assign, or otherwise encumber the property until the court orders the property either returned under s. 961.55 (3) or 973.075 (5) or forfeited under s. 961.555 or 973.076. If the person is subsequently convicted of or found to have committed the offense, the court shall order the person to surrender the returned property for proceedings under s. 961.555 or 973.076, whichever is appropriate.

SECTION 34. 973.075 (1) (intro.) of the statutes is amended to read:

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

SECTION 35. 973.075 (1) (b) 1m. (intro.) of the statutes is renumbered 973.075 (1) (b) (intro.) and amended to read:

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

SECTION 36. 973.075 (1) (b) 1m. a. to h. of the statutes are renumbered 973.075 (1) (b) 1. to 8.

SECTION 37. 973.075 (1) (b) 2m. of the statutes is repealed.

SECTION 38. 973.075 (1) (bg) of the statutes is amended to read:

973.075 (1) (bg) Any property used or to be used in the commission of a crime under s. 943.74, 943.75 (2) or (2m), or 948.07, ~~but if the property is encumbered by a~~

bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

SECTION 39. 973.075 (1) (bm) of the statutes is amended to read:

973.075 (1) (bm) Any property used in the commission of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (4) or 940.32, ~~but if the property is encumbered by a bonafide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.~~

SECTION 40. 973.075 (1) (d) of the statutes is amended to read:

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

SECTION 41. 973.075 (1) (e) of the statutes is amended to read:

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

SECTION 42. 973.075 (1g) of the statutes is created to read:

973.075 (1g) A judgment of forfeiture may not be entered under ss. 973.075 to 973.077 unless a person is convicted of the criminal offense that was the basis for the seizure of the item or that is related to the action for forfeiture.

SECTION 43. 973.075 (1k) of the statutes is created to read:

973.075 (1k) A person who has been subject to a seizure of property has a right to a pretrial hearing under s. 968.20.

SECTION 44. 973.075 (1m) of the statutes is created to read:

973.075 (1m) The property of an innocent owner may not be forfeited. A person who claims to be an innocent owner may follow the procedures under s. 973.076 (5).

SECTION 45. 973.075 (1r) of the statutes is created to read:

973.075 (1r) If a law enforcement officer or agency or state or local employee or agency refers seized property to a federal agency directly, indirectly, by adoption, through an intergovernmental joint task force, or by other means, for the purposes of forfeiture litigation, the agency shall produce an itemized report of actual forfeiture expenses, including administrative expenses of seizure, maintenance of custody, advertising, and court costs and the costs of investigation and prosecution reasonably incurred, and submit the report to the department of administration to make it available on the department's website. If there is a federal or state criminal conviction for the crime that was the basis for the seizure, the agency may accept all proceeds. If there is no federal or state criminal conviction, the agency may not accept any proceeds, except that the agency may accept all proceeds if one of the following circumstances applies and is explained in the report submitted under this subsection:

(a) The defendant has died.

(b) The defendant was deported by the U.S. government.

(c) The defendant has been granted immunity in exchange for testifying or otherwise assisting a law enforcement investigation or prosecution.

(d) The defendant fled the jurisdiction.

(e) The property has been unclaimed for a period of at least 9 months.

SECTION 46. 973.075 (4) of the statutes is renumbered 973.075 (4) (intro.) and amended to read:

973.075 (4) (intro.) When property is forfeited under ss. 973.075 to 973.077, the agency seizing the property may sell shall do one of the following:

(b) Sell the property that is not required by law to be destroyed or transferred to another agency. ~~The agency may retain any vehicle for official use or sell the vehicle.~~ The agency seizing the property may ~~deduct~~ use a portion, not to exceed 50 percent, of the amount received for administrative expenses of seizure, maintenance of custody, advertising, and court costs and the costs of investigation and prosecution reasonably incurred if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department's website.

The remainder shall be deposited in the school fund as the proceeds of the forfeiture.

(c) If the property forfeited ~~under ss. 973.075 to 973.077~~ is money, deposit all the money ~~shall be deposited~~ in the school fund.

SECTION 47. 973.075 (4) (a) of the statutes is created to read:

973.075 (4) (a) If the property is a vehicle, retain it for official use for a period of up to one year. Before the end of that period, the agency shall do one of the following:

1. Sell the property and use a portion, not to exceed 50 percent, of the amount received for payment of forfeiture expenses if the agency produces an itemized report of actual forfeiture expenses and submits the report to the department of administration to make it available on the department's website. The remainder shall be deposited in the school fund as proceeds of the forfeiture. In this subdivision, "forfeiture expenses" include all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs and the costs of investigation and prosecution reasonably incurred.

2. Continue to retain the property, if the agency deposits 30 percent of the value of the vehicle, as determined by the department of revenue, in the school fund as proceeds of the forfeiture. If the agency sells the vehicle at a later time and receives as proceeds from the sale an amount in excess of the amount previously deposited in the school fund, the agency shall deposit the excess in the school fund.

SECTION 48. 973.075 (5) (intro.) of the statutes is amended to read:

973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made with due provision for the rights of innocent persons under ~~sub. (1) (b) 2m., (bg), (bm), (d) and (e) subs. (1g), (1k), and (1m).~~ Except as provided in ~~sub. (5m) (5r),~~ any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned as soon as practically possible if:

SECTION 49. 973.075 (5m) of the statutes is repealed.

SECTION 50. 973.075 (5r) of the statutes is created to read:

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

SECTION 51. 973.076 (1) (a) of the statutes is amended to read:

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

SECTION 52. 973.076 (1) (b) 1. of the statutes is amended to read:

973.076 (1) (b) 1. The district attorney of the county within which the property was seized or in which the defendant is convicted shall commence the forfeiture action within 30 days after the seizure of the property or the date of conviction, whichever is earlier, ~~except that the defendant may request that~~ and the forfeiture proceedings shall be adjourned until after adjudication the defendant is convicted of any charge concerning a crime which was the basis for the seizure of the property. ~~The request shall be granted~~ If property is seized, a charge shall be issued within 6 months after the seizure, except that an unlimited number of 6-month extensions may be granted if, for each extension, a judge determines probable cause is shown and the additional time is warranted. If no charge is issued within 6 months after the seizure, or a 6-month extension is not granted, the seized property shall be returned to the owner. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with ch. 801 within 90 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

SECTION 53. 973.076 (1) (b) 1m. of the statutes is created to read:

973.076 (1) (b) 1m. Upon motion by the prosecuting attorney, the court may waive the conviction requirement under subd. 1. if the prosecuting attorney shows by clear and convincing evidence that any of the following applies:

- a. The defendant has died.
- b. The defendant was deported by the U.S. government.
- c. The defendant has been granted immunity in exchange for testifying or otherwise assisting a law enforcement investigation or prosecution.
- d. The defendant fled the jurisdiction.
- e. The property has been unclaimed for a period of at least 9 months.
- f. The property is contraband that is subject to forfeiture under s. 961.55 (6), (6m), or (7).

SECTION 54. 973.076 (2m) (a) of the statutes is amended to read:

973.076 (2m) (a) In addition to any penalties under this chapter, the court shall, with due provision for the rights of innocent persons in accordance with sub. (5), order forfeiture of any property specified in s. 973.075 (1) in accordance with pars. (b), (c), and (d).

SECTION 55. 973.076 (3) of the statutes is amended to read:

973.076 (3) BURDEN OF PROOF. The state shall have the burden of ~~satisfying or proving by clear and~~ convincing to a reasonable certainty by the greater weight of the credible evidence that the property is subject to forfeiture under ~~s. ss.~~ 973.075 to 973.077.

SECTION 56. 973.076 (3g) of the statutes is created to read:

973.076 (3g) PRIVILEGES. The defendant or convicted offender may invoke the right against self-incrimination or the marital privilege during the forfeiture-related stage of the prosecution. The trier of fact at the hearing may draw an adverse inference from the invocation of the right or privilege.

SECTION 57. 973.076 (3m) of the statutes is created to read:

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

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

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

1. The seriousness of the offense.
2. The purpose of the statute authorizing the forfeiture.
3. The maximum fine for the offense.
4. The harm that actually resulted from the defendant's conduct.

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

SECTION 58. 973.076 (5) of the statutes is created to read:

973.076 (5) INNOCENT OWNERS. (a) Notwithstanding sub. (1) (b) 1., a person who claims to have an ownership interest in property subject to forfeiture as an innocent owner may petition the court for the return of his or her seized property at any time.

(b) A person who has an ownership interest in property subject to forfeiture that exists at the occurrence of the illegal conduct giving rise to the forfeiture and who claims to be an innocent owner has the burden of proving by clear and convincing evidence that he or she has a legal right, title, or interest in the property seized under this chapter.

(c) If the requisite showing under par. (b) has been made, in order to proceed with a forfeiture action against the property, the state has the burden of proving by clear and convincing evidence that the person had actual or constructive knowledge of the underlying crime giving rise to the forfeiture.

(d) A person who has an ownership interest in property subject to forfeiture that he or she acquired after the occurrence of the conduct giving rise to the forfeiture and who claims to be an innocent owner has the burden of proving by clear and convincing evidence that he or she has a legal right, title, or interest in the property seized under this chapter.

(e) If the requisite showing under par. (d) has been made, in order to proceed with a forfeiture action against the property, the state has the burden of proving by clear and convincing evidence that the person had actual or constructive knowledge that the property was subject to forfeiture or that the person was not a bona fide purchaser without notice of any defect in title and for valuable consideration.

(f) If the state does not meet the burden under par. (c) or (e) as to any property, the court shall find that the prop-

erty is the property of an innocent owner and not subject to forfeiture under this chapter and shall order the state to relinquish all claims of title to the property.

SECTION 59. 973.076 (6) of the statutes is created to read:

973.076 (6) RETURN OF PROPERTY. The court shall order the return of any property subject to forfeiture under ss. 973.075 to 973.077 within 30 days of acquittal or dismissal of charges for the offense which was the basis of the forfeiture action, or 6 months after a seizure which was the basis of the forfeiture action if no charges have been issued and no extension has been granted. If the property is co-owned by 2 or more defendants in a criminal action, and one or more defendant co-owners are acquitted or the charges against him or her are dismissed, the court shall have discretion to dispose of the co-owned property in accordance with the proportionality guidelines in sub. (3m) as he or she deems appropriate.

SECTION 60. 973.076 (7) of the statutes is created to read:

973.076 (7) ATTORNEY FEES. A person who prevails in an action to return property subject to forfeiture under ss. 973.075 to 973.077 may be awarded reasonable attorney fees by the state if the court finds that the forfeiting agency or prosecuting attorney has arbitrarily and capriciously pursued the forfeiture action.

SECTION 61. Initial applicability.

(1) This act first applies to property that is seized on the effective date of this subsection.
