

**First Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 09-0489.01 Michael Dohr

**HOUSE BILL 09-1238**

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**HOUSE SPONSORSHIP**

**Rice,**

**SENATE SPONSORSHIP**

**Shaffer B.,**

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**House Committees**  
Judiciary

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING CIVIL FORFEITURE.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Adds a building knowingly used for housing or place of employment for a victim of human trafficking to the list of buildings that may be forfeited. Repeals specific requirements for forfeiture actions, including but not limited to the following:

- ! That a conviction must be obtained in the same jurisdiction as the jurisdiction in which the forfeiture action is brought;
- ! That in specified circumstances a forfeiture action may proceed and judgment may be entered without a criminal conviction of the owner; and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

! That all forfeiture actions shall proceed in state district court if the property was seized by a local or state law enforcement agency as a result of an ongoing state criminal investigation.

Allows a court to order any property subject to forfeiture to be sold by a sheriff in the manner provided for sales on execution. States how the proceeds of the sale shall be applied, including providing funding for mental health treatment and a victim notification network.

Repeals the requirement that an annual forfeiture report be filed with the department of local affairs.

Makes conforming amendments.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Repeal.** 16-13-301 (2.1), Colorado Revised  
3 Statutes, is repealed as follows:

4 **16-13-301. Definitions.** As used in this part 3, unless the context  
5 otherwise requires:

6 (2.1) ~~"Conviction" means a verdict of guilty by a judge or jury or~~  
7 ~~a plea of guilty or nolo contendere that is accepted by the court or~~  
8 ~~adjudication for an offense that would constitute a criminal offense if~~  
9 ~~committed by an adult.~~

10 **SECTION 2.** 16-13-303 (1) (m) (III) and (1) (n), Colorado  
11 Revised Statutes, are amended, and the said 16-13-303 (1) is further  
12 amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

13 **16-13-303. Class 1 public nuisance.** (1) Every building or part  
14 of a building including the ground upon which it is situate and all fixtures  
15 and contents thereof, every vehicle, and any real property shall be deemed  
16 a class 1 public nuisance when:

17 (m) (III) Used for the unlawful manufacture, production, sale,  
18 distribution, or for storage or possession for any unlawful manufacture,  
19 sale, or distribution of any gaming device, as defined in section

1 12-47.1-103 (10), C.R.S., or any other gaming device, equipment, key,  
2 electronic or mechanical device, slot machine, bogus chips, counterfeit  
3 chips, cards, coins, gaming billets, cheating device, thieving device, tools,  
4 drills, or wires used in violation of article 47.1 of title 12, C.R.S., or in  
5 violation of article 20 of title 18, C.R.S.; or

6 (n) Used in committing, attempting to commit, or conspiring to  
7 commit against an elderly person any felony set forth in part 4 of article  
8 4 of title 18, C.R.S., in part 1, 2, 3, or 5 of article 5 of title 18, C.R.S.,  
9 article 5.5 of title 18, C.R.S., or section 11-51-603, C.R.S. For purposes  
10 of this paragraph (n), an "elderly person" means a person sixty years of  
11 age or older; OR

12 (o) USED AS HOUSING OR AS A PLACE OF EMPLOYMENT FOR A  
13 VICTIM OF TRAFFICKING IN ADULTS AS DESCRIBED IN SECTION 18-13-127,  
14 C.R.S., OR SMUGGLING OF HUMANS AS DESCRIBED IN SECTION 18-13-128,  
15 C.R.S.

16 **SECTION 3.** 16-13-303 (5.1) (b) (II) and (5.2) (d), Colorado  
17 Revised Statutes, are amended to read:

18 **16-13-303. Class 1 public nuisance.** (5.1) (b) As used in  
19 paragraph (a) of this subsection (5.1), an owner was a "party to the  
20 creation of the public nuisance" if it is established that:

21 (II) The owner knew OR REASONABLY SHOULD HAVE KNOWN of  
22 the public nuisance act or had notice of the acts creating the public  
23 nuisance or prior similar conduct;

24 (5.2) (d) A person who is convicted of a criminal offense arising  
25 from the same activity giving rise to the forfeiture proceedings ~~in~~  
26 ~~accordance with section 16-13-307 (1.5)~~ shall not be eligible to assert an  
27 innocent owner defense.

1           **SECTION 4. Repeal.** 16-13-307 (1.5) and (1.6), the introductory  
2           portion to 16-13-307 (1.7), and 16-13-307 (1.7) (a) (II), (1.7) (b), (1.7)  
3           (c), (1.7) (d), (1.7) (e), (1.7) (f), (1.8), and (2.5), Colorado Revised  
4           Statutes, are repealed as follows:

5           **16-13-307. Jurisdiction - venue - parties - process.** (1.5) ~~No~~  
6           ~~judgment of forfeiture of property in any forfeiture proceeding shall be~~  
7           ~~entered unless and until an owner of the property is convicted of an~~  
8           ~~offense listed in section 16-13-301 or 16-13-303, or a lesser included~~  
9           ~~offense of an eligible offense if the conviction is the result of a negotiated~~  
10          ~~guilty plea. Nothing in this section shall be construed to require the~~  
11          ~~conviction to be obtained in the same jurisdiction as the jurisdiction in~~  
12          ~~which the forfeiture action is brought. In the event criminal charges~~  
13          ~~arising from the same activity giving rise to the forfeiture proceedings are~~  
14          ~~filed against any individual claiming an interest in the property subject to~~  
15          ~~the forfeiture proceeding, the trial and discovery phases of the forfeiture~~  
16          ~~proceeding shall be stayed by the court until the disposition of the~~  
17          ~~criminal charges. A stay shall not be maintained during an appeal or~~  
18          ~~post-conviction proceeding challenging a criminal conviction. Nothing~~  
19          ~~in this section shall be construed to prohibit or prevent the parties from~~  
20          ~~contemporaneously resolving criminal charges and a forfeiture~~  
21          ~~proceeding arising from the same activity.~~

22          (1.6) ~~Upon acquittal or dismissal of a criminal action against a~~  
23          ~~person named in a forfeiture action related to the criminal action, unless~~  
24          ~~the forfeiture action was brought pursuant to one or more of paragraphs~~  
25          ~~(a) to (f) of subsection (1.7) of this section, the forfeiture claim shall be~~  
26          ~~dismissed and the seized property shall be returned as respects the subject~~  
27          ~~matter property or interest therein of that person, if the case has been~~

1 adjudicated as to all other claims, interests, and owners, unless possession  
2 of the property is illegal. If the forfeiture action is dismissed or judgment  
3 is entered in favor of the claimant, the claimant shall not be subject to any  
4 monetary charges by the state for storage of the property or expenses  
5 incurred in the preservation of the property, unless at the time of dismissal  
6 the plaintiff shows that those expenses would have been incurred to  
7 prevent waste of the property even if it had not been seized.

8 (1.7) Notwithstanding the provisions of subsection (1.5) of this  
9 section:

10 (a) (II) If a person lacks standing pursuant to this paragraph (a),  
11 the forfeiture action may proceed and a judgment of forfeiture may be  
12 entered without a criminal conviction of an owner, upon motion and  
13 notice as provided in the rules of civil procedure.

14 (b) If, following notice to all persons known to have an interest,  
15 or who have asserted an interest in the property subject to forfeiture, an  
16 owner fails to file an answer or other appropriate pleading with the court  
17 claiming an interest in the subject matter property, or no person  
18 establishes standing to contest the forfeiture action pursuant to section  
19 16-13-303 (5), a forfeiture action may proceed and a judgment of  
20 forfeiture may be entered without a criminal conviction of an owner.

21 (c) If the plaintiff proves by clear and convincing evidence that  
22 the property was instrumental in the commission of an offense listed in  
23 section 16-13-303 (1) or that the property is traceable proceeds of the  
24 offense or related criminal activity by a nonowner and the plaintiff proves  
25 by clear and convincing evidence that an owner is not an innocent owner  
26 pursuant to section 16-13-303 (5.2) (a), a judgment of forfeiture may be  
27 entered without a criminal conviction of an owner.

1           (d) ~~If an owner of the property who was involved in the public~~  
2 ~~nuisance act or conduct giving rise to the claim of forfeiture subsequently~~  
3 ~~dies, and was not an innocent owner pursuant to section 16-13-303 (5.2)~~  
4 ~~(a), a judgment of forfeiture may be entered without a criminal conviction~~  
5 ~~of an owner.~~

6           (e) ~~If an owner received a deferred judgment, deferred sentence,~~  
7 ~~or participated in a diversion program, or in the case of a juvenile a~~  
8 ~~deferred adjudication or deferred sentence or participated in a diversion~~  
9 ~~program for the offense, a judgment of forfeiture may be entered without~~  
10 ~~a criminal conviction.~~

11           (f) ~~A defendant or claimant shall be permitted to waive the~~  
12 ~~requirement of a criminal conviction in order to settle a forfeiture action.~~

13           (1.8) ~~Nothing in this section shall be construed to limit the~~  
14 ~~temporary seizure of property for evidentiary, investigatory, or protective~~  
15 ~~purposes.~~

16           (2.5) ~~All forfeiture actions shall proceed in state district court if~~  
17 ~~the property was seized by a local or state law enforcement agency as a~~  
18 ~~result of an ongoing state criminal investigation and the owner is being~~  
19 ~~prosecuted in state court. Unless directed by an authorized agent of the~~  
20 ~~federal government, no state or local law enforcement agency may~~  
21 ~~transfer any property seized by the state or local agency to a federal~~  
22 ~~agency for forfeiture under federal law unless an owner of the property~~  
23 ~~is being prosecuted in federal court.~~

24           **SECTION 5.** 16-13-308 (1) (f), Colorado Revised Statutes, is  
25 amended to read:

26           **16-13-308. Temporary restraining order - preliminary**  
27 **injunction - when to issue.** (1) (f) Any person with an ownership

1 interest adversely affected by a temporary restraining order issued  
2 pursuant to this subsection (1) may file a motion to vacate the temporary  
3 restraining order. ~~Such~~ THE motion shall be filed within ten days ~~of~~  
4 AFTER the time said person is served with or otherwise has notice of the  
5 temporary restraining order. The motion shall be set for hearing within  
6 ten days after its filing. At said hearing, the court shall determine  
7 whether the various provisions of the temporary restraining order should  
8 remain in effect pending final determination of the action. No part of the  
9 temporary restraining order shall be vacated unless the proponent of the  
10 motion demonstrates that there is no probable cause to believe that a  
11 public nuisance exists or that the public nuisance acts underlying the  
12 action occurred, or that the proponent has a reasonable likelihood of  
13 prevailing on the merits of the case with respect to the temporary seizure  
14 or closure of the property. No issue regarding the forfeiture of the  
15 property shall be raised at the hearing on the motion, except the court may  
16 consider an innocent owner defense pursuant to section 16-13-303 (5.2)  
17 by a proponent who has not been charged in a parallel criminal action  
18 arising from the same activity giving rise to the forfeiture proceedings.  
19 When the innocent owner defense is raised as grounds for vacating the  
20 order, the issues at the hearing shall be limited to modifying the order to  
21 provide for the use of the property during the pendency of the action by  
22 an innocent owner, but only if such use is consistent with preserving it for  
23 forfeiture as to any other interest. Such a modifying order may include,  
24 without limitation, reasonable provisions for the continued occupancy of  
25 a residence, or the operation of a business and the sale or disposition of  
26 business inventory. However, no such modifying order shall include the  
27 release of currency. The determination of the facts by the court at the

1 hearing is independent of and shall not be considered in the determination  
2 of the same or similar facts in the adjudication of any criminal charges  
3 arising out of the same occurrences. Any motion to vacate a temporary  
4 restraining order shall state specifically the factual and legal grounds  
5 upon which it is based, and only those grounds may be considered at the  
6 hearing. Until vacated, the temporary restraining order shall remain in  
7 full force and effect.

8 **SECTION 6.** 16-13-311 (3), Colorado Revised Statutes, is  
9 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

10 **16-13-311. Disposition of seized personal property - county jail**  
11 **mental health aftercare - victim notification network fund.**

12 (3) (a) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE COURT  
13 MAY ORDER THE PROPERTY SOLD BY THE SHERIFF IN THE MANNER  
14 PROVIDED FOR SALES ON EXECUTION. THE PROCEEDS OF THE SALE SHALL  
15 BE APPLIED AS FOLLOWS:

16 (I) TO THE FEES AND COSTS OF REMOVAL AND SALE;

17 (II) TO THE ALLOWANCE AND COST OF CLOSING AND KEEPING  
18 CLOSED THE BUILDING OR PLACE WHERE THE PROPERTY WAS SEIZED  
19 PURSUANT TO THE PROVISIONS OF THIS PART 3; AND

20 (III) TO THE PAYMENT OF THE PLAINTIFF'S COSTS IN SUCH ACTION.

21 (b) THE BALANCE OF THE SALE PROCEEDS REMAINING AFTER  
22 DISTRIBUTION PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3), IF  
23 ANY, SHALL BE DISTRIBUTED AS FOLLOWS:

24 (I) FORTY PERCENT TO THE SEIZING AGENCY IF THE COURT FINDS  
25 THAT THE AGENCY CAN USE THE PROCEEDS TO COVER THE COSTS  
26 ASSOCIATED WITH THE INVESTIGATION OF THE FORFEITURE ACTION. AN  
27 ADVISORY COMMITTEE SHALL REVIEW AND APPROVE THE SEIZING

1 AGENCY'S EXPENDITURE OF THE PROCEEDS RECEIVED PURSUANT TO THIS  
2 SUBPARAGRAPH (I). THE ADVISORY COMMITTEE SHALL CONSIST OF THE  
3 CHIEF JUDGE OF THE JUDICIAL DISTRICT THAT SERVES THE SEIZING  
4 AGENCY'S JURISDICTION, A CHIEF OF POLICE OR SHERIFF FROM THE  
5 JUDICIAL DISTRICT THAT SERVES THE SEIZING AGENCY'S JURISDICTION  
6 APPOINTED BY THE CHIEF JUDGE, AND THE DISTRICT ATTORNEY FOR THE  
7 JUDICIAL DISTRICT THAT SERVES THE SEIZING AGENCY'S JURISDICTION. AN  
8 INDEPENDENT AUDITOR SHALL AUDIT THE SEIZING AGENCY'S EXPENDITURE  
9 OF THE PROCEEDS ON AN ANNUAL BASIS.

10 (II) TWENTY PERCENT TO THE COUNTY IN WHICH THE FORFEITURE  
11 WAS MADE. THE COUNTY SHALL DIRECT THE PROCEEDS RECEIVED  
12 PURSUANT TO THIS SUBPARAGRAPH (II) AS FOLLOWS:

13 (A) HALF TO THE COMMUNITY MENTAL HEALTH CENTER IN THE  
14 COUNTY IN WHICH THE FORFEITURE WAS MADE TO PROVIDE ASSISTANCE  
15 FOR THE MENTAL HEALTH NEEDS OF OFFENDERS LEAVING THAT COUNTY  
16 JAIL; AND

17 (B) HALF TO BE DIVIDED EQUALLY AMONG ANY MENTAL HEALTH  
18 CRISIS TRIAGE CENTERS LOCATED IN THE COUNTY OR, IF THE COUNTY DOES  
19 NOT HAVE A MENTAL HEALTH CRISIS TRIAGE CENTER, HALF TO A TRIAGE  
20 CENTER THAT SERVES A GROUP OF COUNTIES THAT INCLUDES THE COUNTY  
21 IN WHICH THE FORFEITURE WAS MADE. IF THE COUNTY IS NOT SERVED BY  
22 AN ACTIVE MENTAL HEALTH CRISIS TRIAGE CENTER, THE PROCEEDS THAT  
23 WOULD HAVE BEEN DIRECTED TO TRIAGE CENTERS PURSUANT TO THIS  
24 SUB-SUBPARAGRAPH (B) SHALL BE DIRECTED TO A MENTAL HEALTH  
25 CENTER IN THE COUNTY IN WHICH THE FORFEITURE WAS MADE TO PROVIDE  
26 ASSISTANCE FOR THE MENTAL HEALTH NEEDS OF CONSUMERS AT RISK OF  
27 INCARCERATION OR REINCARCERATION.

1 (III) TWENTY PERCENT TO THE DISTRICT ATTORNEY FOR ACTUAL  
2 AND REASONABLE EXPENSES RELATED TO THE COSTS OF PROSECUTING THE  
3 FORFEITURE PROCEEDING AND TITLE TRANSFER; AND

4 (IV) TWENTY PERCENT TO THE STATE TREASURER, WHO SHALL  
5 CREDIT THE SAME TO THE VICTIM NOTIFICATION NETWORK FUND, WHICH  
6 FUND IS HEREBY CREATED AND REFERRED TO IN THIS SUBPARAGRAPH (IV)  
7 AS THE "FUND". THE MONEYS IN THE FUND SHALL BE SUBJECT TO ANNUAL  
8 APPROPRIATION BY THE GENERAL ASSEMBLY TO THE OFFICE OF  
9 INFORMATION TECHNOLOGY CREATED IN SECTION 24-37.5-103, C.R.S.,  
10 FOR THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH THE  
11 IMPLEMENTATION AND MAINTENANCE OF A STATEWIDE VICTIM  
12 NOTIFICATION NETWORK. ANY MONEYS IN THE FUND NOT EXPENDED FOR  
13 THE PURPOSE OF THIS SUBPARAGRAPH (IV) MAY BE INVESTED BY THE  
14 STATE TREASURER AS PROVIDED BY LAW. ALL INTEREST AND INCOME  
15 DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEYS IN THE FUND  
16 SHALL BE CREDITED TO THE FUND. ANY UNEXPENDED AND  
17 UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF A  
18 FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT BE CREDITED OR  
19 TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

20 (c) IN LIEU OF ORDERING THE SALE OF THE SEIZED PROPERTY, THE  
21 COURT SHALL, IF IT FINDS THAT THE PROPERTY CAN BE USED BY THE  
22 AGENCY THAT SEIZED IT, ORDER THE PROPERTY DELIVERED TO THE  
23 AGENCY FOR ITS USE.

24 **SECTION 7.** 16-13-311 (4), Colorado Revised Statutes, is  
25 amended to read:

26 **16-13-311. Disposition of seized personal property.** (4) It is  
27 the intent of the general assembly that moneys allocated to a seizing

1 agency OR DISTRICT ATTORNEY pursuant to subsection (3) of this section  
2 shall not be considered a source of revenue to meet normal operating  
3 needs.

4 **SECTION 8. Repeal.** 16-13-502 (1.5), Colorado Revised  
5 Statutes, is repealed as follows:

6 **16-13-502. Definitions.** As used in this part 5, unless the context  
7 otherwise requires:

8 (1.5) ~~"Conviction" means a verdict of guilty by a judge or jury or~~  
9 ~~a plea of guilty or nolo contendere that is accepted by the court or~~  
10 ~~adjudication for an offense that would constitute a criminal offense if~~  
11 ~~committed by an adult.~~

12 **SECTION 9. Repeal.** 16-13-505 (1.5) and (1.6), the introductory  
13 portion to 16-13-505 (1.7), and 16-13-505 (1.7) (a) (II), (1.7) (b), (1.7)  
14 (c), (1.7) (d), (1.7) (e), (1.7) (f), and (2.5), Colorado Revised Statutes, are  
15 repealed as follows:

16 **16-13-505. Forfeiture proceedings.** (1.5) ~~No judgment of~~  
17 ~~forfeiture of property in any forfeiture proceeding shall be entered unless~~  
18 ~~and until an owner of the property is convicted of an offense involving~~  
19 ~~the conduct listed in section 16-13-503, or a lesser included offense of an~~  
20 ~~eligible offense if the conviction is the result of a negotiated guilty plea.~~  
21 ~~Nothing in this section shall be construed to require the conviction to be~~  
22 ~~obtained in the same jurisdiction as the jurisdiction in which the forfeiture~~  
23 ~~action is brought. In the event criminal charges arising from the same~~  
24 ~~activity giving rise to the forfeiture proceedings are filed against any~~  
25 ~~individual claiming an interest in the property subject to the forfeiture~~  
26 ~~proceeding, the trial and discovery phases of the forfeiture proceeding~~  
27 ~~shall be stayed by the court until the disposition of the criminal charges.~~

1 ~~A stay shall not be maintained during an appeal or post-conviction~~  
2 ~~proceeding challenging a criminal conviction. Nothing in this section~~  
3 ~~shall be construed to prohibit or prevent the parties from~~  
4 ~~contemporaneously resolving criminal charges and a forfeiture~~  
5 ~~proceeding arising from the same activity.~~

6 (1.6) ~~Upon acquittal or dismissal of a criminal action against a~~  
7 ~~person named in a forfeiture action related to the criminal action, unless~~  
8 ~~the forfeiture action was brought pursuant to one or more of paragraphs~~  
9 ~~(a) to (f) of subsection (1.7) of this section, the forfeiture claim shall be~~  
10 ~~dismissed and the seized property shall be returned as respects the subject~~  
11 ~~matter property or interest therein of that person, if the case has been~~  
12 ~~adjudicated as to all other claims, interests, and owners, unless possession~~  
13 ~~of the property is illegal. If the forfeiture action is dismissed or judgment~~  
14 ~~is entered in favor of the claimant, the claimant shall not be subject to any~~  
15 ~~monetary charges by the state for storage of the property or expenses~~  
16 ~~incurred in the preservation of the property, unless at the time of dismissal~~  
17 ~~the plaintiff shows that those expenses would have been incurred to~~  
18 ~~prevent waste of the property even if it had not been seized.~~

19 (1.7) ~~Notwithstanding the provisions of subsection (1.5) of this~~  
20 ~~section:~~

21 (a) (II) ~~If a person lacks standing pursuant to this paragraph (a),~~  
22 ~~the forfeiture action may proceed and a judgment of forfeiture may be~~  
23 ~~entered without a criminal conviction of an owner, upon motion and~~  
24 ~~notice as provided in the rules of civil procedure.~~

25 (b) ~~If, following notice to all persons known to have an interest or~~  
26 ~~who have asserted an interest in the property subject to forfeiture, an~~  
27 ~~owner fails to file an answer or other appropriate response with the court~~

1 ~~claiming an interest in the subject matter property, or no person~~  
2 ~~establishes standing to contest the forfeiture action pursuant to section~~  
3 ~~16-13-504 (2), a forfeiture action may proceed and a judgment of~~  
4 ~~forfeiture may be entered without a criminal conviction of an owner.~~

5 (c) ~~If the plaintiff proves by clear and convincing evidence that~~  
6 ~~the property was instrumental in the commission of an offense listed in~~  
7 ~~section 16-13-503 (1) or that the property is traceable proceeds of the~~  
8 ~~offense or related criminal activity by a nonowner and the plaintiff proves~~  
9 ~~by clear and convincing evidence that an owner is not an innocent owner~~  
10 ~~pursuant to section 16-13-504 (2.2), a judgment of forfeiture may be~~  
11 ~~entered without a criminal conviction of an owner.~~

12 (d) ~~If an owner of the property who was involved in the public~~  
13 ~~nuisance act or conduct giving rise to the claim of forfeiture subsequently~~  
14 ~~dies, and was not an innocent owner pursuant to section 16-13-504 (2.2),~~  
15 ~~a judgment of forfeiture may be entered without a criminal conviction of~~  
16 ~~an owner.~~

17 (e) ~~If an owner received a deferred judgment, deferred sentence,~~  
18 ~~or participated in a diversion program, or in the case of a juvenile a~~  
19 ~~deferred adjudication or deferred sentence or participated in a diversion~~  
20 ~~program for the offense, a judgment of forfeiture may be entered without~~  
21 ~~a criminal conviction.~~

22 (f) ~~A defendant or claimant shall be permitted to waive the~~  
23 ~~requirement of a criminal conviction in order to settle a forfeiture action.~~

24 (2.5) ~~All forfeiture actions shall proceed in state district court if~~  
25 ~~the property was seized by a local or state law enforcement agency as a~~  
26 ~~result of an ongoing state criminal investigation and the owner is being~~  
27 ~~prosecuted in state court. Unless, directed by an authorized agent of the~~

1 ~~federal government, no state or local law enforcement agency may~~  
2 ~~transfer any property seized by the state or local agency to a federal~~  
3 ~~agency for forfeiture under federal law unless an owner of the property~~  
4 ~~is being prosecuted in federal court.~~

5 **SECTION 10.** 16-13-601, Colorado Revised Statutes, is amended  
6 to read:

7 **16-13-601. Receipt of federally forfeited property.** Any agency  
8 charged with the enforcement of the laws of this state, including the  
9 Colorado National Guard when participating in operations pursuant to the  
10 drug interdiction and enforcement plan required by part 13 of article 3 of  
11 title 28, C.R.S., is authorized to accept, receive, dispose of, and expend  
12 the property or proceeds from any property forfeited to the federal  
13 government and allocated to such agency by the United States attorney  
14 general pursuant to 21 U.S.C. sec. 881 (e). Such revenues shall be in  
15 addition to the moneys appropriated to such law enforcement agency by  
16 the general assembly or any unit of local government. Said property or  
17 proceeds may be credited to any lawfully created fund designated to  
18 receive proceeds of forfeitures. ~~Any proceeds received pursuant to this~~  
19 ~~section are exempt from the distribution requirements of section~~  
20 ~~16-13-311 (3) (a).~~

21 **SECTION 11. Repeal.** 16-13-701 (2), (3), (4), and (5), Colorado  
22 Revised Statutes, are repealed as follows:

23 **16-13-701. Reporting of forfeited property.** (2) ~~The report~~  
24 ~~required in this section shall be filed with the department of local affairs~~  
25 ~~and shall constitute a public record and shall be open to inspection as~~  
26 ~~provided in part 2 of article 72 of title 24, C.R.S., commonly known as~~  
27 ~~the "Public Records Act".~~

1           (3) ~~Any state or local law enforcement agency or~~  
2 ~~multijurisdictional task force that receives proceeds from federal~~  
3 ~~forfeiture actions shall submit a copy to the department of local affairs of~~  
4 ~~any accounting report filed by such agency pursuant to federal law or~~  
5 ~~regulation. The federal annual accounting report shall constitute a public~~  
6 ~~record and shall be open to inspection as provided in part 2 of article 72~~  
7 ~~of title, 24, C.R.S., commonly known as the "Public Records Act". Such~~  
8 ~~information shall be subject to audit in accordance with part 6 of article~~  
9 ~~1 of title 29, C.R.S.~~

10           (4) ~~The alcohol and drug abuse division in the department of~~  
11 ~~human services shall prepare an annual accounting report of moneys~~  
12 ~~received by the managed service organization pursuant to section~~  
13 ~~16-13-311 (3) (a) (VII) (B), including revenues, expenditures, beginning~~  
14 ~~and ending balances, and services provided. The alcohol and drug abuse~~  
15 ~~division shall provide this information in its annual report pursuant to~~  
16 ~~section 25-1-210, C.R.S.~~

17           (5) ~~Any report submitted pursuant to this section shall be subject~~  
18 ~~to audit in accordance with part 6 of article 1 of title 29, C.R.S.~~

19           **SECTION 12.** 18-17-106 (5), Colorado Revised Statutes, is  
20 amended, and the said 18-17-106 is further amended BY THE  
21 ADDITION OF A NEW SUBSECTION, to read:

22           **18-17-106. Civil remedies.** (5) The attorney general or district  
23 attorney may institute civil proceedings under this section. ~~Any action~~  
24 ~~instituted under this section shall conform to the procedures set forth in~~  
25 ~~part 3 or part 5 of article 13 of title 16, C.R.S.~~ In any action brought  
26 under this section, the district court shall proceed as soon as practicable  
27 to the hearing and determination. Pending final determination, the district

1 court may, at any time, enter such injunctions, prohibitions, or restraining  
2 orders or take such actions, including the acceptance of satisfactory  
3 performance bonds, as the court may deem proper.

4 (13) AN ACTION MAY BE COMMENCED AND HEARD PURSUANT TO  
5 THIS SECTION EVEN IF THE DEFENDANT HAS NOT BEEN CHARGED OR  
6 CONVICTED IN A CRIMINAL PROSECUTION UNDER THIS ARTICLE.

7 **SECTION 13.** 27-1-204 (5.5), Colorado Revised Statutes, is  
8 amended to read:

9 **27-1-204. Types of services purchased - limitation on**  
10 **payments - offender mental health services fund.** (5.5) The offender  
11 mental health services fund is hereby created in the state treasury. The  
12 principal of the fund shall consist of tobacco litigation settlement moneys  
13 transferred by the state treasurer to the fund in accordance with section  
14 24-75-1104.5 (1.5) (a) (II), C.R.S., AND MONEYS TRANSFERRED BY THE  
15 STATE TREASURER TO THE FUND IN ACCORDANCE WITH SECTION 16-13-311  
16 (3) (b) (II), C.R.S., for the purchase of mental health services for juvenile  
17 and adult offenders who have mental health problems and are involved  
18 in the criminal justice system. The division of mental health in the  
19 department of human services, subject to annual appropriation by the  
20 general assembly, shall distribute the principal of the fund to the  
21 community mental health centers; except that, at the end of the 2007-08  
22 fiscal year and at the end of each fiscal year thereafter, all unexpended  
23 and unencumbered principal of the fund shall be transferred to the  
24 short-term innovative health program grant fund created in section  
25 25-36-101 (2), C.R.S., in accordance with section 24-75-1104.5 (1.5) (b),  
26 C.R.S. Interest and income earned on the deposit and investment of  
27 moneys in the offender mental health services fund shall be credited to

1 the fund and shall remain in the fund until the end of the fiscal year in  
2 which credited, when it shall be transferred to the short-term innovative  
3 health program grant fund.

4 **SECTION 14. Effective date - applicability.** This act shall take  
5 effect July 1, 2009, and shall apply to all forfeiture actions filed on or  
6 after said date.

7 **SECTION 15. Safety clause.** The general assembly hereby finds,  
8 determines, and declares that this act is necessary for the immediate  
9 preservation of the public peace, health, and safety.