

As Passed by the Senate

131st General Assembly

Regular Session

2015-2016

Sub. H. B. No. 347

Representatives McColley, Brinkman

Cosponsors: Representatives Antani, Becker, Brenner, Dever, Duffey, Hambley, Henne, Hood, LaTourette, Retherford, Roegner, Schuring, Terhar, Thompson, Vitale, Young, Zeltwanger, Amstutz, Koehler, Rezabek, Romanchuk

Senators LaRose, Coley, Balderson, Beagle, Brown, Burke, Eklund, Faber, Hackett, Hottinger, Jones, Jordan, Lehner, Obhof, Peterson, Seitz, Tavares, Thomas, Uecker

A BILL

To amend sections 2329.84, 2329.85, 2329.86, 1
2981.01, 2981.03, 2981.04, 2981.05, 2981.06, 2
2981.09, 2981.11, and 2981.14 and to enact 3
section 2927.21 of the Revised Code to modify 4
the laws governing criminal and civil asset 5
forfeitures, to revise the procedures upon a 6
writ of execution of goods claimed by a person 7
other than the defendant, and to establish the 8
offense of receiving proceeds of an offense 9
subject to forfeiture proceedings and permit the 10
state to file a civil action against the person 11
who allegedly committed that offense under 12
certain circumstances. 13

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2329.84, 2329.85, 2329.86, 14
2981.01, 2981.03, 2981.04, 2981.05, 2981.06, 2981.09, 2981.11, 15

and 2981.14 be amended and section 2927.21 of the Revised Code 16
be enacted to read as follows: 17

Sec. 2329.84. If, by virtue of a writ of execution issued 18
from a court of record in this state, an officer levies it on 19
goods and chattels claimed by a person other than the defendant, 20
such officer ~~forthwith~~ shall give written notice to a judge of 21
the court of common pleas, municipal court, or county court, 22
~~which whichever court has jurisdiction. The~~ notice shall contain 23
the names of the plaintiff, defendant, and claimant, and at the 24
same time furnish the judge a schedule of the property claimed. 25
~~Immediately upon~~ As soon as is practicable after the receipt of 26
the notice and schedule, the judge shall ~~make an entry of them~~ 27
~~on his docket, and issue a summons directed to the sheriff or~~ 28
~~any constable of the county commanding him to summon five~~ 29
~~disinterested men, having the qualifications of electors, to be~~ 30
~~named in the summons, to appear before him, at the time and~~ 31
~~place therein mentioned, which shall not be more than three days~~ 32
~~after the date of the writ, to try and~~ schedule a hearing to 33
determine the claimant's right to the property in controversy. 34
The claimant shall give two days' notice, in writing, to the 35
plaintiff, or other party, for whose benefit the execution was 36
issued and levied, his agent, or attorney, if within the county, 37
of the time and place of trial. The claimant shall prove to the 38
satisfaction of the judge that such notice was given, or that it 39
could not be given by reason of the absence of the party, his 40
agent, or attorney. 41

Sec. 2329.85. ~~The jurors summoned under section 2329.84 of~~ 42
~~the Revised Code shall be sworn to try and determine the right~~ 43
~~of the claimant to the property in controversy, and give a true~~ 44
~~verdict according to the evidence. If~~ at the hearing under 45
section 2329.84 of the Revised Code the jury judge of the court 46

of common pleas, municipal court, or county court finds that the 47
right to the goods and chattels, in whole or part, is in the 48
claimant, ~~they~~ the judge also shall find the value ~~thereof of~~ 49
the goods and chattels. The judge ~~of the county court~~ shall 50
render judgment on such finding for the claimant that ~~he~~ the 51
claimant recover ~~his~~ the claimant's costs against the plaintiff 52
in execution, or other party for whose benefit the writ of 53
execution is issued, and also have restitution of the goods and 54
chattels, or any part ~~thereof of them~~, according to the finding 55
of the ~~jury judge~~. If the jury judge finds that no right to any 56
part of the goods and chattels, is in the claimant, the judge 57
shall render judgment on such finding in favor of the plaintiff 58
in execution, or other party for whose benefit ~~it~~ the writ of 59
execution is issued, and against the claimant, for costs, and 60
award execution ~~thereon on the judgment~~. If the jury fails to 61
agree and is discharged, costs shall be taxed, to abide the 62
~~final event of the proceedings, and another jury shall be~~ 63
~~summoned as before~~. Unless a bond is executed, as provided in 64
section 2329.86 of the Revised Code, a judgment for the claimant 65
shall be a justification of the officer in returning "no goods" 66
to the writ by virtue of which the levy was made, as to ~~such the~~ 67
part of the goods and chattels ~~as that~~ were found to belong to 68
the claimant. The same fees shall be allowed and taxed by the 69
judge, for ~~himself self~~, officers, jurors, and witnesses, ~~as~~ 70
that are allowed by law for ~~like similar~~ services. 71

Sec. 2329.86. If the ~~jury summoned~~ judge at the hearing 72
under section 2329.84 of the Revised Code finds that the right 73
to the property, or a part of it, is in the claimant, and the 74
plaintiff in execution within three days after the ~~trial hearing~~ 75
tenders to the officer having the property in ~~his~~ the officer's 76
custody, a bond in double the amount of its value as assessed by 77

the ~~jury judge~~, with good and sufficient sureties, payable to 78
the claimant, to the effect that they will pay all damages 79
sustained by reason of the detention or sale of the property, 80
the officer shall deliver such bond to the claimant, sell the 81
property as if no ~~trial hearing~~ of the right ~~thereto~~ to the 82
property had taken place, and shall not be liable to the 83
claimant ~~therefor~~ for the property. 84

Sec. 2927.21. (A) As used in this section: 85

(1) "Offense subject to forfeiture proceedings" means any 86
of the following: 87

(a) A violation of section 2903.01, 2903.02, 2903.03, 88
2903.04, 2903.041, 2903.05, 2903.06, 2903.08, 2903.09, 2903.11, 89
2903.12, 2903.13, 2903.14, 2903.15, 2903.16, 2903.21, or 90
2903.211 of the Revised Code; 91

(b) A violation of section 2905.01, 2905.02, 2905.03, 92
2905.05, 2905.11, 2905.32, or 2905.33 of the Revised Code; 93

(c) A violation of section 2907.02, 2907.03, 2907.04, 94
2907.05, 2907.06, 2907.07, 2907.19, 2907.21, 2907.22, 2907.321, 95
2907.322, or 2907.323 of the Revised Code; 96

(d) A violation of section 2909.02, 2909.03, 2909.22, 97
2909.23, 2909.24, 2909.26, 2909.27, 2909.28, or 2909.29 of the 98
Revised Code; 99

(e) A violation of section 2911.01, 2911.02, 2911.11, 100
2911.12, or 2911.13 of the Revised Code; 101

(f) A violation of section 2915.02, 2915.03, 2915.04, or 102
2915.05 of the Revised Code; 103

(g) A violation of section 2921.02, 2921.03, 2921.04, 104
2921.05, 2921.11, 2921.12, or 2921.41 of the Revised Code; 105

(h) A violation of section 2925.02, 2925.03, 2925.04, 2925.041, 2925.05, 2925.06, 2925.09, or 2925.11 of the Revised Code; 106
107
108

(i) A conspiracy or attempt to commit, or complicity in committing, any offense under division (A) (1) (a), (b), (c), (d), (e), (f), (g), or (h) of this section. 109
110
111

(2) "Proceeds" has the same meaning as in section 2981.01 of the Revised Code. 112
113

(3) "Vehicle" has the same meaning as in section 4501.01 of the Revised Code. 114
115

(B) No person shall receive, retain, possess, or dispose of proceeds knowing or having reasonable cause to believe that the proceeds were derived from the commission of an offense subject to forfeiture proceedings. 116
117
118
119

(C) It is not a defense to a charge of receiving proceeds of an offense subject to forfeiture proceedings in violation of this section that the proceeds were derived by means other than the commission of an offense subject to forfeiture proceedings if the property was explicitly represented to the accused person as having been derived from the commission of an offense subject to forfeiture proceedings. 120
121
122
123
124
125
126

(D) A person shall be considered to have received, retained, possessed, or disposed of proceeds if the proceeds are found anywhere in a vehicle and the person was the last person who operated the vehicle immediately prior to the search of the vehicle by the law enforcement officer who found the proceeds. 127
128
129
130
131

(E) Whoever violates this section is guilty of receiving proceeds of an offense subject to forfeiture proceedings. If the value of the proceeds involved is less than one thousand 132
133
134

dollars, receiving proceeds of an offense subject to forfeiture 135
proceedings is a misdemeanor of the first degree. If the value 136
of the proceeds involved is one thousand dollars or more and is 137
less than twenty-five thousand dollars, receiving proceeds of an 138
offense subject to forfeiture proceedings is a felony of the 139
fifth degree. If the value of the proceeds involved is twenty- 140
five thousand dollars or more and is less than one hundred fifty 141
thousand dollars, receiving proceeds of an offense subject to 142
forfeiture proceedings is a felony of the fourth degree. If the 143
value of the proceeds involved is one hundred fifty thousand 144
dollars or more, receiving proceeds of an offense subject to 145
forfeiture proceedings is a felony of the third degree. 146

Sec. 2981.01. (A) Forfeitures under this chapter shall be 147
governed by all of the following purposes: 148

(1) To provide economic disincentives and remedies to 149
deter and offset the economic effect of offenses by seizing and 150
forfeiting contraband, proceeds, and certain instrumentalities; 151

(2) To ensure that seizures and forfeitures of 152
instrumentalities are proportionate to the offense committed; 153

(3) To protect third parties from wrongful forfeiture of 154
their property; 155

(4) To prioritize restitution for victims of offenses. 156

(B) As used in this chapter: 157

(1) "Aircraft" has the same meaning as in section 4561.01 158
of the Revised Code. 159

(2) "Computers," "computer networks," "computer systems," 160
"computer software," and "telecommunications device" have the 161
same meanings as in section 2913.01 of the Revised Code. 162

- (3) "Financial institution" means a bank, credit union, savings and loan association, or a licensee or registrant under Chapter 1321. of the Revised Code. 163
164
165
- (4) "Firearm" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code. 166
167
- (5) "Innocent person" includes any bona fide purchaser of property that is subject to forfeiture, including any person who establishes a valid claim to or interest in the property in accordance with section ~~2923.04~~2981.04 of the Revised Code, and any victim of an alleged offense. 168
169
170
171
172
- (6) "Instrumentality" means property otherwise lawful to possess that is used in or intended to be used in an offense. An "instrumentality" may include, but is not limited to, a firearm, a mobile instrumentality, a computer, a computer network, a computer system, computer software, a telecommunications device, money, and any other means of exchange. 173
174
175
176
177
178
- (7) "Law enforcement agency" includes, but is not limited to, the state board of pharmacy, the enforcement division of the department of taxation, the Ohio casino control commission, and the office of the prosecutor. 179
180
181
182
- (8) "Mobile instrumentality" means an instrumentality that is inherently mobile and used in the routine transport of persons. "Mobile instrumentality" includes, but is not limited to, any vehicle, any watercraft, and any aircraft. 183
184
185
186
- (9) "Money" has the same meaning as in section 1301.201 of the Revised Code. 187
188
- (10) "Offense" means any act or omission that could be charged as a criminal offense or a delinquent act, whether or not a formal criminal prosecution or delinquent child proceeding 189
190
191

began at the time the forfeiture is initiated. Except as 192
otherwise specified, an offense for which property may be 193
forfeited includes any felony and any misdemeanor. The 194
commission of an "offense" includes the commission of a 195
delinquent act. 196

(11) "Proceeds" means both of the following: 197

(a) In cases involving unlawful goods, services, or 198
activities, "proceeds" means any property derived directly or 199
indirectly from an offense. "Proceeds" may include, but is not 200
limited to, money or any other means of exchange. "Proceeds" is 201
not limited to the net gain or profit realized from the offense. 202
"Proceeds" does not include property, including money or other 203
means of exchange, if all of the following apply to that 204
property: 205

(i) It is held under clear title by a law enforcement 206
agency. 207

(ii) It is used or may be used to purchase contraband for 208
the purpose of investigating any drug abuse offense, as defined 209
in section 2925.01 of the Revised Code. 210

(iii) If it is used to purchase contraband under division 211
(B)(11)(a)(ii) of this section, the property continues to be 212
considered the property of the law enforcement agency if the 213
agency establishes a clear chain of custody of it. 214

(b) In cases involving lawful goods or services that are 215
sold or provided in an unlawful manner, "proceeds" means the 216
amount of money or other means of exchange acquired through the 217
illegal transactions resulting in the forfeiture, less the 218
direct costs lawfully incurred in providing the goods or 219
services. The lawful costs deduction does not include any part 220

of the overhead expenses of, or income taxes paid by, the entity 221
providing the goods or services. The alleged offender or 222
delinquent child has the burden to prove that any costs are 223
lawfully incurred. 224

(12) "Property" means "property" as defined in section 225
2901.01 of the Revised Code and any benefit, privilege, claim, 226
position, interest in an enterprise, or right derived, directly 227
or indirectly, from the offense. 228

(13) "Property subject to forfeiture" includes contraband 229
and proceeds and may include instrumentalities as provided in 230
this chapter. 231

(14) "Prosecutor" has the same meaning as in section 232
2935.01 of the Revised Code. When relevant, "prosecutor" also 233
includes the attorney general. 234

(15) "Vehicle" has the same meaning as in section 4501.01 235
of the Revised Code. 236

(16) "Watercraft" has the same meaning as in section 237
1547.01 of the Revised Code. 238

(C) The penalties and procedures under Chapters 2923., 239
2925., 2933., and 3772. of the Revised Code remain in effect to 240
the extent that they do not conflict with this chapter. 241

Sec. 2981.03. (A) (1) The state or political subdivision 242
acquires provisional title to property subject to forfeiture 243
under this chapter upon a person's commission of an offense 244
giving rise to forfeiture, subject to third party claims and a 245
final adjudication under section 2981.04 or 2981.05 of the 246
Revised Code. Provisional title authorizes the state or 247
political subdivision to seize and hold the property, and to act 248
to protect the property, under this section before any 249

proceeding under this chapter. Title to the property vests with 250
the state or political subdivision when the trier of fact 251
renders a final forfeiture verdict or order under section 252
2981.04 or 2981.05 of the Revised Code, but that title is 253
subject to third party claims adjudicated under those sections. 254

(2) ~~A-Except as otherwise provided in division (A) (3) of~~ 255
this section, a law enforcement officer may seize property that 256
the officer has probable cause to believe is property subject to 257
forfeiture. If a law enforcement officer seizes property that is 258
titled or registered under law, the officer or the law 259
enforcement agency that employs the officer shall notify the 260
property owner of the seizure. The agency shall give notice to 261
the property owner at the owner's last known address as soon as 262
practical after the seizure and may give the notice by certified 263
mail or orally by any means, including telephone. If the officer 264
or agency is unable to provide the notice required by this 265
division despite reasonable, good faith efforts, those efforts 266
constitute fulfillment of the notice requirement. 267

(3) ~~In-If a civil forfeiture case under this chapter in~~ 268
~~which the state or political subdivision seeks to seize real~~ 269
~~property, the property owner may request~~ the prosecutor shall 270
file a motion in the appropriate court to request a hearing 271
~~before the seizure, and in~~ shall notify the property owner of 272
the motion. The court shall hold the hearing not sooner than 273
twenty-one days after the motion is filed. At the hearing, the 274
court shall grant the motion if the state or political 275
subdivision ~~shall show probable cause~~ demonstrates by a 276
preponderance of the evidence that the real property is subject 277
to forfeiture. 278

(4) A person aggrieved by an alleged unlawful seizure of 279

property may seek relief from the seizure by filing a motion in 280
the appropriate court that shows the person's interest in the 281
property, states why the seizure was unlawful, and requests the 282
property's return. If the motion is filed before an indictment, 283
information, or a complaint seeking forfeiture of the property 284
is filed, the court shall ~~promptly~~ schedule a hearing on the 285
motion, and at not later than twenty-one days after it is filed. 286
The court may extend the time for the hearing on the motion by 287
consent of the parties or for good cause shown. At the hearing, 288
if the property seized is titled or registered under law, the 289
person-state or political subdivision shall demonstrate by a 290
preponderance of the evidence that the seizure was ~~unlawful-~~ 291
lawful and that the person is not entitled to the property. If 292
the property seized is not titled or registered under law, the 293
person shall demonstrate by a preponderance of the evidence that 294
the seizure was unlawful and that the person is entitled to the 295
property. If the motion is filed by a defendant after an 296
indictment, information, or a complaint seeking forfeiture of 297
the property has been filed, the court shall treat the motion as 298
a motion to suppress evidence. If the motion is filed by a third 299
party after an indictment, information, or complaint seeking 300
forfeiture of the property has been filed, the court shall treat 301
the motion as a petition of a person with an alleged interest in 302
the subject property, pursuant to divisions (E) and (F) of 303
section 2981.04 of the Revised Code. 304

(5) (a) In any action under section 2981.04 or 2981.05 of 305
the Revised Code, if a property owner or third party claims 306
lawful interest in the subject property alleged to be proceeds, 307
the state or political subdivision has provisional title and a 308
right to hold property if it proves both of the following by a 309
preponderance of the evidence: 310

(i) The interest in the property was acquired by the 311
alleged offender or delinquent child during the commission of 312
the offense or within a reasonable time after that period. 313

(ii) There is no likely source for the interest in the 314
property other than as proceeds derived from or acquired through 315
the commission of the offense. 316

(b) ~~The~~ In any action under section 2981.04 or 2981.05 of 317
the Revised Code, the alleged offender or delinquent child shall 318
have the burden to prove the amount of any direct costs lawfully 319
incurred. 320

(B) (1) Upon application by the prosecutor who prosecutes 321
or brings an action that allows forfeiture under this chapter, 322
the court in which the action is prosecuted or filed may issue 323
an order taking any reasonable action necessary to preserve the 324
reachability of the property including, but not limited to, a 325
restraining order or injunction, an order requiring execution of 326
a satisfactory bond or insurance policy, an order to inspect, 327
photograph, or inventory the property, an order placing a lien 328
or lis pendens against the property, or an order appointing a 329
receiver or trustee. The court may issue an order of this nature 330
at any of the following times: 331

(a) Upon the filing of a complaint, indictment, or 332
information alleging the property to be subject to forfeiture 333
under section 2981.02 of the Revised Code; 334

(b) Prior to the filing of a complaint, an indictment, or 335
information alleging the property to be subject to forfeiture 336
under section 2981.02 of the Revised Code, if, after giving 337
notice to all persons known to have ~~a~~ an interest in the 338
property and giving those persons an opportunity to be heard, 339

the court determines that all of the following apply: 340

(i) There is a substantial probability the state or 341
political subdivision will prevail on the forfeiture issue. 342

(ii) There is a substantial probability that failure to 343
enter the order will result in the property being destroyed, 344
being removed from the court's jurisdiction, or otherwise being 345
made unavailable for forfeiture. 346

(iii) The need to preserve the availability of the 347
property outweighs the hardship on the person against whom the 348
order is to be entered. 349

(c) As a condition of releasing the property based on a 350
determination of substantial hardship under division (D) of this 351
section. 352

(2) Except as otherwise provided in division (B)(3) of 353
this section, the court shall make an order under division (B) 354
(1)(b) of this section effective for not more than ninety days, 355
but the court may extend the order if the prosecutor 356
demonstrates that the need to preserve the reachability of the 357
property still exists or for other good cause shown and shall 358
extend the order if an indictment, information, or a complaint 359
is filed alleging that the property is subject to forfeiture. 360

(3) A court may issue an order under division (B)(1) of 361
this section without giving notice or a hearing to a person 362
known to have a interest in the property if the prosecutor 363
demonstrates that the property is subject to forfeiture and that 364
giving notice and a hearing will jeopardize the availability of 365
the property for forfeiture. Notwithstanding the ninety-day 366
limit described in division (B)(2) of this section, the court 367
shall make an order under division (B)(3) of this section 368

effective for not more than ten days, but the court may extend 369
the order if the prosecutor again demonstrates that the property 370
is subject to forfeiture and that a hearing will jeopardize the 371
availability of the property or for other good cause shown or if 372
the person subject to the order consents to a longer period. If 373
a party requests a hearing on the order, the court shall hold 374
the hearing at the earliest possible time before the order 375
expires. 376

(4) At any hearing under division (B) of this section, the 377
court may receive and consider evidence and information that is 378
inadmissible under the Rules of Evidence. The court shall cause 379
the hearing to be recorded and shall cause a transcript to be 380
made. If property is to be seized as a result of the hearing, 381
the recording and transcript shall not be a public record for 382
purposes of section 149.43 of the Revised Code until the 383
property is seized. This section does not authorize making 384
available for inspection any confidential law enforcement 385
investigatory record or trial preparation record, as defined in 386
section 149.43 of the Revised Code. 387

(C) Except as otherwise provided in division (E) of this 388
section, any replevin, conversion, or other civil action brought 389
concerning property subject to a criminal or civil forfeiture 390
action under this chapter shall be stayed until the forfeiture 391
action is resolved. 392

(D) (1) A person with an interest in property that is 393
subject to forfeiture and that is seized under this chapter may 394
seek conditional release of the property by requesting 395
possession from the person with custody of the property. The 396
request shall demonstrate how the person meets the requirements 397
specified in divisions (D) (3) (a), (b), and (c) of this section. 398

(2) If the person with custody of the property does not 399
release the property within fifteen days after a person makes a 400
request under division (D)(1) of this section, or within seven 401
days after a person makes the request if the property was seized 402
as a mobile instrumentality or if the request is to copy 403
records, the person who made the request may file a petition for 404
conditional release with the court in which the complaint, 405
indictment, or information is filed or, if no complaint, 406
indictment, or information is filed, the court that issued the 407
seizure warrant for the property. The petition shall demonstrate 408
how the person meets the requirements specified in divisions (D) 409
(3) (a), (b), and (c) of this section and the steps the person 410
has taken to secure release of the property from the official. 411
Unless extended for good cause shown, the petition shall be 412
filed either within thirty days of the filing of a complaint, an 413
indictment, or information in the forfeiture action or, if no 414
complaint, indictment, or information is filed, within thirty 415
days of the ~~issuance of the seizure warrant~~ of the property. 416

If the court finds that the person meets the criteria 417
specified in divisions (D)(3) (a), (b), and (c) of this section, 418
the court shall order the property's conditional return to the 419
person pending completion of the forfeiture action. In issuing 420
this order, the court shall notify the person of the 421
prohibitions against interfering with or diminishing property in 422
section 2981.07 of the Revised Code and may make any order 423
necessary to ensure that the value of the property is 424
maintained. 425

If personal, business, or governmental records are seized, 426
including those contained in computer files, a person may 427
petition the court for a prompt opportunity to copy, at the 428
person's expense, any records that are not contraband. The court 429

may grant the petition if the person demonstrates how the person 430
meets the requirements specified in divisions (D) (3) (a) and (c) 431
of this section. The court shall order a competent person to 432
supervise the copying. 433

(3) Except when there is probable cause that the property 434
is contraband, property that must be held for a reasonable time 435
as evidence related to an offense, or property that is likely to 436
be used in additional offenses or except when the state or 437
political subdivision meets the burden imposed under division 438
(A) (5) of this section regarding alleged proceeds, a court may 439
conditionally release property subject to forfeiture to a person 440
who demonstrates all of the following: 441

(a) A possessory interest in the property; 442

(b) Sufficient ties to the community to provide assurance 443
that the property will be available at the time of trial; 444

(c) That failure to conditionally release the property 445
will cause a substantial hardship to the claimant. 446

(4) In determining whether a substantial hardship exists, 447
the court shall weigh the claimant's likely hardship from the 448
state's or political subdivision's continued possession of the 449
property against the risk that the property will be destroyed, 450
damaged, lost, concealed, or transferred if returned to the 451
claimant. The court shall consider in favor of release the 452
possibility that withholding the property would prevent a 453
legitimate business from functioning, prevent the claimant's or 454
an innocent person from maintaining employment, or leave the 455
claimant or an innocent person homeless. 456

(5) If the state or political subdivision shows that the 457
claimant's petition is frivolous, the court shall deny the 458

petition. Otherwise, the state or political subdivision may 459
respond to the petition by submitting evidence ex parte to avoid 460
disclosing any matter that may adversely affect an ongoing 461
criminal investigation or pending trial. 462

(6) The court shall decide on the petition not more than 463
~~thirty-twenty-one~~ days after it is filed. If the property seized 464
is alleged to be a mobile instrumentality, the court shall 465
decide on the petition ~~as soon as practicable within the thirty-~~ 466
~~day period~~ not more than ten days after it is filed. If 467
personal, business, or governmental records were seized and a 468
person files a petition to copy the records, the court shall 469
decide on the petition as soon as practicable, but not later 470
than thirty days after it is filed. In any case, the court may 471
extend the time for deciding on the petition by consent of the 472
parties or for good cause shown. 473

(E) Nothing in this section precludes a financial 474
institution that has or purports to have a security interest in 475
or lien on property described in section 2981.02 of the Revised 476
Code from filing an action in connection with the property, 477
prior to its disposition under this chapter, to obtain 478
possession of the property in order to foreclose or otherwise 479
enforce the security interest or lien. 480

If a financial institution commences a civil action or 481
takes any other appropriate legal action to sell the property 482
prior to its seizure or prior to its disposition under this 483
chapter, if the person who is responsible for conducting the 484
sale has actual knowledge of the commencement of a forfeiture 485
action under either section 2981.04 or 2981.05 of the Revised 486
Code, and if the property is sold, then the person shall dispose 487
of the proceeds of the sale in the following order: 488

(1) First, to the payment of the costs of the sale, 489
excluding any associated attorney's fees, and to the payment of 490
the costs incurred by law enforcement agencies and financial 491
institutions in connection with the seizure, storage, and 492
maintenance of, and provision of security for, the property; 493

(2) Second, in the order of priority of the security 494
interests and liens, to the payment of valid security interests 495
and liens pertaining to the property that, at the time at which 496
the state or political subdivision gains provisional title, are 497
held by known secured parties and lienholders; 498

(3) Third, to the court that has or would have 499
jurisdiction in a case or proceeding under section 2981.04 or 500
~~section~~ 2981.05 of the Revised Code for disposition under this 501
chapter. 502

(F) A prosecutor may file a forfeiture action under 503
section 2981.04 or 2981.05 of the Revised Code, or both. If 504
property is seized pursuant to this section ~~and a criminal~~ 505
~~forfeiture has not begun under section 2981.04 of the Revised~~ 506
~~Code~~, the prosecutor of the county in which the seizure occurred 507
shall commence a civil action to forfeit that property under 508
section 2981.05 of the Revised Code, if that section applies. 509

~~If the property seized includes property alleged to be a~~ 510
~~mobile instrumentality or includes personal, business, or~~ 511
~~governmental records, the civil forfeiture action shall be~~ 512
~~brought within thirty days of seizure. Otherwise, the action~~ 513
~~shall be brought within sixty days of seizure. In either case,~~ 514
~~the period within which the action shall be brought may be~~ 515
~~extended by agreement of the parties or by the court for good~~ 516
~~cause shown.~~ 517

A prosecutor may file an appropriate charging instrument 518
under section 2981.04 of the Revised Code to seek a criminal 519
forfeiture after a civil forfeiture action begins. Filing a 520
charging instrument for an offense that is also the basis of a 521
civil forfeiture action shall stay the civil forfeiture action. 522

~~A civil action to obtain civil forfeiture may be commenced 523
as described in section 2981.05 of the Revised Code regardless 524
of whether the offender or delinquent child has pleaded guilty 525
to, been convicted of, or been adjudicated a delinquent child 526
for the act that is the basis of the order. 527~~

(G) The prosecutor shall maintain an accurate record of 528
each item disposed of under section 2981.04 or 2981.05 of the 529
Revised Code. The record shall not identify or enable the 530
identification of the officer who seized the property. The 531
record is a public record open for inspection under section 532
149.43 of the Revised Code. 533

Sec. 2981.04. (A) (1) Property described in division (A) of 534
section 2981.02 of the Revised Code may be forfeited under this 535
section only if the defendant is convicted of, or enters 536
intervention in lieu of conviction for, an offense or the 537
juvenile is adjudicated a delinquent child for committing an act 538
that would be an offense if committed by an adult and the 539
complaint, indictment, or information charging the offense or 540
municipal violation, or the complaint charging the delinquent 541
act, contains a specification of the type described in section 542
2941.1417 of the Revised Code that sets forth all of the 543
following to the extent it is reasonably known at the time of 544
the filing: 545

(a) The nature and extent of the alleged offender's or 546
delinquent child's interest in the property; 547

(b) A description of the property; 548

(c) If the property is alleged to be an instrumentality, 549
the alleged use or intended use of the property in the 550
commission or facilitation of the offense. 551

(2) If any property is not reasonably foreseen to be 552
subject to forfeiture at the time of filing the indictment, 553
information, or complaint, the trier of fact still may return a 554
verdict of forfeiture concerning that property in the hearing 555
described in division (B) of this section if the prosecutor, 556
upon discovering the property to be subject to forfeiture, gave 557
prompt notice of this fact to the alleged offender or delinquent 558
child under Criminal Rule 7(E) or Juvenile Rule 10(B). 559

~~(3) For good cause shown, the court may consider issues of 560
the guilt of the alleged offender or the delinquency of the 561
alleged delinquent child separate from whether property 562
specified as subject to forfeiture should be forfeited. 563~~

(B) If a person pleads guilty to or is convicted of, or 564
enters intervention in lieu of conviction for, an offense or is 565
adjudicated a delinquent child for committing a delinquent act 566
and the complaint, indictment, or information charging the 567
offense or act contains a specification covering property 568
subject to forfeiture under section 2981.02 of the Revised Code, 569
the trier of fact shall determine whether the person's property 570
shall be forfeited. If the state or political subdivision proves 571
by ~~a preponderance of the~~ clear and convincing evidence that the 572
property is in whole or part subject to forfeiture under section 573
2981.02 of the Revised Code, after a proportionality review 574
under section 2981.09 of the Revised Code when relevant, the 575
trier of fact shall return a verdict of forfeiture that 576
specifically describes the extent of the property subject to 577

forfeiture. If the trier of fact is a jury, on the offender's or 578
delinquent child's motion, the court shall make the 579
determination of whether the property shall be forfeited. 580

(C) If the court enters a verdict of forfeiture under this 581
section, the court imposing sentence or disposition, in addition 582
to any other sentence authorized by section 2951.041 or Chapter 583
2929. of the Revised Code or any disposition authorized by 584
Chapter 2152. of the Revised Code, shall order that the offender 585
or delinquent child forfeit to the state or political 586
subdivision the offender's or delinquent child's interest in the 587
property. The property vests with the state or political 588
subdivision subject to the claims of third parties. The court 589
may issue any additional order to affect the forfeiture, 590
including, but not limited to, an order under section 2981.06 of 591
the Revised Code. 592

(D) After the entry of a forfeiture order under this 593
section, the prosecutor shall attempt to identify any person 594
with an interest in the property subject to forfeiture by 595
searching appropriate public records and making reasonably 596
diligent inquiries. The prosecutor shall give notice of the 597
forfeiture that remains subject to the claims of third parties 598
and proposed disposal of the forfeited property to any person 599
known to have an interest in the property. The prosecutor also 600
shall publish notice of the forfeiture that remains subject to 601
the claims of third parties and proposed disposal of the 602
forfeited property once each week for two consecutive weeks in a 603
newspaper of general circulation in the county in which the 604
property was seized. 605

(E) (1) Any person, other than the offender or delinquent 606
child whose conviction or plea of guilty or delinquency 607

adjudication is the basis of the forfeiture order, who asserts a 608
legal interest in the property that is the subject of the order 609
may petition the court that issued the order for a hearing under 610
division (E) (3) of this section to adjudicate the validity of 611
the person's alleged interest in the property. All of the 612
following apply to the petition: 613

(a) It shall be filed within thirty days after the final 614
publication of notice or the person's receipt of notice under 615
division (D) of this section. 616

(b) It shall be signed by the petitioner under the 617
penalties for falsification specified in section 2921.13 of the 618
Revised Code. 619

(c) It shall describe the nature and extent of the 620
petitioner's interest in the property, the time and 621
circumstances of the petitioner's acquisition of that interest, 622
any additional facts supporting the petitioner's claim, and the 623
relief sought. 624

(d) It shall state that one of the following conditions 625
applies to the petitioner: 626

(i) The petitioner has a legal interest in the property 627
that is subject to the forfeiture order that renders the order 628
completely or partially invalid because the legal interest in 629
the property was vested in the petitioner, rather than the 630
offender or delinquent child whose conviction or plea of guilty 631
or delinquency adjudication is the basis of the order, or was 632
superior to any interest of that offender or delinquent child, 633
at the time of the commission of the offense or delinquent act 634
that is the basis of the order. 635

(ii) The petitioner is a bona fide purchaser for value of 636

the interest in the property that is subject to the forfeiture 637
order and was, at the time of the purchase, reasonably without 638
cause to believe that it was subject to forfeiture. 639

(2) (a) In lieu of filing a petition as described in 640
division (E) (1) of this section, a person, other than the 641
offender or delinquent child whose conviction or plea of guilty 642
or delinquency adjudication is the basis of the forfeiture 643
order, may file an affidavit as described in this division to 644
establish the validity of the alleged right, title, or interest 645
in the property that is the subject of the forfeiture order if 646
the person is a secured party or other lienholder of record that 647
asserts a legal interest in the property, including, but not 648
limited to, a mortgage, security interest, or other type of 649
lien. The affidavit shall contain averments that the secured 650
party or other lienholder acquired its alleged right, title, or 651
interest in the property in the regular course of its business, 652
for a specified valuable consideration, without actual knowledge 653
of any facts pertaining to the offense that was the basis of the 654
forfeiture order, in good faith, and without the intent to 655
prevent or otherwise impede the state or political subdivision 656
from seizing or obtaining a forfeiture of the property. The 657
person shall file the affidavit within thirty days after the 658
earlier of the final publication of notice or the receipt of 659
notice under division (D) of this section. 660

(b) Except as otherwise provided in this section, the 661
affidavit shall constitute prima-facie evidence of the validity 662
of the affiant's alleged interest in the property. 663

(c) Unless the prosecutor files a motion challenging the 664
affidavit within ten days after its filing and unless the 665
prosecutor establishes by ~~a preponderance of the~~ clear and 666

convincing evidence at the hearing held under division (E) (3) of 667
this section that the affiant does not possess the alleged 668
interest in the property or that the affiant had actual 669
knowledge of facts pertaining to the offense or delinquent act 670
that was the basis of the forfeiture order, the affidavit shall 671
constitute conclusive evidence of the validity of the affiant's 672
interest in the property. 673

(d) Any subsequent purchaser or other transferee of 674
property pursuant to forfeiture under this section shall take 675
the property subject to the continued validity of the interest 676
of the affiant. 677

(3) Upon receipt of a petition or affidavit filed under 678
division (E) (1) or (2) of this section, the court shall hold a 679
hearing to determine the validity of the petitioner's interest 680
in the property that is the subject of the forfeiture order or, 681
if the affidavit was challenged, to determine the validity of 682
the affiant's interest in the property. To the extent 683
practicable and consistent with the interests of justice, the 684
court shall hold the hearing within thirty days after the filing 685
of the petition or within thirty days after the prosecutor files 686
the motion challenging the affidavit. The court may consolidate 687
the hearing with a hearing on any other petition or affidavit 688
that is filed by a person other than the offender or delinquent 689
child whose conviction or plea of guilty or delinquency 690
adjudication is the basis of the forfeiture order and that 691
relates to the property that is the subject of the forfeiture 692
order. 693

At the hearing, the petitioner or affiant may testify, 694
present evidence and witnesses on the petitioner's or affiant's 695
behalf, and cross-examine witnesses for the state or political 696

subdivision. In regards to a petition, the state or political 697
subdivision may present evidence and witnesses in rebuttal and 698
in defense of its claim to the property and may cross-examine 699
witnesses for the petitioner. In regards to an affidavit, the 700
prosecutor may present evidence and witnesses and cross-examine 701
witnesses for the affiant. 702

In addition to the evidence and testimony presented at the 703
hearing, the court also shall consider the relevant portions of 704
the record in the criminal or delinquent child case that 705
resulted in the forfeiture order. 706

(F) (1) If the hearing involves a petition, the court shall 707
amend its forfeiture order if it determines at the hearing held 708
pursuant to division (E) (3) of this section that the petitioner 709
has established ~~either of the following~~ by a preponderance of 710
the evidence: 711

~~(a) The petitioner has a legal interest in the property 712
that is subject to the forfeiture order that renders the order 713
completely or partially invalid because the legal interest in 714
the property was vested in the petitioner, rather than the 715
offender or delinquent child whose conviction or plea of guilty 716
or delinquency adjudication is the basis of the order, or was 717
superior to any interest of that offender or delinquent child, 718
at the time of the commission of the offense or delinquent act 719
that is the basis of the order. 720~~

~~(b) The petitioner is a bona fide purchaser for value of 721
the interest in the property that is subject to the forfeiture 722
order and was, at the time of the purchase, reasonably without 723
cause to believe that it was subject that the applicable 724
condition alleged by the petitioner under division (E) (1) (d) of 725
this section applies to forfeiture the petitioner. 726~~

(2) The court also shall amend its forfeiture order to 727
reflect any interest of a secured party or other lienholder of 728
record in the property subject to forfeiture who prevails at a 729
hearing on the petition or affidavit filed pursuant to division 730
(E) (1) or (2) of this section. 731

(G) If the court disposes of all petitions or affidavits 732
timely filed under this section in favor of the state or 733
political subdivision, the state or political subdivision shall 734
have clear title to the property that is the subject of a 735
forfeiture order issued under this section, but only to the 736
extent that other parties' lawful interests in the property are 737
not infringed. To the extent that the state or political 738
subdivision has clear title to the property, the state or 739
political subdivision may warrant good title to any subsequent 740
purchaser or other transferee. 741

Sec. 2981.05. (A) ~~The prosecutor of the political~~ 742
~~subdivision in which~~ After the seizure of property described in 743
division (A) of section 2981.02 of the Revised Code and not 744
sooner than three months after the property owner is deceased as 745
described in division (A) (1) (a) of this section, not sooner than 746
three months after the property owner has not claimed, or 747
asserted any interest in, the property as described in division 748
(A) (2) of this section, or not sooner than one year after 749
division (A) (1) (b) (i) or (ii) of this section applies, the 750
prosecutor of the political subdivision in which the property is 751
located may commence a civil forfeiture action under this 752
section by filing in the court of common pleas of the county in 753
which the property is located a complaint requesting an order 754
that forfeits the property to the state or a political 755
subdivision. A complaint for civil forfeiture may only be filed 756
under this division if the property was seized with probable 757

cause that it was involved in the commission of a felony or a 758
gambling offense or was directly or indirectly obtained through 759
the commission of a felony or a gambling offense and either of 760
the following applies: 761

(1) The property owner is unavailable to the court for one 762
of the following reasons: 763

(a) The property owner is deceased. 764

(b) An indictment for a felony or a charge for a gambling 765
offense has been filed against the property owner, a warrant was 766
issued for the arrest of the property owner, and either of the 767
following applies: 768

(i) The property owner is outside the state and unable to 769
be extradited or brought back to the state for prosecution for 770
the felony or gambling offense. 771

(ii) Reasonable efforts have been made by law enforcement 772
authorities to locate and arrest the property owner, but the 773
property owner has not been located. 774

(2) The property owner has not claimed the property 775
subject to forfeiture or asserted any interest in the property 776
at any time during or after its seizure, verbally or in writing, 777
and all claims brought under division (A) (4) of section 2981.03 778
of the Revised Code have been denied. 779

(B) (1) The filing of a complaint for civil forfeiture 780
under division (A) of this section shall be consistent with 781
division (F) of section 2981.03 of the Revised Code. The 782
complaint shall state all of the following: 783

(a) The facts that support the state's or political 784
subdivision's allegations in the complaint; 785

(b) The alleged felony or gambling offense that subjects 786
the property to forfeiture under division (A) of section 2981.02 787
of the Revised Code. 788

(2) If the property owner is unavailable to the court 789
because the property owner is deceased as provided in division 790
(A) (1) (a) of this section, the complaint shall include a 791
certified copy of the death certificate of the property owner. 792

(C) Simultaneously with or after the filing of a 793
complaint, indictment, or information charging an offense or a 794
complaint charging a delinquent act, the prosecutor may commence 795
a civil forfeiture action by filing in the court in which the 796
applicable complaint, indictment, or information is filed a 797
complaint requesting an order that forfeits to the state or 798
political subdivision any property that is involved in the 799
offense or delinquent act and is subject to forfeiture under 800
section 2981.02 of the Revised Code. The civil forfeiture action 801
filed under this division shall be stayed during the pendency of 802
the applicable criminal or delinquency proceedings. That civil 803
forfeiture action shall proceed after the defendant is convicted 804
of, or enters intervention in lieu of conviction for, the 805
offense involved or the juvenile is adjudicated a delinquent 806
child for the delinquent act involved. 807

(D) (1) Subject to division (D) (7) of this section, the 808
state may file a civil forfeiture action, in the form of a civil 809
action, against any person who is alleged to have received, 810
retained, possessed, or disposed of proceeds, in an amount 811
exceeding fifteen thousand dollars, knowing or having reasonable 812
cause to believe that the proceeds were allegedly derived from 813
the commission of an offense subject to forfeiture proceedings 814
in violation of section 2927.21 of the Revised Code. The 815

complaint shall be filed in the court of common pleas of the 816
county in which the proceeds were alleged to have been received, 817
retained, possessed, or disposed of by the person. The complaint 818
shall specify all of the following: 819

(a) That the person against whom the complaint is filed is 820
alleged to have received, retained, possessed, or disposed of 821
proceeds, in an amount exceeding fifteen thousand dollars, 822
knowing or having reasonable cause to believe that the proceeds 823
were allegedly derived from the commission of an offense subject 824
to forfeiture proceedings in violation of section 2927.21 of the 825
Revised Code; 826

(b) That the state has the right to recover the proceeds 827
described in division (D)(1)(a) of this section; 828

(c) The actual amount of the proceeds described in 829
division (D)(1)(a) of this section. 830

(2) Subject to division (D)(7) of this section, a civil 831
action filed under division (D)(1) of this section shall be 832
stayed if a criminal complaint, indictment, or information is 833
filed against the person who is alleged to have received, 834
retained, possessed, or disposed of proceeds, in an amount 835
exceeding fifteen thousand dollars, knowing or having reasonable 836
cause to believe that the proceeds were derived from the 837
commission of an offense subject to forfeiture proceedings in 838
violation of section 2927.21 of the Revised Code. 839

(3) In a civil action filed under division (D)(1) of this 840
section, the state has the burden to prove by clear and 841
convincing evidence all of the following: 842

(a) That the person received, retained, possessed, or 843
disposed of the proceeds involved; 844

(b) That the person knew or had reasonable cause to 845
believe that the proceeds were derived from the alleged 846
commission of an offense subject to forfeiture proceedings in 847
violation of section 2927.21 of the Revised Code; 848

(c) Subject to division (D) (7) of this section, the actual 849
amount of the proceeds received, retained, possessed, or 850
disposed of by the person that exceeds fifteen thousand dollars. 851

(4) Any statements made in a civil action under division 852
(D) (1) of this section are inadmissible as evidence in a 853
criminal action brought against the person involved for a 854
violation of section 2927.21 of the Revised Code, except for 855
purposes of impeachment. 856

(5) Subject to division (D) (7) of this section, a civil 857
action under division (D) (1) of this section shall be commenced 858
within two years after the latest date on which a person 859
allegedly received, retained, possessed, or disposed of 860
proceeds, in an amount exceeding fifteen thousand dollars, 861
knowing or having reasonable cause to believe that the proceeds 862
were allegedly derived from the commission of an offense subject 863
to forfeiture proceedings in violation of section 2927.21 of the 864
Revised Code. 865

(6) The court shall complete the trial of the civil action 866
under division (D) (1) of this section within one year after the 867
action is commenced unless the parties to the action mutually 868
agree to extend the one-year period or the extension of that 869
period is for good cause shown. 870

(7) The amount of fifteen thousand dollars specified in 871
divisions (D) (1), (2), (3) (c), and (5) of this section shall be 872
increased on the first day of the following January, starting on 873

January 1, 2018, by the rate of inflation for the twelve-month 874
period ending in September of the prior year according to the 875
consumer price index or its successor index. 876

(E) For purposes of this section, there is a rebuttable 877
presumption that the person in possession of the property at the 878
time of its seizure is considered to be the owner of the 879
property unless legal title to the property states otherwise. 880

~~(B)~~ (F) Prior to or upon the commencement of a civil 881
forfeiture action under this section, the prosecutor shall 882
attempt to identify any person with an interest in the property 883
subject to forfeiture by searching appropriate public records 884
and making reasonably diligent inquiries. ~~The~~ At the time of 885
filing the complaint, the prosecutor shall give notice of the 886
commencement of the civil action, together with a copy of the 887
complaint, to each person who is reasonably known to have any 888
interest in the property, by certified mail, return receipt 889
requested, or by personal service. The prosecutor shall cause a 890
similar notice to be published once each week for the two 891
consecutive weeks immediately after the filing of the complaint 892
in a newspaper of general circulation in the county in which the 893
property is located. The published notice shall contain the date 894
and location of the seizure of the property and an itemized list 895
of the property seized that is sought to be forfeited in the 896
complaint. 897

~~(C)~~ (G) A person with an interest in the property subject 898
to forfeiture may petition the court to release the property 899
pursuant to division (D) of section 2981.03 of the Revised Code. 900
The court shall consider the petition as provided in that 901
section. If a timely petition for pretrial hardship release is 902
not filed, or if a petition is filed but not granted, the person 903

may file a claim for the release of the property under the Rules 904
of Civil Procedure. The court shall dispose of any petitions 905
timely filed under this division. 906

~~(D)~~ (H) The court shall issue a civil forfeiture order if 907
it determines that the prosecutor has proved by a ~~preponderance~~ 908
~~of the clear and convincing~~ evidence that the property is 909
subject to forfeiture under section 2981.02 of the Revised Code, 910
and, after a proportionality review under section 2981.09 of the 911
Revised Code when relevant, the trier of fact specifically 912
describes the extent of the property to be forfeited. A civil 913
forfeiture order shall state that all interest in the property 914
in question of the property owner who committed the felony or 915
gambling offense if division (A) of this section applies, of the 916
adult or juvenile who committed the act if division (C) of this 917
section applies, or of the person who is alleged to have 918
received, retained, possessed, or disposed of proceeds if 919
division (D) of this section applies that is the basis of the 920
order is forfeited to the state or political subdivision and 921
shall make due provision for the interest in that property of 922
any other person, when appropriate under this section. The court 923
may issue any additional order to affect the forfeiture, 924
including, but not limited to, one or more orders under section 925
2981.06 of the Revised Code. 926

~~(E)~~ (I) If the court disposes of all petitions timely 927
filed under this section in favor of the state or political 928
subdivision, the state or political subdivision shall have clear 929
title to the property that is the subject of a forfeiture order 930
under this section, but only to the extent that other parties' 931
lawful interests in the property are not infringed. To the 932
extent that the state or political subdivision has clear title 933
to the property, the state or political subdivision may warrant 934

good title to any subsequent purchaser or other transferee.	935
<u>(J) As used in this section:</u>	936
<u>(1) "Gambling offense" has the same meaning as in section 2915.01 of the Revised Code;</u>	937
<u>(2) "Offense subject to forfeiture proceedings" has the same meaning as in section 2927.21 of the Revised Code.</u>	939
Sec. 2981.06. (A) Upon the entry of a forfeiture order under section 2981.04 or 2981.05 of the Revised Code, if necessary, the court shall order an appropriate law enforcement officer to seize the forfeited property on conditions that the court considers proper. If necessary, the court shall order the person in possession of the property to deliver the property by a specific date to the law enforcement agency involved in the initial seizure of the property. The court shall deliver the order by personal service or certified mail.	941
(B) With respect to property that is the subject of a forfeiture order issued under section 2981.04 or 2981.05 of the Revised Code, the court that issued the order, upon petition of the prosecutor who prosecuted the underlying offense or act or brought the civil forfeiture action, may do any of the following:	942
(1) Enter any appropriate restraining orders or injunctions; require execution of satisfactory performance bonds; appoint receivers, conservators, appraisers, accountants, or trustees; or take any other action necessary to safeguard and maintain the forfeited property;	943
(2) Authorize the payment of rewards to persons who provide information resulting in forfeiture of the property under this chapter from funds provided under division (F) of	944
	945
	946
	947
	948
	949
	950
	951
	952
	953
	954
	955
	956
	957
	958
	959
	960
	961
	962
	963

section 2981.12 of the Revised Code;	964
(3) Authorize the prosecutor to settle claims;	965
(4) Restore forfeited property to victims and grant petitions for mitigation or remission of forfeiture;	966 967
(5) Authorize a stay of the forfeiture order pending appeal or resolution of any claim to the property if requested by a person other than the defendant or a person acting in concert with, or on behalf of, the defendant.	968 969 970 971
(C) To facilitate the identification and location of property that is the subject of a forfeiture order and to facilitate the disposition of petitions for remission or mitigation issued under this section, after the issuance of a forfeiture order and upon application by the prosecutor, the court, consistent with the Civil Rules, may order that the testimony of any witness relating to the forfeited property be taken by deposition and that any designated material that is not privileged be produced at the same time and place as the testimony.	972 973 974 975 976 977 978 979 980 981
(D) <u>(1)</u> The court shall order forfeiture of any other property of the offender or delinquent child up to the value of the unreachable property if <u>the state or political subdivision demonstrates by clear and convincing evidence that</u> any of the following describe any property subject to a forfeiture order under section 2981.04 or 2981.05 of the Revised Code:	982 983 984 985 986 987
(1) <u>(a)</u> It cannot be located through due diligence.	988
(2) <u>(b)</u> It has been transferred, sold, or deposited with a <u>an innocent or bona-fide</u> third party.	989 990
(3) <u>(c)</u> It has been placed beyond the jurisdiction of the	991

court. 992

~~(4)~~ (d) It has been substantially diminished in value or 993
has been commingled with other property and cannot be divided 994
without difficulty or undue injury to innocent persons. 995

(2) If property that is subject to a forfeiture order 996
under section 2981.04 or 2981.05 of the Revised Code has been 997
transferred, sold, or deposited with a third party, the court 998
shall order forfeiture of the transferred, sold, or deposited 999
property instead of ordering the forfeiture of other property 1000
under division (D)(1) of this section if the state or political 1001
subdivision demonstrates by clear and convincing evidence that 1002
the transferred, sold, or deposited property was transferred, 1003
sold, or deposited in violation of section 2981.07 of the 1004
Revised Code. 1005

(3) The requirements of divisions (D), (E), and (F) of 1006
section 2981.04 of the Revised Code or the requirements of 1007
divisions (F) and (G) of section 2981.05 of the Revised Code, 1008
whichever are applicable, apply to property forfeited under 1009
division (D)(1) or (2) of this section. 1010

(E) After the state or political subdivision is granted 1011
clear title under section 2981.04 or 2981.05 of the Revised 1012
Code, the prosecutor shall direct disposition of the property 1013
pursuant to this chapter, making due provisions for the rights 1014
of innocent persons. 1015

(F) Any interest in property not exercisable by, or 1016
transferable for value to, the state or political subdivision 1017
shall expire and shall not revert to the offender or delinquent 1018
child who forfeited the property. The offender or delinquent 1019
child is not eligible to purchase the property at a sale under 1020

this chapter. 1021

(G) Any income accruing to or derived from forfeited 1022
property may be used to offset ordinary and necessary expenses 1023
related to the property that are required by law or necessary to 1024
protect the interest of the state, political subdivision, or 1025
third parties. 1026

Sec. 2981.09. (A) Property may not be forfeited as an 1027
instrumentality under this chapter to the extent that the amount 1028
or value of the property is disproportionate to the severity of 1029
the offense. The ~~owner of the property state or political~~ 1030
~~subdivision~~ shall have the burden of going forward with the 1031
evidence and the burden to prove by a ~~preponderance of the clear~~ 1032
~~and convincing~~ evidence that the amount or value of the property 1033
subject to forfeiture is ~~disproportionate~~ proportionate to the 1034
severity of the offense. 1035

(B) Contraband and any proceeds obtained from the offense 1036
are not subject to proportionality review under this section. 1037

(C) In determining the severity of the offense for 1038
purposes of forfeiture of an instrumentality, the court shall 1039
consider all relevant factors including, but not limited to, the 1040
following: 1041

(1) The seriousness of the offense and its impact on the 1042
community, including the duration of the activity and the harm 1043
caused or intended by the person whose property is subject to 1044
forfeiture; 1045

(2) The extent to which the person whose property is 1046
subject to forfeiture participated in the offense; 1047

(3) Whether the offense was completed or attempted; 1048

(4) The extent to which the property was used in 1049
committing the offense; 1050

(5) The sentence imposed for committing the offense that 1051
is the basis of the forfeiture, if applicable. 1052

(D) In determining the value of the property that is an 1053
instrumentality and that is subject to forfeiture, the court 1054
shall consider relevant factors including, but not limited to, 1055
the following: 1056

(1) The fair market value of the property; 1057

(2) The value of the property to the person whose property 1058
is subject to forfeiture, including hardship to the person or to 1059
innocent persons if the property were forfeited. The burden 1060
shall be on the person whose property is subject to forfeiture 1061
to show the value of the property to that person and any 1062
hardship to that person. 1063

Sec. 2981.11. (A) (1) Any property that has been lost, 1064
abandoned, stolen, seized pursuant to a search warrant, or 1065
otherwise lawfully seized or forfeited and that is in the 1066
custody of a law enforcement agency shall be kept safely by the 1067
agency, pending the time it no longer is needed as evidence or 1068
for another lawful purpose, and shall be disposed of pursuant to 1069
sections 2981.12 and 2981.13 of the Revised Code. 1070

(2) This chapter does not apply to the custody and 1071
disposal of any of the following: 1072

(a) Vehicles subject to forfeiture under Title XLV of the 1073
Revised Code, except as provided in division (A) (6) of section 1074
2981.12 of the Revised Code; 1075

(b) Abandoned junk motor vehicles or other property of 1076

negligible value;	1077
(c) Property held by a department of rehabilitation and correction institution that is unclaimed, that does not have an identified owner, that the owner agrees to dispose of, or that is identified by the department as having little value;	1078 1079 1080 1081
(d) Animals taken, and devices used in unlawfully taking animals, under section 1531.20 of the Revised Code;	1082 1083
(e) Controlled substances sold by a peace officer in the performance of the officer's official duties under section 3719.141 of the Revised Code;	1084 1085 1086
(f) Property recovered by a township law enforcement agency under sections 505.105 to 505.109 of the Revised Code;	1087 1088
(g) Property held and disposed of under an ordinance of the municipal corporation or under sections 737.29 to 737.33 of the Revised Code, except that a municipal corporation that has received notice of a citizens' reward program as provided in division (F) of section 2981.12 of the Revised Code and disposes of property under an ordinance shall pay twenty-five per cent of any moneys acquired from any sale or auction to the citizens' reward program.	1089 1090 1091 1092 1093 1094 1095 1096
(B) (1) Each law enforcement agency that has custody of any property that is subject to this section shall adopt and comply with a written internal control policy that does all of the following:	1097 1098 1099 1100
(a) Provides for keeping detailed records as to the amount of property acquired by the agency and the date property was acquired;	1101 1102 1103
(b) Provides for keeping detailed records of the	1104

disposition of the property, which shall include, but not be 1105
limited to, both of the following: 1106

(i) The manner in which it was disposed, the date of 1107
disposition, detailed financial records concerning any property 1108
sold, and the name of any person who received the property. The 1109
record shall not identify or enable identification of the 1110
individual officer who seized any item of property. 1111

(ii) ~~The general types~~ An itemized list of the specific 1112
expenditures made with amounts that are gained from the sale of 1113
the property and that are retained by the agency, including the 1114
specific amount expended on each ~~general type of~~ expenditure, 1115
except that the policy shall not provide for or permit the 1116
identification of any specific expenditure that is made in an 1117
ongoing investigation. 1118

(c) Complies with section 2981.13 of the Revised Code if 1119
the agency has a law enforcement trust fund or similar fund 1120
created under that section. 1121

(2) The records kept under the internal control policy 1122
shall be open to public inspection during the agency's regular 1123
business hours. The policy adopted under this section is a 1124
public record open for inspection under section 149.43 of the 1125
Revised Code. 1126

(C) A law enforcement agency with custody of property to 1127
be disposed of under section 2981.12 or 2981.13 of the Revised 1128
Code shall make a reasonable effort to locate persons entitled 1129
to possession of the property, to notify them of when and where 1130
it may be claimed, and to return the property to them at the 1131
earliest possible time. In the absence of evidence identifying 1132
persons entitled to possession, it is sufficient notice to 1133

advertise in a newspaper of general circulation in the county 1134
and to briefly describe the nature of the property in custody 1135
and inviting persons to view and establish their right to it. 1136

(D) As used in sections 2981.11 to 2981.13 of the Revised 1137
Code: 1138

(1) "Citizens' reward program" has the same meaning as in 1139
section 9.92 of the Revised Code. 1140

(2) "Law enforcement agency" includes correctional 1141
institutions. 1142

(3) "Township law enforcement agency" means an organized 1143
police department of a township, a township police district, a 1144
joint police district, or the office of a township constable. 1145

Sec. 2981.14. (A) ~~Nothing~~ Subject to division (B) of this 1146
section, nothing in this chapter precludes the head of a law 1147
enforcement agency that seizes property from seeking forfeiture 1148
under federal law. If the property is forfeitable under this 1149
chapter and federal forfeiture is not sought, the property is 1150
subject only to this chapter. 1151

(B) A law enforcement agency or prosecuting authority 1152
shall not directly or indirectly transfer or refer any property 1153
seized by the agency or authority to any federal law enforcement 1154
authority or other federal agency for purposes of forfeiture 1155
under federal law unless the value of the seized property 1156
exceeds one hundred thousand dollars, excluding the potential 1157
value of the sale of contraband, or the property is being 1158
transferred or referred for federal criminal forfeiture 1159
proceedings. 1160

(C) Any law enforcement agency that receives moneys from a 1161
sale of forfeited property under federal law shall deposit, use, 1162

and account for the amounts, including any interest derived, in 1163
accordance with applicable federal law. If the state highway 1164
patrol or the investigative unit of the department of public 1165
safety receives such federal forfeiture moneys, the appropriate 1166
official shall deposit all interest or other earnings derived 1167
from the investment of the moneys into the highway patrol 1168
treasury contraband fund, the highway patrol justice contraband 1169
fund, the investigative unit treasury contraband fund, or the 1170
investigative unit justice contraband fund, whichever is 1171
appropriate. 1172

~~(C)~~ (D) There is hereby created in the state treasury the 1173
highway patrol treasury contraband fund, the highway patrol 1174
justice contraband fund, the investigative unit treasury 1175
contraband fund, and the investigative unit justice contraband 1176
fund. Each fund shall consist of moneys received under division 1177
~~(B)~~ (C) of this section and shall be used in accordance with any 1178
federal or other requirements associated with moneys received. 1179

Section 2. That existing sections 2329.84, 2329.85, 1180
2329.86, 2981.01, 2981.03, 2981.04, 2981.05, 2981.06, 2981.09, 1181
2981.11, and 2981.14 of the Revised Code are hereby repealed. 1182