

LFC Requester:

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment** _____
Correction _____ **Substitute** _____

Date January 29, 2025

Bill No: SB 157-280

Sponsor: Katy M. Duhigg and Art De La Cruz
Short Title: SEIZURE OF PROPERTY BY LAW ENFORCEMENT

Agency Name and Code 280—LOPD
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|------------------------------|------------------|
| FY25 | FY26 | | |
| | | | |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------------|------------------|
| FY25 | FY26 | FY27 | | |
| | | | | |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **SB 35 (also amends forfeiture provisions)**
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 157 proposes changes to civil forfeiture proceedings—namely, how funds or property from civil forfeiture actions are allocated among the State or Federal government.

In defining when the Forfeiture Act applies, this bill would add the caveat, “except as provided in Section 31-27-11 NMSA 1978,” which is the statute that controls transfer of forfeitable property to the federal government. Similarly, it would add an exemption to the disposition of seized property section, factoring in Section 31-27-11 for when a state law enforcement agency seizes property for a federal law enforcement authority as part of a federal equitable sharing program.

Where the Forfeiture Act lists where excess proceeds from civil forfeiture actions will be deposited, the bill proposes to add that if the forfeiture money was obtained pursuant to a drug-related crime, the balance shall be subject to appropriation by the legislature for drug treatment rehabilitation, rather than being deposited in the general fund.

Finally, the bill would change how seized property or money would be transferred to the federal government. In the current version of the Act, a state law enforcement agency will not transfer funds to the federal government unless it determines that the criminal conduct that gave rise to the seizure was interstate in nature or sufficiently complex to justify the transfer, or if the seized property would only be forfeited under federal law. The bill proposes that property may be transferred if the federal government has filed criminal charges against the owner of the seized property, there is no innocent owner, and the seized property is required as evidence in the federal prosecution. Additionally, the bill adds that state law enforcement agencies may share information and cooperate with the federal government, and may participate in federal equitable sharing programs provided that the owner must be convicted in federal court. The bill also provides that a law enforcement agency participating in federal equitable sharing programs shall spend money received from the program on drug prevention or awareness programs, including costs associated with conducting law enforcement agency awareness programs.

FISCAL IMPLICATIONS

LOPD does not represent clients in civil forfeiture proceedings. However, certain convictions trigger bifurcated forfeiture proceedings as a collateral consequence of a criminal proceeding, so LOPD attorneys must advise clients on the effects of the Act in the course of their representation.

This bill is unlikely to have major effects on the department workload or performance.

To the extent that proceeds shall be spent on drug prevention or awareness programs (*including costs associated with conducting law enforcement agency awareness programs*), it is unclear at the present whether that allocation would go toward increased enforcement of drug crimes. If the number of prosecutions increases, this bill would increase LOPD's caseload.

Under the present statutory scheme, LOPD workload is so heavy in some offices that lawyers have been required to move to withdraw from new cases in order to provide constitutionally mandated effective assistance of counsel to their existing clients. Barring some other way to reduce indigent defense workload, any increase in the number of felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep this problem from spreading. Of course accurate prediction of the fiscal impact would be impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed statutory scheme.

SIGNIFICANT ISSUES

The provision of this bill that allows for proceeds from drug-related civil forfeitures to be diverted back into law enforcement departments, rather than into the general fund, may incentivize law enforcement overreach.

New Mexico was the subject of national civil forfeiture conversations when the Las Cruces City Attorney publicly bragged about how they can enrich municipalities by raising their sights from just seizing vehicles to seizing real property. He was quoted as saying, "We could be czars. We could own the city. We could be in the real estate business."

<https://www.krwg.org/local-viewpoints/2015-03-26/stratton-civil-asset-forfeiture-bill-worth-signing>

New Mexico subsequently curtailed civil forfeiture by providing that the property owner must be convicted, not just accused, of the crime in order to seize their assets. However, it is worth noting New Mexico's sordid past with civil forfeiture, and proceed with caution in any bill that potentially incentivizes law enforcement agencies to seize property.

Martin Kaste, *New Mexico Ended Civil Asset Forfeiture. Why Then Is It Still Happening?*, NPR (June 7, 2016, 5:02 AM), <http://www.npr.org/2016/06/07/481058641/new-mexico-ended-civil-asset-forfeiture-why-then-is-it-still-happening>

See generally, David Pimentel, *Civil Asset Forfeiture: Can State Legislation Solve the Problem?*, 25 Geo. Mason L. Rev. 173 (2017), [https://www.westlaw.com/Document/I22eb827c7ce711e9adfea82903531a62/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I22eb827c7ce711e9adfea82903531a62/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS