

LFC Requester:	Scott Sanchez
-----------------------	---------------

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.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}

Date Prepared: 28 JAN 2025 *Check all that apply:*
Bill Number: SB 157 Original Correction
 Amendment Substitute

Sponsor: Katy M. Duhigg and Art De La Cruz
Short Title: Seizure of Property by Law Enforcement
Agency Name and Code: 790 – Department of Public Safety
Number: _____
Person Writing: Emmanuel T. Gutierrez
Phone: 505-917-2952 **Email:** Emmanuel.gutierrez@dps.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NFI	NFI	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
NFI	NFI	NFI	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Allows state law enforcement to participate in a federal asset seizure sharing program from the Department of Justice to spend any shared federal money on drug treatment and prevention programs and creates certain requirements for sharing property. It creates new rules for money shared with the state under the Department of Justice Asset Forfeiture Program. Eliminates a requirement that the crime from which the assets originated involve multiple states and be “sufficiently complex to justify the transfer of the property.”

FISCAL IMPLICATIONS

Prior to 2015, on average New Mexico law enforcement agencies received approximately \$4.366 million annually from equitable sharing of federal forfeitures. New Mexico HIDTA: “HB560 and its Impact on Drug Law Enforcement in New Mexico,” dated 7/14/2015.

The Department of Public Safety, New Mexico State Police (NMSP) received approximately \$1.6 million on average from 2010 to 2014, receiving a total of \$8,154,398 during that time period. Funds were expended on the purchase/replacement of state-of-the-art equipment used by the NMSP Investigations Bureau to conduct its own investigations, as well as to provide assistance to local law enforcement agencies throughout the State that lacked trained investigators and such equipment.

SIGNIFICANT ISSUES

DPS is appreciative that SB157 is clearly intended to undo at least some of the damage done to law enforcement agencies statewide by the 2015 amendment to the Forfeiture Act, which required all forfeited funds to be deposited to the State General Fund. NMSA 1978, §31-27-7 (C). Until that time, pursuant to 18 USC §981 and 19 USC §1616(c)(1)(B)(ii), all New Mexico law enforcement agencies were permitted to participate directly in federal “equitable sharing” of forfeiture proceeds resulting from State and federal collaborative law enforcement work. However, the federal forfeiture law, and related federal Department of Justice (DOJ) rules of distribution, do not permit distribution of proceeds to any entities other than law enforcement agencies. *Id.* The State General Fund is not an eligible recipient, so no New Mexico law enforcement agency has been able to receive federal equitable sharing funds since the Forfeiture Act’s amendment in 2015. This has cost the State millions of dollars annually.

SB157’s Section 3(D) requires that a law enforcement agency “participating in federal equitable sharing programs shall spend money received from a program on drug prevention or awareness program....” This may meet one of the allowable purposes under the Department of Justice Rules and allow for equitable sharing, but DPS has some concerns. Funding from federal equitable sharing can only go to law enforcement, so any funds for drug prevention or awareness programs would have to be for programs run by the law enforcement agency who receives the funds. The only DOJ section that allows for those types of offenses is detailed below:

“Drug, gang, and other prevention or awareness programs—Costs associated with conducting law enforcement agency awareness programs. Examples include public service announcements, meeting costs, motivational speakers, and items used or distributed by the agency such as child identification kits and anti-crime items, literature, or software.”

DPS would recommend the bill be amended to either strike that wording or match the wording with the DOJ Equitable Sharing guidelines.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

No administrative implications to DPS.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

No conflict, duplication, companionship or relationship to DPS.

TECHNICAL ISSUES

No technical issues to DPS.

OTHER SUBSTANTIVE ISSUES

DPS notes that the fact of seized property (e.g., a Cadillac and \$150,000 of cash found in the car's trunk) may be evidence of criminal activity but isn't usually admitted as actual evidence in the federal prosecution. It would, however, be forfeited if it were used during the commission, or was the fruit, of criminal activity. If the case is adopted for federal prosecution, the federal law enforcement agency will have seized all property, whether it would be used as evidence at trial or not. Therefore, DPS recommends removing the language in Section 3(A)(2) which states that for State law enforcement to allow the transfer of seized property to federal authorities, the seized property must be "required as evidence in the federal prosecution."

ALTERNATIVES

Not applicable as no impact to DPS.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo will remain.

AMENDMENTS

DPS believes it would be best to strike Section 3(D) of SB157 in its entirety. If it is not struck, DPS believes it should be replaced with the wording that exactly matched the DOJ Equitable Sharing guidelines, which is mentioned above under "Significant Issues". DPS is unsure if the DOJ will make agencies eligible for equitable sharing if the use is limited to just that area.