

## Senate Bill 1325: Forfeiture

Section 10. Amends the Criminal Code of 1961 by changing Sections 10A-15, 11-17.1, 11-19.2, 11-20, 11-20.1, 11-20.3, 16D-6, 17B-25, 26-5, and 29D-65 to move all “Forfeiture of property” provisions to Article 124B.

Forfeiture provisions related to Dog fighting, Computer Crime (not Computer Fraud as noted in the commentary), WIC Fraud, Terrorism, Involuntary Servitude and Trafficking in Persons, Obscenity and Other Sex Offenses have been moved to Article 124B. These provisions have been streamlined to avoid overlap among forfeiture provisions.

Part 5 of Article 124B sets out the General Provisions: “Purpose and scope. The purpose of this Article is to set forth in one place the provisions relating to forfeiture of property in connection with violations of certain criminal statutes. Part 100 of this Article sets forth standard provisions that apply to these forfeiture proceedings. In Parts 300 and following, for each type of criminal violation, this Article sets forth (i) provisions that apply to forfeiture only in connection with that type of violation and (ii) by means of incorporation by reference, the standard forfeiture provisions that apply to that type of violation.”

- Involuntary Servitude and Trafficking in Persons – Part 300
- Obscenity – Part 400
- Other Sex Offenses – Part 500
- Computer Crime – Part 600
- WIC Fraud – Part 700
- Terrorism – Part 800
- Animals – Part 900

Seizure was not consolidated with Forfeiture but remains intact with only reference changes in SB1300. (See commentary on SB1300: Section 36-1. Seizure. Updates references to other Sections.)

***The CLEAR Commission’s recommendation indicated below, except for the consolidation of forfeiture provisions, is not included in the bill but will be considered in the next phase of the drafting work.***

*Commentary:* Article 36: Seizure and Forfeiture. Former Articles 36, Seizure and Forfeiture of Vessels, Vehicles and Aircraft; 37, Property Forfeiture; 38, Criminally Operated Businesses, and other forfeiture provisions are consolidated so that seizure and forfeiture of property are addressed in one location within the Code. The scope and procedures in the former Articles are preserved; however, some names are altered to enhance clarity. References to Non-effective Abortion and Juice Racketeering provisions are eliminated, and an “intentional” mental state is substituted for a “purposeful” mental state. This reorganization enhances the clarity of seizure and forfeiture portions of the Code.

Article 36 is organized into three parts. Part I addresses seizure and forfeiture from the former Articles 36, 37 and 38. Part II sets out seizure and forfeiture in the context of Dog Fighting, Computer Fraud, WIC Fraud, Terrorism, Trafficking in Persons and Involuntary Servitude, certain sex offenses and Obscenity. Part III addresses forfeiture in illegal or controlled substance offenses. These provisions have been streamlined to avoid overlap among seizure and forfeiture provisions.

#### 36-1: Seizure and Forfeiture of Vessels, Vehicles and Aircraft

Articles 36, 37, and 38 are consolidated into Part I of a reorganized Article 36. A number of other offenses that address forfeiture are also placed into Part II of Article 36. The forfeiture provisions in Part II of Article 36 are: Dog Fighting, Computer Fraud, WIC Fraud, Terrorism, and Trafficking in Persons and Involuntary Servitude. Part II also contains sex offenses and obscenity forfeiture provisions, which apply to the offenses of Keeping a Place of Juvenile Prostitution, Exploitation of a Child, Child Pornography, and Obscenity. These provisions added to Part II are relocated to Article 36 so that all forfeiture provisions found in the Code are located in one place for easy reference instead of spread throughout Chapter 720. Most forfeiture provisions relating to Cannabis, Controlled Substances, Methamphetamine, and Drug Paraphernalia, are relocated to Part III of Article 36.

Article 36 is reorganized to become the location for all seizure and forfeiture statutes. Duplicative provisions are removed. For example, two provisions in Part II regarding the scope and procedures for preliminary hearings are the same in all forfeiture provisions, except sex and obscenity. These subsections are placed at the beginning of Part II and deleted from the text of the provisions to reduce repetition. Additionally, forfeiture provisions for the Cannabis Control Act, Controlled Substances Act, Methamphetamine Control and Community Protection Act, and the Drug Paraphernalia Control Act, are consolidated into one statute in Part III. In the newly consolidated forfeiture provision, provisions that applied only to specific Acts are limited in application to these offenses. No substantive change is intended by the reorganization of Article 36.